

Order

Michigan Supreme Court
Lansing, Michigan

May 7, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-33

Michael F. Cavanagh
Stephen J. Markman

Amendments of Rules 1.111, 1.201,
3.302, 3.925, 3.977, 3.992, 5.125, 6.501,
6.509, 7.203, 7.205, 7.211, and 8.127 of
the Michigan Court Rules, and
Amendment of Administrative
Order No. 2013-12

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, the following corrections are adopted, effective immediately.

Rule 1.111 Foreign Language Interpreters

(A)-(D) [Unchanged.]

(E) Avoidance of Potential Conflicts of Interest

(1) [Unchanged.]

(2) A court employee may interpret legal proceedings as follows:

(a) The court may employ a person as an interpreter. The employee must meet the minimum requirements for interpreters established by subrule (A)~~(5)~~(4). The state court administrator may authorize the court to hire a person who does not meet the minimum requirements established by subrule (A)~~(5)~~(4) for good cause including the unavailability of a certification test for the foreign language and the absence of certified interpreters for the foreign language in the geographic area in which the court sits. The court seeking authorization from the state court administrator shall provide proof of the employee's competency to act as an interpreter and shall submit a plan for the employee to meet the minimum requirements established by subrule (A)~~(5)~~(4) within a reasonable time.

(b) [Unchanged.]

(F) Appointment of Foreign Language Interpreters

(1) When the court appoints a foreign language interpreter under subrule (B)(1), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings

and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in (A)(7)(6). The court shall make a record of its reasons for using a qualified foreign language interpreter.

(2)-(7)[Unchanged.]

(G)-(H)[Unchanged.]

Rule 1.201 Amendment Procedures

(A) Notice of Proposed Amendment. Before amending the Michigan Court Rules or other sets of rules within its jurisdiction, the Supreme Court will notify the secretary of the State Bar of Michigan and the state court administrator of the proposed amendment, and the manner and date for submitting comments. The notice also will be posted on the Court's website, www.courts.mi.gov/supremecourt <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/default.aspx>.

(B)-(E)[Unchanged.]

Rule 3.302 Superintending Control

(A)-(C)[Unchanged.]

(D) Jurisdiction.

(1) The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals. ~~In this rule the term "circuit court" includes the Recorder's Court of the City of Detroit as to superintending control actions of which that court has jurisdiction.~~

(2) When an appeal in the Supreme Court, the Court of Appeals, or the circuit court, ~~or the recorder's court~~ is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.

(E) [Unchanged.]

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Files; Setting Aside Adjudications

(A)-(D)[Unchanged.]

(E) Retention and Destruction of Court Case Files and Other Court Records. This subrule governs the retention and destruction of court case files and other court records, as defined by MCR 8.119(D).

(1) [Unchanged.]

(2) Register of Actions, Indexes, and Orders. The register of actions and numerical and alphabetical indexes must be maintained permanently. In addition, the court must permanently maintain the order of adjudication, the order terminating parental rights, and the order terminating jurisdiction for each child protective case; the order of adjudication and the order terminating jurisdiction for each delinquency case; the latest dispositive order for each designated case; and the order appointing a guardian ~~and any order dismissing, terminating, or revoking a guardian~~ for each juvenile guardianship case.

(3)-(5)[Unchanged.]

(6) Juvenile Guardianship Case Files. Except as provided in subrule (2), ~~the~~The court may destroy the records in juvenile guardianship case files 25 years after the order appointing a juvenile guardian.

(7) [Unchanged.]

(F)-(G)[Unchanged.]

Rule 3.977 Termination of Parental Rights

(A)-(I)[Unchanged.]

(J) Respondent's Rights Following Termination.

(1) [Unchanged.]

(2) Appointment of Attorney

(a) [Unchanged.]

(b) In a case involving the termination of parental rights, the order described in ~~(F)~~(J)(2) and (3) must be entered on a form approved by

the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). 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.

(3) [Unchanged.]

(K) [Unchanged.]

Rule 3.992 Rehearings; New Trial

(A) Time and Grounds. Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, and except for a case in which parental rights are terminated, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. In a case that involves termination of parental rights, a motion for new trial, rehearing, reconsideration, or other postjudgment relief shall be filed within 14 days after the date of the order terminating parental rights. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.

