

Order

Michigan Supreme Court
Lansing, Michigan

September 30, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2018-33

ADM File No. 2019-20

ADM File No. 2019-38

David F. Viviano,
Chief Justice Pro Tem

Amendments of Rules
6.425, 6.428, 7.208, and
7.211 of the Michigan
Court Rules

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.425, 6.428, 7.208, and 7.211 of the Michigan Court rules are adopted, effective January 1, 2021.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A) Presentence Report; Contents.

(1) [Unchanged.]

(2) On request, the probation officer must give the defendant's attorney notice and a reasonable opportunity to attend the presentence interview.

(2) [Renumbered (3) but otherwise unchanged.]

(3) ~~Regardless of the sentence imposed, the court must have a copy of the presentence report and of any psychiatric report sent to the Department of Corrections. If the defendant is sentenced to prison, the copies must be sent with the commitment papers.~~

(B) [Unchanged.]

(C) ~~Presentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, or the defendant not represented by a lawyer, with a copy of the presentence report and~~

~~any attachments to it. The court must exempt from disclosure any information the sentencing court exempted from disclosure pursuant to subrule (B).~~

~~(C)~~ [Relettered (C) but otherwise unchanged.]

~~(E)~~ Sentencing Procedure.

(1) [Unchanged.]

(2) Resolution of Challenges and Corrections.

(a) If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge, ~~or~~ determines that it will not take the challenged information into account in sentencing, or otherwise determines that the report should be corrected, it must order direct the probation officer to (i) correct the report, or delete the challenged information in the report, whichever is appropriate, and If ordered to correct the report, the probation officer must (ii) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections, certify that the report has been corrected, and ensure that no prior version of the report is used for classification, programming, or parole purposes.

(b) [Unchanged.]

(3) [Unchanged.]

(E) Presentence Report; Retention and Disclosure after Sentencing. Regardless of the sentence imposed, the Department of Corrections must retain the presentence report reflecting any corrections ordered under subrule (D)(2). On written request or order of the court, the Department of Corrections must provide the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, with a copy of the report. On written request, the court must provide the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, with copies of any documents that were presented for consideration at sentencing, including the court's initial copy of the presentence report if corrections were made after sentencing. If the court exempts or orders the exemption of any information from disclosure, it must follow the exemption requirements of subrule (B).

(F)-(G) [Unchanged.]

Rule 6.428 Restoration of Appellate Rights~~Reissuance of Judgment.~~

~~If the defendant did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, whether convicted by plea or at trial, was denied the right to appellate review or the appointment of appellate counsel due to errors by the defendant's prior attorney or the court, or other factors outside the defendant's control, the trial court shall issue an order restarting the time in which to file an appeal or request counsel of right.~~

Rule 7.208 Authority of Court or Tribunal Appealed From

(A) [Unchanged.]

(B) Postjudgment Motions in Criminal Cases.

- (1) ~~Within~~No later than 56 days after the commencement of the time for filing the defendant-appellant's brief as provided by MCR 7.212(A)(1)(a)(iii), the defendant may file in the trial court a motion for a new trial, for judgment of acquittal, to withdraw a plea, or to correct an invalid sentence.
- (2) [Unchanged.]
- (3) The trial court shall hear and decide the motion within ~~56~~28 days of filing, unless the court determines that an adjournment is necessary to secure evidence needed for the decision on the motion or that there is other good cause for an adjournment.

(4)-(6) [Unchanged.]

(C)-(J) [Unchanged.]

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) Motion to Remand.

(a) ~~Within the time provided for filing the appellant's brief, t~~The appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show:

(i)-(ii) [Unchanged.]

A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.

(b)-(c) [Unchanged.]

(d) If a motion to remand is ~~filed~~granted, further proceedings in the Court of Appeals are stayed until the motion is denied or the trial court proceedings are completed~~completion of the proceedings in the trial court pursuant to the remand~~, unless the Court of Appeals orders otherwise.

(e)-(f) [Unchanged]

(2)-(9) [Unchanged.]

(D)-(E) [Unchanged.]

Staff comment: The amendments, submitted by the State Appellate Defender Office, make several substantive changes. The amendments expand certain time periods within which to file and dispose of postjudgment motions (MCR 7.208 and 7.211), and reconfigure and expand the Reissuance of Judgment Rule (MCR 6.428) (renaming it Restoration of Judgment Rule). Finally, the amendments of MCR 6.425 require a probation officer to give defendant's attorney notice and a reasonable opportunity to attend the presentence interview, require a probation agent to not only correct a report but certify the correction has been made and provide for additional requirements regarding use of and access to the presentence investigation report.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an 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 30, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk