

## CHAPTER 7. APPELLATE RULES

### MICHIGAN COURT RULES OF 1985

#### Subchapter 7.100 Appeals to Circuit Court

##### **Rule 7.101 Scope of Rules**

(A) Scope of Rules. The rules in this subchapter govern appeals to the circuit court.

(B) Rules Do Not Affect Jurisdiction. These rules do not restrict or enlarge the appellate jurisdiction of the circuit court.

##### **Rule 7.102 Definitions**

For purposes of this subchapter:

(1) "agency" means any governmental entity other than a "trial court," the decisions of which are subject to appellate review in the circuit court;

(2) "appeal" means judicial review by the circuit court of a judgment, order, or decision of a "trial court" or "agency," even if the statute or constitutional provision authorizing circuit court appellate review uses a term other than "appeal." "Appeal" does not include actions commenced under the Freedom of Information Act, MCL 15.231 *et seq.*, proceedings described in MCR 3.302 through MCR 3.306, and motions filed under MCR 6.110(H);

(3) "appeal fee" means the fee required to be paid to the circuit court upon filing an appeal and any fee required to be paid to the "trial court" or "agency" in conjunction with the appeal;

(4) "clerk" means clerk of the court;

(5) "court" means the circuit court;

(6) "date of filing" means the date of receipt of a document by the "clerk";

(7) "entry" is as defined in MCR 7.204(A);

(8) "final judgment" or "final order" is as defined in MCR 7.202(6); and

(9) "trial court" means the district, probate, or municipal court from which the "appeal" is taken.

##### **Rule 7.103 Appellate Jurisdiction of the Circuit Court**

(A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or *nolo contendere*;

(2) a final order of a probate court under MCR 5.801(C);

(3) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and

(4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.

(B) Appeal by Leave. The circuit court may grant leave to appeal from:

(1) a judgment or order of a trial court when

(a) no appeal of right exists, or

(b) an appeal of right could have been taken but was not timely filed;

(2) a final order or decision of an agency from which an appeal by leave to the circuit court is provided by law;

(3) an interlocutory order or decision of an agency if an appeal of right would have been available for a final order or decision and if waiting to appeal of right would not be an adequate remedy;

(4) a final order or decision of an agency if an appeal of right was not timely filed and a statute authorizes a late appeal; and

(5) a decision of the Michigan Parole Board to grant parole.

#### **Rule 7.104 Filing Appeal of Right**

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.103(A). Time is computed as provided in MCR 1.108. An appeal of right to the circuit court must be taken within:

(1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or

(2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was filed within:

(a) the initial 21-day period, or

(b) further time the trial court or agency may have allowed during that 21-day period.

(3) If a criminal defendant requests appointment of an attorney within 21 days after entry of the judgment of sentence, an appeal of right must be taken within 21 days after entry of an order:

(a) appointing or denying the appointment of an attorney, or

(b) denying a timely filed motion described in subrule (2).

(B) Manner of Filing. To vest the circuit court with jurisdiction in an appeal of right, an appellant must file with the clerk of the circuit court within the time for taking an appeal:

- (1) the claim of appeal, and
- (2) the circuit court's appeal fee, unless the appellant is indigent.

(C) Claim of Appeal.

(1) *Form.*

(a) The caption of a claim of appeal shall comply with MCR 2.113(C)(1).

(b) In an appeal from a trial court, the claim of appeal should name the parties in the same order as they appear in the trial court, with the added designation "appellant" or "appellee."

(2) *Content.* The claim should state:

"[*name of appellant(s)*] claim[s] an appeal from the [*judgment or order*] entered on [*date*] in the [*name of trial court*] by [*name of judge*]."

(3) *Signature.* The appellant or the appellant's attorney must date and sign the claim of appeal.

(D) Other Documents. The appellant shall file the following documents with the claim of appeal:

- (1) a copy of the judgment, order, or decision appealed;
- (2) a copy of the certificate of the court reporter or recorder or a statement that the transcript has been ordered, pursuant to MCR 7.109(B)(3)(a). If there is nothing to be transcribed, the appellant must file a statement so indicating;
- (3) in an agency appeal, a copy of a written request or order for a certified copy of the record to be sent to the circuit court;
- (4) if the appellant has filed a bond, a true copy of the bond;
- (5) proof that money, property, or documents have been delivered or deposited as required by law;
- (6) a copy of the register of actions, if any;
- (7) proof that the appeal fee of the trial court or agency has been tendered;
- (8) anything else required by law to be filed; and
- (9) proof that a copy of the claim of appeal and other documents required by this subrule were served on all parties, the trial court or agency, and any other person or officer entitled by law to notice of the appeal.

(E) Service Requirements in Trial Court or Agency. Within the time for taking the appeal, the appellant shall serve on the trial court or agency from which the appeal is taken:

- (1) a copy of the claim of appeal;

- (2) any fee required by law;
- (3) any bond required by law as a condition for taking the appeal;
- (4) in an agency appeal, a copy of a written request for a certified copy of the record to be sent to the circuit court; and
- (5) unless there is nothing to be transcribed, the certificate of the court reporter or recorder or a statement that the transcript has been ordered and payment for it made or secured. If a statement is filed, the certificate of the court reporter or recorder must be filed within 7 days after a transcript is ordered by a party or the court.

(F) Appearance. Within 14 days after being served with the claim of appeal, the appellee shall file an appearance in the circuit court identifying the individual appellate attorneys. An appellee who does not file an appearance is not entitled to notice of further proceedings.

### **Rule 7.105 Application for Leave to Appeal**

(A) Time Requirements. An application for leave to appeal must be filed with the clerk of the circuit court within:

- (1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or
- (2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision if the motion was filed within:
  - (a) the initial 21-day period, or
  - (b) such further time as the trial court or agency may have allowed during that 21-day period.
- (3) If a criminal defendant, who has pled guilty or nolo contendere, requests appointment of an attorney within 21 days after entry of the judgment of sentence, an application must be filed within 21 days after entry of an order:
  - (a) appointing or denying the appointment of an attorney, or
  - (b) denying a timely filed motion described in subrule (2).

(B) Manner of Filing. To apply for leave to appeal, the appellant must file:

- (1) a signed application for leave to appeal:
  - (a) stating the date and nature of the judgment, order, or decision appealed;
  - (b) concisely reciting the appellant's allegations of error and the relief sought;
  - (c) setting forth a concise argument in support of the appellant's position on each issue that conforms with MCR 7.212(C); and

(d) if the order appealed is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;

(2) a copy of the judgment, order, or decision appealed and the opinion or findings of the trial court or agency;

(3) if the appeal is from a trial court, a copy of the register of actions;

(4) if the appeal is from an agency, a copy of the written request or order for a certified copy of the record to be sent to the circuit court;

(5) unless waived by stipulation of the parties or trial court order, a copy of certain transcripts as follows:

(a) in an appeal relating to an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court that conducted the hearing;

(b) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;

(c) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;

(d) in an appeal from an order granting or denying a new trial, the portion of the transcript permitting the circuit court to determine whether the trial court's decision on the motion was for a legally recognized reason based on arguable support in the record;

(e) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion related to sentencing;

(f) in an appeal raising any other issue, the portion of the transcript substantiating the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge; or

(g) if the transcript is not yet available, the appellant must file a copy of the certificate of the court reporter or recorder or a statement that a transcript has been ordered, in which case the certificate of the court reporter or recorder must be filed within 7 days after a transcript is ordered by a party or the court. If there is nothing to be transcribed, the appellant must file a statement so indicating within 7 days after the transcript is ordered;

(6) proof that a copy of the application was served on all other parties and that a notice of the filing of the application was filed with the trial court or agency. If service cannot be reasonably accomplished, the appellant may ask the circuit court to prescribe service under MCR 2.107(E); and

(7) the circuit court's appeal fee, unless the appellant is indigent.

(C) Answer. Any other party in the case may file, within 21 days of service of the application:

(1) a signed answer to the application conforming to MCR 7.212(D), and

(2) proof that a copy was served on all other parties.

(D) Reply. Within 7 days after service of the answer, the appellant may file a reply brief that conforms to MCR 7.212.

(E) Decision

(1) There is no oral argument unless directed by the court.

(2) Absent good cause, the court shall decide the application within 35 days of the filing date.

(3) The court may grant or deny leave to appeal or grant other relief. The court shall promptly serve a copy of the order on the parties and the trial court or agency.

(4) If an application is granted, MCR 7.104 governs further proceedings, except that:

(a) the filing of a claim of appeal is not required,

(b) the appellant must complete the acts required by MCR 7.104(D) and (E) within 7 days after the entry of the order granting leave to appeal, and

(c) an appellee may file a claim of cross appeal within 14 days after service of the order granting leave to appeal.

(5) Unless otherwise ordered, the appeal is limited to the issues raised in the application.

(F) Immediate Consideration. When an appellant requires a decision on an application in fewer than 35 days, the appellant must file a motion for immediate consideration concisely stating why an immediate decision is required.

(G) Late Appeal.

(1) When an appeal of right or an application for leave was not timely filed, the appellant may file an application as prescribed under subrule (B) accompanied by a statement of facts explaining the delay. The answer may challenge the claimed reasons for the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application.

(2) A late application may not be filed more than 6 months after entry of:

(a) the order, judgment, or decision appealed;

(b) an order denying a motion for a new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was timely filed; or

(c) an order denying a motion for new trial under MCR 6.610(G) or a motion to withdraw a plea under MCR 6.610(E)(8).

## **Rule 7.106 Cross Appeals**

(A) Right of Cross Appeal.

(1) Any appellee may file a cross appeal when:

- (a) an appeal of right is filed, or
- (b) the circuit court grants leave to appeal.

(2) If there is more than one plaintiff or defendant in a civil action and one party appeals, any other party may file a cross appeal against all or any of the other parties as well as against the party who first appealed. If the cross appeal operates against a party not affected by the first appeal or in a manner different from the first appeal, that party may file a further cross appeal.

(B) Time Requirements. A cross appeal must be filed with the clerk of the circuit court within 14 days after the claim of appeal is served on the cross appellant or the order granting leave to appeal is entered.

(C) Manner of Filing. To file a cross appeal, the cross appellant must file:

- (1) a claim of cross appeal in the form required by MCR 7.104(C);
- (2) any required fee;
- (3) a copy of the judgment, order, or decision from which the cross appeal is taken; and
- (4) proof that a copy of the claim of cross appeal was served on all parties.

(D) Additional Requirements. The cross appellant must perform the steps required by MCR 7.104(D) and (E) unless compliance with this subrule would duplicate the appellant's filing of the same document. The cross appellant is not required to order a transcript or file a court reporter's certificate, unless the initial appeal is dismissed.

(E) Dismissed Appeal. If the initial appeal is dismissed, the cross appeal may continue. If there is a transcript to be produced and the certificate of the court reporter or recorder has not been filed, the cross appellant must file the certificate within 14 days after the order dismissing the appeal. If there is nothing to be transcribed, the cross appellant must file a statement so indicating within 14 days after the order dismissing the appeal.

(F) Delayed Cross Appeal. A party seeking leave to take a delayed cross appeal must proceed under MCR 7.105(F).

### **Rule 7.107 Authority of Trial Court or Agency**

After a claim of appeal is filed or leave to appeal is granted, jurisdiction vests in the circuit court. The trial court or agency may not set aside or amend the judgment, order, or decision appealed except by circuit court order or as otherwise provided by law. In all other respects, the authority of the trial court or agency is governed by MCR 7.208(C) through (I).

### **Rule 7.108 Stay of Proceedings; Bond; Review**

(A) General Provisions.

(1) A motion for bond or a stay pending appeal may not be filed in the circuit court unless such a motion was decided by the trial court. The motion must include a copy of the trial court's opinion and order and a copy of the transcript of the hearing, unless its production has been waived.

(2) Except as otherwise provided by rule or law, the circuit court may amend the amount of bond, order an additional or different bond and set the amount, or require different or additional sureties. The circuit court may also remand a bond matter to the trial court. The circuit court may grant a stay of proceedings in the trial court or stay the effect or enforcement of any judgment or order of a trial court on terms the circuit court deems just.

(B) Civil Actions.

(1) *Automatic Stay.* Unless otherwise provided by rule, statute, or court order, an execution may not issue and proceedings may not be taken to enforce an order or judgment until expiration of the time for taking an appeal of right.

(2) *Effect of Appeal.* An appeal does not stay execution unless:

(a) the appellant files a bond in an amount not less than 1-1/4 times the amount of the judgment or order being enforced, including any costs, interest, attorney fees, and sanctions assessed to date of filing the bond. When the bond is filed, the judgment or order shall automatically be stayed pending entry of a final order under MCR 7.108(B)(4)(c) to stay enforcement of the judgment even though objections to the bond or surety may be filed, or

(b) the trial court grants a stay with or without bond under MCR 3.604(L), MCR 7.209(E)(1), or MCL 600.2605. The stay order must conform to any condition expressly required by the statute authorizing review.

(3) *Bond Form and Content.* The bond must:

(a) recite the names and designations of the parties and the judge in the trial court; identify the parties for whom and against whom judgment was entered; and state the amount of the judgment, including any costs, interest, attorney fees, and sanctions assessed;

(b) contain the promises and conditions that the appellant will:



- (i) diligently file and prosecute the appeal to decision taken from the judgment or order stayed, and will perform and satisfy the judgment or order stayed if it is not set aside or reversed;
- (ii) perform or satisfy the judgment or order stayed if the appeal is dismissed;
- (iii) pay and satisfy any judgment or order entered and any costs assessed against the principal on the bond in the circuit court, Court of Appeals, or Supreme Court; and
- (iv) do any other act which is expressly required in the statute authorizing appeal or ordered by the court;
- (c) be executed by the appellant along with one or more sufficient sureties as required by MCR 3.604; and
- (d) include the conditions provided in MCR 4.201(N)(4) if the appeal is from a judgment for the possession of land.

(4) *Notice of Bond; Objections; Stay Orders.*

(a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay shall file a proposed stay order pursuant to MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.

(b) Objections shall be filed and served within 7 days after service of the notice of bond. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).

(c) If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter the order staying enforcement of the judgment or order pending all appeals. Unless otherwise ordered, the stay shall continue until jurisdiction is again vested in the trial court or until further order of an appellate court.

(d) Any stay order must be promptly served on all parties in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the trial court.

(e) All hearings under this rule may be held by telephone conference as provided in MCR 2.402.

(5) For good cause shown, the trial court may set the amount of the bond in a greater or lesser amount adequate to protect the interests of the parties.

(6) A bond may be secured under MCL 600.2631.

(7) If an execution has issued, it is suspended by giving notice of filing of the bond to the officer holding the execution.

(C) Criminal Cases.

(1) *Immediate Effect.* A criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed. The granting of bond and its

amount are within the discretion of the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases.

(2) *Bond Form and Content.* If a bond is granted, the defendant must promise in writing:

(a) to prosecute the appeal to decision;

(b) if the sentence is one of incarceration, to surrender immediately to the county sheriff or as otherwise directed, if the judgment of sentence is affirmed on appeal or if the appeal is dismissed;

(c) if the sentence is other than one of incarceration, to perform and comply with the judgment of sentence if it is affirmed on appeal or if the appeal is dismissed;

(d) to appear in the trial court if the case is remanded for retrial or further proceedings or if a conviction is reversed and retrial is allowed;

(e) to remain in Michigan unless the court gives written approval to leave;

(f) to notify the trial court clerk in writing of a change of address; and

(g) to comply with any other conditions imposed by law or the court.

(3) *Notice of Bond; Objections.* A criminal defendant filing a bond after conviction shall give notice to the prosecuting attorney of the time and place the bond will be filed. The bond is subject to the objection procedure provided in MCR 3.604.

(D) Civil Infractions. An appeal bond and stay in a civil infraction proceeding is governed by MCR 4.101(H)(1).

(E) Probate Actions.

(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

### **Rule 7.109 Record on Appeal**

(A) Content of Record. Appeals to the circuit court are heard on the original record.

(1) *Appeal From Trial Court.* The record is as defined in MCR 7.210(A)(1).

(2) *Appeal From Agency.* The record is as defined in MCR 7.210(A)(2).

(3) *Excluded Evidence.* The record on appeal must include the substance of the excluded evidence or the transcript of proceedings in the trial court or agency excluding it. Excluded exhibits must be maintained by the party offering them.

(4) *Stipulations.* The parties may stipulate in writing regarding any matters relevant to the trial court or agency record if the stipulation is made a part of the record on appeal and sent to the circuit court.

(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 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.

(b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.

(c) On the appellant's motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.

(d) The parties may stipulate that no transcript or some portion less than the full transcript be filed.

(e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.

(2) *Transcript Unavailable.* When a transcript of the proceedings in the trial court or agency cannot be obtained, the appellant shall file a settled statement of facts using the procedure in MCR 7.210(B)(2) unless a statute provides otherwise.

(3) *Duties of Court Reporter or Recorder.*

(a) Certificate. Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating that the transcript has been ordered and payment for it made or secured and that it will be filed as soon as possible or has already been filed.

(b) Time for Filing.

(i) The court reporter or recorder shall file the transcript in the trial court or agency within:

[A] 14 days after a transcript is ordered by a party or the court for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;

[B] 28 days after a transcript is ordered by a party or the court in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo

contendere or an appeal from the dismissal or reduction of a felony charge following a preliminary examination; or

[C] 56 days after a transcript is ordered by a party or the court in all other cases.

(ii) The circuit court may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.

(c) Copies. Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder. Photocopies of the transcript furnished by the court reporter or recorder may also be made.

(d) Form of Transcript. The transcript must be prepared in the form provided by MCR 7.210(B)(3)(d).

(e) Notice. Immediately after the transcript is filed, the court reporter or recorder shall notify the circuit court and all parties that it has been filed and file in the circuit court an affidavit of mailing of notice to the parties.

(f) Discipline. A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action, including punishment for contempt of court.

(g) Responsibility When More Than One Reporter or Recorder. In a case in which portions of the transcript must be prepared by more than one reporter or recorder, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e), unless the court has designated another person.

(C) Exhibits. Unless otherwise ordered by the circuit court, trial court, or agency, the offering parties shall maintain exhibits in their possession.

(D) Reproduction of Records. The trial court or agency shall procure copies of file contents as provided in MCR 7.210(D).

(E) Record on Motion. If, before the complete record on appeal is sent to the circuit court, a party files a motion that requires the circuit court to have the record, the trial court or agency shall, on request of a party or the circuit court, send the circuit court the documents needed.

(F) Service of the Record. Within 14 days after the transcript is filed with the trial court or agency, the appellant shall serve a copy of the entire record on appeal, including the transcripts and exhibits in his or her possession, on each appellee. However, copies of documents the appellee already possesses need not be served. On request, the appellant shall make available to the appellee exhibits incapable of being copied. Proof that the record was served must be promptly filed with the circuit court and the trial court or agency. If the filing of a transcript has been

excused as provided in subrule (B), the record shall be served within 14 days after the filing of the transcript substitute.

(G) Transmission of Record.

(1) Within 14 days after the complete transcript has been filed or a certified copy of the record has been requested, the trial court or agency shall promptly send the record to the circuit court, except for those things omitted by written stipulation of the parties. The trial court may order removal of exhibits, if any, from the record. Weapons, drugs, or money are not to be sent unless requested by the circuit court. The trial court or agency shall append a certificate identifying the name of the case, listing the papers with reasonable definiteness, and indicating that the required fees have been paid and any required bond filed. The record transmitted shall include:

- (a) a register of actions in the case;
- (b) any exhibits on file;
- (c) all documents and papers from the court file;
- (d) all transcripts;
- (e) all opinions, findings, and orders of the trial court or agency;  
and
- (f) the order or judgment appealed.

(2) Transcripts and all other documents which are part of the record on appeal must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the trial court or agency, the title of the case, and the file number.

(3) The circuit court must immediately send written notice to the parties when the record is filed in the circuit court.

(H) Return of Record. After deciding the appeal, the circuit court shall promptly send the original record with a certified copy of its order and any written opinion

(1) to the clerk of the Court of Appeals if a timely application for leave to appeal is filed in the Court of Appeals, or

(2) to the clerk of the trial court or agency from which the record was received if no timely application for leave to appeal is filed in the Court of Appeals.

(I) Notice of Return of Record. The trial court or agency clerk shall promptly notify all parties of the return of the record.

**Rule 7.110 Motions in Circuit Court Appeals**

Motion practice in a circuit court appeal is governed by MCR 2.119. Motions may include special motions identified in MCR 7.211(C). Absent good cause, the court shall decide motions within 28 days after the hearing date.

## **Rule 7.111 Briefs**

(A) Time for Filing and Service.

(1) *Appellant's Brief.*

(a) Within 28 days after the circuit court provides written notice under MCR 7.109(G)(3) that the record on appeal is filed with the circuit court, the appellant must file a brief conforming to MCR 7.212(C) and serve it on all other parties to the appeal. The time may be extended for 14 days by stipulation and order. The circuit court may extend the time on motion. The filing of a motion does not stay the time for filing a brief.

(b) If an appellant does not file a brief within the time provided by subrule (A)(1)(a), the appeal may be considered abandoned, and the circuit court may dismiss the appeal on 14 days' notice to the parties. Compliance with subrule (A)(1)(a) after notice is sent does not preclude a dismissal of the appeal unless the appellant shows a reasonable excuse for the late filing.

