

### Proposed Amendments of Rules 6.310, 6.428, 6.429, 6.431, 7.205, 7.211, and 7.212 of the Michigan Court Rules

To read ADM File No. 2016-07, dated November 15, 2017, visit <http://courts.michigan.gov/courts/michigan-supremecourt> and click “Administrative Matters & Court Rules” and “Proposed & Recently Adopted Orders on Admin Matters.”

### Administrative Order No. 2017-3 Merger of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) (Dated November 15, 2017)

Michigan's Appellate Defender Act, 1978 PA 620, established an Appellate Defender Commission to oversee a system of criminal appellate defense services for indigents. The Act provides in part that “[t]he appointment of criminal appellate defense services for indigents shall be made by the trial court from the roster provided by the commission or shall be referred to the office of the state appellate defender.” MCL 780.712(6).

In Administrative Order No. 1981-7, this Court directed the Commission to “establish an Appellate Assigned Counsel Administrator's Office which shall be coordinated with but separate from the State Appellate Defender Office.” The office was “to compile and maintain a statewide roster of attorneys eligible and willing to accept criminal appellate defense assignments,” and the Court approved regulations to govern both the appointment process and the assigned counsel roster. In 1985, however, the Court determined that under the Appellate Defender Act, “the regulations governing a system for appointment of appellate counsel for indigents in criminal cases” should fall to “the Appellate Defender Commission and not to this Court.” See Administrative Order No. 1985-3. See also Administrative Order No. 1989-3. The same year, the Michigan Appellate Assigned Counsel System (MAACS) began operating as an independent state agency under regulations adopted by the Commission.

In 2014, at the request of the Appellate Defender Commission, the Court ordered an operational merger of MAACS with the State Appellate Defender Office (SADO) under the management of the State Appellate Defender “to promote efficiency and improve the administration of assigned appellate counsel for indigent defendants.” Administrative Order No. 2014-18. The Court directed the Commission “to review operations of the MAACS and submit a proposed administrative order that reflects the consolidation of the two offices and incorporates proposed updates or revisions that the commission recommends.”

The Commission has overseen the merger of SADO and MAACS and conducted an exhaustive review of operations to improve indigent criminal appellants' access to competent counsel with shared resources and expertise. As part of that review, the Commission

has monitored a pilot project approved by the Court to “assess the feasibility, costs, and benefits associated with structural reforms” including the regional consolidation of trial court assignment lists, the voluntary implementation of a uniform attorney fee policy, the trial courts' delegation of certain administrative responsibilities to MAACS, the pre-screening of counsel, and the electronic transfer of documents related to the appointment process. See Administrative Order No. 2015-9. The Commission reports that these reforms have improved the speed and efficiency of the assignment process as well as the quality of assigned appellate representation, and have been well-received by courts and counsel alike.

Therefore, at the request of the Appellate Defender Commission, the Court orders that the Commission shall remain responsible for enacting regulations to govern the MAACS roster and the selection of felony appellate assigned counsel, including SADO's appropriate share of appellate appointments under MCL 780.716(c). The Commission may approve policies to facilitate the regional consolidation of appellate assignment lists for private assigned counsel, including a voluntary attorney fee and expense policy for participating trial courts.

Trial courts shall address all requests for the appointment of felony appellate counsel under the regulations and procedures approved by the Commission and in conformity with applicable court rules. The Court has reviewed the regulations adopted by the Commission on September 20, 2017, and directs the Commission to notify the Court of any updates or changes to these regulations.

This Order supersedes Administrative Orders 1981-7, 1985-3, and 1989-3.

### Proposed Amendment of Rule 2.105 of the Michigan Court Rules

On order of the Court, dated November 17, 2017, this is to advise that the Court is considering an amendment of Rule 2.105 of the Michigan Court Rules. 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.

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

Rule 2.105 Process; Manner of Service

(A)–(B) [Unchanged.]

(C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by

(1) serving a summons and a copy of the complaint on any general partner or agent for service of process; or

- (2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner or agent for service of process at his or her usual residence or last known address

(D)–(K) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 2.105 would reference service on the “agent for service of process” so that it is consistent with MCL 449.1105(2).

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 March 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-23. 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.

### Proposed Amendment of Rule 6.425 of the Michigan Court Rules

On order of the Court, dated November 15, 2017, this is to advise that the Court is considering an amendment of Rule 6.425 of the Michigan Court Rules. 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.

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Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)–(F) [Unchanged.]

(G) Appointment of Lawyer and Preparation of Transcript; Scope of Appellate Lawyer’s Responsibilities; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer and Preparation of Transcript.

- (a) All requests for the appointment of appellate counsel must be granted or denied on forms approved by the State Court Administrative Office and provided through the Michigan Appellate Assigned Counsel System (MAACS). ~~Unless there is a postjudgment motion pending, the court must rule on a defendant’s~~

~~request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court’s disposition of the pending motion and within 14 days after that disposition.~~

- (b) Within 7 days after receiving a defendant’s request for a lawyer, or within 7 days after the disposition of a postjudgment motion if one is filed, the trial court must submit the request, the judgment of sentence, the register of actions, and any additional requested information to MAACS under procedures approved by the Appellate Defender Commission for the preparation of an appropriate order granting or denying the request. The court must notify MAACS if it intends to deny the request for counsel.
- (c) Within 7 days after receiving a request and related information from the trial court, MAACS must provide the court with a proposed order appointing appellate counsel or denying the appointment of appellate counsel. A proposed appointment order must name the State Appellate Defender Office (SADO) or an approved private attorney who is willing to accept an appointment for the appeal.
- (b)d) Within 7 days after receiving a proposed order from MAACS, the trial court must rule on the request for a lawyer. In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request for a lawyer is filed within 42 days after entry of the judgment of sentence ~~sentencing~~ or, if applicable, within the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal. A denial of counsel must include a statement of reasons.
- (e) In a case involving a conviction following a trial, if the defendant’s request for a lawyer was made within the time for filing a claim of appeal, the order must be entered on an approved form entitled “Claim of Appeal and Appointment of Counsel.” Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.
- (e) ~~In a case involving a conviction following a plea of guilty or nolo contendere, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing.~~
- (f) An appointment order must direct the court reporter to prepare and file, within the time limits specified in MCR 7.210, the full transcript of all proceedings, and provide for the payment of the reporter’s fees.
- (g) The trial court must serve MAACS with a copy of its order granting or denying a request for a lawyer. Unless MAACS has agreed to provide the order to any of the following, the trial court must also serve a copy of

its order on the defendant, defense counsel, the prosecutor, and, if the order includes transcripts, the court reporter(s)/recorder(s). If the order is in the form of a Claim of Appeal and Appointment of Counsel, the court must also serve the Court of Appeals with a copy of the order and the judgment being appealed.

- (d2) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant
- (ia) in available postconviction proceedings in the trial court the lawyer deems appropriate,
  - (iib) in postconviction proceedings in the Court of Appeals,
  - (iiic) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and
  - (ivd) as appellee in relation to any postconviction appeal taken by the prosecutor.
- (2) Order to Prepare Transcript. The appointment order also must
- (a) ~~direct the court reporter to prepare and file, within the time limits specified in MCR 7.210;~~
    - (i) ~~the trial or plea proceeding transcript;~~
    - (ii) ~~the sentencing transcript; and~~
    - (iii) ~~such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request; and~~
  - (b) ~~provide for the payment of the reporter's fees.~~

~~The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System. If the appointed lawyer timely requests additional transcripts, the trial court shall order such transcripts within 14 days after receiving the request.~~

- (3) Order as Claim of Appeal; Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in subrules (G)(1) and (2) must be entered on a form approved by the State Court Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

STAFF COMMENT: The proposed amendments of MCR 6.425(G) would reflect recent changes to the appellate counsel assignment process by extending and segmenting the timeframe for courts to respond to appointment requests, requiring judges to provide a statement of reason when appellate counsel is denied, encouraging courts to liberally grant untimely requests for appellate counsel in guilty plea cases, requiring the filing of all lower court

transcripts and clarifying MAACS assumption of the trial courts service obligations.

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 March 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-36. 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.

### Proposed Amendment of Rule 8.119 of the Michigan Court Rules

On order of the Court, dated November 15, 2017, this is to advise that the Court is considering an amendment of Rule 8.119 of the Michigan Court Rules. 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.

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[Additions to the text are indicated in underlining  
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#### Rule 8.119 Court Records and Reports; Duties of Clerks

(A)–(H) [Unchanged.]

(I) Sealed Records.

(1)–(3) [Unchanged.]

(4) ~~For purposes of this rule, "court records" includes all documents and records of any nature that are filed with or maintained by the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a record in whole or in part shall be held under seal pending the court's disposition of the motion.~~

(5) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with or maintained by the clerk in connection with the action.

~~(5)(6)~~ A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(7) [Unchanged.]

(8) Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C) without a motion to seal or require that a protective order issued under MCR 2.302(C) be filed with the Clerk of the Supreme Court and the State Court Administrative Office. A protective order issued under MCR 2.302(C) may authorize parties to file materials under seal in accordance with the provisions of the protective order without the necessity of filing a motion to seal under this rule.

(6)(9) Any person may file a motion to set aside an order that disposes of a motion to seal the record, to unseal a document filed under seal pursuant to MCR 2.302(C), or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(J)–(L) [Unchanged.]

STAFF COMMENT: The proposed amendment of MCR 8.119 would clarify the procedure for sealing files and better accommodate protective orders issued under MCR 2.302 by clarifying that a protective order may authorize parties to file materials without also filing a motion to seal.

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 March 1, 2018, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2016-20. 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.

### Appointment of Chief Judge of the 9th Circuit Court and Kalamazoo County Probate Court (Dated November 21, 2017)

Pursuant to MCR 8.110, IT IS ORDERED that the Honorable Alexander C. Lipsey is appointed as chief judge of the 9th Circuit Court and the Kalamazoo County Probate Court for the two-year period commencing January 1, 2018.

This order supersedes the order entered on November 1, 2017, with respect to this appointment only.

### Appointment of Chief Judge of the 17th Circuit Court, Kent County (Dated November 15, 2017)

Pursuant to MCR 8.110, IT IS ORDERED that the Honorable Mark A. Trusock is appointed as chief judge of the 17th Circuit Court (Kent County) for the two-year period commencing January 1, 2018.

### Appointment to the Michigan Tribal State Federal Judicial Forum (Dated November 15, 2017)

On order of the Court, effective immediately, the Honorable Anthony Crutchfield (Referee, Third Circuit Court) is appointed to the Michigan Tribal State Federal Judicial Forum for a term ending July 1, 2020.



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