

Order

Michigan Supreme Court
Lansing, Michigan

August 14, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-15

David F. Viviano,
Chief Justice Pro Tem

Amendments of Rules 1.109, 2.113, 2.412,
3.203, 3.222, 3.223, 3.800, 3.903, 3.921, 3.923,
3.932, 3.935, 3.936, 3.943, 3.951, 3.963, 3.972,
3.977, 5.125, 5.402, 5.404, 5.801, 6.104, 7.210,
7.215, 7.305, 7.308, and 8.111 of the Michigan
Court Rules and Internal Operating Procedures
for the Judicial Tenure Commission

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

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)-(F) [Unchanged.]

(G) Electronic Filing and Service.

(1) Definitions. For purposes of this subrule:

(a)-(d) [Unchanged.]

(e) “Electronic service” or “e-service” means the electronic service of information by means of the electronic-filing system under this rule. It does not include service by alternative electronic service ~~mail~~ under MCR 2.107(C)(4).

(f) [Unchanged.]

(2)-(7) [Unchanged.]

Rule 2.113 Form, Captioning, Signing, and Verifying of Documents

(A)-(B) [Unchanged.]

(C) Exhibits; Written Instruments.

(1) [Unchanged.]

(2) An exhibit attached or referred to under subrule (~~C~~F)(1)(a) or (b) is a part of the pleading for all purposes.

(D) [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(~~x~~v).

(6) [Unchanged.]

(C)-(E) [Unchanged.]

Rule 3.203 Service of Notice and Court Documents in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1)-(2) [Unchanged.]

(3) Alternative Electronic Service.

(~~a~~) A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4).

(B)-(J) [Unchanged.]

Rule 3.222 Uniform Collaborative Law Act Process and Agreements

(A)-(B) [Unchanged.]

(C) Establishing Jurisdiction and Starting the Statutory Waiting Period. At any time after a collaborative law participation agreement is signed, if the parties are not already under the court's jurisdiction, the parties may commence an action to submit to the court's jurisdiction.

(1) When the parties have concluded a collaborative law process and are requesting entry of a final judgment or final order, the parties shall file a petition to submit to court jurisdiction and request for entry of a final judgment or final order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought "In the Matter of" the names of Party A and Party B and the subject matter of the collaborative law agreement using the case type codes under MCR 8.117. The petition shall:

(i) [Unchanged.]

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A) and (B);

(iii)-(iv) [Unchanged.]

(v) be accompanied by a verified statement if required by MCR 3.206(~~CB~~) and judgment information form if required by MCR 3.211(F); and

(vi) [Unchanged.]

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b) On the filing of the petition and request for entry of final judgment or final order and payment of the filing fees, the court clerk shall assign a case number and judge. The requirement to issue a summons under MCR 2.102(A) is not applicable. Unless requested by the parties on filing of a motion, the court clerk shall not schedule the matter until ~~either the lifting of a stay granted under subrule (B)(2) or the conclusion of the statutory waiting period, whichever occurs first.~~ The petition under this subrule serves as a complaint and answer and as an appearance of both attorneys, and starts the statutory waiting period(s) under MCL 552.9f.

(2) To commence an action at any time before the conclusion of the collaborative law process, the parties shall file a petition for court jurisdiction and declaration of intent to file a proposed final judgment or proposed final order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought “In the Matter of” the names of Party A and Party B and shall state the type of action corresponding to the assigned case type code in MCR 8.117 (listed under Case File Management Standard [(A)][(6)]). The petition shall:

(i) [Unchanged.]

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A) and (B);

(iii) [Unchanged.]

(iv) be accompanied by a verified statement if required by MCR 3.206(CB), and

(v) [Unchanged.]

The petition may also contain a request to waive the six-month statutory waiting period under MCL 552.9f.

(b)-(e) [Unchanged.]

(D) Entry of Final Judgment or Final Order.

(1) [Unchanged.]

(2) The final judgment or final order shall be served in accordance with MCR 2.602(E~~D~~).

(3) [Unchanged.]

(E) Dismissal.

(1) Lack of Progress. The clerk shall provide notice of intent to dismiss the case for lack of progress if:

(a) the parties have not filed a notice that a collaborative law process has concluded or terminated before the expiration of a stay under subrule (B)(2)(~~ca~~), or

(b) [Unchanged.]

(2)-(3) [Unchanged.]

(F) [Unchanged.]

Rule 3.223 Summary Proceeding for Entry of Consent Judgment or Order

(A)-(B) [Unchanged.]

(C) Commencing an Action.

(1) The parties shall file a petition to submit to court jurisdiction and request for entry of a proposed consent judgment or proposed consent order on a form approved by the State Court Administrative Office.

(a) The petition shall be brought “In the Matter of” the names of Party A and Party B and the subject matter of the proposed consent judgment or proposed consent order using the case type codes under MCR 8.117. The petition shall:

(i) [Unchanged.]

(ii) comply with the provisions of MCR 2.113 and MCR 3.206(A) and (B);

(iii)-(iv) [Unchanged.]

(v) be accompanied by a verified statement if required by MCR 3.206(~~CB~~) and a judgment information form if required by MCR 3.211(F); and

(vi) [Unchanged.]

(b) [Unchanged.]

(2)-(6) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 3.800 Applicable Rules; Interested Parties; Indian Child

- (A) Generally. Except as modified by ~~MCR 3.801-3.807~~the rules in this chapter, adoption proceedings are governed by Michigan Court Rules.
- (B) [Unchanged.]

Rule 3.903 Definitions

- (A) General Definitions. When used in this subchapter, unless the context otherwise indicates:
- (1)-(2) [Unchanged.]
- (3) “Confidential file” means
- (a) that part of a file made confidential by statute or court rule, including, but not limited to,
- (i)-(iv) [Unchanged.]
- (v) biometric data~~fingerprinting—material~~ required to be maintained pursuant to MCL 28.243;
- (vi)-(vii) [Unchanged.]
- (b) [Unchanged.]
- (4)-(27) [Unchanged.]
- (B)-(F) [Unchanged.]

Rule 3.921 Persons Entitled to Notice

- (A) Delinquency Proceedings.
- (1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):
- (a)-(d) [Unchanged.]

- (e) the attorney retained or appointed to represent the juvenile, ~~and~~
- (f) the prosecuting attorney, and;
- (g) [Unchanged.]

(2)-(3) [Unchanged.]

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

(a)-(e) [Unchanged.]

(f) a party's guardian ad litem appointed pursuant to these rules, ~~and~~

(g) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state, ~~and~~

(h)-(i) [Unchanged.]

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

(a)-(j) [Unchanged.]

(k) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state, ~~and~~

(l)-(m) [Unchanged.]

(3) [Unchanged.]

(C) Juvenile Guardianships. In a juvenile guardianship, the following persons shall be entitled to notice:

(1)-(8) [Unchanged.]

(9) the Michigan Children's Institute superintendent; and

(10) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 3.923 Miscellaneous Procedures

(A)-(B) [Unchanged.]

(C) Biometric DataFingerprinting and Photographing. A juvenile must have biometric data collected~~be fingerprinted~~ when required by law. The court may permit the collection of biometric data~~fingerprinting~~ or photographing, or both, of a minor concerning whom a petition has been filed. Biometric data~~Fingerprints~~ and photographs must be placed in the confidential files, capable of being located and destroyed on court order.

(D)-(G) [Unchanged.]

Rule 3.932 Summary Initial Proceedings

(A) [Unchanged.]

(B) Offenses Listed in the Crime Victim's Rights Act. A case involving the alleged commission of an offense listed in the Crime Victim's Rights Act, MCL 780.781(1)(g~~f~~), may only be removed from the adjudicative process upon compliance with the procedures set forth in that act. See MCL 780.786b.

(C) Consent Calendar.

(1)-(2) [Unchanged.]

(3) Biometric Data~~Fingerprinting~~. Except as otherwise required by law, a juvenile shall not have biometric data collected~~be fingerprinted~~ unless the court has authorized the petition. If the court authorizes the petition and the juvenile is alleged to have committed an offense that requires the juvenile to have biometric data collected~~be fingerprinted~~ according to law, the court shall ensure the juvenile has biometric data collected~~is fingerprinted~~ before placing the case on consent calendar under subrule (C)(1).

(4)-(11) [Unchanged.]

(D) [Unchanged.]

Rule 3.935 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)-(6) [Unchanged.]

(7) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the petition to be filed pursuant to MCR 3.932(D). If it authorizes the filing of the petition, the court must:

(a) determine if biometric data~~fingerprints~~ must be taken as provided by MCL 712A.11(5) and MCR 3.936; and

(b) [Unchanged.]

(8) [Unchanged.]

(C)-(F) [Unchanged.]

Rule 3.936 Biometric Data~~Fingerprinting~~

(A) General. The court must permit the collection of biometric data~~fingerprinting~~ of a juvenile pursuant to MCL 712A.11(5) and 712A.18(10), and as provided in this rule. Notice of biometric data collection~~fingerprinting~~ retained by the court is confidential.

(B) Order for Biometric Data~~Fingerprints~~. At the time that the court authorizes the filing of a petition alleging a juvenile offense and before the court enters an order of disposition on a juvenile offense or places the case on consent calendar, the court shall examine the confidential files and verify that the juvenile has had biometric data collected~~been fingerprinted~~. If it appears to the court that the juvenile has not had biometric data collected~~been fingerprinted~~, the court must:

(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so biometric data~~fingerprints~~ may be taken; or

(2) issue an order to the sheriff's department to apprehend the juvenile and to take the biometric data~~fingerprints~~ of the juvenile.

- (C) Notice of Disposition. The court shall notify the Department of State Police in writing:
- (1) of any juvenile who had had biometric data collected~~been fingerprinted~~ for a juvenile offense and who was found not to be within the jurisdiction of the court under MCL 712A.2(a)(1); or
 - (2) that the court took jurisdiction of a juvenile under MCL 712A.2(a)(1), who had biometric data collected~~was fingerprinted~~ for a juvenile offense, specifying the offense, the method of adjudication, and the disposition ordered.
- (D) Order for Destruction of Biometric Data~~Fingerprints~~. The court, on motion filed pursuant to MCL 28.243(8), shall issue an order directing the Department of State Police, or other official holding the information, to destroy the biometric data~~fingerprints~~ and arrest card of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(12), when a juvenile has had biometric data collected~~been fingerprinted~~ for a juvenile offense and no petition on the offense is submitted to the court, the court does not authorize the petition, or the court has neither placed the case on consent calendar nor taken jurisdiction of the juvenile under MCL 712A.2(a)(1).

Rule 3.943 Dispositional Hearing

(A)-(D) [Unchanged.]

(E) Dispositions.

(1)-(3) [Unchanged.]

(4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has had biometric data collected~~been fingerprinted~~. If the juvenile has not been fingerprinted, the court shall proceed as provided by MCR 3.936.

(5)-(7) [Unchanged.]

Rule 3.951 Initiating Designated Proceedings

(A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

- (1) [Unchanged.]
 - (2) Procedure.
 - (a)-(b) [Unchanged.]
 - (c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:
 - (i) determine if biometric data~~fingerprints~~ must be taken as provided by MCR 3.936;
 - (ii)-(iii)
 - (d) [Unchanged.]
 - (3) [Unchanged.]
- (B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.
- (1) [Unchanged.]
 - (2) Procedure.
 - (a)-(b) [Unchanged.]
 - (c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:
 - (i) determine if biometric data~~fingerprints~~ must be taken as provided by MCR 3.936;
 - (ii)-(iii) [Unchanged.]
 - (d) [Unchanged.]
 - (3) [Unchanged.]

Rule 3.963 Acquiring Physical Custody of Child

(A) [Unchanged.]

(B) Court-Ordered Custody.

(1)-(2) [Unchanged.]

(3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending a preliminary hearing, or an emergency removal hearing if the court already has jurisdiction over the child under MCR 3.971 or MCR 3.972, whether there has been a central registry clearance, and whether a criminal history check has been initiated.

(4) [Unchanged.]

(C)-(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(25) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622 (gf), (kj), (zw), or (ax), 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)-(E) [Unchanged.]

Rule 3.977 Termination of Parental Rights

(A)-(D) [Unchanged.]

- (E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1)-(2) [Unchanged.]

- (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) [Unchanged.]

- (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m); ~~or (n)~~;

(4) [Unchanged.]

- (F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

- (1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) [Unchanged.]

- (b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) [Unchanged.]

- (ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), or (m); ~~or (n)~~; and

(c) [Unchanged.]

(G)-(K) [Unchanged.]

Rule 5.125 Interested Persons Defined

(A)-(B) [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)-(5) [Unchanged.]

(6) The persons interested in a proceeding for examination or approval of an account of a fiduciary are:

(a)-(e) [Unchanged.]

(f) for a revocable trust, the settlor (and if the petitioner has a reasonable basis to believe the settlor is an incapacitated individual, those persons who are entitled to be reasonably informed, as referred to in MCL 700.7603[2]), the current trustee, and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust ~~director~~protector,

(g) for an irrevocable trust, the current trustee, the qualified trust beneficiaries, as defined in MCL 700.7103(g), and any other person named in the terms of the trust to receive either an account or a notice of such a proceeding, including a trust ~~director~~protector,

(h) [Unchanged.]

(7)-(31) [Unchanged.]

(32) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in the modification or termination of a noncharitable irrevocable trust are:

(a)-(c) [Unchanged.]

(d) the trust ~~director~~protector, if any, as referred to in MCL 700.7103(~~m~~n),

(e)-(f) [Unchanged.]

- (33) Subject to the provisions of Part 3 of Article VII of the Estates and Protected Individuals Code, the persons interested in a proceeding affecting a trust other than those already covered by subrules (C)(6), (C)(28), and (C)(32) are:

(a)-(d) [Unchanged.]

(e) the trust ~~director~~protector, if any, as referred to in MCL 700.7103(~~m~~),

(f)-(g) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 5.402 Common Provisions

(A)-(D) [Unchanged.]

(E) Indian Child; Definitions, Jurisdiction, Notice, Transfer, Intervention.

(1)-(2) [Unchanged.]

- (3) If an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(6), the court shall ensure that the petitioner has given notice of the proceedings to the persons prescribed in MCR 5.125(A)(8) and (C)(~~2019~~) in accordance with MCR 5.109(1).

(a)-(d) [Unchanged.]

(4) [Unchanged.]

- (5) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall do all of the following:

(a) [Unchanged.]

(b) enter an order for an investigation in accordance with MCR 5.404(A)(2). The order shall be on a form approved by the State Court Administrative Office and shall require the guardian to cooperate in the investigation. The court shall mail a copy of the order to the persons prescribed in MCR 5.125(A)(8), (C)(~~2019~~), and (C)(~~265~~) by first-class mail.

- (c) provide notice of the guardianship and the hearing scheduled in subrule (5)(a) and the potential applicability of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act on a form approved by the State Court Administrative Office to the persons prescribed in MCR 5.125(A)(8), (C)(~~2019~~), and (C)(~~265~~) in accordance with MCR 5.109(1). A copy of the notice shall be served on the guardian.

Rule 5.404 Guardianship of Minor

- (A) [Unchanged.]
- (B) Voluntary Consent to Guardianship of an Indian Child. A voluntary consent to guardianship of an Indian child must be executed by both parents or the Indian custodian.
 - (1) [Unchanged.]
 - (2) Hearing. The court must conduct a hearing on a petition for voluntary guardianship of an Indian child in accordance with this rule before the court may enter an order appointing a guardian. Notice of the hearing on the petition must be sent to the persons prescribed in MCR 5.125(A)(8) and (C)(~~2019~~) in compliance with MCR 5.109(1). At the hearing on the petition, the court shall determine:
 - (a)-(d) [Unchanged.]
 - (3) [Unchanged.]
- (C) Involuntary Guardianship of an Indian Child.
 - (1) Hearing. The court must conduct a hearing on a petition for involuntary guardianship of an Indian child in accordance with this rule before the court may enter an order appointing a guardian. Notice of the hearing must be sent to the persons prescribed in MCR 5.125(A)(8) and (C)(~~2019~~) in compliance with MCR 5.109(1). At the hearing on the petition, the court shall determine:
 - (a)-(e) [Unchanged.]
 - (2)-(3) [Unchanged.]
- (D)-(H) [Unchanged.]

