

# Order

**Michigan Supreme Court  
Lansing, Michigan**

October 22, 2014

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2014-37

Michael F. Cavanagh  
Stephen J. Markman

Proposed Amendments of  
Rules 3.963, 3.966, and 3.974  
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, this is to advise that the Court is considering an amendment of Rules 3.963, 3.966, and 3.974 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 3.963 Acquiring Physical Custody of Child

(A) [Unchanged.]

(B) Court-Ordered Custody.

(1) Order to Take Child into Protective Custody. The court may issue a written order, electronically or otherwise, 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, after presentment of a petition or affidavit of facts to the court, the court has reasonable cause to believe that all the following conditions exist, together with specific findings of fact:

(a) [Unchanged.]

(b) The circumstances warrant issuing an order pending ~~the~~a hearing in accordance with:

(i) MCR 3.965 for a child who is not yet under the jurisdiction of the court, or

(ii) MCR 3.974(C) for a child who is already under the jurisdiction of the court pursuant to MCR 3.971 or 3.972.

(c)-(e)[Unchanged.]

(2) [Unchanged.]

(3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending a preliminary hearing, or an emergency removal hearing if the court already has jurisdiction over the child pursuant to MCR 3.971 or MCR 3.972, whether there has been a central registry clearance, and whether a criminal history check has been initiated.

(4) [Unchanged.]

(C)-(D)[Unchanged.]

#### Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan.

(1) On motion of a party, the court must review the placement order or the initial service plan, and may modify the order and plan if it is in the best interest of the child, ~~and, if removal from the parent, guardian, or legal custodian is requested, at the hearing on the motion, the court shall follow the placement procedures in MCR 3.965(B) and (C) determine whether the conditions in MCR 3.965(C)(2) exist.~~

(2) If the child is removed from the home and disposition is not completed, ~~the progress of the child must be reviewed no later than 182 days from the date the child was removed from the home~~ the court shall conduct a dispositional hearing in accordance with MCR 3.973.

(B)-(C) [Unchanged.]

#### Rule 3.974 ~~Post-Dispositional Procedures; for~~ Child at Home; Petition Authorized

## (A) Review of Child's Progress.

- (1) General. The court shall periodically review the progress of a child not in foster care over whom it has ~~retained~~taken jurisdiction.
- (2) Time. If the child was never removed from the home, the progress of the child must be reviewed no later than 182 days from the date the petition was ~~filed~~authorized and no later than 91 days after that for the first year that the child is subject to the jurisdiction of the court. After that first year, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding hearing until the court terminates its jurisdiction. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care. If the child was removed from the home and subsequently returned home, review hearings shall be held in accordance with MCR 3.975.
- (3) Change of Placement. Except as provided in subrule (~~B~~C), the court may not order a change in the placement of a child ~~solely on the basis of a progress review without a hearing.~~ If the child ~~over~~for whom the court has ~~retained jurisdiction~~authorized a petition remains at home ~~following the initial dispositional hearing~~ or has otherwise returned home from foster care, and it comes to the court's attention at a review hearing held pursuant to subrule (A)(2), or as otherwise provided in this rule, that the child should be removed from the home, the court ~~must conduct a hearing before it may~~ order the placement of the child. If the court orders the child to be placed out of the home following a review hearing held pursuant to subrule (A)(2), the parent must be present and the court shall comply with the placement provisions in MCR 3.965 (C). If the parent is not present, the court shall proceed under subrule (C) before it may order removal. Such a hearing must be conducted in the manner provided in MCR 3.975(E), except as otherwise provided in this subrule for Indian children. If the child is an Indian child, in addition to ~~the~~a hearing ~~prescribed by~~held in accordance with ~~this rule~~subrule, the court must also conduct a removal hearing in accordance with MCR 3.967 before it may order the placement of the Indian child.

(B) Hearing on Petition for Out-of-Home Placement.

- (1) Preadjudication. If a child for whom a petition has been authorized pursuant to MCR 3.962 or MCR 3.965 is not yet under the jurisdiction of the court and an amended petition has been filed to remove the child from

the home, the court shall conduct a hearing on the petition in accordance with MCR 3.965.

- (2) Postadjudication. If a child is under the jurisdiction of the court and a supplemental petition has been filed to remove the child from the home, the court shall conduct a hearing on the petition. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921. Unless the child remains in the home, the court shall comply with the placement provisions in MCR 3.965(C) and must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied. If the court orders the child be placed out of the home, the court shall proceed under subrule (D).

(~~BC~~) Emergency Removal; Protective Custody.

- (1) General. ~~If thea~~ child, ~~overfor~~ whom the court has ~~retained jurisdiction~~ authorized an original petition, remains at home ~~following the initial dispositional hearing or has otherwise~~ is returned home from foster care following a hearing pursuant to the rules in this subchapter, the court may order the child to be taken into protective custody pending an emergency removal hearing pursuant to the conditions listed in MCR 3.963(B)(1) and upon receipt, electronically or otherwise, of a petition or affidavit of fact. 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) Notice. The court shall ensure that the parties are given notice of the emergency removal hearing as provided in MCR 3.920 and MCR 3.921.
- (3) Emergency Removal Hearing. If the court orders the child to be taken into protective custody pursuant to MCR 3.963, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). If the child is an Indian child, the court must also conduct a removal hearing in accordance with MCR 3.967 in order for the child to remain removed from a parent or Indian custodian.
- (a) Preadjudication. If a child for whom a petition has been authorized pursuant to MCR 3.962 or MCR 3.965 is not yet under the jurisdiction of the court, the emergency removal hearing shall be conducted in the manner provided by MCR 3.965.

- (b) Postadjudication. If a child is under the jurisdiction of the court, unless the child is returned to the parent pending disposition or the dispositional review, the court shall comply with the placement provisions in MCR 3.965(C) and must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.

The parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.

- ~~(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights at a hearing to be held pursuant to subrule (D):~~

- ~~(i) to be represented by an attorney at the dispositional review hearing;~~
- ~~(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and~~
- ~~(iii) to use compulsory process to obtain witnesses for the dispositional review hearing.~~

- ~~(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.~~

- ~~(E) Dispositional Review Hearing; Procedure Following Postadjudication Out- of- Home Placement.~~ If the child is in placement pursuant to subrule (B)(2) or (C)(3)(b), the court shall proceed as follows:

- (1) If the court has not held a dispositional hearing pursuant to MCR 3.973, the court shall conduct the dispositional hearing within 28 days after the child is placed by the court, except for good cause shown.

- (2) If the court has already held a dispositional hearing pursuant to MCR 3.973, a dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The dispositional review hearing may be combined with the removal hearing for an Indian child prescribed by MCR 3.967. The dispositional review hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

*Staff Comment:* The proposed amendments of MCR 3.963, 3.966, and 3.974 would provide clarity regarding procedures to be followed when an emergency removal of a child has occurred but a dispositional hearing has not been held.

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 February 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2014-37. 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.

October 22, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk