

Administrative Order No. 2015-1  
Authorization of Pilot Project for Summary Jury Trials  
in the 16th Circuit Court and for Pilot Projects Testing  
Summary Jury Trials in Other Courts Approved by  
the Michigan Supreme Court

To read ADM File No. 2014-24, dated March 25, 2015, visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Amendment of Rule 1.5  
of the Michigan Rules of Professional Conduct

On order of the Court, dated March 25, 2015, this is to advise that the Court is considering alternative amendments of Rule 1.5 of the Michigan Rules of Professional Conduct. Before determining whether either of the alternative proposals 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 proposals 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.]

Alternative A: Would Prohibit “Results Obtained”  
or “Value Added” Fees in Divorce Cases

Rule 1.5 Fees

(a)–(c) [Unchanged.]

(d) A lawyer shall not enter into an arrangement for, charge, or collect; ~~a contingent fee in a domestic relations matter or in a criminal matter.~~

- (1) any fee in a domestic-relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, the lawyer’s success, results obtained, value added, or any factor to be applied that leaves the client unable to discern the basis or rate of the fee or the method by which the fee is to be determined, or
- (2) a contingent fee for representing a defendant in a criminal case.

(e) [Unchanged.]

[The following paragraph would be added in the Comment following Rule 1.5, after the comment on “Basis or Rate of Fee.”]

**Prohibited Contingent Fees**

Paragraph (d) prohibits a lawyer from charging a fee in a domestic relations matter when payment is contingent upon the securing

of a divorce, or upon the amount of alimony or support or property settlement to be obtained. The amount of alimony, support or property awarded to a client shall not be used by a lawyer as a basis for enhancing the fee. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Alternative B: Would Allow “Results Obtained”  
or “Value Added” Fees in Divorce Cases

Rule 1.5 Fees

(a)–(c) [Unchanged.]

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter. An attorney and client may consent in writing to an “enhanced fee” in a case, which may take into consideration the results obtained for a client, provided that such a fee is “reasonable” considering all the factors set forth in MRPC 1.5(a) and is agreed to by attorney and client.

(e) [Unchanged.]

STAFF COMMENT: In *In Re Fryhoff*, 495 Mich 890 (2013), the Michigan Supreme Court invited the Attorney Grievance Commission, the State Bar of Michigan Family Law Section, and the State Bar of Michigan Standing Committee on Professional Ethics to submit proposed language that would clarify the Michigan Rules of Professional Conduct with regard to whether it should be permissible for an attorney to charge a “results obtained” or “value added” fee in addition to the customary hourly or other fee a client pays for services. The AGC and the SBM’s Committee on Professional Ethics submitted similar language that would prohibit the charging of such a fee. The SBM’s Family Law Section submitted a proposal that would explicitly allow such a fee to be charged, with the understanding that the fee must still meet the “reasonable” standard for all fees described in MRPC 1.5(a) and with the agreement of the client.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 Office of Administrative Counsel in writing or electronically by July 1, 2015, 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. 2013-38. 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.

Proposed Amendment of Rule 3.613  
of the Michigan Court Rules

On order of the Court, dated March 25, 2015, this is to advise that the Court is considering an amendment of Rule 3.613 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 3.613 Change of Name

(A) [Unchanged.]

(B) Minor's Signature. A ~~petition for~~ written consent to a change of name by a minor ~~need not~~ must be signed by the minor in the presence of the judge.

(C)–(E) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 3.613 would provide clarification that the signature of a minor is required on the consent document (not the petition) for the minor's change of name and that the minor must sign the document in the presence of the judge.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 Office of Administrative Counsel in writing or electronically by July 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-11. 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.

#### Amendments of Rules 3.903, 3.920, 3.961, and 3.965 of the Michigan Court Rules

On order of the Court, dated March 25, 2015, the need for immediate action having been found, the following amendments of Rules 3.903, 3.920, 3.961, and 3.965 of the Michigan Court Rules are adopted, effective immediately but pending public comment. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendments or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at Administrative Matters & Court Rules page.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

#### Rule 3.903 Definitions

(A) [Unchanged.]

(1)–(26) [Unchanged.]

(27) “Trial” means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court. “Trial” also means a specific adjudication of a parent’s unfitness to determine whether the parent is subject to the dispositional authority of the court.

(B) [Unchanged.]

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1) “Agency” means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(2) “Amended petition” means a petition filed to correct or add information to an original petition, as defined in A(21), after it has been authorized, but before it is adjudicated.

~~(2–6)~~ [Renumbered as (3) through (7) but otherwise unchanged.]

