

# Order

Michigan Supreme Court  
Lansing, Michigan

March 19, 2020

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-29

David F. Viviano,  
Chief Justice Pro Tem

Proposed Amendments of  
Rules 7.212 and 7.312 of  
the Michigan Court Rules

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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 7.212 and 7.312 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.]

Rule 7.212 Briefs

(A)-(I) [Unchanged.]

(J) Appendix.

- (1) ~~In all civil cases (except those pertaining to child protection proceedings, including termination of parental rights, and non criminal delinquency proceedings under chapter XIA of the Probate Code and adoptions under chapter X), and in all appeals from administrative agencies, except those described in section (J)(5) of this rule, the appellant shall file and serve an appendix. The appellant's appendix shall contain a table of contents and copies of the following documents if they exist:~~Requirements. Except as provided in subrules (1)(a)-(f) of this rule, the appellant must file an individual or joint appendix with the appellant's brief. An appellee may file an appendix with the appellee's brief if the appellant's appendix does not contain all the information set forth in subrule (3) of this rule. The appellee's appendix should not contain any of the documents contained in the appellant's appendix except when including additional pages to provide a

more complete context, but should only contain additional information described in subrule (3) that is relevant and necessary to the determination of the issues on appeal. To avoid duplication in cases with more than one appellant or appellee, the parties are encouraged to submit a joint appendix pursuant to subsection (4) rather than separate appendixes. An appendix is not required in appeals from:

- (a) Criminal proceedings.
  - (b) Child protective proceedings.
  - (c) Delinquency proceedings under chapter XIIA of the Probate Code.
  - (d) Adoption proceedings under chapter X.
  - (e) Involuntary mental health treatment proceedings under the Mental Health Code.
  - (f) The Michigan Public Service Commission where the record is available on the Commission's e-docket, or the Michigan Tax Tribunal where the record is available on the Tribunal's tax docket lookup page. In those cases, the parties' briefs shall cite to the document number and relevant pages in the electronic record.
- (2) Form. The appendix must include a cover page or pages with the case caption that sets forth the parties' names and their designations (e.g., plaintiff-appellant), along with the appellate court and trial court or tribunal docket numbers. The cover page(s) must also state whether the appendix is an "Appellant's Appendix," "Appellee's Appendix," or "Joint Appendix." Following the cover page(s), the appendix must include a table of contents that identifies each document with reasonable specificity and indicates both the appendix number or letter and the page number on which the first page of the document appears in the appendix. An appendix must be numbered sequentially in a prominent location at the bottoms of the pages. When the appendix is composed of multiple volumes, pagination must continue from one volume to the next. For multiple appendix volumes, each volume must include a cover page and table of contents, and the first volume must contain a complete table of contents referencing all volumes of the appendix. Each separate document in the appendix must be preceded by a title page that identifies the appendix number or letter and the title of the document.

- (a) For an appendix filed in paper form, one signed copy that is separately bound from the brief shall be filed. The binding method should allow the easy dismantling of the appendix for scanning.
- (b) For an appendix filed electronically:
- (i) The appendix must be separate from the electronically-filed brief and should be transmitted as a single PDF document unless the file size is too large to do so, in which case the appendix should be divided into separate volumes.
- (ii) The appendix must be text searchable and include bookmarks for each document in the appendix and for important information or sections within the documents.
- (iii) The table of contents should link to the documents contained in the appendix or in that volume of the appendix.
- (3) Content. The appendix must include copies of the following documents if they exist:
- (a) The trial court or tribunal judgment or order(s) appealed from, including any written opinion, memorandum, findings of fact and conclusions of law stated on the record, in conjunction with the judgment or order(s) appealed from.;
- (b) ~~A copy of t~~The trial court or tribunal register of actions docket sheet.;
- (c) The relevant pages of any transcripts cited in support of the argumentappellant's position on appeal. Whenre appropriate, pages that precede or followthe appellant may attach pages preceding and succeeding the cited page should be includedeited if helpful to provide context to the citation. Submitting entire transcripts is discouraged unless necessary for the understanding of an argument. If a complete trial, deposition, or administrative transcript is filed, anthe index to such transcript must be included. Transcripts must contain only a single transcript page per document page, not multiple pages combined on a single document page.Only noncompressed (one sheet to a page) transcripts may be filed;
- (d) WhenIf a jury instruction is challenged, the languagea copy of the instruction, any portion of the transcript containing a discussion of the instruction, and any relevant request for the instruction.;~~and~~

- (e) Any other exhibit, pleading, or ~~other~~ evidence that was submitted to the trial court and that is relevant and necessary for the Court to consider in deciding the appeal. Briefs submitted in the trial court are not required to be included in the appendix unless they pertain to a contested preservation issue.

~~For material that is subject to an existing protective order, or for evidence that is not subject to such an order, but which contains information that is confidential or privileged, the procedures of MCR 7.211(C)(9) apply.~~

(4) Joint Appendix.

