

# Order

Michigan Supreme Court  
Lansing, Michigan

September 20, 2017

Stephen J. Markman,  
Chief Justice

ADM File No. 2015-15

Amendment of  
Rule 7.211 of the  
Michigan Court Rules

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
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Kurtis T. Wilder,  
Justices

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On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendments of Rule 7.211 of the Michigan Court Rules are adopted, effective January 1, 2018.

[Additions to the text are indicated in underlining and  
deleted text is shown 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)-(4)[Unchanged.]

(5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.

(a) [Unchanged.]

(b) If the appeal is available only by leave of the court, the motion shall be filed within 56 days after the transcript is filed or within the deadline for filing a late application for leave to appeal, whichever comes first. The filing of such a motion, with the accompanying brief required by MCR 7.211(C)(5)(a)(ii), shall be treated as the filing of an application for leave to appeal on behalf of the appellant.

~~(b)~~(c) [Relettered but otherwise unchanged.]

(e)(d) If the court finds that the appeal is wholly frivolous, it may grant the motion and affirm the conviction or trial court judgment in appeals by right or deny leave to appeal in appeals by leave. If the court ~~grants the motion to withdraw affirms the conviction or trial court judgment or denies leave to appeal~~, the appellant's attorney shall mail to the appellant a copy of the transcript within 14 days after the order affirming is certified and file proof of that service. If the court finds any legal point arguable on its merits, it ~~will~~ may deny the motion and order the court appointed attorney ~~must file an appellant's brief to proceed~~ in support of the appeal or grant the motion and order the appointment of substitute appellate counsel to proceed in support of the appeal.

*Staff Comment:* The amendments of MCR 7.211 allow motions to withdraw for frivolous appeal in cases that proceed by leave to be heard in the Court of Appeals. This alternative to the proposal published for comment was recommended to the Court by the Michigan Appellate Assigned Counsel System, and supported by the Court of Appeals.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, 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.

September 20, 2017

Clerk