

Order

Michigan Supreme Court
Lansing, Michigan

April 27, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2009-19

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

Proposed Amendments of
Rules 6.425, 6.502, 7.204,
and 7.205 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.425, 6.502, 7.204, and 7.205 of the Michigan Court Rules. Before determining whether the proposals 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 proposals 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 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(F)[Unchanged.]

(G) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer.

- (a) Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.
- (b) In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing or within the time for

filing an appeal of right as provided in MCR 7.204(A) and (B). ~~The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.~~

- (c) In a case involving a conviction following a plea of guilty or nolo contendere, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing.
- (d) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant
 - (i) in available postconviction proceedings in the trial court the lawyer deems appropriate,
 - (ii) in postconviction proceedings in the Court of Appeals,
 - (iii) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and
 - (iv) as appellee in relation to any postconviction appeal taken by the prosecutor.
- (2) [Unchanged.]
- (3) Order as Claim of Appeal; Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, ~~timely or not~~, was made within the time for filing a claim of appeal as provided in MCR 7.204(A) and (B), the order described in subrules (G)(1) and (2) must be entered on a form approved by the State Court Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

Rule 6.502 Motion for Relief from Judgment

(A)-(G)[Unchanged.]

- (H) Time for Filing. Unless otherwise permitted by law, a 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of:
- (1) the date on which the judgment of conviction becomes final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Michigan Supreme Court, the Michigan Legislature, or the United States Supreme Court, if that right has been newly recognized by one of those entities and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Rule 7.204 Filing Appeal of Right; Appearance

- (A) [Unchanged.]

ALTERNATIVE A (Extension by Court of Appeals)

- (B) Extension of Time for Filing Claim of Appeal. Upon a showing of excusable neglect, the Court of Appeals may extend the time for filing the claim of appeal by any party for a period not to exceed thirty-five days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion. An answer may be filed within 7 days of service. The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

ALTERNATIVE B (Extension by Trial Court)

- (B) Extension of Time for Filing Claim of Appeal. Upon a showing of excusable neglect, the trial court may extend the time for filing the claim of appeal by any party for a period not to exceed thirty-five days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion. An

answer may be filed within 7 days of service. The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

(B)-(H)[Unchanged but relettered.]

Rule 7.205 Application for Leave to Appeal

(A) Time Requirements: An application for leave to appeal must be filed within

- (1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or
- (2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period.
- (3) 21 days after entry of an order deciding a motion to withdraw a plea of guilty or nolo contendere filed under MCR 6.310(C) or a motion for resentencing filed under MCR 6.429(B)(3).

For purposes of subrules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

ALTERNATIVE A (Extension by Court of Appeals)

(B) Extension of Time for Filing Application. Upon a showing of excusable neglect, the Court of Appeals may extend the time for filing the application for leave to appeal by any party for a period not to exceed twenty-one days from the expiration of the time otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion. An answer may be filed within 7 days of service. The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

ALTERNATIVE B (Extension by Trial Court)

(B) Extension of Time for Filing Application. Upon a showing of excusable neglect, the trial court may extend the time for filing the application for leave to appeal by any party for a period not to exceed thirty-five days from the expiration of the time

otherwise prescribed by this rule. Such an extension may be granted before or after the time otherwise prescribed by this rule has expired; but if a request for an extension is made after such time has expired, it shall be made by motion. An answer may be filed within 7 days of service. The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

(B)-(E)[Unchanged but relettered.]

(F) ~~Late Appeal.~~

- (1) ~~When an appeal of right was not timely filed or was dismissed for lack of jurisdiction, or when an application for leave was not timely filed, the appellant may file an application as prescribed in subrule (B), file 5 copies of a statement of facts explaining the delay, and serve 1 copy on all other parties. The answer may challenge the claimed reasons for delay. The court may consider the length of and the reasons for delay in deciding whether to grant the application. In all other respects, submission, decision, and further proceedings are as provided in subrule (D).~~
- (2) ~~In a criminal case, the defendant may not file an application for leave to appeal from a judgment of conviction and sentence if the defendant has previously taken an appeal from that judgment by right or leave granted or has sought leave to appeal that was denied.~~
- (3) ~~Except as provided in subrules (F)(4) and (F)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:~~
 - (a) ~~entry of a final judgment or other order that could have been the subject of an appeal of right under MCR 7.203(A), but if a motion described in MCR 7.204(A)(1)(b) was filed within the time prescribed in that rule, then the 12 months are counted from the time of entry of the order denying that motion; or~~
 - (b) ~~entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed was filed within the initial 21 day appeal period or within further time the trial court has allowed for good cause during that 21 day period, then the 12 months are counted from the entry of the order deciding the motion.~~
- (4) ~~The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an~~

~~application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.431(A), or if~~

- ~~(a) the defendant has filed a delayed request for the appointment of counsel pursuant to MCR 6.425(G)(1) within the 12-month period,~~
- ~~(b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the delayed request for counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)(2), and~~
- ~~(c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.~~

~~A motion for rehearing or reconsideration of a motion mentioned in subrule (F)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule (F)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.~~

~~A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.~~

- ~~(5) Notwithstanding the 12-month limitation period otherwise provided in subrule (F)(3), leave to appeal may be granted if a party's claim of appeal is dismissed for lack of jurisdiction within 21 days before the expiration of the 12-month limitation period, or at any time after the 12-month limitation period has expired, and the party files a late application for leave to appeal from the same lower court judgment or order within 21 days of denial of a timely filed motion for reconsideration. A party filing a late application in~~

~~reliance on this provision must note the dismissal of the prior claim of appeal in the statement of facts explaining the delay.~~

~~(6) The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).~~

(G) [Unchanged.]

Staff Comment: The amendments proposed in this order would impose time limits for the filing of motions for relief from judgment in criminal cases and would shorten time limits for late appeals in both civil and criminal actions. In proposed amendments of MCR 7.204 and MCR 7.205, alternative provisions are offered, under which, upon a showing of excusable neglect, the Court of Appeals or a trial court may grant an extension of time for filing a late appeal.

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 August 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. 2009-19. 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.

April 27, 2010

Corbin R. Davis

Clerk