

APPELLATE PRACTICE SECTION

February 1, 2012

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Speaker Law Firm PLLC  
230 N Sycamore St  
Lansing, MI 48933-1094

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925 W. Ottawa, P.O. Box 30052  
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RE: ADM File No. 2010-25 - Appellate Practice Section  
Comment on Proposed Amendment of MCR 7.210

Dear Clerk Davis:

At its November 18, 2011 council meeting, the State Bar of Michigan's Appellate Practice Section considered the rule amendment for MCR 7.210(C) published for comment in ADM 2010-25. The Section voted unanimously to support the amendment with one recommended revision. The proposed amendment states what happens to the record on appeal when no appeal is filed, but does not address the trial court's obligation when a claim of appeal is filed. The Section's recommended revision is intended to clarify what happens to the record when the claim of appeal is filed. The Section believes that its recommendation comports with the concept of the proposed amendment, but just helps avoid any confusion by practitioners or the trial court.

Following Council's November 18 meeting and vote, the Council decided to look more deeply into how the amendment to MCR 7.210(C) would affect other court rules. As a result of that investigation, the Appellate Practice Section recommends revisions to MCR 2.518 and MCR 7.210(F). Council also made other recommended revisions to MCR 7.210(C). All of these recommended revisions appear below and are intended to bring clarity to the current proposal contained in ADM 2010-25 and to make the court rules consistent with the proposed amendment MCR 7.210(C). Council voted electronically on these additional revisions the week of January 30, 2012. Fifteen council members voted in favor of these additional recommended revisions, while one council member abstained, and no council members opposed the recommended revisions.

The following represents the Appellate Practice Section's recommended revisions to ADM 2010-25. To aid in the reading of the Section's proposed text, the only revisions that appear are those of the Section, and which otherwise accepts the proposed rule change as submitted in ADM 2010-25. Thus, the language of ADM 2010-25 appears as regular text, and the Section's revisions are indicated with additions underlined, and deletions overstricken. The current language of MCR 7.210(C) does not appear below.

**MCR 7.210. Record on Appeal.**

(A)-(B) [Unchanged.]

(C) Exhibits. The trial court or tribunal shall retain originals or legible copies of all documentary, photographic, video, or audio exhibits offered in evidence, whether admitted or not. If a claim of appeal is filed, the trial court or tribunal shall forward these materials to the trial court's or tribunal's clerk's office to become part of the record on appeal. If no claim of appeal has been filed upon expiration of the time for doing so, the trial court or tribunal may return such exhibits to the parties who offered them. The trial court or tribunal may either retain exhibits in other forms or, by stipulation of the parties or order of the trial court or tribunal, By stipulation of the parties or order of the trial court or tribunal may be returned them to the parties who offered them. Parties in possession of such exhibits shall preserve them until expiration of the time to file an appeal and pending an appeal, or until otherwise ordered. ~~Appellants~~ Parties are entitled to access the exhibits or proposed exhibits that are not in documentary, photographic, video, or audio form upon a showing of good cause and the filing of a motion showing good cause for seeking such access within the time for filing the requesting parties' brief on appeal. No motion is required to access exhibits or proposed exhibits that are in documentary, photographic, video, or audio form. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk shall return the exhibits to the parties who filed them.

(D)-(E) [Unchanged.]

**(F) Service of Record.** Within 21 days after the transcript is filed with the trial court clerk, the appellant shall serve a copy of the entire record on appeal, including the transcript and documentary, photographic, video, or audio exhibits, on each appellee. [Remainder of subrule (F) remains unchanged.]

**MCR 2.518. Receipt and Return or Disposal of Exhibits.**


(A) [Unchanged.]

(B) Return or Disposal of Exhibits. ~~At the conclusion of a trial or hearing, exhibits should be retrieved by the parties submitting them~~ The court or tribunal shall retain originals or legible copies

of all documentary, photographic, video, or audio exhibits offered in evidence, whether admitted or not. If no claim of appeal has been filed upon expiration of the time for doing so, the trial court or tribunal may return such exhibits to the parties who offered them, except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If no timely appeal is filed, and if the exhibits are not retrieved by the parties within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without 14 days' notice to the parties.

The Section thanks this Court's consideration of these recommended revisions to ADM 2010-25.

Sincerely,



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Liisa R. Speaker  
Chair, Appellate Practice Section