

Report on Public Policy Position

Name of committee:

Civil Procedure & Courts Committee

Contact Person:

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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:

December 15, 2007

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

11 Voted for position

1 Voted against position

1 Abstained from vote

7 Did not vote

Position:

Support with recommended amendments

Explanation of the position, including any recommended amendments:

The Committee voted 11 to 1 with one abstention to support the proposed amendment of MCR 2.119(F)(1) that would lengthen the time for filing motions for reconsideration from 14 to 21 days.

But, the Committee voted unanimously to oppose deleting the language now found in MCR 7.204(A)(1)(b) and 7.205(F)(3)(b), which in effect permits a judge to grant one or more extensions of time to file motions. Similarly,

the Committee would include the same discretion in proposed new subrule MCR 7.205(A)(2). While extensions would not often be appropriate, they might be justified in unusual circumstances, such as where there is a need for a transcript or an unexpected illness of an attorney. And giving the judge the discretion to grant a second extension can actually reduce delay. If the judge knows that only one extension is allowed, the judge will be forced to grant a long enough extension that it is virtually certain that the reason for the extension will have ended by then. But the judge can set a shorter time if there remains the escape hatch of a second extension when there are further unexpected circumstances that justify that result. This is not likely to delay proceedings in many cases, since judges tend not to favor such motions and are unlikely to grant extensions except where really appropriate. To emphasize this, the Committee also voted unanimously to add that such extensions should be only for “good cause”.

So the Committee recommends the following changes from the language published for comment by the Supreme Court:

MCR 7.204(A)

(1) An appeal of right in a civil action must be taken within

* * *

(b) 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, if the motion was filed within the initial 21-day appeal period OR WITHIN FURTHER TIME THE TRIAL COURT HAS ALLOWED FOR GOOD CAUSE DURING THAT 21-DAY PERIOD OR AN EARLIER EXTENSION;

MCR 7.205

(A) Time Requirements. An application for leave to appeal must be filed within

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(2) 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, OR WITHIN FURTHER TIME THE TRIAL COURT HAS ALLOWED FOR GOOD CAUSE DURING THAT 21-DAY PERIOD OR AN EARLIER EXTENSION.

MCR 7.205(F)

(3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

* * *

(b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed was filed within the initial 21-day appeal period OR WITHIN FURTHER TIME THE TRIAL COURT HAS ALLOWED FOR GOOD CAUSE DURING THAT 21-DAY PERIOD OR AN EARLIER EXTENSION, then the 12 months are counted from the entry of the order denying deciding the motion.

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