

Order

Michigan Supreme Court
Lansing, Michigan

June 15, 2022

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-15

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

Amendment of Rule 2 and Addition
of Rule 21 of the Rules Concerning
the State Bar of Michigan and
Amendment of Rule 9.119 and
Addition of Subchapter 9.300 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 Amendment of Rule 2 and Addition of Rule 21 of the Rules Concerning the State Bar of Michigan and Amendment of Rule 9.119 and Addition of Subchapter 9.300 of the Michigan Court Rules are adopted, effective September 1, 2023.

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

Rule 2 Membership

Those persons who are licensed to practice law in this state shall constitute the membership of the State Bar of Michigan, subject to the provisions of these rules. Law students may become section members of the State Bar Law Student Section. None other than a member's correct name shall be entered upon the official register of attorneys of this state. Each member, upon admission to the State Bar and in the annual licensing statement~~due notice~~, must provide the State Bar with:

- (A) ~~The~~ member's correct name, physical address, and email address, that can be used, among other things, for the annual licensing statement~~due notice~~ and to effectuate electronic service as authorized by court rule, and such additional information as may be required. If the physical address provided is a mailing address only, the member also must provide a street or building address for the member's business or residence. No member shall practice law in this state until the information required in this Rule has been provided. Members shall promptly notify~~update~~ the State Bar in writing of~~with~~ any change of name, physical address, or email address. The State Bar shall be entitled to due notice of, and to intervene and be heard in, any proceeding by a member to alter or change the member's name. The name and address on file with the State Bar at the time shall control in any matter arising under

these rules involving the sufficiency of notice to a member or the propriety of the name used by the member in the practice of law or in a judicial election or in an election for any other public office.

- (B) ~~Every active member shall annually provide a~~ A certification as to whether the member is in private practice. The signed certification shall be placed on the annual licensing statement and shall require the member's signature or electronic signature. If the member is in private practice, the certification must also include:

- (1) whether the member or the member's law firm has a policy to maintain interest-bearing trust accounts for deposit of client and third-party funds; and
- (2) beginning in 2023, a designation of the attorney's Interim Administrator, as required by Rule 21. If the attorney is designating his or her own Interim Administrator, the designation must include the name and address of the active Michigan attorney in good standing or a Michigan law firm that includes at least one other Michigan attorney in good standing, who will serve, if needed, as the member's Interim Administrator.

~~The certification shall be included on the annual dues notice and shall require the member's signature or electronic signature.~~

- (C) An indication whether the member is willing to be placed on the State Bar's list of members who agree to serve as Interim Administrator for other members.

[NEW] Rule 21 Mandatory Interim Administrator Planning

- (A) An attorney in private practice must designate an Interim Administrator to protect clients by temporarily managing the attorney's practice if the attorney becomes unexpectedly unable to practice law as set forth in MCR 9.301 and pursuant to Rule 2(B) of the Rules Concerning the State Bar of Michigan. On the State Bar of Michigan annual licensing statement, the attorney shall, beginning in 2023 and annually thereafter,
- (1) designate another active Michigan attorney in good standing or law firm with at least one other active Michigan attorney in good standing to serve as the attorney's Interim Administrator, or indicate that he or she wishes to designate an attorney from the list maintained by the State Bar of Michigan; and
 - (2) identify a person with knowledge of the location of the attorney's professional paper and electronic files and records and knowledge of the location of passwords and other security protocols required to access the

attorney's professional electronic records and files. The person so identified may be the same person designated as the Interim Administrator.

The State Bar of Michigan shall create a confirmation process for designated Interim Administrators to confirm that they are willing to serve as Interim Administrator.

- (B) A member who indicates in the annual licensing statement that he or she wishes to utilize the list maintained by the State Bar of Michigan must pay a \$60 fee to the State Bar of Michigan each time he or she chooses this option on the annual licensing statement. The fees collected under this subrule may only be used to fund activities related to Interim Administrators and Interim Administrator planning.
- (C) The State Bar of Michigan shall maintain a list of members who have indicated a willingness to serve as Interim Administrators under Rule 2(C) of the Rules Concerning the State Bar of Michigan. This list must include the member's name, address, and the judicial circuit(s) and practice area(s) in which he or she is willing to be appointed as an Interim Administrator. The State Bar of Michigan will only match an attorney to an Interim Administrator upon notification that the attorney has become an Affected Attorney as defined in MCR 9.301(A).
- (D) Every Interim Administrator, as that term is defined in MCR 9.301(E), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Michigan Court Rules.
- (E) The State Bar of Michigan shall submit a written report to the Michigan Supreme Court regarding the implementation of the Interim Administrator Program by January 1, 2024. The report shall contain an accounting of the funds received and expended under subrule (B).

Rule 9.119 Conduct of Disbarred, Suspended, or Inactive Attorneys

(A)-(F) [Unchanged.]

~~(G) Receivership.~~

- ~~(1) Attorney with a firm. If an attorney who is a member of a firm is disbarred, suspended, is transferred to inactive status pursuant to MCR 9.121, or resigns his or her license to practice law, the firm may continue to represent each client with the client's express written consent. Copies of the signed consents shall be maintained with the client file.~~
- ~~(2) Attorney practicing alone. If an attorney is transferred to inactive status, resigns, or is disbarred or suspended and fails to give notice under the rule,~~

~~or disappears, is imprisoned, or dies, and there is no partner, executor or other responsible person capable of conducting the attorney's affairs, the administrator may ask the chief judge in the judicial circuit in which the attorney maintained his or her practice to appoint a person to act as a receiver with necessary powers, including:~~

- ~~(a) to obtain and inventory the attorney's files;~~
- ~~(b) to take any action necessary to protect the interests of the attorney and the attorney's clients;~~
- ~~(c) to change the address at which the attorney's mail is delivered and to open the mail; or~~
- ~~(d) to secure (garner) the lawyer's bank accounts.~~

~~The person appointed is analogous to a receiver operating under the direction of the circuit court.~~

- ~~(3) Confidentiality. The person appointed may not disclose to any third parties any information protected by MRPC 1.6 without the client's written consent.~~
- ~~(4) Publication of Notice. Upon receipt of notification from the receiver, the state bar shall publish in the Michigan Bar Journal notice of the receivership, including the name and address of the subject attorney, and the name, address, and telephone number of the receiver.~~

[NEW] Subchapter 9.300 Interim Administrators

Rule 9.301 Definitions

- (A) "Affected Attorney" means an attorney who is either temporarily or permanently unable to practice law because the attorney has:
 - (1) resigned;
 - (2) been disbarred or suspended;
 - (3) disappeared;
 - (4) been imprisoned;
 - (5) abandoned the practice of law;

- (6) become temporarily or permanently disabled or incapacitated;
 - (7) been transferred to disability inactive status pursuant to MCR 9.121; or
 - (8) died.
- (B) “Affected Attorney’s Clients” are clients to whom the Affected Attorney is the attorney of record, regardless of whether the retainer agreement is with the Affected Attorney or the Affected Attorney’s Law Firm.
- (C) “Appointed Interim Administrator” means an Interim Administrator who is appointed by the circuit court pursuant to MCR 9.305 to serve on behalf of the Affected Attorney.
- (D) “Designated Interim Administrator” means an Interim Administrator that a Private Practice Attorney has designated to serve and who has accepted the designation in the event the Private Practice Attorney should become an Affected Attorney.
- (E) “Interim Administrator” means a general term for an active Michigan attorney in good standing who serves on behalf of a Private Practice Attorney who becomes an Affected Attorney. It also means a law firm with at least one other active Michigan attorney that is designated to serve on behalf of a Private Practice Attorney who becomes an Affected Attorney.
- (F) “Law Firm” means the entity in which the Affected Attorney carries out the profession of being a lawyer.
- (G) “Private Practice Attorney” means an attorney who is an active Michigan attorney in good standing and who is subject to Rule 21 of the Rules Concerning the State Bar of Michigan, Mandatory Interim Administrator Planning.

Rule 9.303 Affected Attorney with a Firm.

The firm of an attorney who becomes an Affected Attorney may continue to represent each of the Affected Attorney’s Clients without a circuit court appointment as Interim Administrator, provided:

- (A) the firm is the Affected Attorney’s Designated Interim Administrator;
- (B) the firm has at least one active Michigan attorney in good standing capable of competently representing the Affected Attorney’s Clients; and

- (C) each Affected Client gives express written consent to the representation. Copies of the signed consents must be maintained with the client file.

Rule 9.305 Appointment of Interim Administrator.

- (A) Commencement of Proceeding for Appointment of Interim Administrator; Service of Process. A proceeding for the appointment of an Interim Administrator is commenced by the filing of an ex parte petition by the Interim Administrator in the circuit court for the county in which the Affected Attorney lives, last lived, or maintains or last maintained an office for the practice of law. If an Interim Administrator is unable to serve, he or she must promptly notify the State Bar, and the State Bar must promptly identify a replacement Interim Administrator using the list maintained by the State Bar under Rule 21(C) of the Rules Concerning the State Bar of Michigan or its own staff under attorney supervision as a measure of last resort.
 - (1) The petition must set forth facts proving that
 - (a) the attorney is an Affected Attorney as defined in MCR 9.301(A).
 - (b) the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients or the interests of the Affected Attorney.
 - (c) the attorney proposed to be appointed as Interim Administrator is qualified under this rule.
 - (2) The petition must be verified or accompanied by an affidavit or declaration under penalty of perjury of a person having personal knowledge of the facts.
 - (3) The petition and any supporting documents must be served upon the Affected Attorney if the whereabouts of the Affected Attorney are known, the Affected Attorney's estate if the Affected Attorney has died, and on the fiduciary for the Affected Attorney, if one has been appointed. See MCR 2.103 – 2.108. If the petition is filed by the Designated Interim Administrator, it must also be served upon the State Bar of Michigan by email at an address designated by the State Bar of Michigan pursuant to MCR 2.107(C)(4) or by electronic service pursuant to MCR 1.109(G)(6).
- (B) Order of Appointment. If the circuit court determines that the petitioner has proven by a preponderance of the evidence that the attorney is an Affected Attorney as defined in MCR 9.301(A) and the appointment of an Interim Administrator is necessary to protect the interests of the Affected Attorney's Clients or the interests

of the Affected Attorney, the circuit court shall appoint one or more Interim Administrators, as follows:

- (1) The circuit court must appoint the Designated Interim Administrator or the Interim Administrator proposed by the State Bar under subrule (A), unless good cause exists to appoint a different Interim Administrator.
 - (2) If good cause exists, the circuit court may appoint additional Interim Administrators.
 - (3) The order appointing an Interim Administrator shall specifically authorize the Interim Administrator to:
 - (a) take custody of and act as signatory on any bank or investment accounts, safe deposit boxes, and other depositories maintained by the Affected Attorney in connection with the Law Firm, including all lawyer trust accounts, escrow accounts, payroll accounts, operating accounts, and special accounts;
 - (b) disburse funds to clients of the Affected Attorney or others entitled thereto; and
 - (c) take all appropriate actions with respect to the accounts.
 - (4) The order appointing an Interim Administrator takes effect immediately upon entry unless the circuit court orders otherwise.
 - (5) The circuit court may order the Interim Administrator to submit interim and final accountings and reports, as it deems appropriate. The circuit court may allow or direct portions of any accounting relating to the funds and confidential information of the clients of the Affected Attorney to be filed under seal.
- (C) Service of Notice of Interim Administrator's Appointment. Upon receipt of an order of appointment of an Interim Administrator, the petitioner must serve the Notice of Appointment of an Interim Administrator's appointment, including the name and address of the Affected Attorney, and the name, business address, business telephone number, business email address, and P number of the Interim Administrator on the Affected Attorney, the Affected Attorney's estate if the Affected Attorney has died, and the Affected Attorney's fiduciary. If the petitioner is the Designated Interim Administrator, service must also be made on the State Bar of Michigan. If the petitioner is the State Bar of Michigan, service must also be

made on the Interim Administrator. The State Bar of Michigan must publish the notice in the Michigan Bar Journal and on the State Bar of Michigan website.

- (D) **Objection to Appointment.** Within 14 days after service of the Notice of Appointment, any interested person may file objections to the order of appointment of an Interim Administrator specifying the grounds upon which the objection is based. Although the filing of one or more objections does not automatically stay the order appointing Interim Administrator, the court may order that the appointment be stayed pending resolution of the objection(s).

Rule 9.307 Duties and Powers of the Interim Administrator.

- (A) The Interim Administrator is not required to expend his or her own resources when exercising the duties and powers identified in this rule. If the Interim Administrator does expend his or her own resources, the Interim Administrator may request reimbursement under MCR 9.313.
- (B) The general duties of the Interim Administrator are to:
 - (1) take custody of the files and records.
 - (2) take control of accounts, including lawyer trust accounts and operating accounts.
 - (3) review the files and other papers to identify any pending matters.
 - (4) promptly notify all clients represented by the Affected Attorney in pending matters of the appointment of the Interim Administrator. Notification shall be made in writing, where practicable.
 - (5) promptly notify all courts and counsel involved in any pending matters, to the extent they can be reasonably identified, of the appointment of an Interim Administrator for the Affected Attorney. Notification shall be made in writing, where practicable.
 - (6) deliver the files, funds, and other property belonging to the Affected Attorney's Clients pursuant to the clients' directions, subject to the right to retain copies of such files or assert a retaining or charging lien against such files, money, or other property to the extent permitted by law.
 - (7) take steps to protect the interests of the clients, the public, and, to the extent possible and not inconsistent with the protection of the Affected Attorney's Clients, to protect the interests of the Affected Attorney.

- (8) comply with the terms of the agreement between the Affected Attorney and the Interim Administrator.
- (C) Inventory; Accounting; Reporting.
- (1) The Interim Administrator shall file with the court an inventory of the Affected Attorney's interest-bearing trust accounts for deposit of client and third-party funds within 35 days after entry of the order of appointment, unless an inventory has already been filed with the court.
 - (2) The Interim Administrator shall account for all receipts, disbursements, and distributions of money and property for the Affected Attorney, including its interest-bearing trust accounts for deposit of client and third-party funds.
 - (3) The Interim Administrator shall file with the court a final written report and final accounting of the administration of the Affected Attorney and serve a copy of each on the State Bar of Michigan.
 - (4) The State Bar of Michigan may petition the court for an interim accounting if it has reason to believe the Affected Attorney's affairs are being mismanaged.
- (D) If the Interim Administrator determines that there is a conflict of interest between the Interim Administrator and an Affected Attorney's Client, the Interim Administrator must notify the client, the State Bar of Michigan, and the circuit court that made the appointment and take all appropriate action under the Michigan Rules of Professional Conduct.
- (E) To the extent possible, the Interim Administrator may assist and cooperate with the Affected Attorney and/or the Affected Attorney's fiduciary in the continuance, transition, sale, or winding up of the Law Firm.
- (F) The Interim Administrator may purchase the Law Firm only upon the circuit court's approval of the sale.

Rule 9.309 Protection of Client Information and Privilege.

The appointment of the Interim Administrator does not automatically create an attorney and client relationship between the Interim Administrator and any of the Affected Attorney's Clients. However, the attorney-client privilege applies to all communications by or to the Interim Administrator and the Affected Attorney's Clients to the same extent

as it would have applied to any communications by or to the Affected Attorney with those same clients. The Interim Administrator is governed by Michigan Rule of Professional Conduct 1.6 with respect to all information contained in the files of the Affected Attorney's Clients and any information relating to the matters in which the clients were being represented by the Affected Attorney.

Rule 9.311 Protection of Client Files and Property.

The circuit court has jurisdiction over all of the files, records, and property of clients of the Affected Attorney and may make any appropriate orders to protect the interests of the clients of the Affected Attorney and, to the extent possible and not inconsistent with the protection of clients, the interests of the Affected Attorney, including, but not limited to, orders relating to the delivery, storage, or destruction of the client files of the Affected Attorney. The Interim Administrator may maintain client documents in paper or electronic format. The Interim Administrator may destroy any client document pursuant to the law office file retention policy or as necessary to meet ethical obligations, whichever is shorter, without returning to the court for permission to do so.

Rule 9.313 Compensation and Reimbursable Expenses of Interim Administrator.

- (A) Compensation and Reimbursement Available. The Interim Administrator, except as otherwise provided by an agreement with the Affected Attorney, is entitled to reasonable compensation for the performance of the Interim Administrator's duties and reimbursement for actual and reasonable costs incurred in connection with the performance of the Interim Administrator's duties. Reimbursable expenses include, but are not limited to, the costs incurred in connection with maintaining the staff, offices, and operation of the Law Firm and the employment of attorneys, accountants, and others retained by the Interim Administrator in connection with carrying out the Interim Administrator's duties.
- (B) Request for Compensation or Reimbursement.
 - (1) The Interim Administrator may file a motion with the court that ordered the appointment seeking compensation or reimbursement under this rule. Unless the Interim Administrator and the Affected Attorney or the Affected Attorney's estate have reached an agreement otherwise, the Interim Administrator will be paid from the Law Firm if funds are available; if funds are not available from the practice, the attorney may file a claim against the estate in a probate court. The claim must include an accounting of all receipts, disbursements, and distributions of money and property of the Law Firm.

- (2) An Interim Administrator who was matched to an Affected Attorney through the list maintained by the State Bar of Michigan and who was subsequently appointed by the circuit court may seek payment or reimbursement from the State Bar of Michigan for expenses identified in subrule (A). The State Bar of Michigan will promulgate a process for reimbursement under this subrule.
- (C) Award of Compensation or Reimbursement. The circuit court may enter a judgment awarding compensation and expenses to the Interim Administrator against the Law Firm, Affected Attorney, or any other available sources as the court may direct. The judgment will be a lien upon all property of any applicable Law Firm or Affected Attorney retroactive to the date of filing of the petition for the appointment of an Interim Administrator under this Rule. The judgment lien is subordinate to possessory liens and to non-possessory liens and security interests created prior to it taking effect and may be foreclosed upon in the manner prescribed by law.

Rule 9.315 Liability.

Every Interim Administrator, as that term is defined in MCR 9.301(A), shall obtain and retain professional liability insurance that covers conduct performed as an Interim Administrator under these rules and the Rules Concerning the State Bar of Michigan.

Rule 9.317 Employment of the Interim Administrator as Attorney for an Affected Client.

An Interim Administrator shall not, without the informed written consent of the Affected Client represent such client in a pending matter in which the client was represented by the Affected Attorney, other than to temporarily protect the interests of the client, or unless and until the Interim Administrator has concluded the purchase of the Law Firm. Any informed written consent by the Affected Client must include an acknowledgment that the client is not obligated to retain the Interim Administrator.

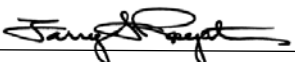
Staff Comment: Beginning in 2023, these amendments impose new obligations on private practice attorneys and the State Bar of Michigan with regard to identifying, designating, and serving as Interim Administrators when an attorney becomes unable to practice.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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.

June 15, 2022


Clerk