

Order

Michigan Supreme Court
Lansing, Michigan

March 25, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-09

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

Amendments of Rules 2.223, 2.305, 2.314, 2.403, 2.506, 3.206, 3.211, 3.229, 3.606, 3.618, 3.903, 3.920, 3.922, 3.936, 3.943, 3.972, 3.973, 6.001, 6.425, 6.430, 6.445, 6.610, 7.118, 7.202, 7.210, 7.303, 8.120, 9.116, and 9.118 of the Michigan Court Rules, Rescission of Administrative Order No. 1999-3, Amendment of Administrative Order No. 2020-20, and Amendment of Rule 1.4 of the Michigan Rules of Professional Conduct

On order of the Court, the following amendments are adopted, effective March 24, 2021.

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

Rule 2.223 Change of Venue; Venue Improper

- (A) [Unchanged.]
- (B) Order for Change of Venue; Case Records.
 - (1)-(2) [Unchanged.]
 - (3) The receiving court ~~must~~shall temporarily suspend payment of the filing fee and open a case pending payment of the filing fee and costs as ordered by the transferring court. The receiving court must notify the plaintiff of the new case number in the receiving court, the amount due, and the due date.
- (C) [Unchanged.]

Rule 2.305 Discovery Subpoena to a Non-Party

- (A) General Provisions

- (1) A represented party may issue a subpoena to a non-party for a deposition, production or inspection of documents, inspection of tangible things, or entry to land upon court order or after all parties have had a reasonable opportunity to obtain an attorney, as determined under MCR 2.306(A). An unrepresented party may move the court for issuance of non-party discovery subpoenas. MCR 2.306(B)(1)-(2) and (C)-(G) apply to a subpoena under this rule. This rule governs discovery from a non-party under MCR 2.303(A)(4), 2.307, 2.310(~~B~~)(2) or 2.315. MCR 2.506(A)(2) and (3) apply to any request for production of ESI. A subpoena for hospital records is governed by MCR 2.506(I).

(2)-(7) [Unchanged.]

(B)-(E) [Unchanged.]

Rule 2.314 Discovery of Medical Information Concerning Party

(A)-(C) [Unchanged.]

(D) Release of Medical Information by Custodian.

(1)-(5) [Unchanged.]

- (6) If a custodian does not respond within the time permitted by subrule (D)(1) to a party's authorized request for medical information, a subpoena may be issued under MCR 2.305(A)(~~1~~), directing that the custodian present the information for examination and copying at the time and place stated in the subpoena.

(E) [Unchanged.]

Rule 2.403 Case Evaluation

(A)-(N) [Unchanged.]

(O) Rejecting Party's Liability for Costs

(1)-(8) [Unchanged.]

- (9) In an action under MCL 436.1801, if the plaintiff rejects the award against the minor or alleged intoxicated person, or is deemed to have rejected such an award under subrule (L)(3)(c), the court shall not award costs against the plaintiff in favor of the minor or alleged intoxicated person unless it finds

that the rejection was not motivated by the need to comply with MCL 436.1801(45).

(10)-(11) [Unchanged.]

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1)-(4) [Unchanged.]

(5) A subpoena may be issued only in accordance with this rule or MCR 2.305, 2.621(C), 9.112(D), 9.115(I)(1), or 9.22142 and 9.234.

(B)-(I) [Unchanged.]

Rule 3.206 Initiating a Case

(A)-(B) [Unchanged.]

(C) Verified Statement and Verified Financial Information Form.

(1)-(5) [Unchanged.]

(6) When the action is to establish paternity or child support and the pleadings are generated from Michigan's automated child support enforcement system, the party is not required to comply with subrule (C)(1), ~~or (C)(2)~~, or MCR 3.211(F)(2). However, the party may comply with subrule (C)(1), ~~and (C)(2)~~, or MCR 3.211(F)(2) to provide the other party an opportunity to supply any omissions or correct any inaccuracies.

(D) [Unchanged.]

Rule 3.211 Judgments and Orders

(A)-(E) [Unchanged.]

(F) Entry of Judgment or Order

(1)-(4) [Unchanged.]

- (5) Except as otherwise provided in MCR 3.206(C), tThe Domestic Relations Judgment Information form must be submitted to the friend of the court in addition to the verified statement that is required by MCR 3.206(C).

(G)-(H) [Unchanged.]

