

Order

Michigan Supreme Court
Lansing, Michigan

November 13, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2009-18

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Proposed Amendments of
Rules 7.211, 7.313, and 8.119
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 7.211, 7.313, and 8.119 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.

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 7.211 Motions in Court of Appeals

(A)-(B)[Unchanged.]

(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)-(8) Motion to Remand.

(9) Motion to Seal Court of Appeals File in Whole or in Part.

(a) Trial court files that have been sealed in whole or in part by a trial court order will remain sealed while in the possession of the Court of Appeals. Public requests to view such trial court files will be referred to the trial court.

(b) Materials that are subject to a protective order entered under MCR 2.302(C) may be submitted for inclusion in the Court of Appeals file in sealed form if they are accompanied by a copy of the protective order. A party objecting to such sealed submissions may file an appropriate motion in the Court of Appeals.

- (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(F). Materials that are subject to a motion to seal a Court of Appeals file in whole or in part 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 7 days after the motion is served on the other parties, or within 7 days after the motion is filed in the Court of Appeals, whichever is later.
- (e) An order granting a motion shall include a finding of good cause, as defined by MCR 8.119(F)(2), and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (f) An order granting or denying a motion to seal a Court of Appeals file in whole or in part may be challenged by any person at any time during the pendency of an appeal.

(D)-(E)[Unchanged.]

Rule 7.313 Motions in Supreme Court

- (A) What to File. To have a motion heard, a party must file with the clerk:
 - (1) a motion stating briefly but distinctly the grounds on which it is based and the relief required;
 - (2) an affidavit supporting any allegations of fact in the motion;
 - (3) a notice that the motion will be heard on a Tuesday at least 7 days after the motion is filed;
 - (4) the fee provided by MCR 7.319(B)(7)(c) or (d); and
 - (5) proof that the motion and supporting papers were served on the opposing party.

Eight copies of the motion must be filed, except only 2 copies need be filed of a motion to extend time, to place a case on or withdraw a case from the session calendar, or for oral argument. The attorney must sign the motion. By filing a motion for immediate consideration, a party may obtain an earlier hearing on the motion.

- (B) Motion Day. Tuesday of each week is motion day. There is no oral argument on motions, unless ordered by the Court.
- (C) Answer. An answer may be filed at any time before an order is entered on the motion.
- (D) Except as otherwise provided by statute or court rule, the procedure for sealing a Supreme Court file is governed by MCR 8.119(F). Materials that are subject to a motion to seal a file in whole or in part shall be held under seal pending the court's disposition of the motion.

(D)-(E)[Relettered but otherwise unchanged.]

Rule 8.119 Court Records and Reports; Duties of Clerks

(A)-(E)[Unchanged.]

(F) Sealed Records.

- (1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless
 - (a) a party has filed a written motion that identifies the specific interest to be protected,
 - (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
 - (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (2) In determining whether good cause has been shown, the court must consider,
 - (a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and
 - (b) the interest of the public.

- (3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.
 - (4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a record in whole or in part shall be held under seal pending the court's disposition of the motion.
 - (5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
 - (6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).
 - (7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.
- (G) [Unchanged.]

Staff Comment: These proposed amendments of MCR 7.211, 7.313, and 8.119 would clarify that materials filed with a trial court, with the Court of Appeals, or with the Supreme Court that relate to a motion to seal a record are nonpublic until the court disposes of the motion.

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, 2010, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2009-18. 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 13, 2009

Corbin R. Davis

Clerk