

Order

Michigan Supreme Court
Lansing, Michigan

November 23, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2008-10

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

Proposed Amendments of
Rule 6.425 and Rule 7.210
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rule 6.425 and Rule 7.210 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 www.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 are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(C) [Unchanged.]

(D) Sentencing Guidelines. The court must use the sentencing guidelines, as provided by law. Proposed scoring of the guidelines shall accompany the presentence report. If the court imposes a minimum sentence outside the recommended minimum range, the judge must explain the substantial and compelling reasons justifying that specific departure on a sentencing guideline departure form to be prescribed by the state court administrator. The completed form will be made part of the case record. The requirement to complete this form is in addition to the requirement in MCR 6.425(E)(1)(e) to articulate substantial and compelling reasons justifying a specific departure on the record.

(E)-(G) [Unchanged.]

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 papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, a sentencing guideline departure form prepared by the court, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2)-(4)[Unchanged.]

(B)-(F)[Unchanged.]

- (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 shall 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 shall append a certificate identifying the name of the case and the papers with reasonable definiteness and shall include as part of the record:

- (1) a register of actions in the case;
- (2) all opinions, findings, and orders of the court or tribunal, including any sentencing guideline departure form prepared by the court; and
- (3) the order or judgment appealed from.

Transcripts and all other documents which are part of the record on appeal 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)-(I)[Unchanged.]

Staff Comment: This proposal would require a sentencing judge to prepare and include with the case record a form in which the judge outlines the reason or reasons for

departure from the sentencing guidelines. The duty to do so would be in addition to the obligation to state such reasons on the record. The proposal is designed to provide litigants and appellate courts a clear and unambiguous recitation of the reasons for departure by the sentencing court.

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 these proposals may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2008-10. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



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 23, 2010

Corbin R. Davis

Clerk