(2) *Appellee's Brief.* Within 21 days after the appellant's brief is served on the appellee, the appellee may file a brief. The brief must conform to MCR 7.212(D) and must be served on all other parties to the appeal. The time may be extended for 14 days by stipulation and order. The circuit court may extend the time on motion. The filing of the motion does not stay the time for filing a brief.

(3) Within 14 days after the appellee's brief is served on appellant, the appellant may file a reply brief. The brief must conform to MCR 7.212(G) and must be served on all other parties to the appeal

(4) *Briefs in Cross Appeals.* The filing and service of briefs by a cross appellant and a cross appellee are governed by subrules (A)(1)-(3).

(5) *Earlier Filing and Service.* For good cause shown, the circuit court may grant a motion to shorten the time for filing and serving briefs.

(6) *Late Filing.* Any party failing to timely file and serve a brief under these rules forfeits oral argument. For good cause shown, the court may grant a motion to reinstate oral argument.

(B) Length and Form of Briefs. The appellant's brief must comply with MCR 7.212(B) and (C), and the appellee's brief must comply with MCR 7.212(B) and (D).

(C) Request for Oral Argument. A party filing a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in capital letters or boldface type on the title page of the brief.

(D) Nonconforming Briefs. If, on its own initiative or on a party's motion, the circuit court concludes that a brief does not substantially comply with the requirements in this rule, it may order the party filing the brief to correct the deficiencies within a specified time or it may strike the nonconforming brief.

### **Rule 7.112 Miscellaneous Relief**

In addition to its general appellate powers, the circuit court may grant relief as provided in MCR 7.216.

### **Rule 7.113 Dismissal**

(A) Involuntary Dismissal.

(1) *Dismissal*. If the appellant fails to pursue the appeal in conformity with the court rules, the circuit court will notify the parties that the appeal shall be dismissed unless the deficiency is remedied within 14 days after service of the notice.

(2) *Reinstatement*. Within 14 days after the date of the dismissal order, the appellant may move for reinstatement by showing mistake, inadvertence, or excusable neglect.

(B) Voluntary Dismissal. In all cases where the parties file a signed stipulation agreeing to dismiss the appeal or the appellant files an unopposed motion to withdraw the appeal, the circuit court shall enter an order of dismissal.

(C) Notice of Dismissal. Immediately upon entry, a copy of an order dismissing an appeal must be sent to the parties and the trial court or agency.

### **Rule 7.114 Oral Argument; Decision and Effect of Judgment, Reconsideration**

(A) Oral Argument. If requested in accord with MCR 7.111(C), the court shall schedule oral argument unless it concludes that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument.

(B) Decision. The circuit court shall decide the appeal by oral or written opinion and issue an order. The court's order is its judgment.

(C) Effect of Judgment. Unless otherwise ordered by the circuit court or the Court of Appeals, a judgment is effective after expiration of the period for filing a timely application for leave to appeal or, if such an application is filed, after the Court of Appeals decides the case. Enforcement is to be obtained in the trial court or agency after the record is returned as provided in MCR 7.109(H).

(D) Reconsideration. A motion for reconsideration is governed by MCR 2.119(F).

### **Rule 7.115 Taxation of Costs, Fees.**

(A) Right to Costs. Except as the circuit court otherwise directs, the prevailing party in a civil case is entitled to costs.

(B) Time for Filing. Within 28 days after the dispositive order, opinion, or order denying rehearing is mailed, the prevailing party may file a certified or verified bill of costs with the clerk and serve a copy on all other parties. Each item claimed in the bill must be specified. Failure to file a bill of costs within the time prescribed waives the right to costs.

(C) Objections. Any other party may file objections to the bill of costs with the clerk within 7 days after a copy of the bill is served. The objecting party must serve a copy of the objections on the prevailing party and file proof of that service.

(D) Taxation. The clerk will promptly verify the bill and tax those costs available.

(E) Review. The action by the clerk will be reviewed by the circuit court on motion of either party filed within 7 days from the date of taxation, but on review only those affidavits or objections that were previously filed with the clerk may be considered by the court.

(F) Taxable Costs and Fees. A prevailing party may tax only the reasonable costs and fees incurred in the appeal, including:

- (1) printing of briefs, or if briefs were typewritten, a charge of \$1 per original page;
- (2) obtaining any stay bond;
- (3) the transcript and necessary copies of it;
- (4) documents required for the record on appeal;
- (5) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (6) taxable costs and fees allowed by law in appeals under MCL 600.2441;
- (7) the additional costs incurred when a party to an appeal under the Administrative Procedures Act unreasonably refused to stipulate to shortening the record as provided in MCL 24.304(2); and
- (8) other expenses taxable under applicable court rules or statutes.

### **Rule 7.116 Appeals Under the Michigan Employment Security Act**

(A) Scope. This rule governs appeals to the circuit court under the Michigan Employment Security Act, MCL 421.1 *et seq.* Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.



(B) Time Requirements. An appeal of right from an order or decision of the Michigan Compensation Appellate Commission must be taken within 30 days after the mailing of the commission's decision.

(C) Manner of Filing. Except as provided in subrule (B), the claim of appeal shall conform with MCR 7.104 and must include statements of jurisdiction and venue. In addition, proof that the claim of appeal was served on the Michigan Compensation Appellate Commission and all interested parties must be filed in the circuit court. The unemployment agency is a party to any appeal under MCL 421.38(3), but the Michigan Compensation Appellate Commission is not a party to the appeal.

(D) Venue. Venue is determined under MCL 421.38(1).

(E) Appearance of Appellee. Within 14 days after service of the claim of appeal, the appellee must file an appearance in the circuit court.

(F) Record on Appeal. Within 42 days after the claim of appeal is served on the Michigan Compensation Appellate Commission, or within further time as the circuit court allows, the Michigan Compensation Appellate Commission must transmit to the clerk of the circuit court a certified copy of the record of proceedings before the administrative law judge and the Michigan Compensation Appellate Commission. The Michigan Compensation Appellate Commission must notify the parties that the record was transmitted.

(G) Standard of Review and Decision on Appeal. Under MCL 421.38, the circuit court may reverse an order or decision of the Michigan Compensation Appellate Commission only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record. In all other respects, MCR 7.114 applies.

### **Rule 7.117 Appeals from the Michigan Civil Service Commission**

(A) Scope. This rule governs appeals to the circuit court from the Michigan Civil Service Commission. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.

(B) Procedure. An appeal from a decision of the Michigan Civil Service Commission must comply with MCR 7.119.

(C) Commission as Party. An appeal challenging any decision, rule, or regulation of the Michigan Civil Service Commission must name the commission as a party and must serve the commission at the Office of the State Personnel Director in Lansing, Michigan.

### **Rule 7.118 Appeals from the Michigan Parole Board**

(A) Scope. This rule governs appeals to the circuit court from the Michigan Parole Board. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.

(B) No Appeal of Right. There is no appeal of right from a decision of the parole board.

(C) Access to Reports and Guidelines. Upon request, the prosecutor, the victim, and the prisoner shall receive the parole eligibility report, any prior parole eligibility reports that are mentioned in the parole board's decision, and any parole guidelines that support the action taken.

(D) Application for Leave to Appeal.

(1) *Parties.*

(a) Only the prosecutor or a victim may file an application for leave to appeal.

(b) The prisoner shall be the appellee.

(c) The parole board may move to intervene as an appellee.

(2) *Time Requirements.* An application for leave to appeal must be filed within 28 days after the parole board mails a notice of action granting parole and a copy of any written opinion to the prosecutor and the victim, if the victim requested notification under MCL 780.771.

(3) *Manner of Filing.* An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue, and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under MCL 780.771.

(a) Service on the parole board, the victim, or the prosecutor must be accomplished by certified mail, return receipt requested, in compliance with MCR 2.105(A)(2).

(b) Service on a prisoner incarcerated in a state correctional facility must be accomplished by serving the application for leave on the warden or administrator, along with the form approved by the State Court Administrative Office for personal service on a prisoner. Otherwise, service must be accomplished by certified mail, return receipt requested, as described in MCR 2.103(C) and MCR 2.104(A)(2) or in compliance with MCR 2.105(A)(2). In addition to the pleadings, service on the

prisoner must also include a notice in a form approved by the State Court Administrative Office advising the prisoner that:

(i) the prisoner may respond to the application for leave to appeal through retained counsel or in propria persona, although no response is required, and

(ii) if an order of parole is issued under MCL 791.236 before the completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required.

(c) Proof of service must be promptly filed with the clerk of the circuit court and must include a copy of the return receipt and, in the case of the prisoner, a copy of the certificate of service executed by the appropriate prison official.

(4) *Venue*. An application for leave to appeal a decision of the parole board may only be filed in the circuit court of the sentencing county under MCL 791.234(11).

(E) Late Application. A late application for leave to appeal may be filed under MCR 7.105(F).

(F) Stay of Order of Parole.

(1) An order of parole issued under MCL 791.236 shall not be executed until 28 days after the mailing of the notice of action.

(2) If an order is issued under MCL 791.235 before completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required.

(G) Decision to Grant Leave to Appeal.

(1) The circuit court shall make its determination within 28 days after the application for leave to appeal is filed.

(2) If the court does not make its determination within 28 days, the court shall enter an order to produce the prisoner before the court for a show cause hearing to determine whether the prisoner shall be released on parole pending disposition of the appeal.

(H) Procedure After Leave to Appeal Granted. If leave to appeal is granted, MCR 7.105(D)(4) applies along with the following:

(1) *Record on Appeal*.

(a) The record on appeal shall consist of the prisoner's central office file at the Department of Corrections and any other documents considered by the parole board in reaching its decision.

(b) Within 14 days after being served with an order granting leave to appeal, the parole board shall send copies of the record to the circuit court and the other

parties. In all other respects, the record on appeal shall be processed in compliance with MCR 7.109.

(c) The expense of preparing and serving the record on appeal may be taxed as costs to a nonprevailing appellant, except that expenses may not be taxed to an indigent party.

(2) *Briefs.* Briefs must comply with MCR 7.111, except:

(a) the appellant's brief is due 28 days after the record is served on the parties, and

(b) the appellee's brief, if filed, is due 21 days after the appellant's brief is served on the appellee.

(3) *Burden of Proof.* The appellant has the burden of establishing that the decision of the parole board was

(a) in violation of the Michigan Constitution, a statute, an administrative rule, or a written agency regulation that is exempted from promulgation pursuant to MCL 24.207, or

(b) a clear abuse of discretion.

(4) *Remand to the Parole Board.* On motion by a party or on the court's own motion, the court may remand the matter to the parole board for an explanation of its decision.

(a) The parole board shall hear and decide the matter within 28 days of the date of the order, unless the board determines that an adjournment is necessary to obtain evidence or there is other good cause for an adjournment.

(b) The time for filing briefs on appeal under subrule (H)(2) is tolled while the matter is pending on remand.

(I) *Subsequent Appeal to the Court of Appeals.* An appeal of a circuit court decision is by emergency application for leave to appeal to the Court of Appeals under MCR 7.205(E), and the Court of Appeals shall expedite the matter.

(J) *Parole Board Responsibility After Reversal or Remand.*

(1) If a decision of the parole board is reversed or remanded, the board shall review the matter and take action consistent with the circuit court's decision within 28 days.

(2) If the circuit court order requires the board to undertake further review of the file or to reevaluate its prior decision, the board shall provide the parties with an opportunity to be heard.

(3) An appeal to the Court of Appeals does not affect the board's jurisdiction to act under this subsection.

## **Rule 7.119 Appeals from Agencies Governed by the Administrative Procedures Act**

(A) Scope. This rule governs an appeal to the circuit court from an agency decision where MCL 24.201 *et seq.* applies. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply.

(B) Appeal of Right.

(1) *Time Requirements.* Judicial review of a final decision or order shall be by filing a claim of appeal in the circuit court within 60 days after the date of mailing of the notice of the agency's final decision or order. If a rehearing before the agency is timely requested, then the claim of appeal must be filed within 60 days after delivery or mailing of the notice of the agency's decision or order on rehearing, as provided in the statute or constitutional provision authorizing appellate review.

(2) *Manner of Filing.*

(a) Claim of Appeal - Form. The claim of appeal shall conform with the requirements of MCR 7.104(C)(1), except that:

(i) the party aggrieved by the agency decision is the appellant and is listed first in the caption; and

(ii) the party seeking to sustain the agency's decision is the appellee; or

(iii) if there is no appellee, then the caption may read "In re [*name of appellant or other identification of the subject of the appeal*]," followed by the designation of the appellant. Except where otherwise provided by law, the agency or another party to the case may become an appellee by filing an appearance within 21 days after service of the claim of appeal.

(b) Claim of Appeal – Content. The claim of appeal must:

(i) state "[*Name of appellant*] claims an appeal from the decision entered on [*date*] by [*name of the agency*]," and

(ii) include concise statements of the following:

[A] the statute, rule, or other authority enabling the agency to conduct the proceedings;

[B] the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court; and

[C] the facts on which venue is based under MCL 24.303(1).

(c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(d) Other Documents. In addition to the claim of appeal, the appellant shall also comply with MCR 7.104(D).

(e) Filing Requirements in the Agency. The appellant must comply with MCR 7.104(E).

(f) *Service.* In addition to the service requirements found in MCR 7.104(D)(9), the appellant must also serve the Attorney General.

(3) *Appearance.* The appellee shall file an appearance that complies with MCR 7.104(F) within 14 days after service of the claim of appeal.

(C) *Application for Interlocutory Appeal.* A preliminary procedural or intermediate agency action or ruling is not immediately reviewable, except that a court may grant interlocutory appeal of a preliminary, procedural, or intermediate decision by an agency only on a showing that review of the final decision would not be an adequate remedy.

(1) *Time Requirements.* An application for interlocutory appeal must be filed with the court within 14 days of the decision.

(2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must:

(a) include a jurisdictional statement citing:

(i) the statute, rule, or other authority enabling the agency to conduct proceedings, and

(ii) the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court;

(b) include a statement of venue with supporting facts;

(c) set forth why review of the agency's final decision will not be an adequate remedy; and

(d) state the relief sought.

(3) *Answer.* An appellee may file an answer to an application for interlocutory appeal under MCR 7.105(C). The circuit court may require the filing of an answer.

(4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.

(D) *Late Appeal.* The appellant may file an application for late appeal if permitted by statute.

(1) *Time Requirements.* Unless inconsistent with the statute authorizing the appeal, the application must be filed within six months after entry of the agency decision or order.

(2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must include:

(a) a statement citing the statute authorizing a late appeal;

(b) a statement of facts explaining the delay; and

(c) statements of jurisdiction and venue complying with subrules (C)(2)(a) and (b).

(3) *Answer.* An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.

(4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.

(E) *Stay of Enforcement.* The filing of an appeal does not stay enforcement of the agency's decision or order.

(1) A party may file a motion seeking a stay in the circuit court.

(2) For purposes of this subrule, the agency is entitled to notice even if it has not filed an appearance in the appeal.

(3) The court may order a stay on appropriate terms and conditions if it finds that:

(a) the moving party will suffer irreparable injury if a stay is not granted;

(b) the moving party made a strong showing that it is likely to prevail on the merits;

(c) the public interest will not be harmed if a stay is granted; and

(d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted.

(4) If the motion for stay is granted, the circuit court may set appropriate terms and conditions for the posting of a bond

(a) in the amount required by any applicable statute authorizing the appeal, or

(b) in an amount and with sureties that the circuit court deems adequate to protect the public and the parties when there are no statutory instructions.

(5) *Temporary Stay.*

(a) The circuit court may grant a temporary stay of enforcement without written notice only if

(i) it clearly appears from facts alleged in the motion that immediate and irreparable injury will result if a stay is not entered before a hearing, and

(ii) the moving party certifies to the court in writing that it made reasonable efforts to contact the other parties and agency, but was unsuccessful.

(b) A temporary stay may be granted by the court until a hearing can be held. A hearing on a motion to dissolve a temporary stay will be heard on 24 hours' notice, or less on order of the court for good cause shown, and takes precedence over all matters except previously filed matters of the same character.

(F) *Stipulations.* The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court.

(G) Additional Evidence. A motion to present proofs of alleged irregularity in procedure before the agency, or to allow the taking of additional evidence before the agency, is timely only if it is filed with or included with the claim of appeal or application. The appellant shall promptly notice the motion for decision. If the court orders the taking of additional evidence, the time for filing briefs is stayed until the taking of the evidence is completed.

(H) Decision. The court may affirm, reverse, remand, or modify the decision of the agency and may grant further relief as appropriate based on the record, findings, and conclusions.

(1) If the agency's decision or order is not supported by competent, material, and substantial evidence on the whole record, the court shall specifically identify the finding or findings that lack support.

(2) If the agency's decision or order violates the Constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed.

### **Rule 7.120 Licensing Appeals Under the Michigan Vehicle Code**

(A) Scope. This rule governs appeals to the circuit court under the Michigan Vehicle Code, MCL 257.1 *et seq.*, from a final determination by the Secretary of State pertaining to an operator's license, a chauffeur's license, a vehicle group designation, or an indorsement. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.

(B) Appeal of Right.

(1) *Time Requirements.* The time for filing an appeal of right is governed by MCL 257.323(1).

(2) *Manner of Filing.*

(a) Claim of Appeal – Form. The claim of appeal shall conform to the requirements of MCR 7.104(C)(1), except that the party aggrieved by the Secretary of State's determination is the appellant.

(b) Claim of Appeal – Content. The claim of appeal must:

(i) state the appellant's full name, current address, birth date, and driver's license number;

(ii) state "[*name of appellant*] claims an appeal from the decision on [*date*] by the Secretary of State"; and

(iii) include concise statements of the following:

[A] the nature of any determination by the Secretary of State;



[B] the statute authorizing the Secretary of State's determination;

[C] the subsection of MCL 257.323 under which the appeal is taken; and

[D] the facts on which venue is based.

(c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(d) Other Documents. The appellant must attach as exhibits accompanying the claim of appeal:

(i) a copy of the Secretary of State's determination, and

(ii) any affidavits supporting the claim of appeal.

(e) Service. The appellant shall serve the claim of appeal on all parties.

(3) *Appearance*. The appellee shall file an appearance within 14 days that complies with MCR 7.104(F).

(C) Application for Late Appeal.

(1) *Time Requirements*. An application for late appeal must be filed within the time set forth in MCL 257.323(1).

(2) *Manner of Filing*. In addition to the requirements of MCR 7.105(B), the application must comply with MCR 7.120(B)(2)(b) and must include a statement showing good cause for the delay.

(3) *Answer*. An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.

(4) *If Application is Granted*. If the application is granted, the appeal proceeds in the same manner as an appeal of right.

(D) Stay of Enforcement. The filing of a claim of appeal or an application for late appeal does not stay enforcement of the Secretary of State's decision or order. The appellant may file for a stay of enforcement under MCL 257.323a. The appellant shall serve a copy of the order granting or denying the stay on the Secretary of State. The Secretary of State may file a motion challenging the stay.

(E) Stipulations. The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court.

(F) Proceedings Under MCL 257.323(3).

(1) *Briefs*. The court may require briefs and may enter an order setting a briefing schedule. Unless otherwise ordered, briefs must comply with MCR 7.111.

(2) *Hearing*. The court shall schedule a hearing under MCL 257.323(2). During the hearing, the court may take testimony and examine all the facts and circumstances

relating to the denial, suspension, or restriction of the person's license under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f.

(3) *Decision.* For denials, suspensions, or restrictions of the person's license under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f, the circuit court may affirm, modify, or set aside the restriction, suspension, or denial. The circuit court, however, shall not order the Secretary of State to issue a restricted or unrestricted chauffeur's license that would permit the person to drive a commercial motor vehicle that hauls hazardous materials.

(4) *Appellant's Responsibility After Decision.* Pursuant to MCL 257.323(3), the appellant shall file a certified copy of the circuit court's order with the Secretary of State's office in Lansing within 7 days after entry of the order for denials, suspensions, or restrictions of the person's license arising under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f.

(G) Proceedings Under MCL 257.323(4).

(1) *Briefs.* Unless otherwise ordered, the parties must file briefs complying with MCR 7.111.

(2) *Oral Argument.* If requested in accord with MCR 7.111(C), the court shall schedule oral argument unless it concludes that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument.

(3) *Decision.* The court shall confine its consideration to a review of the record prepared under MCL 257.322, MCL 257.625f, or MCL 257.204a for statutory legal issues and shall not grant restricted driving privileges. The court shall set aside the Secretary of State's determination only if the appellant's substantial rights have been prejudiced because the determination is:

- (a) in violation of the Constitution of the United States, the Michigan Constitution, or a statute;
- (b) in excess of the Secretary of State's statutory authority or jurisdiction;
- (c) made upon unlawful procedure that results in material prejudice to the appellant;
- (d) not supported by competent, material, and substantial evidence on the whole record;
- (e) arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or
- (f) affected by other substantial and material error of law.

## **Rule 7.121 Appeals From Concealed Weapon Licensing Boards**

(A) Scope. This rule governs appeals to the circuit court from a final determination of a concealed weapon licensing board refusing to restore rights under MCL 28.424 or denying, failing to issue, revoking, or suspending a license to carry a concealed pistol. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply.

