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Effective January 1, 2020: Adopted Amendments to the Michigan Court Rules

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Overview

In January 2015, the Michigan Supreme Court encouraged the State Bar of Michigan to identify issues with civil discovery in Michigan and propose solutions to those problems. The State Bar accepted the court's challenge and formed the Civil Discovery Court Rule Review Special Committee ("Committee"). The Committee performed a detailed review of Michigan's civil discovery rules and proposed various changes. The Committee's Final Report and Proposal was completed on April 21, 2018, and was approved by the State Bar of Michigan's Representative Assembly at its April 2018 meeting. The Michigan Supreme Court accepted comments on the proposed changes through March 1, 2019, and held a public hearing on the amendments on May 22, 2019.

By Order dated June 19, 2019, the Michigan Supreme Court published the adopted amendments to Rules 1.105, 2.301, 2.302, 2.305, 2.306, 2.307, 2.309, 2.310, 2.312, 2.313, 2.314, 2.316, 2.401, 2.410, 2.506, 3.201, 3.206, 3.922, 3.973, 3.975, 3.976, 3.977, 5.131 and new Rule 3.229, which will take effect January 1, 2020.

The adopted changes to the Michigan Court Rules ("Rules") reflected in the Supreme Court's June 19, 2019 Order touch on several important discovery issues that litigation attorneys face on a daily basis. Among other things, the adopted changes require mandatory discovery disclosures in most cases, implement a presumptive limit on interrogatories (20 in most cases; 35 in domestic relations cases), and limit depositions to 7 hours each. The amendments also update the Rules to more thoroughly address issues related to electronically stored information ("ESI"), including broadening the definition of ESI, and permitting an ESI discovery conference early in the proceedings. The amended Rules emphasize early identification and resolution of discovery disputes through the use of a discovery plan and discovery mediators.

This article reviews certain of the adopted changes to the Rules and provides context and background from the Committee's Final Report and Proposal as to the reasons for the changes. This article does not cover all the amendments, however, and readers are encouraged to review the Committee's Final Report and Proposal and the full Supreme Court Order.

Rule 1.105. Construction

Rule 1.105 is amended to read: "These rules are to be construed, *administered, and employed by the parties and the court to* secure the just, speedy, and economical...." (Emphasis added to indicate amendments.)

This amendment matches changes to Fed R Civ P 1 and is intended to emphasize that both the court *and* the parties should construe and administer the court rules to secure the just, speedy, and economical determination of every action.[1] The committee suggested this change because it believed that the Rules should be construed and applied to discourage the misuse, over-use, and abuse of procedural tools that ultimately result in delays and increased costs.[2]

Rule 2.301. Availability and Timing of Discovery

Start of Discovery

Amended Rule 2.301 provides that where initial disclosures are required, a party may seek discovery only *after* the party serves its initial disclosures under Rule 2.302(A).[3] If initial disclosures are not required, "a party may seek discovery *after commencement* of the action when authorized by these Rules, by stipulation, or by court order."[4]

Close of Discovery

Rule 2.301(B)(4) is added to the Rules, and provides:

> Unless ordered otherwise, a date for the completion of discovery means the serving party shall initiate the discovery *by a time that provides for a response or appearance*, per these rules, before the completion date. As may be reasonable under the circumstances, or by leave of court, *motions with regard to discovery* may be brought after the date for completion of discovery.[5]

This adopted Rule clarifies the meaning of "completion of discovery." Some courts have construed "completion of discovery" to mean a date by which discovery must be *initiated*, while others have construed the phrase to mean the date by which discovery must be *completed*. This Rule clarifies that discovery must be *completed* in its entirety by the date set by the court. In other words, attorneys must serve discovery requests by a date that provides the opposing party sufficient time to respond within the discovery period.

However, as may be reasonable under the circumstances (or by leave of the court), motions with regard to such discovery may be brought *after* the date for completion of discovery.

The adopted changes to the Michigan Court Rules ("Rules") reflected in the Supreme Court's June 19, 2019 Order touch on several important discovery issues that litigation attorneys face on a daily basis.

Court's Broad Authority

Rule 2.301(C) is added to state plainly what is otherwise implied throughout the Rules—that the court has the authority to control the scope, order, and amount of discovery. In that vein, Rule 2.301(C) empowers the court to "control the scope, order and amount of discovery, consistent with these rules."

