

Order

Michigan Supreme Court
Lansing, Michigan

April 3, 2013

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2012-04

Michael F. Cavanagh
Stephen J. Markman

Proposed Amendment of
Rule 3.218 of the
Michigan Court Rules

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

On order of the Court, this is to advise that the Court is considering an amendment of Rule 3.218 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 <http://courts.mi.gov/courts/michigansupremecourt/rules/pages/public-administrative-hearings.aspx>

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 3.218 Friend of the Court Records; Access

- (A) ~~General Definitions.~~ Friend of the court records are not subject to a subpoena issued under these Michigan Court Rules. Unless another rule specifically provides for the protection or release of friend of the court records, this rule governs. When used in this subrule, unless the context indicates otherwise,
- (1) “records” means ~~paper files, computer files, microfilm, microfiche, audio tape, video tape, photographs, and includes records as defined in MCR 1.109~~ any case-specific information the friend of the court office maintains on any media;
 - (2) [Unchanged.]
 - (3) “confidential information” means

- (a) staff notes from alternative dispute resolution, investigations, ~~mediation sessions~~, and settlement conferences;
- (b) ~~Family Independence Agency~~ any confidential information from the Department of Human Services child protective services reports unit or information included in any reports to protective services from a friend of the court office;
- (c) formal mediation records;
- (d) communications from minors;
- (e) friend of the court grievances filed by the opposing party and the responses;
- (f) ~~a party's address or any other information if release is prohibited by~~ when a court order prohibits its release;

(g)-(h) [Unchanged.]

(4) Reference to an agency, office, officer, or capacity includes an employee or contractor working within the referenced agency or office, or an employee or caseworker acting on behalf of the referenced officer or working in the referenced capacity.

(B) A friend of the court office must provide access to nonconfidential records to the following:

(1) A party; a third-party custodian; a guardian, guardian ad litem or counsel for a minor; a lawyer-guardian ad litem; and an attorney of record; and the personal representative of the estate of a party. ~~must be given access to friend of the court records related to the case, other than confidential information.~~

The friend of the court office must release records to a government agency at the request of a person in this subrule who can show that the information is necessary to allow the person to receive services from that government agency.

(2) An officer in the Judge Advocate General's office in any branch of the United States military, if the request is made on behalf of a service member on active duty otherwise identified in this subrule.

(C) ~~A citizen advisory committee established under the Friend of the Court Act, MCL 552.501 *et seq.*, Unless the release is otherwise prohibited by law, a friend of the court office must provide access to all nonconfidential and confidential records to the following:~~

(1) ~~shall be given access to a grievance filed with the friend of the court, and to information related to the case, other than confidential information; Other agencies and individuals as necessary for the friend of the court to implement the state's plan under Title IV, Part D of the Social Security Act, 42 USC 651 *et seq.* or as required by the court, state law, or regulation that is consistent with this state's IV-D plan.~~

(2) ~~The Department of Human Services, as necessary to report suspected abuse or neglect or to allow the Department of Human Services to investigate or provide services to a party or child in the case, may be given access to confidential information related to a grievance if the court so orders, upon clear demonstration by the committee that the information is necessary to the performance of its duties and that the release will not impair the rights of a party or the well being of a child involved in the case.~~

~~When a citizen advisory committee requests information that may be confidential, the friend of the court shall notify the parties of the request and that they have 14 days from the date the notice was mailed to file a written response with the court. If the court grants access to the information, it may impose such terms and conditions as it determines are appropriate to protect the rights of a party or the well being of a child.~~

(3) ~~Other agencies that provide services under Title IV, part D of the Social Security Act, 42 USC 651 *et seq.*~~

(4) ~~Auditors from state and federal agencies, as required to perform their audit functions of a friend of the court matter.~~

(5) ~~Corrections, parole, or probation officers, in connection with a criminal action connected to the case for which the records are kept.~~

(6) ~~Michigan law enforcement personnel who are conducting a civil or criminal investigation related directly to a friend of the court matter, and to federal law enforcement officers pursuant to a federal subpoena in a criminal or civil investigation.~~

(D) ~~Protective services personnel from the Family Independence Agency must be given access to friend of the court records related to the investigation of alleged~~

~~abuse and neglect.~~ A citizen advisory committee established under the Friend of the Court Act, MCL 552.501 et seq.

- (1) shall be given access to a grievance filed with the friend of the court, and to information related to the case, other than confidential information.
- (2) may be given access to confidential information related to a grievance if the court so orders, upon demonstration by the committee that the information is necessary to the performance of its duties and that the release will not impair the rights of a party or the well-being of a child involved in the case.

When a citizen advisory committee requests information that may be confidential, the friend of the court shall notify the parties of the request and that they have 14 days from the date the notice was mailed to file a written response with the court.

If the court grants access to the information, it may impose such terms and conditions as it determines are appropriate to protect the rights of a party of the well-being of a child.

- (E) ~~The prosecuting attorney and personnel from the Office of Child Support and the Family Independence Agency must be given access to friend of the court records required to perform the functions required by title IV, part D of the Social Security Act, 42 USC 651 et seq.~~ A friend of the court office may refuse to provide access to records in the friend of the court file if the friend of the court does not hold the original record and the requestor may request access from the holder of the original.
- (F) ~~Auditors from state and federal agencies must be given access to friend of the court records required to perform their audit functions.~~

~~(G)-(H)~~[Redesignated as (F)-(G), but otherwise unchanged.]

Staff Comment: These proposed amendments would codify state and federal statutory and regulation revisions that have occurred in the last decade, and would add specificity and detail to the existing language in MCR 3.218.

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 the proposal may be sent to the Supreme Court Clerk in writing or electronically by August 1, 2013, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2012-04. Your comments and the comments of others will be posted under the chapter affected by this proposal at <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/chapter-3-special-proceedings-and-actions.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.

April 3, 2013

Corbin R. Davis

Clerk