- (a) The parties may stipulate to using a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix shall meet the requirements of subrules (J)(2) and (3) and shall be included with the initial appellant's brief or, for a joint appendix of multiple appellees, with the first appellee's brief to be filed.
- (b) The stipulation to use a joint appendix may specify that any party may file, as a supplemental appendix, additional portions of the record not covered by the joint appendix.
- ~~(2) The appellee shall file and serve an appendix with its responsive brief only if the appellant's appendix does not contain all the information set forth in section (J)(1) of this rule. The appellee's appendix shall not contain any of the documents contained in the appellant's appendix, but shall only contain additional information described in section (J)(1) that is relevant and necessary to the determination of the issues raised in the appeal.~~
- ~~(3) Each volume of any appendix shall contain no more than 250 pages. The table of contents shall identify each document with reasonable definiteness, and indicate the volume and page of the appendix where the document is located. The cover to the appendix shall indicate in bold type whether it is the "Appellant's Appendix" or "Appellee's Appendix."~~
- (a) ~~For a paper appendix, each document shall also be tabbed. A paper appendix shall be bound separate from the brief. Five copies of the paper appendix shall be filed with the court.~~
- (b) ~~If an appendix is to be filed electronically, it must be filed as an independent .pdf file or a series of independent .pdf files. The table~~

~~of contents for electronically filed appendixes shall contain bookmarks, linking to each document in the appendix.~~

- ~~(4) In cases involving more than one appellant or appellee, including cases consolidated for appeal, to avoid duplication each side shall, where practicable, file a joint rather than separate appendixes.~~
- ~~(5) This subsection does not apply to appeals arising from the Michigan Public Service Commission (in which the record is available on the Commission's e-docket) or the Michigan Tax Tribunal (in which the record is available on the Tribunal's tax docket lookup page). In those cases, the parties shall cite to the document number and relevant pages.~~

#### Rule 7.312 Briefs and Appendixes in Calendar Cases

(A)-(C) [Unchanged.]

(D) Appendixes. Unless the Court orders otherwise, briefs in a calendar case or in a case being argued on an application must be filed with an individual or joint appendix that conforms with the requirements, form, and content of MCR 7.212(J), except that the exclusions listed in MCR 7.212(J)(1)(a)-(f) do not apply to the Supreme Court. The individual or joint appendix must also include a copy of the Court of Appeals opinion or order being appealed but need not include the briefs submitted in the Court of Appeals unless they pertain to a contested preservation issue.

- ~~(1) Form. Appendixes must be prepared in conformity with MCR 7.212(B), and shall be similarly endorsed as briefs under MCR 7.312(C) but designated as an appendix. Appendixes must be printed on both sides of the page and, if they encompass more than 20 sheets of paper, must also be submitted on electronic storage media in a file format that can be opened, read, and printed by the Court.~~
- ~~(2) Appellant's Appendix. An appendix filed by the appellant must be entitled "Appellant's Appendix," must be separately bound, and numbered separately from the brief with the letter "a" following each page number (e.g., 1a, 2a, 3a). Each page of the appendix must include a header that briefly describes the character of the document, such as the names of witnesses for testimonial evidence or the nature of the documents for record evidence. The appendix must include a table of contents and, when applicable, must contain:
 
  - ~~(a) the relevant docket entries of the trial court or tribunal and the Court of Appeals arranged in a single column;~~~~

- (b) ~~the trial court judgment, order, or decision in question and the Court of Appeals opinion or order being appealed;~~
- (c) ~~any relevant finding or opinion of the trial court;~~
- (d) ~~any relevant portions of the pleadings or other parts of the record; and~~
- (e) ~~any relevant portions of the transcript, including the complete jury instructions if an issue is raised regarding a jury instruction.~~

~~The items listed in subrules (D)(2)(a) to (e) must be presented in chronological order.~~

(3) ~~Joint Appendix.~~

- (a) ~~The parties may stipulate to use a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix shall meet the requirements of subrule (D)(2) and shall be separately bound and served with the appellant's brief.~~
- (b) ~~The stipulation to use a joint appendix may provide that either party may file, as a supplemental appendix, any additional portion of the record not covered by the joint appendix.~~

(4) ~~Appellee's Appendix. An appendix, entitled "Appellee's Appendix," may be filed. The appellee's appendix must comply with the provisions of subrule (D)(2) and be numbered separately from the brief with the letter "b" following each page number (e.g., 1b, 2b, 3b). Materials included in the appellant's appendix or joint appendix may not be repeated in the appellee's appendix, except to clarify the subject matter involved.~~

(E)-(J) [Unchanged.]

*Staff comment:* The proposed amendments of MCR 7.212 and 7.312 would allow practitioners to efficiently produce an appendix for all appellate purposes by making the appendix rule consistent within the Court of Appeals and Supreme Court.

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](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-29. 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