

# Order

Michigan Supreme Court  
Lansing, Michigan

October 26, 2022

Bridget M. McCormack,  
Chief Justice

ADM File No. 2022-05

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

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

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On order of the Court, this is to advise that the Court is considering amendments of Rules 3.977, 3.993, 7.311, and 7.316 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 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 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; 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 proposed amendments of MCR 3.977, 3.993, 7.311, and 7.316 would 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, provide 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.

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 February 1, 2023 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](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2022-05. 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.

October 26, 2022

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

Clerk