

Amendments of Rules 2.410 and 2.411 and Addition of Rule 3.970 of the Michigan Court Rules

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

Amendments of Rules 6.310, 6.429, 6.431, 7.205, 7.211, and 7.212 of the Michigan Court Rules

To read ADM File No. 2017-19, dated March 28, 2018; ADM File No. 2016-09, dated March 28, 2018; and ADM File No. 2016-07, dated April 19, 2018; 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 7.202 of the Michigan Court Rules (Dated April 19, 2018)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.202 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 7.202 Definitions

For purposes of this subchapter:

- (1)–(5) [Unchanged.]
- (6) “final judgment” or “final order” means:
- (a) In a civil case,
 - (i)–(ii) [Unchanged.]
 - (iii) in a domestic relations action, a postjudgment order affecting the custody of a minor; that, as to a minor, grants or denies a motion to change legal custody, physical custody, domicile, parenting time, grandparenting time, school enrollment or religious affiliation; or authorizes or denies medical or mental health treatment.
 - (iv)–(v) [Unchanged.]
 - (b) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 7.202 clarifies what constitutes a final postjudgment order in a domestic

relations case for purposes of appeal by right. This issue was raised in *Marik v Marik*, docket 154549, during oral arguments held earlier this term.

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, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADM comment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2017-20. 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 2.105 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, 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 amendment of MCR 2.105 of the Michigan Court Rules is adopted, effective May 1, 2018.

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

Rule 2.105 Process; Manner of Service

- (A)–(B) [Unchanged.]
- (C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by
- (1) serving a summons and a copy of the complaint on any general partner or agent for service of process; or
 - (2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner or agent for service of process at his or her usual residence or last known address.
- (D)–(K) [Unchanged.]

STAFF COMMENT: The amendment of MCR 2.105 adds reference to service on the “agent for service of process” so that it is consistent with MCL 449.1105(a)(2).

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.

Addition of Rule 3.808 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, 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 addition of MCR 3.808 of the Michigan Court Rules is adopted, effective May 1, 2018.

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 addition of MCR 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.

Addition of Rule 3.810 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, 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 addition of rule 3.810 of the Michigan Court Rules is adopted, effective May 1, 2018.

Rule 3.810 Transcripts for Purposes of Appeal.

In an appeal following the involuntary termination of parental rights, 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: This new rule requires a court to provide a respondent whose rights are involuntarily terminated under the Adoption Code with transcripts for the purposes of appeal if respondent is unable to pay for their preparation, similar to the requirement in MCR 3.977(J)(3) for respondents whose rights are terminated under the Juvenile Code.

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 3.903 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration given to the comments received, the following amendment of MCR 3.903 of the Michigan Court Rules is adopted, effective May 1, 2018.

[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 amendment of MCR 3.903 removes the requirement that juvenile guardianship information be maintained in a nonpublic manner. This change resolves the conflict between the child protective proceeding social file (which is considered nonpublic) and the juvenile guardianship file (which is public), and makes 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.

Amendment of Rule 3.977 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, 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 amendment of Rule 3.977 of the Michigan Court Rules is adopted, effective May 1, 2018.

[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) [Unchanged.]

(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 complete portions of the 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.]

STAFF COMMENT: The amendments of MCR 3.977(J) were submitted by the Court of Appeals, and require the production of the complete transcript in appeals from termination of parental rights proceedings when counsel is appointed by the court. The amendments codify existing practice in many courts, and the Court of Appeals believes they promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process. Note that the proposal published for comment also contained a similar revision of MCR 6.425. That concept is included with other substantive changes as part of ADM File No. 2014-36 at MCR 6.425(G)(1)(f) and will be incorporated in the order that issues in that file.

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 6.425 of the Michigan Court Rules (Dated March 28, 2018)

On order of the Court, 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 amendment of Rule 6.425 of the Michigan Court Rules is adopted, effective May 1, 2018.

