

Amendments of Rules 3.903, 3.932, and 3.936 of the Michigan Court Rules

Amendments of Rule 7.121 of the Michigan Court Rules

To read ADM File No. 2016-39, dated May 24, 2017; and ADM File No. 2016-29, dated May 24, 2017; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Amendments of Rules 2.116 and 2.119 of the Michigan Court Rules

On order of the Court, dated May 24, 2017, notice of the proposed change and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.116 and 2.119 of the Michigan Court Rules are adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 2.116 Summary Disposition

(A)–(F) [Unchanged.]

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,
(i)–(ii) [Unchanged.]

(iii) the moving party or parties may file a reply brief in support of the motion. Reply briefs must be confined to rebuttal of the arguments in the non-moving party or parties’ response brief and must be limited to 5 pages. The reply brief must be filed and served at least 4 days before the hearing.

(iv) no additional or supplemental briefs may be filed without leave of the court.

(b) If the court sets a different time for filing and serving a motion, ~~or~~ a response, or a reply brief, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion, ~~or~~ response (including brief and any affidavits), or reply brief filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge’s copy must be clearly marked JUDGE’S COPY on the cover sheet; that notation may be handwritten.

(2)–(6) [Unchanged.]

(H)–(J) [Unchanged.]

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) [Unchanged.]

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions.

(a) Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits.

(b) Except as permitted by the court or as otherwise provided in these rules, no reply briefs, additional briefs, or supplemental briefs may be filed.

(c) Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type.

(d) A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge’s copy must be clearly marked JUDGE’S COPY on the cover sheet; that notation may be handwritten.

(3)–(4) [Unchanged.]

(B)–(G) [Unchanged.]

STAFF COMMENT: The amendments, originally submitted in a slightly different form by the State Bar of Michigan Representative Assembly, amend the rules regarding motions for summary disposition to allow for the filing of reply briefs only in summary disposition proceedings.

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.

Amendment of Rule 3.216 of the Michigan Court Rules

On order of the Court, dated May 24, 2017, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.216 of the Michigan Court Rules is adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

MCR 3.216 Domestic Relations Mediation

(A)–(B) [Unchanged.]

(C) Referral to Mediation.

(1)–(2) [Unchanged.]

(3) Unless a court first conducts a hearing to determine whether mediation is appropriate, the court shall not submit a contested issue in a domestic relations action, including post-judgment proceedings, if the Pparties who are subject to

a personal protection order or other protective order, or who are involved in a child abuse and neglect proceeding ~~may not be referred to mediation without a hearing to determine whether mediation is appropriate. The court may order mediation without a hearing if a protected party requests mediation.~~

(D)–(G) [Unchanged.]

(H) Mediation Procedure.

(1) [Unchanged.]

(2) The mediator must make reasonable inquiry as to whether either party has a history of a coercive or violent relationship with the other party. Throughout the mediation process, the mediator must make reasonable efforts to screen for the presence of coercion or violence that would make mediation physically or emotionally unsafe for any participant or that would impede achieving a voluntary and safe resolution of issues. A reasonable inquiry includes the use of the domestic violence screening protocol for mediators provided by the state court administrative office as directed by the supreme court.

(2)–(8) [Renumbered but otherwise unchanged.]

(I)–(K) [Unchanged.]

STAFF COMMENT: The amendments of MCR 3.216 update the rule to be consistent with 2016 PA 93, which allows a court to order mediation if a protected party requests it and requires a mediator to screen for the presence of domestic violence throughout the process.

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.

Amendment of Rule 7.306 of the Michigan Court Rules

On order of the Court, dated May 24, 2017, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.306 of the Michigan Court Rules is adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 7.306 Original Proceedings

(A) When Available. A complaint may be filed to invoke the Supreme Court's superintending control power

(1)–(2) [Unchanged.]

When a dispute regarding court operations arises between judges within a court that would give rise to a complaint under this rule, the judges shall participate in mediation as provided through the State Court Administrator's Office before filing such a complaint. The mediation shall be conducted in compliance with MCR 2.411(C)(2).

(B)–(I) [Unchanged.]

STAFF COMMENT: Under the amendment of MCR 7.306, judges in an intra-court dispute are required to submit to mediation before filing a complaint for superintending control in the Supreme Court under this rule.

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.

Amendment of Rule 7.316 of the Michigan Court Rules

On order of the Court, dated May 31, 2017, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.316 of the Michigan Court Rules is adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 7.316 Miscellaneous Relief

(A) Relief Obtainable. The Supreme Court may, at any time, in addition to its general powers

(1)–(6) [Unchanged.]

(7) enter any judgment or order that ought to have been entered, and enter other and further orders and grant relief as the case may require; ~~or~~

(8) if a judgment notwithstanding the verdict is set aside on appeal, grant a new trial or other relief; ~~or~~

(9) order an appeal submitted to mediation. The mediator shall file a status report with this Court within the time specified in the order. If mediation results in full or partial settlement of the case, the parties shall file, within 21 days after the filing of the notice by the mediator, a stipulation to dismiss (in full or in part) with this Court pursuant to MCR 7.318.

(B)–(C) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.316 explicitly provides that the Supreme Court may order an appeal to mediation.

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.

MARKMAN, C.J. (*dissenting*). When the proposed amendment of MCR 7.316(A) was published for comment, I wrote a concurring statement raising questions, and expressing concerns, about the proposed amendment, which will allow this Court to “order an appeal submitted to mediation.” 500 Mich 1224, 1225–1227 (2016). Following publication of the proposed amendment, the Appellate Practice Section of the State Bar indicated that it “shares in [my] concerns,” while the Alternative Dispute Resolution Section offered point-by-point responses to these concerns. Although I certainly appreciate these responses, they do not alleviate my concerns. As a result of the concerns raised in my statement of November 30, 2016, I respectfully dissent from the adoption of the present amendment.

Amendment of Rule 8.126 of the Michigan Court Rules

On order of the Court, dated May 24, 2017, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 8.126 of the Michigan Court Rules is adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 8.126 Temporary Admission to the Bar

(A) Temporary Admission. Except as otherwise provided in this rule, an out of state attorney may seek temporary admission as determined in this subsection. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.

(1) [Unchanged.]

(B) Waiver. An applicant is not required to associate with local counsel, limited to the number of appearances to practice, or required to pay the fee to the State Bar of Michigan, if the applicant establishes to the satisfaction of the court in which the attorney seeks to appear that:

(1) the applicant appears for the limited purpose of participating in a child custody proceeding as defined by MCL 712B.3(b) in a Michigan court pursuant to the Michigan Indian Family Preservation Act, MCL 712B.1 et seq.; and

(2) the applicant represents an Indian tribe as defined by MCL 712B.3; and

(3) the applicant presents an affidavit from the Indian child's tribe asserting the tribe's intent to intervene and participate in the state court proceeding, and averring the child's membership or eligibility for membership under tribal law; and

(4) the applicant presents an affidavit that verifies:

(a) the jurisdictions in which the attorney is or has been licensed or has sought licensure;

(b) the jurisdiction where the attorney is presently eligible to practice;

(c) that the attorney is not disbarred, or suspended in any jurisdiction, is not the subject of any pending disciplinary action, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and

(d) that he or she is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

(5) If the court in which the attorney seeks to appear is satisfied that the out of state attorney has met the requirements in this subrule, the court shall enter an order authorizing the out of state attorney's temporary admission.

STAFF COMMENT: The amendment of MCR 8.126, submitted by the Michigan Tribal State Federal Judicial Forum, waives fees and other requirements for out of state attorneys who seek temporary admission in Michigan. The exemption from certain requirements applies only in cases in which the attorney desires to represent an Indian tribe intervening in a child custody proceeding.

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.

Amendment of Rule 9.108 of the Michigan Court Rules

On order of the Court, dated May 24, 2017, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of Rule 9.108 of the Michigan Court Rules is adopted, effective September 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 9.108 Attorney Grievance Commission

(A)–(D) [Unchanged.]

(E) Powers and Duties. The commission has the power and duty to:

(1)–(3) [Unchanged.]

(4) when prompt action is required, seek an injunction from the Supreme Court against enjoining an attorney's misconduct or enjoining an attorney from engaging in the practice of law ~~when prompt action is required, even if a disciplinary proceeding concerning that conduct is not pending before the board;~~

(5)–(7) [Unchanged.]

STAFF COMMENT: The amendment of MCR 9.108 clarifies that the Court has the authority to enjoin an attorney from practicing law, at the request of the Attorney Grievance Commission.

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.

Proposed Amendment of Rule 404(b) of the Michigan Rules of Evidence

On order of the Court, dated May 24, 2017, this is to advise that the Court is considering an amendment of Rule 404(b) of the Michigan Rules of Evidence. 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 404 Character Evidence Not Admissible to Prove Conduct;
Exceptions; Other Crimes

(A) [Unchanged.]

(B) *Other crimes, wrongs, or acts.*

(1) [Unchanged.]

(2) The prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial and the rationale, whether or not mentioned in subparagraph (b)(1), for admitting the evidence. This notice must be provided in writing 14 days before trial or orally in open court on the record. If necessary to a determination of the admissibility of the evidence under this rule, the defendant shall be required to state the theory or theories of defense, limited only by the defendant's privilege against self-incrimination.

STAFF COMMENT: This proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing at least 14 days before trial or orally in open court on the record.

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 September 1, 2017, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-11. 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.

Supreme Court Appointment to the Committee on Model Civil Jury Instructions

On order of the Court, dated May 24, 2017, pursuant to Administrative Order No. 2001-6, effective immediately, the Honorable Michael L. Jaconette is appointed to the Committee on Model Civil Jury Instructions for a term ending December 31, 2019.

Appointments to the Michigan Tribal State Federal Judicial Forum (Dated May 24, 2017)

On order of the Court, effective July 1, 2017, the following members of the Michigan Tribal State Federal Judicial Forum are reappointed to terms ending July 1, 2020:

Justice Michael F. Cavanagh (retired), Michigan Supreme Court
Hon. Timothy P. Connors, 22nd Circuit Court Family Division
Hon. William T. Ervin, Isabella County Probate Court, 21st Circuit Court Family Division

Hon. Timothy P. Greeley, U.S. District Court, Marquette

Hon. Cheryl L. Hill, Marquette County Probate Court, 25th Circuit Court Family Division

Hon. James P. Lambros, Chippewa County Courts, 50th Circuit Court Family Division

On further order of the Court, effective July 1, 2017, the Honorable W. Clayton Graham (Mackinac/Luce County Probate Court) and the Honorable Ellen S. Carmody (U.S. District Court, Grand Rapids) are appointed to terms ending July 1, 2020.