

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 and 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 (E).

(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 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, and must comply with the provisions of MCR 7.215(C) regarding citation of unpublished Court of Appeals opinions. 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) Mediation in Calendar Cases.

##### (1) Selection for Mediation.

(a) At any time during the pendency of an appeal before the Court of Appeals, the chief judge or another designated judge may order an appeal submitted to mediation. When a case is selected for mediation, participation is mandatory; however, the chief judge or another designated judge may remove the case on finding that mediation would be inappropriate.

(b) To identify cases for mediation, the Court of Appeals will review civil appeals to determine if mediation would be of assistance to the court or the parties. At any time, a party to a pending civil appeal may file a written request that the appeal be submitted to mediation. Such a request may be made without formal motion and shall be confidential.

(c) A party to a case that has been selected for mediation may file a request to have the case removed from mediation. Such a request may be made without formal motion and shall be confidential. If the request to remove is premised on a desire to avoid the cost of mediation, it is not necessary to demonstrate an inability to pay such costs.

(d) The submission of an appeal to mediation will not toll any filing deadlines in the appeal unless the court orders otherwise.

##### (2) Mediation Procedure.

(a) Mediation shall be conducted by a mediator selected by stipulation of the parties or designated by the court. A mediator designated by the court shall be an attorney, licensed in Michigan, who has met the qualifications of mediators provided in MCR 2.411(F).

(b) Mediation shall consider the possibility of settlement, the simplification of the issues, and any other matters that the mediator determines may aid in the handling or disposition of the appeal.

(c) The order referring the case to mediation shall specify the time within which the mediation is to be completed. Within 7 days after the time stated in the order, the mediator shall file a notice with the clerk stating only the date of completion of mediation, who participated in the mediation, whether settlement was reached, and whether any further mediation is warranted.

(d) If mediation results in full or partial settlement of the case, the parties shall file, within 21 days after the filing of the notice by the mediator, a stipulation to dismiss (in full or in part) pursuant to MCR 7.218(B).

(e) The mediator may charge a reasonable fee, which shall be divided between and borne equally by the parties unless otherwise agreed 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 chief judge or another designated judge shall set a reasonable fee. In all other respects, mediator fees shall be governed by MCR 2.411(D).

(f) The statements and comments made during mediation are confidential as provided in MCR 2.412 and may not be disclosed in the notice filed by the mediator under (A)(2)(c) of this rule or by the participants in briefs or in argument.

(g) Upon failure by a party or attorney to comply with a provision of this rule or the order submitting the case to mediation, the chief judge or another designated judge may assess reasonable expenses, including attorney's fees, caused by the failure, may assess all or a portion of appellate costs, or may dismiss the appeal.

### (3) Selection of Mediator.

(a) Except as otherwise provided in this rule, the selection of a mediator shall be governed by MCR 2.411(B).

(b) Within the time provided in the order referring a case to mediation, the parties may stipulate to the selection of a mediator. Such stipulation shall be filed with the clerk of the court. If the parties do not file a stipulation agreeing to a mediator within the time provided, the court shall appoint a mediator from the roster of approved mediators maintained by the circuit court in which the case originated.

(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. An opinion not designated for publication shall be deemed "unpublished."

(B) Standards for Publication. A court opinion must be published if it:

- (1) establishes a new rule of law;
- (2) construes as a matter of first impression a provision of a constitution, statute, regulation, ordinance, or court rule;
- (3) alters, modifies, or reverses an existing rule of law;
- (4) reaffirms a principle of law or construction of a constitution, statute, regulation, ordinance, or court rule not applied in a reported decision since November 1, 1990;
- (5) involves a legal issue of significant public interest;
- (6) criticizes existing law; or
- (7) resolves a conflict among unpublished Court of Appeals opinions brought to the Court's attention; 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. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party shall explain the reason for citing it and how it is relevant to the issues presented. 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.