

# Order

Michigan Supreme Court  
Lansing, Michigan

March 9, 2016

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2014-20

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

Amendments of Rules 2.403, 2.614,  
3.002, 3.101, 3.210, 3.913, 3.920,  
3.965, 3.972, 5.404, 6.610, 7.118, 7.205,  
8.126, 9.118, and 9.224 of the Michigan  
Court Rules and Amendment of Canon 3 of  
the Code of Judicial Conduct

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

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 2.403 Case Evaluation

(A)-(N)[Unchanged.]

(O) Rejecting Party's Liability for Costs.

(1)-(8)[Unchanged.]

(9) In an action under MCL 436.1801, if the plaintiff rejects the award against the minor or alleged intoxicated person, or is deemed to have rejected such an award under subrule (L)(3)(c), the court shall not award costs against the plaintiff in favor of the minor or alleged intoxicated person unless it finds that the rejection was not motivated by the need to comply with MCL 436.1801~~(6)~~(5).

(10)-(11)[Unchanged.]

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)~~7.108, 7.209, and 7.302(I). 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 3.002 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 MCL 712B.3 and MCL 712B.7 shall apply.

(1)-(6)[Unchanged.]

- (7) "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(1)(j).

(8)-(24)[Unchanged.]

### Rule 3.101 Garnishment after Judgment

- (A) Definitions. In this rule,

(1)-(3) [Unchanged.]

- (4) "periodic payments" includes but is not limited to, wages, salary, commissions, bonuses, and other income paid to the defendant during the period of the writ; land contract payments; rent; and other periodic debt or contract payments. Interest payments and other payments listed in MCL ~~600.4012(4)(a)-(d)~~600.4012(14)(a)-(d) are not periodic payments.

(B)-Remainder of rule [Unchanged.]

### Rule 3.210 Hearings and Trials

- (A) [Unchanged.]

## (B) Default Cases.

(1)-(4)[Unchanged.]

## (5) Entry of Default Judgment.

(a) [Unchanged.]

(b) Proofs for a default judgment may not be taken unless ~~the judgment fee has been deposited with the court clerk and the~~ proposed judgment has been given to the court. Nonmilitary affidavits required by law must be filed before a default judgment is entered in cases in which the defendant has failed to appear. A default judgment may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator or other representative, except as otherwise provided by law.

(c)-(f) [Unchanged.]

(6)-(7)[Unchanged.]

(C)-(E)[Unchanged.]

## Rule 3.913 Referees

## (A) Assignment of Matters to Referees.

(1) [Unchanged.]

## (2) Attorney and Nonattorney Referees.

(a) [Unchanged.]

(b) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, a progress review under MCR 3.974(A) or (B), or an emergency removal hearing under MCR 3.974~~(B)~~(C). In addition, either an attorney or a nonattorney referee may issue an ex parte placement order under MCR 3.963(B).

(c)-(d)[Unchanged.]

(B)-(C)[Unchanged.]

#### Rule 3.920 Service of Process

(A)-(C)[Unchanged.]

(D) Notice of Hearing

(1) [Unchanged.]

(2) Preliminary Hearing; Emergency Removal Hearing.

(a) [Unchanged.]

(b) When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974~~(B)~~(C)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

(3)-(4)[Unchanged.]

(E)-(I) [Unchanged.]

#### Rule 3.965 Preliminary Hearing

(A)-(B)[Unchanged.]

(C) Pretrial Placement.

(1) [Unchanged.]

(2) Criteria. The court may order placement of the child into foster care if the court finds all of the following:

(a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule ~~(A)~~(a).

(c)-(e) [Unchanged.]

(3)-(8)[Unchanged.]

(D)-Remainder of rule [Unchanged.]

#### Rule 3.972 Trial

(A)-(B)[Unchanged.]

(C) Evidentiary Matters.

(1) [Unchanged.]

