

COURT RULES UPDATE

Fall 2024

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The following are pending proposed changes to the Michigan Court Rules:

1. ADM File 2021-27: Proposed Amendments of MCR 3.207 and MCR 3.210

This ADM file was issued on September 11, 2024. The comment period expires on January 1, 2025. The proposed amendment of MCR 3.207 would: (1) clarify the pleading requirements for requesting certain ex parte orders, (2) require that an evidentiary hearing be scheduled anytime the court enters an order that may change a child's established custodial environment, and (3) clarify the procedure following service of an ex parte order. The proposed amendment of MCR 3.210 would require courts to hold an evidentiary hearing prior to entering an order changing a child's established custodial environment in contested cases.

The relevant proposed changes are:

Rule 3.207 Ex Parte, Temporary, and Protective Orders

(A) [Unchanged.]

(B) Ex Parte Orders.

(1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.

(a) An affidavit attached to a motion or a pleading that requests an ex parte custody or parenting time order or that requests a change of custody or parenting time must include the following information:

(i) facts establishing whether the child has an established custodial environment with either or both parents, and

(ii) either facts establishing that entry of the requested order will not change the child's established custodial environment, or facts establishing that clear and convincing evidence exists that the change in the child's established custodial environment is in the child's best interest.

(b) The court must not issue an order that could alter a child's established custodial environment without also scheduling an evidentiary hearing under MCL 722.27 to

be held within 21 days to determine whether there is clear and convincing evidence that the order is in the child's best interest. The hearing date must be included in the order.

(2) The moving party must arrange for the service of true copies of the ex parte order on the friend of the court and the other party within 3 days of the order being issued.

(3)-(4) [Unchanged.]

(5) Procedure Following Service of Ex Parte Order.

- (a) If no timely objection or motion to rescind or modify the ex parte custody, parenting time, or support order is filed, the order is a temporary order. If a hearing date was set in the order, the court may cancel the hearing.
- (b) If a party files a motion to rescind or modify the ex parte order without filing an objection, the court must hold an evidentiary hearing and resolve the dispute within 21 days of the motion being filed or on the hearing date specified in the ex parte order, if any.
- (c) If a party files a timely objection, the friend of the court must attempt to resolve the dispute within 14 days of the objection being filed or on the hearing date specified in the ex parte order, if any. If the friend of the court cannot resolve the dispute, the friend of the court must provide a motion form to the objecting party and schedule an evidentiary hearing to be held within 21 days of the motion being filed.
- (d) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.

(65) An ex parte order providing for child support, custody, or parenting time ~~visitation~~ pursuant to MCL 722.27a, must include the following notice:

"Notice:

"1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

"2. Unless a hearing date is set in this order, if you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

“3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and, unless a hearing date is set in this order, a request for a hearing. If a hearing date is set in this order, and you do not file a written objection or motion, the hearing may be canceled. Even if an objection or motion is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order.”

~~(6)~~ In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to the friend of the court and the other party, within 14 days after the order is served.

~~(a) If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed.~~

~~(b) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.~~

(7) [Unchanged.]

(C) Temporary Orders.

(1) [Unchanged.]

(2) A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in subrules (B)(5) ~~and (6)~~.

(3)-(6) [Unchanged.]

Rule 3.210 Hearings and Trials

(A)-(B) [Unchanged.]

(C) Custody of a Minor or Changing a Child’s Established Custodial Environment.

(1) When the custody, parenting time, change of domicile, or another motion regarding a minor is contested, the court may not enter an order resolving the contested matter that changes a child’s established custodial environment without first holding an evidentiary hearing to determine whether clear and convincing evidence exists to support that the order is in the child’s best interest. When the custody of a minor or a motion that would change a child’s established custodial environment is contested, a hearing on the matter must be held within 56 days

(a) [Unchanged.]

