

Order

Michigan Supreme Court
Lansing, Michigan

May 27, 2015

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-37

Stephen J. Markman
Mary Beth Kelly

Amendments of Rules
3.963, 3.966, and 3.974
of the Michigan Court Rules

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

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of MCR 3.963, 3.966, and 3.974 are adopted, effective September 1, 2015.

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

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 under 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 under 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~~ 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 this ~~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 under 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 that the child be placed out of the home, the court shall proceed under subrule (D).

(BC) Emergency Removal; Protective Custody.

- (1) General. If ~~the~~a child, ~~over~~for 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~~under 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 under 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 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, t~~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 under 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~~under subrule (B)(2) or (C)(3)(b), the court shall proceed as follows:

- (1) If the court has not held a dispositional hearing under 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 under 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 amendments of MCR 3.963, 3.966, and 3.974 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. 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.

May 27, 2015

Clerk