

# Order

Michigan Supreme Court  
Lansing, Michigan

December 23, 2015

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2014-04

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

Proposed Amendments of Rule 2.306  
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rule 2.306 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 [Administrative Matters & Court Rules page](#).

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

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

## Rule 2.306 Depositions on Oral Examination

(A)-(B) [Unchanged.]

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; ~~Conferring~~ Communicating with Deponent.

(1)-(4) [Unchanged.]

(5) ~~Conferring~~ Communicating with Deponent.

(a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).

- (b) A deponent may not ~~confer~~ communicate with another person while a question is pending, except to decide whether to assert a privilege or other legal protection.
- (c) For purposes of this rule, “communicate” includes electronic communication conducted by text message, email or other transmission using an electronic device.

(D)-(G) [Unchanged.]

*Staff Comment:* The proposed amendments of MCR 2.306(C)(5) and (C)(5)(b) would replace references to the word “conferring” or “confer” with “communicating” or “communicate.” The proposed amendment of MCR 2.306(C)(5)(c) would clarify that the term “communicate” would include electronic transmission by text message, email or other electronic manner.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this 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 the proposal may be sent to the Office of Administrative Counsel in writing or electronically by April 1, 2016, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2014-04. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, 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.

December 23, 2015

Clerk