(B) Appeal of Right.

(1) *Time Requirements.* Time requirements are governed by MCR 7.104(A).

(2) *Manner of Filing.*

(a) Claim of Appeal – Form. The claim of appeal shall conform with the requirements of MCR 7.104(C)(1), except that:

(i) the license applicant is the appellant, and

(ii) the board is the appellee.

(b) Claim of Appeal – Content. The claim of appeal must:

(i) state:

[A] “[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the county*] Concealed Weapon Licensing Board,” or

[B] “[*Name of appellant*] claims an appeal from the failure of the [*name of the county*] Concealed Weapon Licensing Board to issue a decision on the application for a license by [*date*],” and

(ii) include concise statements of the following:

[A] the nature of the proceedings before the board, including citation to the statute authorizing the board’s decision;

[B] citation to the statute or Const 1963, art 6 § 28 authorizing appellate review;

[C] the facts on which venue is based.

(c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(d) Other Documents. In addition to the documents required under MCR 7.104(D), the claim of appeal shall include a copy of the board’s decision and any materials accompanying the board’s decision. If the appeal is from the board’s failure to issue a timely decision, the claim of appeal shall state the date on which the application was filed and shall include a statement addressing whether the application complied with MCL 28.425b(1), (5), and (9).

(e) Service. The appellant shall serve the claim of appeal on all parties.

(f) Request for Certified Record. Within the time for filing a claim of appeal, the appellant shall send a written request to the board to send a certified copy of the record to the circuit court.

(3) *Appearance.* The appellee shall file an appearance that complies with MCR 7.104(F) within 14 days after service of the claim of appeal.

(C) Hearing De Novo from Denial of License for Grounds Specified in MCL 28.425b(7)(n).

(1) *Briefs*. The court may require briefs and may enter an order setting a briefing schedule. Unless otherwise ordered, briefs must comply with MCR 7.111.

(2) *Hearing*. The court shall hold a hearing de novo that comports with MCL 28.425d(1). Any determination that the appellant is unfit under MCL 28.425b(7)(n) shall be based on clear and convincing evidence.

(3) *Decision*. The circuit court shall enter an order either affirming the board's denial or finding the applicant qualified under MCL 28.425b(7)(n) and ordering the board to issue a license.

(D) Procedure in All Other Appeals.

(1) *Briefs*. Unless otherwise ordered, the parties must file briefs complying with MCR 7.111.

(2) *Oral Argument*. If requested in accord with MCR 7.111(C), the court shall hold oral argument within 14 days after the appellee's brief was filed or due. The court may dispense with oral argument under MCR 7.114(A).

(3) *Decision*. The court shall confine its consideration to a review of the record. If the court determines that the denial of a license was clearly erroneous, the court shall order the board to issue a license as required by the act. If the court determines that the board erroneously refused to restore rights pursuant to MCL 28.424(3), the court shall order the board to restore the applicant's rights. If the court determines that the board erroneously revoked or suspended a license, the court shall order the board to reinstate the license. If the court determines that the board failed to issue a license pursuant to MCL 28.425b(13), the court shall order the board to act on the application within 14 days. The court shall retain jurisdiction to review the board's decision.

(E) Notice of Decision. The circuit court shall serve the parties with a copy of its order resolving the appeal.

(F) Costs and Attorney Fees.

(1) *Arbitrary and Capricious Board Decision*. If the court determines that the decision of the board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order the state to pay 1/3 and the county in which the concealed weapon licensing board is located to pay 2/3 of the actual costs and actual attorney fees of the applicant in appealing the denial.

(2) *Frivolous Appeal*. If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the board in responding to the appeal.

## **Rule 7.122 Appeals From Zoning Ordinance Determinations**

### (A) Scope.

(1) This rule governs appeals to the circuit court from a determination under a zoning ordinance by any officer, agency, board, commission, or zoning board of appeals, and by any legislative body of a city, village, township, or county authorized to enact zoning ordinances. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply. This rule does not apply to legislative decisions of a city, village, township, or county, such as the adoption of or amendment to a zoning ordinance.

(2) This rule does not restrict the right of a party to bring a complaint for relief relating to a determination under a zoning ordinance. A party may seek a stay of enforcement under MCR 7.123(E).

(3) An appeal under this section is an appeal of right.

(B) Time Requirements. An appeal under this rule must be filed within the time prescribed by the statute applicable to the appeal. If no time is specified in the applicable statute, the appeal must be filed within 30 days after the certification of the minutes of the board or commission from which the appeal is taken or within 30 days after the board or commission issued its decision in writing, whichever deadline comes first.

### (C) Manner of Filing.

(1) *Claim of Appeal – Form.* The claim of appeal shall conform to the requirements of MCR 7.104(C)(1), except that:

(a) the party aggrieved by the determination shall be designated the appellant; and  
(b) the city, village, township, or county under whose ordinance the determination was made shall be designated the “appellee,” except that when a city, village, township, county, or an officer or entity authorized to appeal on its behalf, appeals a determination as an aggrieved party, then the appellee(s) shall be designated as the board, commission, or other entity that made the determination and the party that prevailed before the board, commission, or other entity that made the determination.

(2) *Claim of Appeal – Content.* The claim of appeal must:

(a) state “[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the officer or entity*]”; and

(b) include concise statements of the following:

- (i) the nature of the determination by the officer or entity;
- (ii) the statute authorizing the officer or entity’s proceedings and determination;
- (iii) the statute or constitutional provision under which the appeal is taken;

- (iv) the facts on which venue is based;
- (v) the grounds on which relief is sought, stated in as many separate paragraphs as there are separate grounds alleged; and
- (vi) the relief sought.

(3) *Signature*. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(4) *Other Documents*. The appellant must attach to the claim of appeal a copy of the order and/or minutes of the officer or entity from which the appeal is taken or must indicate that there is no such document to attach.

(5) *Service*. Upon filing the claim of appeal, the appellant, shall serve a copy of the claim of appeal and all attachments upon the clerk of the city, village, township, or county as well as the board, commission, or other entity that made a determination that is the subject of the appeal. Service shall be in the manner provided in MCR 2.107, and appellant shall promptly file a proof of service with the court.

(D) *Bond*. An appellant shall not be required to post a bond unless so ordered by the court.

(E) *Record on Appeal; Transmittal of the Record*.

(1) The record includes the original or a copy certified by the city, village, township, or county clerk of the application, all documents and material submitted by any person or entity with respect to the application, the minutes of all proceedings, and any determination of the officer or entity.

(2) Within 28 days after service of the claim of appeal, the clerk of the city, village, township, or county from which the appeal is taken must file the record with the court.

(3) If the record is not available within 28 days after service of the claim of appeal, the clerk of the city, village, township, or county from which the appeal is taken shall notify the court of the estimated date of transmittal of the record.

(4) If the clerk of the city, village, township, or county postpones transmittal of the record or transmittal is otherwise delayed, the court may on motion or its own initiative exercise superintending control over the clerk to prevent delay.

(5) The clerk of the city, village, township, or county from which the appeal is taken must notify the appellant and appellee of the transmittal of the record to the court.

(6) Motions regarding the contents of the record or to prepare a transcript of proceedings before the officer or entity must be filed within 21 days after transmission of the record to the court.

(F) *Briefs*. Unless otherwise ordered, the parties must file briefs complying with MCR 7.111.

(G) Decision.

(1) *Appeals Under MCL 125.3606.*

(a) In an appeal from a city, village, township, or county board of zoning appeals, the court shall apply the standard of review under MCL 125.3606(1).

(b) If the court finds the record inadequate to review the decision or finds that additional material evidence exists that with good reason was not presented, the court shall order further zoning board of appeals proceedings on conditions that the court considers proper. The zoning board of appeals may modify the findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court.

(c) The court may affirm, reverse, or modify the decision of the board of appeals.

(2) *Other Appeals.* In an appeal from a final determination under a zoning ordinance where no right of appeal to a zoning board of appeals exists, the court shall determine whether the decision was authorized by law and the findings were supported by competent, material, and substantial evidence on the whole record.

(H) Notice of Decision. The court shall serve the parties with a copy of its order resolving the appeal.

### **Rule 7.123 Appeals From Agencies not Governed by Another Rule**

(A) Scope. This rule governs an appeal to the circuit court from an agency decision that is not governed by another rule in this subchapter. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.

(B) Appeal of Right.

(1) *Time Requirements.* Time requirements are governed by MCR 7.104(A).

(2) *Manner of Filing.*

(a) Claim of Appeal – Form. The claim of appeal shall conform to the requirements of MCR 7.119(B)(2)(a).

(b) Claim of Appeal – Content. The claim of appeal must:

(i) state “[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the agency*],” and

(ii) include concise statements of the following:

[A] the nature of the proceedings before the agency;

[B] citation to the statute, rule, or other authority enabling the agency to conduct the proceedings;

[C] citation to the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court; and

[D] the facts on which venue is based.

(c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(d) Other Documents. The appellant must also comply with MCR 7.104(D).

(e) Filing Requirements in the Agency. The appellant must comply with MCR 7.104(E).

(f) Service. The appellant must comply with MCR 7.104(D)(7).

(3) *Appearance*. The appellee shall file an appearance that complies with MCR 7.104(F) within 14 days after service of the claim of appeal.

(C) Application for Leave to Appeal or for Interlocutory Appeal.

(1) *Time Requirements*. An application must comply with MCR 7.105(A).

(2) *Manner of Filing*. An application must comply with MCR 7.105 and MCR 7.123(B)(2)(b)(ii). An application for interlocutory appeal shall also state why review of the agency's final decision will not be an adequate remedy.

(3) *Answer*. An appellee may file an answer to an application that complies with MCR 7.105(C). The circuit court may require the filing of an answer.

(4) *If Application is Granted*. If the application is granted, the appeal proceeds as an appeal of right.

(D) Late Appeal. The appellant may file an application for late appeal if permitted by statute.

(1) *Time Requirements*. Unless inconsistent with the statute authorizing late appeal, the application must be filed within six months after entry of the agency decision or order.

(2) *Manner of Filing*. In addition to the requirements of MCR 7.105(B), the application must include:

(a) a statement citing the statute authorizing a late appeal;

(b) a statement of facts explaining the delay; and

(c) statements of jurisdiction and venue complying with MCR 7.123(B)(2)(b)(ii).

(3) *Answer*. An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.

(4) *If Application is Granted*. If the application is granted, the appeal proceeds in the same manner as an appeal of right.

(E) Stay of Enforcement. The filing of an appeal or an application for leave to appeal does not stay enforcement of the agency's decision or order.



- (1) A party may file a motion seeking a stay in the circuit court.
- (2) For purposes of this subrule, the agency is entitled to notice even if it has not filed an appearance in the appeal.
- (3) The court may order a stay on appropriate terms and conditions if it finds that:
  - (a) the moving party will suffer irreparable injury if a stay is not granted;
  - (b) the moving party made a strong showing that it is likely to prevail on the merits;
  - (c) the public interest will not be harmed if a stay is granted; and
  - (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted.
- (4) If the motion for stay is granted, the circuit court may set appropriate terms and conditions for the posting of a bond:
  - (a) in the amount required by any applicable statute authorizing the appeal, or
  - (b) in an amount and with sureties that the circuit court deems adequate to protect the public and the parties when there are no statutory instructions.
- (5) *Temporary Stay.*
  - (a) The circuit court may grant a temporary stay of enforcement without written notice only if
    - (i) it clearly appears from facts alleged in the motion that immediate and irreparable injury will result if a stay is not entered before a hearing, and
    - (ii) the moving party certifies to the court in writing that it made reasonable efforts to contact the other parties and agency, but was unsuccessful.
  - (b) A temporary stay may be granted by the court until a hearing can be held. A hearing on a motion to dissolve a temporary stay will be heard on 24 hours' notice, or less on order of the court for good cause shown, and takes precedence over all matters except previously filed matters of the same character.

(F) *Stipulations.* The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court.

(G) *Decision.* The court may affirm, reverse, remand, or modify the decision of the agency and may grant further relief as appropriate based on the record, findings, and conclusions.

(1) If the agency's decision or order is not supported by competent, material, and substantial evidence on the whole record, the court shall specifically identify the finding or findings that lack support.

(2) If the agency's decision or order violates the Constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting

in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed.

## Subchapter 7.200 Court of Appeals

### **Rule 7.201 Organization and Operation of Court of Appeals**

#### (A) Chief Judge and Chief Judge Pro Tempore.

(1) The Supreme Court shall select a judge of the Court of Appeals to serve as chief judge. No later than October 1 of each odd-numbered year, the Court of Appeals may submit the names of no fewer than two judges whom the judges of that court recommend for selection as chief judge.

(2) The chief judge shall select a chief judge pro tempore, who shall fulfill such functions as the chief judge assigns.

(3) The chief judge and chief judge pro tempore shall serve a two-year term beginning on January 1 of each even-numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore serves at the pleasure of the chief judge.

#### (B) Court of Appeals Clerk; Place of Filing Papers; Fees.

(1) The court shall appoint a chief clerk who is subject to the requirements imposed on the Supreme Court clerk in MCR 7.319. The clerk's office must be located in Lansing and be operated under the court's direction. With the court's approval, the clerk may appoint assistant and deputy clerks.

(2) Papers to be filed with the court or the clerk must be filed in the clerk's office in Lansing or with a deputy clerk in Detroit, Troy, or Grand Rapids. Fees paid to a deputy clerk must be forwarded to the clerk's office in Lansing. Claims of appeal, applications, motions, and complaints need not be accepted for filing until all required documents have been filed and the requisite fees have been paid.

(3) If a case is accepted for filing without all of the required documents, transcripts, or fees, the appellant, or the plaintiff in an original action under MCR 7.206, must supply the missing items within 21 days after the date of the clerk's notice of deficiency. The chief judge or another designated judge may dismiss the appeal and assess costs if the deficiency is not remedied within that time.

(C) Sessions of Court. There are 9 regular sessions of the court each year. Except as otherwise required for the efficient administration of the court, each session begins on the first Tuesday during the months of October through June. Each session continues for the number of days necessary to conclude the hearing of cases scheduled for argument. The chief judge may order a special session.

(D) Panels. The court shall sit to hear cases in panels of 3 judges. The decision of a majority of the judges of a panel in attendance at the hearing is the decision of the

court. Except as modified by the Supreme Court, a decision of the court is final. The judges must be rotated so that each judge sits with every other judge with equal frequency, consistent with the efficient administration of the court's business. The Supreme Court may assign persons to act as temporary judges of the court, under the constitution and statutes. Only one temporary judge may sit on a 3-judge panel.

(E) Assignments and Presiding Judge. Before the calendar for each session is prepared, the chief judge shall assign the judges to each panel and the cases to be heard by them and designate one of them as presiding judge. A presiding judge presides at a hearing and performs other functions the court or the Supreme Court by rule or special order directs. The chief judge may assign a motion or any other matter to any panel.

(F) Place of Hearing. The court shall sit in Detroit, Lansing, Grand Rapids, and Marquette, or another place the chief judge designates. A calendar case will be assigned for hearing in the city nearest to the court or tribunal from which the appeal was taken or as the parties stipulate, except as otherwise required for the efficient administration of the court's business.

(G) Judicial Conferences. At least once a year and at other times the chief judge finds necessary, the judges shall meet to consider proposals to amend the rules of the court, improve the administration of justice, including the operations of the court, and transact any business which properly comes before them.

(H) Approval of Expenses. The state court administrator shall approve the expenses for operation of the court and the expense accounts of the judges, including attendance at a judicial conference. The state court administrator shall prepare a budget for the court.

### **Rule 7.202 Definitions**

For purposes of this subchapter:

- (1) "clerk" means the Court of Appeals clerk, unless otherwise stated;
- (2) "date of filing" means the date of receipt of a document by a court clerk;
- (3) "entry fee" means the fee required by law or, in lieu of that fee, a motion to waive fees or a copy of an order appointing an attorney;
- (4) "filing" means the delivery of a document to a court clerk and the receipt and acceptance of the document by the clerk with the intent to enter it in the record of the court;
- (5) "custody case" means a domestic relations case in which the custody of a minor child is an issue, an adoption case, or a case in which the family division of circuit court has entered an order terminating parental rights or an order of disposition removing a child from the child's home;
- (6) "final judgment" or "final order" means:
  - (a) In a civil case,

- (i) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order
  - (ii) an order designated as final under MCR 2.604(B);
  - (iii) in a domestic relations action, a postjudgment order affecting the custody of a minor,
  - (iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule,
  - (v) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity;
- (b) In a criminal case,
- (i) an order dismissing the case;
  - (ii) the original sentence imposed following conviction;
  - (iii) a sentence imposed following the granting of a motion for resentencing;
  - (iv) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; or
  - (v) a sentence imposed following revocation of probation.

### **Rule 7.203 Jurisdiction of the Court of Appeals**

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

- (1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6), except a judgment or order of the circuit court
  - (a) on appeal from any other court or tribunal;
  - (b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

An appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

- (2) A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule;

(B) Appeal by Leave. The court may grant leave to appeal from:

- (1) a judgment or order of the circuit court, court of claims that is not a final judgment appealable of right;
- (2) a final judgment entered by the circuit court on appeal from any other court;

- (3) a final order of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court;
- (4) any other judgment or order appealable to the Court of Appeals by law or rule;
- (5) any judgment or order when an appeal of right could have been taken but was not timely filed.

(C) Extraordinary Writs, Original Actions, and Enforcement Actions. The court may entertain an action for:

- (1) superintending control over a lower court or a tribunal immediately below it arising out of an action or proceeding which, when concluded, would result in an order appealable to the Court of Appeals;
- (2) mandamus against a state officer (see MCL 600.4401);
- (3) habeas corpus (see MCL 600.4304);
- (4) quo warranto involving a state office or officer;
- (5) any original action required by law to be filed in the Court of Appeals or Supreme Court;
- (6) any action to enforce a final order of an administrative tribunal or agency required by law to be filed in the Court of Appeals or Supreme Court.

(D) Other Appeals and Proceedings. The court has jurisdiction over any other appeal or action established by law. An order concerning the assignment of a case to the business court under MCL 600.8301 *et seq.* shall not be appealed to the Court of Appeals.

(E) Appeals by Prosecution. Appeals by the prosecution in criminal cases are governed by MCL 770.12, except as provided by MCL 770.3.

(F) Dismissal.

- (1) Except when a motion to dismiss has been filed, the chief judge or another designated judge may, acting alone, dismiss an appeal or original proceeding for lack of jurisdiction.
- (2) The appellant or plaintiff may file a motion for reconsideration within 21 days after the date of the order of dismissal. The motion shall be submitted to a panel of 3 judges. No entry fee is required for a motion filed under this subrule.
- (3) The clerk will not accept for filing a motion for reconsideration of an order issued by a 3-judge panel that denies a motion for reconsideration filed under subrule (2).

(G) Appeals from Orders Granting or Denying Motions for Summary Disposition. Appeals arising solely from orders granting or denying motions for summary disposition under MCR 2.116 are to be processed in accordance with Administrative Order 2004-5.

## **Rule 7.204 Filing Appeal of Right; Appearance**

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

- (1) An appeal of right in a civil action must be taken within
  - (a) 21 days after entry of the judgment or order appealed from;
  - (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;
  - (c) 14 days after entry of an order of the family division of the circuit court terminating parental rights under the Juvenile Code, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or
  - (d) another time provided by law.

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.

- (2) An appeal of right in a criminal case must be taken
  - (a) in accordance with MCR 6.425(G)(3);
  - (b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425(G)(1);
  - (c) within 42 days after entry of the judgment or order appealed from; or
  - (d) within 42 days after the entry of an order denying a motion for a new trial, for directed verdict of acquittal, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.419(B), 6.429(B), or 6.431(A), as the case may be.
  - (e) If a claim of appeal is received by the court after the expiration of the periods set forth above, and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the claim as a pro se party, the claim shall be deemed presented for filing on the date of deposit of the claim in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn

statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to claims of appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

(3) Where service of the judgment or order on appellant was delayed beyond the time stated in MCR 2.602, the claim of appeal must be accompanied by an affidavit setting forth facts showing that the service was beyond the time stated in MCR 2.602. Appellee may file an opposing affidavit within 14 days after being served with the claim of appeal and affidavit. If the Court of Appeals finds that service of the judgment or order was delayed beyond the time stated in MCR 2.602 and the claim of appeal was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely.

(B) Manner of Filing. To vest the Court of Appeals with jurisdiction in an appeal of right, an appellant shall file with the clerk within the time for taking an appeal

- (1) the claim of appeal, and
- (2) the entry fee.

(C) Other Documents. With the claim of appeal, the appellant shall file the following documents with the clerk:

- (1) a copy of the judgment or order appealed from;
- (2) a copy of the certificate of the court reporter or recorder filed under subrule (E)(4), a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed;
- (3) proof that a copy of the claim of appeal was served on all other parties in the case and on any other person or officer entitled by rule or law to notice of the appeal;
- (4) if the appellant has filed a bond, a true copy of the bond;
- (5) a copy of the register of actions of the lower court, tribunal, or agency; and
- (6) a jurisdictional checklist on a form provided by the clerk's office.

(D) Form of Claim of Appeal.

(1) A claim of appeal is entitled "In the Court of Appeals." The parties are named in the same order as they appear in the trial court, with the added designation "appellant" or "appellee" as appropriate. The claim must be substantially in the following form:

*[Name of appellant], [plaintiff or defendant], claims an appeal from the [judgment or order] entered [date of judgment or order or date sentence imposed] in the [name of court or tribunal from which the appeal is taken] by [name of judge or officer who entered the judgment, order, or sentence].*

(2) The claim of appeal must be dated and signed, and must list the appropriate business address and telephone number under the signature.

(3) If the case involves

(a) a contest as to the custody of a minor child, or

(b) a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid,

that the fact must be stated in capital letters on the claim of appeal. In an appeal specified in subrule (D)(3)(b), the Court of Appeals shall give expedited consideration to the appeal, and, if the state or an officer or agency of the state is not a party to the appeal, the Court of Appeals shall send copies of the claim of appeal and the judgment or order appealed from to the Attorney General.

(E) Trial Court Filing Requirements. Within the time for taking the appeal, the appellant shall file in the court or the tribunal from which the appeal is taken

(1) a copy of the claim of appeal;

(2) any fee required by law;

(3) any bond required by law as a condition for taking the appeal; and

(4) unless there is no record to be transcribed, the certificate of the court reporter or recorder stating that a transcript has been ordered and payment for it made or secured, and that it will be filed as soon as possible or has already been filed.

(F) Other Requirements. Within the time for taking the appeal, the appellant shall also

(1) make any delivery or deposit of money, property, or documents, and do any other act required by the statute authorizing the appeal, and file with the clerk an affidavit or other evidence of compliance;

(2) serve on all other parties in the case and on any other person or officer entitled by rule or law to notice of the appeal a copy of the claim of appeal and a copy of any bond filed under subrule (C)(4).

(G) Appearance. Within 14 days after being served with the claim of appeal, the appellee shall file an appearance (identifying the individual attorneys of record) in the Court of Appeals and in the court or tribunal from which the appeal is taken. An appellee who does not file a timely appearance is not entitled to notice of further proceedings until an appearance is filed.



(H) Docketing Statement. In all civil appeals, within 28 days after the claim of appeal is filed, the appellant must file two copies of a docketing statement with the clerk of the Court of Appeals and serve a copy on the opposing parties.

(1) Contents. The docketing statement must contain the information required from time to time by the Court of Appeals through the office of the Chief Clerk on forms provided by the Clerk's office and must set forth:

(a) the nature of the proceeding;

(b) the date of entry of the judgment or order sought to be reviewed as defined in MCR 7.204(A) or MCR 7.205(A), and whether the appeal was timely filed and is within the court's jurisdiction;

(c) a concise, accurate summary of all facts material to consideration of the issues presented, but transcripts are not required at this stage;

(d) the issues presented by the appeal, including a concise summary of how they arose and how they were preserved in the trial court. General conclusory statements such as, "the judgment of the trial court is not supported by the law or the facts," will not be accepted;

(e) a reference to all related or prior appeals, and the appropriate citation, if any.

(2) Amendment. The Court of Appeals may, upon motion and good cause shown, allow for the amendment of the docketing statement.

(3) Cross Appeals. A party who files a cross appeal shall file a docketing statement in accordance with this rule within 28 days after filing the cross appeal.

(4) Dismissal. If the appellant fails to file a timely docketing statement, the chief judge may dismiss the appeal pursuant to MCR 7.217.

### **Rule 7.205 Application for Leave to Appeal**

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

(1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or

(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.

For purposes of subrules (A)(1) and (A)(2), "entry" means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal's register of actions.

(3) If an application for leave to appeal in a criminal case is received by the court after the expiration of the periods set forth above or the period set forth in MCR 7.205(G), and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro

se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to applications for leave to appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.

(B) Manner of Filing. To apply for leave to appeal, the appellant shall file with the clerk:

(1) 5 copies of an application for leave to appeal (one signed), stating the date and nature of the judgment or order appealed from; concisely reciting the appellant's allegations of error and the relief sought; setting forth a concise argument, conforming to MCR 7.212(C), in support of the appellant's position on each issue; and, if the order appealed from is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;

(2) 5 copies of the judgment or order appealed from, of the register of actions of the lower court, tribunal, or agency, of the opinion or findings of the lower court, tribunal, or agency, and of any opinion or findings reviewed by the lower court, tribunal, or agency.

(3) if the appeal is from an administrative tribunal or agency, or from a circuit court on review of an administrative tribunal or agency, evidence that the tribunal or agency has been requested to send its record to the Court of Appeals;

(4) 1 copy of certain transcripts, as follows:

(a) in an appeal relating to the evidence presented at an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court which conducted the hearing;

(b) in an appeal from the circuit court after an appeal from another court, the transcript of proceedings in the court reviewed by the circuit court;

(c) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;

(d) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;

(e) in an appeal from an order granting or denying a new trial, such portion of the transcript of the trial as, in relation to the issues raised, permits the court to determine whether the trial court's decision on the motion was for a legally recognized reason and based on arguable support in the record;

(f) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion relating to sentencing;

(g) in an appeal raising any other issue, such portion of the transcript as substantiates the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge.

If the transcript is not yet available, or if there is no record to be transcribed, the appellant shall file a copy of the certificate of the court reporter or recorder or a statement by the appellant's attorney as provided in MCR 7.204(C)(2). The appellant must file the transcript with the Court of Appeals as soon as it is available.

(5) if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;

(6) proof that a copy of the filed documents was served on all other parties; and

(7) the entry fee.

(C) Answer. Any other party in the case may file with the clerk, within 21 days of service of the application,

(1) 5 copies of an answer to the application (one signed) conforming to MCR 7.212(D), except that transcript page references are not required unless a transcript has been filed; and

(2) proof that a copy was served on the appellant and any other appellee.

(D) Reply. A reply brief may be filed as provided by MCR 7.212(G).

(E) Decision.

(1) There is no oral argument. The application is decided on the documents filed and, in an appeal from an administrative tribunal or agency, the certified record.

(2) The court may grant or deny the application; enter a final decision; grant other relief; request additional material from the record; or require a certified concise statement of proceedings and facts from the court, tribunal, or agency whose order is being appealed. The clerk shall enter the court's order and mail copies to the parties.

(3) If an application is granted, the case proceeds as an appeal of right, except that the filing of a claim of appeal is not required and the time limits for the filing of a cross appeal and for the taking of the other steps in the appeal, including the filing of the docketing statement (28 days), and the filing of the court reporter's or recorder's certificate if the transcript has not been filed (14 days), run from the date the order granting leave is certified.

(4) Unless otherwise ordered, the appeal is limited to the issues raised in the application and supporting brief.

(F) Emergency Appeal.

(1) If the order appealed requires acts or will have consequences within 56 days of the date the application is filed, appellant shall alert the clerk of that

fact by prominent notice on the cover sheet or first page of the application, including the date by which action is required.

(2) When an appellant requires a hearing on an application in less than 21 days, the appellant shall file and serve a motion for immediate consideration, concisely stating facts showing why an immediate hearing is required. A notice of hearing of the application and motion or a transcript is not required. An answer may be filed within the time the court directs. If a copy of the application and of the motion for immediate consideration are personally served under MCR 2.107(C)(1) or (2), the application may be submitted to the court immediately on filing. If mail service is used, it may not be submitted until the first Tuesday 7 days after the date of service, unless the party served acknowledges receipt. In all other respects, submission, decision, and further proceedings are as provided in subrule (D).

(3) Where the trial court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the trial court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the trial court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. The appealing party must pursue the appeal as expeditiously as practicable, and the Court of Appeals shall consider the matter under the same priority as that granted to an interlocutory criminal appeal under MCR 7.213(C)(1). If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the trial court reconsider whether pretrial release is appropriate.

#### (G) Late Appeal.

(1) When an appeal of right was not timely filed or was dismissed for lack of jurisdiction, or when an application for leave was not timely filed, the appellant may file an application as prescribed in subrule (B), file 5 copies of a statement of facts explaining the delay, and serve 1 copy on all other parties. The answer may challenge the claimed reasons for delay. The court may consider the length of and the reasons for delay in deciding whether to grant the application. In all other respects, submission, decision, and further proceedings are as provided in subrule (E).

(2) In a criminal case, the defendant may not file an application for leave to appeal from a judgment of conviction and sentence if the defendant has previously taken an appeal from that judgment by right or leave granted or has sought leave to appeal that was denied.

(3) Except as provided in subrules (G)(4) and (G)(5), leave to appeal may not be granted if an application for leave to appeal is filed more than 6 months after the later of:

(a) entry of a final judgment or other order that could have been the subject of an appeal of right under MCR 7.203(A), but if a motion described

in MCR 7.204(A)(1)(b) was filed within the time prescribed in that rule, then the 6 months are counted from the time of entry of the order denying that motion; or

(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, then the 6 months are counted from the entry of the order deciding the motion.

(4) The limitation provided in subrule (G)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.431(A), or if

(a) the defendant has filed a delayed request for the appointment of counsel pursuant to MCR 6.425(G)(1) within the 6-month period,

(b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the delayed request for counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(G)(2), and

(c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.

A motion for rehearing or reconsideration of a motion mentioned in subrule (G)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule (G)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.

A defendant who seeks to rely on one of the exceptions in subrule (G)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

(5) Notwithstanding the 6-month limitation period otherwise provided in subrule (G)(3), leave to appeal may be granted if a party's claim of appeal is dismissed for lack of jurisdiction within 21 days before the expiration of the 6-month limitation period, or at any time after the 6-month limitation period has expired, and the party files a late application for leave to appeal from the same lower court judgment or order within 21 days of the dismissal of the claim of appeal or within 21 days of denial of a timely filed motion for reconsideration. A party

filing a late application in reliance on this provision must note the dismissal of the prior claim of appeal in the statement of facts explaining the delay.

(6) The time limit for late appeals from orders terminating parental rights is 63 days, as provided by MCR 3.993(C)(2).

(H) Certified Concise Statement.

(1) When the Court of Appeals requires a certified concise statement of proceedings and facts, the appellant shall, within 7 days after the order requiring the certified concise statement is certified, serve on all other parties a copy of a proposed concise statement of proceedings and facts, describing the course of proceedings and the facts pertinent to the issues raised in the application, and notice of hearing with the date, time, and place for settlement of the concise statement.

(2) Hearing on the proposed concise statement must be within 14 days after the proposed concise statement and notice is served on the other parties.

(3) Objections to the proposed concise statement must be filed in writing with the trial court and served on the appellant and any other appellee before the time set for settlement.

(4) The trial court shall promptly settle objections to the proposed concise statement and may correct it or add matters of record necessary to present the issues properly. When a court's discretionary act is being reviewed, the trial court may add to the statement its reasons for the act. Within 7 days after the settlement hearing, the trial court shall certify the proposed or a corrected concise statement of proceedings and facts as fairly presenting the factual basis for the questions to be reviewed as directed by the Court of Appeals. Immediately after certification, the trial court shall send the certified concise statement to the Court of Appeals clerk and serve a copy on each party.

**Rule 7.206 Extraordinary Writs, Original Actions, and Enforcement Actions**

(A) General Rules of Pleading. Except as otherwise provided in this rule, the general rules of pleading apply as nearly as practicable. See MCR 2.111-2.114.

(B) Superintending Control, Mandamus, and Habeas Corpus. To the extent that they do not conflict with this rule, the rules in subchapter 3.300 apply to actions for superintending control, mandamus, and habeas corpus.

(C) Quo Warranto. In a quo warranto action, the Attorney General also must be served with a copy of each pleading and document filed in the Court of Appeals. The Attorney General has the right to intervene as a party on either side.

(D) Actions for Extraordinary Writs and Original Actions.

(1) Filing of Complaint. To commence an original action, the plaintiff shall file with the clerk:

(a) 5 copies of a complaint (1 signed), which may have copies of supporting documents or affidavits attached to each copy;

(b) 5 copies of a supporting brief (1 signed) conforming to MCR 7.212(C) to the extent possible;

(c) proof that a copy of each of the filed documents was served on every named defendant and, in a superintending control action, on any other party involved in the case which gave rise to the complaint for superintending control; and

(d) the entry fee.

(2) Answer. The defendant or any other interested party must file with the clerk within 21 days of service of the complaint and any supporting documents or affidavits:

(a) 5 copies of an answer to the complaint (1 signed), which may have copies of supporting documents or affidavits attached to each copy;

(b) 5 copies of an opposing brief (1 signed) conforming to MCR 7.212(D) to the extent possible; and

(c) proof that a copy of each of the filed documents was served on the plaintiff and any other interested party.

(3) Electronic Filing. The parties may file all pleadings and other papers permitted by this rule electronically with the Court of Appeals. All electronically filed documents must be in PDF digital format, while appendices and other nonoriginal filings may be scanned. All electronic filings must be submitted in accordance with the instructions set forth on the website of the Michigan Court of Appeals. Pro se parties may file pleadings and other papers in paper form.

(4) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right either with or without referral to a judicial circuit or tribunal or agency for the taking of proofs and report of factual findings. If the case is ordered to proceed to full hearing, the time for filing a brief by the plaintiff begins to run from the date the order allowing the case to proceed is certified or the date the transcript or report of factual findings on referral is filed, whichever is later. The plaintiff's brief must conform to MCR 7.212(C). An opposing brief must conform to MCR 7.212(D). In a habeas corpus proceeding, the prisoner need not be brought before the Court of Appeals.

(E) Actions to Enforce the Headlee Amendment, Pursuant to Const 1963, art 9, § 32.

(1) Filing of Complaint. To commence an action pursuant to Const 1963, art 9, § 32, the plaintiff shall file with the clerk:

(a) 5 copies of the complaint (1 signed), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, inter alia, whether there are any factual questions that are anticipated to require resolution by the court and whether the plaintiff(s) anticipate(s) the need for discovery and the development of a factual record;

(b) 5 copies of a supporting brief (1 signed) conforming to MCR 7.212(C) to the extent possible;

(c) proof that a copy of each of the filed documents was served on every named defendant and the office of the attorney general; and

(d) the entry fee.

(2) Answer. The named defendant(s) shall file with the clerk within 21 days of service of the complaint:

(a) 5 copies of an answer to the complaint (1 signed), which conforms with the special pleading requirements of MCR 2.112(M) and indicates, inter alia, whether there are any factual questions that are anticipated to require resolution by the court and whether the named defendant(s) anticipate(s) the need for discovery and the development of a factual record;

(b) 5 copies of a supporting brief (1 signed) conforming to MCR 7.212(C) to the extent possible;

(c) proof that a copy of each of the filed documents was served on every named plaintiff.

(3) Subsequent proceedings. Following receipt of the answer:

(a) the chief clerk shall promptly select a panel of the court by random draw and assign that panel to commence proceedings in the suit; and

(b) the panel of the court may deny relief or grant peremptory relief without oral argument; or

(c) if the panel of the court determines that the issues framed in the parties' pleadings and supporting briefs solely present jurisprudentially significant questions of law, the panel shall direct that the suit proceed to a full hearing on the merits in the same manner as an appeal as of right and notify the parties of the date for the filing of supplemental briefs, if such briefs are determined to be necessary, and of the date for oral argument, which shall be on an expedited basis; or

(d) if the panel of the court determines that the issues framed in the parties' pleadings and supplemental briefs present factual questions for resolution, the panel shall refer the suit to a judicial circuit for the purposes of holding pretrial proceedings, conducting a hearing to receive evidence and arguments of law, and issuing a written report for the panel setting forth proposed findings of fact and conclusions of law. The proceedings before the circuit court shall proceed as expeditiously as due consideration of the circuit court's docket, facts and issues of law requires. Following the receipt of the report from the circuit court, the panel shall notify counsel for the parties of the schedule for filing briefs in response to the circuit court's report and of the date for oral argument, which shall be on an expedited basis.

(F) Enforcement of Administrative Tribunal or Agency Orders.



(1) Complaint. To obtain enforcement of a final order of an administrative tribunal or agency, the plaintiff shall file with the clerk within the time limit provided by law:

- (a) 5 copies of a complaint (one signed) concisely stating the basis for relief and the relief sought;
- (b) 5 copies of the order sought to be enforced;
- (c) 5 copies of a supporting brief (one signed) which conforms to MCR 7.212(C) to the extent possible;
- (d) a notice of preliminary hearing on the complaint on the first Tuesday at least 21 days after the complaint and supporting documents are served on the defendant, the agency (unless the agency is the plaintiff), and any other interested party;
- (e) proof that a copy of each of the filed documents was served on the defendant, the agency (unless the agency is the plaintiff), and any other interested party;
- (f) the certified tribunal or agency record or evidence the plaintiff has requested that the certified record be sent to the Court of Appeals; and
- (g) the entry fee.

(2) Answer. The defendant must file, and any other interested party may file, with the clerk before the date of the preliminary hearing:

- (a) 5 copies of an answer to the complaint (one signed);
- (b) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D) to the extent possible; and
- (c) proof that a copy of each of the filed documents was served on the plaintiff, the agency, and any other interested party.

(3) Preliminary Hearing. There is no oral argument on preliminary hearing of a complaint. The court may deny relief, grant peremptory relief, or allow the parties to proceed to full hearing on the merits in the same manner as an appeal of right. If the case is ordered to proceed to full hearing, the time for filing of a brief by the plaintiff begins to run from the date the clerk certifies the order allowing the case to proceed. The plaintiff's brief must conform to MCR 7.212(C). An opposing brief must conform to MCR 7.212(D). The case is heard on the certified record transmitted by the tribunal or agency. MCR 7.210(A)(2), regarding the content of the record, applies.

### **Rule 7.207 Cross Appeals**

(A) Right of Cross Appeal.

(1) When an appeal of right is filed or the court grants leave to appeal any appellee may file a cross appeal.

(2) If there is more than 1 party plaintiff or defendant in a civil action and 1 party appeals, any other party, whether on the same or opposite side as the

party first appealing, may file a cross appeal against all or any of the other parties to the case as well as against the party who first appealed. If the cross appeal operates against a party not affected by the first appeal or in a manner different from the first appeal, that party may file a further cross appeal as if the cross appeal affecting that party had been the first appeal.

(B) Manner of Filing. To file a cross appeal, the cross appellant shall file with the clerk a claim of cross appeal in the form required by MCR 7.204(D) and the entry fee

(1) within 21 days after the claim of appeal is filed with the Court of Appeals or served on the cross appellant, whichever is later, if the first appeal was of right; or

(2) within 21 days after the clerk certifies the order granting leave to appeal, if the appeal was initiated by application for leave to appeal.

The cross appellant shall file proof that a copy of the claim of cross appeal was served on the cross appellee and any other party in the case. A copy of the judgment or order from which the cross appeal is taken must be filed with the claim.

(C) Additional Requirements. The cross appellant shall perform the steps required by MCR 7.204(E) and (F), except that the cross appellant is not required to order a transcript or file a court reporter's or recorder's certificate unless the initial appeal is abandoned or dismissed. Otherwise the cross appeal proceeds in the same manner as an ordinary appeal.

(D) Abandonment or Dismissal of Appeal. If the appellant abandons the initial appeal or the court dismisses it, the cross appeal may nevertheless be prosecuted to its conclusion. Within 21 days after the clerk certifies the order dismissing the initial appeal, if there is a record to be transcribed, the cross appellant shall file a certificate of the court reporter or recorder that a transcript has been ordered and payment for it made or secured and will be filed as soon as possible or has already been filed.

(E) Delayed Cross Appeal. A party seeking leave to take a delayed cross appeal shall proceed under MCR 7.205.

### **Rule 7.208 Authority of Court or Tribunal Appealed From**

(A) Limitations. After a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except

(1) by order of the Court of Appeals,

(2) by stipulation of the parties,

(3) after a decision on the merits in an action in which a preliminary injunction was granted, or

(4) as otherwise provided by law.

In a criminal case, the filing of the claim of appeal does not preclude the trial court from granting a timely motion under subrule (B).

(B) Postjudgment Motions in Criminal Cases.

(1) No later than 56 days after the commencement of the time for filing the defendant-appellant's brief as provided by MCR 7.212(A)(1)(a)(iii), the defendant may file in the trial court a motion for a new trial, for judgment of acquittal, to withdraw a plea, or to correct an invalid sentence.

(2) A copy of the motion must be filed with the Court of Appeals and served on the prosecuting attorney.

(3) The trial court shall hear and decide the motion within 28 days of filing, unless the court determines that an adjournment is necessary to secure evidence needed for the decision on the motion or that there is other good cause for an adjournment.

(4) Within 28 days of the trial court's decision, the court reporter or recorder must file with the trial court clerk the transcript of any hearing held.

(5) If the motion is granted in whole or in part,

(a) the defendant must file the appellant's brief or a notice of withdrawal of the appeal within 42 days after the trial court's decision or after the filing of the transcript of any hearing held, whichever is later;

(b) the prosecuting attorney may file a cross appeal in the manner provided by MCR 7.207 within 21 days after the trial court's decision. If the defendant has withdrawn the appeal before the prosecuting attorney has filed a cross appeal, the prosecuting attorney may file a claim of appeal or an application for leave to appeal within the 21-day period.

(6) If the motion is denied, defendant-appellant's brief must be filed within 42 days after the decision by the trial court, or the filing of the transcript of any trial court hearing, whichever is later.

