

MCR 6.505 TO 6.508

RULE 6.505 RIGHT TO LEGAL ASSISTANCE

(A) Appointment of Counsel. If the defendant has requested appointment of counsel, and the court has determined that the defendant is indigent, the court may appoint counsel for the defendant at any time during the proceedings under this subchapter. Counsel must be appointed if the court directs that oral argument or an evidentiary hearing be held.

(B) Opportunity to Supplement the Motion. If the court appoints counsel to represent the defendant, it shall afford counsel 56 days to amend or supplement the motion. The court may extend the time on a showing that a necessary transcript or record is not available to counsel.

RULE 6.506 RESPONSE BY PROSECUTOR

(A) Contents of Response. On direction of the court pursuant to MCR 6.504(B)(4), the prosecutor shall respond in writing to the allegations in the motion. The trial court shall allow the prosecutor a minimum of 56 days to respond. If the response refers to transcripts or briefs that are not in the court's file, the prosecutor shall submit copies of those items with the response. Except as otherwise ordered by the court, the response shall not exceed 50 pages double-spaced, exclusive of attachments and exhibits.

(B) Filing and Service. The prosecutor shall file the response and one copy with the clerk of the court and serve one copy on the defendant.

RULE 6.507 EXPANSION OF RECORD

(A) Order to Expand Record. If the court does not deny the motion pursuant to MCR 6.504(B)(2), it may direct the parties to expand the record by including any additional materials it deems relevant to the decision on the merits of the motion. The expanded record may include letters, affidavits, documents, exhibits, and answers under oath to interrogatories propounded by the court.

(B) Submission to Opposing Party. Whenever a party submits items to expand the record, the party shall serve copies of the items to the opposing party. The court shall afford the opposing party an opportunity to admit or deny the correctness of the items.

(C) Authentication. The court may require the authentication of any item submitted under this rule.

RULE 6.508 PROCEDURE; EVIDENTIARY HEARING; DETERMINATION

(A) Procedure Generally. If the rules in this subchapter do not prescribe the applicable procedure, the court may proceed in any lawful manner. The court may apply the rules applicable to civil or criminal proceedings, as it deems appropriate.

(B) Decision Without Evidentiary Hearing. After reviewing the motion and response, the record, and the expanded record, if any, the court shall determine whether an evidentiary hearing is required. If the court decides that an evidentiary hearing is not required, it may rule on the motion or, in its discretion, afford the parties an opportunity for oral argument.

(C) Evidentiary Hearing. If the court decides that an evidentiary hearing is required, it shall schedule and conduct the hearing as promptly as practicable. At the hearing, the rules of evidence other than those with respect to privilege do not apply. The court shall assure that a verbatim record is made of the hearing.

(D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion

(1) seeks relief from a judgment of conviction and sentence that still is subject to challenge on appeal pursuant to subchapter 7.200 or subchapter 7.300;

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision;

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal or in the prior motion, and

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, “actual prejudice” means that,

(i) in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal;

(ii) in a conviction entered on a plea of guilty, guilty but mentally ill, or nolo contendere, the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand;

(iii) in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case;

(iv) in the case of a challenge to the sentence, the sentence is invalid.

The court may waive the “good cause” requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime.

(E) Ruling. The court, either orally or in writing, shall set forth in the record its findings of fact and its conclusions of law, and enter an appropriate order disposing of the motion.