

Name: Scott Bassett

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Comment:

There should be a companion rule proposal for the trial courts where this problem is more likely to occur.

MCR 7.204(A)(3) addresses this issue, but not as elegantly as simply reissuing the order or judgment with a new date. Doing that would preserve the full 21-day appeal period instead of the 14 days provided for in MCR 7.204(A)(3).

The additional 7 days is more necessary in the trial court than in the Court of Appeals. When this happens in the Court of Appeals, the aggrieved party already has appellate counsel. When this happens in the trial court, few trial attorneys also do appeals, so the aggrieved party must find and retain appellate counsel within a short 14-day period instead of the usual 21 days. That can be a significant burden, particularly for individuals with family law and similar cases.

Also, it isn't clear the remedy in MCR 7.204 does anything to preserve the time to file a reconsideration or new trial motion in the trial court. Reissuance of the order or judgment with a new date as is proposed for the Court of Appeals rule would restore those rights if a trial court order or judgment is not timely served. However, in the case of a divorce judgment and perhaps some other types of orders, a nunc pro tunc provision is needed if a divorce judgment is reissued with a new date because it was not timely served and a party remarries shortly after the original judgment date but before the reissue date.