As explained in the Committee's Final Report and Proposal, "Judges in particular thought a clear statement in the rules was beneficial if they were expected to increase active case management."[6]

Rule 2.302. Duty to Disclose; General Rules Governing Discovery

Amended Rule 2.302(A) adds a requirement to the Rules for initial disclosures. These initial disclosures include:

> (a) the factual basis of the party's claims and defenses;
>
> (b) the legal theories on which the party's claims and defenses are based, including, if necessary, citations to relevant legal authorities;
>
> (c) the name and, if known, address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses;
>
> (d) a copy—or description—of all documents, ESI, and tangible things that the disclosing party has in its possession, custody, or control, and may use to support its claims or defenses;
>
> (e) a description by category and location of all documents, ESI, and tangible things that are *not* in the disclosing party's possession that the disclosing party may use to support its claims or defenses;
>
> (f) a computation of each category of damages claimed by the disclosing party (the disclosing party must also make available for inspection and copying the documents on which such damages computation is based);
>
> (g) a copy of pertinent portions of any insurance, indemnity, or suretyship agreement under which another person may be liable to satisfy all or part of a possible judgment; and
>
> (h) the anticipated subject areas of expert testimony.[7]

Subrules (c), (d), (f), and (g) are adapted from Fed R Civ P 26(a)(1)(A). The Oakland County Business Court[8] and Macomb County Business Court[9] already require these same disclosures.[10]

Additional Disclosures in No-Fault and Personal Injury Cases

Amended Rule 2.302(A)(2) and (3) provide for additional disclosures in no-fault cases and additional disclosures by claimants for damages for personal injury. Subrules (2) and (3) were adapted in part from the Wayne County Circuit Court's Addendum to Scheduling Order in No-Fault Cases.[11] These subrules are intended to expedite resolution of no-fault cases, which comprise a significant part of trial court dockets.[12]

Timeframe for Initial Disclosures

Amended Rule 2.302(A)(5) sets the timeframe for initial disclosures. The Rule requires a party that has filed a pleading to serve initial disclosures within 14 days following any opposing party's answer to the pleading. MCR 2.302(A)(5)(b)(i). In other words, where there are multiple defendants, the plaintiff's disclosures are due within 14 days of *any* one defendant's answer.[13]

A party answering a pleading must serve initial disclosures "within the later of 14 days after the opposing party's disclosures are due or 28 days after the party files its answer."[14]

These deadlines are intended to allow the defendants to review the plaintiff's disclosures prior to filing their own disclosures. Additionally, these timeframes defer initial disclosures while a pre-answer motion is pending.[15]

Scope of Discovery

Amended Rule 2.302(B)(1) is modified to provide a more precise and narrower definition for the scope of discovery. The amended Rule states:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable.[16]

The Rule narrows the former definition in MCR 2.302(B)(1) from matters "relevant to the *subject matter* involved in the pending action," to "matters that are relevant to any party's *claims or defenses*."[17] This change requires discovery to be judged by reference to the parties' actual claims or defenses.

An important change to Rule 2.302(B)(1) is that *proportionality is a guiding factor* in deciding what discovery is appropriate.[18] The Committee cited the "consideration of weighing burden and expense against likely benefit" as the first and most important factor for the proportionality consideration.[19]

The final sentence of amended Rule 2.302(B)(1) is a key change from the former Rule. Previously, the last sentence of the Rule stated: "It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."[20] Amended Rule 2.302(B)(1) instead provides that "[i]nformation within the scope of discovery need not be admissible in evidence to be discoverable." This change addresses the Committee's concern that the former language had been misused to expand the scope of discovery beyond relevance, to argue that discovery of inadmissible evidence is permitted if it *could* lead to the discovery of admissible evidence.[21] The revised Rule clarifies "that, although discovery of inadmissible evidence is permitted, it must still 'be within the scope of all discovery' — meaning that it must be both relevant and proportional."[22]

Trial Preparation and Experts

Amended Rule 2.302(B)(4)(e) clarifies that Rule 2.302(B)(3)(a) protects drafts of interrogatory answers regarding expert testimony required under 2.302(B)(4)(a)(i).

Additionally, pursuant to amended Rule 2.302(B)(4)(f), communications between the party's attorney and any expert witness under subrule (B)(4) are similarly protected by Rule 2.302(B)(3)(a), regardless of the form of the communications. The following, however, are not protected by Rule 2.302(B)(4)(f): communications related to compensation for the expert's study or testimony; communications that identify facts or data that the party's attorney provided and that the expert considered in forming his opinions; and communications that identify assumptions that the party's attorney provided and that expert relied upon.

