

Order

Michigan Supreme Court
Lansing, Michigan

September 28, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2009-02

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Amendments of Rules 2.105,
2.612, 3.612, 3.802, 3.903,
3.920, 3.921, 3.929, 3.979, 5.125,
5.128, 6.509, 7.208, 7.210, 7.316,
and 8.119 of the Michigan Court
Rules and Amendment of
Administrative Order No. 2006-3

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

[The present language is amended as indicated below in underlining and overstriking.]

Rule 2.105 Process; Manner of Service

(A)-(C)[Unchanged.]

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(1)-(3)[Unchanged.]

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the ~~Michigan Corporations and Securities Bureau~~ Michigan Bureau of Commercial Services, Corporation Division if

(a)-(c) [Unchanged.]

(E) [Unchanged.]

(F) Service on Insurer. ~~If service on an insurer is made by serving the Commissioner of Insurance, as permitted by statute, 2 summonses and a copy of the complaint must be delivered or mailed by registered mail to the office of the Commissioner of Insurance.~~ To the extent that it is permitted by statute, service on an insurer may

be satisfied by providing two summonses and a copy of the complaint to the Commissioner of the Office of Financial and Insurance Regulation via delivery or registered mail.

(G)-(K)[Unchanged.]

Rule 2.612 Relief From Judgment or Order

(A)-(B)[Unchanged.]

(C) Grounds for Relief From Judgment.

(1) [Unchanged.]

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. Except as provided in MCR 2.614(A)(1), a motion under this subrule does not affect the finality of a judgment or suspend its operation.

(3) [Unchanged.]

Rule 3.612 Winding Up of Corporation Whose Term or Charter has Expired

(A) Scope; Rules Applicable. This rule applies to actions under MCL ~~600.3520~~450.1801 *et seq.* The general rules of procedure apply to these actions, except as provided in this rule and in MCL ~~600.3520~~450.1801 *et seq.*

(B)-(H) [Unchanged.]

Rule 3.802 Manner and Method of Service

(A)-(B)[Unchanged.]

(C) Service When Whereabouts of Noncustodial Parent Is Unascertainable. If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2)(~~b~~) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR 2.114(B)(2), of the attempt to locate the noncustodial parent. If the court finds, on reviewing the affidavit or declaration, that service cannot be made because the whereabouts of

the person has not been determined after reasonable effort, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

Rule 3.903 Definitions

(A)-(B)[Unchanged.]

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1)-(4)[Unchanged.]

(5) “Lawyer-guardian ad litem” means that term as defined in MCL 712A.13a(1)~~(f)~~(g).

(6)-(10)[Unchanged.]

(D)-(F)[Unchanged.]

Rule 3.920 Service of Process

(A) [Unchanged.]

(B) Summons.

(1) [Unchanged.]

(2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:

(a) In a delinquency proceeding, a summons must be served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile, directing them to appear with the juvenile for trial. The juvenile must also be served with a summons to appear for trial. A parent without physical custody must be notified by service as provided in subrule ~~(C)~~(D), unless the whereabouts of the parent remain unknown after a diligent inquiry.

(b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical

custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule ~~(C)~~(D).

(c) [Unchanged.]

(3)-(5)[Unchanged.]

(C) [Unchanged.]

(D) Notice of Hearing.

(1) General. Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules ~~(C)~~(D)(2) and ~~(C)~~(D)(3), or as otherwise provided in the rules.

(2)-(4) [Unchanged.]

(E)-(F)[Unchanged.]

(G) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule ~~(C)~~(D), except that a summons must be served for trial or termination hearing as provided in subrule (B).

(H)-(I)[Unchanged.]

Rule 3.921 Persons Entitled to Notice

(A) [Unchanged.]

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

(a) the respondent,

- (b) the attorney for the respondent,
- (c) the lawyer-guardian ad litem for the child,
- (d) subject to subrule ~~(C)~~(D), the parents, guardian, or legal custodian, if any, other than the respondent,

(e)-(i) [Unchanged.]

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

- (a) the agency responsible for the care and supervision of the child,
- (b) the person or institution having court-ordered custody of the child,
- (c) the parents of the child, subject to subrule ~~(C)~~(D), and the attorney for the respondent parent, unless parental rights have been terminated,

(d)-(m)[Unchanged.]

(3) [Unchanged.]

(C) [Unchanged.]

(D) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

(1) [Unchanged.]

(2) After notice to the putative father as provided in subrule ~~(C)~~(D)(1), the court may conduct a hearing and determine, as appropriate, that:

- (a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.

- (b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
- (c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule ~~(C)~~(D).
- (d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.

(3) [Unchanged.]

(E) [Unchanged.]

Rule 3.929 Use of Facsimile Communication Equipment

The parties may file records, as defined in MCR 3.903(A)~~(24)~~(25), by the use of facsimile communication equipment. Filing of records by the use of facsimile communication equipment in juvenile proceedings is governed by MCR 2.406.

Rule 3.979 Juvenile Guardianships

(A) Appointment of Juvenile Guardian; Process. If the Court determines at a posttermination review hearing or a permanency planning hearing that it is in the child's best interests, the court may appoint a juvenile guardian for the child pursuant to MCL 712A.19a or MCL 712A.19c.

(1)-(2) [Unchanged.]

(3) If the parental rights over a child who is the subject of a proposed juvenile guardianship have been terminated, the court shall not appoint a guardian without the written consent of the Michigan Children's Institute (MCI) superintendent. The court may order the Department of Human Services to seek the consent of the MCI superintendent. The consent must be filed with the court no later than 28 days after the permanency planning hearing or the posttermination review hearing, or such longer time as the court may allow for good cause shown.

- (a) [Unchanged.]
- (b) If a motion is filed alleging that the MCI superintendent's failure to consent was arbitrary and capricious, the court shall set a hearing date and ensure that notice is provided to the MCI superintendent and all parties entitled to notice under MCR 3.921.
- (c) [Unchanged.]

(B)-(F) [Unchanged.]

Rule 5.125 Interested Persons Defined

(A)-(B) [Unchanged.]

(C) **Specific Proceedings.** Subject to subrules (A) and (B) and MCR 5.105(E), the following provisions apply. When a single petition requests multiple forms of relief, the petitioner must give notice to all persons interested in each type of relief:

(1)-(24)[Unchanged.]

(25) The persons interested in a petition for the modification or termination of a guardianship or conservatorship or for the removal of a guardian or a conservator are

- (a) those interested in a petition for appointment under subrule (C)(19), (21), (22), or ~~(23)~~(24) as the case may be, and
- (b) the guardian or conservator.

(26)-(33) [Unchanged.]

(D)-(E)[Unchanged.]

Rule 5.128 Change of Venue

(A) [Unchanged.]

(B) Procedure. If venue is changed

(1) [Unchanged.]

(2) except as provided in MCR ~~5.306(A)~~5.208(A) or unless the court directs otherwise, notices required to be published must be published in the county to which venue was changed.

Rule 6.509 Appeal

(A) Availability of Appeal. Appeals from decisions under this subchapter are by application for leave to appeal to the Court of Appeals pursuant to MCR 7.205. The ~~12-month~~6-month time limit provided by MCR 7.205(F)(3), runs from the decision under this subchapter. Nothing in this subchapter shall be construed as extending the time to appeal from the original judgment.

(B)-(D)[Unchanged.]

Rule 7.208 Authority of Court or Tribunal Appealed From

(A) [Unchanged.]

(B) Postjudgment Motions in Criminal Cases.

(1) No later than 56 days after the commencement of the time for filing the defendant-appellant's brief as provided by MCR 7.212(A)(1)(a)(iii), the defendant may file in the trial court a motion for a new trial, for judgment of acquittal, to withdraw a plea, or ~~for resentencing to correct an invalid sentence.~~

(2)-(6) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.210 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

- (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.977(~~I~~)(3)(~~J~~)(3) or MCR 6.425(G)(2), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.

(b)-(e) [Unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

Rule 7.316 Miscellaneous Relief Obtainable in Supreme Court

(A) [Unchanged.]

- (B) **Allowing Act After Expiration of Time.** When, under the practice relating to appeals or stay of proceedings, a nonjurisdictional act is required to be done within a designated time, the Supreme Court may at any time, on motion and notice, permit it to be done after the expiration of the period on a showing made to the Court that there was good cause for the delay or that it was not due to the culpable negligence of the appellant. The Court will not entertain a motion to file a late application for leave to appeal under MCR 7.302(C)(3) or MCR 7.302(D)(2) or a late motion for reconsideration under MCR 7.313(~~E~~)(F).

(C)-(D) [Unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(D) [Unchanged.]

- (E) **Access to Records.** The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

(1)-(3) [Unchanged.]

- (4) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to

(a)-(c) [Unchanged.]

(F)-(G) [Unchanged.]

Administrative Order No. 2006-3. Michigan Uniform System of Citation

[First three paragraphs unchanged.]

I. Citation of Authority

A. [Unchanged.]

B. Citation of Constitutions, Statutes, Regulations, Court Rules, and Jury Instructions

1.-5. [Unchanged.]

6. *Administrative rules.*

a. ~~1999 Administrative Code: 1999 AC,~~ Mich Admin Code, R 408.41863.

b. If the rule has been amended or superseded, cite the appropriate Annual Supplement where available: 1983 ~~AACS~~Annual Admin Code Supp, R 408.41863, or a more recent revision in the *Michigan Register*: 1985 ~~MR~~Mich Reg 7, R 408.30495c.

(N.B.: Revisions appear monthly in the *Michigan Register* and are cumulated annually in ~~AACS~~Annual Admin Code Supp. E.g., regulations

published in 1985 ~~MR~~Mich Reg, vols. 1-12, are later reprinted in 1985 AACSA~~Annual Admin Code Supp.~~)

Subsequent references may be shortened: Rule 408.41863.

2003 PA 53 amended §§ 55 and 59 of the Administrative Procedures Act, MCL 24.255 and 24.259, effective July 14, 2003, to provide that the official Michigan Administrative Code is what is published and annually supplemented on the ~~Office of Regulatory Reform~~Office of Regulatory Reinvention website at ~~<http://www.michigan.gov/orr>~~.<http://www.michigan.gov/lara/0,1607,7-154-10576_35738---,00.html>.

C.-end[Unchanged.]

Staff Comment: The above noted changes are minor revisions of the rules that have been recommended to the Court to correct cross references and to reflect other technical changes.

The staff comment is not an authoritative construction by the Court.



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.

September 28, 2011

Corbin R. Davis

Clerk