

**From:** [Hamilton, Scott T](#)  
**To:** [ADMcomment](#)  
**Subject:** 2015-21: New court rules based on In re Ferranti  
**Date:** Thursday, June 20, 2019 9:50:05 AM

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To whom it may concern:

QUESTION #1: The new rules establish an appeal as of right from “any order removing a child from a parent’s care and custody.” New rule 3.965(B)(15) requires a court to advise parents of this right if the court removes a child at a preliminary hearing. There is no similar provision in 3.974(C)(3)(b). Or, for that matter, MCR 3.963(B). Why not?

QUESTION #2: New rule 3.965(B)(15) only requires that the court advise the parent that the parent, guardian or legal custodian has a right to appeal an order of removal. There is no requirement that the court notify the parent of anything else, such as the rights the court must read in new rule 3.971(B)(7) and (8), and new rule 3.973(G)(3) and (4). Why not?

QUESTION #3: Let’s say a parent went through an adjudication trial and all sorts of evidentiary errors occurred over the respondent’s attorney’s objections. After the verdict (jury trial) or judgment (bench trial) of “responsible for child abuse or neglect under MCL 712A.2(b)”, the court reads the respondent their rights to appeal the adjudication just like the new court rules require. The respondent chooses not to appeal, and goes ahead with disposition. Again, at initial disposition, the court follows the new advice of rights rules. Ultimately, subsequent hearings lead to a supplemental petition for termination, and the court does terminate rights in a later proceeding. The parent appeals the termination order and, in that appeal, challenges the court’s assumption of jurisdiction over the children in the original 712A.2(b) trial, citing all those evidentiary errors the court made. Under *Hatcher*, that challenge is defeated by the “no collateral attack” rule. Under these new court rules, can the parent win that appeal if the errors were significant enough not to be harmless? Or, would new rule 3.971(B)(8) and/or 3.972(H) prevent them from winning that appeal (they didn’t appeal “timely”, or, the appeal isn’t based on a “fail[ure] to properly advise the respondent of their right to appeal”)?

QUESTION #4: Does the new MCR 3.993(A)(1-3) remove an appeal of right? New section (A)(1) applies only to an order removing a “child” (NA cases), not a “juvenile” (DL cases) or a “minor” (both NA and DL cases). Old section (A)(1) allowed appeals of right for a disposition order and a removal order for “minors”. It now appears that a juvenile has no right to appeal an order removing him or her from home in a DL case.

Thank you,

**Scott T. Hamilton**

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