

# Order

Michigan Supreme Court  
Lansing, Michigan

September 21, 2016

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2015-02

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

Proposed Amendment of  
Rule 7.213 of the Michigan  
Court Rules

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On order of the Court, the need for immediate action having been found, the notice requirements of MCR 1.201 are dispensed with and the following amendment of Rule 7.213 of the Michigan Court Rules is adopted, effective immediately. However, the issue will be placed on a future administrative public hearing. Comments will be received until January 1, 2017, and may be submitted to the Office of Administrative Counsel in writing or electronically to P.O. Box 30052, Lansing, MI 48909, or [ADMComment@courts.mi.gov](mailto:ADMComment@courts.mi.gov). The amendment will be considered at a future public hearing. The notices and schedules of public hearings are posted on the Supreme Court's website at the following address: [Administrative Public Hearings](#).

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 7.213 Calendar Cases

(A) ~~Pre-Argument Conference~~ Mediation in Calendar Cases.

(1) Selection for Mediation.

- (a) At any time during the pendency of an appeal before the Court of Appeals, the chief judge or another designated judge may order an appeal submitted to mediation. When a case is selected for mediation, participation is mandatory; however, the chief judge or another designated judge may remove the case on finding that mediation would be inappropriate.
- (b) To identify cases for mediation, the Court of Appeals will review civil appeals to determine if mediation would be of assistance to the court or the parties. At any time, a party to a pending civil appeal may file a written request that the appeal be submitted to mediation. Such a request may be made without formal motion and shall be confidential.

- (c) A party to a case that has been selected for mediation may file a request to have the case removed from mediation. Such a request may be made without formal motion and shall be confidential. If the request to remove is premised on a desire to avoid the cost of mediation, it is not necessary to demonstrate an inability to pay such costs.
- (d) The submission of an appeal to mediation will not toll any filing deadlines in the appeal unless the court orders otherwise.

(2) Mediation Procedure.

- (a) Mediation shall be conducted by a mediator selected by stipulation of the parties or designated by the court. A mediator designated by the court shall be an attorney, licensed in Michigan, who has met the qualifications of mediators provided in MCR 2.411(F).
- (b) Mediation shall consider the possibility of settlement, the simplification of the issues, and any other matters that the mediator determines may aid in the handling or disposition of the appeal.
- (c) The order referring the case to mediation shall specify the time within which the mediation is to be completed. Within 7 days after the time stated in the order, the mediator shall file a notice with the clerk stating only the date of completion of mediation, who participated in the mediation, whether settlement was reached, and whether any further mediation is warranted.
- (d) If mediation results in full or partial settlement of the case, the parties shall file, within 21 days after the filing of the notice by the mediator, a stipulation to dismiss (in full or in part) pursuant to MCR 7.218(B).
- (e) The mediator may charge a reasonable fee, which shall be divided between and borne equally by the parties unless otherwise agreed and paid by the parties directly to the mediator. If a party does not agree upon the fee requested by the mediator, upon motion of the party, the chief judge or another designated judge shall set a reasonable fee. In all other respects, mediator fees shall be governed by MCR 2.411(D).
- (f) The statements and comments made during mediation are confidential as provided in MCR 2.412 and may not be disclosed in

the notice filed by the mediator under (A)(2)(c) of this rule or by the participants in briefs or in argument.

(g) Upon failure by a party or attorney to comply with a provision of this rule or the order submitting the case to mediation, the chief judge or another designated judge may assess reasonable expenses, including attorney's fees, caused by the failure, may assess all or a portion of appellate costs, or may dismiss the appeal.

(3) Selection of Mediator.

(a) Except as otherwise provided in this rule, the selection of a mediator shall be governed by MCR 2.411(B).

(b) Within the time provided in the order referring a case to mediation, the parties may stipulate to the selection of a mediator. Such stipulation shall be filed with the clerk of the court. If the parties do not file a stipulation agreeing to a mediator within the time provided, the court shall appoint a mediator from the roster of approved mediators maintained by the circuit court in which the case originated.

~~(1) At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with information and authority adequate for responsible and effective participation in settlement discussions to appear in person or by telephone for a pre argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling of or the disposition of the appeal. The mediator shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.~~

~~(2) All civil cases will be examined to determine if a pre argument conference would be of assistance to the court or the parties. An attorney or a party may request a pre argument conference in any case. Such a request shall be confidential. The pre argument conference shall be conducted by~~

- (a) ~~the court, or by a judge, retired judge or attorney designated by the court;~~
- (b) ~~if the parties unanimously agree, a special mediator designated by the court or selected by unanimous agreement of the parties. The special mediator shall be an attorney, licensed in Michigan, who possesses either mediation type experience or expertise in the subject matter of the case. The special mediator may charge a reasonable fee, which shall be divided and borne equally by the parties unless agreed otherwise and paid by the parties directly to the mediator. If a party does not agree upon the fee requested by the mediator, upon motion of the party, the Court of Appeals shall set a reasonable fee.~~

~~When a case has been selected for participation in a pre argument conference, participation in the conference is mandatory; however, the Court of Appeals may except the case from participation on motion for good cause shown if it finds that a pre argument conference in that case would be inappropriate.~~

- (3) ~~Any judge who participates in a pre argument conference or becomes involved in settlement discussions under this rule may not thereafter consider any aspect of the merits of the case, except that participation in a pre argument conference shall not preclude the judge from considering the case pursuant to MCR 7.215(J).~~
- (4) ~~Statements and comments made during the pre argument conference are confidential, except to the extent disclosed by the pre argument conference order, and shall not be disclosed by the mediator or by the participants in briefs or in argument.~~
- (5) ~~To facilitate the pre argument conference, unless one has already been filed, an appellant must file the docketing statement required by MCR 7.204(H).~~
- (6) ~~Upon failure by a party or attorney to comply with a provision of this rule or the pre argument conference order, the Court of Appeals may assess reasonable expenses caused by the failure, including attorney's fees, may assess all or a portion of appellate costs, or may dismiss the appeal.~~

(B)-(E) [Unchanged.]

*Staff comment:* This proposal, submitted by the Michigan Court of Appeals, would make permanent the mediation pilot project that has been operating under authority of Administrative Order No. 2015-8 since October 2015. The proposed amendments have been adopted with immediate effect to enable the mediation program to continue during the comment period.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or 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 Office of Administrative Counsel in writing or electronically by January 1, 2017, 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. 2015-02. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed and 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.

September 21, 2016

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

Clerk