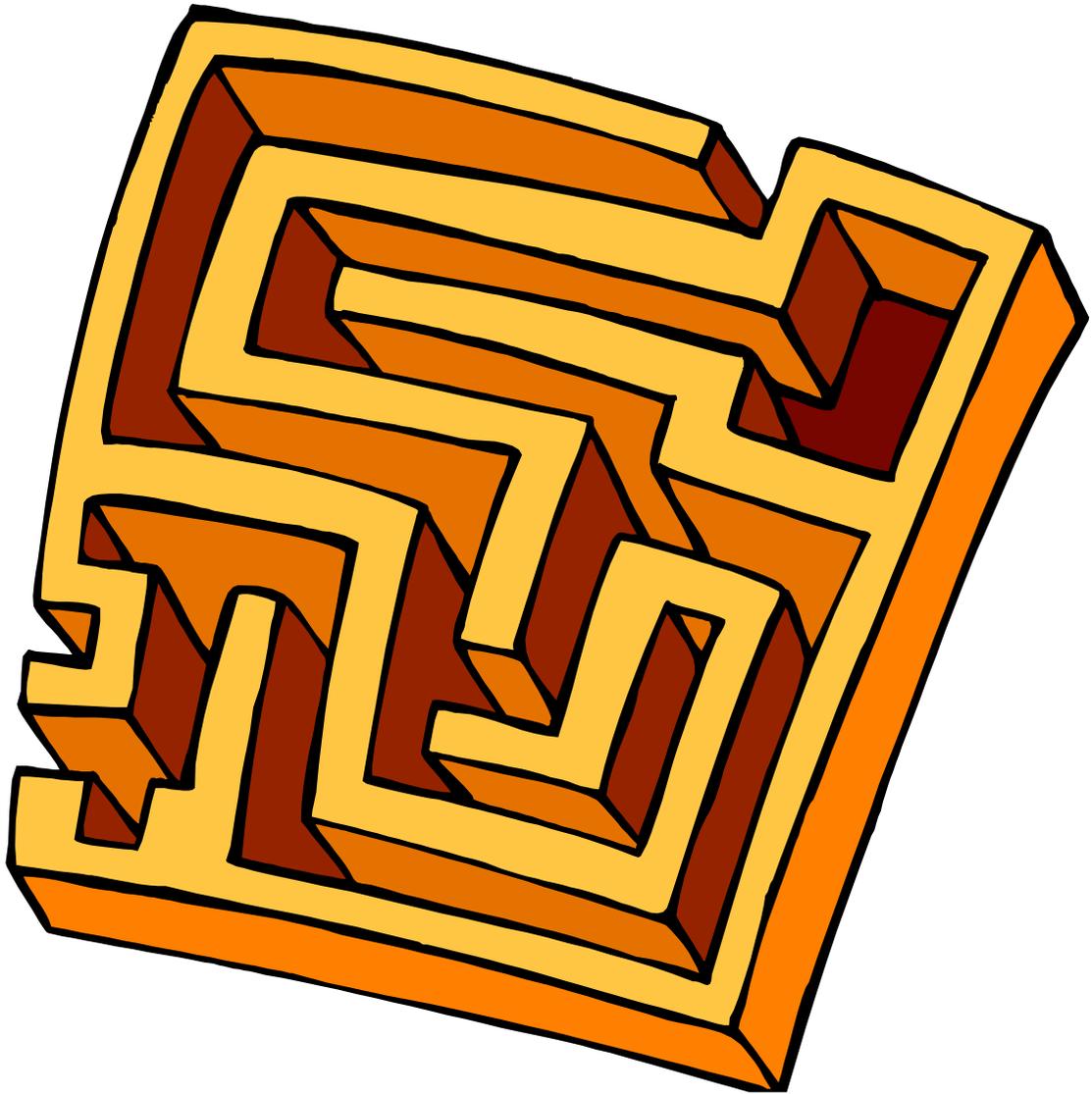


Michigan Court of Appeals

Filing Appeals and Original Actions



An Appellant's Guide to Navigating the Appellate Process

For People without Attorneys

**Published by the
Clerk's Office of the Michigan Court of Appeals**

© May 2000

Revised: January 2005

Revised: May 2008

Revised: January 2009

Minor revision: October 2009

Minor revision: March 2011

Revised: December 2011

Minor revision: October 2012

Minor revision: February 2014

All contacts and documents you intend to file with the Court of Appeals must be made through one of the clerk's offices listed below. You may use whichever is most convenient for you.

Addresses and Telephone Numbers

Detroit

Cadillac Place
3020 W. Grand Boulevard, Suite 14-300
Detroit, MI 48202
Telephone: (313) 972-5678

Troy

Columbia Center
201 W. Big Beaver, Suite 800
Troy, MI 48084
Telephone: (248) 524-8700

Lansing

Hall of Justice
925 W. Ottawa St., P. O. Box 30022
Lansing, MI 48909-7522
Telephone: (517) 373-0786

Grand Rapids

State of Michigan Office Building
350 Ottawa St. NW
Grand Rapids, MI 49503-2349
Telephone: (616) 456-1167

Offices are open from 9:00 a.m. until 5:00 p.m., Monday through Friday, except on Court holidays.

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Documents you will need to file later *if* the Court of Appeals . . .

- has jurisdiction over your claim of appeal,
- grants your application for leave to appeal, **or**
- grants full hearing in your original action.

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Purpose of Manual

The purpose of this manual is to guide non-attorneys in filing and prosecuting¹ appeals and original actions in the Court of Appeals. The manual provides information, forms and instructions on the basic documents required and the proper format for those documents. However, this manual is only a **procedural** guide. It does not give legal advice or guidance. It will not help you know whether you will win. It will not protect you from being sanctioned for filing a vexatious appeal. A copy of this manual is also available on the Court's website at <http://courts.mi.gov/courts/coa> under Clerk's Office.

The Rules

The requirements described in this manual are based on the Michigan Court Rules (MCR), which are the procedural rules governing all courts in Michigan. MCR 7.201 - 7.219 are the rules specifically written for the Court of Appeals, although other rules also apply. For your convenience, references to the applicable court rules are provided throughout this manual in **inverse shading**. While this manual presents the current interpretation of the current rules, the rules and their interpretations may change at any time. You can find a copy of the Michigan Court Rules at any law library, or on the Court's website at <http://courts.mi.gov/courts/coa>.

CAUTION: The publication of this manual should not be viewed as encouragement for non-attorneys to represent themselves. Bringing a case before the Court of Appeals without an attorney is a difficult, if not impossible, task. You must present a *legal* wrong and cite *legal* authority to support your position – presenting a moral or ethical wrong is not sufficient.

Prosecuting an appeal will involve a great deal of time and effort, and cause a great deal of frustration. In most cases, you have only one opportunity to have the Court hear your case. A failure to follow all the applicable procedures may result in dismissal of your case and loss of that opportunity. Therefore, the decision to proceed without an attorney should only be made after very serious consideration.

¹ The term "prosecuting" is used in this manual to mean carrying a matter through to the end.

What is an Appeal?

An **appeal** is a request to a higher court to review the decision of a lower court or administrative agency (tribunal). This manual explains the forms and procedures to file and prosecute an appeal in the Court of Appeals. There is a **Glossary of Terms** and a **Diagram of the Appellate Process** at the back of this manual to help you understand the terminology and process.

The person who files the appeal is the “**appellant**.”
The person who is on the opposite side of the case is the “**appellee**.”

NOTE: An appeal is *not* a new trial. No new evidence is presented and no witnesses are called. The Court of Appeals decides the appeal based on the written record of the proceedings in the lower court or tribunal. Generally, if an issue was not presented to, and decided by, the lower court or tribunal, the Court of Appeals will not consider it.

Types of Appeals/Actions

There are three (3) ways to initiate an action in the Court of Appeals:

1. A **claim of appeal** is filed when an appellant has an appeal as a matter of right provided by the Michigan Constitution, a statute or court rule. If you file all the required documents correctly within the time allotted, the Court of Appeals must review the substance of your arguments and issue a decision on the merits. **MCR 7.203(A); MCR 7.204**
2. An **application for leave to appeal** is a request for the Court of Appeals to accept an appeal which you do not have an automatic right to file. The Court of Appeals will decide whether it will grant full review based on the content of the correctly filed application. If the Court grants the application, then it will review the substance of your arguments and issue a decision on the merits, provided that you file any additional required documents correctly within the allotted time. **MCR 7.203(B); MCR 7.205**
3. An **action for an extraordinary writ** or an **original action** is generally an action in which you are requesting the Court of Appeals to exercise its supervisory authority over a lower court or tribunal, or to exercise its power to force a public official to fulfill his/her duty. **MCR 7.203(C); MCR 7.206**

NOTE: You cannot initiate an appeal by motion. If one of the above actions has not been filed, the motion will be rejected.²

² The only exceptions are a motion to review bond prior to a criminal trial, **MCR 6.106(H)**, and a motion to review a release decision regarding a child support bench warrant, **MCR 3.221(I)(1)**.

How to Determine Which Type of Appeal/Action to File

If the lower court has determined that you are indigent in a criminal or termination of parental rights case, you need only sign and timely return the request for counsel form provided by the lower court. That court will then appoint counsel to represent you on appeal, order all the transcripts and automatically file the claim of appeal. You need not avail yourself of this manual. MCR 6.425(F) & (G) & MCR 3.977(I).

Appeal

If the lower court or tribunal has issued an order that you wish to appeal, you may be able to file either 1) a claim of appeal or 2) an application for leave to appeal. To decide which is available and most advantageous:

1. Review the criteria for filing a **claim of appeal** *first*. If the claim is properly filed and this Court has jurisdiction, the Court of Appeals **must** review the substance of your arguments and issue a decision on the merits. Therefore, is usually advantageous to file a claim of appeal if you and your case can meet the requirements.

Requirements for Filing a Claim of Appeal 4

2. If you cannot meet the criteria for filing a claim of appeal, then review and determine whether you are able to meet the criteria for filing an **application for leave to appeal**.

Requirements for Filing an Application for Leave to Appeal 21

3. If the lower court/tribunal has not issued an order, or you cannot otherwise meet the criteria for filing either a claim of appeal or an application for leave to appeal, then you cannot file an appeal in the Court of Appeals.

Original Action

If the lower court or a public official refuses to issue an order or otherwise act as required by law, determine whether and which original action might provide you with the means to request the desired relief.

Discussion of Original Actions 40

Claim of Appeal

Criteria/Requirements for Filing

WHO May File a Claim of Appeal?

Only an “**aggrieved party**” may file a claim of appeal. **MCR 7.203(A)**

You would be a “**party**” if you were a party in the case in the lower court or administrative tribunal. You may not file an appeal on behalf of a spouse, other relative or friend.

You would be “**aggrieved**” if:

- you were convicted after trial of a crime and a judgment of sentence was entered in the circuit court [criminal case], **or**
- the circuit court family division terminated your parental rights [civil case], **or**
- the lower court or administrative tribunal entered a judgment or order that invaded or prejudiced your legal rights or monetary interest [civil case]. **Grace Petroleum Corp v Public Service Comm, 178 Mich App 309, 312-313 (1989).**

WHAT May be Appealed by a Claim of Appeal?

You may appeal a judgment or order entered by the lower court or administrative tribunal. If the court/tribunal has not issued an order, you cannot appeal.

Criminal: You may only file a claim of appeal from a **final** judgment or order entered in the **circuit court**. **MCR 7.203(A)(1)** Generally, the final judgment or order would be:

1. the original judgment of sentence entered following conviction, **or**
2. a judgment of sentence entered following a properly filed motion for resentencing, **or**
3. a sentence or order entered following a remand from an appellate court in a prior appeal of right, **or**
4. a judgment of sentence entered following revocation of probation when the underlying conviction was **not** based on a plea.

MCR 7.202(6)(b)

NOTE: You may **NOT** file a claim of appeal from a judgment of sentence entered after a **guilty plea or a nolo contendere (no contest) plea**. **MCR 7.203(A)(1)(b)**
If you wish to appeal from a plea-based conviction, you must file an application for leave to appeal.

Civil: You may file a claim of appeal from the following judgments or orders entered in the ***circuit court***:

1. The first judgment or order that decides all the claims and liabilities of all the parties. **MCR 7.202(6)(a)(i)**
2. A postjudgment order affecting the custody of a minor child in a domestic relations action. **MCR 7.202(6)(a)(iii)**
3. A postjudgment order for attorney fees and costs. **MCR 7.202(6)(a)(iv)**
4. An order denying governmental immunity to a governmental party. **MCR 7.202(6)(a)(v)**

NOTE: Appeals of items 2 – 4 are limited to the one issue noted, not everything that may have been in the order.

You may file a claim of appeal from a final order affecting your rights or interests in an estate or trust entered in the ***probate court***. **MCL 600.861 MCR 5.801(B)**

You may file a claim of appeal from the following judgments or orders entered by an ***administrative tribunal***:

1. Certain Michigan Public Service Commission orders. **MCL 462.26**
2. Tax Tribunal final orders. **MCL 205.753**
3. Michigan Employment Relations Commission final orders. **MCL 423.23**
4. Certain health profession disciplinary subcommittee final decisions. **MCL 333.16237**

WHEN Must a Claim of Appeal be Filed?

Criminal: The time to file a claim of appeal is controlled by **MCR 7.204(A)(2)**. It must be filed:

1. within 42 days after entry of the judgment or order appealed, **or**
2. within 42 days after an entry of an order denying a timely filed³ motion for appointment of counsel, **or**
3. within 42 days after entry of an order denying a timely filed³ motion for resentencing, judgment of acquittal or new trial in the circuit court.

“Mailbox rule” for incarcerated inmates:

If you are an inmate in the custody of the Michigan Department of Corrections and the Court received your pro se claim of appeal after the expiration of the 42-day period, the claim shall be considered presented for filing on the date it was deposited in the outgoing mail at the correctional institution in which you are housed. You should submit a sworn statement with your filing to show the date of deposit and state that first-class postage has been prepaid. This rule applies to claims of appeal from decisions or orders entered on or after March 1, 2010. It also applies if you are an inmate housed in a penal institution in another state or in a federal penal institution, and you want to seek an appeal in a Michigan court. **MCR 7.204(A)(2)(e)** Note: The mailbox rule does not apply to subsequent filings in the appeal.

³ The motion would be timely if it was filed within 42 days of the judgment of sentence.

Civil:

A claim of appeal must be filed:

1. within 21 days after entry of the judgment or order you are appealing, **MCR 7.204(A)(1)(a)**
- or
2. within 21 days after entry of an order denying a timely filed⁴ motion for new trial, reconsideration, or other postjudgment relief, **MCR 7.204(A)(1)(c)**
- or
3. In a **termination of parental rights** case under the Juvenile Code, within 14 days of entry of an order:
 - a. terminating your parental rights,
 - b. denying your timely filed⁵ motion for postjudgment relief, or
 - c. denying your timely filed⁵ request for appointment of counsel.**MCR 7.204(A)(1)**
- or
4. As provided by a statute governing your specific type of case. **MCR 7.204(A)(1)(d)**

WHERE Must a Claim of Appeal be Filed?

You must file your appeal by mail or in person at any of the four (4) Court of Appeals clerk's offices. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i at the front of this manual.

NOTE: Your appeal is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** Thus, the documents are not yet "filed" when you place them in a mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

⁴ The motion would be timely if it was filed within 21 days of entry of the judgment/order being appealed.

⁵ The motion would be timely if it was filed within 14 days of entry of the order terminating parental rights.

HOW Must a Claim of Appeal be Filed?

You must file the following items to correctly submit a claim of appeal: Forms, examples, and instructions for each of these documents are provided on the following pages.

1. Claim of appeal form. **MCR 7.204(B)(1) & (D)**
2. Copy of the judgment or order you are appealing. **MCR 7.204(C)(1)** In *criminal* cases, that would be the judgment of sentence. It would also be helpful to provide the Court of Appeals with a copy of any other orders that disposed of any claims or parties, or that decided a postjudgment motion.
3. A copy of the court reporter's/recorder's certificate of ordering transcript stating that you have ordered and secured payment for the transcript, **or**
A copy of a letter sent to the court reporter/recorder ordering the transcript or a written statement that the transcript has been ordered (identifying the hearing dates and reporter/recorder is helpful), **or**
A statement that there is no record to be transcribed.
MCR 7.204(C)(2)
4. A copy of the **current** lower court or tribunal register of actions (docket entries) for your case. **MCR 7.204(C)(5)**
5. A jurisdictional checklist. **MCR 7.204(C)(6)**
6. A proof of service stating that you have provided all the other parties in your case with a copy of the claim of appeal and all attendant documents. **MCR 7.204(C)(3) & (F)(2)** In *criminal* cases that would be the prosecuting attorney. In *termination of parental rights* cases, that would be the prosecuting attorney and the guardian-ad-litem for the children.
7. A check or money order for \$375 to cover the entry fee. **MCR 7.204(B)(2)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, accompanied by either an affidavit of indigency or, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3); MCR 7.219(G)** See pp 64-70 of this manual for forms, examples, and information about fee waiver.

NOTE: Once you are assured that the Court of Appeals has jurisdiction over the appeal, you must send the appropriate fee to the lower court/tribunal for the transmittal of the record to the Court of Appeals. The lower court/tribunal will not transfer the record if this fee is not paid, and the Court of Appeals cannot decide your case if it cannot review the record. For circuit court matters, the record transmittal fee is currently \$25. MCL 600.2529(1)(g). The fees charged by agencies for the transmittal of records may vary.

What happens if I don't file it right?

If you omit one of the above documents, the clerk's office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)**

Forms, Examples and Instructions – Claim of Appeal

The previous page listed the documents you must file with the Court of Appeals to file a claim of appeal. The first is the ***Claim of Appeal*** document. **MCR 7.204(B)(1) & (D)**

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1] Enter the **names** of the party[ies] who initiated the action in the lower court/tribunal. Usually, they are designated “Plaintiff(s),” but also might be called “Petitioner(s),” “Charging Party[ies],” or similar labels. In a *criminal* case, the plaintiff would be the “People of the State of Michigan.”
- [2] Enter whether the plaintiff(s) are “**appellant(s)**” or “**appellee(s)**” on appeal. [You are initiating the appeal, so you are the appellant. The people/entities on the opposing side are appellees.]
- [3] Enter your **case number in the lower court/tribunal**. A circuit court case number should look something like “10-123456-XX” or “2011-123456-XX.”
- [4] Enter the **names** of the party[ies] against whom the action was brought in the lower court/tribunal. Usually, they are designated “Defendant(s),” but also might be called “Respondents(s).” In a *criminal* case, you would be the defendant.
- [5] Enter whether the defendant(s) are “**appellant(s)**” or “**appellee(s)**” on appeal. [You are initiating the appeal, so you are the appellant. The people/entities on the opposing side are appellees.]

If this case involves the **custody of a minor child**, write in capital letters “**CUSTODY**” in the shaded box to the right of the defendant(s) name(s) and designation(s).
- [6] Enter **your name** as it appears in the caption (Item [1] or [4] above). Then check the box to indicate whether you were the plaintiff or defendant.
- [7] Enter the **date** that the lower court/tribunal judgment or order was entered in the first blank space. Enter the **name of the lower court/tribunal** whose judgment you are appealing in the second blank space. [Ex. Saginaw Circuit Court, Department of Treasury.]
- [8] Enter the **current date** and **sign** the claim of appeal.
- [9] Type or print legibly your **full name, address and telephone number**. If you are incarcerated, you must include your prisoner number on all documents or correspondence filed.

MCR 7.204(D)

Please immediately notify this Court whenever your address changes. Otherwise, you may not receive correspondence, orders, or opinions which may negatively affect your ability to get the relief you want.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[1] _____,
[2] Plaintiff(s)-Appell____(s), Lower Court/Tribunal Case No: _____
[3] v
[4] _____,
[5] Defendant(s)-Appell____(s). _____

CLAIM OF APPEAL

[6] _____, plaintiff, claims an appeal from the
 defendant.
[7] judgment or order entered on _____ in the _____.

[8] Date: _____ Signature _____
[9] _____

Copy of the Judgment or Order you are Appealing

You must provide this Court with a copy of the judgment or order that you are appealing. **MCR 7.204(C)(1)** The lower court/tribunal should have provided you with a copy. If not, contact the court or agency to get one.

It would also be helpful to provide the Court of Appeals with a copy of any other orders that disposed of any other claims or parties, or that decided a postjudgment motion.

Below is an example of a order granting a motion for summary disposition in a civil case. On the facing page is an example of a Judgment of Sentence in a criminal case. The judgment or order you are appealing may not look exactly like one of these, but it should be similar.

STATE OF MICHIGAN ✓
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

CHARLO ██████ OLD
Plaintiff,

v

File No. 08-8392-CH ✓
HON. THOMAS G. POWER

██████████ DSKI, TORCH LAKE TOWNSHIP
TAX ASSESSOR,
Defendant,

**ORDER FOLLOWING HEARING ON
SUMMARY DISPOSITION**

*At a session of said Court held in the
Courthouse in Bellaire, Michigan
on the 18th day of August, 2008.* ✓

PRESENT: HONORABLE THOMAS G. POWER
Circuit Court Judge

This matter having come on to be heard on the Motion of Defendant for Summary
Disposition, the Court having reviewed the files and records herein, the briefs and
supporting affidavits, having heard the arguments of counsel and being fully advised in the
premises;

IT IS HEREBY ORDERED AND ADJUDGED that the above matter shall be and
the same is hereby dismissed with prejudice and without cost to either party.

Thomas G. Power 8/28/08
Thomas G. Power
Circuit Court Judge

FILED
CLERK OF COURT
8/28/08

Ordering Transcripts

Any time there is a hearing in a court, a court reporter or recorder makes notes or a recording of everything that was said. You must order the transcripts of every court hearing held in your case from the responsible court reporter/recorder. **MCR 7.210(B)(1)** You will likely have to pay the reporter/recorder, unless the court has entered an order establishing that you are indigent and entitled to a copy of the transcript at public expense. Within seven (7) days of ordering the transcript, the reporter/recorder should provide a Certificate of Ordering Transcript that states that the transcript has been ordered, payment has been secured, and estimating when the transcript will be filed in the trial court. **MCR 7.210(B)(3)(a)**

Needed Information:

Advise the Court whether:

1. there were no hearings and, thus, there will not be any transcripts filed, **or**
2. the transcripts have already been prepared and filed in the lower court, **or**
3. you have received the Certificate of Ordering Transcript and are forwarding a copy of the certificate to the Court of Appeals, **or**
4. You have ordered the complete transcript, but have not yet received the Certificate. A copy of a letter to the reporter or recorder requesting the transcripts is sufficient.

A form to help assure that you have met the requirement for ordering of the transcript is on the facing page. You may photocopy and type or print legibly the following information in the areas provided.

- [1]** Enter the case **caption** as it appears on the claim of appeal (Items **[1]** – **[5]** on pp 8 & 9).
- [2]** **Check** the box next to the statement that describes the status of the transcript.
- [3]** Enter the **dates** of the hearings and the name and number of the responsible **reporter/recorder**, if known.
- [4]** Enter the **current date** and **sign** the statement.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[REDACTED],

Plaintiff(s)-Appell [REDACTED],

Lower Court/Tribunal Case No: [REDACTED]

[1] v

[REDACTED],

Defendant(s)-Appell [REDACTED].

STATEMENT REGARDING TRANSCRIPT

- There were no hearings held in the lower court/tribunal, so there no transcript will be filed.
- [2] The Certificate of Ordering Transcript is attached to this statement.
- I have ordered the transcript of the relevant hearings as shown by the attached document.

[3] Provide the dates of hearings and the responsible reporter/recorder, if known.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[4] Date: [REDACTED]

[REDACTED]
Signature

Lower Court/Tribunal Register of Actions

You must obtain a copy of the lower court/tribunal register of actions (docket entries) for your case. You can do that by sending a letter requesting them to the court or agency at the proper address, providing the case name and number. You will likely have to submit a copying fee, unless the court/tribunal has entered an order establishing that you are indigent and entitled to a copy of the transcript at public expense.

An example of the first page of a Register of Actions is on the facing page. Each court/tribunal has its own format, however, so yours may look somewhat different.

CLOSED FOJ CASE REGISTER OF ACTIONS 05/28/08 PAGE 1
 07-003890-FC JUDGE CELELL FILE 10/10/07 ADJ D 02/28/08 CLOSE 04/21/08
 DICKINSON COUNTY SCAO:SEC B LINE 01

D 001 [REDACTED] DOB: 11/20/62 SEX: M RACE: W
 CTN:220700075001 TCN:
 SID:1537869L
 DLN:XXXXXXXXXXXX ST:XX
 PIN:IMPD64707
 ATY: JASPEN, DANIEL M., PROSECUTOR: DOWNING, CARL B.,
 P-41091 906-774-8770 APPOINTED P-41947
 LOWER DISTRICT: 95B0 CTY# 22 CASE# 07-4725-FY PRELIM: 10/10/07
 INCARCERATION DATE: DISTRICT ARRAIGNMENT: 09/29/07

Bond History

Num	Amount	Type	Posted Date	Status
1	\$500,000.00	Surety		Cancelled

Charges

Num	Type	Charge(Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp Evt
01	ORG	750.83		ASSAULT W/INTENT MURDER	09/28/07	
	LES	750.84		ASSAULT HARM LESS MURDER		GTJ JTH
	HAB	769.10		HABITUAL OFFENDER 2ND CON ENHANCED SENTENCE		

Assessments

Account	Ordered	Paid	Balance
STATE MINIMUM COSTS	\$60.00	\$.00	\$60.00
CRIME VICTIM RIGHTS	\$60.00	\$.00	\$60.00
TOTAL:	\$120.00	\$.00	\$120.00
PAYMENT DUE: 4/21/08	LATE FEE DATE: 6/17/08		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	10/11/07	CELELLO		RETURN TO CIRCUIT COURT SET NEXT DATE FOR: 11/05/07 9:00 AM ARRAIGNMENT finger prints ARE on file ordered to pay \$25 a month	CLK CKL CLK CLK CKL
2				INFORMATION added habitual 2nd WITNESS LIST/RE FOR DISCLOSURE	CLK CLK CKL CLK
3	10/18/07			REQUEST AND NOTICE FOR FILM AMD MEDIA COVERAGE	CLK CKL CLK
4	11/05/07			REQUEST AND NOTICE FOR FILM AND ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS	CLK MKG CLK CLK
5			00001	ARRAIGNMENT PLEAD NOT GUILTY	CRT MKG CRT

RECEIVED
 2008 SEP 29 PM 1:58
 CLERK OF DISTRICT COURT
 SAKOMA COUNTY, KANSAS

Jurisdictional Checklist

The jurisdictional checklist is a form devised by the Court of Appeals to help you make sure you have filed all the necessary documents to perfect your claim of appeal.

Needed Information:

You may photocopy the form on the facing page and fill out the information requested.

Fill in the **court information** in the boxes provided, and the **case name**.

Place a **check** mark in the box beside every item that you are filing with the claim of appeal. If you have followed all the instructions in this section of the manual, you should be able to check a box for every category.

Date and **sign** the form.

Trial Court/Tribunal Name:

Court of Appeals, State of Michigan

Jurisdictional Checklist

CASE NO.
Trial Court/Tribunal:

Court of Appeals:

Case Name: _____ v _____

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- 1. A **signed** claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).
 - a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
 - b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
 - c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
 - d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
 - e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
 - f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
 - g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (*Even if a party is not an appellee, they must be served.*)
- 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: _____
- The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

Date

Preparer's Signature

Proof of Service

You must serve (mail or hand deliver) one copy of the claim of appeal and all the attached documents on all the parties (through their attorneys, if applicable) that were named or participated in your lower court/tribunal case. **MCR 7.204(C)(3) & (F)(2)** You must then provide proof of that service to the Court of Appeals.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1] Enter the **caption** as it appears on the claim of appeal.

- [2] Enter the **date** on which all other parties in this case were served, and check whether the service was by mail or hand-delivery.

- [3] Enter any other **documents** that you served, or delete any that you did not serve.

