

Order

Michigan Supreme Court
Lansing, Michigan

March 22, 2023

Elizabeth T. Clement,
Chief Justice

ADM File No. 2022-05

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

Amendments of Rules
3.977, 3.993, 7.311, and
7.316 of the Michigan
Court Rules

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 Rules 3.977, 3.993, 7.311, and 7.316 of the Michigan Court Rules are adopted, effective May 1, 2023.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 3.977 Termination of Parental Rights

(A)-(J) [Unchanged.]

(K) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights. On application in accordance with Chapter 7 of these rules, the Supreme Court may consider a claim of ineffective assistance of appellate counsel, and the Court will review such a claim using the standards that apply to criminal law.

Rule 3.993 Appeals

(A)-(B) [Unchanged.]

(C) Procedure; Ineffective Assistance of Appellate Counsel; Delayed Appeals.

(1) [Unchanged.]

(2) Ineffective Assistance of Appellate Counsel Claims. In accordance with MCR 7.316(D), the Supreme Court may consider a claim of ineffective assistance of appellate counsel in cases involving termination of parental rights.

(2) [Renumbered (3) but otherwise unchanged.]

(D)-(E) [Unchanged.]

Rule 7.311 Motions in Supreme Court

(A)-(G) [Unchanged.]

(H) Motion to Expand Record in Cases Involving Termination of Parental Rights. In a case involving termination of parental rights, a respondent who claims ineffective assistance of appellate counsel under MCR 7.316(D) may file a motion to expand the record to support that claim if appellate counsel's errors are not evident on the record. The motion must be filed no later than the date the application is due.

Rule 7.316 Miscellaneous Relief

(A)-(C) [Unchanged.]

(D) Ineffective Assistance of Appellate Counsel Claims in Appeals Involving Termination of Parental Rights. If a respondent's application for leave to appeal raises the issue of ineffective assistance of appellate counsel, the Court may consider the claim. In making its determination and in addition to any other action allowed by these rules or law, the Court may take the following actions:

- (1) order the trial court to appoint new appellate counsel under MCR 3.993(D),
- (2) allow the respondent time to retain new appellate counsel,
- (3) grant a motion to expand the record under MCR 7.311(H), or
- (4) remand the case to the Court of Appeals for a new appeal.

Staff Comment (ADM File No. 2022-05): The amendments of MCR 3.977, 3.993, 7.311, and 7.316 establish a procedure for assessing whether a respondent in a termination of parental rights case was denied the effective assistance of appellate counsel, and if so, providing relief.

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 22, 2023

Clerk