

Order

Michigan Supreme Court
Lansing, Michigan

March 19, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-27

David F. Viviano,
Chief Justice Pro Tem

Proposed Amendments of Rules
6.310, 6.429, 6.431, 6.509, and
7.205 and Proposed Addition of
Rule 6.126 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, this is to advise that the Court is considering amendments of Rules 6.310, 6.429, 6.431, 6.509, and 7.205 and a proposed addition of Rule 6.126 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 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 [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 6.126 Decision on Admissibility of Evidence

Where the court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the court reconsider whether pretrial release is appropriate.

Rule 6.310 Withdrawal or Vacation of Plea

(A)-(B) [Unchanged.]

(C) Motion to Withdraw Plea After Sentence.

(1) The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.205(A)(2)(a) and

~~(b)(i)-(iii) 6 months after sentence or within the time provided by subrule (C)(2).~~

- (2) ~~If 6 months have elapsed since sentencing, the defendant may file a motion to withdraw the plea if:~~
- ~~(a) the defendant has filed a request for the appointment of counsel pursuant to MCR 6.425(G)(1) within the 6-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 request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G), and~~
 - ~~(c) the motion to withdraw the plea is filed in accordance with the provisions of this subrule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing counsel or substitute counsel, or the order denying the appointment of counsel, the 42-day period runs from the date of that order.~~

(3)-(5) [Renumbered (2)-(4) but otherwise unchanged.]

(D)-(E) [Unchanged.]

Rule 6.429 Correction and Appeal of Sentence

(A) [Unchanged.]

(B) Time for Filing Motion.

(1)-(2) [Unchanged.]

- (3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed within the time for filing an application for leave to appeal under MCR 7.205(A)(2)(a) and (b)(i)-(iii).÷
- ~~(a) within 6 months of entry of the judgment of conviction and sentence, or,~~

- (b) ~~if 6 months have elapsed since entry of the judgment of conviction and sentence, the defendant may file a motion to correct an invalid sentence if:~~
- (i) ~~the defendant has filed a request for the appointment of counsel pursuant to MCR 6.425(G)(1) within the 6 month period,~~
 - (ii) ~~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 request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G), and~~
 - (iii) ~~The motion to correct invalid sentence is filed in accordance with the provisions of this subrule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing counsel or substitute counsel, or the order or denying the appointment of counsel, the 42 day period runs from the date of that order.~~

(4)-(5) [Unchanged.]

(C) [Unchanged.]

Rule 6.431 New Trial

(A) Time for Making Motion.

(1)-(2) [Unchanged.]

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion for a new trial may be filed within the time for filing an application for leave to appeal under MCR 7.205(A)(2)(a) and (b)(i)-(iii).÷

- (a) ~~within 6 months of entry of the judgment of conviction and sentence,~~
~~or~~
- (b) ~~If 6 months have elapsed since entry of the judgment of conviction and sentence, the defendant may file a motion for new trial if:~~
 - (i) ~~the defendant has filed a request for the appointment of counsel pursuant to MCR 6.425(G)(1) within the 6 month period,~~

- (ii) ~~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 request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G), and~~
- (iii) ~~the motion for a new trial is filed in accordance with the provisions of this subrule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing counsel or substitute counsel, or the order denying the appointment of counsel, the 42-day period runs from the date of that order.~~

(4)-(5) [Unchanged.]

(B)-(D) [Unchanged.]

Rule 6.509 Appeal

- (A) Availability of Appeal. Appeals from decisions under this subchapter are by application for leave to appeal to the Court of Appeals pursuant to MCR 7.205(A)(1). The 6-month time limit provided by MCR 7.205(A)(43)(a), runs from the decision under this subchapter. Nothing in this subchapter shall be construed as extending the time to appeal from the original judgment.

(B)-(D) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

- (A) Time Requirements. The time limit for an application for leave to appeal is jurisdictional. See MCR 7.203(B). The provisions of MCR 1.108 regarding computation of time apply. For purposes of this subrule, "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. ~~An application for leave to appeal must be filed within~~
 - (1) Except as otherwise provided in this rule, an application for leave to appeal must be filed within:
 - (a) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or

- (b2) 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.
- (2) In a criminal case involving a final judgment or final order entered in that case, an application for leave to appeal filed on behalf of the defendant must be filed within the later of:
- (a) 6 months after entry of the judgment or order; or
 - (b) 42 days after:
 - (i) an order appointing appellate counsel or substitute counsel, or denying a request for appellate counsel, if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed;
 - (ii) the filing of transcripts ordered under MCR 6.425(G)(1)(f), if the defendant requested counsel within 6 months after entry of the judgment or order to be appealed;
 - (iii) the filing of transcripts ordered under MCR 6.433, if the defendant requested the transcripts within 6 months after entry of the judgment or order to be appealed;
 - (iv) an order deciding a timely filed motion to withdraw plea under MCR 6.310(C), motion for directed verdict under MCR 6.419(C), motion to correct an invalid sentence under MCR 6.429(B), or motion for new trial under MCR 6.431(A); or
 - (v) an order deciding a timely filed motion for reconsideration of an order described in subrule (A)(2)(b)(iv).

A defendant relying on subrule (A)(2)(b) must provide a statement, supported by relevant documentation, explaining how the application meets the requirements of the subrule.

~~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.~~

(3) In an appeal from an order terminating parental rights, an application for leave to appeal must be filed within 63 days, as provided by MCR 3.993(C)(2). 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.

(4) Delayed Application for Leave to Appeal.

(a) For appeals governed by subrule (A)(1), when an application is not filed within the time provided by that subrule, a delayed application for leave to appeal may be filed within 6 months of the entry of a judgment or order described in that subrule.

(b) For appeals governed by subrule (A)(1) or (2), if the Court of Appeals dismisses a claim of appeal for lack of jurisdiction, a delayed application for leave to appeal may be filed within 21 days of the entry of the dismissal order or an order denying reconsideration of that order, provided that:

(i) the delayed application is taken from the same lower court judgment or order as the claim of appeal, and

(ii) the claim of appeal was filed within the applicable time period in subrule (A)(1) or (2).

A delayed application under this rule must contain a statement of facts explaining the reasons for delay. The appellee may challenge the claimed reasons in the answer. The court may consider the length of and the reasons for delay in deciding whether to grant the delayed application.

(5) In a criminal case, if an inmate in the custody of the Michigan Department of Corrections, or in the custody of another state or federal penal institution, submits an application or delayed application for leave to appeal as a pro per

party that is received by the court after the expiration of the periods set forth in this rule, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution where 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.

- (6) In a criminal case, except as provided in subrule (4)(b), 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.

(B)-(D) [Unchanged.]

(E) Decision.

(1) [Unchanged.]

- (2) ~~The court may grant or deny the application,; enter a final decision,; grant other relief,; or request additional material from the record; or require a certified concise statement of proceedings and facts from the court, tribunal, or agency whose order is being appealed. The clerk shall enter the court's order and mail copies to the parties.~~

(3)-(4) [Unchanged.]

(F) Expedited DecisionEmergency Appeal. ~~When a party requires a decision on an application by a date certain, the party may file a motion for immediate consideration of the application as provided in MCR 7.211(C)(6). When a motion for immediate consideration is filed, the time for submission of the application and motion is governed by MCR 7.211(C)(6). In all other respects, submission, decision, and further proceedings are as provided in subrule (E).~~

- (1) ~~If the order appealed requires acts or will have consequences within 56 days of the date the application is filed, appellant shall alert the clerk of that fact by prominent notice on the cover sheet or first page of the application, including the date by which action is required.~~

- (2) ~~When an appellant requires a hearing on an application in less than 21 days, the appellant shall file and serve a motion for immediate consideration, concisely stating facts showing why an immediate hearing is required. A notice of hearing of the application and motion or a transcript is not required. An answer may be filed within the time the court directs. If a copy of the~~

~~application and of the motion for immediate consideration are personally served under MCR 2.107(C)(1) or (2), the application may be submitted to the court immediately on filing. If mail service is used, it may not be submitted until the first Tuesday 7 days after the date of service, unless the party served acknowledges receipt. In all other respects, submission, decision, and further proceedings are as provided in subrule (E).~~

- (3) ~~Where the trial court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the trial court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the trial court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. The appealing party must pursue the appeal as expeditiously as practicable, and the Court of Appeals shall consider the matter under the same priority as that granted to an interlocutory criminal appeal under MCR 7.213(C)(1). If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the trial court reconsider whether pretrial release is appropriate.~~

(G) ~~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 (E).~~
- (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 (G)(4) and (G)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 6 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 6 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 6 months are counted from the entry of the order deciding the motion.~~
- ~~(4) The limitation provided in subrule (G)(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(C), 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 6-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 or for substitute counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G), 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 counsel, or substitute counsel, or the order 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 (G)(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 (G)(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 (G)(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 6-month limitation period otherwise provided in subrule (G)(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 6-month limitation period, or at any time after the 6-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 the dismissal of the claim of appeal or 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).~~
- ~~(H) Certified Concise Statement.~~
- ~~(1) When the Court of Appeals requires a certified concise statement of proceedings and facts, the appellant shall, within 7 days after the order requiring the certified concise statement is certified, serve on all other parties a copy of a proposed concise statement of proceedings and facts, describing the course of proceedings and the facts pertinent to the issues raised in the application, and notice of hearing with the date, time, and place for settlement of the concise statement.~~
 - ~~(2) Hearing on the proposed concise statement must be within 14 days after the proposed concise statement and notice is served on the other parties.~~
 - ~~(3) Objections to the proposed concise statement must be filed in writing with the trial court and served on the appellant and any other appellee before the time set for settlement.~~
 - ~~(4) The trial court shall promptly settle objections to the proposed concise statement and may correct it or add matters of record necessary to present the issues properly. When a court's discretionary act is being reviewed, the trial court may add to the statement its reasons for the act. Within 7 days after the~~

~~settlement hearing, the trial court shall certify the proposed or a corrected concise statement of proceedings and facts as fairly presenting the factual basis for the questions to be reviewed as directed by the Court of Appeals. Immediately after certification, the trial court shall send the certified concise statement to the Court of Appeals clerk and serve a copy on each party.~~

Staff comment: The proposed amendments of MCR 6.310, 6.429, 6.431, 6.509, and 7.205 and proposed addition of MCR 6.126 would clarify and simplify the rules regarding procedure in criminal appellate matters.

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 No. 2019-27. 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

Clerk