

Order

Michigan Supreme Court
Lansing, Michigan

March 10, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2007-40

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Amendment of Rule 7.205
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 7.205 of the Michigan Court Rules is adopted, effective May 1, 2009.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.205 Application for Leave to Appeal

(A)-(E)[Unchanged.]

(F) Late Appeal.

- (1) When an appeal of right was not timely filed or was dismissed for lack of jurisdiction, or when an application for leave was not timely filed, the appellant may file an application as prescribed in subrule (B), file 5 copies of a statement of facts explaining the delay, and serve 1 copy on all other parties. The answer may challenge the claimed reasons for delay. The court may consider the length of and the reasons for delay in deciding whether to grant the application. In all other respects, submission, decision, and further proceedings are as provided in subrule (D).
- (2) [Unchanged.]
- (3) Except as provided in subrules (F)(4) and (F)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

- (a) [Unchanged.]
- (b) [Unchanged.]
- (4) [Unchanged.]
- (5) Notwithstanding the 12-month limitation period otherwise provided in subrule (F)(3), leave to appeal may be granted if a party's claim of appeal is dismissed for lack of jurisdiction within 21 days before the expiration of the 12-month limitation period, or at any time after the 12-month limitation period has expired, and the party files a late application for leave to appeal from the same lower court judgment or order within 21 days of the dismissal of the claim of appeal or within 21 days of denial of a timely filed motion for reconsideration. A party filing a late application in reliance on this provision must note the dismissal of the prior claim of appeal in the statement of facts explaining the delay.
- ~~(6)(5)~~ [Unchanged but renumbered.]

(G) [Unchanged.]

Staff Comment: The amendment of MCR 7.205(F)(5) allows a party to file a late application for leave to appeal after the 12-month limitation period in MCR 7.205(F)(3) if the party's claim of appeal was dismissed for lack of jurisdiction within 21 days before the 12-month period expires or after it expires. A party must file its late application for leave to appeal within 21 days of dismissal of the claim of appeal or within 21 days of denial of a timely filed motion for reconsideration.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, 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.

March 10, 2009

Corbin R. Davis
Clerk