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

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)–(F) [Unchanged.]

(G) Appointment of Lawyer and Preparation of Transcript; Scope of Appellate Lawyer's Responsibilities; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer and Preparation of Transcript.

(a) All requests for the appointment of appellate counsel must be granted or denied on forms approved by the State Court Administrative Office and provided through the Michigan Appellate Assigned Counsel System (MAACS). Unless there is a postjudgment mo-

tion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(b) Within 7 days after receiving a defendant's request for a lawyer, or within 7 days after the disposition of a postjudgment motion if one is filed, the trial court must submit the request, the judgment of sentence, the register of actions, and any additional requested information to MAACS under procedures approved by the Appellate Defender Commission for the preparation of an appropriate order granting or denying the request. The court must notify MAACS if it intends to deny the request for counsel.

(c) Within 7 days after receiving a request and related information from the trial court, MAACS must provide the court with a proposed order appointing appellate counsel or denying the appointment of appellate counsel. A proposed appointment order must name the State Appellate Defender Office (SADO) or an approved private attorney who is willing to accept an appointment for the appeal.

(b)d) Within 7 days after receiving a proposed order from MAACS, the trial court must rule on the request for a lawyer. In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request for a lawyer is filed within 42 days after entry of the judgment of sentence ~~sentencing~~ or, if applicable, within the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal. A denial of counsel must include a statement of reasons.

(e) In a case involving a conviction following a trial, if the defendant's request for a lawyer was made within the time for filing a claim of appeal, the order must be entered on an approved form entitled "Claim of Appeal and Appointment of Counsel." Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

(e) In a case involving a conviction following a plea of guilty or nolo contendere, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing.

(f) An appointment order must direct the court reporter to prepare and file, within the time limits specified in MCR 7.210, the full transcript of all proceedings, and provide for the payment of the reporter's fees.

(g) The trial court must serve MAACS with a copy of its order granting or denying a request for a lawyer. Unless MAACS has agreed to provide the order to any of

the following, the trial court must also serve a copy of its order on the defendant, defense counsel, the prosecutor, and, if the order includes transcripts, the court reporter(s)/recorder(s). If the order is in the form of a Claim of Appeal and Appointment of Counsel, the court must also serve the Court of Appeals with a copy of the order and the judgment being appealed.

- (d2) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant
- (ia) in available postconviction proceedings in the trial court the lawyer deems appropriate,
 - (iib) in postconviction proceedings in the Court of Appeals,
 - (iic) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and
 - (iivd) as appellee in relation to any postconviction appeal taken by the prosecutor.
- (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;
 - (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, the trial court shall order such transcripts within 14 days after receiving the request.
- (3) Order as Claim of Appeal, Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in subrules (G)(1) and (2) must be entered on a form approved by the

State Court Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

STAFF COMMENT: The amendments of MCR 6.425(G) reflect recent changes to the appellate counsel assignment process by extending and segmenting the timeframe for courts to respond to appointment requests, requiring judges to provide a statement of reason when appellate counsel is denied, encouraging courts to liberally grant untimely requests for appellate counsel in guilty plea cases, requiring the filing of all lower court transcripts as part of an order appointing counsel, and clarifying MAACS' assumption of the trial court's service obligations.

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.

Appointment of Chief Judge of the Court of Appeals (Dated March 28, 2018)

On order of the Court, effective April 25, 2018, the Honorable Christopher M. Murray is appointed chief judge of the Court of Appeals for the remainder of a term ending December 31, 2019.

Assignment of Judge to the Court of Claims and Appointment of Chief Judge (Dated March 28, 2018)

On order of the Court, effective April 25, 2018, the following Court of Appeals judge is assigned to sit as a judge of the Court of Claims for a term ending May 1, 2019:

Hon. Colleen A. O'Brien

Upon further order of the Court, effective April 25, 2018, the Honorable Christopher M. Murray is appointed as chief judge of the Court of Claims for a term ending May 1, 2019.