

Order

Michigan Supreme Court
Lansing, Michigan

March 19, 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

Stephen J. Markman
Brian K. Zahra

Richard H. Bernstein
Elizabeth T. Clement

Megan K. Cavanagh,
Justices

Proposed Amendments of Rules
6.310, 6.425, 6.428, 6.429, 6.431,
7.204, 7.205, 7.208, 7.211, 7.305,
and Proposed Addition of Rule
1.112 of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.310, 6.425, 6.428, 6.429, 6.431, 7.204, 7.205, 7.208, 7.211, 7.305, and a proposed addition of Rule 1.112 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 [Administrative Matters & Court Rules page](#).

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

[NEW] Rule 1.112 Filings by Incarcerated Individuals

If filed by an unrepresented individual who is incarcerated in a prison or jail, a pleading or other document must be deemed filed on the date of deposit in the institution's outgoing mail. Timely filing may be shown by a receipt of mailing or sworn statement setting forth the date of deposit and that postage has been prepaid.

Rule 6.310 Withdrawal or Vacation of Plea

(A)-(B) [Unchanged.]

(C) Motion to Withdraw Plea After Sentence.

(1)-(4) [Unchanged.]

- (5) ~~If a motion to withdraw plea is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the motion as a pro se party, the motion shall be deemed presented for filing on the date of deposit of the motion in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement filed with the motion, which must set forth the date of deposit and state that first class postage has been prepaid. The exception applies to cases in which a plea was accepted on or after the effective date of this amendment. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to withdraw a plea in a Michigan court.~~

(D)-(E) [Unchanged.]

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).~~

(D) [Renumbered (C) but otherwise unchanged.]

(ED) 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 6.429 Correction and Appeal of Sentence

(A) [Unchanged.]

(B) Time for Filing Motion.

(1)-(4) [Unchanged.]

(5) ~~If a motion to correct an invalid sentence is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the motion as a pro se party, the motion shall be deemed presented for filing on the date of deposit of the motion in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement filed with the motion, which must set forth the date of deposit and state that first class postage has been prepaid. The exception applies to cases in which a judgment of conviction and sentence is entered on or after the effective date of this amendment. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to correct an invalid sentence in a Michigan court.~~

(C) [Unchanged.]

Rule 6.431 New Trial

(A) Time for Making Motion.

(1)-(4) [Unchanged.]

(5) ~~If a motion for new trial is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the motion as a pro se party, the motion shall be deemed presented for filing on the date of deposit of the motion in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement filed with the motion, which must set forth the date of deposit and~~

~~state that first class postage has been prepaid. The exception applies to cases in which the trial court rendered its decision on or after the effective date of this amendment. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks a new trial in a Michigan court.~~

(B)-(D) [Unchanged.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. 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.

(1) [Unchanged.]

(2) An appeal of right in a criminal case must be taken

(a)-(d) [Unchanged.]

~~(e) If a claim of appeal is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the claim as a pro se party, the claim shall be deemed presented for filing on the date of deposit of the claim in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first class postage has been prepaid. The exception applies to claims of appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.~~

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42- day period.

(3) [Unchanged.]

(B)-(H) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

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

(1)-(2) [Unchanged.]

(3) ~~If an application for leave to appeal in a criminal case is received by the court after the expiration of the periods set forth above or the period set forth in MCR 7.205(G), and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to applications for leave to appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.~~

(B)-(H) [Unchanged.]

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.]

Rule 7.305 Application for Leave to Appeal

(A)-(B) [Unchanged.]

(C) When to File.

(1)-(4) [Unchanged.]

~~(5) Late Application, Exception. Late applications will not be accepted except as allowed under this subrule. If an application for leave to appeal in a criminal case is not received within the time periods provided in subrules (C)(1) or (2), and the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first class postage was prepaid. The exception applies to applications from decisions of the Court of Appeals rendered on or after March 1, 2010. This exception also applies to an inmate housed in a federal or other state correctional institution who is acting pro se in a criminal appeal from a Michigan court.~~

(6)-(8) [Renumbered (5)-(7) but otherwise unchanged.]

(D)-(I) [Unchanged.]

Staff comment: The proposed amendments were submitted by the State Appellate Defender Office and would address several issues.

First, it would expand the prisoner mailbox rule to all legal filings (not just claims of appeal and postjudgment motions) made by a person incarcerated in prison or jail (not just prison, as under the current rule). This part of the proposal includes a new MCR 1.112, and elimination of specific prison mailbox provisions in MCR 6.310(C)(5), MCR 6.429(B)(5), MCR 6.431(A)(5), MCR 7.204(A)(2)(e), MCR 7.205(A)(3), and MCR 7.305(C)(5). One difficulty with this expansion is the fact that most jails do not have a mail log system like that in place in prisons. Second, the proposal would expand certain time frames for filing and deciding postjudgment motions in criminal cases, as reflected in the amendments of MCR 7.208 and MCR 7.211. Third, the proposal would reconfigure and expand the “Reissuance of Judgment” rule, as shown in the proposed amendments of MCR 6.428. Finally, the proposal (as shown in proposed amendments of MCR 6.425) would 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 that the correction has been made, and “ensure that no prior version of the report is used for classification, programming, or parole purposes.” This portion of the proposal also would require the Michigan Department of Corrections to provide the prosecutor, defendant, or defense lawyer with a copy of the presentence investigation report, and further require the court to provide to the parties any documents presented for consideration at sentencing, including any PSIR considered before corrections were made.

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.

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 the proposal may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File Nos. 2018-33/2019-20/2019-38. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

March 19, 2020

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

Clerk