

# Order

Michigan Supreme Court  
Lansing, Michigan

April 8, 2020

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-47

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendments of Rules  
3.804, 5.140, and 5.404 and  
Proposed Addition of Rule 3.811  
of the Michigan Court Rules

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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 amendments of Rules 3.804, 5.140, and 5.404 and a proposed addition of Rule 3.811 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 3.804 Consent and Release

(A) [Unchanged.]

(B) Hearing on Consent to Adopt.

(1)-(2) [Unchanged.]

(3) Use of Videoconferencing Technology. Videoconferencing technology may not be used~~Except~~ for a consent hearing under this subrule involving an Indian child pursuant to MCL 712B.13, ~~the court may allow the use of videoconferencing technology under this subchapter in accordance with MCR 2.407.~~

(C)-(D) [Unchanged.]

[New] Rule 3.811 Use of Videoconferencing Technology

Except as otherwise provided, the court may allow the use of videoconferencing technology for proceedings under this subchapter in accordance with MCR 2.407.

Rule 5.140 Use of Videoconferencing Technology

(A)-(C) [Unchanged.]

~~(D)~~ The court may not use videoconferencing technology for a consent hearing required to be held pursuant to the Michigan Indian Family Preservation Act and MCR 5.404(B).

~~(E)~~ [Relettered but otherwise unchanged.]

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) Form of Consent. To be valid, the consent must contain the information prescribed by MCL 712B.13(2) and be executed on a form approved by the State Court Administrative Office, in writing, recorded before a judge of a court of competent jurisdiction, and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, the birth of the Indian child is not valid. The court may ~~not~~ use videoconferencing technology for the guardianship consent hearing required to be held under MCL 712B.13(1)~~the Michigan Indian Family Preservation Act~~ and this subrule.

(2)-(3) [Unchanged.]

(C)-(H) [Unchanged.]

*Staff comment:* The proposed amendments of MCR 3.804, 5.140, and 5.404 and proposed new MCR 3.811 would allow greater use of videoconferencing equipment in cases involving Indian children.

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, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-47. 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 8, 2020

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

Clerk