(2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a~~(24)~~(25) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or (x), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a)-(c) [Unchanged.]

(D)-(E)[Unchanged.]

#### Rule 5.404 Guardianship of Minor

(A)-(G)[Unchanged.]

(H) Termination of Guardianship.

(1)-(4)[Unchanged.]

(5) Petition for Termination by a Party Other Than a Parent. If a petition for termination is filed by a party other than a parent or Indian custodian, the court may proceed in the manner for termination of a guardianship under section 5209 of the Estates and Protected Individuals Code, MCL 700.5209.

(6) [Unchanged.]

#### Rule 6.610 Criminal Procedure Generally

(A)-(D)[Unchanged.]

(E) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(1)-(7)[Unchanged.]

(8) The following provisions apply where a defendant seeks to challenge the plea.

(a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.105(~~F~~)(G)(2).

(b)-(c) [Unchanged.]

(9) [Unchanged.]

(F)-Remainder of rule [Unchanged.]

#### Rule 7.118 Appeals from the Michigan Parole Board

(A)-(H)[Unchanged.]

(I) Subsequent Appeal to the Court of Appeals. An appeal of a circuit court decision is by emergency application for leave to appeal to the Court of Appeals under MCR 7.205(~~E~~)(F), and the Court of Appeals shall expedite the matter.

(J) [Unchanged.]

#### Rule 7.205 Application for Leave to Appeal

(A)-(E)[Unchanged.]

(F) Emergency Appeal.

(1) [Unchanged.]

(2) When an appellant requires a hearing on an application in less than 21 days, the appellant shall file and serve a motion for immediate consideration, concisely stating facts showing why an immediate hearing is required. A notice of hearing of the application and motion or a transcript is not required. An answer may be filed within the time the court directs. If a copy of the application and of the motion for immediate consideration are personally served under MCR 2.107(C)(1) or (2), the application may be submitted to the court immediately on filing. If mail service is used, it may not be submitted until the first Tuesday 7 days after the date of service, unless the party served acknowledges receipt. In all other respects, submission, decision, and further proceedings are as provided in subrule ~~(D)~~(E).

(3) [Unchanged.]

(G)-(H)[Unchanged.]

[Please note that the following amendment of MCR 8.126 corrects the recent amendment of MCR 8.126 (ADM File No. 2004-08, to be effective May 1, 2016):]

#### Rule 8.126 Temporary Admission to the Bar

(A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may be temporarily admitted to practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.

(1) Procedure.

(a) Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with

whom the out-of-state attorney is associated shall file with the court, ~~or~~ administrative tribunal or agency, or arbitrator an appearance and a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible to practice, the document supplied by the State Bar of Michigan showing that the required fee has been paid and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify

(i)-(iv)[Unchanged.]

The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses and email addresses of both attorneys.

(b)-(d)[Unchanged.]

#### Rule 9.118 Review of Order of Hearing Panel

(A) Review of Order; Time.

(1)-(2)[Unchanged.]

(3) A delayed petition for review may be considered by the board chairperson under the guidelines of MCR 7.205~~(F)~~(G). If a petition for review is filed more than 12 months after the order of the hearing panel is entered, the petition may not be granted.

(B)-(F)[Unchanged.]

#### Rule 9.224 Review by Supreme Court

(A)-(E)[Unchanged.]

- (F) Submission. The clerk will place the case on a session calendar under MCR 7.3127.313. Oral argument may be requested.

## Code of Judicial Conduct

### Canon 3

#### A Judge Should Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A.-B. [Unchanged.]

C. Disqualification:

A judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(~~B~~)(C).

D. ~~Remittal~~ Waiver of Disqualification.

A disqualification of a judge may be ~~remitted~~ waived as provided by MCR 2.003(~~D~~)(E).

*Staff Comment:* These amendments update cross-references that changed after the rule was adopted and make other nonsubstantive revisions.

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.



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.

March 9, 2016

Clerk