

# Order

Michigan Supreme Court  
Lansing, Michigan

April 14, 2021

Bridget M. McCormack,  
Chief Justice

ADM File No. 2020-15

Proposed Amendment of Rule 2  
and Proposed Addition of Rule 21  
of the Rules Concerning the State  
Bar of Michigan and Proposed  
Amendment of Rule 9.119 and  
Proposed Addition of Rule 9.1XX  
of the Michigan Court Rules

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2 and an addition of Rule 21 of the Rules Concerning the State Bar of Michigan and an amendment of Rule 9.119 and an addition of Rule 9.1XX 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 will also be considered at a public hearing. The notices and agendas for public hearing 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 2 Membership

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become section members of the State Bar Law Student Section. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual licensing statement~~due notice~~, must provide the State Bar with

(A) The member's correct name, physical address, and email address, that can be used, among other things, for the annual licensing statement~~due notice~~ and to effectuate electronic service as authorized by court rule, and such additional information as may be required. If the physical address provided is a mailing address only, the member also must provide a street or building address for the member's business or

residence. No member shall practice law in this state until the information required in this Rule has been provided. Members shall promptly ~~notify~~<sup>update</sup> the State Bar promptly in writing of~~with~~ any change of name, physical address, or email address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office.

(B) Every active member shall annually provide a certification as to whether the member is in private practice. The signed certification shall be placed on the annual licensing statement and shall require the member's signature or electronic signature. If the member is in private practice, the certification must also include:

(1) whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds; and-

(2) a designation of the attorney's Interim Administrator, as required by SBR 21, by either

(a) providing the name and an address of an active Michigan attorney in good standing or a Michigan law firm that includes at least one other Michigan attorney in good standing, who will serve, if needed, as the member's Interim Administrator; or

(b) enrolling in the State Bar of Michigan Interim Administrator Program, as defined in SBR 21, by paying an annual assessment.

~~The certification shall be included on the annual dues notice and shall require the member's signature or electronic signature.~~

#### [NEW] Rule 21 Mandatory Interim Administrator Planning

Section 1. An attorneys in private practice must designate an interim administrator to protect clients by winding down or temporarily managing the attorney's practice if the attorney becomes unexpectedly unable to practice law as set forth in MCR 9.1XX and pursuant to Rule 2(C) of the Rules Concerning the State Bar of Michigan. On the State Bar of Michigan annual licensing statement, the attorney shall:

(a) choose either to designate another active Michigan attorney in good standing or law firm with at least one other active Michigan attorney in good standing to serve as the attorney's Interim Administrator, or to enroll in

the State Bar Interim Administrator Program for an annual fee; and

- (b) identify a person with knowledge of the location of the attorney's professional paper and electronic files and records and knowledge of the location of passwords and other security protocols required to access the attorney's professional electronic records and files. The person so designated may be the same person designated as the Interim Administrator.

The State Bar of Michigan shall create a confirmation process for designated Interim Administrators to confirm that they are willing to serve as Interim Administrator and will comply with the terms of the State Bar approved agreement.

Section 2. The State Bar of Michigan shall administer a State Bar Interim Administrator Program and charge an annual fee for enrollment. The Program shall include the following components:

- (a) For attorneys who elect to enroll in the State Bar Interim Administrator Program, the State Bar will be responsible for ensuring that an Interim Administrator is appointed and the requirements of MCR 9.1XX are met if a Program participant becomes unexpectedly unable to practice law.
- (b) The State Bar shall establish and administer a Trust to collect and disburse fees collected from attorneys who elect to enroll in the State Bar Interim Administrator Program. The Trust shall be used to pay the expenses of the State Bar Interim Administrator Program, including compensation for Interim Administrators acting on behalf of the State Bar Interim Administrator Program, as set forth in MCR 9.1XX(G)(2).

Section 3. State Bar staff and its agents and the State Bar of Michigan Board of Commissioners are absolutely immune from suit for conduct arising out of the performance of their duties and responsibilities regarding the Interim Administrator Program.

