



Report on Public Policy Position

Name of Section:

Appellate Practice Section

Contact Person:

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Proposed Court Rule or Administrative Order Number:

2004-46 - Proposed Amendment of Rule 7.211 of the Michigan Court Rules

Date position was adopted:

May 2005

Process used to take the ideological position:

Discussion by Section council.

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

12 in favor, 0 opposed

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The Appellate Practice Section supports the Supreme Court's effort to clarify the procedures for sealing Court of Appeals files and unsealing previously sealed files. However, the Section opposes the proposed amendment to MCR 7.211 in its current form because the Section fears that some litigants or attorneys may not readily appreciate the proposed rule's distinction between the "trial court file" and the "Court of Appeals file." Many litigants or attorneys may believe that once the trial court record is transferred to the Court of Appeals during an appeal, it becomes part of the "Court of Appeals file," along with those documents originally filed in the Court of Appeals during the appeal. This could create confusion, including possible confusion over which court should receive the litigant's request for relief.

The Section believes that minor changes in the proposed amendment could clarify this, such as sentences defining the terms "trial court file" and "Court of Appeals file." The proposed rule might also be changed to create a cleaner structural demarcation between the provisions touching on the "trial court file" – i.e., proposed subrules (9)(a) and (9)(b) – and those that pertain exclusively to the "Court of Appeals file." This might be accomplished with additional subheadings like "Trial Court File" and "Court of Appeals File."

The following is an attempt to clarify the proposed rule to address these concerns:

(C) [unchanged]

(1)-(8) [unchanged]

(9) Motion to Seal Court of Appeals File in Whole or in Part; Treatment of Sealed Trial Court Files or Materials Subject to Protective Order

(a) Definitions

(i) As used in this rule, "trial court file" refers to those documents, exhibits, and other materials that were originally filed in the trial court and made part of the trial court record.

(ii) As used in this rule, "Court of Appeals file" refers to those documents, exhibits, and other materials that were originally filed in the Court of Appeals, including copies or duplicates of documents, exhibits, or materials previously filed in the trial court.

(b) Trial Court Files. A trial court file that has been sealed in whole or in part by a trial court order will remain sealed while in the possession of the Court of Appeals. Public requests to view such a trial court file will be referred to the trial court.

(c) Materials Subject to Protective Order. Materials that are subject to a protective order entered under MCR 2.302(C) may be submitted for inclusion in the Court of Appeals file in a sealed form if they are accompanied by a copy of the protective order. A party objecting to such sealed submissions may file an appropriate motion before the Court of Appeals.

(d) Court of Appeals Files.

(i) [insert proposed subrule (9)(c)]

(ii) [insert proposed subrule (9)(d)]

(iii) [insert proposed subrule (9)(e)]

(iv) [insert proposed subrule (9)(f)]

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-46.pdf>