

July 29, 2022

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2021-21 – Proposed Amendment of Rule 3.613 of the Michigan Court Rules

Dear Clerk Royster:

At its July 22, 2022 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2021-21. The Board voted unanimously to support the proposed amendment with two additional recommendations:

- The Court should make good cause required under proposed Rule 3.613(C) presumptive for persons whose name change is sought for affirmation of gender identity, and for victims of human trafficking and domestic violence.
- The Court should add language to the rule to provide for Court-approved alternative service for the notice of a hearing to noncustodial parents, rather than requiring publication of such notice in a newspaper. Additionally, such notice must not include a minor child's name.

In its review of this proposed amendment, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, and Children's Law Section. Both the Access to Justice Policy Committee and Children's Law Section submitted detailed proposals for alternative language amending Rule 3.613. While the Board ultimately opted not to endorse either of these proposals in their entirety, the Board believes that a review of both alternatives may help inform the Court's deliberations on this matter. As such, a copy of the Access to Justice Policy Committee proposal is included for the Court's review. The Children's Law Section proposal will be provided to the Court under separate cover.

We thank the Court for the opportunity to convey the Board's position.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Dana M. Warnez, President

Public Policy Position
ADM File No. 2021-21: Proposed Amendment of MCR 3.613

The Access to Justice Policy Committee is comprised of members appointed by the President of the State Bar of Michigan. The position expressed is that of the Access to Justice Policy Committee only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan. The State Bar's position on this matter is to support the amendment to MCR 3.613 and recommend that the Court make the determination of good cause required by the proposed amendment presumptive for persons whose name change is sought for affirmation of gender identity, and for victims of human trafficking and domestic violence. The State Bar also recommends that language be added to the rule to provide for Court-approved alternative service for the notice of a hearing to noncustodial parents, rather than requiring publication of such notice in a newspaper, and further recommends that such notice not include a minor child's name.

The Access to Justice Policy Committee has a public policy decision-making body with 27 members. On June 29, 2022, the Committee adopted its position after a discussion at a scheduled meeting and an electronic discussion and vote. 16 members voted in favor of the Committee's position, 0 members voted against this position, 2 members abstained, 9 members did not vote.

Support with Recommended Amendments

Explanation

The Committee voted to support the proposed amendment of MCR 3.613 with additional recommended amendments. The Committee believes that establishing a presumption of confidentiality for transgender individuals seeking a name change to affirm their gender identity is necessary as it will protect these individuals from the threat of violence, including sexual assault, physical harm, and even murder, occasioned by name change proceedings. In addition, such a presumption would serve to support transgender individuals undertaking the process of affirming their gender identity without neighbors, acquaintances, colleagues, future employers, and other individuals becoming aware of their transgender identity.

In a similar vein, establishing a presumption of confidentiality for victims and survivors of domestic violence would serve to protect individuals seeking a name change to evade their abusers and individuals who support and enable their abusers, such as family and friends, as well as minor children of abusers who do not have physical custody, legal custody, or parenting time. Further, publishing a minor child's change in name can provide abusers with the identity of partners who have left an abuser.

With the noncustodial parent's name published, a noncustodial parent with some type of custody will have sufficient information to participate in the hearing, if desired.

Rule 3.613 Change of Name

(A) A petition to change a name must be made on a form approved by the State Court Administrative Office.

~~(AB)~~ [Relettered (B) but otherwise unchanged.]

(B) No Publication of Notice; Confidential Record. Upon receiving a request establishing good cause, the court may order that no publication of notice of the proceeding take place and that the record of the proceeding be confidential. Good cause may include but is not limited to evidence that publication or availability of a record of the proceeding could place the petitioner or another individual in physical danger ~~with the fear of physical danger or harassment due to a change in name for gender affirmation or due to the threat of domestic violence establishing a presumption of good cause.~~

(1) Evidence of the possibility of physical danger ~~or harassment~~ must include the petitioner's or the endangered individual's sworn statement stating the reason for the fear of physical danger ~~or harassment~~ if the record is published or otherwise available ~~with this sworn statement confidential and not available for public viewing.~~

(2) The court must issue an ex parte order granting or denying a request under this subrule. ~~This order must be confidential and not available for public viewing.~~

(3) If a request under this subrule is granted, the court must:

(a) issue a written order;

(b) notify the petitioner of its decision and the time, date, and place of the hearing on the requested name change; and

(c) if a minor is the subject of the petition, notify the noncustodial parent as provided in subrule (E), except that if the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the published notice of hearing must not include the ~~current or~~ proposed name of the minor.

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- (4) If a request under this subrule is denied, the court must issue a written **confidential order not available for public viewing** that states the reasons for denying relief and advises the petitioner of the right to request a hearing regarding the denial, file a notice of dismissal, or proceed with the petition and publication of notice.
- (5) If the petitioner does not request a hearing under subrule (4) within 14 days of entry of the order, the order is final.
- (6) If the petitioner does not request a hearing under subrule (4) or file a notice of dismissal within 14 days of entry of the order denying the request, the court may set a time, date, and place of a hearing on the petition and proceed with ordering publication of notice as provided in subrule (B), and if applicable, subrule (E).
- (7) A hearing under subrule (4) must be held on the record **with attendance in the court room limited to only those who are parties to the case and any persons requested by the petitioner to be present.**
- (8) The petitioner must attend the hearing under subrule (4). If the petitioner fails to attend the hearing, the court may adjourn and reschedule or dismiss the petition for a name change.
- (9) At the conclusion of the hearing under subrule (4), the court must state the reasons for granting or denying a request under this subrule and enter an appropriate order **with the written order confidential and not available for public.**

(BD) [Relettered (D) but otherwise unchanged.]

(GE) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.

(1) [Unchanged.]

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing by ~~publishing in a newspaper~~ alternate service as approved by the Court and filing a proof of service as provided by MCR 2.106(F) and (G). A notice provided under this subrule shall not include the minor child's proposed name. Unless otherwise provided in this rule, the

~~notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (AB). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.~~

~~(D)-(E)~~(F)-(G) [Relettered (F)-(G) but otherwise unchanged.]

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