

Michigan Supreme Court Approves Significant Changes to Michigan Court Rules Effective January 1, 2020

June 27, 2019

The Michigan Supreme Court has adopted significant changes to several Michigan Court Rules, at the recommendation of the State Bar of Michigan Civil Discovery Rule Review Special Committee. These changes will take effect **January 1, 2020**. For the most part, the new discovery rules more closely track the federal discovery rules. In some instances, however, the changes impose even greater obligations on parties than the federal rules. The new rules, adopted on June 19, 2019, are available to view [here](#).

Some of the more prominent changes are discussed below:

Scope of Discovery

MCR 2.302(B) has been amended to adopt a "proportionality" standard similar to the one set forth in Fed. R. Civ. P. 26 (b)(1). The scope of discovery will now be limited to "any non-privileged 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." The amended rule no longer permits discovery of matters "reasonably calculated to lead to the discovery of admissible evidence."

Initial Disclosures

Michigan Court Rules 2.301 and MCR 2.302(A) have been amended to require parties to serve initial disclosures, similar to the initial disclosures required by Fed. R. Civ. P. 26(a). Under MCR 2.302(A)(1), all parties must, without awaiting a discovery request, disclose:

- (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 for a reasonable understanding of the claim or defense, citation to relevant legal authorities;
- (c) the name, address, and telephone number of individuals with discoverable information and the subjects of that information;
- (d) a copy and description by category and location of all documents and ESI in a disclosing party's possession that the disclosing party may use to support its claims or defenses;
- (e) a copy and description by category and location of all documents and ESI that not in the disclosing party's possession that the disclosing party may use to support its claims or defenses, and a description of the person who has possession, custody, or control of the material;
- (f) a computation of each category of damages claimed by the disclosing party and the basis for the computation, including an materials bearing on the nature and extent of the alleged damages;
- (g) a copy of any pertinent portions of insurance, indemnity, security equivalent, or suretyship agreement that may be available to satisfy a judgment; and

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- (h) the anticipated subject areas of expert testimony.

These disclosures must be based on the information readily available to a party, and "a party is not excused from making disclosures because the party has not fully investigated the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made its disclosures." Parties must also supplement their disclosures in a timely manner

These new initial disclosure requirements impose even greater obligations than those set forth in the federal rules, since parties in state court will now be required to identify the factual basis of a claim or a defense, legal theories (including case law), and anticipated expert testimony, at the onset of the case.

Additional Disclosures for First Party No-Fault Cases

In addition to the initial disclosures required by MCR 2.302(A)(1), MCR 2.302(A)(2) requires parties to make additional disclosures in cases involving first-party claims for benefits under the Michigan No-Fault Act, MCL 500.3101, *et seq.*

MCR 2.302(A)(2) now requires a first-party no-fault plaintiff to disclose:

- (i) the identity of those who provided, medical, household, and attendant care services to plaintiff;
- (ii) all provider bills or outstanding balances for which the plaintiff seeks reimbursement;
- (iii) the name, address, and phone number of plaintiff's employers; and
- (iv) authorizations for medical records.

No-fault defendants must disclose: (i) a copy of the first-party claim file and a privilege log for redactions; and (ii) the payments the insurance company has made on the claim.

Additional Disclosures for Personal Injury Cases

Similarly, MCR 2.302(A)(3) requires a personal injury plaintiff to provide the other parties with executed medical record authorizations for all persons, institutions, hospitals, and other custodians in actual possession of medical information relating to the plaintiff's alleged condition.

Attorney-Client/Attorney Work Product Protection for Attorney-Expert Communications

MCR 2.302(B)(4) has been amended to bring the court rules more in line with the federal rules and to clarify that any communications between an attorney and an expert, including draft interrogatory answers, are privileged, except if they: (i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify the assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Discovery Plan and Early Scheduling Conference

MCR 2.401(B) has been amended to allow the court to consider various matters at an early scheduling conference that might aid in the disposition of the action. With approval of the court, the parties can agree to make changes to the timing, form, or requirements of discovery in a scheduling order.

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MCR 2.301(B) has been modified to clarify that unless ordered otherwise, a date of completion of discovery means the serving party must initiate the discovery by a time that provides for a response or appearance before the completion date.

If you have questions about how these rule changes could affect you, please contact your Miller Canfield attorney or the authors of this alert.