

Order

Michigan Supreme Court
Lansing, Michigan

April 8, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-15

Stephen J. Markman
Mary Beth Kelly

Proposed Amendments of
Rule 6.106 of the
Michigan Court Rules

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

On order of the Court, this is to advise that the Court is considering amendments of Rule 6.106 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 6.106 Pretrial Release

(A) [Unchanged.]

(B) Pretrial Release/Custody Order Under Const 1963, art 1, § 15.

(1)-(4)[Unchanged.]

(5) The court may, in its custody order, limit or prohibit defendant's contact with any other named person or persons if the court determines the limitation or prohibition is necessary to maintain the integrity of the judicial proceedings. If an order under this paragraph is in conflict with another court order, the most restrictive provisions of the orders shall take precedence until the conflict is resolved.

(6) Nothing in this rule limits the ability of a jail to impose restrictions on detainee contact as an appropriate means of furthering penological goals.

- (C) [Unchanged.]
- (D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including
- (1) [Unchanged.]
- (2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to
- (a)-(l) [Unchanged.]
- (m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of ~~each order~~the orders shall take precedence ~~over the other court order~~ until the conflict is resolved. The court may make this condition effective immediately on entry of a pretrial release order of defendant and while defendant remains in custody if the court determines it necessary to maintain the integrity of the judicial proceedings.
- (n)-(o) [Unchanged.]
- (E)-(I) [Unchanged.]

Staff Comment: The proposed amendments of MCR 6.106(B) and (D) would provide clarification that courts are permitted to exercise their inherent power to order conditions that limit or prohibit a pretrial defendant's contact with any named person to be effective immediately, even while defendant remains in custody. These conditions are allowed in a custody order when the protective limitation or prohibition is necessary to maintain the integrity of the judicial proceedings.

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 August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-15. 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](#).

McCORMACK, J. (*concurring*). I write to encourage comment on a number of questions raised by this proposed amendment.

(1) Is this amendment necessary, or do judicial officers already possess the inherent authority to impose conditions on pretrial detainees?

(2) Does a court rule providing courts explicit authorization to limit a pretrial detainee's contact with others then require us to similarly specifically authorize other conditions that courts commonly impose on pretrial detainees (for example, that a pretrial detainee may not be considered for eligibility in a jail's work-release program, may be permitted to receive medical treatment off the jail premises, may be permitted to go to a funeral home or attend a funeral, or be required to attend substance abuse therapy meetings while in custody)?

(3) Will a rule explicitly authorizing courts to impose a specific list of conditions on pretrial detainees inadvertently dissuade judicial officers from ordering conditions that are not identified in the rule but might be merited given the unique facts of a particular situation?

(4) Is it a reasonable assumption that at the time of arraignment, when a judicial officer is considering what conditions to impose, the judicial officer will know whether a defendant will immediately post any bond, will be released on bond at a future date, or will remain in custody for the duration of the trial processes? If not, does this practical hurdle matter?

I encourage public comment on these and any other considerations raised by the proposed amendment.



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.

April 8, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk