

Amendments of Rules 1.105, 2.301, 2.302, 2.305, 2.306, 2.307, 2.309, 2.310, 2.312, 2.313, 2.314, 2.316, 2.401, 2.411, 2.506, 3.201, 3.206, 3.922, 3.973, 3.975, 3.976, 3.977, and 5.131 and Addition of Rule 3.229 of the Michigan Court Rules

To read ADM File No. 2018-19, dated June 19, 2019, 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 3.802 of the Michigan Court Rules (Dated June 19, 2019)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.802 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 3.802 Manner and Method of Service

(A) Service of Documents.

(1) [Unchanged.]

(2) Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a ~~noncustodial~~ parent under MCL 710.51(6), must be served on the individual or the individual’s attorney in the manner provided in:

(a)–(b) [Unchanged.]

(3)–(4) [Unchanged.]

(B) Service When Identity or Whereabouts of Father areis Unascertainable

(1)–(2) [Unchanged.]

(C) Service When Whereabouts of ~~Noncustodial~~ Parent areis Unascertainable. If service of a petition to terminate the parental rights of a ~~noncustodial~~ parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2) because the whereabouts of ~~that~~the ~~noncustodial~~ parent havehas not been ascertained after diligent inquiry, the petitioner must file proof of the efforts made to locate ~~that~~the ~~noncustodial~~ parent in a statement made under MCR 1.109(D)(3). If the court finds, on reviewing the

statement, that service cannot be made because the whereabouts of the person havehas not been determined after reasonable efforts, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

(D) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 3.802 would eliminate references to the “noncustodial parent” to make the rule consistent with the statute (MCL 710.51) allowing stepparent adoption when the petitioning stepparent’s spouse has custody according to a court order, rather than requiring sole legal custody.

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 October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2018-36. 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 5.117 of the Michigan Court Rules (Dated June 19, 2019)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.117 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 5.117 Appearance by Attorneys

(A) [Unchanged.]

(B) Appearance.

(1) In General. An attorney may generally appear by an act indicating that the attorney represents an interested person in the proceeding. A limited appearance may be made by an attorney for an interested person in a civil action or a proceeding as provided in MCR 2.117(B)(2)(c), except that any reference to parties of record in MCR 2.117(B)(2)(c) shall instead refer to interested persons. An appearance by an attorney for an interested person is deemed an appearance by the interested person. Unless a particular rule

indicates otherwise, any act required to be performed by an interested person may be performed by the attorney representing the interested person.

(2) [Unchanged.]

(3) Appearance by Law Firm.

(a) [Unchanged.]

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court-ordered conference or trial if it is within the scope of the appearance.

(C) Duration of Appearance by Attorney.

(1)–(4) [Unchanged.]

(5) Limited Scope Appearances. Notwithstanding other provisions in this section, limited appearances under MCR 2.117(B)(2)(c) may be terminated in accordance with MCR 2.117(C)(3), except that any reference to parties of record in MCR 2.117(B)(2)(c) shall instead refer to interested persons.

(5) [Renumbered but otherwise unchanged.]

(D) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 5.117, submitted by the State Bar of Michigan, would clarify that the rules authorizing limited scope representation are explicitly applicable to civil cases that proceed in probate court.

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 October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-04. 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 9.123 of the Michigan Court Rules (Dated June 19, 2019)

On order of the Court, this is to advise that the Court is considering an amendment of Rule 9.123 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 9.123 Eligibility for Reinstatement

(A) Suspension, 179 Days or Less. An attorney whose license has been suspended for 179 days or less pursuant to disciplinary proceedings may be automatically reinstated in accordance with this rule. The attorney may file, not sooner than 7 days before the last day of the suspension, with the board and serve on the administrator by filing with the Supreme Court clerk, the board, and the administrator an affidavit showing that the attorney has fully complied with all requirements the terms and conditions of the suspension order. The affidavit must contain a statement that the attorney will continue to comply with the suspension order until the attorney is reinstated. A materially false statement contained in the affidavit is ground for disbarment a basis for an action by the administrator and additional discipline. Within 7 days after the filing of the affidavit, the administrator may file with the board and serve on the attorney an objection to reinstatement based on the attorney's failure to demonstrate compliance with the suspension order. If the administrator files an objection, an order of reinstatement will be issued only after the board makes a determination that the attorney has complied with the suspension order. If the administrator does not file an objection and the board is not otherwise apprised of a basis to conclude that the attorney has failed to comply with the suspension order, the board must promptly issue an order of reinstatement. The order must be filed and served under MCR 9.118(F).

