



Michigan Supreme Court

State Court Administrative Office

Trial Court Services

Friend of the Court Bureau

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MEMORANDUM

DATE: September 4, 2008

TO: Chief Circuit Judges
Presiding Family Division Judges
County Clerks
Circuit Court Administrators
Family Division Administrators
Friends of the Court

FROM: Steven D. Capps

RE: Amendments of Michigan Court Rules MCR 3.204 (Proceedings Affecting Minors);
and MCR 3.212 (Postjudgment Transfer of Domestic Relations Cases)

I. PURPOSE

Amendments of MCR 3.204 (Proceedings Affecting Minors) and MCR 3.212 (Postjudgment Transfer of Domestic Relations Cases) have been adopted and became **effective September 1, 2008**. The amendments determine the appropriate venue for certain new domestic relations cases when the same adult parties (and usually at least one of their children) already have an existing domestic relations case. In general, the rule amendments require filing the new action in the same county as the earlier case when that is possible. They also provide for the postfiling consolidation of multiple actions involving the same parents when the new action must be filed in a different county than existing cases.

Courts or friends of the court should address questions or comments about these amendments to Toni Beatty at BeattyT@courts.mi.gov or call 517-373-5975.

II. Alert—Issues Involving Implementation

The court rule is designed to have all actions involving the same family heard by the same judge and with consideration of the family’s other cases. It was not designed to change the nature of the underlying statutory proceeding, which formerly would have been filed as a new case. Some courts have reported that their current case management systems will not accurately reflect a supplemental complaint as a “case” for caseload reporting purposes and further that the supplemental complaint may not be tracked accurately for time guidelines and caseload management purposes. Those courts can use the following procedure to ensure that a supplemental complaint is reported and tracked accurately:

1. The supplemental complaint will be captioned as a supplemental complaint in the existing case.
2. The court clerk will assign a new case number to the supplemental complaint.
3. The court will consolidate the new case with the existing case and administer the consolidated cases as set forth in Component 13 of the Case File Management Standards.

By assigning a new number, the case management system will track time guidelines and count the supplemental complaint as a case for caseload purposes.

III. Background

The four statutes that authorize courts to enter custody, parenting time, and support orders for children are the Divorce Act, MCL 552.1 *et seq.*; the Family Support Act, MCL 552.451 *et seq.*; the Paternity Act, MCL 722.711 *et seq.*; and the Child Custody Act, MCL 722.21 *et seq.* In addition, the Emancipation of Minors Act, MCL 722.1 *et seq.*, authorizes courts to order child support for a minor child. The venue requirements specified in those acts vary as follows:

Statute	County in Which Action May be Filed
Divorce Act MCL 552.1 <i>et seq.</i>	Where the mother or the father has lived at least ten days before filing.
Family Support Act MCL 552.451 <i>et seq.</i>	Where the mother or the father resides.
Paternity Act MCL 722.711 <i>et seq.</i>	Where the mother or the child resides, or if they reside out of state, wherever in Michigan the father resides or is found.
Child Custody Act MCL 722.21 <i>et seq.</i>	In the circuit court of the county with prior jurisdiction over the child, or, if none, where the child resides or may be found.
Emancipation of Minors Act MCL 722.1 <i>et seq.</i>	Where the child resides.

The amendments of MCR 3.204 expand that rule's venue provisions to address custody, parenting time, and support actions filed under all the laws listed above.¹ While remaining consistent with the statutory venue provisions, the rule amendments address both where and how to file a new action. The amendments also allow the court to waive rule requirements for good cause.

When parents change their residence after a final order of custody, parenting time, or support is entered, they sometimes file a new complaint involving the same child or other children in a different county. The basic concept of family division of circuit court contemplates that one judge will preside over all the cases involving the same family. In keeping with the family division concept, the consolidation of cases saves time and money for parents by decreasing the need for multiple hearings in multiple venues. Courts can determine a more equitable outcome. The revisions of MCR 3.204 and MCR 3.212 encourage the consolidation of those cases in one county before one judge whenever possible. The chart attached as "Appendix A" will help court staff to identify the case situations impacted by the changes of MCR 3.204.

IV. *MCR 3.204 Proceedings Affecting Children*

The word "minors" in the title of this court rule has been changed to "children." Courts may order child support to age 19 ½, so the term "minor" in the rule's title occasionally caused confusion. In addition to the title change, the rule text as amended now uses the terms "child" and "children" to clarify that it applies to children who may no longer be "minors."

In the pages that follow, sections of the amended rule are presented in italicized type, preceded or followed by this memo's summaries and explanations presented in other font styles.