(b) after the filing of notice that a ~~custody~~ hearing is requested, unless both parties agree to mediation under MCR 3.216 or MCR 3.224(G) ~~MCL 552.513~~ and mediation is unsuccessful, in which event the hearing must be held within 56 days after the final mediation session.

(2)-(8) [Unchanged.]

(D)-(E) [Unchanged.]

2. ADM File 2020-08: Proposed Amendments of MCR 2.107 and 3.203

This ADM file was issued on September 11, 2024. The comment period expires on January 1, 2025. The proposed amendment of MCR 2.107 in this order reflects an alternative proposal that would expand the use of electronic service by requiring its use unless a party opts out. The proposed amendment of MCR 3.203 clarifies the use of electronic service in domestic relations cases.

The relevant proposed changes are:

Rule 2.107 Service and Filing of Pleadings and Other Documents

(A)-(B) [Unchanged.]

(C) Manner of Service. Except as otherwise provided in subrule (C)(4), all service by parties, except for case initiation, must be performed by using electronic means. If a case is not subject to electronic service and~~Except under MCR 1.109(G)(6)(a),~~ service of a copy of a document on an attorney ~~is~~ must be made by delivery or by mailing to the attorney, it must be delivered or mailed to at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Except under MCR 1.109(G)(6)(a), service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings. Nothing in this subrule requires the court or friend of the court to use electronic service.

(1)-(3) [Unchanged.]

(4) ~~Alternative Electronic Service.~~ Parties must use electronic service in accordance with this subrule unless the party opts out as provided in this subrule, another court rule requires a different method of service for a particular type of action or prohibits the use of electronic service, or the case is subject to electronic service under MCR 1.109(G)(6)(a).

(a) ~~Except as provided by MCR 1.109(G)(6)(a)(ii), the parties may agree to alternative electronic service among themselves by filing a stipulation in that case. Some or all of the parties may also agree to alternative electronic service of notices and court documents in a particular case by a court or a friend of the court by filing an agreement with the court or friend of the court respectively. Methods. Alternative E~~ Electronic service may be by any of the following methods:

(i)-(iii) [Unchanged.]

(b) Notification. A party initiating a case must file and serve on all other parties a notification of electronic service on a form approved by the State Court Administrative Office. All other parties must file and serve the notification form when filing their responsive pleading, or if no responsive pleading is filed, at the party's or the party's attorney's first appearance. The notification must state:

(i) Whether the party opts out from using electronic service, and if so, the reason(s) for opting out.

(ii) If the party is not opting out from electronic service, the notification must also state:

(A) The type(s) of electronic service the party can send and receive.

(B) The email address(es) or phone number(s) that will be used for electronic service, including the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party. Attorneys must include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the email address must be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission.

A party must file and serve a new notification form if the party's opt out status changes.

(c) Obligation to Provide and Update Information.

(i) The agreement for alternative electronic service shall set forth the e-mail addresses or phone numbers for service. Attorneys who agree to e-mail service shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the email address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties or attorneys who have not opted out of agreed to alternative electronic service under this subrule must ~~shall~~ immediately file with ~~notify, as required,~~ the court a new notification form and serve it on all parties and ~~or the friend~~

of the court if the e-mail address or phone number for service changes.

- (ii) ~~The agreement for service by text message or text message alert shall set forth the phone number for service.~~ Parties or attorneys who have agreed to service by text message or text message alert under this subrule ~~must~~ shall immediately file with ~~notify, as required,~~ the court a new notification form and serve it on all parties and ~~or~~ the friend of the court if the phone number for service changes.

(d) A party may opt out from using electronic service if any of the following barriers to effective electronic service exist:

- (i) the party lacks reliable access to the Internet or an electronic device that is capable of sending or receiving electronic service;
- (ii) the party lacks the technical ability to use and understand the methods for engaging in electronic service described in subrule (C)(4)(a);
- (iii) access from a home computer system or the ability to gain access at a public computer terminal present a safety issue for the party;
- (iv) the party has a disability as defined under the Americans with Disabilities Act that prevents or limits the person's ability to use the methods of electronic service identified in subrule (C)(4)(a);
- (v) the party has limited English proficiency that prevents or limits the person's ability to engage in or receive electronic service; or
- (vi) the party is confined by governmental authority, including but not limited to an individual who is incarcerated in a jail or prison facility, detained in a juvenile facility, or committed to a medical or mental health facility.

