

Order

Michigan Supreme Court
Lansing, Michigan

April 23, 2025

Megan K. Cavanagh,
Chief Justice

ADM File No. 2023-38

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

Proposed Amendments of Rules
9.110, 9.111, 9.115, 9.117, 9.118,
9.125, 9.128, 9.129, 9.131, 9.201,
9.211, 9.221, 9.224, 9.231, 9.232,
9.233, 9.234, 9.235, 9.236, 9.240,
9.241, 9.242, 9.243, 9.244, 9.245,
9.251, 9.261, and 9.263 of the
Michigan Court Rules and Rules
1.12 and 3.5 of the Michigan Rules
of Professional Conduct

On order of the Court, this is to advise that the Court is considering amendments of Rules 9.110, 9.111, 9.115, 9.117, 9.118, 9.125, 9.128, 9.129, 9.131, 9.201, 9.211, 9.221, 9.224, 9.231, 9.232, 9.233, 9.234, 9.235, 9.236, 9.240, 9.241, 9.242, 9.243, 9.244, 9.245, 9.251, 9.261, and 9.263 of the Michigan Court Rules and Rules 1.12 and 3.5 of the Michigan Rules of Professional Conduct. 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 will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) 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 9.110 Attorney Discipline Board

(A)-(D) [Unchanged.]

(E) Powers and Duties. The board has the power and duty to:

(1) [Unchanged.]

(2) appoint hearing panels, neutral arbiters~~masters~~, monitors and mentors;

- (3) assign a proceeding under this subchapter to a hearing panel or to a neutral arbiter~~master~~, except that a proceeding for reinstatement under MCR 9.124 may not be assigned to a neutral arbiter~~master~~;

(4)-(10) [Unchanged.]

Rule 9.111 Hearing Panels

(A) [Unchanged.]

(B) Hearing Panelists or Neutral Arbiters~~Masters~~; Discipline.

- (1) An attorney shall not be appointed as a hearing panelist or neutral arbiter~~master~~ if he or she:

(a)-(b) [Unchanged.]

- (2) A hearing panelist or neutral arbiter~~master~~ who becomes the subject of an order imposing discipline, an admonition, or placement on contractual probation shall be removed from the roster of hearing panelists. A hearing panelist or neutral arbiter~~master~~ who becomes the subject of a formal discipline proceeding shall be removed from consideration of any pending matter; shall be placed on the ADB's roster of inactive panelists; and shall not be assigned to a panel until the formal discipline proceeding has been resolved. A hearing panelist or neutral arbiter~~master~~ who becomes the subject of an otherwise confidential request for investigation must disclose that investigation to the parties in the matter before the panelist or neutral arbiter~~master~~, or must disqualify himself or herself from participation in the matter.

(C) [Unchanged.]

Rule 9.115 Hearing Panel Procedure

(A)-(F) [Unchanged.]

- (G) Hearing Time and Place; Notice. The board or the chairperson of the hearing panel shall set the time and place for a hearing. Notice of a hearing must be served by the board or the chairperson of the hearing panel on the administrator, the respondent, the complainant, and any attorney of record at least 21 days before the initial hearing. Unless the board or the chairperson of the hearing panel otherwise directs, the hearing must be in the county in which the respondent has or last had an office or residence. If the hearing panel fails to convene or complete its hearing within a

reasonable time, the board may reassign the complaint to another panel or to a neutral arbiter~~master~~. A party may file a motion for a change of venue. The motion must be filed with the board and shall be decided by the board chairperson, in part, on the basis of the guidelines in MCR 2.221. Notwithstanding MRE 615, there shall be a presumption that a complainant is entitled to be present during a hearing, which may only be overcome upon a finding by the panel, supported by facts that are particular to the proceeding, that testimony by the complainant is likely to be materially affected by exposure to other testimony at the hearing.

(H)-(M) [Unchanged.]

Rule 9.117 Hearing Procedure Before Neutral Arbiter~~Master~~

If the board assigns a complaint to a neutral arbiter~~master~~, the neutral arbiter~~master~~ shall hold a public hearing on the complaint and receive evidence. To the extent that MCR 9.115 may be applied, it governs procedure before a neutral arbiter~~master~~. After the hearing, the neutral arbiter~~master~~ shall prepare a report containing

(1)-(3) [Unchanged.]

The neutral arbiter~~master~~ shall file the report with a hearing panel designated by the board and serve a copy on the administrator and the respondent. Within 14 days after the report is filed, the administrator or the respondent may file objections to the report and a supporting brief. The panel must determine if the record supports the findings of fact and conclusions of law and impose discipline, if warranted. Further proceedings are governed by MCR 9.118.

Rule 9.118 Review of Order of Hearing Panel

(A)-(B) [Unchanged.]

(C) Hearing.

(1) [Unchanged.]

(2) If the board believes that additional testimony should be taken, it may refer the case to a hearing panel or a neutral arbiter~~master~~. The panel or the neutral arbiter~~master~~ shall then take the additional testimony and shall make a supplemental report, including a transcript of the additional testimony, pleadings, exhibits, and briefs with the board. Notice of the filing of the supplemental report and a copy of the report must be served as an original report and order of a hearing panel.

(D)-(F) [Unchanged.]

Rule 9.125 Immunity

A person is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff, or given in an investigation or proceeding on alleged misconduct or reinstatement. The administrator, legal counsel, investigators, members of hearing panels, neutral arbiters~~masters~~, voluntary investigators, fee arbitrators, mentors, practice monitors, the commission, the board, and their staffs are absolutely immune from suit for conduct arising out of the performance of their duties.

A medical or psychological expert who administers testing or provides a report pursuant to MCR 9.114(C) or MCR 9.121 is absolutely immune from suit for statements and communications transmitted solely to the administrator, the commission, or the commission staff, or given in an investigation or formal disciplinary proceeding.

Rule 9.128 Costs

(A) [Unchanged.]

(B) Amount and Nature of Costs Assessed. The costs assessed under these rules shall include both basic administrative costs and disciplinary expenses actually incurred by the board, the commission, a neutral arbiter~~master~~, or a panel for the expenses of that investigation, hearing, review and appeal, if any.

(1) [Unchanged.]

(2) Actual Expenses. Within 14 days of the conclusion of a proceeding before a panel or a written request from the board, whichever is later, the grievance administrator shall file with the board an itemized statement of the commission's expenses allocable to the hearing, including expenses incurred during the grievance administrator's investigation. Copies shall be served upon the respondent and the panel. An itemized statement of the expenses of the board, the commission, and the panel, including the expenses of a neutral arbiter~~master~~, shall be a part of the report in all matters of discipline and reinstatement.

(C)-(E) [Unchanged.]

Rule 9.129 Expenses; Reimbursement

The state bar must reimburse each investigator, legal counsel, hearing panel member, board member, neutral arbiter~~master~~, and commission member for the actual and necessary expenses the board, commission, or administrator certifies as incurred as a result of these rules.

Rule 9.131 Investigation of Member or Employee of Board or Commission, or Relative of Member or Employee of Board or Commission; Investigation of Attorney Representing Respondent or Witness; Other Investigations Creating the Possible Appearance of Impropriety; Representation by Member or Employee of Board or Commission

(A) [Unchanged.]

(B) Investigation of Board Member or Employee or Relative of Board Member or Employee. Before the filing of a formal complaint, the procedures regarding a request for investigation of a member or employee of the board or relative of a member or employee of the board, are the same as in other cases. Thereafter, the following provisions apply:

(1) [Unchanged.]

(2) The chief justice shall appoint a hearing panel and may appoint a neutral arbiter~~master~~ to conduct the hearing. The hearing procedure is as provided in MCR 9.115, 9.117, or 9.120, as is appropriate, except that no matters shall be submitted to the board. Procedural matters ordinarily within the authority of the board shall be decided by the hearing panel, except that a motion to disqualify a member of the panel shall be decided by the chief justice.

(3)-(4) [Unchanged.]

(C)-(E) [Unchanged.]

Rule 9.201 Definitions

As used in this chapter, unless the context or subject matter otherwise requires

(A)-(D) [Unchanged.]

(E) “neutral arbiter~~master~~” means one or more judges or former judges appointed by the Supreme Court at the commission’s request to hold hearings on a complaint against a respondent.

(F)-(I) [Unchanged.]

Rule 9.211 Judicial Tenure Commission; Powers; Review

- (A) Authority of Commission. The commission has all the powers provided for under Const 1963, art 6, § 30, and further powers provided by Supreme Court rule. Proceedings before the commission or a neutral arbiter~~master~~ are governed by these rules. The commission may adopt and publish internal operating procedures for its internal operation and the administration of its proceedings that do not conflict with this subchapter and shall submit them to the Supreme Court for approval.
- (B) [Unchanged.]
- (C) Control of Commission Action. Proceedings under these rules are subject to the direct and exclusive superintending control of the Supreme Court. No other court has jurisdiction to restrict, control, or review the orders of the neutral arbiter~~master~~ or the commission.
- (D)-(E) [Unchanged.]

Rule 9.221 Evidence

- (A)-(C) [Unchanged.]
- (D) Sanctions for Contempt; Disobedience by Respondent.
 - (1) [Unchanged.]
 - (2) If a respondent disobeys a subpoena or other lawful order of the commission or the neutral arbiter~~master~~, whether before or during the hearing, the commission or the neutral arbiter~~master~~ may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).
- (E) [Unchanged.]

Rule 9.224 Complaint

- (A)-(B) [Unchanged.]
- (C) Upon issuing a complaint, the commission shall petition the Court for the appointment of a neutral arbiter~~master~~.

Rule 9.231 Appointment of Neutral Arbiter~~Master~~

- (A) The Supreme Court shall appoint a neutral arbiter~~master~~ to conduct the hearing within a reasonable period of the date of the petition and shall establish a date for completion of the hearing procedure.
- (B) The neutral arbiter~~master~~ shall set a time and a place for the hearing and shall notify the respondent and the examiner at least 28 days in advance. The neutral arbiter~~master~~ shall rule on all motions and other procedural matters incident to the complaint, answer, and hearing. Recommendations on dispositive motions shall not be announced until the conclusion of the hearing, except that the neutral arbiter~~master~~ may refer to the commission on an interlocutory basis a recommendation regarding a dispositive motion.
- (C) The neutral arbiter~~master~~ may conduct one or more pretrial conferences, and may order a prehearing conference to obtain admissions or otherwise narrow the issues presented by the pleadings.
- (D) Unless the parties agree to waive them, closing arguments at the hearing before the neutral arbiter~~master~~ shall be oral and take place upon conclusion of the presentation of evidence. The neutral arbiter~~master~~ may not adjourn or postpone closing arguments for the preparation of a transcript or the submission of proposed findings of fact.
- (E) MCR 2.003(B) shall govern all matters concerning the disqualification of a neutral arbiter~~master~~.

Rule 9.232 Discovery

(A)-(B) [Unchanged.]

- (C) If a party fails to comply with subrules (A) or (B), the neutral arbiter~~master~~ may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(e).

Rule 9.233 Public Hearing

(A) [Unchanged.]

(B) Effect of Failure to Comply.

- (1) If the respondent is in default for not having filed a timely answer or fails to attend the proceedings without being excused by the neutral arbiter~~master~~, the commission, or the court, the allegations set forth in the complaint shall

be deemed admitted, taken as true, and may form the basis for the neutral arbiter~~master~~ to make findings of fact.

- (2) The respondent's failure to testify in his or her own behalf or to submit to a medical examination requested by the commission or the neutral arbiter~~master~~ may be considered as an evidentiary fact, unless the failure was due to circumstances unrelated to the facts in issue at the hearing.
- (C) Record. The proceedings at the hearing must be recorded by stenographic or mechanical means. If the neutral arbiter~~master~~ declines to admit evidence, a separate record shall be made so that the commission and/or the court may consider that evidence and determine whether to include it in the record.

Rule 9.234 Subpoenas

- (A) [Unchanged.]
- (B) Sanctions for Contempt; Disobedience by Respondent.
 - (1) [Unchanged.]
 - (2) If a respondent disobeys a subpoena or other lawful order of the commission or the neutral arbiter~~master~~, whether before or during the hearing, the commission or the neutral arbiter~~master~~ may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).

Rule 9.235 Amendments of Complaint or Answer

The neutral arbiter~~master~~, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments of the complaint or the answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged in the amendment. A "28-day letter" is not required to amend a complaint.

Rule 9.236 Report of Neutral Arbiter~~Master~~

The court reporter shall prepare a transcript of the proceedings conducted before the neutral arbiter~~master~~ within 21 days of the conclusion of the hearing, filing the original with the commission, and serving copies on the respondent (or the respondent's attorney) and disciplinary counsel, by August 30, 2024 e-mail. Within 21 days after a transcript of the proceedings is provided, the neutral arbiter~~master~~ shall prepare and transmit to the

commission a report that contains a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. On receiving the report, the commission must promptly send a copy to the respondent, unless the neutral arbiter~~master~~ has already done so.

Rule 9.240 Objections to Report of Neutral Arbiter~~Master~~

Within 28 days after the neutral arbiter~~master~~'s report is mailed to the respondent, disciplinary counsel or the respondent may file with the commission an original and 9 copies of a brief in support of or in opposition to all or part of the neutral arbiter~~master~~'s report. The briefs must include a discussion of possible sanctions and, except as otherwise permitted by the commission, are limited to 50 pages in length. A copy of the brief must be served on the opposite party, who shall have 14 days to respond.

Rule 9.241 Appearance Before Commission

When the hearing before the neutral arbiter~~master~~ has concluded, the commission shall set a date for hearing objections to the report. Both the respondent and the disciplinary counsel may present oral argument at the hearing before the commission.

Rule 9.242 Extension of Time

For good cause shown, the commission or its chairperson may extend for periods not to exceed 28 days the time for the filing of an answer, for the commencement of a hearing before the commission, for the filing of the neutral arbiter~~master~~'s report, and for the filing of a statement of objections to the report of a neutral arbiter~~master~~.

Rule 9.243 Hearing Additional Evidence

The commission may order a hearing before itself or the neutral arbiter~~master~~ for the taking of additional evidence at any time while the complaint is pending before it. The order must set the time and place of hearing and indicate the matters about which evidence is to be taken. A copy of the order must be sent to the respondent at least 14 days before the hearing.

Rule 9.244 Commission Decision

(A) Majority Decision.

- (1) The affirmative vote of 5 commission members who have considered the report of the neutral arbiter~~master~~ and any objections, and who were present at an oral hearing provided for in MCR 9.241, or have read the transcript of

that hearing, is required for a recommendation of action with regard to a respondent. A commissioner may file a written dissent.

(2) [Unchanged.]

(B) Record of Decision.

(1) The commission must make written findings of fact and conclusions of law along with its recommendations for action with respect to the issues of fact and law in the proceedings, but may adopt the findings of the neutral arbiter~~master~~, in whole or in part, by reference. The commission's report must include a list of all respondent's prior disciplinary actions under MCR 9.223(A)(2)-(5) or MCR 9.224 and must include an acknowledgment that the commission has included its consideration of any prior discipline in the commission's recommended action. The list of previous disciplinary actions shall be submitted under seal and will be retained in a nonpublic manner. Disclosure of any prior disciplinary action will occur only if the information is relevant to any recommendation or imposed sanction.

(2) [Unchanged.]

Rule 9.245 Consent Agreements

(A) [Unchanged.]

(B) Commission Action. If the commission agrees to the terms set forth in the consent agreement in subsection (1), the commission shall issue a decision and recommendation as if there had been a neutral arbiter~~master~~'s report filed. If the commission agrees to the terms set forth in the consent agreement in subsection (2), the stipulated facts serve in lieu of a neutral arbiter~~master~~'s report and the matter then proceeds to a hearing before the commission, with the briefing schedule and an appearance before the commission, as set forth in MCR 9.240 and MCR 9.241. The time for filing a brief before the commission in matters filed under subsection (2) shall start with the filing of the consent agreement. A copy of the consent agreement shall be attached to the commission's decision. The commission's recommendation must include its rationale for accepting the consent agreement as well as a list of all respondent's prior disciplinary actions under MCR 9.223(A)(2)-(5) or MCR 9.224 and must include an acknowledgment that the commission has included its consideration of any prior discipline in the commission's recommended action. The list of previous disciplinary actions shall be submitted under seal and will be retained in a nonpublic manner. Disclosure of any prior disciplinary action will occur only if the information is relevant to any recommendation or imposed sanction.

(C)-(E) [Unchanged.]

Rule 9.251 Review by Supreme Court

(A) [Unchanged.]

(B) Role of Commission Counsel and Disciplinary Counsel. If a respondent submits a petition under subsection (A), commission counsel shall appear on behalf of the commission, submit the brief of the commission under subrule (C), and shall advocate only for the position recommended by the commission. Filing of documents with the commission shall be deemed service on commission counsel. Disciplinary counsel's involvement in the case is ended, unless the matter is remanded for further proceedings before the commission or neutral arbiter~~master~~.

(C)-(G) [Unchanged.]

Rule 9.261 Confidentiality; Disclosure

(A)-(C) [Unchanged.]

(D) After Filing of Complaint

(1) When the commission issues a complaint, the following shall not be confidential or privileged:

- (a) the complaint and all subsequent pleadings filed with the commission or neutral arbiter~~master~~, all stipulations entered, all findings of fact made by the neutral arbiter~~master~~ or commission, and all reports of the neutral arbiter~~master~~ or commission; however, all papers filed with and proceedings before the commission during the period preceding the issuance of a complaint remain confidential and privileged except where offered into evidence in a formal hearing; and
- (b) the formal hearing before the neutral arbiter~~master~~ or commission, and the public hearing provided for in MCR 9.241.

(2)-(3) [Unchanged.]

(E)-(K) [Unchanged.]

Rule 9.263 Immunity

A person is absolutely immune from civil suit for statements and communications transmitted solely to the commission, its employees, or its agents, or given in an investigation or proceeding on allegations regarding a respondent, and no civil action predicated upon the statements or communications may be instituted against a grievant, a witness, or his or her counsel. Members of the commission and their employees and agents, neutral arbiters~~masters~~, disciplinary counsel, and commission counsel are absolutely immune from civil suit for all conduct in the course of their official duties.

Michigan Rules of Professional Conduct

Rule 1.12. Former Judge or Arbitrator.

(a)-(c) [Unchanged.]

Comment:

This rule generally parallels Rule 1.11. The term “personally and substantially” signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the comment to Rule 1.11. The term “adjudicative officer” includes such officials as judges pro tempore, referees, neutral arbiters, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

Rule 3.5. Impartiality and Decorum of the Tribunal.

A lawyer shall not:

(a)-(d) [Unchanged.]

Comment:

[Paragraph 1 unchanged.]

During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, neutral arbiters, masters, or jurors, unless authorized to do so by law or court order.

[Paragraphs 3-4 unchanged.]

Staff Comment (ADM File No. 2023-38): The proposed amendments would replace the term “master” or “special master” with “neutral arbiter” or add the term “neutral arbiter” to a definition.

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.

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 submitted by August 1, 2025 by clicking on the “Comment on this Proposal” link under this proposal on the [Court’s Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2023-38. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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 23, 2025

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

Clerk