

Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2023-36

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

Amendments of Rules 3.937,
3.950, 3.955, 3.993, and 6.931
of the Michigan Court Rules

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 Rules 3.937, 3.950, 3.955, 3.993, and 6.931 of the Michigan Court Rules are adopted, effective October 1, 2024.

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

Rule 3.937 Advice of Appellate Rights

(A) At the conclusion of a dispositional hearing under MCR 3.943 or any delinquency hearing at which the court orders that the juvenile be removed from a parent's care and custody, the court must advise the juvenile on the record that:

(1)-(2) [Unchanged.]

(3) A request for the appointment of an appellate attorney must be made

(a) within 21 days after notice of the order is given or an order is entered denying a timely-filed postjudgment motion, if the juvenile wants to preserve any appeal by right authorized by these rules; or

(b) within 6 months of the entry of the order to be appealed.

(B)-(C) [Unchanged.]

Rule 3.950 Waiver of Jurisdiction

(A)-(D) [Unchanged.]

(E) Grant of Waiver Motion.

- (1) If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must:

(a)-(b) [Unchanged.]

- (c) Advise the juvenile, orally or in writing, that

(i)-(ii) [Unchanged.]

- (iii) if the juvenile is financially unable to retain an attorney, the court will appoint one to represent the juvenile on appeal in accordance with MCR 3.993(D)(5).

(d) [Unchanged.]

- (2) [Unchanged.]

(F)-(G) [Unchanged.]

Rule 3.955 Sentencing or Disposition in Designated Cases

(A)-(B) [Unchanged.]

- (C) Sentencing. If the court determines that the juvenile should be sentenced as an adult, either initially or following a delayed imposition of sentence, the sentencing hearing shall be held in accordance with the procedures set forth in MCR 6.425, including the procedures of MCR 6.425(G) for appointing appellate counsel.

(D) [Unchanged.]

- (E) Disposition Hearing. If the court does not determine that the juvenile should be sentenced as an adult, the court shall hold a dispositional hearing and comply with the procedures set forth in MCR 3.943. Requests for and appointment of appellate counsel are subject to the procedures in MCR 3.993(D).

Rule 3.993 Appeals

- (A) The following orders are appealable to the Court of Appeals by right:

(1)-(3) [Unchanged.]

- (4) an order granting a motion to waive jurisdiction as provided in MCR 3.950(E)(1)(c).

(4)-(7) [Renumbered (5)-(8) but otherwise unchanged.]

In any appeal as of right, an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal and to preparation of relevant transcripts.

(B)-(C) [Unchanged.]

(D) Request and Appointment of Counsel.

- (1) To preserve an appeal by right from an order listed in subrule (A), a request for appointment of appellate counsel must be made within 21 days after notice of the order is given or an order is entered denying a timely-filed postjudgment motion.
- (2) Except as provided in subrule (C)(3), if a request for appointment of appellate counsel is timely-filed within 6 months of entry of the order to be appealed and the court finds that the respondent is financially unable to retain~~provide~~ an attorney, the court must~~shall~~
 - (a) in child protective proceedings, appoint an attorney within 14 days after the respondent's request is filed.
 - (b) in all other proceedings subject to this rule, appoint an attorney as provided in subrule (D)(5).

The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

- (3) All requests for the appointment of appellate counsel must be granted or denied on forms approved by the State Court Administrative Office. If the order being appealed is appealable by right and the request for appointment of appellate counsel was filed within the time provided in subrule (D)(1), ~~the order described in subrule (D)(2) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and~~
- (4) The court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the

respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

(5) Proceedings Subject to Appointment of Appellate Counsel via Michigan Appellate Assigned Counsel System. This subrule is not applicable to child protective proceedings.

- (a) A request for the appointment of appellate counsel in a proceeding subject to this subrule (D)(5) must be deemed filed on the date it is received by the court or the Michigan Appellate Assigned Counsel System (MAACS), whichever is earlier.
- (b) Within 7 days after receiving a juvenile's request for a lawyer, or within 7 days after the disposition of a postjudgment motion if one is filed, the trial court must submit the request, the order to be appealed, the register of actions, and any additional requested information to MAACS under procedures approved by the Appellate Defender Commission for the preparation of an appropriate order granting or denying the request. The court must notify MAACS if it intends to deny the request.
- (c) Within 7 days after receiving a request and related information from the trial court, MAACS must provide the court with a proposed order appointing appellate counsel or denying the appointment of appellate counsel. A proposed appointment order must name the State Appellate Defender Office or an approved private attorney who is willing to accept an appointment for the appeal.
- (d) Within 7 days after receiving a proposed order from MAACS, the trial court must rule on the request for a lawyer. If the juvenile is indigent, the court must enter an order appointing a lawyer if the request for a lawyer is filed within 6 months. An order denying a request for the appointment of appellate counsel must include a statement of reasons and must inform the juvenile that the order denying the request may be appealed by filing an application for leave to appeal in the Court of Appeals under MCR 7.205.
- (e) The trial court must serve MAACS with a copy of its order granting or denying a request for a lawyer. Unless MAACS has agreed to

provide the order to any of the following, the trial court must also serve a copy of its order on the juvenile, the juvenile's parents, the juvenile's attorney, the petitioner, and, if the order includes transcripts, the court reporter(s)/recorder(s).

(E) [Unchanged.]

Rule 6.931 Juvenile Sentencing Hearing

(A)-(D) [Unchanged.]

(E) Juvenile Sentencing Hearing Procedure.

(1)-(5) [Unchanged.]

(6) Appellate Rights and Appointment of Appellate Counsel. Following the court's decision at the juvenile sentencing hearing, it must advise the juvenile as provided in MCR 6.425(F). Requests for and appointment of appellate counsel are subject to the procedures in MCR 6.425(G).

(F) [Unchanged.]

Staff Comment (ADM File No. 2023-36): The amendments of MCR 3.937(A)(3), 3.950(E)(1), 3.955(C) and (E), 3.993(A)(4) and (D), and 6.931(E) implement 2023 PA 299 and incorporate additional changes from the SADO/MAACS Youth Defense Project regarding requests for and appointment of appellate counsel in cases involving juveniles.

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.

May 22, 2024

Clerk