

Order

Michigan Supreme Court
Lansing, Michigan

April 22, 2019

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-16

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendment of Rule 3.201
and Proposed Addition of Rule
3.230 of the Michigan Court Rules

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.201 and a proposed addition of Rule 3.230 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 also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules 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 3.201 Applicability of Rules

(A) Subchapter 3.200 applies to

- (1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, ~~family~~ support under MCL 552.451 *et seq.*, or MCL 722.1 *et seq.*, the custody of minors or parenting time under MCL 722.21 *et seq.* or MCL 722.1101 *et seq.*, ~~and visitation with minors under MCL 722.27b, and to~~
- (2) an expedited proceeding to determine paternity or child support under MCL 722.1491 *et seq.*, or to register a foreign judgment or order under MCL 552.2101 *et seq.* or MCL 722.1101 *et seq.*, and to
- (~~2~~3) proceedings that are ancillary or subsequent to the actions listed in subrules (A)(1) and (A)(2) and that relate to
 - (a) [Unchanged.]

(b) ~~visitation~~parenting time with minors, or

(c) [Unchanged.]

(B)-(C) [Unchanged.]

(D) When used in this subchapter, unless the context otherwise indicates:

(1) “Case” means an action ~~initiated~~commenced in the family division of the circuit court by:

(a)-(c) [Unchanged.]

(d) filing a petition under MCR 3.222(C);~~or~~

(e) filing a consent judgment under MCR 3.223;

(f) filing of a complaint and notice under MCR 3.230; or

(g) filing a request for entry of a consent agreement and a consent judgment or order under MCR 3.230.

(2)-(3) [Unchanged.]

(4) “Initiating document” means a statement, letter, or other document filed in lieu of a complaint to open a case and request relief under the Summary Support and Paternity Act, MCL 722.1491 et seq., or to register a foreign judgment or order under the Uniform Interstate Family Support Act, MCL 552.2101 et seq. or the Uniform Child Custody Jurisdiction Enforcement Act, MCL 722.1101 et seq.

[NEW] Rule 3.230 Actions Under the Summary Support and Paternity Act

(A) Scope and Applicability of Rules; Definitions.

(1) Procedure in actions under the Summary Support and Paternity Act, MCL 722.1491 et seq., is governed by the rules applicable to other domestic relations actions, except as otherwise provided in this rule and the act.

(2) Definitions. For purposes of this rule

(a) “IV-D agency” means the agency in a county that provides support and paternity establishment services under MCL 722.1501.

- (b) “Plaintiff” means
 - (i) The child’s mother, father, or alleged father on whose behalf the IV-D agency files the action, or
 - (ii) The Michigan Department of Health and Human Services when the IV-D agency files an action on behalf of a child.
- (c) “Expedited paternity action” means an action commenced to establish either paternity or paternity and support under MCL 722.1491 *et seq.*
- (d) “Expedited support action” means an action commenced to establish a parent’s support obligation under MCL 722.1499.

(B) Commencing an Action.

- (1) A IV-D agency commences an expedited paternity or expedited support action by filing one of the following with the court:
 - (a) A complaint and notice, or
 - (b) A request to enter a consent agreement, and a consent judgment or order signed by the parties.
- (2) Upon filing an action, the court clerk shall assign a case number and judge. The court clerk shall not issue a summons under MCR 2.102.
- (3) A complaint, notice, and request for entry of a consent agreement used to initiate an action or set child support must be completed on forms approved by the State Court Administrative Office.
- (4) Complaint to Establish Paternity. A complaint filed in an expedited paternity action shall:
 - (a) contain a statement of the information required in MCL 722.1495 and other applicable laws and rules,
 - (b) comply with the provisions of MCR 2.113 and MCR 3.206(A),
 - (c) state the relief being requested, and

- (d) be verified and signed by the mother or alleged father, or signed by the IV-D agency. A statement signed by a IV-D agency does not need to be verified, and may be signed “on information and belief.” If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).
- (5) Complaint to Establish Duty for Child Support. A complaint filed in an expedited support action shall:
- (a) contain the information required in MCL 722.1499, and other applicable laws and rules,
 - (b) comply with the provisions of MCR 2.113 and MCR 3.206(A),
 - (c) state the relief being requested, and
 - (d) be signed by the plaintiff or the IV-D agency. If the plaintiff is a minor, the complaint must be signed as provided in MCR 2.201(E).
- (6) Notice. A notice to initiate an expedited paternity or expedited support action shall be titled “In the name of the people of the state of Michigan,” and shall be signed by the IV-D agency. The notice must be directed to the defendant and include:
- (a) the name and address of the court;
 - (b) the names and addresses of the parties;
 - (c) the case number and name of the assigned judge;
 - (d) the name, address, and phone number of the IV-D agency filing the action;
 - (e) the name and address of any attorney appearing in the matter;
 - (f) notice that written responses, agreements, and other actions must be filed with the court within 21 days after being served, and if the defendant fails to file a written response pursuant to statute or take other action within 21 days, an order or a judgment may be entered granting the relief requested in the complaint without further notice or hearing; and

- (g) an expiration date, which does not exceed 126 days after the date the action is filed.
- (7) Request to Enter Consent Agreement. A request for entry of a consent judgment or order to initiate an expedited paternity or expedited support action shall:
- (a) state the following:
 - (i) the name and address of the court;
 - (ii) the names and addresses of the parties;
 - (iii) the name, address, and phone number of the IV-D agency filing the action; and
 - (iv) the name and address of any attorney appearing in the matter.
 - (b) contain the grounds for jurisdiction, the statutory grounds to enter the judgment or order, and a request for entry of the judgment or order without further notice; and
 - (c) be signed by the parties and the IV-D agency.
- (C) Service.
- (1) A complaint and notice filed under subrule (B)(1)(a) must be served on the parties by the IV-D agency in accordance with MCR 2.105, or in the alternative, may be served by mail in accordance with MCL 722.1495(4).
 - (2) Pursuant to MCL 722.1501(4)(c), a request to enter a consent judgment or order filed under subrule (B)(1)(b) is considered served at the time of filing, and a party's signature on the request to enter a consent agreement, or the consent judgment or order signifies acknowledgement of service.
 - (3) After a party has been served under subrule (C)(1) or (2), other court papers, orders, and notices shall be served in accordance with MCR 3.203.
- (D) Dismissal as to Defendant Not Served.
- (1) Upon expiration of the notice under subrule (B)(6)(g), the action is deemed dismissed without prejudice if the defendant has not been served with notice of the action unless the defendant has responded.

- (2) A court shall set aside a dismissal of an action under this subrule without hearing upon showing by the IV-D agency within 28 days of the expiration of the notice that the defendant did in fact receive timely notice or had submitted to the court's jurisdiction before the dismissal.

(E) Setting Child Support.

- (1) At the time that a complaint is filed, or any time after establishing paternity or a duty to support a child, the IV-D agency may provide notice setting a proposed support amount. The proposed support obligation shall be calculated by application of the Michigan Child Support Formula or a properly documented deviation from the amount calculated using the formula. The notice or an accompanying calculation results report must state the amounts calculated for support, the proposed effective date, and the facts and assumptions upon which the calculation is based.
- (2) A notice and calculation report setting a child support amount shall be filed with the court and provided to the parties. The notice shall contain statements notifying the parties of all of the following:
 - (a) that objections and responses to the notice must be filed within 21 days from:
 - (i) the date of service, if the notice setting child support is served at the same time as the complaint and notice; or
 - (ii) the date of mailing or service, if the notice is served under MCR 3.203.
 - (b) a party may object to the proposed child support amount based on either a mistake in the facts or assumptions used to calculate support, or on an error in the calculation by filing an answer requesting a hearing on the proposed obligation;
 - (c) if no objection is filed, an order will be submitted to the court in the proposed amounts for entry without further notice or hearing;
 - (d) if an objection is filed, a hearing will be scheduled, unless the IV-D agency recalculates the amount and sends a new notice.
- (3) If the IV-D agency receives information from a party after filing a notice setting a child support amount and before a support order is submitted for

entry, the agency may recalculate support and issue a new notice and calculation report under this subrule proposing a corrected child support amount.

(F) Response.

- (1) Within 21 days after being served with a notice under subrule (B) or a notice under subrule (E), a party must file a response with the court or take another action permitted by law or these rules. The party must serve copies of the response on the IV-D agency and the other party in accordance with MCR 3.203.
- (2) The IV-D agency shall immediately forward to the court any response it receives from a party who has not filed the response with the court.
- (3) A request to enter a consent agreement, or a consent judgment or order filed under subrule (B)(1)(b) does not require a response. A party may file an additional response or motion regarding issues not resolved by the agreement, consent judgment or order, or the other party filing an additional response.
- (4) Within 14 days after the time permitted for responses under subrule (F)(1), if a party has filed a response, or pursuant to any matter left unresolved, the IV-D agency shall take one or more of the following actions:
 - (a) schedule genetic testing, if a party in an expedited paternity action requests genetic testing;
 - (b) schedule a hearing on any matters or relief proposed in a complaint or notice that are contested, and the IV-D agency may submit a proposed order or judgment that incorporates any proposed relief that was not contested; or
 - (c) submit a proposed judgment or order that incorporates any proposed relief that a party agrees to or that was not contested.

(G) Failure to Respond.

- (1) Subrule MCR 3.210(B) does not apply to proceedings under this rule.
- (2) If neither party in an action to establish paternity brought against an alleged father requests genetic tests and the defendant does not otherwise defend within 21 days after receiving notice, the IV-D agency may request entry of

a judgment establishing defendant as the child's legal father by submitting a proposed judgment for entry.

- (3) In an action to establish paternity brought by an alleged father against the child's mother, if the mother does not admit the alleged father's paternity, the court shall not determine paternity unless based on genetic test results.
- (4) When a defendant does not respond or otherwise defend, the IV-D agency shall submit a proposed order that establishes the duty to support the child.
- (5) If neither party files an objection to a notice setting a support amount within 21 days, the IV-D agency shall submit a support order in the recommended amounts to the court.
- (6) Nonmilitary affidavits required by law must be filed before a judgment is entered in cases in which the defendant has failed to respond or appear.
- (7) A judgment may not be entered against a minor or an incompetent person who has failed to respond or appear unless the person is assisted in the action by a conservator or other representative, except as otherwise provided by law.

(H) Judgments and Orders.

- (1) The court may consider the complaints and other documents filed with the court, relevant and material affidavits, or other evidence when entering an order in an expedited paternity or support action.
- (2) Entering Orders. The court may enter a proposed judgment or order submitted by the IV-D agency without hearing if the court is satisfied of all of the following:
 - (a) that the parties were given proper notice and opportunity to file a response,
 - (b) the statutory and rule requirements were met, and
 - (c) the terms of the judgment or order are in accordance with the law.
- (3) The IV-D agency seeking entry of a proposed judgment or order must schedule a hearing and serve the motion, notice of hearing, and a copy of the proposed judgment or orders upon the parties at least 14 days before the hearing, and promptly file a proof of service when:

- (a) the proposed judgment involves a request for relief that is different from the relief requested in the complaint; or
 - (b) the IV-D agency does not have sufficient facts to complete the judgment or order without a judicial determination of the relief to which the party is entitled.
- (4) If the court determines that a proposed judgment or order is not in accordance with the law or that the court needs additional information to decide the matter, the court may direct the IV-D agency or the parties to do any of the following within 14 days:
- (a) submit a modified proposed judgment or order in conformity with the court's ruling;
 - (b) file additional affidavits or other documents and notices, or
 - (c) schedule a hearing to present evidence sufficient to satisfy the court or to meet statutory requirements.
- (5) A party may waive a statutory waiting period or further notice prior to entry of a consent judgment or order.
- (6) If paternity of a child has not been established and a party or IV-D agency requests genetic testing, the court may order the parties and child to submit to genetic testing without a hearing.
- (7) Upon entry of a judgment or order and as provided by MCR 3.203, the IV-D agency must serve a copy as entered by the court on all parties within 7 days after entry, and promptly file a proof of service.

Staff comment: The proposed amendment of MCR 3.201 and proposed addition of MCR 3.230 would provide procedural rules to incorporate the Summary Support and Paternity Act (366 PA 2014; MCL 722.1491, *et seq.*) to establish a parent's paternity or support obligation through a summary action.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 sent to the Supreme Court Clerk in writing or electronically by August 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-16. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

April 22, 2019

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

Clerk