

# Order

Michigan Supreme Court  
Lansing, Michigan

October 26, 2022

Bridget M. McCormack,  
Chief Justice

ADM File No. 2022-32

Proposed Amendments of Rules  
7.201, 7.202, 7.203, 7.204, 7.205,  
7.206, 7.207, 7.208, 7.209, 7.210,  
7.211, 7.212, 7.213, 7.215, 7.216,  
7.217, and 7.219 of the Michigan  
Court Rules

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

On order of the Court, this is to advise that the Court is considering amendments of Rules 7.201, 7.202, 7.203, 7.204, 7.205, 7.206, 7.207, 7.208, 7.209, 7.210, 7.211, 7.212, 7.213, 7.215, 7.216, 7.217, and 7.219 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the [Public Administrative Hearings](#) page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

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

## Rule 7.201 Organization and Operation of Court of Appeals

### (A) Chief Judge and Chief Judge Pro Tempore.

- (1) The Supreme Court ~~shall~~selects a judge of the Court of Appeals to serve as chief judge. No later than October 1 of each odd-numbered year, the Court of Appeals may submit the names of no fewer than two judges whom the judges of that court recommend for selection as chief judge.
- (2) The chief judge ~~shall~~selects a chief judge pro tempore, who ~~shall~~fulfills such functions as the chief judge assigns.
- (3) The chief judge and chief judge pro tempore ~~shall~~ serve a two-year term beginning on January 1 of each even-numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore serves at the pleasure of the chief judge.

- (B) Court of Appeals Clerk; Place of Filing of Documents; Forms of Documents; Signature Papers; Fees.
- (1) The court ~~shall~~ appoints a chief clerk who is subject to the requirements imposed on the Supreme Court clerk in MCR 7.301(C). The clerk's office must be located in Lansing and be operated under the court's direction. With the court's approval, the clerk may appoint assistant and deputy clerks.
  - (2) The electronic filing of documents or data with the court is governed by MCR 1.109(G). Documents that are not electronically ~~Papers to be~~ filed with the court ~~or the clerk~~ must be filed in the clerk's office ~~in Lansing or with a deputy clerk in Detroit, Troy, or Grand Rapids~~. Fees paid to a deputy clerk must be forwarded to the clerk's office in Lansing. Claims of appeal, applications, motions, and complaints need not be accepted for filing until all required documents have been filed and the requisite fees have been paid.
  - (3) [Unchanged.]
- (C) [Unchanged.]
- (D) Panels. The court ~~shall~~ sits to hear cases in panels of ~~three~~3 judges. The decision of a majority of the judges of a panel in attendance at the hearing is the decision of the court. Except as modified by the Supreme Court, a decision of the court is final. The judges must be rotated so that each judge sits with every other judge with equal frequency, consistent with the efficient administration of the court's business. The Supreme Court may assign persons to act as temporary judges of the court, under the constitution and statutes. Only one temporary judge may sit on a ~~three~~3-judge panel.
- (E) Assignments and Presiding Judge. Before the calendar for each session is prepared, the chief judge ~~will~~~~shall~~ assign the judges to each panel and the cases to be heard by them and designate one of them as presiding judge. A presiding judge presides at a hearing and performs other functions as directed by the court or the Supreme Court by rule or special order~~directs~~. The chief judge may assign a motion or any other matter to any panel.
- (F) Place of Hearing. The court ~~shall~~ sits in Detroit, Lansing, Grand Rapids, ~~and Marquette~~, or another place the chief judge designates. A calendar case will be assigned for hearing in the city nearest to the court or tribunal from which the appeal was taken ~~or as the parties stipulate~~, except as otherwise required for the efficient administration of the court's business.

- (G) Judicial Conferences. At least once a year and at other times the chief judge finds necessary, the judges ~~will~~shall meet to transact any business that properly comes before them and to consider proposals to amend the rules of the court, and improve the administration of justice, including the operations of the court, ~~and transact any business which properly comes before them.~~
- (H) Approval of Expenses. The state court administrator ~~must~~shall approve the expenses for operation of the court and the expense accounts of the judges, including attendance at a judicial conference. The state court administrator ~~must~~shall prepare a budget for the court.

#### Rule 7.202 Definitions

For purposes of this subchapter:

- (1) [Unchanged.]
- (2) “date of filing” means the date of receipt of a document by ~~thea court~~ clerk or if electronically filed, the date the document is deemed filed under MCR 1.109(G)(5)(b);
- (3) [Unchanged.]
- (4) “filing” means the delivery of a document to ~~thea court~~ clerk and the receipt and acceptance of the document by the clerk with the intent to enter it in the record of the court or the electronic transmission of data and documents through the electronic filing system as provided in MCR 1.109(G);
- (5) “custody case” means a domestic relations case in which the custody of a minor child is an issue, an adoption case, a child protective proceeding, or a delinquency case in which a dispositional order removing the minor from the minor’s home is an issue;
- (6) [Unchanged.]

#### Rule 7.203 Jurisdiction of the Court of Appeals

- (A)-(C) [Unchanged.]
- (D) Other Appeals and Proceedings. The court has jurisdiction over any other appeal or action established by law. An order concerning the assignment of a case to the business court under MCL 600.8301 *et seq.* ~~may~~shall not be appealed to the Court of Appeals.

- (E) [Unchanged.]
- (F) Dismissal.
  - (1) [Unchanged.]
  - (2) The appellant or plaintiff may file a motion for reconsideration within 21 days after the date of the order of dismissal. The motion ~~will~~shall be submitted to a panel of ~~three~~3 judges. No entry fee is required for a motion filed under this subrule.
  - (3) The clerk will not accept for filing a motion for reconsideration of an order issued by a ~~three~~3-judge panel that denies a motion for reconsideration filed under subrule (2).

#### Rule 7.204 Filing Appeal of Right; Appearance

- (A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.
  - (1) [Unchanged.]
    - (a)-(c) [Unchanged.]
    - (d) an order deciding a ~~postjudgment~~post-judgment motion for a new trial, rehearing, reconsideration, or other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within any further time that the trial court has allowed for good cause during that 21-day period.
  - (2) [Unchanged.]
  - (3) ~~When~~Where service of the judgment or order on appellant was delayed beyond the time stated in MCR 2.602, the claim of appeal must be accompanied by an affidavit setting forth facts showing that the service was beyond the time stated in MCR 2.602. Appellee may file an opposing affidavit within 14 days after being served with the claim of appeal and affidavit. If the Court of Appeals finds that service of the judgment or order was delayed beyond the time stated in MCR 2.602 and the claim of appeal

was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely.

- (B) Manner of Filing. Except as otherwise provided in MCR 3.993(D)(3) and MCR 6.425(G)(1), ~~t~~To vest the Court of Appeals with jurisdiction in an appeal of right, an appellant must~~shall~~ file with the clerk within the time for taking an appeal

(1)-(2) [Unchanged.]

- (C) Other Documents. With the claim of appeal, the appellant must~~shall~~ file the following documents with the clerk:

(1)-(6) [Unchanged.]

- (D) Form of Claim of Appeal.

(1)-(2) [Unchanged.]

- (3) If the case involves

(a)-(c) [Unchanged.]

that fact must be stated in capital letters on the claim of appeal. In an appeal specified in subrule (D)(3)(c), the Court of Appeals must expedite~~shall give expedited consideration to~~ the appeal, and, if the state or an officer or agency of the state is not a party to the appeal, the Court of Appeals must~~shall~~ send copies of the claim of appeal and the judgment or order appealed from to the Attorney General.

- (E) Trial Court Filing Requirements. Within the time for taking the appeal, the appellant must~~shall~~ file in the court or the tribunal from which the appeal is taken

(1)-(4) [Unchanged.]

- (F) Other Requirements. Within the time for taking the appeal, the appellant must~~shall~~ also

(1)-(2) [Unchanged.]

- (G) Appearance. Within 14 days after being served with the claim of appeal, the appellee may~~shall~~ file an appearance (identifying the individual attorneys of record) in the Court of Appeals and in the court or tribunal from which the appeal is taken.

An appellee who does not file a timely appearance is not entitled to notice of further proceedings until an appearance is filed.

- (H) Docketing Statement. In all civil appeals, within 28 days after the claim of appeal is filed, the appellant must file ~~two copies of a~~ docketing statement with the court clerk of the Court of Appeals and serve a copy on the opposing parties.

(1)-(2) [Unchanged.]

- (3) Cross-Appeals. A party who files a cross-appeal ~~must~~shall file a docketing statement in accordance with this rule within 28 days after filing the cross-appeal.
- (4) Dismissal. ~~Failure if the appellant fails to file a timely docketing statement, the chief judge may result in dismissal of the appeal or cross-appeal under~~pursuant to MCR 7.217.

#### Rule 7.205 Application for Leave to Appeal

(A) [Unchanged.]

- (B) Manner of Filing. To apply for leave to appeal, the appellant ~~must~~shall file with the clerk:

(1) ~~5 copies of an~~ application for leave to appeal ~~(one signed)~~, stating the date and nature of the judgment or order appealed from; concisely reciting the appellant's allegations of error and the relief sought; setting forth a concise argument, conforming to MCR 7.212(B) and (C), in support of the appellant's position on each issue; and, if the order appealed from is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;

(2) ~~5 copies of the~~ judgment or order appealed from; ~~of the~~ register of actions of the lower court, tribunal, or agency; ~~of the~~ opinion or findings of the lower court, tribunal, or agency; ~~and of any~~ opinion or findings reviewed by the lower court, tribunal, or agency;

(3) [Unchanged.]

(4) a~~1~~ copy of certain transcripts, as follows:

- (a) in an appeal relating to the evidence presented at an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary

hearing, including the opinion or findings of the court ~~that~~<sup>which</sup> conducted the hearing;

(b)-(g) [Unchanged.]

If the transcript is not yet available, or if there is no record to be transcribed, the appellant ~~must~~<sup>shall</sup> file a copy of the certificate of the court reporter or recorder or a statement by the appellant's attorney as provided in MCR 7.204(C)(2). ~~As soon as the transcript is available, t~~<sup>The appellant must file</sup> ~~the transcript with the Court of Appeals as soon as it is available.~~

(5)-(6) [Unchanged.]

(C) Answer. Any other party in the case may file with the clerk, within 21 days of service of the application,

(1) ~~5 copies of an answer to the application (one signed)~~ conforming to MCR 7.212(B) and (D), except that transcript page references are not required unless a transcript has been filed; and

(2) [Unchanged.]

(D) [Unchanged.]

(E) Decision.

(1)-(2) [Unchanged.]

(3) If an application is granted, the case proceeds as an appeal of right, except that the filing of a claim of appeal is not required and the time limits for the filing of a cross--appeal and for the taking of the other steps in the appeal, including the filing of the docketing statement (28 days), and the filing of the court reporter's or recorder's certificate if the transcript has not been filed (14 days), run from the date the order granting leave is certified.

(4) [Unchanged.]

(F) [Unchanged.]

Rule 7.206 Extraordinary Writs, Original Actions, and Enforcement Actions

(A)-(C) [Unchanged.]

## (D) Actions for Extraordinary Writs and Original Actions.

- (1) Filing of Complaint. To commence an original action, the plaintiff ~~must~~shall file with the clerk:
- (a) ~~5 copies of a complaint (1 signed), which may have copies of supporting documents or affidavits attached to each copy;~~
  - (b) ~~5 copies of a supporting brief (1 signed) conforming to MCR 7.212(B) and (C) to the extent possible;~~
  - (c) proof that a copy of each of the filed documents was served on every ~~named~~ defendant and, in a superintending control action, on any other party involved in the case ~~that~~which gave rise to the complaint for superintending control; and
  - (d) [Unchanged.]
- (2) Answer. ~~A~~the defendant or any other interested party must file with the clerk within 21 days of service of the complaint ~~and any supporting documents or affidavits:~~
- (a) ~~5 copies of an answer to the complaint (1 signed), which may have copies of supporting documents or affidavits attached to each copy;~~
  - (b) ~~a supporting~~5 copies of an opposing brief (1 signed) conforming to MCR 7.212(B) ~~and (D)~~ to the extent possible; and
  - (c) [Unchanged.]
- (3) ~~Electronic Filing. The parties may file all pleadings and other papers permitted by this rule electronically with the Court of Appeals. All electronically filed documents must be in PDF digital format, while appendices and other nonoriginal filings may be scanned. All electronic filings must be submitted in accordance with the instructions set forth on the website of the Michigan Court of Appeals. Pro se parties may file pleadings and other papers in paper form.~~
- (43) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right either with or without referral to a judicial circuit or tribunal or agency for the taking of proofs and report of factual findings. If the case



is ordered to proceed to full hearing, the time for filing a brief by the plaintiff begins to run from the date the order allowing the case to proceed is certified or the date the transcript or report of factual findings on referral is filed, whichever is later. The plaintiff's brief must conform to MCR 7.212(B) and (C). An opposing brief must conform to MCR 7.212(B) and (D). In a habeas corpus proceeding, the prisoner need not be brought before the Court of Appeals.

(E) Actions to Enforce the Headlee Amendment, Under Pursuant to Const 1963, art 9, § 32.

(1) Filing of Complaint. To commence an action underpursuant to Const 1963, art 9, § 32, the plaintiff mustshall file with the clerk:

- (a) ~~a 5 copies of the~~ complaint (~~1 signed~~), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, ~~inter alia~~, whether there are any factual questions that are anticipated to require resolution by the court and whether the plaintiff(s) anticipate(s) the need for discovery and the development of a factual record;
- (b) ~~5 copies of a~~ supporting brief (~~1 signed~~) conforming to MCR 7.212(B) and (C) to the extent possible;
- (c) proof that a copy of each of the filed documents was served on every ~~named~~ defendant and the office of the attorney general; and
- (d) [Unchanged.]

(2) Answer. ~~A The named~~ defendant(s) mustshall file with the clerk within 21 days of service of the complaint:

- (a) ~~5 copies of an~~ answer to the complaint (~~1 signed~~), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, ~~inter alia~~, whether there are any factual questions that are anticipated to require resolution by the court and whether ~~at the named~~ defendant(s) anticipate(s) the need for discovery and the development of a factual record;
- (b) ~~5 copies of a~~ supporting brief (~~1 signed~~) conforming to MCR 7.212(B) and (C) to the extent possible;
- (c) proof that a copy of each of the filed documents was served on every ~~named~~ plaintiff.

## (3) Subsequent proceedings. Following receipt of the answer:

- (a) the ~~chief-clerk~~ must~~shall~~ promptly select a panel of the court by random draw and assign that panel to commence proceedings in the suit; and
- (b) [Unchanged.]
- (c) if the panel of the court determines that the issues framed in the parties' pleadings and supporting briefs solely present jurisprudentially significant questions of law, the panel must~~shall~~ direct that the suit proceed to a full hearing on the merits in the same manner as an appeal ~~as-of right~~ and notify the parties of the date for the filing of supplemental briefs, if such briefs are determined to be necessary, and of the date for oral argument, which must~~shall~~ be on an expedited basis; or
- (d) if the panel of the court determines that the issues framed in the parties' pleadings and supplemental briefs present factual questions for resolution, the panel must~~shall~~ refer the suit to a judicial circuit for the purposes of holding pretrial proceedings, conducting a hearing to receive evidence and arguments of law, and issuing a written report for the panel setting forth proposed findings of fact, and conclusions of law. The proceedings before the circuit court must~~shall~~ proceed as expeditiously as due consideration of the circuit court's docket, facts and issues of law requires. Following the receipt of the report from the circuit court, the panel must~~shall~~ notify counsel for the parties of the schedule for filing briefs in response to the circuit court's report and of the date for oral argument, which must~~shall~~ be on an expedited basis.

## (F) Enforcement of Administrative Tribunal or Agency Orders.

- (1) Complaint. To obtain enforcement of a final order of an administrative tribunal or agency, the plaintiff must~~shall~~ file with the clerk within the time limit provided by law:
  - (a) ~~5 copies of a complaint (one signed)~~ concisely stating the basis for relief and the relief sought;
  - (b) ~~5 copies of the order sought to be enforced;~~

- (c) ~~5 copies of a supporting brief (one signed) which conforms~~ to MCR 7.212(B) and (C) to the extent possible;
  - (d) ~~a notice of preliminary hearing on the complaint on the first Tuesday at least 21 days after the complaint and supporting documents are served on the defendant, the agency (unless the agency is the plaintiff), and any other interested party;~~
  - (e)-(g) [Relettered (d)-(f) but otherwise unchanged.]
- (2) Answer. ~~A~~The defendant ~~or must file, and~~ any other interested party ~~must~~ may file, with the clerk within 21 days of service of the complaint before the date of the preliminary hearing:
- (a) ~~5 copies of an answer to the complaint (one signed);~~
  - (b) a supporting~~5 copies of an opposing~~ brief (one signed) conforming to MCR 7.212(B) and (D) to the extent possible; and
  - (c) [Unchanged.]
- (3) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right. If the case is ordered to proceed to full hearing, the time for filing of a brief by the plaintiff begins to run from the date the clerk certifies the order allowing the case to proceed. The plaintiff's brief must conform to MCR 7.212(B) and (C). An opposing brief must conform to MCR 7.212(B) and (D). The case is heard on the certified record transmitted by the tribunal or agency. MCR 7.210(A)(2), regarding the content of the record, applies.

## Rule 7.207 Cross-Appeals

### (A) Right of Cross-Appeal.

- (1) When an appeal of right is filed or the court grants leave to appeal, any appellee may file a cross-appeal.
- (2) If there is more than one~~1~~ party plaintiff or defendant in a civil action and one~~1~~ party appeals, any other party, whether on the same or opposite side as the party first appealing, may file a cross-appeal against all or any of the other parties to the case as well as against the party who first appealed. If the cross-appeal operates against a party not affected by the first appeal or in a

manner different from the first appeal, that party may file a further cross-appeal as if the cross-appeal affecting that party had been the first appeal.

- (B) Manner of Filing. To file a cross-appeal, the cross-appellant ~~must~~ shall file with the clerk a claim of cross-appeal in the form required by MCR 7.204(D) and the entry fee
- (1) within 21 days after the claim of appeal is filed with the Court of Appeals or served on the cross-appellant, whichever is later, if the first appeal was of right; or
  - (2) [Unchanged.]

The cross-appellant ~~must~~ shall file proof that a copy of the claim of cross-appeal was served on the cross-appellee and any other party in the case. A copy of the judgment or order from which the cross-appeal is taken must be filed with the claim.

- (C) Additional Requirements. The cross-appellant ~~must~~ shall perform the steps required by MCR 7.204(E) and (F), except that the cross-appellant is not required to order a transcript or file a court reporter's or recorder's certificate unless the initial appeal is abandoned or dismissed. Otherwise the cross-appeal proceeds in the same manner as an ordinary appeal.
- (D) Abandonment or Dismissal of Appeal. If the appellant abandons the initial appeal or the court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion. Within 21 days after the clerk certifies the order dismissing the initial appeal, if there is a record to be transcribed, the cross-appellant ~~must~~ shall file a certificate of the court reporter or recorder that a transcript has been ordered and payment for it made or secured and will be filed as soon as possible or has already been filed.
- (E) Delayed Cross-Appeal. A party seeking leave to take a delayed cross-appeal ~~must~~ shall proceed under MCR 7.205.

#### Rule 7.208 Authority of Court or Tribunal Appealed From

- (A) [Unchanged.]
- (B) Postjudgment Motions in Criminal Cases.
- (1)-(2) [Unchanged.]

- (3) The trial court ~~must~~shall hear and decide the motion within 56 days of filing, unless the court determines that an adjournment is necessary to secure evidence needed for the decision on the motion or that there is other good cause for an adjournment.
- (4) [Unchanged.]
- (5) If the motion is granted in whole or in part,
  - (a) [Unchanged.]
  - (b) the prosecuting attorney may file a cross-~~an~~ appeal in the manner provided by MCR 7.207 within 21 days after the trial court's decision. If the defendant has withdrawn the appeal before the prosecuting attorney has filed a cross-~~an~~ appeal, the prosecuting attorney may file a claim of appeal or an application for leave to appeal within the 21-day period.
- (6) If the motion is denied, defendant-appellant's brief must be filed within 42 days after the decision by the trial court~~;~~ or the filing of the transcript of any trial court hearing, whichever is later.

(C)-(J) [Unchanged.]

#### Rule 7.209 Bond; Stay of Proceedings

(A)-(D) [Unchanged.]

(E) Stay of Proceedings by Trial Court.

(1)-(3) [Unchanged.]

(4) When the bond is filed under subsection (E)(2)(a), the judgment or order ~~is~~shall automatically ~~be~~ stayed pending entry of a final order under subsection (G).

(5)-(6) [Unchanged.]

(7) If a government party files a claim of appeal from an order described in MCR 7.202(6)(a)(v), the proceedings ~~are~~shall be stayed during the pendency of the appeal, unless the Court of Appeals directs otherwise.

(F) Conditions of Stay Bond.

- (1) Civil Actions and Probate Proceedings. In a bond filed for stay pending appeal in a civil action or probate proceeding, the appellant must~~shall~~ promise in writing:
- (a)-(e) [Unchanged.]
- (2) Criminal Cases. A criminal defendant for whom bond pending appeal is allowed after conviction must~~shall~~ promise in writing:
- (a)-(f) [Unchanged.]
- (G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.
- (1) Civil Actions and Probate Proceedings.
- (a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay must~~shall~~ file a proposed stay order under~~pursuant to~~ MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.
- (b) Objections must~~shall~~ be filed and served within seven~~7~~ days after service of the bond. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).
- (c) If no timely objections to the bond, surety, or stay order are filed, the trial court must~~shall~~ promptly enter the order staying enforcement of the judgment or order pending all appeals. The stay ~~shall~~ continues until otherwise ordered by the trial court or an appellate court.
- (d)-(g) [Unchanged.]
- (2) Criminal Cases. A criminal defendant filing a bond after conviction must~~shall~~ give notice to the county prosecuting attorney of the time and place the bond will be filed. The bond is subject to the objection procedure provided in MCR 3.604.
- (H) [Unchanged.]

- (I) Ex Parte Stay. Whenever an ex parte stay of proceedings is necessary to allow a motion in either the trial court or the Court of Appeals, the court before which the motion will be heard may grant an ex parte stay for that purpose. Service of a copy of the order, with a copy of the motion, any affidavits on which the motion is based, and notice of hearing on the motion, ~~shall operate~~ as a stay of proceedings until the court rules on the motion unless the court supersedes or sets aside the order in the interim. Proceedings may not be stayed for longer than necessary to enable the party to make the motion according to the practice of the court, and, if made, until the decision of the court.

#### Rule 7.210 Record on Appeal

- (A) Content of Record. Appeals to the Court of Appeals are heard on the original record.
- (1) Appeal From Court. In an appeal from a lower court, the record consists of the original ~~documents~~papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health Code, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.
- (2)-(4) [Unchanged.]
- (B) Transcript.
- (1) Appellant's Duties; Orders; Stipulations.
- (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.993(E) or MCR 6.425(G), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant ~~must~~shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.
- (b) [Unchanged.]

(c) On the appellant's motion, with notice to the appellee, the trial court or tribunal may order that some portion less than the full transcript (or no transcript at all) be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of the motion extends the time for filing the court reporter's or recorder's certificate until seven~~7~~ days after entry of the trial court's or tribunal's order on the motion.

(d)-(e) [Unchanged.]

(2) Transcript Unavailable. When a transcript of the proceedings in the trial court or tribunal cannot be obtained from the court reporter or recorder, the appellant must~~shall~~ take the following steps to settle the record and to cause the filing of a certified settled statement of facts to serve as a substitute for the transcript.

(a) No later than 56 days after the filing of the available transcripts, or 28 days after the filing of the available transcripts in a child custody case or interlocutory criminal appeal, or, if no transcripts are available, within 14 days after filing the claim of appeal, the appellant must~~shall~~ file with the trial court or tribunal clerk, and serve on each appellee, a motion to settle the record and, where reasonably possible, a proposed statement of facts. A proposed statement of facts must concisely set forth the substance of the testimony, or the oral proceedings before the trial court or tribunal if no testimony was taken, in sufficient detail to provide for appellate review.

(b) Except as otherwise provided, the appellant must~~shall~~ notice the motion to settle the record for hearing before the trial court or tribunal to be held within 21 days of the filing of the motion. If it is not the typical practice of a tribunal to conduct hearings, the motion to settle the record must be filed with the tribunal for consideration by the tribunal within 21 days of the filing of the motion. The motion must~~shall~~ be filed and served at least 14 days before the date noticed for hearing or consideration to settle the record. If appellant filed a proposed statement of facts with the motion, appellee must file and serve on the appellant and other appellees an amendment or objection to the proposed statement of facts in the trial court or tribunal at least seven~~7~~ days before the time set for the settlement hearing or consideration. The trial court may adopt and file the appellant's proposed statement of facts as the certified settled statement of facts.



- (c) The trial court or tribunal ~~must~~shall settle any controversy and certify a settled statement of facts as an accurate, fair, and complete statement of the proceedings before it. The certified settled statement of facts must concisely set forth the substance of the testimony, or the oral proceedings before the trial court or tribunal if no testimony was taken, in sufficient detail to provide for appellate review.
  - (d) The appellant ~~must~~shall file the settled statement of facts and the certifying order with the trial court or tribunal clerk and Court of Appeals.
- (3) Duties of Court Reporter or Recorder.
- (a) Certificate. Within ~~seven~~7 days after a transcript is ordered by a party or the court, the court reporter or recorder ~~must file~~shall ~~furnish~~ a certificate stating:
    - (i)-(iii) [Unchanged.]
  - (b) Time for Filing. The court reporter or recorder ~~must~~shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder ~~must~~shall file the transcript with the trial court or tribunal clerk within
    - (i)-(iv) [Unchanged.]

The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.
  - (c) [Unchanged.]
  - (d) Form of Transcript. The transcript must be filed in one or more volumes ~~under a hard surfaced or other suitable cover,~~ stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts filed with the court must contain only a single transcript page per document page, not multiple pages combined on a single document page.

- (e) Notice. Immediately after the transcript is filed, the court reporter or recorder ~~must~~shall notify the Court of Appeals and all parties that it has been filed and file in the Court of Appeals an affidavit of mailing of notice to the parties.
  - (f) [Unchanged.]
  - ~~(g) Responsibility When More Than One Reporter or Recorder. In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e).~~
- (C) Exhibits. Within 21 days after the claim of appeal is filed, a party possessing any exhibits offered in evidence, whether admitted or not, ~~must~~shall file them with the trial court or tribunal clerk, unless by stipulation of the parties or order of the trial court or tribunal they are not to be sent, or copies, summaries, or excerpts are to be sent. ~~Xerographic~~eCopies of exhibits may be filed in lieu of originals unless the trial court or tribunal orders otherwise. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk ~~must~~shall return the exhibits to the parties who filed them.
- (D) Reproduction of Records. Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, ~~must~~shall procure for the party as promptly as possible and at the cost to the clerk the requested number of copies of documents, transcripts, and exhibits on file.
- (E) Record on Motion. If, before the time the complete record on appeal is sent to the Court of Appeals, a party files a motion that requires the Court of Appeals to have the record, the trial court or tribunal clerk ~~must~~shall, on request of a party or the Court of Appeals, send the Court of Appeals the documents needed.
- (F) Service of Record. Within 21 days after the transcript is filed with the trial court clerk, the appellant ~~must~~shall serve a copy of the entire record on appeal, including the transcript and exhibits, on each appellee. However, copies of documents the appellee already possesses need not be served. Proof that the record was served must be promptly filed with the Court of Appeals and the trial court or tribunal clerk. If the filing of a transcript has been excused as provided in subrule (B), the record is to be served within 21 days after the filing of the transcript substitute.

- (G) Transmission of Record. Within 21 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk ~~must~~ send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk ~~must~~ append a certificate identifying the name of the case and the ~~documents~~ papers with reasonable definiteness and ~~must~~ include as part of the record:

(1)-(3) [Unchanged.]

Transcripts and all other documents ~~that~~ which are part of the record on appeal must be included in the record and, if filed in print, must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the trial court or tribunal, the title of the case, and the file number.

- (H) Return of Record Filed in Printed Form. If the record was filed in printed form, ~~a~~After the Court of Appeals disposes of ~~the~~ an appeal, the ~~clerk~~ Court of Appeals ~~must~~ promptly send it to the original record, together with a certified copy of the opinion, judgment, or order entered by the Court of Appeals,

(1) ~~to~~ the Clerk of the Supreme Court on request if an application for leave to appeal is filed in the Supreme Court, or

(2) ~~to~~ the clerk of the court or tribunal from which it was received when

(a) [Unchanged.]

(b) the period for filing a motion for reconsideration in the Court of Appeals has expired and any timely-filed motion has been resolved, ~~and there is pending in the Court of Appeals no~~

(i) ~~timely motion for reconsideration,~~

(ii) ~~timely petition for a special panel under MCR 7.215 (I), or~~

(iii) ~~timely request by a judge of the Court of Appeals for a special panel under MCR 7.215 (I),~~

~~and the period for such a timely motion, petition, or request has expired.~~

- (c) the period for initiation of a special panel under MCR 7.215(J) has expired and any proceedings under that subrule are concluded.
- (I) Disposition of Record Filed in Electronic Form. If the record is filed in electronic form, the Court of Appeals may dispose of the electronic record according to the standards established by the court.
- (J) Notice by Trial Court or Tribunal Clerk. In order that the parties may take the appropriate action in the trial court or tribunal under the Court of Appeals judgment, ~~†The trial court or tribunal clerk must~~ shall promptly notify all parties of the return of the record, if filed in printed form, or of the expiration of the time under subrule (H)(2) if the record was filed in electronic form ~~in order that they may take the appropriate action in the trial court or tribunal under the Court of Appeals mandate.~~

#### Rule 7.211 Motions in Court of Appeals

- (A) Manner of Making Motion. A motion is made in the Court of Appeals by filing:
- (1) ~~5 copies of a motion (one signed)~~ stating briefly but distinctly the facts and the grounds on which it is based and the relief requested;
  - (2) [Unchanged.]
  - (3) for a motion to dismiss, to affirm, or for peremptory reversal, ~~5 copies of a supporting brief.~~ A supporting brief may be filed with any other motion. A brief must conform to MCR 7.212(B) and (C) as nearly as possible, except that page references to a transcript are not required unless the transcript is relevant to the issue raised in the motion. A brief ~~in conformance with MCR 7.212(C)~~ is not required in support of a motion to affirm when the appellant argues that:
    - (a)-(c) [Unchanged.]
    - (d) a sentence ~~that~~ which is within the sentencing guidelines is invalid.

Instead of a brief in support of a motion to affirm in such a circumstance, the movant may append those portions of the transcript that are pertinent to the issues raised in the motion; in that case, the motion must include a summary of the movant's position;
  - (4) a motion for immediate consideration under subrule (C)(6) if the party wants a decision on the motion ~~desires a hearing~~ on a date earlier than the answer ~~applicable~~ date set forth in subrules (B)(2)(a)-(e);

(5) proof that ~~a copy of the motion~~, the motion for immediate consideration if one has been filed, and any ~~other supporting documents~~papers were served on all other parties to the appeal.

(B) Answer.

(1) A party to an appeal may answer a motion by filing:

(a) ~~5 copies of an answer (one signed)~~; and

(b) proof that ~~a copy of the answer and any supporting documents~~other opposing papers were served on all other parties to the appeal.

(2) Subject to subrule (3), the answer must be filed within

(a) 21 days after the motion is served on the other parties; for a motion to dismiss, to remand, or to affirm;

(b) 35 days after the motion is served on the appellee; if the motion is for peremptory reversal;

(c) 56 days after the motion is served on the defendant; for a motion to withdraw as the appointed appellate attorney;

(d) 14 days after the motion is served on the other parties; for a motion for reconsideration of an opinion or an order, to stay proceedings in the trial court, to strike a full or partial pleading on appeal, to file an amicus brief, to hold an appeal in abeyance, or to reinstate an appeal after dismissal under MCR 7.217(D);

(e) seven~~7~~ days after the motion is served on the other parties; for all other motions.

If a motion for immediate consideration has been filed, ~~all answers to all affected motions must be filed within seven~~7 days ~~if the motions for immediate consideration was served by mail~~, or within such time as the Court of Appeals directs. See subrule (C)(6).

(3) In its discretion, the Court of Appeals may dispose of the following motions before the answer period has expired: a motion to extend time to order or file transcripts, to extend time to file a brief or other appellate pleading, to substitute one attorney for another, for oral argument when the right to oral

argument was not otherwise preserved as described in MCR 7.212, or for an out-of-state attorney to appear and practice in Michigan.

- (4) ~~A supporting~~Five copies of an opposing brief may be filed with the answer. A brief must conform to MCR 7.212(B) and (D) as nearly as possible, except that page references to a transcript are not required unless the transcript is relevant to the issue raised in the motion.
- (C) ~~Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.~~
- (1) Motion to Remand.
- (a)-(d) [Unchanged.]
- (e) If the trial court grants the appellant relief in whole or in part,
- (i) ~~u~~Unless the Court of Appeals orders otherwise, appellant must file the brief on appeal or notice of withdrawal of appeal within 21 days after the trial court's decision or after the filing of the transcript of any hearing held, whichever is later.
- (ii) ~~t~~The appellee may file a cross-appeal in the manner provided by MCR 7.207 within 21 days after the trial court's decision. If the appellant has withdrawn the appeal before the appellee has filed a cross-appeal, the appellee may file a claim of appeal or an application for leave to appeal within the 21-day period.
- (f) If the trial court denies the appellant's request for relief, appellant's brief must be filed within 21 days after the decision by the trial court, or the filing of the transcript of any trial court hearing, whichever is later.
- (2)-(4) [Unchanged.]
- (5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.
- (a) A motion to withdraw is made by filing:

- (i) ~~5 copies of~~ a motion to withdraw ~~that (one signed) which~~ identifies any points the appellant seeks to assert and any other matters that the attorney has considered as a basis for appeal;
  - (ii) ~~5 copies of~~ a brief conforming to MCR 7.212(B) and (C), ~~which that~~ refers to anything in the record that might arguably support the appeal, contains relevant record references, and ~~discusses cites and deals with~~ those authorities ~~that which~~ appear to bear on the points in question;
  - (iii) [Unchanged.]
  - (iv) proof that a copy of the motion only and not the brief was served on the appellee.
- (b) If the appeal is available only by leave of the court, the motion ~~must shall~~ be filed within 56 days after the transcript is filed or within the deadline for filing a late application for leave to appeal, whichever comes first. The filing of such a motion, with the accompanying brief required by MCR 7.211(C)(5)(a)(ii), ~~must shall~~ be treated as the filing of an application for leave to appeal on behalf of the appellant.
- (c) [Unchanged.]
- (d) If the court finds that the appeal is wholly frivolous, it may grant the motion and affirm the conviction or trial court judgment in appeals by right or deny leave to appeal in appeals by leave. If the court affirms the conviction or trial court judgment or denies leave to appeal, the appellant's attorney ~~must shall~~ mail to the appellant a copy of the transcript within 14 days after the order affirming is certified and file proof of that service. If the court finds any legal point arguable on its merits, it may deny the motion and order the court appointed attorney to proceed in support of the appeal or grant the motion and order the appointment of substitute appellate counsel to proceed in support of the appeal.
- (6) Motion for Immediate Consideration. A party may file a motion for immediate consideration to expedite ~~decision hearing~~ on another motion. The motion must state facts showing why immediate consideration is required. If ~~a copy of~~ the motion for immediate consideration and ~~a copy of~~ the motion of which immediate consideration is sought are served by electronic service under MCR 1.109(G)(6) or personally served under MCR 2.107(C)(1) or (2),

the motions may be submitted to the court immediately on filing. If mail service is used, motions may not be submitted until the first Tuesday ~~seven~~7 days after the date of service, unless the party served acknowledges receipt. ~~The trial court or tribunal record need not be requested unless it is required as to the motion of which immediate consideration is sought.~~

- (7) Confession of Error by Prosecutor. In a criminal case, if the prosecutor concurs in the relief requested by the defendant, the prosecutor ~~must~~shall file a confession of error ~~and so indicating, which may~~ state reasons why concurrence in the relief requested is appropriate. The confession of error ~~will~~shall be submitted to one judge ~~under~~pursuant to MCR 7.211(E). If the judge approves the confession of error, the judge ~~will~~shall enter an order or opinion granting the relief. If the judge rejects the confession of error, the case ~~will~~shall be submitted for decision through the ordinary processes of the court, and the confession of error ~~will~~shall be submitted to the panel assigned to decide the case.
- (8) [Unchanged.]
- (9) Motion to Seal Court of Appeals File in Whole or in Part.
- (a)-(b) [Unchanged.]
- (c) Except as otherwise provided by statute or court rule, the procedure for sealing a Court of Appeals file is governed by MCR 8.119(I). Materials that are subject to a motion to seal a Court of Appeals file in whole or in part ~~must~~shall be held under seal pending the court's disposition of the motion.
- (d) Any party or interested person may file an answer in response to a motion to seal a Court of Appeals file within ~~seven~~7 days after the motion is served on the other parties, or within ~~seven~~7 days after the motion is filed in the Court of Appeals, whichever is later.
- (e) An order granting a motion ~~must~~shall include a finding of good cause, as defined by MCR 8.119(I)(2), and a finding that there is no less- restrictive means to adequately and effectively protect the specific interest asserted.
- (f) [Unchanged.]
- (D)-(E) [Unchanged.]



## Rule 7.212 Briefs

(A)-(C) [Unchanged.]

(D) Appellee's Brief; Contents.

(1)-(2) [Unchanged.]

(3) Unless under the headings "Statement of Questions Involved" and "Statement of Facts" the appellee accepts the appellant's statements, the appellee must~~shall~~ include:

(a)-(b) [Unchanged.]

(E) Briefs in Cross-Appeals. The filing and service of briefs by a cross-appellant and a cross-appellee are governed by subrules (A)-(D).

(F) Supplemental Authority. Without leave of the court, a party may file a one-page communication, titled "supplemental authority," to call the court's attention to new authority released after the party filed its brief. Such a communication,

(1)-(3) [Unchanged.]

(G) [Unchanged.]

(H) Amicus Curiae.

(1)-(2) [Unchanged.]

(3) Except for briefs presented on behalf of amicus curiae listed in MCR 7.312(H)(2), a brief filed under this rule must~~shall~~ indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief; and must~~shall~~ identify every person other than the amicus curiae, its members, or its counsel, who made such a monetary contribution. The disclosure must~~shall~~ be made in the first footnote on the first page of text.

(I) Nonconforming Briefs. If, on its own initiative or on a party's motion, the court concludes that a brief does not substantially comply with the requirements in this rule, the court~~it~~ may order the party who filed the brief to file a supplemental brief within a specified time correcting the deficiencies, or it may strike the nonconforming brief.

## (J) Appendix.

- (1) Requirements. Except as provided in subrules (1)(a)-(f) of this rule, the appellant must file an individual or joint appendix with the appellant's brief. An appellee may file an appendix with the appellee's brief if the appellant's appendix does not contain all the information set forth in subrule (3) of this rule. The appellee's appendix should not contain any of the documents contained in the appellant's appendix except when including additional pages to provide a more complete context, but should only contain additional information described in subrule (3) that is relevant and necessary to the determination of the issues on appeal. To avoid duplication in cases with more than one appellant or appellee, the parties are encouraged to submit a joint appendix ~~underpursuant to~~ subsection (4) rather than separate appendixes. An appendix is not required in appeals from:

(a)-(e) [Unchanged.]

- (f) The Michigan Public Service Commission where the record is available on the ~~c~~Commission's e-docket, or the Michigan Tax Tribunal where the record is available on the ~~t~~Tribunal's tax docket lookup page. In those cases, the parties' briefs ~~must~~shall cite ~~to~~ the document number and relevant pages in the electronic record.

(2) [Unchanged.]