This amended Rule is intended to clarify that certain communications between counsel and expert witnesses are subject to the work product privilege, "thus eliminating an area of potential conflict and motion practice and making the process of working with experts more efficient."[23]

Supplementing Disclosures and Responses

Amended Rule 2.302(E) alters and revises the former Rule to address supplementation of initial disclosures. The new Rule requires a party who has made a disclosure under Rule 2.302(A), or a response, to supplement the disclosure or response "in a timely manner" upon learning that the disclosure is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing, or as the court orders.[24]

Changes to Discovery Procedure

Amended Rule 2.302(F) permits the court (by order) or the parties (by stipulation) to change the disclosure requirements in amended Rule 2.302(A), to change the limits

Amended Rule 2.302(B)(1) is modified to provide a more precise and narrower definition for the scope of discovery.

on interrogatories in amended Rule 2.309(A)(2), and to modify or waive the other procedures of the discovery Rules "so long as not inconsistent with a court order, but a stipulation may not change scheduling order deadlines without court approval."[25]

Rule 2.305. Discovery Subpoena to a Non-Party

Amended Rule 2.305 is modified to clarify the difference between non-party discovery and party discovery.

Amended Rule 2.305 is modified to clarify the difference between non-party discovery and party discovery. The Committee found that the previous Rules were confusing as to the different procedural aspects of party discovery versus non-party discovery and the difference between discovery subpoenas and subpoenas for attendance at hearings.[26] A notice of deposition is sufficient for a party. Any subpoena therefore applies only to a non-party. As such, the amended Rule reflects these differences. For example, amended Rule 2.305(A)(1) is revised to provide that "a represented party may issue a subpoena to a *non-party* for a deposition, production or inspection of documents, inspection of tangible things, or entry to land upon court order or after all parties have had a reasonable opportunity to obtain an attorney[.]"[27]

The Committee found that the previous Rules were unclear as to when a plaintiff may start issuing third-party subpoenas. The Committee took the view that, "absent extraordinary circumstances (in which case, a motion is appropriate), all parties should be in the case...to eliminate abuse and the potential for repetition[.]"[28]

Next, pursuant to amended Rule 2.305(A)(2), where a subpoena provides that it is solely for producing documents or tangible things for inspection, then the subpoena must specify "whether an inspection is requested or whether the subpoena may be satisfied by delivering a copy of the requested documents... ."[29]

Pursuant to amended Rule 2.305(A)(3), a subpoena shall provide a minimum of 14 days after service of the subpoena (or a shorter time if the court directs) for the requested act.[30] The subpoenaing party may file a motion to compel compliance with the subpoena under Rule 2.313(A). Where a party or the subpoenaed non-party timely moves for an order quashing or modifying the subpoena, the non-party's obligation to respond to the subpoena is stayed until the motion is resolved.[31]

Amended Rule 2.305(A)(6) sets forth certain requirements for issuing a subpoena on a public or private corporation, partnership, association, or governmental agency. It also permits the subpoenaed party to file objections and move for a protective order.

Lastly, amended Rule 2.305(A)(7) provides that "*upon written request* from another party and payment of reasonable copying costs, the subpoenaing party shall provide copies of documents received pursuant to a subpoena."[32]

Rule 2.306. Depositions on Oral Examination of a Party

Amended Rule 2.306 is modified to add that a deposition may not exceed "one day of seven hours."[33] This limit may be changed by stipulation of the parties.[34] Note that the entire seven-hour deposition must be completed in one day.

The Committee considered amending the Rule to include a ten-deposition presumptive limit to the total number of depositions taken under Rules 2.506, 2.306, and 2.307.[35] However, it ultimately determined that certain categories of cases were not well-suited to deposition limits.[36] Additionally, the Committee concluded that abuse of the number of depositions is not widespread, and courts may impose limits as necessary under its general authority to control the course of discovery.[37]

Amended Rule 2.306(B)(3) addresses deposition notices to corporations, partnerships, associations, and governmental agencies. Pursuant to the modified Rule, notice must be served at least 14 days before the deposition. The noticed entity may object or move for a protective order within 10 days of being noticed. The party seeking discovery may proceed on undisputed topics or move to enforce the notice.[38]

Rule 2.309. Interrogatories to Parties

Amended Rule 2.309(A)(2) limits the number of interrogatories that each separately represented party may serve to 20 interrogatories. Further, "[a] discrete subpart of an interrogatory counts as a separate interrogatory."[39] (The Federal Rules impose a 25-interrogatory limit.)

The Committee received significant feedback on the issue of presumptive limits on interrogatories. Some attorneys claimed that interrogatories are inefficient, abused, and

fail to generate meaningful information.[40] Others believed that abuse and inefficiency is a flaw with the particular attorney's approach to discovery, and not the interrogatory as a discovery device itself.[41] Overall, the Committee believed that presumptive limits on interrogatories will create more efficiency, particularly if initial disclosures are taken seriously by the parties.[42] Additionally, parties and the courts should be open to allowing additional interrogatories when appropriate.

The Committee adopted a limit of 35 interrogatories for domestic relations actions in amended Rule 3.201(C).

Rule 2.310. Requests for Production of Documents and Other Things; Entry On Land for Inspection and Other Purposes

Amended Rule 2.310 clarifies that the term "documents" encompasses electronically stored information ("ESI").[43] ESI is defined in amended Rule 2.310 as "electronically stored information, regardless of format, system, or properties."[44]

According to the Committee, a broad definition of ESI is important because of "[t]he wide variety of computer systems currently in use, and the rapidity of technological change, [which counsels] against a limiting or precise definition of ESI. The Rule is intended to be broad enough to cover all current types of computer-based information, and flexible enough to encompass future changes and developments."[45]

References elsewhere in the Rules to "ESI" should be understood to invoke the expansive definition set forth in amended Rule 2.310.[46] However, references to "documents" that appear in discovery Rules that were *not* amended should be interpreted to include ESI as circumstances warrant.[47]

Rule 2.312. Request for Admission

Amended Rule 2.312 clarifies that the "request must clearly identify in the caption and before each request that it is a Request for Admission."[48] This change is to address the problem of attorneys burying requests to admit in interrogatories or document requests.[49] Burying requests for admission should be avoided given the severe consequences of failing to respond.

Rule 2.313. Failure to Serve Disclosures or to Provide or to Permit Discovery; Sanctions

Amended Rule 2.313(A)(5) is revised to provide that the court may award expenses if disclosure or requested discovery is provided *after* a motion to compel discovery is filed. This amendment is intended to allow the award of expenses where the non-producing party complies with discovery requests only after a motion to compel is filed, even if the court ultimately does not rule on the substance of the motion.[50] However, in order to receive expenses, the moving party must have made a good faith attempt to obtain the disclosure or discovery without court action. Further, the court may decline to award expenses where the opposition to the motion was substantially justified, or other circumstances make an award unjust.

New subrule (A)(6) permits the court to award additional sanctions as are just.

Amended Rule 2.313(C)(1) is a new section setting forth sanctions for failure to provide disclosures as required by Rule 2.302. A party who does not identify a witness or provide the required information is not allowed to use the information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure to provide the disclosure was "substantially justified" or "harmless."[51] In addition to, or instead of, this sanction, the court may (on motion and after giving an opportunity to be heard) order payment of expenses, inform the jury of the party's failure to disclose the information, or other appropriate sanctions.

Amended Rule 2.313(D) rewrites the former Rule (MCR 2.313(E)) regarding failure to preserve electronically stored information. The new version provides for sanctions if ESI is lost because a party failed to take "reasonable steps to preserve it", and if the ESI cannot be restored or replaced through additional discovery.[52] The Rule also provides for more severe sanctions if the court finds "intent to deprive another party of the information's use in the litigation."[53] These sanctions include a presumption that the lost information was unfavorable to the party, a jury instruction directing that the jury may or must presume the information was unfavorable to the party, or dismissal of the action or entry of a default judgment.[54]

Amended Rule 2.313(A)(5) is revised to provide that the court may award expenses if disclosure or requested discovery is provided *after* a motion to compel discovery is filed.

Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

Early Scheduling Conference

Amended Rule 2.401(B) expands the issues that the court may address at an early scheduling conference.[55] These issues include, among others: disclosure, discovery, preservation, and claims of privilege of ESI; simplification of the issues; the amount of time necessary for discovery; necessity of amendments to pleadings; timing of initial disclosures under Rule 2.302(A); limitation of the number of expert witnesses, estimated length of trial, and possibility of settlement.[56]

The list of additional issues comes from former Rule 2.401(C) ("Pretrial Conference"), which is deleted and replaced with this new section, and from amended Rule 2.401(H) ("Final Pretrial Conference and Order"). This new structure more clearly delineates between an early scheduling conference and a final pretrial conference.[57]

Discovery Planning

Amended Rule 2.401(C) is new and refers to discovery planning. This Rule provides that upon "court order or written request by another party, the parties must confer among themselves and prepare a proposed discovery plan."[58] Under the Federal Rules of Civil Procedure, a discovery plan is required in most cases. Under these amended Rules, the discovery plan is an available *alternative* to the initial disclosure requirements and discovery limits.[59] The proposed discovery plan must address all disclosure and discovery matters and propose deadlines for completion of disclosure and discovery.[60]

Final Pretrial Conference

Rule 2.401(H)(2) is a new Rule that provides for the scheduling of a final pretrial conference "to facilitate preparation of the action for trial and to formulate a trial plan."[61] At least one lead attorney who will try the case for each party must attend the conference.[62] At the conference, the parties may discuss, and the court may order the parties to prepare, a joint final pretrial order providing for a number of trial issues, including scheduling motions in *limine*, concise statement of the plaintiff's claims and legal theories, concise statement of defendant's defenses and claims, statement of stipulated facts, issues of fact to be litigated, issues of law to be litigated, evidence problems likely to arise at trial, a list of witnesses to be called, a list of exhibits, estimated length of trial, and other potential trial issues.[63]

As the Committee noted, a pre-trial conference is already the practice in many courts.[64] Pre-trial orders and pre-trial conferences "assist parties, counsel, and the court to anticipate issues for trial and avoid ambush or surprise."[65]

Electronically Stored Information Conference

Rule 2.401(J) is a new Rule that provides for an ESI conference, plan, and order.[66] The conference can take place by agreement or by court order where a case is "reasonably likely to include the discovery of ESI".[67] The Rule lists many issues to be considered at the ESI conference, including any issues relating to preservation of discoverable information, including adoption of a preservation plan for potentially relevant ESI; identification of potentially relevant types, categories, and time frames of ESI; disclosure of the manner in which ESI is maintained; implementation of a preservation plan for potentially relevant ESI; the form in which each type of ESI will be produced; the time to produce ESI; and any other related issues.[68]

Rule 2.401(J)(3) requires that attorneys participating in the ESI conference be competent in "matters relating to their clients' technological systems." Accordingly, the Rule permits them to "bring a client representative or outside expert to assist in such discussions."[69]

Within 14 days after the ESI conference, the plaintiff's attorney must file with the court an ESI discovery plan and a statement concerning any issues upon which the parties cannot agree.[70]

Rule 2.411. Mediation

Rule 2.411(H) is a new Rule that provides for mediation of discovery disputes.[71] The Rule permits parties to stipulate, or the court to order the parties, to mediate discovery disputes. The Committee determined that a small number of cases are particularly complex and generate an inordinate number of discovery disputes requiring the court's attention. As such, "[i]n order to best serve the parties and the interests of justice, the services of a discovery mediator may provide enhanced case management without causing undue expense, delay or burden, and without prejudice to a party's right to have all dis-

Rule 2.411(H) is a new Rule that provides for mediation of discovery disputes.[71] The Rule permits parties to stipulate, or the court to order the parties, to mediate discovery disputes.

covery disputes adjudicated by the court."[72] However, the court may not "delegate its judicial authority to the discovery mediator."[73]

It is unclear whether the parties will be required to pay for the discovery mediator, or if there will be volunteer discovery mediators. The Oakland County Circuit Court (General Civil and Business Court) uses volunteer discovery facilitators. However, Rule 2.411(H) states that "all other provisions of this rule shall apply to a discovery mediator."[74] Rule 2.411(D)(2) requires the costs of mediation to be divided between the parties on a pro-rata basis unless otherwise agreed by the parties or ordered by the court.[75] As such, it should be assumed, absent further guidance, that the costs of a discovery mediator will be paid by the parties.