Rule 3.229 Filing Confidential Materials

- (A) If a party or interested party files any of the following items with the court, the party shall identify the document as a confidential document and the items shall be served on the other parties in the case and maintained in a nonpublic file in accordance with subrule (B):

(1) verified statements and disclosure forms under MCR 3.206(~~C~~B);

(2)-(8) [Unchanged.]

(B) [Unchanged.]

Rule 3.606 Contempts Outside Immediate Presence of Court

(A)-(E) [Unchanged.]

- (F) The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(~~D~~E)(3). Proceedings to which the Child Support and Parenting Time Enforcement Act, MCL 552.602 et seq., applies are subject to the requirements of that act.

Rule 3.618 Emancipation of Minor

(A)-(G) [Unchanged.]

- (H) A minor's birth certificate filed with the court as required by MCL 722.4a must be maintained confidentially.

Rule 3.903 Definitions

- (A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)-(25) [Unchanged.]

(26) “Register of actions” means the case history of all cases, as defined in subrule (A)(1), maintained in accordance with Michigan Supreme Court Records Case File Management Standards. See MCR 8.119(D)(1)(a).

(27) [Unchanged.]

(B)-(F) [Unchanged.]

Rule 3.920 Service of Process

(A) [Unchanged.]

(B) Summons.

(1)-(2) [Unchanged.]

(3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:

(a)-(c) [Unchanged.]

(d) have a copy of the petition attached. The confidential case inventory required by MCR 3.931(A) and MCR 3.961(A) shall not be served on any party.

(4)-(5) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) [Unchanged.]

(B) Discovery and Disclosure in Delinquency Matters.

(1)-(2) [Unchanged.]

(3) In delinquency matters, if a respondent demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the court shall conduct an in camera inspection of the records.

(a)-(d) [Unchanged.]

(e) Records disclosed under this subrule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(f) [Unchanged.]

(4)-(5) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Notice of Intent.

(1)-(2) [Unchanged.]

(3) The court may shorten the time periods provided in this subrule ~~(E)~~ if good cause is shown.

Rule 3.936 Biometric Data

(A) [Unchanged.]

(B) Order for Biometric Data. 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 the consent calendar, the court shall examine the confidential files and verify that the juvenile has had biometric data collected. If it appears to the court that the juvenile has not had biometric data collected, 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 may be collected~~taken~~; or

(2) issue an order to the sheriff's department to apprehend the juvenile and to collect~~take~~ the biometric data 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 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) [Unchanged.]
- (D) Order for Destruction of Biometric Data. The court, on motion filed pursuant to MCL 28.243(108), shall issue an order directing the Department of State Police, or other official holding the information, to destroy the biometric data and arrest card of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(142), when a juvenile has had biometric data collected 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 the 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. If the juvenile has not had biometric data collected~~been fingerprinted~~, the court shall proceed as provided by MCR 3.936.
- (5)-(7) [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(265) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622 (g), (k), (z), or (aa), 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 3.973 Dispositional Hearing

(A)-(I) [Unchanged.]

(J) Allegations of Additional Abuse or Neglect.

- (1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(gf) and (kj), of a child who is under the jurisdiction of the court are governed by MCR 3.977.
- (2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(gf) and (kj), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.101, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(D~~E~~)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(C) [Unchanged.]

(D) Sentencing Procedure

- (1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court must, on the record:

(a) [Unchanged.]

- (b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule ~~(DE)~~(2),

(c)-(f) [Unchanged.]

(2)-(3) [Unchanged.]

(E)-(G) [Unchanged.]

Rule 6.430 Postjudgment Motion to Amend Restitution

- (A) The court may amend an order of restitution entered under the Crime Victim's Rights Act~~this section~~ on a motion filed by the prosecuting attorney, the victim, or the defendant based upon new or updated information related to the injury, damages, or loss for which the restitution was ordered.

(B)-(F) [Unchanged.]

Rule 6.445 Probation Revocation

(A)-(F) [Unchanged.]

- (G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and may not sentence the probationer to prison or jail (including for failing to pay fines, costs, restitution, and other financial obligations imposed by the court) without having complied with the provisions set forth in MCR 6.425(B) and ~~(DE)~~.

(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

- (F) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1)-(3) [Unchanged.]

(4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:

(a)-(c) [Unchanged.]

Except as provided in subrule (F)(7), if the court uses a writing pursuant to subrule (F)(4)(b) or (c), the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(5)-(9) [Unchanged.]

(G) Sentencing.

