

Order

Michigan Supreme Court
Lansing, Michigan

September 11, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2021-27

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

Proposed Amendments of
Rules 3.207 and 3.210 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.207 and 3.210 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

Rule 3.207 Ex Parte, Temporary, and Protective Orders

(A) [Unchanged.]

(B) Ex Parte Orders.

(1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.

(a) An affidavit attached to a motion or a pleading that requests an ex parte custody or parenting time order or that requests a change of custody or parenting time must include the following information:

(i) facts establishing whether the child has an established custodial environment with either or both parents, and

(ii) either facts establishing that entry of the requested order will

not change the child's established custodial environment, or facts establishing that clear and convincing evidence exists that the change in the child's established custodial environment is in the child's best interest.

- (b) The court must not issue an order that could alter a child's established custodial environment without also scheduling an evidentiary hearing under MCL 722.27 to be held within 21 days to determine whether there is clear and convincing evidence that the order is in the child's best interest. The hearing date must be included in the order.
- (2) The moving party must arrange for the service of true copies of the ex parte order on the friend of the court and the other party within 3 days of the order being issued.
- (3)-(4) [Unchanged.]
- (5) Procedure Following Service of Ex Parte Order.
 - (a) If no timely objection or motion to rescind or modify the ex parte custody, parenting time, or support order is filed, the order is a temporary order. If a hearing date was set in the order, the court may cancel the hearing.
 - (b) If a party files a motion to rescind or modify the ex parte order without filing an objection, the court must hold an evidentiary hearing and resolve the dispute within 21 days of the motion being filed or on the hearing date specified in the ex parte order, if any.
 - (c) If a party files a timely objection, the friend of the court must attempt to resolve the dispute within 14 days of the objection being filed or on the hearing date specified in the ex parte order, if any. If the friend of the court cannot resolve the dispute, the friend of the court must provide a motion form to the objecting party and schedule an evidentiary hearing to be held within 21 days of the motion being filed.
 - (d) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.
- (65) An ex parte order providing for child support, custody, or parenting time~~visitation~~ pursuant to MCL 722.27a, must include the following notice:

“Notice:

“1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

“2. Unless a hearing date is set in this order, if you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

“3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and, unless a hearing date is set in this order, a request for a hearing. If a hearing date is set in this order, and you do not file a written objection or motion, the hearing may be canceled. Even if an objection or motion is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order.”

(6) In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to the friend of the court and the other party, within 14 days after the order is served.

(a) ~~If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed.~~

(b) ~~A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.~~

(7) [Unchanged.]

(C) Temporary Orders.

(1) [Unchanged.]

- (2) A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in subrules (B)(5) and (6).

(3)-(6) [Unchanged.]

Rule 3.210 Hearings and Trials

(A)-(B) [Unchanged.]

(C) Custody of a Minor or Changing a Child's Established Custodial Environment.

- (1) When the custody, parenting time, change of domicile, or another motion regarding a minor is contested, the court may not enter an order resolving the contested matter that changes a child's established custodial environment without first holding an evidentiary hearing to determine whether clear and convincing evidence exists to support that the order is in the child's best interest. When the custody of a minor or a motion that would change a child's established custodial environment is contested, a hearing on the matter must be held within 56 days

(a) [Unchanged.]

- (b) after the filing of notice that a ~~eustody~~ hearing is requested, unless both parties agree to mediation under MCR 3.216 or MCR 3.224(G)~~MCL 552.513~~ and mediation is unsuccessful, in which event the hearing must be held within 56 days after the final mediation session.

(2)-(8) [Unchanged.]

(D)-(E) [Unchanged.]

Staff Comment (ADM File No. 2021-27): The proposed amendment of MCR 3.207 would: (1) clarify the pleading requirements for requesting certain ex parte orders, (2) require that an evidentiary hearing be scheduled anytime the court enters an order that may change a child's established custodial environment, and (3) clarify the procedure following service of an ex parte order. The proposed amendment of MCR 3.210 would require courts to hold an evidentiary hearing prior to entering an order changing a child's established custodial environment in contested cases.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by January 1, 2025 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2021-27. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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 11, 2024

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk