

Order

Michigan Supreme Court
Lansing, Michigan

April 19, 2018

Stephen J. Markman,
Chief Justice

ADM File No. 2016-07

Amendments of Rules 6.310,
6.429, 6.431, 7.205, 7.211, and
7.212 of the Michigan Court Rules

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.310, 6.429, 6.431, 7.205, 7.211, and 7.212 of the Michigan Court Rules are adopted, effective May 1, 2018.

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

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 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)(2), 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) Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500.
- (4) If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

(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:
- (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)(2), 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) [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:

(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)(2), 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) [Unchanged.]

(B)-(D) [Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A)-(F) [Unchanged.]

(G) Late Appeal.

(1)-(3) [Unchanged.]

(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) [Unchanged.]

(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)(2), 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)-(6) [Unchanged.]

(H) [Unchanged.]

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) **Special Motions.** If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1) **Motion to Remand.**

(a)-(c) [Unchanged.]

- (d) If a motion to remand is granted, further proceedings in the Court of Appeals are stayed until completion of the proceedings in the trial court pursuant to the remand, unless the Court of Appeals orders otherwise.—~~Unless the Court of Appeals sets another time, the appellant’s brief must be filed within 21 days after the trial court’s decision or after the filing of the transcript of any hearing held, whichever is later.~~
- (e) If the trial court grants the appellant relief in whole or in part,
- (i) Unless the Court of Appeals orders otherwise, appellant must file the brief on appeal or notice of withdrawal of appeal within 21 days after the trial court’s decision or after the filing of the transcript of any hearing held, whichever is later.
- (ii) The appellee may file a cross appeal in the manner provided by MCR 7.207 within 21 days after the trial court’s decision. If the appellant has withdrawn the appeal before the appellee has filed a cross appeal, the appellee may file a claim of appeal or an application for leave to appeal within the 21 day period.
- (f) If the trial court denies the appellant’s request for relief, appellant’s brief must be filed within 21 days after the decision by the trial court, or the filing of the transcript of any trial court hearing, whichever is later.

(2)-(9) [Unchanged.]

(D)-(E) [Unchanged.]

Rule 7.212 Briefs

(A) [Unchanged.]

(B) Length and Form of Briefs. Except as permitted by order of the Court of Appeals, and except as provided in subrule (G), briefs are limited to 50 pages double-spaced, exclusive of tables, indexes, and appendices.

Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed by the due date of the brief and shall accompany the proposed brief at least 21 days before the due date of the brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons. If the motion is denied, the movant shall file a conforming brief within 21 days after the date of the order deciding the motion.

(C)-(I) [Unchanged.]

Staff Comment: The amendments, submitted by SADO, are intended to clarify practices and provide protections for criminal defendants represented by assigned appellate counsel. The amendments allow an additional 42 days to file post-judgment motions in certain circumstances, and where delay is due to the trial court, clarify in the amendment of MCR 7.205 that in certain circumstances, substitute appellate counsel may file a delayed application for leave to appeal within 42 days of appointment (even if later than six months after sentencing), add language to MCR 7.211 to guide parties and courts if relief is granted in the trial court, and change the procedure for seeking permission to file a brief longer than 50 pages in length.

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.



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.

April 19, 2018

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

Clerk