(1) [Unchanged.]

(2) The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(D)(3).

(3)-(4) [Unchanged.]

(H)-(I) [Unchanged.]

Rule 7.118 Appeals from the Michigan Parole Board

(A)-(D) [Unchanged.]

(E) Late Application. A late application for leave to appeal may be filed under MCR 7.105(G).

(F)-(G) [Unchanged.]

(H) Procedure After Leave to Appeal Granted. If leave to appeal is granted, MCR 7.105(E)(4) applies along with the following:

(1)-(4) [Unchanged.]

(I) Subsequent Appeal to the Court of Appeals. An appeal of a circuit court decision is by motion for immediate consideration in emergency application for leave to

appeal to the Court of Appeals under MCR 7.205(F), and the Court of Appeals shall expedite the matter.

(J) [Unchanged.]

Rule 7.202 Definitions

For purposes of this subchapter:

(1)-(5) [Unchanged.]

(6) “final judgment” or “final order” means:

(a) In a civil case,

- (i) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;
- (ii) [Unchanged.]
- (iii) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile;
- (iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule; or;
- (v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity;

(b) [Unchanged.]

Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

- (1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits

introduced. In an appeal from probate court in an estate or trust proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health Code, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2)-(4) [Unchanged.]

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.99377(EJ)(3) or MCR 6.425(G), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.

(b)-(e) [Unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.303 Jurisdiction of the Supreme Court

(A) **Mandatory Review.** The Supreme Court shall review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.25023 to 9.25326).

(B) [Unchanged.]

Rule 8.120 Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, and Legal Training Programs

(A) [Unchanged.]

(B) **Legal Training Programs.** Law students and recent law graduates may participate in legal training programs organized in the offices of county prosecuting attorneys,

county corporation counsel, city attorneys, municipal/township attorneys, the Attorney Grievance Commission, and the Attorney General.

(C)-(D) [Unchanged.]

Rule 9.116 Judges; Former Judges

(A) Judges. The administrator or commission may not take action against an incumbent judge, except that this rule does not prohibit an action by the administrator or commission against:

(1) [Unchanged.]

(2) a visiting judge as provided in MCR 9.21103(E). If the Judicial Tenure Commission receives a request for investigation of a magistrate or referee or visiting judge arising from the practice of law, the Judicial Tenure Commission shall refer the matter to the administrator or commission for investigation in the first instance. If the administrator or the commission dismisses the request for investigation referred by the Judicial Tenure Commission, or a request for investigation of a magistrate, referee or visiting judge submitted directly to the commission by a complainant, the administrator or commission shall notify the Judicial Tenure Commission, which may take action as it deems appropriate.

(B) Former Judges. The administrator or commission may take action against a former judge for conduct resulting in removal as a judge, and for any conduct which was not the subject of a disposition by the Judicial Tenure Commission or by the Court. The administrator or commission may not take action against a former judge for conduct where the court imposed a sanction less than removal or the Judicial Tenure Commission has taken any action under MCR 9.22307(A)(1)-(5).

(C) [Unchanged.]

Rule 9.118 Review of Order of Hearing Panel

(A) Review of Order; Time.

(1)-(2) [Unchanged.]

(3) A delayed petition for review may be considered by the board chairperson under the guidelines of MCR 7.205(A)(4). If a petition for review is filed more than 12 months after the order of the hearing panel is entered, the petition may not be granted.

(B)-(F) [Unchanged.]

Rescission of Administrative Order No. 1999-3 – Discovery in Misdemeanor Cases

On order of the Court, Administrative Order No. 1999-3 is rescinded, effective immediately.

Amendment of Administrative Order No. 2020-20 – Election Related Litigation Procedures

- (1) [Unchanged.]
- (2) Upon the filing of a complaint regarding an election matter, the following persons must be notified of the lawsuit as soon as practicable:
 - (a) Supreme Court Clerk
 - (b) State Director of Elections
 - (c) Attorney General Civil Litigation, Employment, & Elections Division (if the complaint is against the state or one of its subdivisions).
 - (d) The Governor’s Chief Legal Counsel (on behalf of the Governor)

The State Court Administrator will circulate a memo before each election that identifies the names and contact information for the individuals and offices listed above.

(2)-(4) [Unchanged.]

MRPC 1.4: Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, ~~case~~mediation evaluations, and proposed plea bargains.
- (b) [Unchanged.]

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.

March 25, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk