

Order

Michigan Supreme Court
Lansing, Michigan

October 22, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2013-36

Michael F. Cavanagh
Stephen J. Markman

Proposed Amendments of
Subchapter 7.300 of the
Michigan Court Rules

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, this is to advise that the Court is considering amendments of the series of rules found in Subchapter 7.300 of the Michigan Court Rules, which contains the procedural rules applicable to the Michigan Supreme Court. The changes proposed in this order would clarify procedure and would reflect current practice and provide uniformity in a numbering system that is consistent with the procedural rules found in Subchapter 7.200 (the rules governing procedure in the Court of Appeals). 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.

[Because the revisions would replace the existing series of rules in Chapter 7.300 *et seq.*, the proposed amendments are not indicated in underlining or strikeover.]

Subchapter 7.300 Supreme Court

Rule 7.301 Organization and Operation of Supreme Court

- (A) Chief Justice. At the first meeting of the Supreme Court in each odd-numbered year, the justices shall select by majority vote one among them to serve as Chief Justice.
- (B) Term and Sessions. The annual term of the Court begins on August 1 and ends on July 31. Except as provided in MCR 7.313(E), the end of a term has no effect on pending cases. Oral arguments are generally scheduled at sessions in October, November, December, January, March, April, and May. The Court will only schedule cases for argument in September, February, June or July pursuant to an order upon a showing of special cause.
- (C) Supreme Court Clerk.

- (1) Appointment; General Provisions. The Supreme Court will appoint a clerk who shall keep the clerk's office in Lansing under the direction of the Court. Where the term "clerk" appears in this subchapter without modification, it means the Supreme Court clerk. The clerk may not practice law other than as clerk while serving as clerk.
 - (2) Duties. The clerk shall perform the following duties:
 - (a) Furnish bond before taking office. The bond must be in favor of the people of the state and in the penal sum of \$10,000, approved by the Chief Justice and filed with the Secretary of State, and conditioned on the faithful performance of the clerk's official duties. The fee for the bond is a Court expense.
 - (b) Collect the fees provided for by statute or court rule.
 - (c) Deposit monthly with the State Treasurer the fees collected, securing and filing a receipt for them.
 - (d) Provide for the recording of Supreme Court proceedings as the Court directs.
 - (e) Care for and maintain custody of all records, seals, books, and papers pertaining to the clerk's office and filed or deposited there.
 - (f) Return the original record as provided in MCR 7.310(B) after an appeal has been decided by the Court.
- (D) Deputy Supreme Court Clerks. The Supreme Court may appoint deputy Supreme Court clerks. A deputy clerk shall carry out the duties assigned by the clerk and perform the duties of the clerk if the clerk is absent or unable to act.
- (E) Reporter of Decisions. The Supreme Court will appoint a reporter of decisions. The reporter shall
- (1) prepare the decisions, including concurring and dissenting opinions, of the Supreme Court for publication;
 - (2) write a brief statement of the facts of each case and headnotes containing the points made;

- (3) publish each opinion in advance sheets as soon as practicable; and
- (4) publish bound volumes as soon as practicable after the last opinion included in it is issued.

The reasons for denying leave to appeal, as required by Const 1963, art 6, § 6 and filed in the clerk's office, are not to be published and are not to be regarded as precedent.

- (F) Supreme Court Crier. The Supreme Court will appoint a court crier. The court crier shall
 - (1) have charge of the Supreme Court courtroom and the offices and other rooms assigned to the Supreme Court justices; and
 - (2) have the power to serve an order, process, or writ issued by the Supreme Court; collect the fee for that service allowed by law to sheriffs; and deposit monthly with the State Treasurer all the fees collected, securing a receipt for them.

Rule 7.303 Jurisdiction of the Supreme Court

- (A) Mandatory Review. The Supreme Court shall review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223-9.226).
- (B) Discretionary Review. The Supreme Court may
 - (1) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.305);
 - (2) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);
 - (3) issue an advisory opinion (see Const 1963, art 3, § 8 and MCR 7.308[B]);
 - (4) respond to a certified question (see MCR 7.308[A]);
 - (5) exercise superintending control over a lower court or tribunal (see MCR 7.306);
 - (6) exercise other jurisdiction as provided by the constitution or by law.

Rule 7.305 Application for Leave to Appeal

- (A) What to File. To apply for leave to appeal, a party must file
- (1) 4 copies of an application for leave to appeal (1 signed) prepared in conformity with MCR 7.212(B) and consisting of the following:
 - (a) a statement identifying the judgment or order appealed from and the date of its entry;
 - (b) the questions presented for review related in concise terms to the facts of the case;
 - (c) a table of contents and index of authorities conforming to MCR 7.212(C)(2) and (3);
 - (d) a concise statement of the material proceedings and facts conforming to MCR 7.212(C)(6);
 - (e) a concise argument, conforming to MCR 7.212(C)(7), in support of the appellant's position on each of the stated questions and establishing a ground for the application as required by subrule (B); and
 - (f) a statement of the relief sought.
 - (2) 4 copies of any opinion, findings, or judgment of the trial court or tribunal relevant to the question as to which leave to appeal is sought and 4 copies of the opinion or order of the Court of Appeals, unless review of a pending case is being sought;
 - (3) proof that a copy of the application was served on all other parties, and that a notice of the filing of the application was served on the clerks of the Court of Appeals and the trial court or tribunal; and
 - (4) the fee provided by MCR 7.319(C)(1).
- (B) Grounds. The application must show that
- (1) the issue involves a substantial question as to the validity of a legislative act;

- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
 - (3) the issue involves legal principles of major significance to the state's jurisprudence;
 - (4) in an appeal before a decision of the Court of Appeals,
 - (a) delay in final adjudication is likely to cause substantial harm, or
 - (b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branches of state government is invalid;
 - (5) in an appeal from a decision of the Court of Appeals,
 - (a) the decision is clearly erroneous and will cause material injustice, or
 - (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or
 - (6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.
- (C) When to File.
- (1) Before Court of Appeals Decision. In an appeal before the Court of Appeals decision, the application must be filed within 42 days after
 - (a) a claim of appeal is filed in the Court of Appeals;
 - (b) an application for leave to appeal is filed in the Court of Appeals;
 - (c) an original action is filed in the Court of Appeals; or
 - (d) entry of an order of the Court of Appeals granting an application for leave to appeal.
 - (2) After Court of Appeals Decision. Except as provided in subrule (C)(4), the application must be filed within 28 days in termination of parental rights

cases, within 42 days in other civil cases, or within 56 days in criminal cases, after the date of

- (a) the Court of Appeals order or opinion disposing of the appeal; or
 - (b) the Court of Appeals order denying a timely filed motion for rehearing or reconsideration.
 - (c) the Court of Appeals order granting a motion to publish an opinion that was originally released as unpublished.
- (3) Attorney Discipline Board Decision. In an appeal from an order of discipline or dismissal entered by the Attorney Discipline Board, the application must be filed within 28 days.
- (4) 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 subrule (C)(1) or (C)(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.
- (5) Decisions Remanding for Further Proceedings. If the decision of the Court of Appeals remands the case to a lower court for further proceedings, an application for leave may be filed within 28 days in termination of parental rights cases, 42 days in other civil cases, and 56 days in criminal cases, after the date of
- (a) the Court of Appeals order or opinion remanding the case,
 - (b) the Court of Appeals order denying a timely filed motion for rehearing of a decision remanding the case, or

- (c) the Court of Appeals order or opinion disposing of the case following the remand procedure, in which case an application may be made on all issues raised initially in the Court of Appeals, as well as those related to the remand proceedings.
- (6) Effect of Appeal on Decision Remanding Case. If a party appeals a decision that remands for further proceedings as provided in subrule (C)(5)(a), the following provisions apply:
 - (a) If the Court of Appeals decision is a judgment under MCR 7.215(E)(1), an application for leave to appeal stays proceedings on remand unless the Court of Appeals or the Supreme Court orders otherwise.
 - (b) If the Court of Appeals decision is an order other than a judgment under MCR 7.215(E)(1), the proceedings on remand are not stayed by an application for leave to appeal unless ordered by the Court of Appeals or the Supreme Court.
- (7) Orders Denying Motions to Remand. If the Court of Appeals has denied a motion to remand, the appellant may raise issues relating to that denial in an application for leave to appeal from the decision on the merits.
- (D) Answer. Any party may file 4 copies of an answer (1 signed) within 28 days of service of the application. The party must file proof that a copy of the answer was served on all other parties.
- (E) Reply. A reply may be filed as provided in MCR 7.212(G).
- (F) Nonconforming Pleading. On its own initiative or on a party's motion, the Court may order a party who filed a pleading that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading.
- (G) Submission and Argument. Leave applications may be submitted for a decision after the reply brief has been filed or the time for filing such has expired, whichever occurs first. There is no oral argument on an application for leave to appeal unless ordered by the Court under subrule (H)(1).
- (H) Decision.

- (1) Possible Court Actions. The Court may grant or deny the application, enter a final decision, direct argument on the application, or issue a peremptory order. The clerk shall issue the order entered and provide copies to the parties and to the Court of Appeals clerk.
- (2) Appeal Before Court of Appeals Decision. If leave to appeal is granted before a decision of the Court of Appeals, the appeal is thereafter pending in the Supreme Court only, and subchapter 7.300 applies.
- (3) Appeal After Court of Appeals Decision. If leave to appeal is denied after a decision of the Court of Appeals, the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms. If leave to appeal is granted, jurisdiction over the case is vested in the Supreme Court, and subchapter 7.300 applies.
- (4) Issues on Appeal.
 - (a) Unless otherwise ordered by the Court, an appeal shall be limited to the issues raised in the application for leave to appeal.
 - (b) On motion of any party establishing good cause, the Court may grant a request to add additional issues not raised in the application for leave to appeal or not identified in the order granting leave to appeal. Permission to brief and argue such additional issues does not extend the time for filing the briefs and appendixes.
- (I) Stay of Proceedings. MCR 7.209 applies to appeals to the Supreme Court. When a stay bond has been filed on appeal to the Court of Appeals under MCR 7.209 or a stay has been entered or takes effect pursuant to MCR 7.209(E)(4), it operates to stay proceedings pending disposition of the appeal to the Supreme Court unless otherwise ordered by the Supreme Court or Court of Appeals.

Rule 7.306 Original Proceedings

- (A) When Available. A complaint may be filed to invoke the Court's superintending control power
 - (1) over a lower court or tribunal when an application for leave to appeal could not have been filed under MCR 7.305, or
 - (2) over the Board of Law Examiners, the Attorney Discipline Board, or the Attorney Grievance Commission.

(B) What to File. To initiate an original proceeding, a plaintiff must file with the clerk

- (1) 4 copies of a complaint (1 signed) prepared in conformity with MCR 7.212(B) and entitled, for example,

“*[Plaintiff] v [Court of Appeals, Board of Law Examiners, Attorney Discipline Board, or Attorney Grievance Commission].*”

A complaint that is named differently shall be re-titled by the clerk.

- (2) 4 copies of a brief (1 signed) conforming as nearly as possible to MCR 7.212(B) and (C);
- (3) proof that a copy of the complaint and brief was served on the defendant; and
- (4) the fee provided by MCR 7.319(C)(1).

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(C) Answer. The defendant must file with the clerk within 21 days of notice of the complaint

- (1) 4 copies of an answer and a brief (1 signed) conforming with MCR 7.212(B) and (D). The grievance administrator’s answer to a complaint against the Attorney Grievance Commission must show the investigatory steps taken and any other pertinent information.
- (2) proof that a copy of the answer was served on the plaintiff.

(D) Reply. Four copies of a reply brief (1 signed) may be filed as provided in MCR 7.212(G).

(E) Actions Against Attorney Grievance Commission; Confidentiality. The clerk shall keep the file in an action against the Attorney Grievance Commission or the grievance administrator confidential and not open to the public if it appears that the complaint relates to matters that are confidential under MCR 9.126. In the answer to a complaint, the grievance administrator shall certify to the clerk whether the matters involved in the action are deemed confidential under MCR 9.126. The protection provided in MCR 9.126 continues unless and until the Court orders otherwise.

- (F) **Nonconforming Pleading.** On its own initiative or on a party's motion, the Court may order a plaintiff who filed a complaint or supporting brief or a defendant who filed an answer that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading.
- (G) **Submission and Argument.** Original proceedings may be submitted for a decision after the reply brief has been filed or the time for filing the reply brief has expired, whichever occurs first. There is no oral argument on original complaints unless ordered by the Court.
- (H) **Decision.** The Court may set the case for argument as on leave granted, grant or deny the relief requested, or provide other relief that it deems appropriate, including an order to show cause why the relief sought in the complaint should not be granted.

Rule 7.307 Cross-Appeal

- (A) **Filing.** An application for leave to appeal as cross-appellant may be filed with the clerk within 28 days of service of the application. The cross-appellant's application must comply with the requirements of MCR 7.305(A). A late application to cross-appeal will not be accepted.
- (B) **Alternative arguments; new or different relief.** A party is not required to file a cross-appeal to advance alternative arguments in support of the judgment or order appealed. A cross-appeal is required to seek new or different relief than that provided by the judgment or order appealed.

Rule 7.308 Certified Questions and Advisory Opinions

(A) Certified Questions

(1) From Michigan Courts.

- (a) Whenever a court or tribunal from which an appeal may be taken to the Court of Appeals or to the Supreme Court has pending before it an action or proceeding involving a controlling question of public law, and the question is of such public moment as to require an early determination according to executive message of the governor addressed to the Supreme Court, the Court may authorize the court or tribunal to certify the question to the Court with a statement of the facts sufficient to make clear the application of the question. Further

proceedings relative to the case are stayed to the extent ordered by the court or tribunal, pending receipt of a decision of the Court.

- (b) If any question is not properly stated or if sufficient facts are not given, the Court may require a further and better statement of the question or of the facts.
- (c) The Court shall render its decision on a certified question in the ordinary form of an opinion, to be published with other opinions of the Court.
- (d) After the decision of the Court has been sent to the court or tribunal, the court or tribunal will proceed with or dispose of the case in accordance with the Court's answer.

(2) From Other Courts.

- (a) When a federal court, another state's appellate court, or a tribal court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Court.
- (b) A certificate may be prepared by stipulation or at the certifying court's direction, and must contain
 - (i) the case title;
 - (ii) a factual statement; and
 - (iii) the question to be answered.

The presiding judge must sign it, and the clerk of the court must certify it.

- (c) With the certificate, the parties shall submit
 - (i) briefs conforming with MCR 7.312;
 - (ii) a joint appendix conforming with MCR 7.312(D); and
 - (iii) a request for oral argument on the title page of the pleading, if oral argument is desired.

- (d) If the Supreme Court responds to the question certified, the clerk shall send a copy to the certifying court.
 - (e) The Supreme Court shall divide costs equally among the parties, subject to redistribution by the certifying court.
- (3) Submission and Argument. Certified questions may be submitted for a decision after receipt of the question. Oral argument of a certified question under subrule (2), if properly requested under subrule (2)(c)(iii), or under subrule (1) if desired by the Court will be scheduled in accordance with MCR 7.313.
- (B) Advisory Opinion
- (1) Form of Request. A request for an advisory opinion by either house of the Legislature or the governor pursuant to Const 1963, art 3, § 8 may be in the form of a letter that includes a copy or verbatim statement of the enacted legislation and identifies the specific questions to be answered by the Court. Four copies of the request (1 signed) and supporting documents are to be filed.
 - (2) Briefing. The governor, a member of the house or senate, and the attorney general may file briefs in support of or opposition to the enacted legislation within 28 days after the request for an advisory opinion is filed. Interested parties may file amicus curiae briefs on motion granted by the Court. The party shall file 4 copies of the brief (1 signed), which must conform as nearly as possible to MCR 7.212(B) and (C).
 - (3) Submission and Argument. Advisory opinions may be submitted for a decision after the brief in support of the advisory opinion request has been filed. There is no oral argument on a request for an advisory opinion unless ordered by the Court.
 - (4) Decision. The Supreme Court may deny the request for an advisory opinion by order, issue a peremptory order, or render a decision in the ordinary form of an opinion, to be published with other opinions of the Court.

Rule 7.310 Record on Appeal

- (A) Transmission of Record. An appeal is heard on the original papers, which constitute the record on appeal. When requested by the Supreme Court clerk, the Court of Appeals clerk or the lower court clerk shall send to the Supreme Court

clerk all papers on file in the Court of Appeals or the lower court, certified by the clerk. For an appeal originating from an administrative board, office, or tribunal, the record on appeal is the certified record filed with the Court of Appeals clerk and the papers filed with the Court of Appeals clerk.

- (B) Return of Record. After final adjudication or other disposition of an appeal, the Supreme Court clerk shall return the original record to the Court of Appeals clerk, to the clerk of the lower court or tribunal in which the record was made, or to the clerk of the court to which the case has been remanded for further proceedings. Thereafter, the clerk of the lower court or tribunal to which the original record has been sent shall promptly notify the attorneys of the receipt of the record. The Supreme Court clerk shall forward a certified copy of the order or judgment entered by the Supreme Court to the Court of Appeals clerk and to the clerk of the trial court or tribunal from which the appeal was taken.
- (C) Stipulations. The parties may stipulate in writing regarding any matter constituting the basis for an application for leave to appeal or regarding any matter relevant to a part of the record on appeal.

Rule 7.311 Motions in Supreme Court

- (A) What to File. To have a motion heard, a party must file with the clerk
 - (1) 4 copies of a motion (1 signed), except as otherwise provided in this rule, stating briefly but distinctly the grounds on which it is based and the relief requested and including an affidavit supporting any allegations of fact in the motion;
 - (2) proof that the motion and supporting papers were served on the opposing party; and
 - (3) the fee provided by MCR 7.319(C)(2) or (3).

Only 2 copies (1 signed) need be filed of a motion to extend time, to place a case on or adjourn a case from the session calendar, or for oral argument.

- (B) Submission and Argument. Motions are submitted on Tuesday of each week at least 14 days after they are filed but administrative orders (e.g., to extend time for filing a pleading, to file an amicus brief, to appear and practice, to exceed page limit) may be entered earlier to advance the efficient administration of the Court. There is no oral argument on a motion unless ordered by the Court.

- (C) Answer. An answer may be filed at any time before an order is entered on the motion.
- (D) Motion to Seal File. Except as otherwise provided by statute or court rule, the procedure for sealing a Supreme Court file is governed by MCR 8.119(I). Materials that are subject to a motion to seal a file in whole or in part shall be held under seal pending the Court's disposition of the motion.
- (E) Motion for Immediate Consideration or to Expedite Proceedings. A party may move for immediate consideration of a motion or to expedite any proceeding before the Court. The motion or an accompanying affidavit must identify the manner of service of the motion on the other parties and explain why immediate consideration of the motion or expedited scheduling of the proceeding is necessary. If the motion is granted, the Court will schedule an earlier hearing or render an earlier decision on the matter.
- (F) Motion for Rehearing.
 - (1) To move for rehearing, a party must file within 21 days after the opinion was filed
 - (a) 14 copies of a motion (1 signed) if the opinion decided a case placed on a session calendar, or 8 copies of a motion (1 signed) if the opinion decided a noncalendar case; and
 - (b) proof that a copy was served on the parties.

The motion for rehearing must include reasons why the Court should modify its opinion. Motions for rehearing are subject to the restrictions contained in MCR 7.119(F)(3).

- (2) Unless otherwise ordered by the Court, the timely filing of a motion for rehearing postpones issuance of the Court's judgment order until the motion is either denied by the Court or, if granted, until at least 21 days after the filing of the Court's opinion on rehearing.
- (3) Any party or amicus curiae that participated in the case may answer a motion for rehearing within 14 days after it is served by filing
 - (a) 14 or 8 copies of the motion (1 signed), depending on whether the motion was filed to rehear a calendar case or to rehear a noncalendar case, respectively, as indicated under subrule (F)(1)(a); and

- (b) proof that a copy was served on the other parties.
- (4) Unless ordered by the Court, there is no oral argument on a motion for rehearing.
- (5) The clerk shall refuse to accept for filing a late-filed motion for rehearing or a motion for reconsideration of an order denying a motion for rehearing.
- (G) **Motion for Reconsideration.** To move for reconsideration of a court order, a party must file the items required by subrule (A) within 21 days after the date of certification of the order. Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3). The clerk shall refuse to accept for filing a late-filed motion for reconsideration or a motion for reconsideration of an order denying a motion for reconsideration. The filing of a motion for reconsideration does not stay the effect of the order addressed in the motion.

Rule 7.312 Briefs and Appendixes in Calendar Cases

- (A) **Form.** Briefs in calendar cases must be prepared in the form provided in MCR 7.212(B), (C), and (D). Briefs shall be printed on only the front side of the page of good quality, white unglazed paper by any printing, duplicating, or copying process that provides a clear image. Original typewritten pages may be used, but not carbon copies.
- (B) **Citation to Record; Summary of Argument; Length of Brief.**
 - (1) A party's statement of facts or counter-statement of facts shall provide the appendix page numbers of the transcript pages, pleadings, or other documents being cited or referenced.
 - (2) If the argument of any one issue in a brief exceeds 20 pages, a summary of argument must be included. The summary must be a succinct, accurate, and clear condensation of the argument actually made in the body of the brief and may not be a mere repetition of the headings under which the argument is arranged.
 - (3) Except by Court order allowing a longer brief, a brief may not exceed 50 pages, excluding the table of contents, index of authorities, and appendixes, but including the summary of argument.
- (C) **Cover.** A brief must have a suitable cover of heavy paper. The cover page must follow this form:

In the Supreme Court
Appeal from the [court or tribunal appealed from]
[judge or presiding officer]

Plaintiff-[Appellant or Appellee],

v

Docket No. _____

Defendant-[Appellant or Appellee],

Brief on Appeal – [Appellant or Appellee]
ORAL ARGUMENT [REQUESTED/NOT REQUESTED]

Attorney for [PL or DF]-[AT or AE]
[Business Address]

The cover page of the appellant’s brief must be blue; that of the appellee’s brief, red; that of an intervenor or amicus curiae brief, green; and that of a reply brief, gray. The cover page of a cross-appeal brief, if filed separately from the primary brief, must be the same color as the primary brief.

(D) Appendixes

- (1) **Form and Color of Cover.** Appendixes must be prepared in conformity with MCR 7.212(B), except that they must be printed on both sides of the page. The cover pages of appendixes shall be printed on yellow paper and shall be similarly endorsed as briefs under MCR 7.312(C) but designated as an appendix.
- (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 appendix, 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, where applicable, must contain

- (a) the relevant docket entries of the lower 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)-(e) must be presented in chronological order.

(3) Joint Appendix.

- (a) The parties may stipulate to use a joint appendix, designated as a joint appendix and 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) Time for Filing. Unless the Court directs a different time for filing,

- (1) the appellant's brief and appendixes, if any, are due within 56 days after the leave to appeal is granted;

- (2) the appellee's brief and appendixes, if any, are due within 35 days after the appellant's brief is served on the appellee; and
 - (3) the reply brief is due within 21 days after the appellee's brief is served on the appellant.
- (F) What to File. The parties shall
- (1) file 14 copies of a brief (1 signed) and appendixes with the clerk;
 - (2) serve 2 copies on each attorney who has appeared in the case for a separate party or group of parties and on each party who has appeared in person;
 - (3) serve 1 copy on the Attorney General in a criminal case or in a case in which the state is a named or interested party; and
 - (4) file a proof of service with the clerk.
- (G) Cross-Appeal Briefs. The filing and service of cross-appeal briefs are governed by subrules (D) and (E). A party may file a combined brief for the primary appeal and the cross-appeal within the earlier of the filing periods.
- (H) Amicus Curiae Briefs and Argument.
- (1) An amicus curiae brief may be filed only on motion granted by the Court except as provided in subrule (2).
 - (2) A motion for leave to file an amicus curiae brief is not required if the brief is presented by the Attorney General on behalf of the people of the state of Michigan, the state of Michigan, or an agency or official of the state of Michigan; on behalf of a political subdivision of the state when submitted by its authorized legal officer, its authorized agent, or an association representing a political subdivision; or on behalf of the Prosecuting Attorneys Association of Michigan or the Criminal Defense Attorneys of Michigan.
 - (3) An amicus curiae brief must conform to subrules (A), (B), (C) and (F), and must be filed within 21 days after the brief of the appellee has been filed or the time for filing the appellee's brief has expired, or at such other time as the Court directs.

- (4) An amicus curiae may not participate in oral argument except by Court order.
- (I) Supplemental Authority. A party may file a supplemental authority as provided in MCR 7.212(F).
- (J) Extending or Shortening Time; Failure to File; Forfeiture of Oral Argument.
 - (1) The time provided for filing and serving the briefs and appendixes may be shortened or extended by order of the Court on its own initiative or on motion of a party.
 - (2) If the appellant fails to file the brief and appendix within the time required, the Court may dismiss the case and award costs to the appellee, or affirm the judgment or order appealed.
 - (3) A party filing a brief late forfeits the right to oral argument.

Rule 7.313 Supreme Court Calendar

- (A) Definition. A case in which leave to appeal has been granted, or a case initiated in the Supreme Court which the Court determines will be argued at a monthly session, is termed a “calendar case.”
- (B) Notice of Hearing; Request for Oral Argument.
 - (1) After the briefs of both parties have been filed or the time for filing the appellant’s reply brief has expired, the clerk shall notify the parties that the calendar case will be argued at a monthly session of the Supreme Court not less than 35 days after the date of the notice. The Court may direct that a case be scheduled for argument at a future monthly session with expedited briefing times or may shorten the 35-day notice period on its own initiative or on motion of a party.
 - (2) Except on order of the Court, a party who has not specifically requested oral argument on the title page of its brief or has forfeited argument by not timely filing its brief is not entitled to oral argument unless it files a motion for such at least 21 days before the first day of the monthly session. If neither party is entitled to oral argument, the clerk will list the case as submitted on briefs. The Court may direct that a case be submitted on briefs without oral argument even when a party would otherwise be entitled to oral argument.

