

Order

Michigan Supreme Court
Lansing, Michigan

November 7, 2012

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2011-19

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Proposed Amendments of
Rule 6.302 and Rule 6.310
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 6.302 and Rule 6.310 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at <http://courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>.

Publication of this proposal does not mean the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated in underlining and deletions
are indicated by strikeover.]

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A)-(B) [Unchanged.]

(C) A Voluntary Plea.

(1)-(2)[Unchanged.]

(3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation, the court may

(a) reject the agreement; or

(b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to the sentence agreed to ~~or recommended by the prosecutor~~; or

- (c) accept the agreement without having considered the presentence report; or
- (d) take the plea agreement under advisement.

If the court accepts the agreement without having considered the presentence report or takes the plea agreement under advisement, it must explain to the defendant that the court is not bound to follow the sentence disposition or recommendation agreed to by the prosecutor, and that if the court chooses not to follow the sentence disposition, the defendant will be allowed to withdraw from the plea agreement. A judge's decision not to follow the sentence recommendation does not entitle the defendant to withdraw the defendant's plea.

(4) [Unchanged.]

(D)-(F) [Unchanged.]

Rule 6.310 Withdrawal or Vacation of Plea

(A) [Unchanged.]

(B) **Withdrawal After Acceptance but Before Sentence.** Except as provided in subsection (3), after ~~After~~ acceptance but before sentence,

(1) [Unchanged.]

(2) the defendant is entitled to withdraw the plea if

- (a) ~~the plea involves a prosecutorial sentence recommendation or an agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or~~
- (b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

- (3) A defendant is not entitled to withdraw a plea under subsection (2)(a) or (2)(b) if the defendant commits misconduct after the plea is accepted but before sentencing. For purposes of this rule, misconduct is defined to include, but is not limited to: absconding or failing to appear for sentencing, violating terms of conditions on bond or the terms of any sentencing or plea agreement, or otherwise failing to comply with an order of the court pending sentencing.

(C)-(E) [Unchanged.]

Staff Comment: The proposed amendments of MCR 6.302 and MCR 6.310 would eliminate the ability of a defendant to withdraw a plea if the defendant and prosecutor agree that the prosecutor will recommend a particular sentence, but the court chooses to impose a sentence greater than that recommended by the prosecutor. Further, the proposal would clarify that a defendant's misconduct that occurs between the time the plea is accepted and the defendant's sentencing may result in a forfeiture of the defendant's right to withdraw a plea in either a *Cobbs* or *Killebrew* case.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2013, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2011-19. Your comments and the comments of others will be posted under ADM File No. 2011-19 at the following address:

<http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/chapter-6-criminal-procedure.aspx>.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 7, 2012

Corbin R. Davis
Clerk