

Order

Michigan Supreme Court
Lansing, Michigan

December 19, 2024

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-34

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

Proposed Amendments of
Rules 3.993 and 6.428 of
the Michigan Court Rules

The Court, having given an opportunity for comment in writing and at a public hearing, again seeks public comment regarding the proposed amendments of Rule 3.993 and 6.428 of the Michigan Court Rules. During the initial comment period, the Court received comments on the [original proposal](#) that would provide for the restoration of appellate rights in juvenile cases and would ask parties to provide the Court of Appeals with a copy of the order when filing the appeal. The Court has revised the proposal and is interested in receiving additional comments, especially regarding the proposed addition of provisions that establish specific time periods in which a motion must be filed under MCR 3.993 and MCR 6.428. The revised proposal would also reorganize both rules for clarity and consistency.

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.993 and 6.428 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 3.993 Appeals

(A)-(E) [Unchanged.]

(F) A party may file a motion to restore their appellate rights as provided in this subrule. If a party was denied the right to appellate review or the appointment of appellate counsel due to errors by the party's prior attorney or the court, or other factors

outside the party's control, the trial court must issue an order restarting the time in which to file an appeal or request counsel, except that the court must not issue any order that would extend the time for appealing an order terminating parental rights beyond 63 days from entry of the order terminating rights.

- (1) A motion premised on the party being denied the right to appellate review must be filed within 2 years of the date an order identified in subrule (A) was entered or within 1 year of the date on which the party's claim of appeal was dismissed, whichever is later.
- (2) A motion premised on the party being denied the appointment of appellate counsel must be filed within 2 years of the date an order denying appointment of appellate counsel was entered.
- (3) A motion under this subrule will not be considered if it alleges grounds for relief that were resolved against that party in a prior proceeding or appeal.
- (4) A party filing an appeal after receiving an order issued under this subrule must provide the Court of Appeals with a copy of the order when filing the appeal with the claim of appeal or application for leave to appeal. The Court of Appeals can excuse this requirement for good cause.

Rule 6.428 Restoration of Appellate Rights

A party may file a motion to restore appellate rights as provided in this rule. If the defendant, whether convicted by plea or at trial, was denied the right to appellate review or the appointment of appellate counsel due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control, the trial court shall issue an order restarting the time in which to file an appeal or request counsel.

- (A) A motion premised on the party being denied the right to appellate review must be filed within 2 years of the date the trial court entered the final judgment or order that the party sought to appeal or within 1 year of the date on which the party's claim of appeal was dismissed, whichever is later.
- (B) A motion premised on the party being denied the appointment of appellate counsel must be filed within 2 years of the date an order denying appointment of appellate counsel was entered.
- (C) A motion under this subrule will not be considered if it alleges grounds for relief which were resolved against that party in a prior proceeding or appeal.

- (D) A party filing an appeal after receiving an order issued under this subrule must provide the Court of Appeals with a copy of the order when filing the appeal with the claim of appeal or application for leave to appeal. The Court of Appeals can excuse this requirement for good cause.

Staff Comment (ADM File No. 2022-34): The proposed amendment of MCR 3.993 would add a new subrule (F) to provide for the restoration of appellate rights in juvenile cases, similar to that of criminal cases under MCR 6.428. The proposed amendment of MCR 3.993 would also provide a time limit for filing a motion under the rule, and both proposed amendments would clarify that a motion for restoration of appellate rights is limited to grounds for relief not raised in a prior proceeding or appeal, as well as require parties to provide the Court of Appeals with a copy of the order restoring appellate rights when filing the appeal unless the Court of Appeals directs otherwise.

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 April 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. 2022-34. 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.

December 19, 2024

Clerk