Rule 9.119 Conduct of Disbarred, Suspended, or Inactive Attorneys

(A)-(F) [Unchanged.]

~~(G) Receivership.~~

- ~~(1) Attorney with a firm. If an attorney who is a member of a firm is disbarred, suspended, is transferred to inactive status pursuant to MCR 9.121, or resigns his or her license to practice law, the firm may continue to represent each client with the client's express written consent. Copies of the signed consents shall be maintained with the client file.~~

- (2) ~~Attorney practicing alone. If an attorney is transferred to inactive status, resigns, or is disbarred or suspended and fails to give notice under the rule, or disappears, is imprisoned, or dies, and there is no partner, executor or other responsible person capable of conducting the attorney's affairs, the administrator may ask the chief judge in the judicial circuit in which the attorney maintained his or her practice to appoint a person to act as a receiver with necessary powers, including:~~
- (a) ~~to obtain and inventory the attorney's files;~~
  - (b) ~~to take any action necessary to protect the interests of the attorney and the attorney's clients;~~
  - (c) ~~to change the address at which the attorney's mail is delivered and to open the mail; or~~
  - (d) ~~to secure (garner) the lawyer's bank accounts. The person appointed is analogous to a receiver operating under the direction of the circuit court.~~
- (3) ~~Confidentiality. The person appointed may not disclose to any third parties any information protected by MRPC 1.6 without the client's written consent.~~
- (4) ~~Publication of Notice. Upon receipt of notification from the receiver, the state bar shall publish in the Michigan Bar Journal notice of the receivership, including the name and address of the subject attorney, and the name, address, and telephone number of the receiver.~~

[NEW] Rule 9.1XX Appointment of an Interim Administrator When an Attorney Becomes Unable to Continue the Practice of Law

(A) Definitions.

- (1) "Affected Attorney" means an attorney who is either temporarily or permanently unable to practice law because the attorney has:
- (a) resigned;
  - (b) been disbarred or suspended;
  - (c) disappeared;

- (d) been imprisoned;
  - (e) abandoned the practice of law;
  - (f) become temporarily or permanently disabled or incapacitated;
  - (g) been transferred to disability inactive status pursuant to MCR 9.121;  
or
  - (h) died.
- (2) “Affected Attorney’s Clients” are clients to whom the Affected Attorney is the attorney of record, regardless of whether the retainer agreement is with the Affected Attorney or the Affected Attorney’s Law Firm.
- (3) “Appointed Interim Administrator” means an Interim Administrator who is appointed by the circuit court pursuant to (C)(2) of this Rule to serve on behalf of the Affected Attorney.
- (4) “Bar Proposed Interim Administrator” means an Interim Administrator who is proposed by the State Bar of Michigan pursuant the State Bar Interim Administrator Program to serve in the event a Program Participant becomes an Affected Attorney under this Rule.
- (5) “Designated Interim Administrator” means an Interim Administrator that a Private Practice Attorney has designated to serve and who has accepted the designation in the event the Private Practice Attorney should become an Affected Attorney.
- (6) “Interim Administrator” means a general term for an active Michigan attorney in good standing who, or law firm with at least one other active Michigan attorney that is designated to serve on behalf of a Private Practice Attorney who becomes an Affected Attorney.
- (7) “Law Firm” means the entity in which the Affected Attorney carries out of the profession of being a lawyer.
- (8) “Private Practice Attorney” means an attorney who is an active Michigan attorney in good standing and who is subject to State Bar Rule 21, Mandatory Interim Administrator Planning.
- (9) “Program Participant” means a Private Practice Attorney who elects to enroll in the State Bar Interim Administrator Program.