(B)-(F)[Unchanged.]

Rule 5.125 Interested Persons Defined

(A) Special Persons. In addition to persons named in subrule (C) with respect to specific proceedings, the following persons must be served:

(1)-(7)[Unchanged.]

- (8) In a guardianship proceeding for a minor, if the minor is an Indian child as defined by the ~~Indian Child Welfare Act, 25 USC 1901~~Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*, the minor's tribe and the Indian custodian, if any, and, if the Indian child's parent or Indian custodian, or tribe, is unknown, the Secretary of the Interior.

(B)-(E)[Unchanged.]

Rule 6.501 Scope of Subchapter

Unless otherwise specified by these rules, a judgment of conviction and sentence entered by the circuit court ~~or the Recorder's Court for the City of Detroit~~ not subject to appellate review under subchapters 7.200 or 7.300 may be reviewed only in accordance with the provisions of this subchapter.

Rule 6.509 Appeal

- (A) Availability of Appeal. Appeals from decisions under this subchapter are by application for leave to appeal to the Court of Appeals pursuant to MCR 7.205. The 6-month time limit provided by MCR 7.205~~(F)~~(G)(3), runs from the decision under this subchapter. Nothing in this subchapter shall be construed as extending the time to appeal from the original judgment.

(B)-(D)[Unchanged.]

Rule 7.203 Jurisdiction of the Court of Appeals

(A) [Unchanged.]

(B) Appeal by Leave. The court may grant leave to appeal from:

- (1) a judgment or order of the circuit court, and court of claims, ~~and recorder's court which~~ that is not a final judgment appealable of right;
- (2) a final judgment entered by the circuit court ~~or the recorder's court~~ on appeal from any other court;

(3)-(5)[Unchanged.]

(C)-(G)[Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A) Time Requirements. An application for leave to appeal must be filed within

(1)-(2)[Unchanged.]

(3) If an application for leave to appeal in a criminal case is received by the court after the expiration of the periods set forth above or the period set forth in MCR 7.205(F)(G), and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to applications for leave to appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.

(B) Manner of Filing. To apply for leave to appeal, the appellant shall file with the clerk:

(1)-(3)[Unchanged.]

(4) 1 copy of certain transcripts, as follows:

(a) [Unchanged.]

(b) in an appeal from the circuit court ~~or recorder's court~~ after an appeal from another court, the transcript of proceedings in the court reviewed by the circuit court ~~or recorder's court~~;

(c)-(g)[Unchanged.]

(5)-(7)[Unchanged.]

(C)-(F)[Unchanged.]

(G) Late Appeal.

(1) When an appeal of right was not timely filed or was dismissed for lack of jurisdiction, or when an application for leave was not timely filed, the appellant may file an application as prescribed in subrule (B), file 5 copies of a statement of facts explaining the delay, and serve 1 copy on all other

parties. The answer may challenge the claimed reasons for delay. The court may consider the length of and the reasons for delay in deciding whether to grant the application. In all other respects, submission, decision, and further proceedings are as provided in subrule ~~(D)~~(E).

- (2) [Unchanged.]
- (3) Except as provided in subrules ~~(F)~~(G)(4) and ~~(F)~~(G)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 6 months after the later of:

(a)-(b)[Unchanged.]

- (4) The limitation provided in subrule ~~(F)~~(G)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.431(A), or if

(a)-(c)[Unchanged.]

A motion for rehearing or reconsideration of a motion mentioned in subrule ~~(F)~~(G)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule ~~(F)~~(G)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.

A defendant who seeks to rely on one of the exceptions in subrule ~~(F)~~(G)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

- (5) Notwithstanding the 6-month limitation period otherwise provided in subrule ~~(F)~~(G)(3), leave to appeal may be granted if a party's claim of appeal is dismissed for lack of jurisdiction within 21 days before the expiration of the 6-month limitation period, or at any time after the 6-month limitation period has expired, and the party files a late application for leave to appeal from the same lower court judgment or order within 21 days of the dismissal of the claim of appeal or within 21 days of denial of a timely filed motion for reconsideration. A party filing a late application in reliance

on this provision must note the dismissal of the prior claim of appeal in the statement of facts explaining the delay.

(6) [Unchanged.]

(H) [Unchanged.]

Rule 7.211 Motions in Court of Appeals

(A)-(B)[Unchanged.]

(C) **Special Motions.** If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(8)[Unchanged.]

(9) **Motion to Seal Court of Appeals File in Whole or in Part.**

(a)-(b)[Unchanged.]

(c) Except as otherwise provided by statute or court rule, the procedure for sealing a Court of Appeals file is governed by MCR 8.119(~~F~~)(I). Materials that are subject to a motion to seal a Court of Appeals file in whole or in part shall be held under seal pending the court's disposition of the motion.

(d) [Unchanged.]

(e) An order granting a motion shall include a finding of good cause, as defined by MCR 8.119(~~F~~)(I)(2), and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(f) [Unchanged.]

(D)-(E)[Unchanged.]

Rule 8.127 Foreign Language Board of Review and Regulation of Foreign Language Interpreters

(A) [Unchanged.]

(B) Responsibilities of Foreign Language Board of Review

The Foreign Language Board of Review has the following responsibilities:

(1)-(2)[Unchanged.]

(3) Interpreter Certification Requirements

The board shall recommend requirements for interpreters to the state court administrator that the state court administrator may adopt in full, in part, or in a modified form concerning the following:

- (a) requirements for certifying interpreters as defined in MCR 1.111(A)~~(5)~~(4). At a minimum, those requirements must include that the applicant is at least 18 years of age and not under sentence for a felony for at least two years and that the interpreter attends an orientation program for new interpreters.
- (b) requirements for interpreters to be qualified as defined in MCR 1.111(A)~~(7)~~(6).
- (c) [Unchanged.]
- (d) requirements for interpreters as defined in MCR 1.111(A)~~(5)~~(4) to maintain their certification.
- (e) requirements for entities that provide interpretation services by telecommunications equipment to be qualified as defined in MCR 1.111(A)~~(7)~~(6).

(C) Interpreter Registration

- (1) Interpreters who meet the requirements of MCR 1.111(A)~~(5)~~(4) and MCR 1.111(A)~~(7)~~(6)(a) and (b) must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is \$60. The fee for renewal is \$30. The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Renewal applications must be filed or postmarked on or before September 30. Any application filed or postmarked after that date must be accompanied by a late fee of \$100. Any late registration made after

December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

- (2) Entities that employ a certified foreign language interpreter as defined in MCR 1.111(A)~~(5)~~(4), or a qualified foreign language interpreter as defined in MCR 1.111(A)~~(7)~~(6) must also register with the State Court Administrative Office and pay the registration fee and renewal fees.

(D) Interpreter Misconduct or Incompetence

(1)-(6) [Unchanged.]

- (7) The State Court Administrative Office shall maintain a record of all interpreters who are sanctioned for incompetence or misconduct. If the interpreter is certified in Michigan under MCR 1.111(A)~~(5)~~(4) because of certification pursuant to another state or federal test, the state court administrator shall report the findings and any sanctions to the certification authority in the other jurisdiction.

(8)-(10)[Unchanged.]

Administrative Order No. 2013-12 Revised Caseflow Management Guidelines and Rescission of Administrative Order No. 2011-3

[The *only* portion of Administrative Order No. 2013-12 that is amended is found under the section entitled “Circuit Court Guidelines” in 8.c., as follows:]

8. Miscellaneous Family Proceedings.

a.-b. [Unchanged.]

- c. Personal Protection. 100% of all petitions requesting ex parte relief ~~filed ex parte~~ should be adjudicated within 24 hours of filing. 90% of all petitions

not requesting ex parte relief or in which a hearing will be set ~~not filed ex parte~~—should be adjudicated within 14 days from the date of filing and 100% within 21 days.

d.-f. [Unchanged.]

[The remaining sections 9.-11. under “Circuit Court Guidelines”
of Administrative Order No. 2013-12 are unchanged.]

Staff Comment: These amendments reflect changes that correct minor technical errors that have occurred in drafting or the changes respond to recent adopted rule revisions, which occasionally inadvertently create incorrect cross-references in other rules.

The staff comment is not an authoritative construction by the Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 7, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk