

# Order

Michigan Supreme Court  
Lansing, Michigan

March 20, 2013

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-02

Michael F. Cavanagh  
Stephen J. Markman

Amendments of Rules 3.002,  
3.800, 3.802, 3.807, 3.903,  
3.905, 3.920, 3.921, 3.935,  
3.961, 3.963, 3.965, 3.967,  
3.974, 3.977, and 5.402  
of the Michigan Court Rules

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

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On order of the Court, the need for immediate action having been found, the following amendments of Rules 3.002, 3.800, 3.802, 3.807, 3.903, 3.905, 3.920, 3.921, 3.935, 3.961, 3.963, 3.965, 3.967, 3.974, 3.977, and 5.402 of the Michigan Court Rules are adopted, effective immediately and pending public comment. This notice is given to afford interested persons the opportunity to comment on the form or the merits of the amendment or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas of public hearings are posted at

<http://www.courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>.

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

## Rule 3.002 Indian Children

For purposes of applying the Indian Child Welfare Act, 25 USC 1901 *et seq.*, and the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*, to proceedings under the Juvenile Code, the Adoption Code, and the Estates and Protected Individuals Code, the following definitions taken from ~~25 USC 1903 and 25 USC 1911(a)~~ MCL 712B.3 and MCL 712B.7 shall apply.

- (1) “Active efforts” means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as

required by title IV-E of the social security act, 42 USC 670 to 679c, and also include doing or addressing all of the following:

- (a) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.
- (b) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
- (c) Conducting or causing to be conducted a diligent search for extended family members for placement.
- (d) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.
- (e) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.
- (f) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.
- (g) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
- (h) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for

transportation and other assistance to enable family members to participate in that interaction.

- (i) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child’s tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child’s tribe.
  - (j) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child’s family with special needs, and providing information about those resources to the Indian child’s family, and actively assisting the Indian child’s family or offering active assistance in accessing those resources.
  - (k) Monitoring client progress and client participation in services.
  - (l) Providing a consideration of alternative ways of addressing the needs of the Indian child’s family, if services do not exist or if existing services are not available to the family.
- (42) [Former “(1)” has been renumbered as “(2)” and is otherwise unchanged.]
- (3) “Court” means the family division of circuit court or the probate court.
- (4) “Culturally appropriate services” means services that enhance an Indian child’s and family’s relationship to, identification, and connection with the Indian child’s tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child’s tribe so those may be incorporated into the Indian child’s daily life, as well as services that address the issues that have brought the child and family to the attention of the department that are consistent with the tribe’s beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child’s tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe’s definition.
- (5) “Department” means the department of human services or any successor department or agency.

- (26) “Exclusive jurisdiction” shall mean that an Indian tribe has jurisdiction exclusive as to any state over any child custody proceeding as defined above involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe ~~shall~~ retains exclusive jurisdiction, notwithstanding regardless of the residence or domicile of the child, or subsequent change in his or her residence or domicile. ~~25 USC 1911[a]~~MCL 712B.7.
- (37) “Extended family member” shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 years and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term “relative” as that term is defined in MCL 712A.13a(j).
- (8) “Foster home or institution” means a child caring institution as that term is defined in section 1 of 1973 PA 116, MCL 722.111.
- (9) “Guardian” means a person who has qualified as a guardian of a minor under a parental or spousal nomination or a court order issued under section 19a or 19c of chapter XIA, section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or sections 600 to 644 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644. Guardian may also include a person appointed by a tribal court under tribal code or custom. Guardian does not include a guardian ad litem.
- (10) “Guardian ad litem” means an individual whom the court appoints to assist the court in determining the child’s best interests. A guardian ad litem does not need to be an attorney.
- (411) “Indian” means any ~~person who is a~~ member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any ~~or who is an~~ Alaska Native village and a member of a Regional Corporation as defined in ~~43 USC 1606~~ as defined in section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.

- (~~§~~12) “Indian child” means any unmarried person who is under age 18 and is either
- (a) a member of an Indian tribe, or
  - (b) is eligible for membership in an Indian tribe ~~and is the biological child of a member of an~~ as determined by that Indian tribe.
- (~~§~~13) “Indian child’s tribe” means
- (a) the Indian tribe ~~of~~ in which an Indian child is a member or eligible for membership, or
  - (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the ~~more~~ most significant contacts.
- (14) “Indian child welfare act” means the Indian child welfare act of 1978, 25 USC 1901 to 1963.
- (~~7~~15) “Indian custodian” means any Indian person who has ~~legal~~ custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control ~~has~~ have been transferred by the child’s parent of such child.
- (~~8~~16) [Former “(8)” has been renumbered “(16)” and is otherwise unchanged.]
- (~~9~~17) [Former “(9)” has been renumbered “(17)” and is otherwise unchanged.]
- (18) “Lawyer-guardian ad litem” means an attorney appointed under MCL 712B.21 to represent the child with the powers and duties as set forth in MCL 712A.17d. The provisions of MCL 712A.17d also apply to a lawyer-guardian ad litem appointed for the purposes of MIFPA under each of the following:
- (a) MCL 700.5213 and 700.5219,
  - (b) MCL 722.24, and
  - (c) MCL 722.630.
- (19) “Official tribal representative” means an individual who is designated by the Indian child’s tribe to represent the tribe in a court overseeing a child

custody proceeding. An official tribal representative does not need to be an attorney.

(~~10~~20) “Parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include ~~an unwed~~the putative father—whose if paternity has not been acknowledged or established.

(~~11~~21) [Former “(11)” has been renumbered “(21)” and is otherwise unchanged.]

(~~12~~22) [Former “(12)” has been renumbered “(22)” and is otherwise unchanged.]

(~~13~~23) [Former “(13)” has been renumbered “(23)” and is otherwise unchanged.]

(24) “Ward of tribal court” means a child over whom an Indian tribe exercises authority by official action in tribal court or by the governing body of the tribe.

#### Rule 3.800 Applicable Rules; Interested Parties; Indian Child

(A) Generally. Except as modified by MCR 3.801-3.807, adoption proceedings, are governed by Michigan Court Rules.

(B) Interested Parties.

(1) [Unchanged.]

(2) If the court knows or has reason to know the adoptee is an Indian child, in addition to the above, the persons interested are the child’s tribe and the Indian custodian, if any, and, if the Indian’s child’s parent or Indian custodian, or tribe, is unknown, the Secretary of the Interior.

(3) The interested persons in a petition to terminate the rights of the noncustodial parent pursuant to MCL 710.51(6) are:

(a)-(c) [Unchanged.]

(d) if the court knows or has reason to know the adoptee is an Indian child, the child’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.

### Rule 3.802 Manner and Method of Service

#### (A) Service of Papers.

(1)-(2) [Unchanged.]

#### (3) Notice of Proceeding Concerning Indian Child.

If the court knows or has reason to know an Indian child is the subject of an adoption proceeding and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(26),

(a)-(b) [Unchanged.]

(4) [Unchanged.]

(B)-(C) [Unchanged.]

### Rule 3.807 Indian Child

(A) Definitions. If an Indian child, as defined by the ~~Indian Child Welfare Act, 25 USC 1903~~ Michigan Indian Family Preservation Act, MCL 712B.3, is the subject of an adoption proceeding, the definitions in MCR 3.002 shall control.

#### (B) Jurisdiction, Notice, Transfer, Intervention.

(1) If an Indian child is the subject of an adoption proceeding and an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(26), the matter shall be dismissed.

(2) If an Indian child is the subject of an adoption proceeding and an Indian tribe does not have exclusive jurisdiction as defined in MCR 3.002(26), the court shall ensure that the petitioner has given notice of the proceedings to the persons prescribed in MCR 3.800(B) in accordance with MCR 3.802(A)(3).

(a) If either parent or the Indian custodian or the Indian child's tribe petitions the court to transfer the proceeding to the tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. ~~In determining whether good cause not to transfer exists, the court shall consider the Bureau of Indian Affairs, Guidelines for State Courts; Indian Child Custody~~

~~Proceedings, 44 Fed Reg No 228, 67590-67592, C.2 C.4. A perceived inadequacy of the tribal court or tribal series does not constitute good cause to refuse to transfer the case. When the court makes a good-cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered. A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:~~

- (i) The Indian tribe does not have a tribal court.
  - (ii) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.
- (b) [Unchanged.]
- (c) If the tribal court declines transfer, the ~~Indian Child Welfare Act~~Michigan Indian Family Preservation Act applies, as do the provisions of these rules that pertain to an Indian child (see ~~25 USC 1902, 1911(b)~~MCL 712B.3 and MCL 712B.5).
- (d) A petition to transfer may be made at any time in accordance with ~~25 USC 1911(b)~~MCL 712B.7(3).
- (3) The Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceeding for foster care placement or termination of parental rights pursuant to ~~25 USC 1911(e)~~MCL 712B.7(6).
- (C) Record of Tribal Affiliation. Upon application by an Indian individual who has reached the age of 18 and who was the subject of an adoption placement, the court that entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. (25 USC 1917.)

#### Rule 3.903 Definitions

(A)-(E)[Unchanged.]

(F) ~~Indian Child Welfare Act~~Michigan Indian Family Preservation Act.

If an Indian child, as defined by the ~~Indian Child Welfare Act, 25 USC 1901 et seq.,~~ Michigan Indian Family Preservation Act, MCL 712B.1 et seq., 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), the definitions in MCR 3.002 shall control.

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

- (A) If 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 if an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(26), and the matter is not before the state court as a result of emergency removal pursuant to ~~25 USC 1922~~ MCL 712B.7(2), the matter shall be dismissed.
- (B) If 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 if an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(26), and the matter is before the state court as a result of emergency removal pursuant to ~~25 USC 1922~~ MCL 712B.7(2), and either the tribe notifies the state court that it is exercising its jurisdiction, or the emergency no longer exists, then the state court shall dismiss the matter.
- (C) If 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(26), the court shall ensure that the petitioner has given notice of the proceedings to the persons described in MCR 3.921 in accordance with MCR 3.920(C).
- (1) If either parent or the Indian custodian or the Indian child's tribe petitions the court to transfer the proceeding to the tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. ~~In determining whether good cause not to transfer exists, the court shall consider the Bureau of Indian Affairs, Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed Reg No 228, 67590-67592, C.2-C.4. (November 26, 1979). A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case. When the court makes a good-cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered. A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:~~
- (a) The Indian tribe does not have a tribal court.

- (b) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.
- (2) [Unchanged.]
- (3) If the tribal court declines transfer, the ~~Indian Child Welfare Act~~Michigan Indian Family Preservation Act applies to the continued proceeding in state court, as do the provisions of these rules that pertain to an Indian child. See ~~25 USC 1902, 1911(b)~~MCL 712B.3 and MCL 712B.5.
- (4) A petition to transfer may be made at any time in accordance with ~~25 USC 1911(b)~~MCL 712B.7(3).
- (D) The Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceeding pursuant to ~~25 USC 1911(e)~~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(~~2~~6):
- (1)-(2)[Unchanged.]
- (D)-(I)[Unchanged.]

#### Rule 3.921 Persons Entitled to Notice

- (A) Delinquency Proceedings.
- (1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):
- (a)-(f) [Unchanged.]

(g) in accordance with the notice provisions of MCR 3.905, if the juvenile is charged with a status offense in violation of MCL 712A.2(a)(2)-(4) or (d) and if the court knows or has reason to know the juvenile is an Indian child:

- (i) the juvenile's tribe and, if the tribe is unknown, the Secretary of the Interior, and
- (ii) the juvenile's parents or Indian custodian, and if unknown, the Secretary of the Interior.

(2)-(3) [Unchanged.]

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

(a)-(g) [Unchanged.]

(h) in accordance with the notice provisions of MCR 3.905, if the court knows or has reason to know the child is an Indian child:

(i)-(ii) [Unchanged.]

(i) [Unchanged.]

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

(a)-(i) [Unchanged.]

(j) if the court knows or has reason to know the child is an Indian child, the child's tribe,

(k) [Unchanged.]

(l) if the court knows or has reason to know the child is an Indian child and the parents, guardian, legal custodian, or tribe are unknown, to the Secretary of Interior, and

(m) [Unchanged.]

(3) Termination of Parental Rights. Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2), except that if the court knows or has reason to know the child is an Indian child, notice shall be given in accordance with MCR 3.920(C)(1).

(C) Juvenile Guardianships. In a juvenile guardianship, the following persons shall be entitled to notice:

(1)-(7)[Unchanged.]

(8) if the court knows or has reason to know the child is an Indian child ~~if the child is a member of a federally recognized Indian tribe~~, the child's tribe, Indian custodian, or if the tribe is unknown, the Secretary of the Interior;

(9)-(10)[Unchanged.]

(D)-(E)[Unchanged.]

#### Rule 3.935 Preliminary Hearing

(A) [Unchanged.]

(B) Procedure.

(1)-(4)[Unchanged.]

(5) If the charge is a status offense in violation of MCL 712A.2(a)(2)-(4) or (d), the court must inquire if the juvenile or a parent is a member of an Indian tribe. If the court knows or has reason to know the child is an Indian child, the juvenile is a member, or if a parent is a member and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe and comply with MCR 3.905 before proceeding with the hearing.

(6)-(8)[Unchanged.]

(C)-(F) [Unchanged.]

#### Rule 3.961 Initiating Child Protective Proceedings

- (A) [Unchanged.]
- (B) Content of Petition. A petition must contain the following information, if known:
  - (1)-(5)[Unchanged.]
  - (6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated. If the petition requests removal of an Indian child or if an Indian child was taken into protective custody pursuant to MCR 3.963 as a result of an emergency, the petition must specifically describe:
    - (a) the active efforts, as defined in MCR 3.002, that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; and
    - (b) documentation, including attempts, to identify the child's tribe.
  - (7) [Unchanged.]

#### Rule 3.963 Protective Custody of Child

- (A) Taking Custody Without Court Order. An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered. If the child is an Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, the officer may take the child into protective custody only when necessary to prevent imminent physical damage or harm to the child.
- (B) Court-Ordered Custody.
  - (1) The court may issue a written order authorizing a child protective services worker, an officer, or other person deemed suitable by the court to immediately take a child into protective custody when, upon presentment of proofs as required by the court, the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. If the child is an Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, the child is subject to the exclusive jurisdiction of the tribal court. However, the state court may enter

an order for protective custody of that child when it is necessary to prevent imminent physical damage or harm to the child. At the time it issues the order or as provided in MCR 3.965(D), the court shall make a judicial determination that reasonable efforts to prevent removal of the child have been made or are not required. The court may also include in such an order authorization to enter specified premises to remove the child.

(2)-(3)[Unchanged.]

(C) [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 member, or if a parent is a member and the child is eligible for membership in the tribe,~~ the court must determine the identity of the child's tribe, ~~notify the 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 expert witness is present to provide testimony.

(3)-(11)[Unchanged.]

(12) If the court authorizes the filing of the petition, the court:

(a) [Unchanged.]

(b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made. If the child is an Indian child, the child must be placed in descending order of preference with:

(i)-(ii) [Unchanged.]

(iii) an Indian foster family licensed or approved by the department ~~a non-Indian licensing authority,~~

(iv) [Unchanged.]

The court may order another placement for good cause shown in accordance with MCL 712B.23(3)-(5). If the Indian child's tribe has established ~~by resolution~~ a different order of preference than the order prescribed above, placement shall follow that tribe's order of preference as long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in ~~25 USC 1915(b)~~ MCL 712B.23(6). The standards to be applied in meeting the preference requirements above shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(13) [Unchanged.]

(C)-(E)[Unchanged.]

#### Rule 3.967 Removal Hearing for Indian Child

(A) Child in Protective Custody. If an Indian child is taken into protective custody pursuant to MCR 3.963(A) or (B) or MCR 3.974, a removal hearing must be completed within 14 days after removal from a parent or Indian custodian unless that parent or Indian custodian has requested an additional 20 days for the hearing pursuant to ~~25 USC 1912(a)~~ MCL 712B.9(2) or the court adjourns the hearing pursuant to MCR 3.923(G). Absent extraordinary circumstances that make additional delay unavoidable, temporary emergency custody shall not be continued for more than 45 days.

(B)-(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 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 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) [Unchanged.]
- (F) The Indian child, if removed from home, must be placed in descending order of preference with:
  - (1)-(2)[Unchanged.]
  - (3) an Indian foster family licensed or approved by the department~~non-Indian licensing authority,~~
  - (4) [Unchanged.]

The court may order another placement for good cause shown in accordance with MCL 712B.23(3)-(5). If the Indian child's tribe has established ~~by resolution~~ a different order of preference than the order prescribed in subrule (F), placement shall follow that tribe's order of preference as long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in ~~25 USC 1915(b)~~MCL 712B.23(6).

The standards to be applied in meeting the preference requirements above shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

#### Rule 3.974 Post-Dispositional Procedures; Child At Home

- (A) [Unchanged.]
- (B) Emergency Removal; Protective Custody.
  - (1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order the child to be taken into protective custody to protect the health, safety, or welfare of the child, pending an emergency removal hearing, except, that if the child is an Indian child and the child resides or is domiciled within a reservation, but is temporarily located off the reservation, the court may order the child to be

taken into protective custody only when necessary to prevent imminent physical damage or harm to the child.

(2)-(3)[Unchanged.]

(C) [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) [Unchanged.]

(2) the court finds evidence beyond a reasonable doubt, including testimony of at least one qualified expert witness, as described in MCL 712B.17, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

(H)-(K)[Unchanged.]

#### Rule 5.402 Common Provisions

(A)-(D)[Unchanged.]

(E) Indian Child; Definitions, Jurisdiction, Notice, Transfer, Intervention.

(1) If an Indian child, as defined by the ~~Indian Child Welfare Act, 25 USC 1903~~ Michigan Indian Family Preservation Act, MCL 712B.3, is the subject of a guardianship proceeding, the definitions in MCR 3.002 shall control.

(2) If an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe has exclusive jurisdiction as defined in MCR 3.002(26), the matter shall be dismissed.

(3) If an Indian child is the subject of a petition to establish guardianship of a minor and an Indian tribe does not have exclusive jurisdiction as defined in

MCR 3.002(26), the court shall ensure that the petitioner has given notice of the proceedings to the persons prescribed in MCR 5.125(A)(8) and (C) in accordance with MCR 5.109.

- (a) If either parent or the Indian custodian or the Indian child's tribe petitions the court to transfer the proceeding to the tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. ~~In determining whether good cause not to transfer exists, the court shall consider the Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed Reg No 228, 67590-67592, C.2 C.4. A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case. When the court makes a good-cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered. A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:~~
- (i) The Indian tribe does not have a tribal court.
  - (ii) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.
- (b) [Unchanged.]
- (c) If the tribal court declines transfer, the ~~Indian Child Welfare Act~~ Michigan Indian Family Preservation Act applies, as do the provisions of these rules that pertain to an Indian child (see ~~24 USC 1902, 1911(b)~~ MCL 712B.3 and MCL 712B.5).
- (d) A petition to transfer may be made at any time in accordance with ~~25 USC 1911(b)~~ MCL 712B.7(3).
- (4) The Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceeding pursuant to ~~25 USC 1911(e)~~ MCL 712B.7(6).

*Staff Comment:* This proposal incorporates provisions of the newly enacted Michigan Indian Family Preservation Act into specific provisions within various rules relating to child protective proceedings and juvenile status offenses.

The staff comment is not an authoritative construction by the 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 this amendment may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2013, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2013-02. Your comments and the comments of others will be posted under the chapter affected by this proposal at <http://www.courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/default.aspx>.



I, Corbin R. Davis, 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.

March 20, 2013

*Corbin R. Davis*

Clerk