- (10) “State Bar Interim Administrator Program” means the program authorized by the Michigan Supreme Court set forth in Rule 21 of the Rules Concerning the State Bar of Michigan.
- (B) Affected Attorney with a firm. The firm of an attorney who becomes an Affected Attorney may continue to represent each of the Affected Attorney’s Clients without a circuit court appointment as Interim Administrator, provided:
- (1) the firm is the Affected Attorney’s Designated Interim Administrator;
  - (2) the firm has at least one active Michigan attorney in good standing capable of competently representing the Affected Attorney’s Clients; and
  - (3) each Affected Client gives express written consent to the representation. Copies of the signed consents must be maintained with the client file.
- (C) Appointment of Interim Administrator.
- (1) Commencement of Proceeding for Appointment of Interim Administrator; Service of Process. A proceeding for the appointment of an Interim Administrator is commenced by the filing of an ex parte petition by the State Bar of Michigan or the by the Designated Interim Administrator in the circuit court for the county in which the Affected Attorney lives, last lived, or maintains or last maintained an office for the practice of law.
    - (a) The petition must set forth facts proving that
      - (i) the attorney is an Affected Attorney as defined in (A)(1).
      - (ii) the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney’s Clients or the interests of the Affected Attorney.
      - (iii) the attorney proposed to be appointed as Interim Administrator is qualified under this rule.
    - (b) The petition must be verified or accompanied by an affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts.
    - (c) The petition and any supporting documents must be served upon the Affected Attorney if the whereabouts of the Affected Attorney are

known, and on the fiduciary for the Affected Attorney, if one has been appointed. See MCR 2.103 – 2.108. If the petition is filed by the Designated Interim Administrator, it must also be served upon the State Bar of Michigan by email at an address designed by the State Bar of Michigan pursuant to MCR 2.107(C)(4) or by electronic service pursuant to MCR 1.109(G)(6).

- (2) Order of Appointment. If the circuit court determines that the petitioner has proven by a preponderance of the evidence that the attorney is an Affected Attorney as defined in (A)(1) and the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients or the interests of the Affected Attorney, the circuit court shall appoint one or more Interim Administrators, as follows:
- (a) If the Affected Attorney has a Designated Interim Administrator, the circuit court must appoint the Designated Interim Administrator unless good cause exists to appoint a different Interim Administrator.
  - (b) If the Affected Attorney is participating in the State Bar Interim Administrator Program, the circuit court must appoint the Bar Appointed Interim Administrator proposed by the State Bar unless good cause exists to appoint a different Interim Administrator.
  - (c) If good cause exists, the circuit court may appoint additional Interim Administrators.
  - (d) The order appointing an Interim Administrator shall specifically authorize the Interim Administrator to:
    - (i) take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the Affected Attorney in connection with the Law Firm, including all lawyer trust accounts, escrow accounts, payroll accounts, operating accounts, and special accounts;
    - (ii) disburse funds to clients of the Affected Attorney or others entitled thereto; and
    - (iii) take all appropriate actions with respect to the accounts.
  - (e) The order appointing an Interim Administrator shall provide that, for all matters pending in Michigan state courts, all statute of limitations, deadlines, time limits, and return dates for filings in matters of the

Affected Attorney's Clients are tolled from the date that the circuit court determines that the Affected Attorney became unable to practice law until at least ninety (90) calendar days after the date of the entry of the order.

- (f) The order appointing an Interim Administrator takes effect immediately upon entry unless the circuit court orders otherwise.
  - (g) The circuit court may order the Interim Administrator to submit interim and final accountings and reports, as it deems appropriate. The circuit court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the Affected Attorney to be filed under seal.
- (3) Service of Notice of Interim Administrator's Appointment. Upon receipt of an order of appointment of an Interim Administrator, the petitioner must serve the Notice of Appointment of an Interim Administrator's appointment, including the name and address of the Affected Attorney, and the name, business address, business telephone number, business email address, and P number of the Interim Administrator on the Affected Attorney, the Affected Attorney's fiduciary, and the State Bar of Michigan. The State Bar of Michigan must publish the notice in the Michigan Bar Journal and on the State Bar of Michigan website.
- (4) Objection to Appointment. Within 14 days after service of the Notice of Appointment, any interested person may file objections to the order of appointment of an Interim Administrator specifying the grounds upon which the objection is based. Although the filing of one or more objections does not automatically stay the order appointing Interim Administrator, the court may order that the appointment be stayed pending resolution of the objection(s).
- (D) Duties and Powers of the Interim Administrator.
- (1) The general duties of the Interim Administrator are to:
    - (a) take control of the Law Firm, whether it be a sole proprietorship, professional corporation, professional company, or other similar entity.
    - (b) take custody of the files, records, and other property of the Law Firm.

- (c) take control of accounts, including lawyer trust accounts and operating accounts.
  - (d) review the files and other papers to identify any pending matters.
  - (e) promptly notify all clients represented by the Affected Attorney in pending matters of the appointment of the Interim Administrator. Notification shall be made in writing, where practicable.
  - (f) promptly notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of an Interim Administrator for the Affected Attorney. Notification shall be made in writing, where practicable.
  - (g) deliver the files, funds, and other property belonging to the Affected Attorney's Clients pursuant to the clients' directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property to the extent permitted by law.
  - (h) take steps to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the Affected Attorney's Clients, to protect the interests of the Affected Attorney.
  - (i) take all steps necessary continue or wind down the Law Firm, including payment of overhead and staff out of the Affected Attorney's accounts. The Interim Administrator is not required to expend his or her own resources to maintain the Law Firm.
  - (j) make reasonable efforts to safeguard all property in the offices of the Affected Attorney and to collect any outstanding attorney's fees, costs, and expenses to which the Affected Attorney is entitled and make appropriate arrangements for the prompt resolution of any disputes concerning outstanding attorney's fees, costs, and expenses.
  - (k) comply with the terms of the agreement between the Affected Attorney and the Interim Administrator.
- (2) If the Interim Administrator determines that there is a conflict of interest between the Interim Administrator and an Affected Attorney's Client, the Interim Administrator must notify the client and the circuit court that made

the appointment and take all appropriate action under the Michigan Rules of Professional Conduct.

- (3) To the extent possible, the Interim Administrator must assist and cooperate with the Affected Attorney and/or the Affected Attorney's fiduciary in the continuance, transition, sale, or winding up of the Law Firm.
  - (4) The Interim Administrator may purchase the Law Firm only upon the circuit court's approval of the sale.
- (E) **Protection of Client Information and Privilege.** The appointment of the Interim Administrator does not automatically create an attorney and client relationship between the Interim Administrator and any of the Affected Attorney's Clients. However, the attorney-client privilege applies to all communications by or to the Interim Administrator and the Affected Attorney's Clients to the same extent as it would have applied to any communications by or to the Affected Attorney with those same clients. The Interim Administrator is governed by Michigan Rule of Professional Conduct 1.6 with respect to all information contained in the files of the Affected Attorney's Clients and any information relating to the matters in which the clients were being represented by the Affected Attorney.
- (F) **Protection of Client Files and Property.** The circuit court has jurisdiction over all of the files, records, and property of clients of the Affected Attorney and may make any appropriate orders to protect the interests of the clients of the Affected Attorney and, to the extent possible and not inconsistent with the protection of clients, the interests of the Affected Attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the Affected Attorney. The Interim Administrator may maintain client documents in paper or electronic format. The Interim Administrator may destroy any client document pursuant to the law office file retention policy or older than six years from the date closed, whichever is shorter, without returning to the court for permission to do so.
- (G) **Compensation and Expenses of Interim Administrator.**
- (1) **Compensation.** The Interim Administrator, except as otherwise provided by an agreement with Affected Attorney, is entitled to reasonable compensation for the performance of the Interim Administrator's duties and reimbursement for actual and reasonable costs incurred in connection with the performance of the Interim Administrator's duties. Reasonable compensation shall be determined in consultation with any Interim Administrator Compensation guidelines provided by the State Bar of Michigan. Reimbursable expenses include, but are not limited to, the costs incurred in connection with maintaining the staff, offices, and operation of the Law Firm and the

employment of attorneys, accountants, and others retained by the Interim Administrator in connection with carrying out the Interim Administrator's duties.

- (2) **Application for Compensation.** Unless the Interim Administrator and the Affected Attorney or the Affected Attorney's estate have reached an agreement otherwise, the Interim Administrator will be paid from the Law Firm if funds are available; if funds are not available from the practice, the attorney may file an application for compensation and expenses with the circuit court, which will determine the amount of compensation and expenses. The application must include an accounting of all receipts, disbursements, and distributions of money and property of the Law Firm.
  - (3) **Award of Compensation.** The circuit court may enter an order awarding compensation and expenses to the Interim Administrator against the Law Firm, Affected Attorney, estate of the Affected Attorney, or any other available sources as the court may direct. The order will be a lien upon all property of any applicable Law Firm, Affected Attorney, or estate or trust of the Affected Attorney retroactive to the date of filing of the petition for the appointment of an Interim Administrator under this Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to it taking effect and may be foreclosed upon in the manner prescribed by law.
  - (4) **Additional Source of Compensation for Bar Proposed Interim Administrators Acting on Behalf of the State Bar Interim Administrator Program.** A Bar Appointed Interim Administrator acting on behalf of the State Bar Interim Administrator Program may request compensation from the State Bar of Michigan Interim Administrator Program if the Law Firm, Affected Attorney, estate, or trust of the Affected Attorney is unable to fulfill the obligation. The Bar Proposed Interim Administrator must notify the circuit court of any compensation received from the State Bar Interim Administrator Program.
- (H) **Limitation of Liability.** An Interim Administrator acting under this Rule is immune from suit for any conduct undertaken in good faith in the course of performing official duties as Interim Administrator.
- (I) **Employment of the Interim Administrator as Attorney for an Affected Client.** An Interim Administrator shall not, without the informed written consent of the Affected Client represent such client in a pending matter in which the client was represented by the Affected Attorney, other than to temporarily protect the interests of the client, or unless and until the Interim Administrator has concluded the

purchase of the Law Firm. Any informed written consent by the Affected Client must include an acknowledgment that the client is not obligated to retain the Interim Administrator.

*Staff Comment:* This proposal, submitted by the State Bar of Michigan, would impose new obligations on attorneys and would create a new Interim Administrator Program within the State Bar of Michigan. The proposal would require an attorney in private practice to nominate another attorney or law firm to serve as interim administrator if the nominating attorney becomes unable to practice. The Bar would confirm the nomination with the identified attorney, and that attorney would acknowledge agreement. Alternatively, an attorney could pay an annual fee (unspecified in the Bar's proposal) to ensure that in the event of death or disability, the Bar would appoint an attorney to serve as interim administrator. The interim administrator would be eligible for compensation from the attorney's law practice or estate; those who participate in the SBM Interim Administrator Program could be reimbursed through that program as a secondary source of compensation.

In addition to comments about the breadth of the program and its particular provisions, the Court is interested in comment that addresses provisions that may go beyond the scope of authority for court rules. For example, under proposed MCR 9.1XX(C)(2)(e), the order appointing the Interim Administrator shall toll all statutes of limitation, deadlines, time limits, and return dates. But such deadlines, especially statutes of limitation, are purely a legislative creation and arguably not within the Court's ability to change by rule. Further, under proposed MCR 9.1XX(F), the circuit court purportedly has "jurisdiction over all of the files, records, and property of clients of the Affected Attorney, and may make any appropriate orders to protect the interest of the clients ..." To the extent that this language could be interpreted to mean that a circuit court judge in one jurisdiction could issue an order affecting a case in another jurisdiction, it is questionable where such authority is derived. And finally, the role of the circuit court judge is more involved under this proposal, and it would be helpful to understand whether the circuit court judges support this expanded role.

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, 2021, 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. 2020-15. 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 14, 2021

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

Clerk