(A) Unless the court orders otherwise for good cause, if a circuit court action involving child support, custody, or parenting time is pending, or if the circuit court has continuing jurisdiction over such matters because of a prior action:

Under the new rule language, a court may deviate from the requirements of MCR 3.204 in a pending action, but only for good cause.² SCAO recommends that the court's order explain or reference the reason for the deviation.

Subrules A(1) and A(2) below address the situation where there already is a case involving a child, and the child's parents file a new request for custody, child support or parenting time involving the same child or a different child.

(1) A new action concerning support, custody, or parenting time of the same child must be filed as a motion or supplemental complaint in the earlier

¹ This rule applies only to domestic relations actions and not to actions concerning neglect, abuse, or juvenile delinquency.

² For example, when a judge is disqualified from hearing the case in the county in which the rule would require the case be filed, it makes sense to allow the case to be filed in another county. Another example is when a conflict of interest between a party and court personnel cannot be resolved.

action. The new action shall be filed as a motion if the relief sought would have been available in the original action. If the relief sought was not available in the original action, the new action must be filed as a supplemental complaint.

When a subsequent request for relief regarding the support, custody, or parenting time of the *same* child is filed, it should be heard by the same judge and in the same court as the original action. If the relief could have been requested when the original action was filed, the rule requires filing the new request as a motion.³ Because the court already has the legal address for both parties (obtained during the original action), service of the pleadings for the new action can be accomplished by mail under MCR 3.203.

(2) A new action for the support, custody, or parenting time of a different child of the same parents must be filed as a supplemental complaint in the earlier action if the court has jurisdiction and the new action is not an action for divorce, annulment, or separate maintenance.

If two parents already have a case involving a child, and one parent needs to file a new action involving a *different* child of the same parents, the new action must be filed as a supplemental complaint. This allows the same judge to decide custody, child support, and parenting time for both or all siblings.

Subrule A(3) below prescribes the correct venue when a parent files a new action for divorce, annulment, or separate maintenance, and a circuit court already has jurisdiction in a custody, child support, or parenting time action involving a child of the same parents.

(3) A new action for divorce, annulment, or separate maintenance that also involves the support, custody, or parenting time of that child must be filed in the same county if the circuit court for that county has jurisdiction over the new action and the new case must be assigned to the same judge to whom the previous action was assigned.

Actions for divorce, annulment, or separate maintenance involve the relationship of the parties and the division of their real property, personal property, and debt and therefore, should not be treated as ancillary to an existing custody, child support, or parenting time action.⁴ Whenever

³ For example, assume that paternity was established and support ordered. Subsequently, the noncustodial parent seeks custody of the child. The same judge who heard the original action should hear the new custody matter. Because custody could have been sought in the earlier action, the noncustodial parent must file a *motion* seeking custody. There are few situations in which a new action will have to be filed as a *supplemental complaint*, but those situations will arise. For example, custody orders were not available under the Family Support Act prior to 2002; therefore, a supplemental complaint seeking custody will be necessary if the original complaint was based on the Family Support Act prior to its 2002 amendment.

⁴ For example, suppose that an order for support of the child of unmarried parents was entered and the parents later marry, but state arrears continued to be owed. If one parent subsequently files for divorce, the divorce complaint may not be filed as a supplemental complaint in the previous child support action. However, the court may later

possible, however, these new actions should be filed in the same circuit and assigned to the same judge as the previous action.

Subrule A (4) below allows parents to file supplemental pleadings without first seeking the permission of the court.

(4) A party may file a supplemental pleading required by this subrule without first seeking and obtaining permission from the court. The supplemental pleading must be served as provided in MCR 3.203(A)(2), and an answer must be filed within the time allowed by MCR 2.108. When this rule requires a supplemental pleading, all filing and judgment entry fees must be paid as if the action was filed separately.

MCR 2.118(E) requires that a party obtain the court's approval for filing a supplemental pleading.⁵ The amended language of Subrule (A)(4) dispenses with that requirement in this domestic relations context. The reference to MCR 3.203(A)(2) confirms that MCR 2.107 governing service of process applies unless a court rule or statute provides otherwise.⁶ Filing and judgment fees are paid as if the action was filed separately.

Subrule B, below, outlines venue choices when parents with multiple pending circuit court actions in the same or different circuits file a new or supplemental complaint for a different child.