Rule 5.801 Appeals to Court of Appeals

- (A) Appeal of Right. A party or an interested person aggrieved by a final order of the probate court may appeal as a matter of right as provided by this rule.

Orders appealable of right to the Court of Appeals are defined as and limited to the following:

- (1) [Unchanged.]
- (2) a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate, the estate of a person who has disappeared or is missing, a conservatorship or other protective proceeding, the estate of an individual with developmental disabilities, or an inter vivos trust or a trust created under a will. These are defined as and limited to orders resolving the following matters:
 - (a) appointing or removing a fiduciary or trust ~~director~~~~protector~~ as defined in MCL 700.7103(~~mn~~), or denying such an appointment or removal;
 - (b)-(x) [Unchanged.]
 - (y) surcharging or refusing to surcharge a fiduciary or trust ~~director~~~~protector~~ as referred to in MCL 700.7103(~~mn~~);
 - (z)-(ff) [Unchanged.]
- (3)-(6) [Unchanged.]

- (B) [Unchanged.]

Rule 6.104 Arraignment on the Warrant or Complaint

- (A)-(D) [Unchanged.]

- (E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must

- (1)-(5) [Unchanged.]
- (6) ensure that the accused has had biometric data collected~~been fingerprinted~~ as required by law.

The court may not question the accused about the alleged offense or request that the accused enter a plea.

(F)-(G) [Unchanged.]

Rule 7.210 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

(1)-(2) [Unchanged.]

(3) Duties of Court Reporter or Recorder.

(a)-(c) [Unchanged.]

(d) Form of Transcript. The transcript must be filed in one or more volumes under a hard-surfaced or other suitable cover, stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts filed with the court must contain only a single transcript page per document page, not multiple pages combined on a single document page~~Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.~~

(e)-(g) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

(A)-(C) [Unchanged.]

(D) Requesting Publication.

- (1) Any party may request publication of an authored or per curiam opinion not designated for publication by
 - (a) [Unchanged.]
 - (b) mailing a copy to each party to the appeal not joining in the request, ~~and to the clerk of the Supreme Court.~~

Such a request must be filed within 21 days after release of the unpublished opinion or, if a timely motion for rehearing is filed, within 21 days after the denial of the motion.

(2)-(3) [Unchanged.]

- (4) The Court of Appeals shall not direct publication if the Supreme Court has denied an application for leave to appeal under MCR 7.3052.

(E)-(J) [Unchanged.]

Rule 7.305 Application for Leave to Appeal

(A)-(B) [Unchanged.]

(C) When to file.

(1)-(6) [Unchanged.]

- (7) Effect of Appeal on Decision Remanding Case. If a party appeals a decision that remands for further proceedings as provided in subrule (C)(~~65~~)(a), the following provisions apply:

(a)-(b) [Unchanged.]

(8) [Unchanged.]

(D)-(I) [Unchanged.]

Rule 7.308 Certified Questions and Advisory Opinions

(A) [Unchanged.]

(B) Advisory Opinion

- (1) Form of Request. A request for an advisory opinion by either house of the legislature or the governor pursuant to Const 1963, art 3, § 8 may be in the form of a letter that includes a copy or verbatim statement of the enacted legislation and identifies the specific questions to be answered by the Court. One signed copy of the request and one~~1~~ set of supporting documents are to be filed with the Court.

(2)-(4) [Unchanged.]

Rule 8.111 Assignment of Cases

(A)-(C) [Unchanged.]

- (D) Actions Arising out of Same Transaction or Occurrence. Subject to subrule 8.111~~0~~(C),

(1)-(4) [Unchanged.]

Judicial Tenure Commission IOP 9.203(A) [New Language]

Upon request, the Commission and the Commission staff may, in their discretion, respond formally or informally to an inquiry by a judge or judicial candidate regarding past or prospective conduct.

If the response is informal, the person doing the responding should take care to ensure:

1. The response has taken into account applicable provisions of MCR 9.205, the Michigan Code of Judicial Conduct, the Michigan Rules of Professional Conduct, and if appropriate, the ethics opinions published by the State Bar.
2. The response communicates any uncertainty in the above authorities with respect to the question presented.
3. The response includes the qualification that it is an informal opinion that rests on the accuracy and completeness of the facts that have been presented, and it does not represent the opinion of the full Judicial Tenure Commission or the Supreme Court.
4. The essence of the response is circulated to the Commission and staff attorneys, both to give an opportunity to offer input concerning the response, and to keep all interested parties informed about questions asked and responses provided. The person doing the responding may, but need not, circulate a proposed response to the Commission before providing it to the judge or judicial candidate.

The Commission, in its sole discretion, may instead choose to provide a formal response to any inquiry. A formal response requires the vote of five Commissioners. The formal response shall include the qualification that it rests on the accuracy and completeness of the facts that have been presented, and it does not represent the opinion of the Supreme Court.

Upon receiving an inquiry by a judge or judicial candidate, the Commission and the Commission staff may, in their discretion, decline to respond to the inquiry and instead to refer the inquirer to the appropriate State Bar of Michigan ethics committee.

Judicial Tenure Commission IOP 9.207(A)-9 – Case Status [New Language]

Monthly, or at such other times as the Commission may direct, the executive director shall inform the Commission of the status of all open matters for which the Commission has authorized an investigation. The status report shall include the respondent's name and court, the date the grievance was received by the staff, the identity of the grievant(s), a summary of the principle allegations being investigated, and the status of the investigation including anticipated next steps, plus any other information requested by the Commission.

Judicial Tenure Commission IOP 9.207(B)-12 – Prompt Resolution of Complaints [New Language]

The Commission recognizes that the public and judiciary have a strong interest in prompt resolution of complaints alleging a judge has committed misconduct. The Commission's goal is to

- review all complaints expeditiously;
- thoroughly investigate those that warrant further examination;
- accurately determine the merits of each complaint; and
- arrive at a just resolution as quickly as practicable.

Judicial Tenure Commission IOP 9.219 – Interim Suspension [New Language]

The Commission shall consider whether to seek interim suspension, with or without pay, under MCR 9.219: a) in every case in which a formal complaint is issued, at the time of issuing the complaint or at any subsequent time before resolution of the complaint; and b) in any case still under investigation, in which a formal complaint has not yet issued, in which the respondent has been accused or convicted of a crime or other extraordinary circumstances are present.

The Commission shall evaluate the following in its determination:

1. Whether the issuance of the formal complaint is likely to call into serious question the propriety of the respondent hearing cases until the complaint is resolved;
2. Whether the misconduct, if established, is likely to result in the Commission recommending removal or suspension;
3. Whether the evidence of serious misconduct is sufficiently strong to justify suspension, with or without pay, before the proceedings are concluded.
4. The impact on the credibility of the judiciary if the respondent is or is not suspended, with or without pay, pending the outcome of the formal complaint;
5. Any hardship either interim suspension or the absence of interim suspension, with or without pay, would cause to the people of the jurisdiction in which the respondent sits;
6. Any other facts of the case that militate in favor of, or against, interim suspension with or without pay.

After considering all relevant facts, including the respondent's interests, the Commission may seek interim suspension if it determines that doing so is in the best interest of the public and the judiciary. When it can do so without compromising an investigation or other important interests, the Commission will notify the respondent of its intention to seek interim suspension, whether with or without pay, as soon as practicable.

Staff Comment: 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.

August 14, 2019

Clerk