

Section 7: Appellate Procedures

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Section 7: Appellate Procedures

Chapter 1: Appeals to Circuit Court

A. Procedure

1. Ordering Transcript

The appellant is responsible for ordering in writing a copy of the trial court transcript. The transcript must be ordered no later than when the claim of appeal is filed. Unless the trial court orders otherwise, the appellant must secure filing of the full transcript of the testimony and other proceedings. When the court permits filing of less than the full transcript, the appellee may order an additional portion of the transcript. ([MCR 7.101\[C\]\[2\]\[d\]](#))

The ordering party must secure payment for the transcript. ([MCR 7.101\[C\]\[2\]\[d\]](#)) This is generally accomplished with a suitable deposit, followed by payment of the balance, if any, when the transcript is completed. If the appellant is indigent, the trial court will issue an order for production of the transcript at public expense. See [MCR 6.425\(F\)\(2\)](#) and [MCR 3.997\(I\)\(3\)](#).

2. Court Reporter/Recorder Certificate

Within 7 days after the transcript is ordered by a party or the court, the court reporter or recorder must serve the ordering party/attorney with a certificate stating:

- a. that the transcript has been ordered and payment secured, with the estimated date of completion; that the transcript has already been furnished; or that there is no record to be transcribed;
- b. as to each proceeding requested, whether the court reporter or recorder filing the certificate recorded the proceeding; and if not,
- c. the name and certification number of the court reporter or recorder responsible for the transcript of that proceeding.

([MCR 7.101\[C\]\[3\]\[c\]](#))

SCAO-Approved Reporter/Recorder Certificate of Ordering of Transcript on Appeal (form MC 501) should be used for this purpose. Copies of the form are to be distributed to the appellate court, the trial court, the appellant/attorney, and the appellee/attorney. A copy should also be retained by the court reporter or recorder. The form is available at: <http://courts.michigan.gov/scao/courtforms/appeals/mc501.pdf>.

3. Time for Filing

Unless the circuit court orders otherwise, the complete transcript must be filed in the trial court within 28 days after it is ordered. ([MCR 7.101\[F\]\[1\]](#), [MCR 7.101\[N\]\[4\]](#))

4. Untimely Transcripts

In appeals to the circuit court, there is no court rule permitting the reporter or recorder to file a motion for an extension of time to file the transcript. If the transcript is not completed within 28 days, the trial court shall postpone transmittal of the record to the circuit court, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and estimated date of transmittal. ([MCR 7.101\[F\]\[4\]](#)) The circuit court may exercise superintending control over the trial court or the court reporter or recorder to prevent delay. ([MCR 7.101\[N\]\[1\]](#))

5. Filing of Transcript

The court rule requires the appellant to file the original transcript with the trial court, [MCR 7.101\(F\)\(1\)](#), but the court reporter or recorder normally does so.

6. Notice of Filing and Service

SCAO-Approved Notice of Filing of Transcript and Affidavit of Mailing (form MC 502) may be used to notify the circuit court and parties that the transcript has been filed in the trial court, but it is not required. If used, copies are to be distributed to the circuit court, the trial court, the appellant/attorney, and the appellee/attorney. A copy should also be retained by the court reporter or recorder. The form is available at: <http://courts.michigan.gov/scao/courtforms/appeals/mc502.pdf>.

If requested, the court reporter or recorder must serve a copy of the transcript on the ordering party. The ordering party is not required to serve a copy of the transcript on the opposing party. Instead, parties may withdraw the original transcript from the trial court clerk to prepare the brief and return it when finished. ([MCR 7.101\[I\]\[2\]](#))

B. 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; each individual bound volume should start with page one.

Chapter 2: Appeals to Court of Appeals

A. Procedure

1. Ordering and Filing Transcript

The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by [MCR 3.977\(I\)\(3\)](#) or [MCR 6.425\(F\)\(2\)](#), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant 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. ([MCR 7.210\[B\]\[1\]\[a\]](#))

In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript. ([MCR 7.210\[B\]\[1\]\[b\]](#))

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 7 days after entry of the trial court's or tribunal's order on the motion. ([MCR 7.210\[B\]\[1\]\[c\]](#))

The parties may stipulate that some portion less than the full transcript (or none) be filed. ([MCR 7.210\[B\]\[1\]\[d\]](#))

Transcripts are generally ordered by written request of an attorney or party accompanied by a suitable deposit, or if the appellant is indigent, the trial court will issue and order for production of the transcript at public expense. See [MCR 6.425\(F\)\(2\)](#) and [MCR 3.997\(I\)\(3\)](#).

2. Court Reporter/Recorder Certificate

Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating:

- a. that the transcript has been ordered, that payment for the transcript has been made or secured, that it will be filed as soon as possible or has already been filed, and the estimated number of pages for each of the proceedings requested;
- b. as to each proceeding requested, whether the court reporter or recorder filing the certificate recorded the proceeding; and if not,

- c. the name and certification number of the court reporter or recorder responsible for the transcript of that proceeding.

[\(MCR 7.210\[B\]\[3\]\[a\]\)](#)

SCAO-Approved Reporter/Recorder Certificate of Ordering of Transcript on Appeal (form MC 501) should be used for this purpose. Copies of the form are to be distributed to the appellate court, the trial court, the appellant/attorney, and the appellee/attorney. A copy should also be retained by the court reporter or recorder. The form is available at: <http://courts.michigan.gov/scao/courtforms/appeals/mc501.pdf>.

3. Time for Filing

The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within:

- a. 14 days after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
- b. 28 days after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;
- c. 42 days after it is ordered in any other interlocutory criminal appeal or custody case (including termination of parental rights cases); or
- d. 91 days after it is ordered in other cases.

[\(MCR 7.210\[B\]\[3\]\[b\]\)](#)

In addition, the transcript from a postjudgment proceeding in a criminal case must be filed within 28 days of the trial court's decision. [\(MCR 7.208\[B\]\[4\]\)](#)

4. Extension of Time

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. A motion is made in the Court of Appeals by filing five copies of a motion (one signed) stating clearly and concisely the facts and the grounds on which it is based and the relief requested along with the filing fee of \$100.00 and proof that a copy of the motion was served on all parties to the appeal. [\(MCR 7.211\[A\]\)](#)

SCAO-Approved Motion to Extend Time for Filing Transcript on Appeal (form MC 503) should be used for this purpose. Five copies of the motion (one signed) are to be filed in the Court of Appeals. Copies are to be mailed to the appellant/attorney, and the appellee/attorney. A copy should also be retained by the court reporter or recorder. The

form is available at: <http://courts.michigan.gov/scao/courtforms/appeals/mc503.pdf>.

Any answer to the motion must be filed within 7 days after it was served. ([MCR 7.211\[B\]\[2\]\[e\]](#))

Motions to extend time to file the transcript are submitted on the first Tuesday, 7 days after the motion is served on all parties. There is no oral argument on motions, unless ordered by the court. ([MCR 7.211\[D\]](#))

5. Filing of Transcript

Transcripts must be filed in the trial court or tribunal within the times stated in the court rules or as directed by order of the court. A transcript is filed when it has been received by the trial court and accepted for filing. ([MCR 7.202\[2\], \[4\]](#)) A transcript is not considered filed when the transcript has been completed or mailed or when the notice of filing of transcript has been prepared by the court reporter or recorder. A transcript is only considered filed when it has been actually received by the trial court and accepted for filing. It is extremely important that this date be accurately stated in the affidavit of mailing of notice to the parties because the due date of the appellant's brief is calculated from this date.

6. Notice of Filing and Service

Immediately after the transcript is filed, the court reporter or recorder 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. ([MCR 7.210\[B\]\[3\]\[e\]](#))

SCAO-Approved Notice of Filing of Transcript and Affidavit of Mailing (form MC 502) should be used for this purpose. Copies are to be distributed to the appellate court, the trial court, the appellant/attorney, and the appellee/attorney. A copy should also be retained by the court reporter or recorder. The form is available at: <http://courts.michigan.gov/scao/courtforms/appeals/mc502.pdf>.

7. Consequences of Violating the Court Rules

A court reporter or recorder failing to comply with the requirements of the court rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party. ([MCR 7.210\[B\]\[3\]\[f\]](#))

Generally, the discipline would include assessment of costs or fines payable to the Court of Appeals. A finding of contempt for an egregious violation of the timelines following a show cause hearing may result in incarceration in the local county jail until the transcripts are completed. ([MCR 3.606](#))

B. 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; each individual bound volume should start with page one; each individual bound volume should start with page one. Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript. ([MCR 7.210\[B\]\[3\]\[d\]](#))

C. Copies of Transcripts

Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder, or photocopies may be made of the transcript furnished by the court reporter or recorder. ([MCR 7.210\[B\]\[3\]\[c\]](#))

D. Responsibility When More Than One Court Reporter or Recorder

In a case in which portions of the transcript must be prepared by more than one court 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 MCR 7.210(B)(3)(e). ([MCR 7.210\[B\]\[3\]\[g\]](#))

As a practical matter, each individual court reporter or recorder files his or her own transcripts and provides the required notice.

Chapter 3: SCAO-Approved Forms

Filing/distribution instructions at the top of all forms are self-explanatory. Please observe the instructions at all times.

A. Heading on Forms

1. Complete the entire heading, i.e., court number and file number (on MC 501 only, check whether appeal goes to a circuit court or the Court of Appeals).
2. For probate matters (IN THE MATTER OF), please provide the complete case name and specify the appellant and appellee (at request of the Court of Appeals).

B. MC 501, Reporter/Recorder Certificate of Ordering of Transcript on Appeal

1. MC 501 must be completed and certified by the reporter or recorder so that the appellant

may file a copy with appellate court within 7 days after the claim of appeal is filed as required by [MCR 7.101\(C\)\(3\)\(c\)](#).

2. For appeals to the Court of Appeals, [MCR 7.210\(B\)\(3\)\(a\)](#) requires the reporter or recorder to file this certificate within 7 days after a transcript is ordered by a party or the court. Although it is the responsibility of the appellant to file this form in appeals to the circuit court, the court reporter or recorder often assumes this responsibility to ensure that filing is accomplished timely.

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc501.pdf>

C. MC 502, Notice of Filing of Transcript and Affidavit of Mailing

This form is for use in appeals to the Court of Appeals as required under [MCR 7.210\(B\)\(3\)\(e\)](#) but can be used in appeals to circuit court as well. The form is to be completed by each reporter or recorder who is filing in a given case. The Affidavit of Mailing on the reverse side of the original copy must be completed and notarized before filing. There is no requirement to give notice of filing or an affidavit of mailing for appeals to circuit court; however, the court reporter or recorder often assumes this responsibility.

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc502.pdf>

D. MC 503, Motion to Extend Time for Filing Transcript on Appeal

1. To Court of Appeals

This form is for appeals to the Court of Appeals as required under [MCR 7.210\(B\)\(3\)](#) but can be used in appeals to circuit court as well. The reporter or recorder is responsible for completing the form.

2. To Circuit Court

There is no requirement for a formal motion to extend time for appeals to the circuit court; however, individual court practice may require such a document. [MCR 7.101\(F\)](#) states that in appeals to circuit court, when a transcript is not available within the time required, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and of the estimated date of transmittal. Extension of time on appeal to the circuit court should be requested only under the most extraordinary circumstances. Every effort should be made to produce all transcripts on appeal within the 28 days allowed by court rule.

3. Procedure for Determining Submission Date in Court of Appeals

- a. Motions in the Court of Appeals are on Tuesday of each week. There is no oral argument on a motion unless ordered by the court.

- b. A motion fee must accompany the motion.

See the form at: <http://courts.michigan.gov/scao/courtforms/appeals/mc503.pdf>