

# Order

Michigan Supreme Court  
Lansing, Michigan

September 20, 2018

ADM File No. 2013-05

ADM File No. 2014-46

Amendments of Rule 6.502 of  
the Michigan Court Rules and  
Rule 3.8 of the Michigan Rules  
of Professional Conduct

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Stephen J. Markman,  
Chief Justice

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 6.502 of the Michigan Court Rules and Rule 3.8 of the Michigan Rules of Professional Conduct are adopted, effective January 1, 2019.

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

MCR 6.502 Motion for Relief from Judgment

(A)-(F) [Unchanged.]

(G) Successive Motions.

(1) [Unchanged.]

(2) A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. The clerk shall refer a successive motion that asserts that one of these exceptions is applicable to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime.

(3) For purposes of subrule (G)(2), “new evidence” includes new scientific evidence. This includes, but is not limited to, shifts in science entailing changes:

- (a) in a field of scientific knowledge, including shifts in scientific consensus;
- (b) in a testifying expert's own scientific knowledge and opinions; or
- (c) in a scientific method on which the relevant scientific evidence at trial was based.

### Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a)-(e) [Unchanged.]

- (f) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the crime for which the defendant was convicted, the prosecutor shall:
  - (1) promptly disclose that evidence to an appropriate court or authority, and
  - (2) if the conviction was obtained in the prosecutor's jurisdiction,
    - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.
- (h) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of section (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Comments: [Unchanged.]

*Staff Comment:* The amendments make several substantive changes in MCR 6.502 regarding postjudgment relief from judgment motions. First, the new language in MCR 6.502(G)(2) inserts a discretionary “actual innocence” waiver provision similar to that in MCR 6.508(D)(3). Further, MCR 6.502(G)(3) is added to clarify that shifts in science are included in the definition of “new evidence” for purposes of the exemption from the successive motion limitation. Finally, new language is added to MRPC 3.8 to require certain actions by a prosecutor who knows of new, credible, and material evidence creating a reasonable likelihood that defendant is innocent of the crime for which defendant was convicted, or who knows of clear and convincing evidence that shows defendant did not commit the offense. The additional language of MRPC 3.8 is taken from the ABA Model Rules of Professional Conduct 3.8, and includes the “safe harbor” provision as a separate provision of the rule (as opposed to being part of the comments as in the model rule).

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.



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.

September 20, 2018

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

Clerk