Rule 2.506. Subpoena; Order to Attend

Amended Rule 2.506(A) modifies the previous Rule to require that a request for documents included with a trial subpoena must comply with MCR 2.302(B) (Scope of Discovery) and any scheduling order. This change is intended to clarify that trial subpoenas should not be used to essentially take discovery after the time for discovery has elapsed.[76]

Conclusion

The amendments to the civil discovery Rules are intended to make discovery more efficient, less costly, and further the interests of justice. But they are flexible—parties and courts are permitted, in many instances, to vary the discovery Rules in order to best suit the case at hand. Familiarizing yourself with the new amendments and understanding the Committee's reasons for proposing such changes will help you more efficiently represent your clients and more effectively practice in the courts.

The amendments to the civil discovery Rules are intended to make discovery more efficient, less costly, and further the interests of justice.

NOTES

1. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 19.
2. *Id.*
3. MCR 2.301(A)(1) (emphasis added).
4. *Id.* (Emphasis added).
5. Amended MCR 2.301(B)(4) (emphasis added).
6. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 21.
7. Amended MCR 2.302(A)(1)(a)-(h) (emphasis added).
8. The Oakland County Business Court case management protocol can be found here: https://www.oakgov.com/courts/businesscourt/Documents/ocbc-pro-case-management.pdf.
9. The Macomb County Business Court administrative order, along with discovery protocols, can be found here: https://circuitcourt.macombgov.org/sites/default/files/content/government/circuitcourt/pdfs/2013-02SignedLAOinreCreationofSpecializedBusinessCourt.pdf. ; https://circuitcourt.macombgov.org/sites/default/files/content/government/circuitcourt/pdfs/BusinessOrganaizationDisputeProtocol-1-14-14.pdf; https://circuitcourt.macombgov.org/sites/default/files/content/government/circuitcourt/pdfs/Business-Contractualprotocols-1-14-14.pdf.
10. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 23.
11. The Wayne County Circuit Court's Addendum to Scheduling Order in No-Fault Cases can be found here: https://www.3rdcc.org/Documents/Civil/General//Auto%20Neg%20Addendum%20to%20Scheduling%20Order%5E%5E%5E.pdf.
12. *Id.* at 24.
13. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 26.
14. MCR 2.302(A)(5)(b)(ii).
15. Id. at 26.
16. Amended MCR 2.302(B)(1).
17. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 27 (emphasis added).
18. Id.
19. Id. at 28.
20. Original MCR 2.302(B)(1).
21. *Id.*
22. *Id.*
23. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 29.
24. Amended MCR 2.302(E).
25. Amended MCR 2.302(F).
26. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 37.
27. Amended MCR 2.305(A)(1) (emphasis added).
28. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 38.
29. Amended MCR 2.305(A)(2).
30. Amended MCR 2.305(A)(3).
31. Amended MCR 2.305(A)(4).
32. Amended MCR 2.305(A)(7) (emphasis added).
33. Amended MCR 2.306(A)(3).
34. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 39.
35. *Id.*
36. *Id.*
37. *Id.*
38. Amended MCR 2.306(B)(3).
39. Amended MCR 2.309(A)(2).
40. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 42.
41. *Id.*
42. *Id.*
43. Amended MCR 2.310(A)(1).
44. Amended MCR 2.310(A)(2).
45. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 44-5.
46. *Id.*
47. *Id.*
48. Amended MCR 2.312(A).
49. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 46.
50. Civil Discovery Court Rule Review Special Com-

mittee Final Report and Proposal, p 48.

51. Amended MCR 2.313(C)(1).

52. Amended MCR 2.313(D).

53. Amended MCR 2.313(D)(2).

54. Amended MCR 2.313(D)(2).

55. Amended MCR 2.401(B).

56. *Id.*

57. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 55.

58. Amended MCR 2.401(C)(1).

59. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 56.

60. Amended MCR 2.401(C)(2).

61. MCR 2.401(H)(2).

62. *Id.*

63. MCR 2.401(H)(2).

64. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 59.

65. *Id.*

66. MCR 2.401(J).

67. *Id.*

68. MCR 2.401(J). The Eastern District of Michigan has a model ESI preservation order, which is referenced in the Oakland County Circuit Court case management protocol. The Eastern District model ESI preservation order can be found here: https://www.mied.uscourts.gov/PDFFIles/ModelESIDiscoveryOrderAndRule26f-Checklist.pdf

69. MCR 2.401(J)(3).

70. MCR 2.401(J)(2).

71. MCR 2.410(H).

72. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 62.

73. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 62.

74. MCR 2.411(H).

75. MCR 2.411(D)(2).

76. Civil Discovery Court Rule Review Special Committee Final Report and Proposal, p 64.

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