(8) “Nonrespondent parent” means a parent who is not named as a respondent in a petition filed under MCL 712A.2(b).

(79) “Offense against a child” means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.

(810) “Placement” means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.

(911) “Prosecutor” or “prosecuting attorney” means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

~~(4012)~~ Except as provided in MCR 3.977(B), “respondent” means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.

(13) “Supplemental petition” means:

(a) a written allegation, verified in the manner provided in MCR 2.114(B), that a parent, for whom a petition was authorized, has committed an additional offense since the adjudication of the petition, or

(b) a written allegation, verified in the manner provided in MCR 2.114(B), that a nonrespondent parent is being added as an additional respondent in a case in which an original petition has been authorized and adjudicated against the other parent under MCR 3.971 or MCR 3.972, or

(c) a written allegation, verified in the manner provided in MCR 2.114(B), that requests the court terminate parental rights of a parent or parents under MCR 3.977(F) or MCR 3.977(H).

(D)–(F) [Unchanged.]

#### Rule 3.920 Service of Process

(A) [Unchanged.]

(B) Summons.

(1) [Unchanged.]

(2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:

(a) [Unchanged.]

(b) In a child protective proceeding, a summons must be served on the any respondent and any nonrespondent parent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (D).

(c) [Unchanged.]

(3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:

(a) identify the nature of hearing;

(b) explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;

(c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights of a respondent parent; and

(d) have a copy of the petition attached.

(4)–(5) [Unchanged.]

(C)–(D) [Unchanged.]

Rule 3.961 Initiating Child Protective Proceedings

(A)–(B) [Unchanged.]

(C) Amended and Supplemental Petitions.

(1) If a nonrespondent parent is being added as an additional respondent to a petition that has been authorized by the court under MCR 3.962 or MCR 3.965 against the first respondent parent, and the first respondent parent has not made a plea under MCR 3.971 or a trial has not been conducted under MCR 3.972, the allegations against the second respondent shall be filed in an amended petition.

(2) If a nonrespondent parent is being added as an additional respondent in a case in which a petition has been authorized under MCR 3.962 or MCR 3.965, and adjudicated by plea under MCR 3.971 or by trial under MCR 3.972, the allegations against the second respondent shall be filed in a supplemental petition.

(3) If either an amended or supplemental petition is not accompanied by a request for placement of the child or the child is not in protective or temporary custody, the court shall conduct a preliminary inquiry to determine the appropriate action to be taken on a petition. If either the amended or supplemental petition contains a request for removal, the court shall conduct a preliminary hearing to determine the appropriate action to be taken on the petition consistent with MCR 3.965(B). If the amended petition is authorized, the court shall proceed against each respondent parent in accordance with MCR 3.971 or MCR 3.972.

Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)–(7) [Unchanged.]

(8) The court must advise a nonrespondent parent of his or her right to seek placement of his or her children in his or her home.

(8–13) [Renumbered as (9)–(14), but otherwise unchanged.]

(C)–(D) [Unchanged.]

STAFF COMMENT: The amendments of MCR 3.203, 3.920, 3.961, and 3.965 were prompted by the Michigan Supreme Court's decision in *In re Sanders*, 495 Mich 394 (2014), to provide clarification and procedural provisions consistent with the Court's holding in that case.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 Office of Administrative Counsel in writing or electronically by July 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-49. 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.

### Appointment of Chief Judge of the 8th District Court (Kalamazoo County)

On order of the Court, dated March 25, 2015, effective immediately, the Honorable Richard A. Santoni is appointed chief judge of the 8th District Court for a term ending December 31, 2015.

### Supreme Court Appointment to the Committee on Model Civil Jury Instructions

On order of the Court, dated March 25, 2015, pursuant to Administrative Order No. 2001-6, James F. Hewson is appointed to the Committee on Model Civil Jury Instructions for completion of a term ending December 31, 2017.

### Supreme Court Appointments to the Court Reporting and Recording Board of Review

On order of the Court, dated March 25, 2015, pursuant to MCR 8.108(G)(2)(a):

The Honorable Shana A. Lambourn (probate court judge) is reappointed to the Court Reporting and Recording Board of Review for a second four-year term that will expire on March 31, 2019.

Jacqueline A. Reed (certified electronic recorder who is an employee of a Michigan court) is reappointed to the Court Reporting and Recording Board of Review for a first full term that will expire on March 31, 2019.

Melinda I. Dexter (certified stenographic reporter who is an employee of a Michigan court) is appointed to the Court Reporting and Recording Board of Review for a first full term that will expire on March 31, 2019.