

# Order

Michigan Supreme Court  
Lansing, Michigan

April 11, 2024

Elizabeth T. Clement,  
Chief Justice

ADM File No. 2023-11

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

Amendments of Rules 1.109, 2.412, 3.302, 3.716, 3.717, 3.718, 3.903, 3.965, 3.972, 4.002, 5.125, 5.501, 7.108, 7.205, 7.305, 9.125, 9.220, 9.315 of the Michigan Court Rules, Rule 1.17 of the Michigan Rules of Professional Conduct, and Rules 801, 803, 804, 1001, and 1102 of the Michigan Rules of Evidence

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On order of the Court, the following amendments are adopted, effective immediately.

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

Rule 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

(A)-(C) [Unchanged.]

(D) Filing Standards.

(1)-(8) [Unchanged.]

(9) Personal Identifying Information.

(a) [Unchanged.]

(b) Filing, Accessing, and Serving Personal Identifying Information.

(i)-(v) [Unchanged.]

(vi) A party or a court is not exempt from the requirement to serve a nonpublic document containing protected personal identifying information that has been filed with the court under subrule (i), except by court order in accordance with subrule (vii).

(vii) [Unchanged.]

(c)-(e) [Unchanged.]

(10)-(11) [Unchanged.]

(E)-(H) [Unchanged.]

#### Rule 2.412 Mediation Communications; Confidentiality and Disclosure

(A) [Unchanged.]

(B) Definitions.

(1)-(4) [Unchanged.]

(5) “Protected individual” is used as defined in the Estates and Protected Individuals Code, MCL 700.1106(y~~x~~).

(6) [Unchanged.]

(C)-(E) [Unchanged.]

#### Rule 3.302 Superintending Control

(A) [Unchanged.]

(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be filed. See subrule (D)(2); and MCR 7.101(A)(2), and 7.306(A).

(C)-(E) [Unchanged.]

#### Rule 3.716 Commencing an Extreme Risk Protection Action

(A)-(D) [Unchanged.]

(E) Other ~~Existing~~Pending Actions; Order, Judgments.

(1) The complaint must specify whether there are any other ~~existing~~pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known.

- (a) If the complaint is filed in the same court as an ~~existing~~pending action or where an order or judgment has already been entered by that court affecting the parties, it shall be assigned to the same judge.
- (b) If there are ~~existing~~pending actions in another court or orders or judgments already entered by another court affecting the parties, the court may contact the court where the ~~existing~~pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.

(2) [Unchanged.]

(F)-(G) [Unchanged.]

#### Rule 3.717 Dismissals

Except as specified in ~~MCR 3.718(A)(5)~~, MCR 3.718(B), MCR 3.718(D), and MCR 3.720, an action for an extreme risk protection order may only be dismissed upon motion by the petitioner prior to the issuance of an order. There is no fee for such a motion. This rule does not preclude a dismissal as otherwise permitted by law.

#### Rule 3.718 Issuing Extreme Risk Protection Orders

(A) [Unchanged.]

(B) Immediate Emergency Ex Parte Orders.

(1) [Unchanged.]

(2) The judge or magistrate must immediately rule on a verbal request made under this subrule, and if the judge or magistrate issues an immediate emergency ex parte order,

(a) [Unchanged.]

(b) within one business day, the officer must file a sworn written ~~petition~~complaint detailing the facts and circumstances presented verbally to the judge or magistrate; and

(c) [Unchanged.]

(3) [Unchanged.]

(C)-(D) [Unchanged.]

#### Rule 3.903 Definitions

(A)-(B) [Unchanged.]

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1) [Unchanged.]

(2) “Amended petition” means a petition filed to correct or add information to an original petition, as defined in subrule (A)(20~~+~~)<sub>2</sub> before it is adjudicated.

(3)-(15) [Unchanged.]

(D)-(F) [Unchanged.]

#### Rule 3.965 Preliminary Hearing

(A) Time for Preliminary Hearing.

(1) [Unchanged.]

(2) ~~Seriously~~~~Severely~~ Physically ~~Harmed~~~~Injured~~ or Sexually Abused Child. When the Department of Health and Human Services submits a petition in cases in which the child has been ~~seriously~~~~severely~~ physically ~~harmed~~~~injured~~, as that term is defined in ~~MCL 722.622~~~~MCL 722.628~~(3)(e), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B)-(D) [Unchanged.]

#### Rule 3.972 Trial

(A)-(B) [Unchanged.]

(C) Evidentiary Matters.

(1) [Unchanged.]

- (2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability, as defined in MCL 330.1100a(27~~6~~), regarding an act of child abuse, child neglect, confirmed sexual abuse, or confirmed sexual exploitation, as defined in MCL 722.622(g), (k), (q), or (r), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a)-(c) [Unchanged.]

(D)-(G) [Unchanged.]

#### Rule 4.002 Transfer of Actions from District Court to Circuit Court

- (A) Counterclaim or Cross-Claim in Excess of Jurisdiction.

(1) [Unchanged.]

- (2) Transfer of summary proceedings to recover possession of premises is governed under MCR 4.201(~~H~~G)(2) and 4.202(I)(4) and subrules (C) and (D) of this rule.

(B)-(D) [Unchanged.]

#### Rule 5.125 Interested Persons Defined

- (A) [Unchanged.]

- (B) Special Conditions for Interested Persons.

(1)-(2) [Unchanged.]

- (3) Trust as Devisee. If either a trust or a trustee is a devisee, the trustee is the interested person. If no trustee has qualified, the interested persons are the qualified trust beneficiaries described in MCL 700.7103(g)(i)(~~A~~) and the nominated trustee, if any.

(4)-(5) [Unchanged.]

- (C) Specific Proceedings. Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

- (1) The persons interested in an application or a petition to probate a will are the
- (a) [Unchanged.]
  - (b) nominated trustee and qualified trust beneficiaries described in MCL 700.7103(g)(i)(A) of a trust created under the will,
  - (c)-(e) [Unchanged.]
- (2)-(3) [Unchanged.]
- (4) The persons interested in a petition of surety for discharge from further liability are the
- (a)-(d) [Unchanged.]
  - (e) qualified trust beneficiaries, as referred to in MCL 700.7103(g)(i)(A),
  - (f)-(g) [Unchanged.]
- (5)-(33) [Unchanged.]

(D)-(E) [Unchanged.]

#### Rule 5.501 Trust Proceedings in General

(A)-(D) [Unchanged.]

(E) **Qualification of Trustee.** A trustee appointed by an order of the court, nominated as a trustee in a will that has been admitted to probate shall qualify by signing and filing an acceptance indicating the nominee's willingness to serve. The trustee must serve the acceptance and order, if any, on the then known qualified trust beneficiaries described in MCL 700.7103(g)(i)(A) and, in the case of a testamentary trustee, on the personal representative of the decedent estate, if one has been appointed. No letters of trusteeship shall be issued by the court. The trustee or the attorney for the trustee may establish the trustee's incumbency by executing an affidavit to that effect, identifying the trustee and the trust and indicating that any required bond has been filed with the court and is in force.

(F) [Unchanged.]

#### Rule 7.108 Stay of Proceedings; Bond; Review

(A) [Unchanged.]

(B) Civil Actions.

(1)-(2) [Unchanged.]

(3) Bond Form and Content. The bond must:

(a)-(c) [Unchanged.]

(d) include the conditions provided in MCR 4.201(~~ON~~)(4) if the appeal is from a judgment for the possession of land.

(4)-(7) [Unchanged.]

(C)-(D) [Unchanged.]

#### Rule 7.205 Application for Leave to Appeal

(A) Time Requirements. The time limit for an application for leave to appeal is jurisdictional. See MCR 7.203(B). The provisions of MCR 1.108 regarding computation of time apply. For purposes of this subrule, “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1)-(2) [Unchanged.]

(3) In an appeal from an order terminating parental rights, an application for leave to appeal must be filed within 63 days, as provided by MCR 3.993(C)(~~32~~).

(4)-(5) [Unchanged.]

(B)-(F) [Unchanged.]

#### Rule 7.305 Application for Leave to Appeal

(A)-(C) [Unchanged.]

(D) Answer. A responding party may file 1 signed copy of an answer in accordance with MCR 7.212(B) within 28 days after service of the application ~~in accordance~~

~~with MCR 7.212(B).~~ The party must file proof that a copy of the answer was served on all other parties.

(E)-(I) [Unchanged.]

#### Rule 9.125 Immunity

A person is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff, or given in an investigation or proceeding on alleged misconduct or reinstatement. The administrator, legal counsel, investigators, members of hearing panels, masters, ~~receivers appointed under MCR 9.119(G),~~ voluntary investigators, fee arbitrators, mentors, practice monitors, the commission, the board, and their staffs are absolutely immune from suit for conduct arising out of the performance of their duties.

A medical or psychological expert who administers testing or provides a report pursuant to MCR 9.114(C) or MCR 9.121 is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff, or given in an investigation or formal disciplinary proceeding.

#### Rule 9.220 Preliminary Investigation

(A)-(C) [Unchanged.]

(D) Physical or Mental Examination. In the course of an investigation where a respondent's physical or mental condition is at issue, the commission may require the respondent to submit to a physical or mental examination. Failure of the respondent to submit to the examination may constitute judicial misconduct. MCR 2.311(~~CB~~) is applicable to the examination.

(E) [Unchanged.]

#### Rule 9.315 Liability

Every Interim Administrator, as that term is defined in MCR 9.301(~~EA~~), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Rules Concerning the State Bar of Michigan.

### Michigan Rules of Professional Conduct

#### Rule 1.17. Sale of a Law Practice

(a)-(e) [Unchanged.]



Comment:

[All remaining comment sections are unchanged.]

Client Confidences, Consent, and Notice.

Negotiations between the seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client can be conducted in a manner that does not violate the confidentiality provisions of MRPC 1.6, just as preliminary discussions are permissible concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the fact of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the transfer of the client's file to the identified purchaser is presumed.

A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients are not available to consent to the purchase or direct any other disposition of their files, the rule requires an order from a judge of the judicial circuit in which the seller maintains the practice, authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

The client should be told the identity of the purchaser before being asked to consent to disclosure of confidences and secrets or to consent to transfer of the file.

Subchapter 9.300 of the Michigan Court Rules~~MCR 9.119(G)~~ provides a mechanism for handling client matters when a lawyer is temporarily or permanently unable to practice law~~dies and there is no one else at the firm to take responsibility for the file.~~

Michigan Rules of Evidence

Rule 801. Definitions That Apply to Rules 801–807; Exclusions from Hearsay

The following definitions apply under Rules 801–807:

(a)-(c) [Unchanged.]

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) [Unchanged.]

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) [Unchanged.]

(B) is one the party manifested that it adopted or believed to be true;

(C)-(E) [Unchanged.]

#### Rule 803. Exceptions to the Rule Against Hearsay

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1)-(3) [Unchanged.]

(4) Statement Made for Purposes of Medical Treatment or Diagnosis in Connection with Treatment. A statement that:

(A) is made for—and is reasonably necessary to—medical treatment or diagnosis in connection with treatment; and

(B) [Unchanged.]

(5)-(7) [Unchanged.]

(8) Public Record. A record or statement of a public office if it sets out:

(A) [Unchanged.]

(B) a matter observed while under a legal duty to report, but not including;

(i)-(ii) [Unchanged.]

(9) [Unchanged.]

(10) Absence of a Public Record. Testimony—or a certification under Rule 902—that diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A)-(B) [Unchanged.]

(11) [Unchanged.]

(12) Certificate of Marriage, Baptism, and Similar Ceremonies. A statements of fact contained in a certificate:

(A)-(C) [Unchanged.]

(13)-(23) [Unchanged.]

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1)-(4) [Unchanged.]

(5) is absent from the trial or hearing, and

(A) the statement’s proponent has not been able, by process or other reasonable means, to procure:

(i) the declarant’s attendance, in the case of a hearsay exception under subrule (b)(1), ~~(2)~~, or (6); or

(ii) the declarant’s attendance or testimony, in the case of a hearsay exception under subrule (b)~~(32)~~, ~~(43)~~, or ~~(54)~~; and

(B) [Unchanged.]

But this subrule (a) does not apply if the statement’s proponent procured or wrongfully caused the declarant’s unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1)-(5) [Unchanged.]

- (6) Statement Offered Against a Party That Wrongfully Caused or Encouraged the Declarant’s Unavailability. A statement offered against a party that wrongfully caused—or encouraged—the declarant’s unavailability as a witness, and did so intending that result.

#### Rule 1001. Definitions That Apply to Rules 1001–1008

In Rules 1001–1008:

(a)-(e) [Unchanged.]

#### Rule 1102. Title

These rules are named the Michigan Rules of Evidence and may be cited as MRE.

~~The notes following the individual rules were drafted by the chair and the reporter of the committee which drafted the proposed rules of evidence for the benefit of the bench and bar and are not authoritative constructions by the Court.~~

*Staff Comment (ADM File No. 2023-11):* These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

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.



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 11, 2024

Clerk