

## Report on Public Policy Position

**Name of section:**

Appellate Practice Section

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**Proposed Court Rule or Administrative Order Number:**

2005-36 - Proposed Amendment of Rules 2.119, 7.204, and 7.205 of the Michigan Court Rules

The proposed amendments of MCR 7.204 and MCR 7.205 would clarify that a party who seeks to appeal to the Court of Appeals has 21 days after the 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 to file a claim of appeal or an application for leave to appeal, if the motion is filed within the initial 21-day appeal period. For consistency, the time limit for filing a motion for rehearing or reconsideration under MCR 2.119(F)(1) would be increased from 14 to 21 days, and the phrase “or within further time the trial court may have allowed during that 21-day period” was stricken from MCR 7.204(A)(1)(b) and MCR 7.205(F)(3)(b).

**Date position was adopted:**

January 15, 2008

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote.

**Number of members in the decision-making body:**

23

**Number who voted in favor and opposed to the position:**

19 Voted for position

2 Voted against position

0 Abstained from vote

2 Did not vote

**Position:**

Support with recommended amendments

**Explanation of the position, including any recommended amendments:**

The Appellate Practice Section offers the following comments regarding the October 17, 2007 proposed revisions to MCR 2.119, 7.204 and 7.205. While we generally favor the amendments proposed, we do have some concerns.

We would first like to express our thanks to the Court for incorporating our suggested revision to the amendment to MCR 7.205(A)(2) appearing in the November 7, 2006 request for comment. The clarification that an application for leave to appeal may be filed within “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” should resolve any uncertainty in interpretation of that portion of the rule.

The October 17, 2007 proposed revisions make a parallel change to MCR 7.204(A)(1)(b), governing claims of appeal. The Appellate Practice Section endorses this amendment, for the same reasons that we urged the adoption of the revised language in MCR 7.205(A)(2). We are concerned, however, about the proposed deletion of the last clause in MCR 7.204(A) (1)(b): “if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period” (emphasis supplied).

Both MCR 7.205(A)(2) and MCR 7.204(A)(1)(b) as amended would refer to “a motion for rehearing or reconsideration or a motion for relief from the order or judgment appealed.” The latter would include motions for new trial, for judgment notwithstanding the verdict, for additur or remittitur and other motions that are highly dependent on the facts of an individual case. Often it is advisable, if not essential, to obtain a transcript of all or part of a trial, a post-trial hearing or other proceeding in order to draft a motion for reconsideration, a motion for new trial, or another post-trial motion. Transcripts, however, cannot always be produced soon enough to be used in the preparation of a post-judgment motion if it must be completed within 21 days after entry of the order in question. For that reason, parties may request that the trial court extend the time for filing a motion beyond that specified in the court rule.

ADM 2005-36 would remove any express grant of discretion to the trial court to extend the time for a post-trial motion. As a result, a party seeking post-judgment relief may well be left with the choice between making a post-judgment motion without the benefit of a transcript and simply filing a claim of appeal so as not to risk losing the right to appellate review. As a result, some matters that might have been resolved at the trial court level will reach the Court of Appeals, increasing both the expense to the parties and the burden on the court. We recommend, then, that the present language, allowing the trial court to extend the time for filing post-judgment motions, be retained.

With regard to MCR 2.119(F)(1), we agree that conforming the time provided in that rule to the time for filing a motion for rehearing or reconsideration in the Court of Appeals will reduce the chance of confusion, both for practitioners and the trial courts. We would, therefore, recommend adoption of the proposed amendment to MCR 2.119(F)(1).

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://courtofappeals.mijud.net/rules/documents/1Chapter2CivilProcedure.pdf>

<http://courtofappeals.mijud.net/rules/documents/1Chapter7AppellateRules.pdf>

[http://courts.michigan.gov/supremecourt/Resources/Administrative/2005-36\(10-16-07\).pdf](http://courts.michigan.gov/supremecourt/Resources/Administrative/2005-36(10-16-07).pdf)