

## AMENDMENT TO MCR 7.109 – RECORD ON APPEAL

### Issue

Should the Representative Assembly support an amendment to MCR 7.109 that would allow an indigent to move for the waiver of transcript fees on appeals from agency decisions?

### Synopsis

In 2012, the court rules relating to appeals to circuit court were completely rewritten. MCR 7.100, *et seq.* The goals of the new rules were uniformity, ease of use, and consistency with MCR 7.201, *et seq.* Most of the changes had little impact on litigants other than requiring a careful reading of the new rules to ensure compliance. There were changes in briefing schedules, altering responsibilities of the parties, as well as clarification of jurisdictional issues.

However, the new court rules require that all appellants appealing agency decisions to circuit court file the record on appeal. Included in the record are all documents, files, pleadings, testimony, and opinions and orders of the agency. MCR 7.210(A)(2). The underlying transcript is also a part of the record. The rules require the appellant to order and pay for the transcript. The court rules contain no specific provision for indigent appellants to be exempted from this requirement. As a result, the decision to file an appeal rests, to some degree, on the ability of the individual or the legal aid program to pay for the transcript fee, creating a barrier to accessing the legal system. For this reason, the Committee on Justice Initiatives now submits a proposal to amend Rule 7.109 of the Michigan Court Rules that would provide for a process whereby appellants could request that the transcript fees be waived.

### **Proposed Amendment**

Rule 7.109 – Record on Appeal

\* \* \* \*

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order **or by subrule (f)**, or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.

\* \* \* \*

**(f) If the court finds that the appellant from an agency decision is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.**

## Background

For more than a decade, the Circuit Court Appellate Rules Revision Committee's goal was to overhaul the appellate process. Specifically, it aimed to revise the subchapter that covers appeals to circuit court, MCR 7.100 *et seq.* The goal of the re-write was to create uniformity between the various appeals to circuit court, addressing inconsistencies that had arisen as a result of new agencies being created. Often these agencies had their own rules for judicial review. The new rules sought to eliminate this problem.

MCR 7.119 now governs appeals from agency decisions. MCR 7.119 states: "[t]his rule governs an appeal to the circuit court from an agency decision where MCL 24.201 *et seq.* [Administrative Procedures Act] applies. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply."

However, prior to the 2012 changes, it was unclear whether the agency was responsible for the filing of the transcript. For example, MCL 24.304(2) provides:

(2) Within 60 days after service of the petition, or within such further time as the court allows, the agency shall transmit to the court the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for judicial review stipulate that the record be shortened.

Moreover, in appeals from decisions of the Department of Human Services (DHS) and the Department of Community Health (DCH), legal services attorneys experienced the practices where DHS and DCH responded to the appeals by filing the entire record, including the written transcript.

With the new court rules, legal services attorneys are now experiencing a shift in the burden of filing the record, including the transcript. This shift in the burden that is, paying for the transcript of the agency hearing, is a cost that neither low income appellants nor legal aid programs can afford to pay.

The Committee on Justice Initiatives believes that the proposed amendment to MCR 7.109 is consistent with the other exceptions provided for in MCR 7.210. For example, MCR 7.210(B)(1) provides: "Except in cases governed by MCR 3.977(J)(3) or MCR 6.425(G)(2), ..., the appellant shall order ... the transcript ...."

MCR 3.977(J)(3) provides:

*Termination of Parental Rights: Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.*

and second, MCR 6.425:

Sentencing; Appointment of Appellate Counsel:

(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. [bold added]*

Moreover, the proposed amendment to MCR 7.109 will support access to justice for indigent appellants. It is in accord with the State Bar of Michigan's Mission Statement, which states (in part): "The State Bar shall aid in promoting improvements in the administration of justice". Accordingly, MCR 7.109 should be amended to allow appellants to move the court to waive transcript fees.

### **Opposition**

None known.

### **Prior Action by Representative Assembly**

None known.

### **Fiscal and Staffing Impact on State Bar of Michigan**

Know or None known.

## **STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 18, 2014**

Should the Representative Assembly support an amendment to MCR 7.109 that would allow an indigent to move for the waiver of transcript fees on appeals from agency decisions?

(a) Yes

or

(b) No