(B) When more than one circuit court action involving support, custody, or parenting time of a child is pending, or more than one circuit court has continuing jurisdiction over those matters because of prior actions, an original or supplemental complaint for the support, custody, or parenting time of a different child of the same parents must be filed in whichever circuit court has jurisdiction to decide the new action. If more than one of the previously involved circuit courts would have jurisdiction to decide the new action, or if the action might be filed in more than one county within a circuit:

- (1) The new action must be filed in the same county as a prior action involving the parents' separate maintenance, divorce, or annulment.***
- (2) If no prior action involves separate maintenance, divorce, or annulment, the new action must be filed:***
 - (a) in the county of the circuit court that has issued a judgment affecting the majority of the parents' children in common, or***
 - (b) if no circuit court for a county has issued a judgment affecting a majority of the parents' children in common, then in the county of the***

consolidate the two cases.

⁵ Supplemental pleadings may state transactions or events which have taken place after the original case was filed.

⁶ For example, MCL 552.451 (The Family Support Act) specifies that parties be personally served.

circuit court that has issued the most recent judgment affecting a child of the same parents.

Sometimes parents have multiple pending domestic relations actions in several circuit courts. When the parents already have cases in more than one circuit, often the new case could be filed in any of those circuits. The amendments establish a hierarchy for deciding where to file the new case.

The simplest rule is that if the new action can only be filed in one “previous” circuit, then that is the circuit where the new action must be filed.

A special rule applies when the parents have an existing divorce, separate maintenance, or annulment action. Any new action involving their child or children must be filed in the same circuit because that circuit can grant the fullest relief to the parties.⁷

If the parents were never married (and thus have never been parties to the *same* prior action for divorce, separate maintenance, or annulment), a new action concerning a different child of those parents must be filed in the county that has issued a judgment affecting the *majority* of the parents’ children in common. If there is no prior judgment affecting a majority of the children in common, then the new action must be filed in the county that issued the *most recent* judgment affecting a child of the same parents. This rule assumes that the most recent court to act will be the most convenient forum for hearing all of the parties’ cases.

When cases are filed according to these new venue-priority rules, the presiding court will be able to see the whole picture of how court decisions will impact the family. Combined with the postjudgment case transfer requirements of MCR 3.212 discussed later in this memo, most family division cases affecting parents and their children in common will be consolidated and transferred to a single judge. Orders for support and parenting time will be issued by the judge who can make the most accurate assessment of the parents, their children, and their obligations. Combining court hearings, interviews, and investigations will save judicial resources. Parents will benefit because their presiding judge knew of and considered the multiple support obligations affecting the parties.

Subrule C, below, discusses the administrative consolidation of multiple cases.

(C) The court may consolidate actions administratively without holding a consolidation hearing when:

- (1) the cases involve different children of the same parents but all other parties are the same, or***
- (2) more than one action involves the same child and parents.***

Allowing courts to administratively consolidate actions saves judicial resources and benefits the parties by reducing the expenses related to attending a consolidation hearing.

⁷ Some circuits have more than one county. For example, the 8th circuit consists of Ionia and Montcalm counties. The rule requires that a new action be filed not only in the same circuit, but also the same county within that circuit.

(D) If a new action for support is filed in a circuit court in which a party has an existing action or pending support obligation, the new case must be assigned to the same judge to whom the other case is assigned, pursuant to MCR 8.111(D).

(E) In a case involving a dispute regarding the custody of a minor child, the court may, on motion of a party or on its own initiative, for good cause shown, appoint a guardian ad litem to represent the child and assess the costs and reasonable fees against the parties involved in full or in part.

Subrules D and E above, have been re-lettered but contain no language changes.

The language in subrules A and B below remain unchanged, except that the word “child” has been substituted for the word “minor.”
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V. MCL 3.212 Postjudgment Transfer of Domestic Relations Cases

(A) Motion.

(1) A party, court-ordered custodian, or friend of the court may move for the postjudgment transfer of a domestic relations action in accordance with this rule, or the court may transfer such an action on its own motion. A transfer includes a change of venue and a transfer of all friends of the court responsibilities. The court may enter a consent order transferring a postjudgment domestic relations action, provided the conditions under subrule (B) are met.

(2) The postjudgment transfer of an action initiated pursuant to MCL 780.151 et seq., is controlled by MCR 3.214.

(B) Conditions.

(1) A Motion filed by a party or court-ordered custodian may be granted only if all of the following conditions are met:

(a) the transfer of the action is requested on the basis of the residence and convenience of the parties, or other good cause consistent with the best interests of the child;

(b) neither party nor the court-ordered custodian has resided in the county of current jurisdiction for at least 6 months prior to the filing of the motion; and

(c) at least one party or the court-ordered custodian has resided in the county to which the transfer is requested for at least 6 months prior to the filing of the motion; and

(d) the county to which the transfer is requested is not contiguous to the county of current jurisdiction.

(2) When the court or the friend of the court initiates a transfer, the conditions stated in subrule (B)(1) do not apply.

Subrule C, below, explains the FOC's responsibilities for transferring an older case when an FOC becomes aware of a more recent judgment in a different circuit.

(C) Unless the court orders otherwise for good cause, if a friend of the court becomes aware of a more recent final judgment involving the same parties issued in a different county, the friend of the court must initiate a transfer of the older case to the county in which the new judgment was entered if neither of the parents, any of their children who are affected by the judgment in the older case, nor another party resides in the county in which the older case was filed.

If the FOC becomes aware of a more recent final judgment involving the same parents in another case, that case should be reviewed to see if this new subrule requires the FOC to file a motion to transfer the older case to the court that issued the more recent judgment. If neither parent, nor the court-ordered custodian, nor any of the affected children reside in the same county in which the older action was filed, the FOC *must* initiate a transfer of the older case to the county with the newer case -- unless the court orders otherwise for good cause.⁸ If a court finds good cause to deny a request to transfer the case, that court should enter an order that explains its finding.

Together, the amendments of MCR 3.204 and MCR 3.212 will result in older cases being transferred to circuits with newer cases and being assigned to judges presiding over newer cases. The court ordering the postjudgment transfer must issue all the necessary orders to effect the transfer. SCAO Administrative Memorandum 2007-04, <http://courts.michigan.gov/scao/resources/other/proc.htm>, provides guidelines for completing a postjudgment case transfer pursuant to MCR 3.212.⁹

(D) Transfer Order

(1) The court ordering a postjudgment transfer must enter all necessary orders pertaining to the certification and transfer of the action. The transferring court must send to the receiving court all court files and friend of the court files, ledgers, records, and documents that pertain to the action. Such materials may be used in the receiving jurisdiction in the same manner as in the transferring jurisdiction.

(2) The court may order that any past-due fees and costs be paid to the transferring friend of the court office at the time of transfer.

(3) The court may order that one or both of the parties or the court-ordered custodian pay the cost of the transfer.

(E) Filing Fee. An order transferring a case under this rule must provide that the party who moved for the transfer pay the statutory filing fee applicable to the court to which

⁸ See form FOC 24, "Motion/Stipulation for Transferring Case (Post Judgment)", at <http://courts.michigan.gov/scao/courtforms/domesticrelations/drindex.htm>

⁹ The rule governs transfers between Michigan counties. It does not address interstate case transfers, which are governed by the Uniform Interstate Family Support Act.

the action is transferred, except where MCR 2.002 applies. If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise. In either event, the transferring court must submit the filing fee to the court to which the action is transferred, at the time of transfer. If the court or friend of the court initiates the transfer, the statutory filing fee is waived.

(F) Physical Transfer of Files. Court and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by another secure method of transfer.

Subrules D, E and F have been re-lettered but contain no language changes.

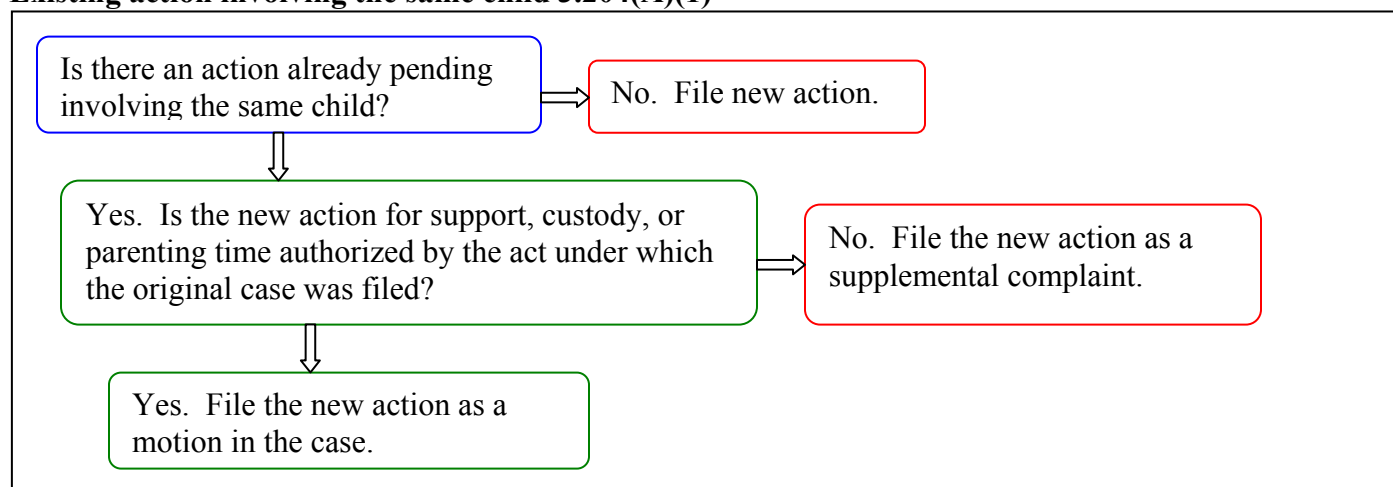
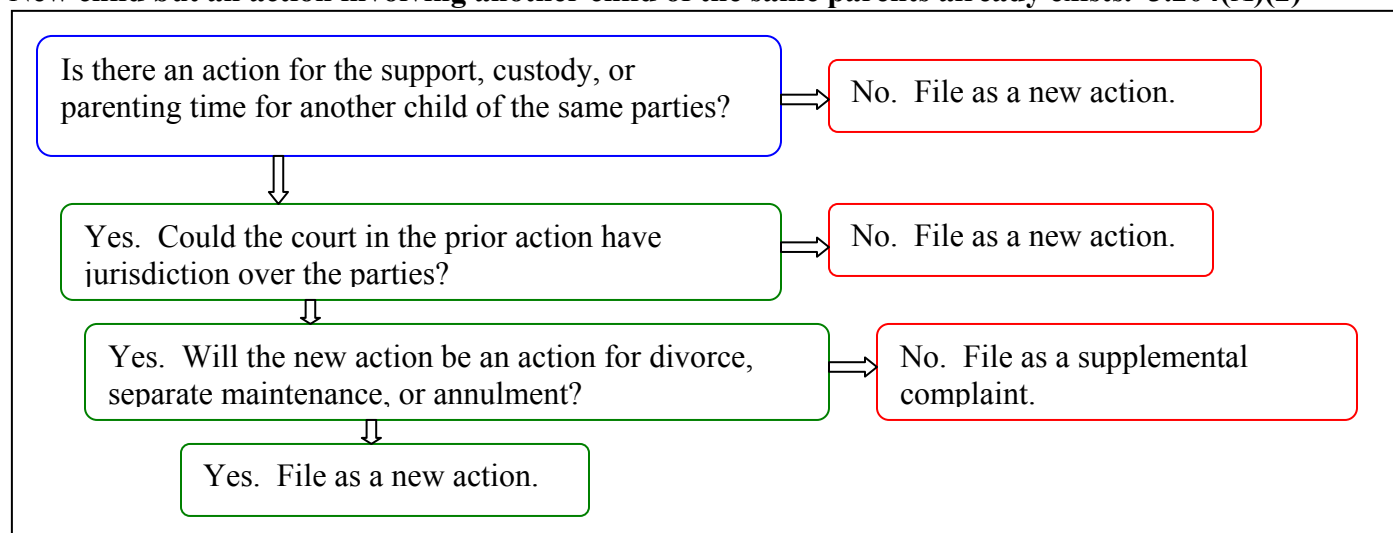
Subrule G, below, explains the transferee FOC's responsibilities upon receiving an older case from a different circuit.

(G) Upon completion of the transfer, the transferee friend of the court must review the case and determine whether the case contains orders specific to the transferring court or county. The friend of the court must take such action as is necessary, which may include obtaining ex parte orders to transfer court or county specific actions to the transferee court.

The transferee FOC must review the case when the transfer is complete. If the files contain orders that are specific to the transferring court, such as a bench warrant that requires a party to be brought before the transferring court, or an order to obtain services from an agency in the transferring region, the transferee FOC must identify those orders and, if necessary, take steps to have the orders modified so that they no longer tie the parties to the previous circuit. This may involve the FOC obtaining ex parte orders to effectuate or expedite the transfer of responsibilities in the case.

VI. Case Management Implementation

SCAO is reviewing the implementation procedures required to implement this rule, and is forming a workgroup to assist in that assessment. If you have questions about using your case management system in light of these new rules contact your system provider. If you have any other questions related to implementing these court rules, contact Toni Beatty at beattyt@courts.mi.gov.

Existing action involving the same child 3.204(A)(1)**New child but an action involving another child of the same parents already exists. 3.204(A)(2)****The parents already have child-in-common cases pending in multiple jurisdictions. 3.204(A)(3) and (B)**