

Order

Michigan Supreme Court
Lansing, Michigan

April 29, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-02

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra

Proposed Amendment of Rule 5.402
of the Michigan Court Rules

Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.402 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 [Administrative Matters & Court Rules page](#).

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 5.402 Common Provisions

(A)-(D)[Unchanged.]

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

(1)-(4)[Unchanged.]

(5) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall do all of the following:

(a) schedule a hearing to be conducted in accordance with MCR 5.404(C) and MCR 5.404(F).

(b) enter an order for an investigation in accordance with MCR 5.404(A)(2). The order shall be on a form approved by the State

Court Administrative Office and shall require the guardian to cooperate in the investigation. The court shall mail a copy of the order to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) by first-class mail.

- (c) provide notice of the guardianship and the hearing scheduled in subrule (5)(a) and the potential applicability of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act on a form approved by the State Court Administrative Office to the persons prescribed in MCR 5.125(A)(8), (C)(19), and (C)(25) in accordance with MCR 5.109(1). A copy of the notice shall be mailed to the guardian by first-class mail.

Staff Comment: The proposed amendments of MCR 5.402(E)(5)(a) would require a court that discovers a child of an ordered guardianship may be an Indian child to schedule a hearing in accordance with MCR 5.404(C) and MCR 5.404(F); also the amendment of MCR 5.402(E)(5)(b) would require the court to enter an order for investigation in accordance with MCR 5.404(A)(2), and the amendment of MCR 5.402(E)(5)(c) would require notice of the hearing scheduled in subrule (5)(a) to be provided to the persons prescribed.

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 Office of Administrative Counsel in writing or electronically by August 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@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 [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

April 29, 2015

Clerk