

Proposed Amendment of Rules 2.410 and 2.411 and Adoption of New Rule 3.970 of the Michigan Court Rules

Appointment of Chief Judges of Michigan Courts

To read ADM File No. 2017-19, dated October 17, 2017; and ADM File No. 2017-01, dated November 1, 2017; visit <http://courts.michigan.gov/courts/michigansupremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

Proposed Amendments of Rules 3.804, 3.971, and 3.977 and Addition of New Rule 3.809 of the Michigan Court Rules

On order of the Court, dated November 1, 2017, this is to advise that the Court is considering an amendment of Rules 3.804, 3.971, and 3.977 and addition of new Rule 3.809 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 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) Contents and Execution of Consent or Release-; Indian Child.
In addition to the requirements of MCL 710.29 or MCL 710.44, if a parent of an Indian child intends to voluntarily consent to adoptive placement or the termination of his or her parental rights for the express purpose of adoption pursuant to MCL 712B.13, the following requirements must be met:
(1)–(4) [Unchanged.]
- (B) ~~Hearing- on Consent to Adopt.~~
(1)–(3) [Unchanged.]
- (C) Notice of Child Support Obligation.
(1) Before executing a release, as part of the explanation of the parent’s legal rights, the parent shall be informed that the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law.
(2) Before executing the consent, as part of the explanation of the parent’s legal rights, the parent shall be informed that

the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law.

- (3) Failure to provide required notice under this subsection does not affect the obligation imposed by law or otherwise establish a remedy or cause of action on behalf of the parent.

(ED) [Relettered but otherwise unchanged.]

[New] Rule 3.809 Notice Following Involuntary Termination of Parental Rights

- (A) If the parental rights of a parent whose identity and whereabouts are known are involuntarily terminated, the court shall notify the parent, either orally or in a writing, that the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law.
- (B) If the whereabouts of a parent are unknown, the notice required by subsection (A) may be provided in a notice of hearing provided pursuant to MCR 3.802(C).
- (C) Failure to provide required notice under this subsection does not affect the obligation imposed by law or otherwise establish a remedy or cause of action on behalf of the parent.

Rule 3.971 Pleas of Admission or No Contest

- (A) [Unchanged.]
- (B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:
(1)–(4) [Unchanged.]
(5) if parental rights are subsequently terminated, the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law. Failure to provide required notice under this subsection does not affect the obligation imposed by law or otherwise establish a remedy or cause of action on behalf of the parent.
- (C) [Unchanged.]

Rule 3.977 Termination of Parental Rights

- (A)–(I) [Unchanged.]
- (J) Respondent’s Rights Following Termination.
(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:
(a)–(d) [Unchanged.]
(e) The respondent’s obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption

is entered, or the child is emancipated by operation of law. Failure to provide required notice under this subsection does not affect the obligation imposed by law or otherwise establish a remedy or cause of action on behalf of the parent.

(2)–(3) [Unchanged.]

(K) [Unchanged.]

STAFF COMMENT: The proposed amendments would incorporate into both the rules concerning juvenile proceedings and adoption proceedings the requirement to notify parents that the termination of parental rights does not automatically terminate the obligation to provide support for a child. The proposed amendments also would make clear that failure to provide the notice would not affect the parent's obligation to continue to pay child support.

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 March 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-09. 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 Addition of New Rule 3.808 of the Michigan Court Rules

On order of the Court, dated October 17, 2017, this is to advise that the Court is considering an addition of Rule 3.808 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.

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Rule 3.808 Finalizing Adoption; Findings of Court

Before entering a final order of adoption, the trial court shall determine that the adoptee is not the subject of any pending proceedings on rehearing or reconsideration, or on appeal from a decision to terminate parental rights. The trial court shall make the following findings on the record:

That any appeal of the decision to terminate parental rights has reached disposition; that no appeal, application for leave to appeal, or motion for rehearing or reconsideration is pending; and that the time for all appellate proceedings in this matter has expired.

STAFF COMMENT: The proposed addition of Rule 3.808 is consistent with § 56 of the Michigan Adoption Code, MCL 710.56. This new rule arises out of *In re JK*, 468 Mich 202 (2003), and *In re Jackson*, 498 Mich 943 (2015), which involved cases where a final order of adoption was entered despite pending appellate proceedings involving the adoptee children. Although the Michigan Court of Appeals has adopted a policy to suppress in its register of actions and online case search tool the names of children (and parents) who are the subject of appeals from proceedings involving the termination of parental rights, this information remains open to the public. Therefore, in order to make the determination required of this new rule, a trial court may contact the clerk of the Michigan Court of Appeals, the Michigan Supreme Court, or any other court where proceedings may be pending.

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 February 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-26. 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 Addition of Rule 3.810 of the Michigan Court Rules

On order of the Court, dated October 17, 2017, this is to advise that the Court is considering adoption of a new Rule 3.810 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.

Rule 3.810 Transcripts for Purposes of Appeal. In an appeal following the involuntary termination of the parental rights of a putative father, if the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.

STAFF COMMENT: The proposed new rule would require a court to provide an indigent putative father whose rights are terminated under the Adoption Code with transcripts for the purposes of appeal, similar to the requirement in MCR 3.977(J) for putative fathers whose rights are terminated under the Juvenile Code.

62 From the Michigan Supreme Court

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 February 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-13. 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 3.903 of the Michigan Court Rules

On order of the Court, dated October 17, 2017, this is to advise that the Court is considering an amendment of Rules 3.903 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.

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

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1)–(2) [Unchanged.]

(3) “Confidential file” means

(a) [Unchanged.]

(b) the contents of a social file maintained by the court, including materials such as:

(i)–(vi) [Unchanged.]

(vii) information regarding the identity or location of a foster parent, preadoptive parent, or relative caregiver, ~~or juvenile guardian.~~

(4)–(27) [Unchanged.]

(B)–(F) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 3.903 would make juvenile guardianship information public. This change would resolve the conflict between the child protective proceeding social file (which is considered nonpublic) and the juvenile guardianship file (which is public) and would make the rule consistent with current court practices.

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 February 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-18. 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 Amendments of Rules 3.977 and 6.425 of the Michigan Court Rules

On order of the Court, dated October 17, 2017, this is to advise that the Court is considering an amendment of Rule 3.977 and Rule 6.425 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 3.977 Termination of Parental Rights.

(A)–(I) [Unchanged.]

(J) Respondent’s Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) The respondent is entitled to appellate review of the order.

(b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the ~~portions of~~ the complete transcript and record of all proceedings ~~the attorney requires to appeal.~~

(c)–(d) [Unchanged.]

(2) [Unchanged.]

(3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order the complete transcripts of all proceedings prepared at public expense.

(K) [Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel.

(A)–(F) [Unchanged.]

(G) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) [Unchanged.]

(2) Order to Prepare Transcript. The appointment order also must

(a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210, the complete transcript of all proceedings, and

(i) ~~the trial or plea proceeding transcript,~~

(ii) ~~the sentencing transcript, and~~

(iii) ~~such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and~~

(b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System. If the appointed lawyer timely requests additional transcripts that were not in the initial order, the trial court shall order such transcripts within 14 days after receiving the request.

(3) [Unchanged.]

STAFF COMMENT: The proposed amendments of MCR 3.977(J) and MCR 6.425(G) were submitted by the Court of Appeals. The proposed amendments would require the production of the complete transcript in criminal appeals and appeals from termination of parental rights proceedings when counsel is appointed by the court. The proposed amendments would codify existing practice in many courts, and the Court of Appeals believes they would promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process.

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 February 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-08. 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 7.212 of the Michigan Court Rules

On order of the Court, dated October 17, 2017, this is to advise that the Court is considering an amendment of Rule 7.212 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.

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

Rule 7.212 Briefs.

(A)–(B) [Unchanged.]

(C) Appellant's Brief; Contents. The appellant's brief must contain, in the following order:

(1)–(7) [Unchanged.]

(8) The relief, stating in a distinct, concluding section the order or judgment requested; ~~and~~

(9) A signature; and

(10) Only as provided in section (J) of this rule, an appendix.

(D)–(I) [Unchanged.]

(J) Appendix.

(1) The purpose of an appendix is to permit the parties to prepare and transmit to the court copies of those portions of the record deemed necessary to an understanding of the issues presented.

(2) In all civil cases (except those pertaining to child protection proceedings, including termination of parental rights, and non-criminal delinquency proceedings under chapter XIIA of the Probate Code and adoptions under chapter X), and in all appeals from administrative agencies, except those described in section (J)(6) of this rule, the appellant shall file and serve an appendix no later than 14 days after the date the principal brief is filed. The appellant's appendix shall contain a table of contents and copies of the following documents if they exist:

(a) The judgment or order(s) appealed from, including any written opinion, memorandum, findings of fact and conclusions of law stated on the record, in conjunction with the judgment or order(s) appealed from;

(b) A copy of the trial court docket sheet;

(c) The relevant pages of any transcripts cited in support of the appellant's position on appeal. Where appropriate, the appellant may attach pages preceding and succeeding the page cited if helpful to provide context to the citation. If a complete trial, deposition, or administrative transcript is filed, the index to such transcript must be included;

(d) If a jury instruction is challenged, a copy of the instruction, any portion of the transcript containing a discussion of the instruction, and any relevant request for the instruction; and

(e) Any other exhibit, pleading, or other evidence that was submitted to the trial court and that is relevant and necessary for the Court to consider in deciding the appeal. Briefs submitted in the trial court are not required to be included in the appendix unless they pertain to a contested preservation issue.

For material that is subject to an existing protective order, or for evidence that is not subject to such an order, but which contains information that is confidential or privileged, the procedures of MCR 7.211(C)(9) apply.

(3) The appellee shall file and serve an appendix with its responsive brief only if the appellant's appendix does not contain all the information set forth in section (J)(2) of this rule. The appellee's appendix shall not contain any of the documents contained in the appellant's appendix, but shall only contain additional information described in section (J)(2) that is relevant and necessary to the determination of the issues raised in the appeal.

(4) Each volume of any appendix shall contain no more than 250 pages. The table of contents shall identify each document with reasonable definiteness, and indicate the volume and page of the appendix where the document is located. The cover to the appendix shall indicate in bold type whether it is the "Appellant's Appendix" or "Appellee's Appendix."

(a) For a paper appendix, each document shall also be tabbed. A paper appendix shall be bound separate from the brief.

(b) If an appendix is to be filed electronically, it must be filed as an independent .pdf file or a series of independent .pdf files. The table of contents for electronically filed appendixes shall contain bookmarks, linking to each document in the appendix.

(5) In cases involving more than one appellant or appellee, including cases consolidated for appeal, to avoid duplication each side shall, where practicable, file a joint rather than separate appendixes.

(6) This subsection does not apply to appeals arising from the Michigan Public Service Commission in which the record is available on the Commission's e-docket. In those cases, the parties shall cite to the document number and relevant pages.

(7) Failure to comply with any part of this rule may result in monetary sanctions against the attorney that failed to comply.

STAFF COMMENT: The proposed amendment of MCR 7.212 was submitted by the Court of Appeals. Proposed amendments of MCR 7.212 would require an appellant to file an appendix with specific documents within 14 days after filing the appellant's principal brief. The proposal is intended to identify for practitioners the key portions of the record that the Court deems necessary for thorough and efficient review of the issues on appeal.

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 February 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-25. 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.

Amendment of Rule 404 of the Michigan Rules of Evidence

On order of the Court, dated October 11, 2017, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of MRE 404 are adopted, effective January 1, 2018.

[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~~ written notice at least 14 days in advance of trial, or orally on the record later 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. 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: The amendments of MRE 404(b) require written notice to be provided at least 14 days before trial, or orally on the record later if the court finds there is good cause. This notice requirement replaces the former language that required only "reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown." The amendment is not intended to discourage oral notice provided earlier than 14 days in advance of trial, so long as such notice is then confirmed in writing as provided in the 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.