(B)–(D) [Unchanged.]

(E) Abatement or Modification of Conditions of Discipline or Reinstatement. When a condition has been imposed in an order of discipline or in an order of reinstatement, the attorney may request an order of abatement discharging the lawyer from the obligation to comply with the condition, or an order modifying the condition. The attorney may so request either before or with the attorney's affidavit of compliance under MCR 9.123(A) or petition for reinstatement under MCR 9.123(B). The request may be granted only if the attorney shows by clear and convincing evidence that a timely, good-faith effort has been made to meet the condition but it is impractical to fulfill the condition.

STAFF COMMENT: The proposed amendment of MCR 9.123 would update the attorney discipline process for reinstatement of short-term suspensions and allow for abatement or modification of a condition in certain circumstances. The Attorney Discipline Board and Attorney Grievance Commission submitted the proposal jointly.

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 October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2019-02. 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 3.965, 3.971, 3.972, 3.973, and 3.993 of the Michigan Court Rules (Dated June 12, 2019)

On order of the Court, this is to advise that the amendments of Rules 3.965, 3.971, 3.972, 3.973, and 3.993 of the Michigan Court Rules are adopted, effectively immediately. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendments. 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.

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

Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)–(14) [Unchanged.]

(15) If the court orders removal of the child from a parent's care or custody, the court shall advise the parent, guardian, or legal custodian of the right to appeal that action.

(C)–(D) [Unchanged.]

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;

(6) that appellate review is available to challenge a court's initial order of disposition following adjudication, and such a challenge can include any issues leading to the disposition, including any errors in the adjudicatory process;

(7) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal of the initial dispositional order and to preparation of relevant transcripts; and

(8) the respondent may be barred from challenging the assumption of jurisdiction in an appeal from the order terminating parental rights if they do not timely file an appeal of the initial dispositional order under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(C) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (B)(6)–(8).

(DE) [Relettered but otherwise unchanged.]

Rule 3.972 Trial

(A)–(E) [Unchanged.]

(F) Respondent's Rights Following Trial and Possible Disposition. If the trial results in a verdict that one or more statutory grounds for jurisdiction has been proven, the court shall advise the respondent orally or in writing that:

(1) appellate review is available to challenge a court's assumption of jurisdiction in an appeal of the initial order of disposition,

(2) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal and to preparation of relevant transcripts, and

(3) the respondent may be barred from challenging the assumption of jurisdiction if they do not timely file an appeal under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(G) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (F)(1)–(3).

Rule 3.973 Dispositional Hearing

(A)–(F) [Unchanged.]

(G) Respondent's Rights Upon Entry of Dispositional Order. When the court enters an initial order of disposition following adjudication the court shall advise the respondent orally or in writing:

(1) that at any time while the court retains jurisdiction over the minor, the respondent may challenge the continuing exercise of that jurisdiction by filing a motion for rehearing, MCL 712A.21 or MCR 3.992, or by filing an application for leave to appeal with the Michigan Court of Appeals,

(2) that appellate review is available to challenge both an initial order of disposition following adjudication and any order removing a child from a parent's care and custody,

(3) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on any appeal as of right and to preparation of relevant transcripts, and

(4) the respondent may be barred from challenging the assumption of jurisdiction or the removal of the minor from

a parent's care and custody in an appeal from the order terminating parental rights if they do not timely file an appeal under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(H) Right to Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (G)(2)–(4).

(G)–(H) [Relettered (I)–(J) but otherwise unchanged.]

Rule 3.993 Appeals

(A) The following orders are appealable to the Court of Appeals by right:

- (1) any order removing a child from a parent's care and custody,
- (2) an initial order of disposition following adjudication in a child protective proceeding,
- (3) an order of disposition placing a minor under the supervision of the court in a delinquency proceeding or removing the minor from the home,

(2)–(5) [Renumbered (4)–(7) but otherwise unchanged.]

In any appeal as of right, an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal and to preparation of relevant transcripts.

(B)–(C) [Unchanged.]

STAFF COMMENT: The amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993 incorporate a requirement for a trial court to notify a respondent in a child protection proceeding of the right to appeal following a child's removal from the home and the initial dispositional order, and that failure to do so may bar respondent from later challenging the court's assumption of jurisdiction.

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 amendment may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2015-21. 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.



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