- (a) For an appendix filed in paper form, one signed copy that is separately bound from the brief ~~must~~shall be filed. Each separate document in the appendix must be preceded by a title page that identifies the appendix number or letter and the title of the document. The binding method should allow the easy dismantling of the appendix for scanning.

(b) [Unchanged.]

(3) [Unchanged.]

(4) Joint Appendix.

- (a) The parties may stipulate to using a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix ~~must~~shall meet the requirements of subrules (J)(2)and (3) and ~~must~~shall be included with the initial

appellant's brief or, for a joint appendix of multiple appellees, with the first appellee's brief to be filed.

(b) [Unchanged.]

#### Rule 7.213 Calendar Cases

(A) Mediation in Calendar Cases.

(1) Selection for Mediation.

(a) [Unchanged.]

(b) To identify cases for mediation, the Court of Appeals will review civil appeals to determine if mediation would be of assistance to the court or the parties. At any time, a party to a pending civil appeal may file a written request that the appeal be submitted to mediation. Such a request may be made without formal motion and ~~is~~shall be confidential.

(c) A party to a case that has been selected for mediation may file a request to have the case removed from mediation. Such a request may be made without formal motion and ~~is~~shall be confidential. If the request to remove is premised on a desire to avoid the cost of mediation, it is not necessary to demonstrate an inability to pay such costs.

(d) [Unchanged.]

(2) Mediation Procedure.

(a) Mediation ~~must~~shall be conducted by a mediator selected by stipulation of the parties or designated by the court. A mediator designated by the court ~~must~~shall be an attorney, licensed in Michigan, who has met the qualifications of mediators provided in MCR 2.411(F).

(b) Mediation ~~must~~shall consider the possibility of settlement, the simplification of the issues, and any other matters that the mediator determines may aid in the handling or disposition of the appeal.

(c) The order referring the case to mediation ~~must~~shall specify the time within which the mediation is to be completed. Within 7 days after

the time stated in the order, the mediator ~~must~~shall file a notice with the clerk stating only the date of completion of mediation, who participated in the mediation, whether settlement was reached, and whether any further mediation is warranted.

- (d) If mediation results in full or partial settlement of the case, the parties ~~must~~shall file, within 21 days after the filing of the notice by the mediator, a stipulation to dismiss (in full or in part) ~~under~~pursuant to MCR 7.218(B).
- (e) The mediator may charge a reasonable fee, which ~~must~~shall be divided between and borne equally by the parties unless otherwise agreed and paid by the parties directly to the mediator. If a party does not agree ~~upon~~ the fee requested by the mediator, ~~upon~~ motion of the party, the chief judge or another designated judge ~~must~~shall set a reasonable fee. In all other respects, mediator fees ~~are~~shall be governed by MCR 2.411(D).

(f)-(g) [Unchanged.]

(3) Selection of Mediator.

- (a) Except as otherwise provided in this rule, the selection of a mediator ~~is~~shall be governed by MCR 2.411(B).
- (b) Within the time provided in the order referring a case to mediation, the parties may stipulate to the selection of a mediator. Such stipulation ~~must~~shall be filed with the clerk of the court. If the parties do not file a stipulation agreeing to a mediator within the time provided, the court ~~will~~shall appoint a mediator from the roster of approved mediators maintained by the circuit court in which the case originated.

(B) Notice of Calendar Cases. After the briefs of both parties have been filed, or after the expiration of the time for filing the appellee's brief, the clerk ~~must~~shall notify the parties that the case will be submitted as a "calendar case" at the next available session of the court.

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence ~~must~~shall be given to:

(1)-(2) [Unchanged.]

- (3) Interlocutory appeals from the grant of a preliminary injunction;
  - (4) [Unchanged.]
  - (5) appeals of decisions holding that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid;~~and~~
  - (6) actions brought under Const 1963, art 9, §§ 29-34 (Headlee actions); and
  - (7) [Unchanged.]
- (D) Arrangement of Calendar. Twenty-one days before the first day of the session, the clerk ~~must send~~~~shall mail~~ to all parties in each calendar case notice of the designated panel, location, day, and order in which the cases will be called.
- (E) [Unchanged.]

#### Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals

- (A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name ~~must~~~~shall~~ be published by the Supreme Court reporter of decisions. A memorandum opinion ~~must~~~~shall~~ not be published. A per curiam opinion ~~must~~~~shall~~ not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court. An opinion not designated for publication ~~is~~~~shall~~ be deemed "unpublished."
- (B) Standards for Publication. A court opinion must be published if it:
- (1)-(5) [Unchanged.]
  - (6) criticizes existing law;~~or~~
  - (7) [Unchanged.]

- (8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan sStatute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid.

(C) Precedent of Opinions.

- (1) An unpublished opinion is not precedentially binding under the rule of stare decisis. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party must~~shall~~ explain the reason for citing it and how it is relevant to the issues presented. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.
- (2) A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal int~~o~~ the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.

(D) Requesting Publication.

- (1) Any party may request publication of an authored or per curiam opinion not designated for publication by
- (a) filing with the clerk ~~4 copies of~~ a letter stating why the opinion should be published, and
  - (b) ~~servicing~~mailing a copy ont~~o~~ each party to the appeal not joining in the request.

Such a request must be filed within 21 days after release of the unpublished opinion or, if a timely motion for rehearing is filed, within 21 days after the denial of the motion.

- (2) [Unchanged.]
- (3) Promptly after the expiration of the time provided in subrule (D)(2), the clerk must~~shall~~ submit the request, and any response that has been received, to the panel that filed the opinion. Within 21 days after submission of the request, the panel will~~shall~~ decide whether to direct that the opinion be published. The opinion will~~shall~~ be published only if the panel unanimously so directs.

Failure of the panel to act within 21 days ~~will~~shall be treated as a denial of the request.

- (4) The Court of Appeals ~~must~~shall not direct publication if the Supreme Court has denied an application for leave to appeal under MCR 7.305.
- (E) Judgment.
- (1) [Unchanged.]
- (2) The clerk ~~must~~shall send a certified copy of the opinion or order, with the date of filing stamped on it, to each party and, in an appeal, to the court or tribunal from which the appeal was received. In criminal cases, ~~the clerk shall provide an additional copy of any opinion or order disposing of an appeal or of any order denying leave to appeal to the defendant's lawyer, which the lawyer must promptly send to the defendant a copy of any opinion or order disposing of an appeal or of any order denying leave to appeal.~~ An opinion or order is notice of the entry of judgment of the Court of Appeals.
- (F) Execution and Enforcement.
- (1) Routine Issuance. Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,
- (a) the Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal ~~int~~to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court;
- (b) execution on the Court of Appeals judgment is to be obtained or enforcement proceedings had in the trial court or tribunal after the record has been returned (by the clerk under MCR 7.210(~~H~~)) or by the Supreme Court clerk under MCR 7.310) with a certified copy of the court's judgment or, if a printed record was not transmitted to the Court of Appeals, after the time specified for return of the record had it been transmitted.
- (2) [Unchanged.]
- (G) Entry, Issuance, Execution On, and Enforcement of All Other Orders. An order other than one described in subrule (E) is entered on the date of filing. The clerk must promptly send a certified copy to each party and to the trial court or tribunal. Unless otherwise stated, an order is effective on the date it is entered.

(H) [Unchanged.]

(I) Reconsideration.

(1) A motion for reconsideration may be filed within 21 days after the date of the order or the date stamped on an opinion. The motion ~~must~~shall include all facts, arguments, and citations to authorities in a single document and ~~must~~shall not exceed 3,200 words or, for self-represented litigants without access to a word-processing system, 10 double-spaced pages. A copy of the order or opinion of which reconsideration is sought must be included with the motion. Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3).

(2) A party may answer a motion for reconsideration within 14 days after the motion is served on the party. An answer to a motion for reconsideration ~~must~~shall be a single document and ~~shall~~not exceed 2,500 words or, for self-represented litigants without access to a word-processing system, ~~seven~~7 double-spaced pages.

(3)-(4) [Unchanged.]

(J) Resolution of Conflicts in Court of Appeals Decisions.

(1)-(2) [Unchanged.]

(3) Convening of Special Panel.

(a) Poll of Judges. Except as provided in subrule (3)(b), within 28 days after release of the opinion indicating disagreement with a prior decision as provided in subrule (2), the chief judge must poll the judges of the Court of Appeals to determine whether the particular question is both outcome--determinative and warrants convening a special panel to rehear the case for the purpose of resolving the conflict that would have been created but for the provisions of subrule (1). Special panels may be convened to consider outcome-determinative questions only.

(b) Effect of Pending Supreme Court Appeal. ~~A~~No poll ~~must not~~shall be conducted and a special panel ~~must~~shall not be convened if, at the time the judges are required to be polled, the Supreme Court has granted leave to appeal in the controlling case.



- (c) [Unchanged.]
- (4) Composition of Panel. A special panel convened ~~under~~<sup>pursuant to</sup> this rule consists of ~~seven~~<sup>7</sup> judges of the Court of Appeals selected by lot, except that judges who participated in either the controlling decision or the opinion in the case at bar may not be selected.
- (5) Consideration of Case by Panel. An order directing the convening of a special panel must vacate only that portion of the prior opinion in the case at bar addressing the particular question that would have been decided differently but for the provisions of subrule (1). The special panel ~~must~~<sup>shall</sup> limit its review to resolving the conflict that would have been created but for the provisions of subrule (1) and applying its decision to the case at bar. The parties are permitted to file supplemental briefs; and are entitled to oral argument before the special panel unless the panel unanimously agrees to dispense with oral argument. The special panel ~~must~~<sup>shall</sup> return to the original panel for further consideration any remaining; unresolved issues, as the case may require.
- (6) [Unchanged.]
- (7) Reconsideration; Appeal. There is no appeal from the decision of the Court of Appeals as to whether to convene a special panel. As to the decision in the case at bar, the time limits for moving for ~~reconsideration~~<sup>rehearing</sup> or for filing an application for leave to appeal ~~into~~<sup>to</sup> the Supreme Court run from the date of the order declining to convene a special panel or, if a special panel is convened, from the date of the decision of the special panel, except that, if the case is returned to the original panel for further consideration in accordance with subrule (5), the time limits ~~shall~~<sup>run</sup> from the date of the original panel's decision; after return from the special panel. If a motion for reconsideration is filed, it ~~will~~<sup>shall</sup> be submitted to the special panel, which, if appropriate, may refer some or all ~~of~~ the issues presented to the original panel.

#### Rule 7.216 Miscellaneous Relief

- (A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:
- (1) exercise any or all ~~of~~ the powers of amendment of the trial court or tribunal;
- (2) [Unchanged.]

(3) permit amendment of or additions to the grounds for appeal;

(4)-(10) [Unchanged.]

(B) [Unchanged.]

(C) Vexatious Proceedings; Vexatious Litigator.

(1)-(2) [Unchanged.]

(3) Vexatious Litigator. If a party habitually, persistently, and without reasonable cause engages in vexatious conduct under subrule (C)(1), the cCourt may, on its own initiative or on motion of another party, find the party to be a vexatious litigator and impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the cCourt without first obtaining leave, prohibiting the filing of actions in the cCourt without the filing fee or security for costs required by MCR 7.209 or MCR 7.219, or other restriction the cCourt deems just.

#### Rule 7.217 Involuntary Dismissal of Cases

(A)-(C) [Unchanged.]

(D) Reinstatement.

(1) Within 21 days after the date of the clerk's notice of dismissal ~~under~~pursuant ~~to~~ this rule, the appellant or plaintiff may seek relief from dismissal by filing a motion for reinstatement that shows~~ing~~ mistake, inadvertence, or excusable neglect.

(2) [Unchanged.]

#### Rule 7.219 Taxation of Costs; Fees

(A)-(B) [Unchanged.]

(C) Objections. Any other party may file objections to the bill of costs with the clerk within seven~~7~~ days after a copy of the bill is served. The objecting party must serve a copy of the objections on the prevailing party and file proof of that service.

(D) [Unchanged.]

- (E) Review. The action by the clerk will be reviewed by the Court of Appeals on motion of either party filed within ~~seven~~7 days from the date of taxation, but on review only those affidavits or objections ~~that~~<sup>which</sup> were previously filed with the clerk may be considered by the court.
- (F) Costs Taxable. A prevailing party may tax only the reasonable costs incurred in the Court of Appeals, including:
- (1) ~~printing of briefs, or if briefs were typewritten,~~ a charge of \$1 per original page for the prevailing party's costs associated with preparation of appellant's brief, appellee's brief, a supplemental brief or a reply brief, not including any attachments or appendices;
  - (2)-(7) [Unchanged.]
- (G) Fees Paid to Clerk. The clerk ~~may~~<sup>shall</sup> collect the following fees, which may be taxed as costs:
- (1)-(5) [Unchanged.]
- (H) [Unchanged.]
- (I) Violation of Rules. The Court of Appeals may impose costs on a party or an attorney ~~when in its discretion they should be assessed~~ for violation of these rules.

*Staff Comment (ADM File No. 2022-32):* The proposed amendments of subchapter 7.200 would make technical amendments of the COA rules in an effort to modernize them and ensure they reflect the COA's established practices.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by February 1, 2023 by clicking on the "Comment on this Proposal" link under this proposal on the [Court's Proposed & Adopted Orders on Administrative Matters](#) page. You may also submit a comment in writing at

P.O. Box 30052, Lansing, MI 48909 or via email at [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When submitting a comment, please refer to ADM File No. 2022-32. Your comments and the comments of others will be posted under the chapter affected by this proposal.



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.

October 26, 2022

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk