

Order

Michigan Supreme Court
Lansing, Michigan

September 5, 2013

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2012-24

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

Amendments of Rules 2.614,
3.216, 3.807, 3.903, 3.905, 3.920,
3.925, 3.932, 3.965, 3.967, 3.977, 4.201, and
5.208 of the Michigan Court Rules
and Amendments of Rules 4, 5, and 8 of the
Rules for the Board of Law Examiners

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

[The present language is amended as indicated below
in underlining and overstriking.]

Rule 2.614 Stay of Proceedings to Enforce Judgment

(A)-(C) [Unchanged.]

(D) Stay on Appeal. Stay on appeal is governed by MCR 7.101(H), 7.209, and 7.302(~~G~~). If a party appeals a trial court's denial of the party's claim of governmental immunity, the party's appeal operates as an automatic stay of any and all proceedings in the case until the issue of the party's status is finally decided.

(E)-(G) [Unchanged.]

Rule 3.216 Domestic Relations Mediation

(A) Scope and Applicability of Rule, Definitions.

(1) All domestic relations cases, as defined in MCL 552.502(~~4m~~), are subject to mediation under this rule, unless otherwise provided by statute or court rule.

(2)-(4) [Unchanged.]

(B)-(K) [Unchanged.]

Rule 3.807 Indian Child

(A) [Unchanged.]

(B) Jurisdiction, Notice, Transfer, Intervention.

(1)-(2) [Unchanged.]

(3) The Indian custodian of the child, ~~and the Indian child's tribe,~~ and the Indian child have a right to intervene at any point in the proceeding ~~for foster care placement or termination of parental rights~~ pursuant to MCL 712B.7(6).

(C) [Unchanged.]

Rule 3.903 Definitions

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

(1)-(13) [Unchanged.]

(14) "Legal Custodian" means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state. It also includes the term "Indian custodian" as defined in MCR 3.002(~~7~~15).

(15)-(17) [Unchanged.]

(18) "Parent" means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor. It also includes the term "parent" as defined in MCR 3.002(~~10~~20).

(19)-(27) [Unchanged.]

(B)-(F) [Unchanged.]

Rule 3.905 Indian Children; Jurisdiction, Notice, Transfer, Intervention

(A)-(C) [Unchanged.]

(D) The Indian custodian of the child, ~~and the Indian child's tribe,~~ and the Indian child have a right to intervene at any point in the proceeding pursuant to MCL 712B.7(6).

Rule 3.920 Service of Process

(A)-(B) [Unchanged.]

(C) Notice of Proceeding Concerning Indian Child. If the court knows or has reason to know an Indian child is the subject of a protective proceeding or is charged with a status offense in violation of MCL 712A.2(a)(2)-(4) or (d) and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(6):

(1) in addition to any other service requirements, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, ~~by personal service or~~ by registered mail with return receipt requested, of the pending proceedings on a petition filed under MCR 3.931 or MCR 3.961 and of their right of intervention on a form approved by the State Court Administrative Office. If the identity or location of the parent or Indian custodian, or of the tribe, cannot be determined, notice shall be given to the Secretary of the Interior by registered mail with return receipt requested. Subsequent notices shall be served in accordance with this subrule for proceedings under MCR 3.967 and MCR 3.977.

(2) [Unchanged.]

(D)-(I) [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)-(2)[Unchanged.]

(3) Delinquency and Motor Vehicle Code Case Files.

(a)-(b) [Unchanged.]

(c) Except as provided by subrules (2), (3)(a), and (3)(b), the court may destroy the legal records in the case files pertaining to a person's juvenile offenses when the person becomes 30 years of age. The social records in the case files pertaining to a person's juvenile offenses may be destroyed three years after entry of the order

terminating jurisdiction of that person or when the person becomes 18 years old, whichever is later. The social records are the confidential files defined in MCR 3.903(A)(23). The court must destroy the records in traffic and local ordinance case files opened by issuance of a citation pursuant to the motor vehicle code or a local corresponding ordinance when the person becomes 30 years of age.

(d) [Unchanged.]

- (4) Child Protective Case Files. Except as provided in subrule (2), the court may destroy the legal records in the child protective proceeding case files pertaining to a child, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends. The social records in the child protective proceeding case files pertaining to a child may be destroyed three years after entry of the order terminating jurisdiction of that child or when the child becomes 18 years of age, whichever is later. The social records are the confidential files defined in MCR 3.903(A)(23).

(5)-(7) [Unchanged.]

(F)-(G) [Unchanged.]

Rule 3.932 Summary Initial Proceedings

- (A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.781(1)(fg), the preliminary inquiry need not be conducted on the record. The court may, in the interest of the juvenile and the public:

(1)-(5) [Unchanged.]

(B)-(D) [Unchanged.]

Rule 3.965 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

- (1) [Unchanged.]
- (2) The court must inquire if the child or either parent is a member of an Indian tribe. If the court knows or has reason to know the child is an Indian child, the court must determine the identity of the child's tribe and, if the child was taken into protective custody pursuant to MCR 3.963(A) or the petition requests removal of the child, follow the procedures set forth in MCR 3.967. If necessary, the court may adjourn the preliminary hearing pending the conclusion of the removal hearing. A removal hearing may be held in conjunction with the preliminary hearing if all necessary parties have been notified as required by MCR 3.905, there are no objections by the parties to do so, and at least one qualified expert witness is present to provide testimony.

(3)-(13) [Unchanged.]

(C)-(D) [Unchanged.]

Rule 3.967 Removal Hearing for Indian Child

(A)-(C) [Unchanged.]

- (D) Evidence. An Indian child may be removed from a parent or Indian custodian, or, for an Indian child already taken into protective custody pursuant to MCR 3.963 or MCR 3.974(B), remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence, including the testimony of at least one qualified expert witness, as described in MCL 712B.17, who has knowledge about the child-rearing practices of the Indian child's tribe, that active efforts as defined in MCR 3.002 have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that these efforts have proved unsuccessful, and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe.

(E)-(F) [Unchanged.]

Rule 3.977 Termination of Parental Rights

(A)-(F) [Unchanged.]

(G) Termination of Parental Rights; Indian Child. In addition to the required findings in this rule, the parental rights of a parent of an Indian child must not be terminated unless:

- (1) the court is satisfied that active efforts as defined in MCR 3.002 have been made to provide remedial service and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful, and
- (2) [Unchanged.]

(H)-(K) [Unchanged.]

Rule 4.201 Summary Proceedings to Recover Possession of Premises

(A) [Unchanged.]

(B) Complaint.

(1) [Unchanged.]

(2) Specific Requirements.

(a)-(c) [Unchanged.]

(d) If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises pursuant to MCL 600.5714(1)(~~e~~)(d), the complaint must

(i)-(ii) [Unchanged.]

(e) If possession is sought for trespass pursuant to MCL 600.5714(1)(~~d~~)(f), the complaint must describe, when known by the plaintiff, the conditions under which possession was unlawfully taken or is unlawfully held and allege that no lawful tenancy of the premises has existed between the parties since defendant took possession.

(C)-(O)[Unchanged.]

Rule 5.208 Notice to Creditors, Presentment of Claims

(A)-(E) [Unchanged.]

- (F) A claim is considered presented
- (1) on mailing, if addressed to the personal representative or trustee, or the attorney for the personal representative or trustee, or
 - (2) in all other cases, when received by the personal representative, or trustee or the attorney for the personal representative or trustee or in the case of an estate when filed with the court.

~~For purposes of this subrule (F), personal representative includes a proposed personal representative.~~

[The following amendments affect various Rules for the
Board of Law Examiners.]

Rule 4 Post-Examination Procedures

- (A) ~~The Assistant Secretary~~ Executive Director will release examination results at the Board's direction. Blue books will be kept for 3 months after results are released.
- (B) Within 30 days after the day the results are released, the applicant may ask the Board to reconsider the applicant's essay grades. The applicant shall file with the ~~Assistant Secretary~~ Executive Director two (2) copies of
- (1) the request;
 - (2) the answer given in the applicant's blue books; and
 - (3) an explanation why the applicant deserves a higher grade.
- (C) An applicant for re-examination may obtain an application from the ~~Assistant Secretary~~ Executive Director. The application must be filed at least sixty (60) days before the examination. If the applicant's clearance is more than three (3) years old, the applicant must be approved by the State Bar Committee on Character and Fitness.

Rule 5 Admission Without Examination

- (A) An applicant for admission without examination must
- (1)-(5) [Unchanged.]

The Supreme Court may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(A)(65)(c) may be excluded when computing the 5-year period.

(B)-(C)[Unchanged.]

(D) An attorney

- (1) ineligible for admission without examination because of the inability to satisfy Rule 5(A)(65); and
- (2) practicing law in an institutional setting, e.g., counsel to a corporation or instructor in a law school, may apply to the Board for a special certificate of qualification to practice law. The applicant must satisfy Rule 5(A)(1)-(4)(3), and comply with Rule 5(B). The Board may then issue the special certificate, which will entitle the attorney to continue current employment if the attorney becomes an active member of the State Bar. If the attorney leaves the current employment, the special certificate automatically expires; if the attorney's new employment is also institutional, the attorney may reapply for another special certificate.

(E) Special Legal Consultants.

(a)-(b)[Unchanged.]

(c) An applicant for a license as a special legal consultant shall submit to the Board:

(1)-(3)[Unchanged.]

(4) shall execute and file with the ~~Assistant Secretary~~ Executive Director of the State Board of Law Examiners, in such form and manner as the Board may prescribe,

- (i) a duly acknowledged instrument in writing setting forth the special legal consultant's address in the state of Michigan and designating the ~~Assistant Secretary~~ Executive Director of the State Board of Law Examiners an agent upon whom process may be served, with like effect as if served personally upon the special legal consultant, in any action or proceeding thereafter brought against the special legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the special legal consultant within

or to residents of the state of Michigan whenever after due diligence service cannot be made upon the special legal consultant at such address or at such new address in the state of Michigan as the special legal consultant shall have filed in the office of the ~~Assistant Secretary~~ Executive Director of the State Board of Law Examiners by means of a duly acknowledged supplemental instrument in writing; and

- (ii) the special legal consultant's commitment to notify the ~~Assistant Secretary~~ Executive Director of the State Board of Law Examiners of any resignation or revocation of the special legal consultant's admission to practice in the foreign country of admission, or of any censure, suspension or expulsion in respect of such admission.

Service of process on the ~~Assistant Secretary~~ Executive Director of the State Board of Law Examiners shall be made by personally delivering to and leaving with the ~~Assistant Secretary~~ Executive Director, or with a deputy or assistant authorized by the ~~Assistant Secretary~~ Executive Director to receive such service, at the ~~Assistant Secretary's~~ Executive Director's office, duplicate copies of such process together with a fee of \$10.00. Service of process shall be complete when the ~~Assistant Secretary~~ Executive Director has been so served. The ~~Assistant Secretary~~ Executive Director shall promptly send one of such copies to the special legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such special legal consultant at the address specified by the special legal consultant as aforesaid.

- (d) [Unchanged.]

Rule 8 Recertification

An applicant for recertification shall file an application and other material required by the Board. After a hearing the Board shall either recertify the applicant or require that the applicant pass the examination described in Rule 3. An applicant may use the Board's subpoena power for the hearing. An applicant who is an inactive State Bar member or who had previously voluntarily resigned from the State Bar or who previously elected emeritus status, and who has been employed in another jurisdiction in one of the ways listed in Rule 5(A)(6~~5~~) is entitled to recertification by the Board.

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.

September 5, 2013


Clerk