(C) Correction of Defects. Except as otherwise provided by rule and until the record is filed in the Court of Appeals, the trial court or tribunal has jurisdiction

(1) to grant further time to do, properly perform, or correct any act in the trial court or tribunal in connection with the appeal that was omitted or insufficiently done, other than to extend the time for filing a claim of appeal or for paying the entry fee or to allow delayed appeal;

(2) to correct any part of the record to be transmitted to the Court of Appeals, but only after notice to the parties and an opportunity for a hearing on the proposed correction.

After the record is filed in the Court of Appeals, the trial court may correct the record only with leave of the Court of Appeals.

(D) Supervision of Property. When an appeal is filed while property is being held for conservation or management under the order or judgment of the trial court, that court retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders.

(E) Temporary Orders. A trial court order entered before final judgment concerning custody, control, and management of property; temporary alimony, support or custody of a minor child, or expenses in a domestic relations action; or a preliminary injunction, remains in effect and is enforceable in the trial court, pending interlocutory appeal, except as the trial court or the Court of Appeals may otherwise order.

(F) Stays and Bonds. The trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders.

(G) Matters Pertaining to Appointment of Attorney. Throughout the pendency of an appeal involving an indigent person, the trial court retains authority to appoint, remove, or replace an attorney except as the Court of Appeals otherwise orders.

(H) Acts by Other Judges. Whenever the trial judge who has heard a case dies, resigns, or vacates office, or is unable to perform any act necessary to an appeal of a case within the time prescribed by law or these rules, another judge of the same court, or if another judge of that court is unavailable, another judge assigned by the state court administrator, may perform the acts necessary to the review process. Whenever a case is heard by a judge assigned from another court, the judicial acts necessary in the preparation of a record for appeal may be performed, with consent of the parties, by a judge of the court in which the case was heard.

(I) Attorney Fees and Costs. The trial court may rule on requests for costs or attorney fees under MCR 2.403, 2.405, 2.625 or other law or court rule, unless the Court of Appeals orders otherwise.

### **Rule 7.209 Bond; Stay of Proceedings**

(A) Effect of Appeal; Prerequisites.

(1) Except for an automatic stay pursuant to MCR 2.614, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2) A motion for bond or for a stay pending appeal may not be filed in the Court of Appeals unless such a motion was decided by the trial court.

(3) A motion for bond or a stay pending appeal filed in the Court of Appeals must include a copy of the trial court's opinion and order, and a copy of the transcript of the hearing on the motion in the trial court.

(B) Responsibility for Setting Amount of Bond in Trial Court.

(1) Civil Actions. Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action must be set by the trial court in an amount adequate to protect the opposite party.

(2) Criminal Cases. In a criminal case the granting of bond pending appeal and the amount of it are within the discretion of the trial court, subject to applicable law and rules. Bond must be sufficient to guarantee the appearance of the

defendant. Unless bond pending appeal is allowed and a bond is filed with the trial court, a criminal judgment may be executed immediately, even though the time for taking an appeal has not elapsed.

(C) Amendment of Bond. On motion, the trial court may order an additional or different bond, set the amount, and approve or require different sureties.

(D) Review by Court of Appeals. Except as otherwise provided by rule or law, on motion filed in a case pending before it, the Court of Appeals may amend the amount of bond set by the trial court, order an additional or different bond and set the amount, or require different or additional sureties. The Court of Appeals may also refer a bond or bail matter to the court from which the appeal is taken. The Court of Appeals may grant a stay of proceedings in the trial court or stay of effect or enforcement of any judgment or order of a trial court on the terms it deems just.

(E) Stay of Proceedings by Trial Court.

(1) Unless otherwise provided by rule, statute, or court order, an execution may not issue and proceedings may not be taken to enforce an order or judgment until expiration of the time for taking an appeal of right.

(2) An appeal does not stay execution unless:

(a) With respect to a money judgment, the party seeking the stay files with the court a bond in compliance with MCR 3.604 and in an amount not less than 110% of the judgment or order being enforced, including any costs, interest, attorney fees, and sanctions assessed to the date of filing the bond, with the party in whose favor the judgment or order was entered as the obligee, by which the party promises to

(i) perform and satisfy the judgment or order stayed if it is not set aside or reversed; and

(ii) prosecute to completion any appeal subsequently taken from the judgment or order stayed and perform and satisfy the judgment or order entered by the Court of Appeals or Supreme Court, or

(b) With respect to all other judgments, including those obtained in a domestic relations matter, the trial court grants a stay with or without bond, or with a reduced bond, as justice requires or as otherwise provided by statute (see MCL 500.3036).

(c) The court may order, on stipulation or otherwise, other forms of security in lieu of the bond in subsection (E)(2)(a), including but not limited to an irrevocable letter of credit.

(3) When the bond or other security in subsections (E)(2)(a)-(c) is filed, the judgment or order shall automatically be stayed pending entry of a final order under subsection (G).

(4) If a stay bond filed under this subrule substantially meets the requirements of subrule (F), it will be a sufficient bond to stay proceedings pending disposition of an appeal subsequently filed.

(5) The stay order must conform to any condition expressly required by the statute authorizing review.

(6) If a government party files a claim of appeal from an order described in MCR 7.202(6)(a)(v), the proceedings shall be stayed during the pendency of the appeal, unless the court of Appeals directs otherwise.

(F) Conditions of Stay Bond.

(1) Civil Actions. In a bond filed for stay pending appeal in a civil action, the appellant shall promise in writing:

(a) to prosecute the appeal to decision;

(b) to perform or satisfy a judgment or order of the Court of Appeals or the Supreme Court;

(c) to perform or satisfy the judgment or order appealed from, if the appeal is dismissed;

(d) in an action involving the possession of land or judgment for foreclosure of a mortgage or land contract, to pay the appellee the damages which may result from the stay of proceedings; and

(e) to do any other act which is expressly required in the statute authorizing appeal.

(2) Criminal Cases. A criminal defendant for whom bond pending appeal is allowed after conviction shall promise in writing:

(a) to prosecute the appeal to decision;

(b) if the sentence is one of incarceration, to surrender himself or herself to the sheriff of the county in which he or she was convicted or other custodial authority if the sentence is affirmed on appeal or if the appeal is dismissed;

(c) if the judgment or order appealed is other than a sentence of incarceration, to perform and comply with the order of the trial court if it is affirmed on appeal or if the appeal is dismissed;

(d) to appear in the trial court if the case is remanded for retrial or further proceedings or if a conviction is reversed and retrial is allowed;

(e) to remain in Michigan unless the court gives written approval to leave; and

(f) to notify the trial court clerk of a change of address.

(G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

(1) Civil Actions.

(a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay shall file a proposed stay order

pursuant to MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.

(b) Objections shall be filed and served within 7 days after service of the bond. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).

(c) If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter the order staying enforcement of the judgment or order pending all appeals. The stay shall continue until otherwise ordered by the trial court or an appellate court.

(d) Any stay order must be promptly served on all parties in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the trial court.

(e) All hearings under this rule may be held by telephone conference as provided in MCR 2.402.

(f) For good cause shown, the trial court may set the amount of the bond in a greater or lesser amount adequate to protect the interests of the parties.

(g) A bond may be secured under MCL 600.2631.

(2) Criminal Cases. A criminal defendant filing a bond after conviction shall give notice to the county prosecuting attorney of the time and place the bond will be filed. The bond is subject to the objection procedure provided in MCR 3.604.

#### (H) Stay of Execution.

(1) If a bond is filed before execution issues, and notice is given to the officer having authority to issue execution, execution is stayed. If the bond is filed after the issuance but before execution, and notice is given to the officer holding it, execution is suspended.

(2) The Court of Appeals may stay or terminate a stay of any order or judgment of a lower court or tribunal on just terms.

(3) When the amount of the judgment is more than \$1000 over the insurance policy coverage or surety obligation, then the policy or obligation does not qualify to stay execution under MCL 500.3036 on the portion of the judgment in excess of the policy or bond limits. Stay pending appeal may be achieved by complying with that statute and by filing a bond in an additional amount adequate to protect the opposite party or by obtaining a trial court or Court of Appeals order waiving the additional bond.

(4) A statute exempting a municipality or other governmental agency from filing a bond to stay execution supersedes the requirements of this rule.

(I) Ex Parte Stay. Whenever an ex parte stay of proceedings is necessary to allow a motion in either the trial court or the Court of Appeals, the court before which the motion will be heard may grant an ex parte stay for that purpose. Service of a copy of the order, with a copy of the motion, any affidavits on which the motion is based, and notice of hearing on the motion, shall operate as a stay of proceedings until the court rules on the motion unless the court supersedes or sets aside the order in the

interim. Proceedings may not be stayed for longer than necessary to enable the party to make the motion according to the practice of the court, and if made, until the decision of the court.

### **Rule 7.210 Record on Appeal**

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

(1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2) Appeal From Tribunal or Agency. In an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. Testimony not transcribed when the certified record is sent for consideration of an application for leave to appeal, and not omitted by stipulation of the parties, must be filed and sent to the court as promptly as possible.

(3) Excluded Evidence. The substance or transcript of excluded evidence offered at a trial and the proceedings at the trial in relation to it must be included as part of the record on appeal.

(4) Stipulations. The parties in any appeal to the Court of Appeals may stipulate in writing regarding any matters relevant to the lower court or tribunal or agency record if the stipulation is made a part of the record on appeal and sent to the Court of Appeals.

(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. Except in cases governed by MCR 3.977(J)(3) or MCR 6.425(G)(2), or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.

(b) In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

(c) On the appellant's motion, with notice to the appellee, the trial court or tribunal may order that some portion less than the full transcript (or no transcript at all) be included in the record on appeal. The motion must be



filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of the motion extends the time for filing the court reporter's or recorder's certificate until 7 days after entry of the trial court's or tribunal's order on the motion.

(d) The parties may stipulate that some portion less than the full transcript (or none) be filed.

(e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or tribunal clerk and sent as the record of testimony in the action.

(2) Transcript Unavailable. When a transcript of the proceedings in the trial court or tribunal cannot be obtained from the court reporter or recorder, the appellant shall take the following steps to settle the record and to cause the filing of a certified settled statement of facts to serve as a substitute for the transcript.

(a) No later than 56 days after the filing of the available transcripts, or 28 days after the filing of the available transcripts in a child custody case or interlocutory criminal appeal, or, if no transcripts are available, within 14 days after filing the claim of appeal, the appellant shall file with the trial court or tribunal clerk, and serve on each appellee, a motion to settle the record and, where reasonably possible, a proposed statement of facts. A proposed statement of facts must concisely set forth the substance of the testimony, or the oral proceedings before the trial court or tribunal if no testimony was taken, in sufficient detail to provide for appellate review.

(b) Except as otherwise provided, the appellant shall notice the motion to settle the record for hearing before the trial court or tribunal to be held within 21 days of the filing of the motion. If it is not the typical practice of a tribunal to conduct hearings, the motion to settle the record must be filed with the tribunal for consideration by the tribunal within 21 days of the filing of the motion. The motion shall be filed and served at least 14 days before the date noticed for hearing or consideration to settle the record. If appellant filed a proposed statement of facts with the motion, appellee must file and serve on the appellant and other appellees an amendment or objection to the proposed statement of facts in the trial court or tribunal at least 7 days before the time set for the settlement hearing or consideration. The trial court may adopt and file the appellant's proposed statement of facts as the certified settled statement of facts.

(c) The trial court or tribunal shall settle any controversy and certify a settled statement of facts as an accurate, fair, and complete statement of the proceedings before it. The certified settled statement of facts must concisely set forth the substance of the testimony, or the oral proceedings before the trial court or tribunal if no testimony was taken, in sufficient detail to provide for appellate review.

(d) The appellant shall file the settled statement of facts and the certifying order with the trial court or tribunal clerk and Court of Appeals.

(3) Duties of Court Reporter or Recorder.

(a) Certificate. Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating:

(i) that the transcript has been ordered, that payment for the transcript has been made or secured, that it will be filed as soon as possible or has already been filed, and the estimated number of pages for each of the proceedings requested;

(ii) as to each proceeding requested, whether the court reporter or recorder filing the certificate recorded the proceeding; and if not,

(iii) the name and certification number of the court reporter or recorder responsible for the transcript of that proceeding.

(b) Time for Filing. The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within

(i) 14 days after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;

(ii) 28 days after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;

(iii) 42 days after it is ordered in any other interlocutory criminal appeal or custody case;

(iv) 91 days after it is ordered in other cases.

The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.

(c) Copies. Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder or photocopies may be made of the transcript furnished by the court reporter or recorder.

(d) Form of Transcript. The transcript must be filed in one or more volumes under a hard-surfaced or other suitable cover, stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.

(e) Notice. Immediately after the transcript is filed, the court reporter or recorder shall notify the Court of Appeals and all parties that it has been

filed and file in the Court of Appeals an affidavit of mailing of notice to the parties.

(f) Discipline. A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party.

(g) Responsibility When More Than One Reporter or Recorder. In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e).

(C) Exhibits. Within 21 days after the claim of appeal is filed, a party possessing any exhibits offered in evidence, whether admitted or not, shall file them with the trial court or tribunal clerk, unless by stipulation of the parties or order of the trial court or tribunal they are not to be sent, or copies, summaries, or excerpts are to be sent. Xerographic copies of exhibits may be filed in lieu of originals unless the trial court or tribunal orders otherwise. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk shall return the exhibits to the parties who filed them.

(D) Reproduction of Records. Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, shall procure for the party as promptly as possible and at the cost to the clerk the requested number of copies of documents, transcripts, and exhibits on file.

(E) Record on Motion. If, before the time the complete record on appeal is sent to the Court of Appeals, a party files a motion that requires the Court of Appeals to have the record, the trial court or tribunal clerk shall, on request of a party or the Court of Appeals, send the Court of Appeals the documents needed.

(F) Service of Record. Within 21 days after the transcript is filed with the trial court clerk, the appellant shall serve a copy of the entire record on appeal, including the transcript and exhibits, on each appellee. However, copies of documents the appellee already possesses need not be served. Proof that the record was served must be promptly filed with the Court of Appeals and the trial court or tribunal clerk. If the filing of a transcript has been excused as provided in subrule (B), the record is to be served within 21 days after the filing of the transcript substitute.

(G) Transmission of Record. Within 21 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk shall append a certificate identifying the name of the case and the papers with reasonable definiteness and shall include as part of the record:

- (1) a register of actions in the case;
- (2) all opinions, findings, and orders of the court or tribunal; and
- (3) the order or judgment appealed from.

Transcripts and all other documents which are part of the record on appeal must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the trial court or tribunal, the title of the case, and the file number.

(H) Return of Record. After the Court of Appeals disposes of an appeal, the Court of Appeals shall promptly send the original record, together with a certified copy of the opinion, judgment, or order entered by the Court of Appeals

- (1) to the Clerk of the Supreme Court if an application for leave to appeal is filed in the Supreme Court, or
- (2) to the clerk of the court or tribunal from which it was received when
  - (a) the period for an application for leave to appeal to the Supreme Court has expired without the filing of an application, and
  - (b) there is pending in the Court of Appeals no
    - (i) timely motion for reconsideration,
    - (ii) timely petition for a special panel under MCR 7.215 (I), or
    - (iii) timely request by a judge of the Court of Appeals for a special panel under MCR 7.215 (I),and the period for such a timely motion, petition, or request has expired.

(I) Notice by Trial Court or Tribunal Clerk. The trial court or tribunal clerk shall promptly notify all parties of the return of the record in order that they may take the appropriate action in the trial court or tribunal under the Court of Appeals mandate.

### **Rule 7.211 Motions in Court of Appeals**

(A) Manner of Making Motion. A motion is made in the Court of Appeals by filing:

- (1) 5 copies of a motion (one signed) stating briefly but distinctly the facts and the grounds on which it is based and the relief requested;
- (2) the entry fee;
- (3) for a motion to dismiss, to affirm, or for peremptory reversal, 5 copies of a supporting brief. A supporting brief may be filed with any other motion. A brief must conform to MCR 7.212(C) as nearly as possible, except that page references to a transcript are not required unless the transcript is relevant to the issue raised in the motion. A brief in conformance with MCR 7.212(C) is not required in support of a motion to affirm when the appellant argues that:
  - (a) the trial court's findings of fact are clearly erroneous;
  - (b) the trial court erred in applying established law;
  - (c) the trial court abused its discretion; or

(d) a sentence which is within the sentencing guidelines is invalid.

Instead of a brief in support of a motion to affirm in such a circumstance, the movant may append those portions of the transcript that are pertinent to the issues raised in the motion; in that case, the motion must include a summary of the movant's position;

(4) a motion for immediate consideration if the party desires a hearing on a date earlier than the applicable date set forth in subrules (B)(2)(a)-(e);

(5) proof that a copy of the motion, the motion for immediate consideration if one has been filed, and any other supporting papers were served on all other parties to the appeal.

(B) Answer.

(1) A party to an appeal may answer a motion by filing:

(a) 5 copies of an answer (one signed); and

(b) proof that a copy of the answer and any other opposing papers were served on all other parties to the appeal.

(2) Subject to subrule (3), the answer must be filed within

(a) 21 days after the motion is served on the other parties, for a motion to dismiss, to remand, or to affirm;

(b) 35 days after the motion is served on the appellee, if the motion is for preemptory reversal;

(c) 56 days after the motion is served on the defendant, for a motion to withdraw as the appointed appellate attorney;

(d) 14 days after the motion is served on the other parties, for a motion for reconsideration of an opinion or an order, to stay proceedings in the trial court, to strike a full or partial pleading on appeal, to file an amicus brief, to hold an appeal in abeyance, or to reinstate an appeal after dismissal under MCR 7.217(D);

(e) 7 days after the motion is served on the other parties, for all other motions.

If a motion for immediate consideration has been filed, all answers to all affected motions must be filed within 7 days if the motions for immediate consideration was served by mail, or within such time as the Court of Appeals directs. See subrule (C)(6).

(3) In its discretion, the Court of Appeals may dispose of the following motions before the answer period has expired: motion to extend time to order or file transcripts, to extend time to file a brief or other appellate pleading, to substitute one attorney for another, for oral argument when the right to oral argument was not otherwise preserved as described in MCR 7.212, or for an out-of-state attorney to appear and practice in Michigan.

(4) Five copies of an opposing brief may be filed. A brief must conform to MCR 7.212(D) as nearly as possible, except that page references to a transcript are not required unless the transcript is relevant to the issue raised in the motion.

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1) Motion to Remand.

(a) Within the time provided for filing the appellant's brief, the appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show

(i) that the issue is one that is of record and that must be initially decided by the trial court; or

(ii) that development of a factual record is required for appellate consideration of the issue.

A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.

(b) A timely motion must be granted if it is accompanied by a certificate from the trial court that it will grant a motion for new trial.

(c) In a case tried without a jury, the appellant need not file a motion for remand or a motion for new trial to challenge the great weight of the evidence in order to preserve the issue for appeal.

(d) If a motion to remand is granted, further proceedings in the Court of Appeals are stayed until completion of the proceedings in the trial court pursuant to the remand, unless the Court of Appeals orders otherwise. Unless the Court of Appeals sets another time, the appellant's brief must be filed within 21 days after the trial court's decision or after the filing of the transcript of any hearing held, whichever is later.

(2) Motion to Dismiss. An appellee may file a motion to dismiss an appeal any time before it is placed on a session calendar on the ground that

(a) the appeal is not within the Court of Appeals jurisdiction;

(b) the appeal was not filed or pursued in conformity with the rules; or

(c) the appeal is moot.

(3) Motion to Affirm. After the appellant's brief has been filed, an appellee may file a motion to affirm the order or judgment appealed from on the ground that

(a) it is manifest that the questions sought to be reviewed are so unsubstantial as to need no argument or formal submission; or

(b) the questions sought to be reviewed were not timely or properly raised.

The decision to grant a motion to affirm must be unanimous. An order denying a motion to affirm may identify the judge or judges who would have granted it but for the unanimity requirement of this subrule.

(4) Motion for Peremptory Reversal. The appellant may file a motion for peremptory reversal on the ground that reversible error is so manifest that an immediate reversal of the judgment or order appealed from should be granted without formal argument or submission. The decision to grant a motion for peremptory reversal must be unanimous. An order denying a motion for peremptory reversal may identify the judge or judges who would have granted it but for the unanimity requirement of this subrule.

(5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.

(a) A motion to withdraw is made by filing:

(i) 5 copies of a motion to withdraw (one signed) which identifies any points the appellant seeks to assert and any other matters that the attorney has considered as a basis for appeal;

(ii) 5 copies of a brief conforming to MCR 7.212(C), which refers to anything in the record that might arguably support the appeal, contains relevant record references, and cites and deals with those authorities which appear to bear on the points in question;

(iii) proof that copies of the motion, brief in support, and notice that the motion may result in the conviction or trial court judgment being affirmed were served on the appellant by certified mail; and

(iv) proof that a copy of the motion only and not the brief was served the appellee.

(b) The motion to withdraw and supporting papers will be submitted to the court for decision on the first Tuesday

(i) 28 days after the appellant is served in appeals from orders of the family division of the circuit court terminating parental rights under the Juvenile Code, or

(ii) 56 days after the appellant is served in all other appeals.

. The appellant may file with the court an answer and brief in which he or she may make any comments and raise any points that he or she chooses concerning the appeal and the attorney's motion. The appellant must file proof that a copy of the answer was served on his or her attorney.

(c) If the court finds that the appeal is wholly frivolous, it may grant the motion and affirm the conviction or trial court judgment. If the court grants the motion to withdraw, the appellant's attorney shall mail to the appellant a copy of the transcript within 14 days after the order affirming is certified and file proof of that service. If the court finds any legal point arguable on

its merits, it will deny the motion and the court appointed attorney must file an appellant's brief in support of the appeal.

(6) Motion for Immediate Consideration. A party may file a motion for immediate consideration to expedite hearing on another motion. The motion must state facts showing why immediate consideration is required. If a copy of the motion for immediate consideration and a copy of the motion of which immediate consideration is sought are personally served under MCR 2.107(C)(1) or (2), the motions may be submitted to the court immediately on filing. If mail service is used, motions may not be submitted until the first Tuesday 7 days after the date of service, unless the party served acknowledges receipt. The trial court or tribunal record need not be requested unless it is required as to the motion of which immediate consideration is sought.

(7) Confession of Error by Prosecutor. In a criminal case, if the prosecutor concurs in the relief requested by the defendant, the prosecutor shall file a confession of error so indicating, which may state reasons why concurrence in the relief requested is appropriate. The confession of error shall be submitted to one judge pursuant to MCR 7.211(E). If the judge approves the confession of error, the judge shall enter an order or opinion granting the relief. If the judge rejects the confession of error, the case shall be submitted for decision through the ordinary processes of the court, and the confession of error shall be submitted to the panel assigned to decide the case.

(8) Vexatious Proceedings. A party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule. A party may file a motion for damages or other disciplinary action under MCR 7.216(C) at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious.

(9) Motion to Seal Court of Appeals File in Whole or in Part.

(a) Trial court files that have 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 trial court files will be referred to the trial court.

(b) 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 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 in the Court of Appeals.

(c) Except as otherwise provided by statute or court rule, the procedure for sealing a Court of Appeals file is governed by MCR 8.119(I). Materials that are subject to a motion to seal a Court of Appeals file in whole or in part shall be held under seal pending the court's disposition of the motion.

(d) Any party or interested person may file an answer in response to a motion to seal a Court of Appeals file within 7 days after the motion is



served on the other parties, or within 7 days after the motion is filed in the Court of Appeals, whichever is later.

(e) An order granting a motion shall include a finding of good cause, as defined by MCR 8.119(I)(2), and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(f) An order granting or denying a motion to seal a Court of Appeals file in whole or in part may be challenged by any person at any time during the pendency of an appeal.

(D) Submission of Motions. Motions in the Court of Appeals are submitted on Tuesday of each week. There is no oral argument on motions, unless ordered by the court.

(E) Decision on Motions.

(1) Except as provided in subrule (E)(2), orders may be entered only on the concurrence of the majority of the judges to whom the motion has been assigned.

(2) The chief judge or another designated judge may, acting alone, enter an order disposing of an administrative motion. Administrative motions include, but are not limited to:

(a) a motion to consolidate;

(b) a motion to extend the time to file a transcript or brief;

(c) a motion to strike a nonconforming brief;

(d) a motion for oral argument in a case that has not yet been placed on a session calendar;

(e) a motion to adjourn the hearing date of an application, complaint, or motion;

(f) a motion to dismiss a criminal appeal on the grounds that the defendant has absconded;

(g) a motion to file an amicus curiae brief;

(h) a motion to allow an out-of-state attorney to appear and practice.

## **Rule 7.212 Briefs**

(A) Time for Filing and Service.

(1) Appellant's Brief.

(a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 28 days after the claim of appeal is filed, the order granting leave is certified, the transcript is filed with the trial court, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in a child custody case or an interlocutory

criminal appeal. This time may be extended only by the Court of Appeals on motion; or

(ii) the time provided by MCR 7.208(B)(5)(a), 7.208(B)(6), or 7.211(C)(1), in a case in which one of those rules applies; or

(iii) 56 days after the claim of appeal is filed, the order granting leave is certified, the transcript is filed with the trial court or tribunal, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in all other cases. In a criminal case in which substitute counsel is appointed for the defendant, the time runs from the date substitute counsel is appointed, the transcript is filed, or a settled statement of facts and certifying order is filed, whichever is later. The parties may extend the time within which the brief must be filed for 28 days by signed stipulation filed with the Court of Appeals. The Court of Appeals may extend the time on motion.

(b) Service. Within the time for filing the appellant's brief, 1 copy must be served on all other parties to the appeal and proof of that service filed with the Court of Appeals and served with the brief.

(2) Appellee's Brief.

(a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) 21 days after the appellant's brief is served on the appellee, in an interlocutory criminal appeal or a child custody case. This time may be extended only by the Court of Appeals on motion;

(ii) 35 days after the appellant's brief is served on the appellee, in all other cases. The parties may extend this time for 28 days by signed stipulation filed with the Court of Appeals. The Court of Appeals may extend the time on motion.

(b) Service. Within the time for filing the appellee's brief, 1 copy must be served on all other parties to the appeal and proof of that service must be filed with the Court of Appeals.

(3) Earlier Filing and Service. The time for filing and serving the appellant's or the appellee's brief may be shortened by order of the Court of Appeals on motion showing good cause.

(4) Late Filing. Any party failing to timely file and serve a brief required by this rule forfeits the right to oral argument.

(5) Motions. The filing of a motion does not stay the time for filing a brief.

(B) Length and Form of Briefs. Except as permitted by order of the Court of Appeals, and except as provided in subrule (G), briefs are limited to 50 pages double-spaced, exclusive of tables, indexes, and appendixes. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A motion for leave to file a brief in excess of the page limitations of this subrule must be filed at least 21 days before

the due date of the brief. Such motions are disfavored and will be granted only for extraordinary and compelling reasons.

(C) Appellant's Brief; Contents. The appellant's brief must contain, in the following order:

(1) A title page, stating the full title of the case and in capital letters or boldface type "ORAL ARGUMENT REQUESTED" or "ORAL ARGUMENT NOT REQUESTED." If the appeal involves a ruling that a provision of the Michigan Constitution, a Michigan Statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid, the title page must include the following in capital letters or boldface type:

"THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID";

(2) A table of contents, listing the subject headings of the brief, including the principal points of argument, in the order of presentation, with the numbers of the pages where they appear in the brief;

(3) An index of authorities, listing in alphabetical order all case authorities cited, with the complete citations including the years of decision, and all other authorities cited, with the numbers of the pages where they appear in the brief.

(4) A statement of the basis of jurisdiction of the Court of Appeals.

(a) The statement concerning appellate jurisdiction must identify the statute, court rule, or court decision believed to confer jurisdiction on the Court of Appeals and the following information:

(i) the date of signing the judgment or order, or the date of data entry of the judgment or order in the issuing tribunal's register of actions, as applicable to confer jurisdiction on the Court of Appeals under MCR 7.204 or MCR 7.205.

(ii) the filing date of any motion claimed to toll the time within which to appeal, the disposition of such a motion, and the date of entry of the order disposing of it;

(iii) in cases where appellate counsel is appointed, the date the request for appointment of appellate counsel was filed;

(iv) in cases where appellate counsel is retained or the party is proceeding in propria persona, the filing date of the claim of appeal or the date of the order granting leave to appeal or leave to proceed under MCR 7.206.

(b) If the order sought to be reviewed adjudicates fewer than all the claims, or the rights and liabilities of fewer than all the parties, the statement must provide enough information to enable the court to determine whether there is jurisdiction.

(5) A statement of questions involved, stating concisely and without repetition the questions involved in the appeal. Each question must be expressed and numbered separately and be followed by the trial court's answer to it or the statement that the trial court failed to answer it and the appellant's answer to it. When possible, each answer must be given as "Yes" or "No";

(6) A statement of facts that must be a clear, concise, and chronological narrative. All material facts, both favorable and unfavorable, must be fairly stated without argument or bias. The statement must contain, with specific page references to the transcript, the pleadings, or other document or paper filed with the trial court,

(a) the nature of the action;

(b) the character of pleadings and proceedings;

(c) the substance of proof in sufficient detail to make it intelligible, indicating the facts that are in controversy and those that are not;

(d) the dates of important instruments and events;

(e) the rulings and orders of the trial court;

(f) the verdict and judgment; and

(g) any other matters necessary to an understanding of the controversy and the questions involved;

(7) The arguments, each portion of which must be prefaced by the principal point stated in capital letters or boldface type. As to each issue, the argument must include a statement of the applicable standard or standards of review and supporting authorities. Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court. Page references to the transcript, the pleadings, or other document or paper filed with the trial court must also be given to show whether the issue was preserved for appeal by appropriate objection or by other means. If determination of the issues presented requires the study of a constitution, statute, ordinance, administrative rule, court rule, rule of evidence, judgment, order, written instrument, or document, or relevant part thereof, this material must be reproduced in the brief or in an addendum to the brief. If an argument is presented concerning the sentence imposed in a criminal case, the appellant's attorney must send a copy of the presentence report to the court at the time the brief is filed;

(8) The relief, stating in a distinct, concluding section the order or judgment requested; and

(9) A signature.

(D) Appellee's Brief; Contents.

(1) Except as otherwise provided in this subrule, the appellee's brief must conform to subrule (C).

(2) The appellee must state whether the jurisdictional summary and the standard or standards of review stated in the appellant's brief are complete and

correct. If they are not, the appellee must provide a complete jurisdictional summary and a counterstatement of the standard or standards of review, and supporting authorities.

(3) Unless under the headings "Statement of Questions Involved" and "Statement of Facts" the appellee accepts the appellant's statements, the appellee shall include:

- (a) a counter-statement of questions involved, stating the appellee's version of the questions involved; and
- (b) a counter-statement of facts, pointing out the inaccuracies and deficiencies in the appellant's statement of facts without repeating that statement and with specific page references to the transcript, the pleadings, or other document or paper filed with the trial court, to support the appellee's assertions.

(E) Briefs in Cross Appeals. The filing and service of briefs by a cross appellant and a cross appellee are governed by subrules (A)-(D).

(F) Supplemental Authority. Without leave of court, a party may file an original and four copies of a one-page communication, titled "supplemental authority," to call the court's attention to new authority released after the party filed its brief. Such a communication,

- (1) may not raise new issues;
- (2) may only discuss how the new authority applies to the case, and may not repeat arguments or authorities contained in the party's brief;
- (3) may not cite unpublished opinions.

(G) Reply Briefs. An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee within 21 days after service of the brief of the appellee or cross-appellee. Reply briefs must be confined to rebuttal of the arguments in the appellee's or cross-appellee's brief and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court.

(H) Amicus Curiae.

- (1) An amicus curiae brief may be filed only on motion granted by the Court of Appeals. The motion must be filed within 21 days after the appellee's brief is filed. If the motion is granted, the order will state the date by which the brief must be filed.
- (2) The brief is limited to the issues raised by the parties. An amicus curiae may not participate in oral argument except by court order.

(I) Nonconforming Briefs. If, on its own initiative or on a party's motion, the court concludes that a brief does not substantially comply with the requirements in this rule, it may order the party who filed the brief to file a supplemental brief within a specified time correcting the deficiencies, or it may strike the nonconforming brief.

## **Rule 7.213 Calendar Cases**

### **(A) Pre-Argument Conference in Calendar Cases.**

(1) At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with information and authority adequate for responsible and effective participation in settlement discussions to appear in person or by telephone for a pre-argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling of or the disposition of the appeal. The mediator shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.

(2) All civil cases will be examined to determine if a pre-argument conference would be of assistance to the court or the parties. An attorney or a party may request a pre-argument conference in any case. Such a request shall be confidential. The pre-argument conference shall be conducted by

(a) the court, or by a judge, retired judge or attorney designated by the court;

(b) if the parties unanimously agree, a special mediator designated by the court or selected by unanimous agreement of the parties. The special mediator shall be an attorney, licensed in Michigan, who possesses either mediation-type experience or expertise in the subject matter of the case. The special mediator may charge a reasonable fee, which shall be divided and borne equally by the parties unless agreed otherwise and paid by the parties directly to the mediator. If a party does not agree upon the fee requested by the mediator, upon motion of the party, the Court of Appeals shall set a reasonable fee.

When a case has been selected for participation in a pre-argument conference, participation in the conference is mandatory; however, the Court of Appeals may except the case from participation on motion for good cause shown if it finds that a pre-argument conference in that case would be inappropriate.

(3) Any judge who participates in a pre-argument conference or becomes involved in settlement discussions under this rule may not thereafter consider any aspect of the merits of the case, except that participation in a pre-argument conference shall not preclude the judge from considering the case pursuant to MCR 7.215(J).

(4) Statements and comments made during the pre-argument conference are confidential, except to the extent disclosed by the pre-argument conference

order, and shall not be disclosed by the mediator or by the participants in briefs or in argument.

(5) To facilitate the pre-argument conference, unless one has already been filed, an appellant must file the docketing statement required by MCR 7.204(H).

(6) Upon failure by a party or attorney to comply with a provision of this rule or the pre-argument conference order, the Court of Appeals may assess reasonable expenses caused by the failure, including attorney's fees, may assess all or a portion of appellate costs, or may dismiss the appeal.

(B) Notice of Calendar Cases. After the briefs of both parties have been filed, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" at the next available session of the court.

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

- (1) interlocutory criminal appeals;
- (2) child custody cases;
- (3) interlocutory appeals from the grant of a preliminary injunction
- (4) appeals from all cases involving election issues, including, but not limited to, recall elections and petition disputes;
- (5) appeals of decisions holding that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid; and
- (6) actions brought under Const 1963, art 9, § 29-34 (Headlee actions); and
- (7) cases that the court orders expedited.

(D) Arrangement of Calendar. Twenty-one days before the first day of the session, the clerk shall mail to all parties in each calendar case notice of the designated panel, location, day, and order in which the cases will be called.

(E) Adjournment. A change may not be made in the session calendar, except by order of the court on its own initiative or in response to timely motions filed by the parties. A calendar case will not be withdrawn after being placed on the session calendar, except on a showing of extreme emergency.

### **Rule 7.214 Argument of Calendar Cases**

(A) Request for Argument. Oral argument of a calendar case is not permitted, except on order of the court, unless a party has stated on the title page of his or her brief in capital letters or boldface type "ORAL ARGUMENT REQUESTED." The failure of a party to properly request oral argument or to timely file and serve a brief waives the right to oral argument. If neither party is entitled to oral argument, the clerk will list the case as submitted on briefs.

(B) Length of Argument. In a calendar case the time allowed for argument is 30 minutes for each side. When only one side is represented, only 15 minutes is allowed to that side. The time for argument may be extended by the court on motion filed at least 21 days before the session begins, or by the presiding judge during argument.

(C) Call for Argument. The court, on each day of the session, will call the cases for argument in the order they appear on the session calendar as arranged.

(D) Submission on Briefs. A case may be submitted on briefs by stipulation at any time.

(E) Decision Without Oral Argument. Cases may be assigned to panels of judges for appropriate review and disposition without oral argument as provided in this subrule.

(1) If, as a result of review under this rule, the panel unanimously concludes that

(a) the dispositive issue or issues have been recently authoritatively decided;

(b) the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument; or

(c) the appeal is without merit;

the panel may enter without oral argument an appropriate order or opinion dismissing the appeal, affirming, reversing, or vacating the judgment or order appealed from, or remanding the case for additional proceedings.

(2) Any party's brief may include, at the conclusion of the brief, a statement setting forth the reasons why oral argument should be heard.

### **Rule 7.215 Opinions, Orders, Judgments, and Final Process for Court of Appeals**

(A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name shall be published by the Supreme Court reporter of decisions. A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court.

(B) Standards for Publication. A court opinion must be published if it:

(1) establishes a new rule of law;

(2) construes a provision of a constitution, statute, ordinance, or court rule;



- (3) alters or modifies an existing rule of law or extends it to a new factual context;
- (4) reaffirms a principle of law not applied in a recently reported decision;
- (5) involves a legal issue of continuing public interest;
- (6) criticizes existing law; or
- (7) creates or resolves an apparent conflict of authority, whether or not the earlier opinion was reported; or
- (8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan Statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid.

(C) Precedent of Opinions.

(1) An unpublished opinion is not precedentially binding under the rule of stare decisis. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.

(2) A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.

(D) Requesting Publication.

(1) Any party may request publication of an authored or per curiam opinion not designated for publication by

(a) filing with the clerk 4 copies of a letter stating why the opinion should be published, and

(b) mailing a copy to each party to the appeal not joining in the request, and to the clerk of the Supreme Court.

Such a request must be filed within 21 days after release of the unpublished opinion or, if a timely motion for rehearing is filed, within 21 days after the denial of the motion.

(2) Any party served with a copy of the request may file a response within 14 days in the same manner as provided in subrule (D)(1).

(3) Promptly after the expiration of the time provided in subrule (D)(2), the clerk shall submit the request, and any response that has been received, to the panel that filed the opinion. Within 21 days after submission of the request, the panel shall decide whether to direct that the opinion be published. The opinion shall be published only if the panel unanimously so directs. Failure of the panel to act within 21 days shall be treated as a denial of the request.

(4) The Court of Appeals shall not direct publication if the Supreme Court has denied an application for leave to appeal under MCR 7.302.

(E) Judgment.

(1) When the Court of Appeals disposes of an original action or an appeal, whether taken as of right, by leave granted, or by order in lieu of leave being granted, its opinion or order is its judgment. An order denying leave to appeal is not deemed to dispose of an appeal.

(2) The clerk shall send a certified copy of the opinion or order, with the date of filing stamped on it, to each party and, in an appeal, to the court or tribunal from which the appeal was received. In criminal cases, the clerk shall provide an additional copy of any opinion or order disposing of an appeal or of any order denying leave to appeal to the defendant's lawyer, which the lawyer must promptly send to the defendant. An opinion or order is notice of the entry of judgment of the Court of Appeals.

(F) Execution and Enforcement.

(1) Routine Issuance. Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

(a) the Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court;

(b) execution on the Court of Appeals judgment is to be obtained or enforcement proceedings had in the trial court or tribunal after the record has been returned (by the clerk under MCR 7.210[H] or by the Supreme Court clerk under MCR 7.311[B]) with a certified copy of the court's judgment or, if a record was not transmitted to the Court of Appeals, after the time specified for return of the record had it been transmitted.

(2) Exceptional Issuance. The court may order that a judgment described in subrule (E) has immediate effect. The order does not prevent the filing of a motion for rehearing, but the filing of the motion does not stay execution or enforcement.

(G) Entry, Issuance, Execution on, and Enforcement of All Other Orders. An order other than one described in subrule (E) is entered on the date of filing. The clerk must promptly send a certified copy to each party and to the trial court or tribunal. Unless otherwise stated, an order is effective on the date it is entered.

(H) Certain Dispositive Orders and Opinions in Criminal Cases; Expedited Notice to Prosecutor. In a criminal case, if the prosecuting attorney files a notice of a victim's request for information and proof that copies of the notice were served on the other parties to the appeal, then, coincident with issuing an order or opinion that reverses a conviction, vacates a sentence, remands a case to the trial court for a new trial, or denies the prosecuting attorney's appeal, the clerk of the court must electronically transmit a copy of the order or opinion to the prosecuting attorney at a facsimile number or electronic mail address provided by the prosecuting attorney in the notice.

(I) Reconsideration.

(1) A motion for reconsideration may be filed within 21 days after the date of the order or the date stamped on an opinion. The motion shall include all facts, arguments, and citations to authorities in a single document and shall not exceed 10 double-spaced pages. A copy of the order or opinion of which reconsideration is sought must be included with the motion. Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3).

(2) A party may answer a motion for reconsideration within 14 days after the motion is served on the party. An answer to a motion for reconsideration shall be a single document and shall not exceed 7 double-spaced pages.

(3) The clerk will not accept for filing a motion for reconsideration of an order denying a motion for reconsideration.

(4) The clerk will not accept for filing a late motion for reconsideration.

(J) Resolution of Conflicts in Court of Appeals Decisions.

(1) Precedential Effect of Published Decisions. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.

(2) Conflicting Opinion. A panel that follows a prior published decision only because it is required to do so by subrule (1) must so indicate in the text of its opinion, citing this rule and explaining its disagreement with the prior decision. The panel's opinion must be published in the official reports of opinions of the Court of Appeals.

(3) Convening of Special Panel.

(a) Poll of Judges. Except as provided in subrule (3)(b), within 28 days after release of the opinion indicating disagreement with a prior decision as provided in subrule (2), the chief judge must poll the judges of the Court of Appeals to determine whether the particular question is both outcome determinative and warrants convening a special panel to rehear the case for the purpose of resolving the conflict that would have been created but for the provisions of subrule (1). Special panels may be convened to consider outcome-determinative questions only.

(b) Effect of Pending Supreme Court Appeal. No poll shall be conducted and a special panel shall not be convened if, at the time the judges are required to be polled, the Supreme Court has granted leave to appeal in the controlling case.

(c) Order. Immediately following the poll, an order reflecting the result must be entered. The chief clerk of the Court of Appeals must provide a copy of the order to the Clerk of the Supreme Court. The order must be published in the official reports of opinions of the Court of Appeals.

(4) Composition of Panel. A special panel convened pursuant to this rule consists of 7 judges of the Court of Appeals selected by lot, except that judges

who participated in either the controlling decision or the opinion in the case at bar may not be selected.

(5) Consideration of Case by Panel. An order directing the convening of a special panel must vacate only that portion of the prior opinion in the case at bar addressing the particular question that would have been decided differently but for the provisions of subrule (1). The special panel shall limit its review to resolving the conflict that would have been created but for the provisions of subrule (1) and applying its decision to the case at bar. The parties are permitted to file supplemental briefs, and are entitled to oral argument before the special panel unless the panel unanimously agrees to dispense with oral argument. The special panel shall return to the original panel for further consideration any remaining, unresolved issues, as the case may require.

(6) Decision. The decision of the special panel must be by published opinion or order and is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court.

(7) Reconsideration; Appeal. There is no appeal from the decision of the Court of Appeals as to whether to convene a special panel. As to the decision in the case at bar, the time limits for moving for rehearing or for filing an application for leave to appeal to the Supreme Court run from the date of the order declining to convene a special panel or, if a special panel is convened, from the date of the decision of the special panel, except that, if the case is returned to the original panel for further consideration in accordance with subrule (5), the time limits shall run from the date of the original panel's decision, after return from the special panel. If a motion for reconsideration is filed, it shall be submitted to the special panel, which, if appropriate, may refer some or all of the issues presented to the original panel.

### **Rule 7.216 Miscellaneous Relief**

(A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:

- (1) exercise any or all of the powers of amendment of the trial court or tribunal;
- (2) allow substitution, addition, or deletion of parties or allow parties to be rearranged as appellants or appellees, on reasonable notice;
- (3) permit amendment or additions to the grounds for appeal;
- (4) permit amendments, corrections, or additions to the transcript or record;
- (5) remand the case to allow additional evidence to be taken;
- (6) draw inferences of fact;
- (7) enter any judgment or order or grant further or different relief as the case may require;
- (8) if a judgment notwithstanding the verdict is set aside on appeal, grant a new trial or other relief as necessary;
- (9) direct the parties as to how to proceed in any case pending before it;

(10) dismiss an appeal or an original proceeding for lack of jurisdiction or failure of the appellant or the plaintiff to pursue the case in conformity with the rules.

(B) **Allowing Act After Expiration of Time.** When any nonjurisdictional act is required to be done within a designated time, the Court of Appeals may permit it to be done after expiration of the period on motion showing that there was good cause for delay or that it was not due to the culpable negligence of the party or attorney.

(C) **Vexatious Proceedings.**

(1) The Court of Appeals may, on its own initiative or on the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or

(b) a pleading, motion, argument, brief, document, record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

(2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The court may remand the case to the trial court or tribunal for a determination of actual damages.

### **Rule 7.217 Involuntary Dismissal of Cases**

(A) **Dismissal.** If the appellant, or the plaintiff in an original action under MCR 7.206, fails to order a transcript, file a brief, or comply with court rules, the clerk will notify the parties that the appeal may be dismissed for want of prosecution unless the deficiency is remedied within 21 days after the date of the clerk's notice of deficiency. If the deficiency is not remedied within that time, the chief judge or another designated judge may dismiss the appeal for want of prosecution.

(B) **Notice.** A copy of an order dismissing an appeal for want of prosecution will be sent to the parties and the court or tribunal from which the appeal originated.

(C) **Other Action.** In all instances of failure to prosecute an appeal to hearing as required, the chief judge or another designated judge may take such other action as is deemed appropriate.

(D) **Reinstatement.**

(1) Within 21 days after the date of the clerk's notice of dismissal pursuant to this rule, the appellant or plaintiff may seek relief from dismissal by showing mistake, inadvertence, or excusable neglect.

(2) The chief judge of the Court of Appeals will decide all untimely motions for reinstatement of an appeal.

### **Rule 7.218 Voluntary Dismissal**

(A) Dismissal by Appellant. In all cases where the appellant or plaintiff in an original action under MCR 7.206 files an unopposed motion to withdraw the appeal, the clerk will enter an order of dismissal.

(B) Stipulation to Dismiss. The parties to a case in the Court of Appeals may file with the clerk a signed stipulation agreeing to dismissal of an appeal or an action brought under MCR 7.206. On payment of all fees, the clerk will enter an order dismissing the appeal or the action under MCR 7.206, except that class actions or cases submitted on a session calendar may not be dismissed except by order of the Court of Appeals.

### **Rule 7.219 Taxation of Costs; Fees**

(A) Right to Costs. Except as the Court of Appeals otherwise directs, the prevailing party in a civil case is entitled to costs.

(B) Time for Filing. Within 28 days after the dispositive order, opinion, or order denying reconsideration is mailed, the prevailing party may file a certified or verified bill of costs with the clerk and serve a copy on all other parties. Each item claimed in the bill must be specified. Failure to file a bill of costs within the time prescribed waives the right to costs.

(C) Objections. Any other party may file objections to the bill of costs with the clerk within 7 days after a copy of the bill is served. The objecting party must serve a copy of the objections on the prevailing party and file proof of that service.

(D) Taxation. The clerk will promptly verify the bill and tax those costs allowable.

(E) Review. The action by the clerk will be reviewed by the Court of Appeals on motion of either party filed within 7 days from the date of taxation, but on review only those affidavits or objections which were previously filed with the clerk may be considered by the court.

(F) Costs Taxable. A prevailing party may tax only the reasonable costs incurred in the Court of Appeals, including:

- (1) printing of briefs, or if briefs were typewritten, a charge of \$1 per original page;
- (2) any appeal or stay bond;
- (3) the transcript and necessary copies of it;
- (4) documents required for the record on appeal;
- (5) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (6) taxable costs allowed by law in appeals to the Supreme Court (MCL 600.2441); and
- (7) other expenses taxable under applicable court rules.

(G) Fees Paid to Clerk. The clerk shall collect the following fees, which may be taxed as costs:

- (1) the fee required by law for a claim of appeal, application for leave to appeal, application for delayed appeal, original complaint, or motion;
- (2) 50¢ per page for a certified copy of a paper from a public record;
- (3) \$5 for certified docket entries;
- (4) \$1 per document for certification of a copy presented to the clerk; and
- (5) 50¢ per page for a copy of an opinion; however, one copy must be given without charge to each party in a case.

A person who is unable to pay a filing fee may ask the court to waive the fee by filing a motion and an affidavit disclosing the reason for the inability.

(H) Rule Applicable. Except as provided in this rule, MCR 2.625 applies generally to taxation of costs in the Court of Appeals.

(I) Violation of Rules. The Court of Appeals may impose costs on a party or an attorney when in its discretion they should be assessed for violation of these rules.

## Subchapter 7.300 Supreme Court

### **Rule 7.301 Organization and Operation of Supreme Court**

(A) Chief Justice. At the first meeting of the Supreme Court in each odd-numbered year, the justices shall select by majority vote one among them to serve as Chief Justice.

(B) Term and Sessions. The annual term of the Court begins on August 1 and ends on July 31. Except as provided in MCR 7.313(E), the end of a term has no effect on pending cases. Oral arguments are generally scheduled at sessions in October, November, December, January, March, April, and May. The Court will only schedule cases for argument in September, February, June, or July pursuant to an order upon a showing of special cause.

#### (C) Supreme Court Clerk

(1) Appointment; General Provisions. The Supreme Court will appoint a clerk who shall keep the clerk's office in Lansing under the direction of the Court. Where the term "clerk" appears in this subchapter without modification, it means the Supreme Court clerk. The clerk may not practice law other than as clerk while serving as clerk.

(2) Duties. The clerk shall perform the following duties:

(a) Furnish bond before taking office. The bond must be in favor of the people of the state and in the penal sum of \$10,000, approved by the Chief Justice and filed with the Secretary of State, and conditioned on the faithful performance of the clerk's official duties. The fee for the bond is a Court expense.

(b) Collect the fees provided for by statute or court rule.

(c) Deposit monthly with the State Treasurer the fees collected, securing and filing a receipt for them.

(d) Provide for the recording of Supreme Court proceedings as the Court directs.

(e) Care for and maintain custody of all records, seals, books, and papers pertaining to the clerk's office and filed or deposited there.

(f) Return the original record as provided in MCR 7.310(B) after an appeal has been decided by the Court.

(D) Deputy Supreme Court Clerks. The Supreme Court may appoint deputy Supreme Court clerks. A deputy clerk shall carry out the duties assigned by the clerk and perform the duties of the clerk if the clerk is absent or unable to act.



(E) Reporter of Decisions. The Supreme Court will appoint a reporter of decisions. The reporter shall

- (1) prepare the decisions, including concurring and dissenting opinions, of the Supreme Court for publication;
- (2) write a brief statement of the facts of each case and headnotes containing the points made;
- (3) publish each opinion in advance sheets as soon as practicable; and
- (4) publish bound volumes as soon as practicable after the last opinion included in a volume is issued.

The reasons for denying leave to appeal, as required by Const 1963, art 6, § 6 and filed in the clerk's office, are not to be published and are not to be regarded as precedent.

(F) Supreme Court Crier. The Supreme Court will appoint a court crier. The court crier shall

- (1) have charge of the Supreme Court courtroom and the offices and other rooms assigned to the Supreme Court justices; and
- (2) have the power to serve an order, process, or writ issued by the Supreme Court; collect the fee for that service allowed by law to sheriffs; and deposit monthly with the State Treasurer all the fees collected, securing a receipt for them.

### **Rule 7.303 Jurisdiction of the Supreme Court**

(A) Mandatory Review. The Supreme Court shall review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223 to 9.226).

(B) Discretionary Review. The Supreme Court may

- (1) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.305);
- (2) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);
- (3) issue an advisory opinion (see Const 1963, art 3, § 8 and MCR 7.308(B));
- (4) respond to a certified question (see MCR 7.308(A));
- (5) exercise superintending control over a lower court or tribunal (see MCR 7.306);
- (6) exercise other jurisdiction as provided by the constitution or by law.

## **Rule 7.305 Application for Leave to Appeal**

(A) What to File. To apply for leave to appeal, a party must file

(1) 4 copies of an application for leave to appeal (1 signed) prepared in conformity with MCR 7.212(B) and consisting of the following:

(a) a statement identifying the judgment or order appealed and the date of its entry;

(b) the questions presented for review related in concise terms to the facts of the case;

(c) a table of contents and index of authorities conforming to MCR 7.212(C)(2) and (3);

(d) a concise statement of the material proceedings and facts conforming to MCR 7.212(C)(6);

(e) a concise argument, conforming to MCR 7.212(C)(7), in support of the appellant's position on each of the stated questions and establishing a ground for the application as required by subrule (B); and

(f) a statement of the relief sought.

(2) 4 copies of any opinion, findings, or judgment of the trial court or tribunal relevant to the question as to which leave to appeal is sought and 4 copies of the opinion or order of the Court of Appeals, unless review of a pending case is being sought;

(3) proof that a copy of the application was served on all other parties, and that a notice of the filing of the application was served on the clerks of the Court of Appeals and the trial court or tribunal; and

(4) the fee provided by MCR 7.319(C)(1).

(B) Grounds. The application must show that

(1) the issue involves a substantial question about the validity of a legislative act;

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves a legal principle of major significance to the state's jurisprudence;

(4) in an appeal before a decision of the Court of Appeals,

(a) delay in final adjudication is likely to cause substantial harm, or

(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code,

or any other action of the legislative or executive branches of state government is invalid;

(5) in an appeal of a decision of the Court of Appeals,

(a) the decision is clearly erroneous and will cause material injustice, or

(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.

(C) When to File.

(1) Before Court of Appeals Decision. In an appeal before the Court of Appeals decision, the application must be filed within 42 days after

(a) a claim of appeal is filed in the Court of Appeals;

(b) an application for leave to appeal is filed in the Court of Appeals;

(c) an original action is filed in the Court of Appeals; or

(d) entry of an order of the Court of Appeals granting an application for leave to appeal.

(2) After Court of Appeals Decision. Except as provided in subrule (C)(4), the application must be filed within 28 days in termination of parental rights cases, within 42 days in other civil cases, or within 56 days in criminal cases, after the date of

(a) the Court of Appeals order or opinion disposing of the appeal,

(b) the Court of Appeals order denying a timely filed motion for reconsideration, or

(c) the Court of Appeals order granting a motion to publish an opinion that was originally released as unpublished.

(3) Attorney Discipline Board Decision. In an appeal from an order of discipline or dismissal entered by the Attorney Discipline Board, the application must be filed within the time provided in MCR 9.122(A)(1).

(4) Late Application, Exception. Late applications will not be accepted except as allowed under this subrule. If an application for leave to appeal in a criminal case is not received within the time periods provided in subrules (C)(1) or (2), and the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage was prepaid. The exception applies to applications from decisions of the Court of Appeals rendered on or after March 1, 2010. This exception also applies to an inmate housed in a federal or other state correctional institution who is acting pro se in a criminal appeal from a Michigan court.

(5) Decisions Remanding for Further Proceedings. If the decision of the Court of Appeals remands the case to a lower court for further proceedings, an application for leave to appeal may be filed within 28 days in termination of parental rights cases, 42 days in other civil cases, and 56 days in criminal cases, after the date of

(a) the Court of Appeals order or opinion remanding the case,

(b) the Court of Appeals order denying a timely filed motion for reconsideration of a decision remanding the case, or

(c) the Court of Appeals order or opinion disposing of the case following the remand procedure, in which case an application may be made on all issues raised initially in the Court of Appeals, as well as those related to the remand proceedings.

(6) Effect of Appeal on Decision Remanding Case. If a party appeals a decision that remands for further proceedings as provided in subrule (C)(5)(a), the following provisions apply:

(a) If the Court of Appeals decision is a judgment under MCR 7.215(E)(1), an application for leave to appeal stays proceedings on remand unless the Court of Appeals or the Supreme Court orders otherwise.

(b) If the Court of Appeals decision is an order other than a judgment under MCR 7.215(E)(1), the proceedings on remand are not stayed by an application for leave to appeal unless so ordered by the Court of Appeals or the Supreme Court.

(7) Orders Denying Motions to Remand. If the Court of Appeals has denied a motion to remand, the appellant may raise issues relating to that denial in an application for leave to appeal the decision on the merits.

(D) Answer. Any party may file 4 copies of an answer (1 signed) within 28 days of service of the application. The party must file proof that a copy of the answer was served on all other parties.

(E) Reply. A reply may be filed as provided in MCR 7.212(G).

(F) Nonconforming Pleading. On its own initiative or on a party's motion, the Court may order a party who filed a pleading that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading if it has not been corrected within the specified time.

(G) Submission and Argument. Applications for leave to appeal may be submitted for a decision after the reply brief has been filed or the time for filing such has expired, whichever occurs first. There is no oral argument on an application for leave to appeal unless ordered by the Court under subrule (H)(1).

(H) Decision.

(1) Possible Court Actions. The Court may grant or deny the application for leave to appeal, enter a final decision, direct argument on the application, or issue a peremptory order. The clerk shall issue the order entered and provide copies to the parties and to the Court of Appeals clerk.

(2) Appeal Before Court of Appeals Decision. If leave to appeal is granted before a decision of the Court of Appeals, the appeal is thereafter pending in the Supreme Court only, and subchapter 7.300 applies.

(3) Appeal After Court of Appeals Decision. If leave to appeal is denied after a decision of the Court of Appeals, the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms. If leave to appeal is granted, jurisdiction over the case is vested in the Supreme Court, and subchapter 7.300 applies.

(4) Issues on Appeal.

(a) Unless otherwise ordered by the Court, an appeal shall be limited to the issues raised in the application for leave to appeal.

(b) On motion of any party establishing good cause, the Court may grant a request to add additional issues not raised in the application for leave to appeal or not identified in the order granting leave to appeal. Permission to brief and argue additional issues does not extend the time for filing the briefs and appendixes.

(I) Stay of Proceedings. MCR 7.209 applies to appeals in the Supreme Court. When a stay bond has been filed on appeal to the Court of Appeals under MCR 7.209 or a stay has been entered or takes effect pursuant to MCR 7.209(E)(4), it operates to stay proceedings pending disposition of the appeal in the Supreme Court unless otherwise ordered by the Supreme Court or the Court of Appeals.

### **Rule 7.306 Original Proceedings**

(A) When Available. A complaint may be filed to invoke the Supreme Court's superintending control power

(1) over a lower court or tribunal when an application for leave to appeal could not have been filed under MCR 7.305, or

(2) over the Board of Law Examiners, the Attorney Discipline Board, or the Attorney Grievance Commission.

(B) What to File. To initiate an original proceeding, a plaintiff must file with the clerk

(1) 4 copies of a complaint (1 signed) prepared in conformity with MCR 7.212(B) and entitled, for example,

“[Plaintiff] v [Court of Appeals, Board of Law Examiners, Attorney Discipline Board, or Attorney Grievance Commission].”

The clerk shall retitle a complaint that is named differently.

(2) 4 copies of a brief (1 signed) conforming as nearly as possible to MCR 7.212(B) and (C);

(3) proof that a copy of the complaint and brief was served on the defendant; and

(4) the fee provided by MCR 7.319(C)(1).

Copies of relevant documents, record evidence, or supporting affidavits may be attached as exhibits to the complaint.

(C) Answer. The defendant must file the following with the clerk within 21 days of notice of the complaint:

(1) Four copies of an answer and a brief (1 signed) conforming with MCR 7.212(B) and (D). The grievance administrator’s answer to a complaint against the Attorney Grievance Commission must show the investigatory steps taken and any other pertinent information.

(2) Proof that a copy of the answer was served on the plaintiff.

(D) Reply. 4 copies of a reply brief (1 signed) may be filed as provided in MCR 7.212(G).

(E) Actions Against Attorney Grievance Commission; Confidentiality. The clerk shall keep the file in an action against the Attorney Grievance Commission or the grievance administrator confidential and not open to the public if it appears that the complaint relates to matters that are confidential under MCR 9.126. In the answer to a complaint, the grievance administrator shall certify to the clerk whether the matters involved in the action are deemed confidential under MCR 9.126. The protection provided in MCR 9.126 continues unless and until the Court orders otherwise.

(F) Nonconforming Pleading. On its own initiative or on a party’s motion, the Court may order a plaintiff who filed a complaint or supporting brief or a defendant who filed an answer that does not substantially comply with the requirements of this rule to file a conforming pleading within a specified time or else it may strike the nonconforming pleading. The submission to the clerk of a nonconforming pleading does not satisfy the time limitation for filing the pleading if it has not been corrected within the specified time.

(G) Submission and Argument. Original proceedings may be submitted for a decision after the reply brief has been filed or the time for filing a reply brief has

expired, whichever occurs first. There is no oral argument on original complaints unless ordered by the Court.

(H) Decision. The Court may set the case for argument as on leave granted, grant or deny the relief requested, or provide other relief that it deems appropriate, including an order to show cause why the relief sought in the complaint should not be granted.

### **Rule 7.307 Cross-Appeal**

(A) Filing. An application for leave to appeal as a cross-appellant may be filed with the clerk within 28 days of service of the application for leave to appeal. The cross-appellant's application must comply with the requirements of MCR 7.305(A). A late application to cross-appeal will not be accepted.

(B) Alternative arguments; new or different relief. A party is not required to file a cross-appeal to advance alternative arguments in support of the judgment or order appealed. A cross-appeal is required to seek new or different relief than that provided by the judgment or order appealed.

### **Rule 7.308 Certified Questions and Advisory Opinions**

(A) Certified Questions

(1) From Michigan Courts.

(a) Whenever a court or tribunal from which an appeal may be taken to the Court of Appeals or to the Supreme Court has pending before it an action or proceeding involving a controlling question of public law, and the question is of such public moment as to require an early determination according to executive message of the governor addressed to the Supreme Court, the Court may authorize the court or tribunal to certify the question to the Court with a statement of the facts sufficient to make clear the application of the question. Further proceedings relative to the case are stayed to the extent ordered by the court or tribunal, pending receipt of a decision of the Supreme Court.

(b) If any question is not properly stated or if sufficient facts are not given, the Court may require a further and better statement of the question or of the facts.

(c) The Court shall render its decision on a certified question in the ordinary form of an opinion, to be published with other opinions of the Court.

(d) After the decision of the Court has been sent, the court or tribunal will proceed with or dispose of the case in accordance with the Court's answer.

(2) From Other Courts.

(a) When a federal court, another state's appellate court, or a tribal court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Court.

(b) A certificate may be prepared by stipulation or at the certifying court's direction, and must contain

- (i) the case title;
- (ii) a factual statement; and
- (iii) the question to be answered.

The presiding judge must sign it, and the clerk of the federal, other state, or tribal court must certify it.

(c) With the certificate, the parties shall submit

- (i) briefs conforming with MCR 7.312;
- (ii) a joint appendix conforming with MCR 7.312(D); and
- (iii) a request for oral argument on the title page of the pleading, if oral argument is desired.

(d) If the Supreme Court responds to the question certified, the clerk shall send a copy to the certifying court.

(e) The Supreme Court shall divide costs equally among the parties, subject to redistribution by the certifying court.

(3) Submission and Argument. Certified questions may be submitted for a decision after receipt of the question. Oral argument of a certified question under subrule (2), if properly requested under subrule (2)(c)(iii), or under subrule (1) if desired by the Court, will be scheduled in accordance with MCR 7.313.

## (B) Advisory Opinion

(1) Form of Request. A request for an advisory opinion by either house of the legislature or the governor pursuant to Const 1963, art 3, § 8 may be in the form of letter that includes a copy or verbatim statement of the enacted legislation and identifies the specific questions to be answered by the Court. Four copies of the request (1 signed) and supporting documents are to be filed.

(2) Briefing. The governor, any member of the house or senate, and the attorney general may file briefs in support of or opposition to the enacted legislation within 28 days after the request for an advisory opinion is filed. Interested parties may file amicus curiae briefs on motion granted by the Court. The party shall file 4 copies of the brief (1 signed), which must conform as nearly as possible to MCR 7.212(B) and (C).

(3) Submission and Argument. Advisory opinions may be submitted for a decision after the brief in support of the advisory opinion request has been filed. There is no oral argument on a request for an advisory opinion unless ordered by the Court.



(4) Decision. The Supreme Court may deny the request for an advisory opinion by order, issue a peremptory order, or render a decision in the ordinary form of an opinion, to be published with other opinions of the Court.

### **Rule 7.310 Record on Appeals**

(A) Transmission of Record. An appeal is heard on the original papers, which constitute the record on appeal. When requested by the Supreme Court clerk to do so, the Court of Appeals clerk or the lower court clerk shall send to the Supreme Court clerk all papers on file in the Court of Appeals or the lower court, certified by the clerk. For an appeal originating from an administrative board, office, or tribunal, the record on appeal is the certified record filed with the Court of Appeals clerk and the papers filed with the Court of Appeals clerk.

(B) Return of Record. After final adjudication or other disposition of an appeal, the Supreme Court clerk shall return the original record to the Court of Appeals clerk, to the clerk of the lower court or tribunal in which the record was made, or to the clerk of the court to which the case has been remanded for further proceedings. Thereafter, the clerk of the lower court or tribunal to which the original record has been sent shall promptly notify the attorneys of the receipt of the record. The Supreme Court clerk shall forward a certified copy of the order or judgment entered by the Supreme Court to the Court of Appeals clerk and to the clerk of the trial court or tribunal from which the appeal was taken.

(C) Stipulations. The parties may stipulate in writing regarding any matter constituting the basis for an application for leave to appeal or regarding any matter relevant to a part of the record on appeal.

### **Rule 7.311 Motions in Supreme Court**

(A) What to File. To have a motion heard, a party must file with the clerk

(1) 4 copies of a motion (1 signed), except as otherwise provided in this rule, stating briefly but distinctly the grounds on which it is based and the relief requested and including an affidavit supporting any allegations of fact in the motion;

(2) proof that the motion and supporting papers were served on the opposing party; and

(3) the fee provided by MCR 7.319(C)(2) or (3).

Only 2 copies (1 signed) need be filed of a motion to extend time, to place a case on or adjourn a case from the session calendar, or for oral argument.

(B) Submission and Argument. Motions are submitted on Tuesday of each week at least 14 days after they are filed, but administrative orders (e.g., on motions to

extend time for filing a pleading, to file an amicus brief, to appear and practice, to exceed the page limit) may be entered earlier to advance the efficient administration of the Court. There is no oral argument on a motion unless ordered by the Court.

(C) Answer. An answer may be filed at any time before an order is entered on the motion.

(D) Motion to Seal File. Except as otherwise provided by statute or court rule, the procedure for sealing a Supreme Court file is governed by MCR 8.119(I). Materials that are subject to a motion to seal a file in whole or in part shall be held under seal pending the Court's disposition of the motion.

(E) Motion for Immediate Consideration or to Expedite Proceedings. A party may move for immediate consideration of a motion or to expedite any proceeding before the Court. The motion or an accompanying affidavit must identify the manner of service of the motion on the other parties and explain why immediate consideration of the motion or expedited scheduling of the proceeding is necessary. If the motion is granted, the Court will schedule an earlier hearing or render an earlier decision on the matter.

(F) Motion for Rehearing.

(1) To move for rehearing, a party must file within 21 days after the opinion was filed

(a) 14 copies of a motion (1 signed) if the opinion decided a case placed on a session calendar, or 8 copies of a motion (1 signed) if the opinion decided a noncalendar case; and

(b) proof that a copy was served on the parties.

The motion for rehearing must include reasons why the Court should modify its opinion. Motions for rehearing are subject to the restrictions contained in MCR 2.119(F)(3).

(2) Unless otherwise ordered by the Court, the timely filing of a motion for rehearing postpones issuance of the Court's judgment order until the motion is either denied by the Court or, if granted, until at least 21 days after the filing of the Court's opinion on rehearing.

(3) Any party or amicus curiae that participated in the case may answer a motion for rehearing within 14 days after it is served by filing

(a) 14 or 8 copies of the motion (1 signed), in accordance with subrule (F)(1)(a); and

(b) proof that a copy was served on the other parties.

(4) Unless ordered by the Court, there is no oral argument on a motion for rehearing.

(5) The clerk shall refuse to accept for filing a late-filed motion for rehearing or a motion for reconsideration of an order denying a motion for rehearing.

(G) Motion for Reconsideration. To move for reconsideration of a court order, a party must file the items required by subrule (A) within 21 days after the date of certification of the order. The motion shall include all facts, arguments, and citations to authorities in a single document and shall not exceed 10 double-spaced pages. A copy of the order for which reconsideration is sought must be included with the motion. Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3). The clerk shall refuse to accept for filing a late-filed motion or a motion for reconsideration of an order denying a motion for reconsideration. The filing of a motion for reconsideration does not stay the effect of the order addressed in the motion.

### **Rule 7.312 Briefs and Appendixes in Calendar Cases**

(A) Form. Briefs in calendar cases must be prepared in the form provided in MCR 7.212(B), (C), and (D). Briefs shall be printed on only the front side of the page of good quality, white unglazed paper by any printing, duplicating, or copying process that provides a clear image. Original typewritten pages may be used, but not carbon copies.

(B) Citation of Record; Summary of Arguments; Length of Briefs.

(1) A party's statement of facts or counterstatement of facts shall provide the appendix page numbers of the transcript pages, pleadings, or other documents being cited or referred to.

(2) If the argument of any one issue in a brief exceeds 20 pages, a summary of the argument must be included. The summary must be a succinct, accurate, and clear condensation of the argument actually made in the body of the brief and may not be a mere repetition of the headings under which the argument is arranged.

(3) Except by order of the Court allowing a longer brief, a brief may not exceed 50 pages, excluding the table of contents, index of authorities, and appendixes, but including the summary of argument.

(C) Cover. A brief must have a suitable cover of heavy paper. The cover page must follow this form:

In the Supreme Court

Appeal from the [court or tribunal appealed from]

[judge or presiding officer]

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Plaintiff-[Appellant or Appellee],

v

Docket No. \_\_\_\_\_

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Defendant-[Appellant or Appellee],

Brief on Appeal – [Appellant or Appellee]

ORAL ARGUMENT [REQUESTED/NOT REQUESTED]

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Attorney for [PL or DF]-[AT or AE]

[Business Address]

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The cover page of the appellant’s brief must be blue; that of the appellee’s brief, red; that of an intervenor or amicus curiae brief, green; and that of a reply brief, gray. The cover page of a cross-appeal brief, if filed separately from the primary brief, must be the same color as the primary brief.

(D) Appendixes.

(1) Form and Color of Cover. Appendixes must be prepared in conformity with MCR 7.212(B), except that they must be printed on both sides of the page. The cover pages of appendixes shall be printed on yellow paper and shall be similarly endorsed as briefs under MCR 7.312(C) but designated as an appendix.

(2) Appellant’s Appendix. An appendix filed by the appellant must be entitled “Appellant’s Appendix,” must be separately bound, and numbered separately from the brief with the letter “a” following each page number (e.g., 1a, 2a, 3a). Each page of the appendix must include a header that briefly describes the character of the document, such as the names of witnesses for testimonial evidence or the nature of the documents for record evidence. The appendix must include a table of contents and, when applicable, must contain

(a) the relevant docket entries of the lower court or tribunal and the Court of Appeals arranged in a single column;

- (b) the trial court judgment, order, or decision in question and the Court of Appeals opinion or order being appealed;
- (c) any relevant finding or opinion of the trial court;
- (d) any relevant portions of the pleadings or other parts of the record; and
- (e) any relevant portions of the transcript, including the complete jury instructions if an issue is raised regarding a jury instruction.

The items listed in subrules (D)(2)(a) to (e) must be presented in chronological order.

### (3) Joint Appendix.

(a) The parties may stipulate to use a joint appendix, so designated, containing the matters that are deemed necessary to fairly decide the questions involved. A joint appendix shall meet the requirements of subrule (D)(2) and shall be separately bound and served with the appellant's brief.

(b) The stipulation to use a joint appendix may provide that either party may file, as a supplemental appendix, any additional portion of the record not covered by the joint appendix.

(4) Appellee's Appendix. An appendix, entitled "Appellee's Appendix," may be filed. The appellee's appendix must comply with the provisions of subrule (D)(2) and be numbered separately from the brief with the letter "b" following each page number (e.g., 1b, 2b, 3b). Materials included in the appellant's appendix or joint appendix may not be repeated in the appellee's appendix, except to clarify the subject matter involved.

### (E) Time for Filing. Unless the Court directs a different time for filing,

(1) the appellant's brief and appendixes, if any, are due within 56 days after the leave to appeal is granted;

(2) the appellee's brief and appendixes, if any, are due within 35 days after the appellant's brief is served on the appellee; and

(3) the reply brief is due within 21 days after the appellee's brief is served on the appellant.

### (F) What to File. The parties shall

(1) file 14 copies of a brief (1 signed) and appendixes with the clerk;

(2) serve 2 copies on each attorney who has appeared in the case for a separate party or group of parties and on each party who has appeared in person;

(3) serve 1 copy on the Attorney General in a criminal case or in a case in which the state is a named or interested party; and

(4) file a proof of service with the clerk.

(G) Cross-Appeal Briefs. The filing and service of cross-appeal briefs are governed by subrule (F). An appellee/cross-appellant may file a combined brief for the primary appeal and the cross-appeal within 35 days of the appellant's brief in the primary appeal. An appellant/cross-appellee may file a combined reply brief for the primary appeal and a responsive brief for the cross-appeal within 35 days of the cross-appellant's brief. A reply to the cross-appeal may be filed within 21 days of the responsive brief.

(H) Amicus Curiae Briefs and Argument.

(1) An amicus curiae brief may be filed only on motion granted by the Court except as provided in subsection (2).

(2) A motion for leave to file an amicus curiae brief is not required if the brief is presented by the Attorney General on behalf of the people of the state of Michigan, the state of Michigan, or an agency or official of the state of Michigan; on behalf of any political subdivision of the state when submitted by its authorized legal officer, its authorized agent, or an association representing a political subdivision; or on behalf of the Prosecuting Attorneys Association of Michigan or the Criminal Defense Attorneys of Michigan.

(3) An amicus curiae brief must conform to subrules (A), (B), (C) and (F), and must be filed within 21 days after the brief of the appellee has been filed or the time for filing such brief has expired, or at any other time the Court directs.

(4) An amicus curiae may not participate in oral argument except by Court order.

(I) Supplemental Authority. A party may file a supplemental authority as provided in MCR 7.212(F).

(J) Extending or Shortening Time; Failure to File; Forfeiture of Oral Argument.

(1) The time provided for filing and serving the briefs and appendixes may be shortened or extended by order of the Court on its own initiative or on motion of a party.

(2) If the appellant fails to file the brief and appendix within the time required, the Court may dismiss the case and award costs to the appellee or affirm the judgment or order appealed.

(3) A party filing a brief late forfeits the right to oral argument.

### **Rule 7.313 Supreme Court Calendar**

(A) Definition. A case in which leave to appeal has been granted, or a case initiated in the Supreme Court that the Court determines will be argued at a monthly session, is termed a "calendar case."

(B) Notice of Hearing; Request for Oral Argument.

(1) After the briefs of both parties have been filed or the time for filing the appellant's reply brief has expired, the clerk shall notify the parties that the calendar case will be argued at a monthly session of the Supreme Court not less than 35 days after the date of the notice. The Court may direct that a case be scheduled for argument at a future monthly session with expedited briefing times or may shorten the 35-day notice period on its own initiative or on motion of a party.

(2) Except on order of the Court, a party who has not specifically requested oral argument on the title page of its brief or has forfeited argument by not timely filing its brief is not entitled to oral argument unless it files a motion for oral argument at least 21 days before the first day of the monthly session. If neither party is entitled to oral argument, the clerk will list the case as submitted on briefs. The Court may direct that a case be submitted on briefs without oral argument even when a party would otherwise be entitled to oral argument.

(C) Arrangement of Calendar. At least 21 days before the first day of the monthly session, the clerk will place cases on the session calendar and arrange the order in which they are to be heard. The cases will be called and heard in that order except as provided in subrule (D).

(D) Rearrangement of Calendar; Adjournment. At least 21 days before the first day of a session, the parties may stipulate to have a case specially placed on the calendar, grouped to suit the convenience of the attorneys, or placed at the beginning or end of the call. After that time, changes to the session calendar may be requested only by motion, not by stipulation of the parties. A motion to adjourn a case from the call will be granted only by order upon a showing of good cause with an explanation of why the motion could not have been filed sooner. Costs payable to the Court may be imposed on the moving party for a late-filed motion to adjourn.

(E) Reargument of Undecided Calendar Cases. When a calendar case remains undecided at the end of the term in which it was argued, either party may file a supplemental brief. In addition, by directive of the Court or upon a party's written request within 14 days after the beginning of the new term, the clerk shall schedule the case for reargument. This subrule does not apply to a case argued on the application for leave to appeal under MCR 7.305(H)(1) and 7.314(B)(2).

### **Rule 7.314 Call and Argument of Cases**

(A) Call; Notice of Argument; Adjournment From Call. The Court, on the first day of each monthly session, will call the cases for argument in the order they stand on the calendar as arranged in accordance with MCR 7.313(C), and proceed from day to day during the session in the same order. A case may not be adjourned after

being placed on the call, except on a showing of extreme emergency. A case may be submitted on briefs by stipulation at any time.

(B) Argument.

(1) In a calendar case in which both sides are entitled to oral argument, the time allowed for argument is 30 minutes for each side unless the Court orders otherwise. When only one side is scheduled for oral argument, 15 minutes is allowed unless the Court orders otherwise.

(2) In a case being argued on the application for leave to appeal under MCR 7.305(H)(1), each side that is entitled to oral argument is allowed 15 minutes to argue unless the Court orders otherwise.

The time for argument may be extended by Court order on motion of a party filed at least 14 days before the session begins or by the Chief Justice during the argument.

### **Rule 7.315 Opinions, Orders, and Judgments**

(A) Opinions of Court. An opinion must be written and bear the authoring justice's name or the label "Per Curiam" or "Memorandum Opinion." Each justice deciding a case must sign an opinion. Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting.

(B) Filing and Publication. The Court shall file a signed opinion with the clerk, who shall stamp the date of filing on it. The reporter of decisions is responsible for having the opinions printed in a form and under a contract approved by the Court in accordance with MCR 7.301(E).

(C) Orders or Judgments Pursuant to Opinions.

(1) Entry. The clerk shall enter an order or judgment pursuant to an opinion as of the date the opinion is filed with the clerk.

(2) Routine Issuance.

(a) If a motion for rehearing is not timely filed under MCR 7.311(F)(1), the clerk shall send a certified copy of the order or judgment to the Court of Appeals with its file, and to the court or tribunal that tried the case with its record, not less than 21 days or more than 28 days after entry of the order or judgment.

(b) If a motion for rehearing is timely filed, the clerk shall fulfill the responsibilities under subrule (C)(2)(a) promptly after the Court denies the motion or, if the motion is granted, enter a new order or judgment after the Court's decision on rehearing.



(3) Exceptional Issuance. The Court may direct the clerk to dispense with the time requirement of subrule (C)(2)(a) and issue the order or judgment when its opinion is filed. An order or judgment issued under this subrule does not preclude the filing of a motion for rehearing, but the filing of a motion does not stay execution or enforcement.

(4) Execution or Enforcement. Unless otherwise ordered by the Court, an order or judgment is effective when it is issued under subrule (C)(2)(a) or (b) or (C)(3), and enforcement is to be obtained in the trial court.

(D) Entry, Issuance, Execution, and Enforcement of Other Orders and Judgments. An order or judgment, other than those by opinion under subrule (C), is entered on the date of filing. Unless otherwise stated, an order or judgment is effective the date it is entered. The clerk must promptly send a certified copy to each party, to the Court of Appeals, and to the lower court or tribunal. A motion may not be decided or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid.

### **Rule 7.316 Miscellaneous Relief**

(A) Relief Obtainable. The Supreme Court may, at any time, in addition to its general powers

- (1) exercise any or all of the powers of amendment of the court or tribunal below;
- (2) on reasonable notice as it may require, allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause; allow new parties to be added or parties to be dropped; or allow parties to be rearranged as appellants or appellees;
- (3) permit the reasons or grounds of appeal to be amended or new grounds to be added;
- (4) permit the transcript or record to be amended by correcting errors or adding matters that should have been included;
- (5) adjourn the case until further evidence is taken and brought before it;
- (6) draw inferences of fact;
- (7) enter any judgment or order that ought to have been entered, and enter other and further orders and grant relief as the case may require; or
- (8) if a judgment notwithstanding the verdict is set aside on appeal, grant a new trial or other relief.

(B) Allowing Act After Expiration of Time. When, under the practice relating to appeals or stay of proceedings, a nonjurisdictional act is required to be done within a designated time, the Court may at any time, on motion and notice, permit it to be done after the expiration of the period on a showing that there was good cause for

the delay or that it was not due to the culpable negligence of the party or attorney. The Court will not accept for filing a motion to file a late application for leave to appeal under MCR 7.305(C), a late application for leave to cross-appeal under MCR 7.307(A), a late motion for rehearing under MCR 7.311(F), or a late motion for reconsideration under MCR 7.311(G).

(C) Vexatious Proceedings.

(1) The Court may, on its own initiative or the motion of any party filed before a case is placed on a session calendar, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or

(b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court.

(2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The Court may remand the case to the trial court or tribunal for a determination of actual damages.

**Rule 7.317 Involuntary Dismissal; No Progress**

(A) Designation. If an appellant's brief has not been timely filed under MCR 7.312(E)(1) or within the time period granted by an order extending the time for filing the brief, or if the appellant fails to pursue the case in substantial conformity with the rules, the case shall be designated as one in which no progress has been made.

(B) Notice; Dismissal. When a case is designated as one in which no progress is made, the clerk shall mail to each party notice that, unless the appellant's brief that conforms with the rules is filed within 21 days or a motion is filed seeking further extension upon a showing of good cause, the case will be dismissed. A copy of an order dismissing an action under this rule will be sent to the parties and the court or tribunal from which the action arose.

(C) Reinstatement. Within 21 days of the dismissal order, the appellant may seek reinstatement of the action by filing a conforming brief along with a motion showing mistake, inadvertence, or excusable neglect. The clerk shall not accept a late-filed motion to reinstate.

(D) Dismissal for Lack of Jurisdiction. The Court may dismiss an appeal, application, or an original proceeding for lack of jurisdiction at any time.

### **Rule 7.318 Voluntary Dismissal**

The parties may file with the clerk a stipulation agreeing to the dismissal of an application for leave to appeal, an appeal, or an original proceeding. The Court may deny the stipulation if it concludes that the matter should be decided notwithstanding the stipulation. Costs payable to the Court may be imposed on the parties in the order granting the stipulated dismissal if the case has been scheduled for oral argument and the stipulation is received less than 21 days before the first day of the monthly session.

### **Rule 7.319 Taxation of Costs; Fees**

(A) Rules Applicable. The procedure for taxation of costs in the Supreme Court is as provided in MCR 7.219.

(B) Expenses Taxable. Unless the Court otherwise orders, a prevailing party may tax only the reasonable costs incurred in the Supreme Court, including an amount not to exceed \$2 per original page for the necessary expense of printing the briefs and appendixes required by these rules.

(C) Fees Paid to Clerk. The Clerk shall collect the following fees, which may be taxed as costs when costs are allowed by the Court:

- (1) \$375 for an application for leave to appeal or an original action;
- (2) \$150 for a motion for immediate consideration or a motion to expedite appeal, except that a prosecuting attorney is exempt from paying a fee under this subdivision in an appeal arising out of a criminal proceeding if the defendant is represented by a court-appointed lawyer;
- (3) \$75 for all other motions;
- (4) 50 cents per page for (a) a certified copy of a paper from a public record or (b) a copy of an opinion, although one copy must be provided without charge to the attorney for each party in the case;
- (5) \$5 for certified docket entries; and
- (6) \$1 for certification of a copy presented to the clerk.

A party who is unable to pay a filing fee may ask the Court to waive the fee by filing a motion and an affidavit disclosing the reason for that inability. There is no fee for filing the motion but, if the motion is denied, the party must pay the fee for the underlying filing.

(D) Violation of Rules. The Supreme Court may impose costs on a party or an attorney when in its discretion they should be assessed for violation of these rules.