

# Order

Michigan Supreme Court  
Lansing, Michigan

November 10, 2011

ADM File No. 2010-26

Proposed Amendment of  
Rule 7.210 and Rule 7.212  
of the Michigan Court Rules

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Robert P. Young, Jr.,  
Chief Justice

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

On order of the Court, this is to advise that the Court is considering amendment of Rule 7.210 and Rule 7.212 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 also will be considered at a public hearing. The notices and agendas for public hearings are posted at <http://courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>.

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 7.210 Record on Appeal

(A)[Unchanged.]

(B) Transcript.

(1) [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 shall take the following steps to settle the record and to cause the filing of a certified file a settled statement of facts to serve as a substitute for the transcript.

(a) No later than 56 days after the filing of the other transcripts, Within 14 days after filing the claim of appeal, the appellant 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 ~~The~~ 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 ~~inform the Court of Appeals of the nature of the controversy and of the proceedings in the trial court or tribunal~~ provide for appellate review.

- (b) The appellant shall notice the motion to settle the record for hearing ~~proposed statement of facts for prompt settlement~~ before the trial court or tribunal to be held within 21 days of the filing of the motion. If appellant filed a proposed statement of facts with the motion, appellee must file an ~~An~~ amendment or objection to the proposed statement of facts ~~must be in writing, filed~~ in the trial court or tribunal before the time set for the settlement hearing, and ~~served~~ serve it on the appellant and any other appellee, or the trial court shall adopt and file appellant's proposed statement of facts as the certified settled statement of facts.
- (c) The trial court or tribunal 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 settled statement of facts and the certifying order must be filed with the trial court or tribunal clerk and a copy of the ~~certifying order~~ same must be filed with the Court of Appeals.

(3) [Unchanged.]

(C)-(I) [Unchanged.]

## Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) Appellant's Brief.

- (a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within
  - (i) 28 days after the claim of appeal is filed, the order granting leave is certified, or the transcript is filed with the trial court, whichever is later, in a child custody case or an interlocutory criminal appeal. This time may be extended only by the Court of Appeals on motion; or

- (ii) the time provided by MCR 7.208(B)(5)(a), 7.208(B)(6), or 7.211(C)(1), in a case in which one of those rules applies;
- (iii) 56 days after the claim of appeal is filed, the order granting leave is certified, ~~or~~ the transcript is filed with the trial court or tribunal, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in all other cases. In a criminal case in which substitute counsel is appointed for the defendant, the time runs from the date substitute counsel is appointed, ~~or~~ the transcript is filed, or a settled statement of facts and certifying order is filed, whichever is later. The parties may extend the time within which the brief must be filed for 28 days by signed stipulation filed with the Court of Appeals. The Court of Appeals may extend the time on motion.

(b) [Unchanged.]

(2)-(5) [Unchanged.]

(B)-(I) [Unchanged.]

Staff Comment: The proposed amendments of MCR 7.210 and MCR 7.212 would extend the time period in which parties may request that a court settle a record for which a transcript is not available and would clarify the procedure for doing so.

The staff comment is not an authoritative construction by the 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 sent to the Supreme Court Clerk in writing or electronically by March 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2010-26. Your comments and the comments of others will be posted at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.



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.

November 10, 2011

*Corbin R. Davis*

Clerk