(ee) ~~The following party or attorney shall set forth the agreement all limitations and conditions concerning e-mail or text message service apply, including but not limited to:~~

- (i) Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message

the name of the court, case name, case number, and the title of each document being sent.

- (ii) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.
- (iii) An electronic service transmission sent at or before 11:59 p.m. is deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.
- (iv) Electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.
- (v) If an attachment exceeds the maximum size permitted by the email or text messaging provider, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a statement indicating that the electronic transmission was not possible due to its size. The court or friend of the court must also retain a notice that the electronic transmission was not possible.
- (vi) Exhibits must be attached or sent and designated as separate documents.
 - (i) ~~the maximum size of the document that may be attached to an e-mail or text message,~~
 - (ii) ~~designation of exhibits as separate documents,~~

~~(iii) — the obligation (if any) to furnish paper copies of e-mailed or text message documents, and~~

~~(iv) — the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.~~

~~(d) Documents served by e-mail or text message must be in PDF format or other format that prevents the alteration of the document contents. Documents served by alert must be in PDF format or other format for which a free downloadable reader is available.~~

~~(e) A document served by alternative electronic service that the court or friend of the court or his or her authorized designee is required to sign may be signed in accordance with MCR 1.109(E).~~

~~(f) — Each e-mail or text message that transmits a document or provides an alert to log in to view a document shall identify in the e-mail subject line or at the beginning of the text message the name of the court, case name, case number, and the title of each document being sent.~~

~~(g) — An alternative electronic service transmission sent at or before 11:59 p.m. shall be deemed to be served on that day. If the transmission is sent on a Saturday, Sunday, legal holiday, or other day on which the court is closed pursuant to court order, it is deemed to be served on the next business day.~~

~~(h) — A party or attorney may withdraw from an agreement for alternative electronic service by notifying the party or parties, court, and the friend of the court, as appropriate, in writing and shall take effect immediately.~~

~~(i) — Alternative electronic service is complete upon transmission, unless the party, court, or friend of the court making service learns that the attempted service did not reach the intended recipient. If an alternative electronic service transmission is undeliverable, the entity responsible for serving the document must serve the document by regular mail under MCR 2.107(C)(3) or by delivery under MCR 2.107(C)(1) or (2), and include a copy of the return notice indicating that the electronic transmission was undeliverable. The court or friend of the court must also retain a notice that the electronic transmission was undeliverable.~~

(gj) [Relettered as (g) but otherwise unchanged.]

~~(hk)~~ This rule does not require the court or the friend of the court to create functionality it does not have nor accommodate more than one standard for ~~alternative~~ electronic service.

~~(l)~~ The party or attorney requesting electronic service under this subrule is required to submit a request to initiate, update, modify, or withdraw from electronic service to the court independently from the friend of the court office.

(D)-(F) [Unchanged.]

~~(G)~~ Notwithstanding any other provision of this rule, until further order of the Court, all service of process except for case initiation must be performed using electronic means (eFiling where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of subsection (C)(4).

Rule 3.203 Service of Notice and Court Documents in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1)-(2) [Unchanged.]

(3) ~~Alternative~~ Electronic Service. A party or an attorney may file an agreement with the friend of the court to authorize the friend of the court to serve notices and court papers on the party or attorney in accordance with MCR 2.107(C)(4). However, the friend of the court must not use electronic service if federal law, state law, or court rule:

(a) prohibits the document from being served electronically in a form that complies with other court rules governing the document, or

(b) requires restrictions that make it less likely the recipient can receive or open the document.

(B)-(J) [Unchanged.]