

Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-03

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly

Amendment of
Rule 6.106 of the
Michigan Court Rules

Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
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 amendment of Rule 6.106 of the Michigan Court Rules is adopted, effective September 1, 2007.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.106 Pretrial Release

(A)-(H)[Unchanged.]

(I) Termination of Release Order.

- (1) If the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bail or bond, and return the cash (or its equivalent) posted in the full amount of the bail, or, if there has been a deposit of 10 percent of the full bail amount, return 90 percent of the deposited money and retain 10 percent.
- (2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.
 - (a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.
 - (b) If the defendant does not appear and surrender to the court within 28 days after the revocation date ~~or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant,~~

the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted, an amount not to exceed the full amount of the surety bond, ~~and costs of the court proceedings.~~ If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. If the defendant does not within that period satisfy the court that there was compliance with the conditions of release other than appearance or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant alone for an amount not to exceed the full amount of the bond, and costs of the court proceedings.

- (c) The 10 percent bail deposit made under subrule (E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.
- (3) If money was deposited on a bail or bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to subrule (I)(1).

Staff comment: This amendment clarifies that bail agents are liable only for the appearance of a defendant, and not for compliance with conditions imposed on a defendant by the court as part of a conditional release pursuant to MCR 6.106. The amendment also clarifies that a court may continue the revocation order and enter judgment against a defendant for failure to comply with the conditions of release or failure to satisfy the court that compliance with those conditions was impossible, regardless of whether the defendant failed to appear.

The amendment also prohibits a court from entering a judgment that includes the costs of the proceeding against a surety. MCL 765.28 limits judgment against the surety

to an amount not more than the full amount of the surety bond.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, 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.

May 22, 2007

Corbin R. Davis

Clerk