- (C) Arrangement of Calendar. At least 21 days before the first day of the monthly session, the clerk will place cases on the session calendar and arrange the order in which they are to be heard. The cases will be called and heard in that order except as provided in subrule (D).
- (D) Rearrangement of Calendar; Adjournment. By stipulation filed with the clerk at least 21 days before the first day of the session, a case may be specially placed on the session calendar, grouped to suit the convenience of the attorneys, placed at the end of the call, or adjourned to a later session. If less than 21 days before the first day of the monthly session, the adjournment of a calendar case to another session will be made only by order upon a showing of good cause with an explanation as to why the motion could not have been filed sooner. Costs payable to the Court may be imposed on the moving party for a late-filed motion to adjourn.
- (E) Reargument of Undecided Calendar Case. When a calendar case remains undecided at the end of the term in which it was argued, either party may file a supplemental brief. In addition, by directive of the Court or upon a party's written request within 14 days after the beginning of the new term, the clerk shall schedule the case for reargument. This subrule does not apply to a case argued pursuant to special order under MCR 7.305(H)(1) and 7.314(B)(2).

Rule 7.314 Call and Argument of Cases

- (A) Call; Notice of Argument; Adjournment From Call. The Court, on the first day of each monthly session, will call the cases for argument in the order they stand on the calendar as arranged in accordance with MCR 7.313(C), and proceed from day to day during the session in the same order. A case may not be adjourned after being placed on the call, except on a showing of extreme emergency. A case may be submitted on briefs by stipulation at any time.
- (B) Argument.
 - (1) In a calendar case where both sides are entitled to oral argument, the time allowed for argument is 30 minutes for each side unless the Court orders otherwise. When only one side is scheduled for oral argument, 15 minutes is allowed unless the Court orders otherwise.
 - (2) In a case being argued on the application under MCR 7.305(H)(1), each side that is entitled to oral argument is allowed 15 minutes to argue unless the Court orders otherwise.

The time for argument may be extended by Court order on motion of a party filed at least 14 days before the session begins or by the Chief Justice during the argument.

Rule 7.315 Opinions, Orders, and Judgments

- (A) Opinions of Court. An opinion must be written and bear the authoring justice's name or the label "Per Curiam." Each justice deciding a case must sign an opinion. Except when the Court affirms an action of a lower court or tribunal by an even division of the justices, a decision of the Court must be made by concurrence of a majority of the voting justices.
- (B) Filing and Publication. The Court shall file a signed opinion with the clerk, who shall stamp the date of filing on it. The reporter of decisions is responsible for having the opinions printed in a form and under a contract approved by the Court in accordance with MCR 7.301(E).
- (C) Orders or Judgments Pursuant to Opinions.
 - (1) Entry. The clerk shall enter an order or judgment pursuant to an opinion as of the date the opinion is filed with the clerk.
 - (2) Routine Issuance.
 - (a) If a motion for rehearing is not timely filed under MCR 7.311(F)(1), the clerk shall send a certified copy of the order or judgment to the Court of Appeals with its file, and to the court or tribunal that tried the case with its record, not less than 21 days and not more than 28 days after entry of the order or judgment.
 - (b) If a motion for rehearing is timely filed, the clerk shall fulfill the responsibilities under subrule (C)(2)(a) promptly after the Court denies the motion or, if the motion is granted, enter a new order or judgment after the Court's opinion on rehearing.
 - (3) Exceptional Issuance. The Court may direct the clerk to dispense with the time requirement of subrule (C)(2)(a) and issue the order or judgment when its opinion is filed. An order or judgment issued under this subrule does not preclude the filing of a motion for rehearing, but the filing of a motion does not stay execution or enforcement.

- (4) Execution or Enforcement. Unless otherwise ordered by the Court, an order or judgment is effective when it is issued under subrule (C)(2)(a) or (b) or subrule (C)(3), and enforcement is to be obtained in the trial court.
- (D) Entry, Issuance, Execution, and Enforcement of Other Orders and Judgments. An order or judgment, other than those by opinion under subrule (C), is entered on the date of filing. Unless otherwise stated, an order or judgment is effective the date it is entered. The clerk must promptly send a certified copy to each party, to the Court of Appeals, and to the lower court or tribunal. A motion may not be decided or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid.

Rule 7.316 Miscellaneous Relief

- (A) Relief Obtainable. The Supreme Court may, at any time, in addition to its general powers
 - (1) exercise any or all of the powers of amendment of the court or tribunal below;
 - (2) on reasonable notice as it may require, allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause; allow new parties to be added or parties to be dropped; or allow parties to be rearranged as appellants or appellees;
 - (3) permit the reasons or grounds of appeal to be amended or new grounds to be added;
 - (4) permit the transcript or record to be amended by correcting errors or adding matters that should have been included;
 - (5) adjourn the case until further evidence is taken and brought before it;
 - (6) draw inferences of fact;
 - (7) enter any judgment or order that ought to have been entered, and enter other and further orders and grant relief as the case may require; or
 - (8) if a judgment notwithstanding the verdict is set aside on appeal, grant a new trial or other relief.
- (B) Allowing Nonjurisdictional Act After Expiration of Time. When, under the practice relating to appeals or stay of proceedings, a nonjurisdictional act is

required to be done within a designated time, the Court may at any time, on motion and notice, permit the act after the expiration of the period on a showing that there was good cause for the delay or that the delay was not caused by the culpable negligence of the party or attorney. The Court will not accept for filing a motion to file a late application for leave to appeal under MCR 7.305(C), a late application for leave to cross-appeal under MCR 7.307(A), a late motion for rehearing under MCR 7.311(F), or a late motion for reconsideration under MCR 7.311(G).

(C) Vexatious Proceedings.

- (1) The Court may, on its own initiative or the motion of any party filed before a case is placed on a session calendar, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
 - (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or
 - (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court.
- (2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The Court may remand the case to the trial court or tribunal for a determination of actual damages.

Rule 7.317 Involuntary Dismissal; No Progress

- (A) Designation. If an appellant's brief has not been timely filed under MCR 7.312(E)(1) or within the time period granted by an order extending the time for filing the brief, or if the appellant fails to pursue the case in substantial conformity with the rules, the case shall be designated as one in which no progress has been made.
- (B) Notice; Dismissal. When a case is designated as one in which no progress is made, the clerk shall mail to each party notice that, unless the appellant's brief that conforms with the rules is filed within 21 days or a motion is filed seeking further

extension upon a showing of good cause, the case will be dismissed. A copy of an order dismissing an action under this rule will be sent to the parties and the court or tribunal from which the action arose.

- (C) Reinstatement. Within 21 days of the dismissal order, the appellant may seek reinstatement of the action by filing a conforming brief along with a motion showing mistake, inadvertence, or excusable neglect. The clerk shall not accept a late-filed motion to reinstate.
- (D) Dismissal for Lack of Jurisdiction. The Court may dismiss an appeal, application, or an original proceeding for lack of jurisdiction at any time.

Rule 7.318 Voluntary Dismissal

The parties may file with the clerk a stipulation agreeing to the dismissal of an application for leave to appeal, an appeal, or an original proceeding. The Court may deny the stipulation if it concludes that the matter should be decided notwithstanding the stipulation. Costs payable to the Court may be imposed on the parties in the order granting the stipulated dismissal if the case has been scheduled for oral argument and the stipulation is received less than 21 days before the first day of the monthly session.

Rule 7.319 Taxation of Costs; Fees

- (A) Rules Applicable. The procedure for taxation of costs in the Supreme Court is as provided in MCR 7.219.
- (B) Expenses Taxable. Unless the Court otherwise orders, a prevailing party may tax only the reasonable costs incurred in the Supreme Court, including an amount not to exceed \$2 per original page for the necessary expense of printing the briefs and appendixes required by these rules.
- (C) Fees Paid to Clerk. The clerk shall collect the following fees, which may be taxed as costs when costs are allowed by the Court:
 - (1) \$375 for an application for leave to appeal or an original action;
 - (2) \$150 for a motion for immediate consideration or a motion to expedite appeal, except that a prosecuting attorney is exempt from paying a fee under this subdivision in an appeal arising out of a criminal proceeding if the defendant is represented by a court-appointed lawyer;
 - (3) \$75 for all other motions;

- (4) 50 cents per page for (a) a certified copy of a paper from a public record, or (b) a copy of an opinion, although one copy must be provided without charge to the attorney for each party in the case;
- (5) \$5 for certified docket entries;
- (6) \$1 for certification of a copy presented to the clerk.

A party who is unable to pay a filing fee may ask the Court to waive the fee by filing a motion and an affidavit disclosing the reason for that inability. There is no fee for filing the motion but, if the motion is denied, the party must pay the fee for the underlying filing.

- (D) Violation of Rules. The Supreme Court may impose costs on a party or an attorney when in its discretion the party or attorney should be assessed for violation of these rules.

Staff Comment: These proposed amendments would update the rules regarding practice in the Michigan Supreme Court, and would renumber and reorganize the rules to be consistent with those in the Court of Appeals for the ease of the appellate practitioner and greater judicial efficiency.

The staff comment is not an authoritative construction by the 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 Office of Administrative Counsel in writing or electronically by February 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2013-36. 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.

October 22, 2014

Clerk