- [4] The **names and addresses of all the parties** that you served.

- [5] The **current date** and the **signature** of the person who actually served the documents. If you mailed the documents, you must sign the proof of service.

NOTE: You must also provide the lower court/tribunal with a copy of these documents. **MCR 7.204(E)**

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Plaintiff(s)-Appell _____,

Lower Court/Tribunal Case No. _____

[1]

v

Defendant(s)-Appell _____.

PROOF OF SERVICE

[2]

On _____, I mailed hand-delivered a copy of the following documents:

Claim of Appeal
Judgment(s)/Order(s) _____

[3]

Document regarding transcripts _____
Jurisdictional Checklist
Lower Court/Tribunal Register of Actions
This Proof of Service
Motion to Waive Fees/Affidavit of Indigency or Prisoner Account Statement
Other _____

[4]

to _____ at _____
at _____
at _____

[5]

Date: _____

Signature

Filing Fees

Needed Information:

You must pay the entry or filing fee before the Court of Appeals can review your claim of appeal. **MCR 7.204(B)(2)** It is currently \$375. You may pay the fee by providing a check or money order in that amount made payable to “State of Michigan.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3); MCR 7.219(G)** See pages 64-70 of this manual for forms, examples and instructions on how to file such a motion. The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or a portion of the filing fee.

You have completed the Claim of Appeal and attendant documents. Mail or hand-deliver these documents to any of the Court of Appeals offices listed on page i.

NOTE: You will need to file other documents as the appeal progresses. See pp 71-94 of this manual to determine when and what you must file.

Application for Leave to Appeal

Criteria/Requirements for Filing

WHO May File an Application for Leave to Appeal?

You must have “standing” to file an application for leave to appeal. **Grace Petroleum Corp v Public Service Comm, 178 Mich App 309, 312 (1989)**. Generally, that means that the requirement for filing an application is the same as for filing a claim: that is, only an “aggrieved” party may file an appeal. **MCR 7.203(A); Federated Ins Co v Oakland Co Rd Comm, 475 Mich 286, 290-291 (2006)**.

You would be a “party” if you were a party in the case in the lower court or administrative tribunal. You may not file an appeal on behalf of a spouse, other relative or friend.

You would be “aggrieved” if:

- you were convicted of a crime and a judgment of sentence was entered in the circuit court [criminal case], **or**
- the family division of the circuit court terminated your parental rights [civil case], **or**
- the lower court or administrative tribunal entered a judgment or order that invaded or prejudiced your legal rights or monetary interest [civil case]. **Grace Petroleum Corp v Public Service Comm, 178 Mich App 309, 312-313 (1989)**.

WHAT May be Appealed by an Application?

You may appeal a judgment or order entered by the lower court or administrative tribunal. If the court/tribunal has not issued an order, you cannot appeal.

You may file an application for leave to appeal from the following orders:

1. An order entered in the lower court that is not a final judgment or order disposing of the whole controversy. **MCR 7.203(B)(1)**
2. A circuit court final judgment or order from an appeal from a district or probate court, or an administrative tribunal. **MCR 7.203(B)(2)**
3. A final order of the Worker’s Compensation Appellate Commission. **MCR 7.203(B)(3) & MCL 418.861a**
4. A judgment of sentence entered after a plea of guilty or nolo contendere (no contest) in the circuit court. **MCR 7.203(B)(4) & Const 1963, Art 1 Sec 20**
5. Certain probate court orders. **MCR 5.801(B)**
6. A judgment or order from which you could have had an appeal by right, but the claim of appeal was not timely filed. **MCR 7.203(B)(5)** In this case you must file a delayed application for leave to appeal. **MCR 7.205(G)(1)** However, you cannot file an application from a conviction and sentence that you previously appealed. **MCR 7.205(G)(2)**

WHEN Must an Application be Filed?

IF THE ORDER YOU ARE APPEALING WAS ENTERED **BEFORE SEPTEMBER 1, 2011**, THE FOLLOWING TIME LIMITS APPLY:

Criminal: A ***timely*** application for leave to appeal must be filed within 21 days after the lower court or tribunal entered the judgment or order you are appealing. **MCR 7.205(A)**

A ***delayed*** application for leave to appeal must be filed:

1. within 12 months after the circuit court enters the judgment or order you are appealing, or an order denying a timely filed⁶ post-judgment motion, **MCR 7.205(G)(3)** or
2. beyond 12 months if it is filed within 21 days of entry of an order denying a motion for new trial, judgment of acquittal, withdrawal of a plea or correction of an invalid sentence that was filed within 6 months after the circuit court entered the judgment or order you are appealing **MCR 7.205(G)(4)** or
3. if you filed a delayed request for appointment of counsel in the lower court within 12 months after the circuit court entered the judgment or order you are appealing, and you ordered the appropriate transcripts within 28 days of the order denying appointment of counsel, you must file the application within 42 days after the filing of the transcripts in the lower court. **MCR 7.205(G)(4)(a - c)**

“Mailbox rule” for incarcerated inmates:

If you are an inmate in the custody of the Michigan Department of Corrections and the Court received your pro se application for leave to appeal after the expiration of the periods set forth above, the application shall be considered presented for filing on the date it was deposited in the outgoing mail at the correctional institution in which you are housed. You should submit a sworn statement with your filing to show the date of deposit and state that first-class postage has been prepaid. It also applies if you are an inmate housed in a penal institution in another state or in a federal penal institution, and you want to seek an appeal in a Michigan court. **MCR 7.205(A)(3)** Note: The mailbox rule does not apply to subsequent filings in the appeal.

An application ***from an order denying a motion for relief from judgment*** must be filed within 12 months after the circuit court enters the order. **MCR 6.509(A)**

Civil: An application in a ***worker’s compensation*** case must be filed within 30 days of entry of the final order. **MCL 418.861a**

A ***delayed*** application for leave to appeal in a ***termination of parental rights*** case must be filed within 63 days after entry of the order terminating parental rights. **MCR 7.205(G)(5); MCR 3.993(C)(2)**.

In other cases:

A ***timely*** application for leave to appeal must be filed within 21 days after entry of the judgment or order you are appealing. **MCR 7.205(A)**

A ***delayed*** application for leave to appeal must be filed within 12 months after entry of the judgment or order you are appealing, or entry of an order denying a timely filed⁶ motion for new trial, reconsideration, or other post-judgment relief. **MCR 7.205(G)(3)**

⁶ The motion would be timely if filed within 21 days after the order or judgment you are appealing.

IF THE ORDER YOU ARE APPEALING WAS ENTERED ON OR AFTER SEPTEMBER 1, 2011, THE FOLLOWING TIME LIMITS APPLY:

Criminal: A **timely** application for leave to appeal must be filed within 21 days after the lower court or tribunal entered the judgment or order you are appealing. **MCR 7.205(A)**

A **delayed** application for leave to appeal must be filed:

1. within 6 months after the circuit court enters the judgment or order you are appealing, or an order denying a timely filed⁷ post-judgment motion, **MCR 7.205(G)(3)** or
2. beyond 6 months if it is filed within 21 days of entry of an order denying a motion for new trial, judgment of acquittal, withdrawal of a plea or correction of an invalid sentence that was filed within 6 months after the circuit court entered the judgment or order you are appealing **MCR 7.205(G)(4)** or
3. if you filed a delayed request for appointment of counsel in the lower court within 6 months after the circuit court entered the judgment or order you are appealing, and you ordered the appropriate transcripts within 28 days of the order denying appointment of counsel, you must file the application within 42 days after the filing of the transcripts in the lower court. **MCR 7.205(G)(4)(a - c)**

“Mailbox rule” for incarcerated inmates:

If you are an inmate in the custody of the Michigan Department of Corrections and the Court received your pro se application for leave to appeal after the expiration of the periods set forth above, the application shall be considered presented for filing on the date it was deposited in the outgoing mail at the correctional institution in which you are housed. You should submit a sworn statement with your filing to show the date of deposit and state that first-class postage has been prepaid. It also applies if you are an inmate housed in a penal institution in another state or in a federal penal institution, and you want to seek an appeal in a Michigan court. **MCR 7.205(A)(3)** Note: The mailbox rule does not apply to subsequent filings in the appeal.

An application **from an order denying a motion for relief from judgment** must be filed within 6 months after the circuit court enters the order. **MCR 6.509(A)**

Civil: An application in a **worker’s compensation** case must be filed within 30 days of entry of the final order. **MCL 418.861a**

A **delayed** application for leave to appeal in a **termination of parental rights** case must be filed within 63 days after entry of the order terminating parental rights. **MCR 7.205(G)(5); MCR 3.993(C)(2)**.

In other cases:

A **timely** application for leave to appeal must be filed within 21 days after entry of the judgment or order you are appealing. **MCR 7.205(A)**

A **delayed** application for leave to appeal must be filed within 6 months after entry of the judgment or order you are appealing, or entry of an order denying a timely filed⁶ motion for new trial, reconsideration, or other post-judgment relief. **MCR 7.205(G)(3)**

⁷ The motion would be timely if filed within 21 days after the order or judgment you are appealing.

WHERE Must an Application be Filed?

You must file your appeal by mail or in person at any of the four (4) Court of Appeals clerk's offices. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i at the front of this manual.

NOTE: Your appeal is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** Thus, the documents are not yet "filed" when you place them in the mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must an Application be Filed?

You must file the following documents to correctly submit an application for leave to appeal. Forms, examples, and instructions for each of these documents are provided on the following pages.

1. Five (5) copies of an application for leave to appeal in the form of a brief. At least one copy must be signed. **MCR 7.205(B)(1)**
2. Five (5) copies of the judgment or order you are appealing, along with any opinion or findings of fact the lower court/tribunal issued. In addition, attach five (5) copies of any opinion or findings that the lower court/tribunal reviewed in making its decision, such as the opinion of the district court if your case began there. **MCR 7.205(B)(2)**
3. Five (5) copies of the **current** lower court/tribunal register of actions (docket entries), showing the entry of the order you are appealing and any post-judgment order. **MCR 7.205(B)(2)**
4. If this is a delayed application, five (5) copies of a statement explaining the reason(s) for the delay. **MCR 7.205(G)(1)**
5. If the appeal involves a tribunal action, proof that the agency record has been ordered (a copy of a letter requesting the record is sufficient). **MCR 7.205(B)(3)** You will have to pay the agency a fee for the transmittal of the record.
6. One (1) copy of that portion of the transcript that substantiates the issues you raise in the application. **MCR 7.205(B)(4)** **NOTE:** The court reporter/recorder will file the transcript with the trial court, **not** the Court of Appeals. **You** must provide this Court with a copy of the transcript.
7. A proof of service stating that you have provided all parties in your lower court/tribunal case with a copy of the application for leave to appeal and all the attendant documents. **MCR 7.205(B)(6)** In a *criminal* case, that would be the Prosecuting Attorney for the county in which you were convicted.
8. A check or money order for \$375 to cover the entry fee. **MCR 7.205(B)(7)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees, accompanied by either an affidavit of indigency or, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3); MCR 7.219(G)** See pp 64-70 of this manual for forms, examples, and information about fee waiver.

NOTE: If your appeal is from an administrative tribunal, you must order the tribunal record when filing the application for leave to appeal (see item 5 above) and pay the tribunal the transmittal fee it requires.

If your appeal is from a lower court and the Court of Appeals grants your application for leave to appeal, you must send \$25 to the lower court for the transmittal of the record to the Court of Appeals.

The lower courts/tribunals will not transfer the record if this fee is not paid, and the Court of Appeals cannot decide your case if it cannot review the record.

What happens if I don't file it right? If you omit one of the above documents, the clerk's office in the Court of Appeals will send you a letter explaining what is defective about your filing, and give you 21 days to correct it. **MCR 7.201(B)(3)**

Forms, Examples and Instructions – Application for Leave to Appeal

The previous page listed the documents you must file with the Court of Appeals to file an application for leave to appeal. The first is **five (5) copies** of an **application** in the form of a brief that conforms to **MCR 7.212(C)** and has the following general format characteristics: **MCR 7.212(B)**

- At least 1” margins on the top, bottom, and both sides (or the equivalent).
- Typed in at least 12-point type or printed legibly.
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, not counting indexes and appendices.

Because the application is in the form of a brief, this section will only show you the cover or title page, and then you must follow the directions for preparing a brief on pp 77-94. However, the other documents you must attach to the application are described immediately following the cover/title page.

Application Cover Page

Needed Information:

You may photocopy the form on the facing page and simply type or print legibly the following information in the areas provided.

- [1] Enter the **names** of the party[ies] who initiated the action in the lower court/tribunal. Usually, they are designated “Plaintiff(s),” but also might be called “Petitioner(s),” “Charging Party[ies],” or similar labels.
In a *criminal* case, the plaintiff would be the “People of the State of Michigan.”
- [2] Enter whether the plaintiff(s) are appell**ant**(s) or appelle**ee**(s) on appeal. [You are initiating the appeal, so you are the appell**ant**. The people/entities on the opposing side are appelle**es**.]
- [3] Enter your **case number in the lower court/tribunal**. A circuit court number should look something like “10-123456-XX” or “2011-123456-XX.”
- [4] Enter the **names** of the party[ies] against whom the action was brought in the lower court/tribunal. Usually, they are designated “Defendant(s),” but also might be called “Respondents(s).”
In a *criminal* case, you would be the defendant.
- [5] Enter whether the defendant(s) are appell**ant**(s) or appelle**ee**(s) on appeal. [You are initiating the appeal, so you are the appell**ant**. The persons/entities on the opposing side are appelle**es**.]
- [6] **Check** the appropriate box indicating whether you are filing a timely or delayed application.
- [7] Enter the **current date** and type or print legibly your **full name, address and telephone number**. If you are incarcerated, you must include your prisoner number on all documents or correspondence filed.

MCR 7.205(B)(1); MCR 7.212(C)(1)

Please immediately notify this Court whenever your address changes. Otherwise, you may not receive correspondence, orders or opinions, which may negatively affect your ability to get the relief you want.

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

[1] _____,

[2] Plaintiff(s)-Appell _____(s),

Lower Ct/Tribunal Case No. _____

[3] v

[4] _____,

[5] Defendant(s)-Appell _____(s).

[6]

APPLICATION FOR LEAVE TO APPEAL

DELAYED APPLICATION FOR LEAVE TO APPEAL

[7]

Date: _____

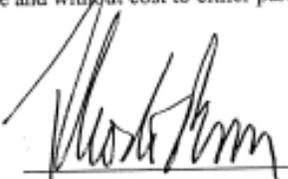


Judgment or Order Appealed

You must provide this Court with **five (5) copies** of the judgment or order that you are appealing. **MCR 7.205(B)(2)** The lower court/tribunal should have provided you with a copy. If not, contact the court or agency to get one.

You must also attach five (5) copies of any opinion or findings that the lower court/tribunal reviewed in making its decision, such as the opinion of the district court if your case began there.

Below is an example of a order granting a motion for summary disposition in a civil case. On the facing page is an example of a Judgment of Sentence in a guilty plea case. The judgment/order you are appealing may not look exactly like one of these, but it should be similar.

STATE OF MICHIGAN ✓	
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM	
CHARLO ██████ OLD Plaintiff,	File No. 08-8392-CH ✓ HON. THOMAS G. POWER
v	
██████████ OSKI, TORCH LAKE TOWNSHIP TAX ASSESSOR, Defendant,	
<u>ORDER FOLLOWING HEARING ON SUMMARY DISPOSITION</u>	
"At a session of said Court held in the Courthouse in Bellaire, Michigan on the 18 th day of August, 2008." ✓	
PRESENT: HONORABLE THOMAS G. POWER Circuit Court Judge	
<p>This matter having come on to be heard on the Motion of Defendant for Summary Disposition, the Court having reviewed the files and records herein, the briefs and supporting affidavits, having heard the arguments of counsel and being fully advised in the premises;</p> <p>IT IS HEREBY ORDERED AND ADJUDGED that the above matter shall be and the same is hereby dismissed with prejudice and without cost to either party.</p>	
 8/28/08	
Thomas G. Power Circuit Court Judge	

Copy of Relevant Transcript

Any time a hearing is held in a court or tribunal, a court reporter or recorder makes notes or a recording of everything that was said. You must order from the reporter/recorder that portion of the transcript that substantiates or is relevant to the issues that you raise in the application, and provide this Court with one (1) copy of that transcript. You will likely have to pay the reporter/recorder, unless the trial court has entered an order establishing that you are indigent and entitled to a copy of the transcript at public expense. Within seven (7) days of ordering the transcript, the reporter/recorder should provide a Certificate of Ordering Transcript that states that the transcript has been ordered, payment has been secured, and when the transcript will be filed *in the trial court*. **MCR 7.210(B)(3)(a)** Because the reporter/recorder files the transcript in the trial court and not the Court of Appeals, **you** must file a copy of it in this Court.

If there was no hearing, or none that you believe is relevant to the application, then you need to provide a statement to that effect to the Court.

NOTE: If you are appealing a conviction and/or sentence arising from a **guilty plea**, you need to assure that the plea and sentencing transcripts are filed in the trial court, along with any transcript of a post-judgment hearing.

Needed Information:

If you already have the transcript, send one (1) copy to this Court and skip to p 33.

Otherwise, advise the Court whether:

1. there were no relevant hearings and, thus, there will not be any transcripts filed, **or**
2. you have received the Certificate of Ordering Transcript and are forwarding a copy to the Court, **or**
3. You have ordered the complete transcript, but have not received the Certificate. A copy of a letter to the reporter/recorder requesting the transcripts is sufficient.

A form to help assure that you have met the requirement for ordering of the transcript is on the facing page. You may photocopy and type or print legibly the following information in the areas provided.

- [1] Enter the case **caption** as it appears on the application for leave to appeal (Items [1] – [5] on pp 27-28).
- [2] **Check** the box next to the statement that describes the status of the transcript request.
- [3] Enter the **dates** of the hearings and the name or number of the responsible **reporter/recorder**, if known.
- [4] Enter the **current date** and **sign** the statement.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[REDACTED],

Plaintiff(s)-Appell [REDACTED],

[1]

v

Lower Ct/Tribunal Case No [REDACTED]

[REDACTED],

Defendant(s)-Appell [REDACTED].

STATEMENT REGARDING TRANSCRIPT

- There were no hearings relevant to this application held in the lower court/tribunal, so there no transcript will be filed.
- [2] The Certificate of Ordering Transcript is attached to this statement.
- I have ordered the complete transcript of the hearings as shown by the attached document.

[3]

Provide the dates of hearings and the responsible reporter/recorder, if known.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[4]

Date: [REDACTED]

[REDACTED]
Signature

Circuit Court/Tribunal Register of Actions

Needed Information:

You must obtain a copy of the lower court/tribunal **register of actions** (docket entries) for your case. You can do that by sending a letter requesting them to the court or agency at the proper address, providing the case name and number. You will likely have to submit a copying fee, unless the court/tribunal has entered an order establishing that you are indigent and entitled to a copy of the transcript at public expense.

An example of what the first page of a Register of Actions might look like is on the facing page. Each court/tribunal has its own format, however, so yours may look somewhat different.

CLOSED FOJ CASE REGISTER OF ACTIONS 05/28/08 PAGE 1
 07-003890-FC JUDGE CELELLO FILE 10/10/07 ADJ D 02/28/08 CLOSE 04/21/08
 DICKINSON COUNTY SCAO:SEC B LINE 01

D 001 [REDACTED] DOB: 11/20/62 SEX: M RACE: W
 CTN:220700075001 TCN:
 SID:1537869L
 DLN:XXXXXXXXXXXX ST:XX
 PIN:IMPD64707
 ATY: JASPEN, DANIEL M., PROSECUTOR: DOWNING, CARL B.,
 P-41091 906-774-8770 APPOINTED P-41947
 LOWER DISTRICT: 95B0 CTY# 22 CASE# 07-4725-FY PRELIM: 10/10/07
 INCARCERATION DATE: DISTRICT ARRAIGNMENT: 09/29/07

Bond History

Num	Amount	Type	Posted Date	Status
1	\$500,000.00	Surety		Cancelled

Charges

Num	Type	Charge(Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp	Evt
01	ORG	750.83		ASSAULT W/INTENT MURDER	09/28/07		
	LES	750.84		ASSAULT HARM LESS MURDER			GTJ JTH
	HAB	769.10		HABITUAL OFFENDER 2ND CON ENHANCED SENTENCE			

Assessments

Account	Ordered	Paid	Balance
STATE MINIMUM COSTS	\$60.00	\$.00	\$60.00
CRIME VICTIM RIGHTS	\$60.00	\$.00	\$60.00
TOTAL:	\$120.00	\$.00	\$120.00
PAYMENT DUE: 4/21/08	LATE FEE DATE: 6/17/08		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	10/11/07	CELELLO		RETURN TO CIRCUIT COURT SET NEXT DATE FOR: 11/05/07 9:00 AM ARRAIGNMENT finger prints ARE on file ordered to pay \$25 a month	CLK CKL CLK CLK
2				INFORMATION added habitual 2nd WITNESS LIST/RE FOR DISCLOSURE	CLK CKL CLK CLK
3	10/18/07			REQUEST AND NOTICE FOR FILM AMD MEDIA COVERAGE	CLK CKL CLK
4	11/05/07			REQUEST AND NOTICE FOR FILM AND ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS	CLK MKG CLK CLK
5			00001	ARRAIGNMENT PLEAD NOT GUILTY	CRT MKG CRT

Statement Explaining Delay

If you are filing a ***delayed*** application for leave to appeal, you must provide **five (5) copies** of a statement explaining the reason(s) for the delay – i.e. why a claim of appeal or a *timely* application for leave to appeal was not filed. **MCR 7.205(A) & (G)(1)**

Needed Information:

You may photocopy the form on the facing page, and **check the box** next to all explanations that apply. If none of the preprinted statements apply, or you have an additional explanation, check the box next to “Other,” and type or print legibly your explanation.

Date and **Sign** the document.

Statement Explaining Delay

This application for leave to appeal is being filed more than 21 days after the lower court's entry of the judgment/order being appealed because: (Check all the boxes that apply to you.)

- I had to wait until my transcripts were completed before writing the application.
- I did not know I could appeal, or how to appeal, my decision until recently.
- I could not afford the copying cost and postage to file this application until recently.
- I could not afford the entry fee, and did not know I could request a waiver of fees until recently.
- Other: _____

Date: _____

Signature

Proof of Service

You must serve (mail or hand deliver) one copy of the application for leave to appeal and all the attached documents on all the parties (through their attorneys, if applicable) that were named or participated in your lower court/tribunal case. You must then provide proof of that service to the Court of Appeals. **MCR 7.205(B)(6)**

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1] Enter the **caption** as it appears on the application cover page.

- [2] Enter the **date** on which you served all other parties in this case, and check whether the service was by mail or hand-delivery.

- [3] Enter any other **documents** that you served, or delete any that you did not serve.

- [4] The **names and addresses of all the parties** that you served.

- [5] The **current date** and the **signature** of the person who actually served the documents. If you mailed the documents, you must sign the proof of service.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____ ,

Plaintiff(s)-Appell _____ ,

Lower Ct/Tribunal Case No. _____

[1]

v

_____ ,

Defendant(s)-Appell _____ .

PROOF OF SERVICE

[2] On _____, I mailed hand-delivered a copy of the following documents:

[3]

Application for Leave to Appeal
Judgment(s)/Order(s) _____
Transcript(s)/Statement Regarding Transcript(s) _____
Register of Actions
Statement Explaining Delay
Motion to Waive Fees/Affidavit of Indigency or Prisoner Account Statement
This Proof of Service
Other _____

[4]

to _____ at _____
at _____
at _____

[5]

Date: _____

Signature

Filing Fees

Needed Information:

You must pay the entry or filing fee before the Court of Appeals can review your application for leave to appeal. **MCR 7.205(B)(7)** It is currently \$375. You may pay the fee by providing a check or money order in that amount, made payable to “State of Michigan.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3): MCR 7.219(G)** See pages 64-70 of this manual for forms, examples and instructions on how to file such a motion. The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or a portion of the filing fee.

You have completed the application for leave to appeal and attendant documents. Mail or hand-deliver these documents to any of the Court of Appeals offices listed on page i.

What Happens Next?

After this application is reviewed by a panel of judges, the Court will issue an order granting or denying the application.

If the application is granted, you will need to file other documents as the appeal progresses. See pp 71-94 of this manual to determine when additional pleadings may be due.

Original Actions

Criteria/Requirements for Filing a Complaint

Definitions/Types of Complaints in an Original Action

This section will address three (3) types of original actions that can be filed directly in the Court of Appeals. **MCR 7.203(C)** If you wish to file a different original action or extraordinary writ, refer to the court rules and use the following instructions and forms as a guide.

1. A **Complaint for Superintending Control** is generally used to request the Court of Appeals to order the trial court or tribunal to act. For example, if the trial court refused to rule on a motion or decide a case, you could ask this Court to order the trial court to act. **NOTE:** You would have to be a party in the case below. You could not file this complaint on behalf of a spouse, other relative or friend.
2. A **Complaint for Mandamus** is generally used to compel a state official to perform a clear legal duty that is ministerial in nature, i.e. it does not involve the exercise of discretion.
3. A **Complaint for Habeas Corpus** is generally used to request the Court to order the release of a person from unlawful imprisonment.

These are all requests for extraordinary remedies. They are generally not available if you have access to a remedy by appeal. There are many other limitations which are too lengthy to go into in this manual. You will need to study the court rules and other law to determine whether you qualify.

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WHERE Must a Complaint be Filed?

You must file the complaint by mail or in person at any of the four (4) clerk's offices in this state. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i at the front of this manual.

NOTE: The complaint is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2) & (4)** Thus, the documents are not yet "filed" when you place them in the mailbox. They are filed when they reach the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of their arrival.

HOW Must a Complaint be Filed?

You must file the following documents to correctly submit an original action:

1. Five (5) copies of a **complaint**, one signed, with any supporting documents attached. **MCR 7.206(D)(1)(a)**
2. Five (5) copies of a **supporting brief**, one signed. **MCR 7.206(D)(1)(b)**
3. A **proof of service** stating that you have provided all other parties in the case with a copy of the complaint and all other documents filed with it. **MCR 7.206(D)(1)(c)**
4. A check or money order for \$375 to cover the **entry fee**. **MCR 7.206(D)(1)(d)** If you cannot afford to pay the entry fee, then you must file a motion to waive fees. The motion must be accompanied by either an affidavit of indigency or, if you are incarcerated, a prisoner account statement for the past 12 months. **MCR 7.202(3); MCR 7.219(G)** See pp 64-70 of this manual for forms, examples, and information about fee waiver.

NOTE: If you are filing a Complaint for Superintending Control and the Court of Appeals issues an order granting you a full hearing, you must send \$25 to the lower court/tribunal for the transmittal of the record to the Court of Appeals. The lower court will not transfer the record if this fee is not paid, and the Court of Appeals cannot decide your case if it cannot review the record.

Forms and Instructions for Filing a Complaint in an Original Action

Five (5) copies of a Complaint must be filed; at least one copy should be signed.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1] Enter your **full name**. You are filing the Complaint and are the “Plaintiff.”
- [2] If this is a complaint for superintending control, enter the **lower court number**. If not, leave this area blank.
- [3] Enter the name(s) of all the people or entities that you are bringing this action against. They are the **defendant(s)**.
- [4] **Check** the appropriate box indicating which type of original action you are filing.
- [5] Enter your full name (as in [1] above).
- [6] Enter what you **request** that the Court of Appeals do. For example, if you filed a motion several months ago that Judge Smith has failed/refused to rule on, then you might request that the Court of Appeals order: “Judge Smith to enter a written order on my December 1, 20xx motion for new trial based on the jury being tainted by a newspaper article that was not admitted into evidence.”
- [7] Enter the **current date** and **sign** the document.
- [8] Type or print legibly your **full name, address and telephone number**. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

Please immediately notify this Court whenever your address changes. Otherwise, you may not receive correspondence, orders or opinions, which may negatively affect your ability to get the relief you want.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[1] _____,

Plaintiff,

[2] v

Circuit Ct./Tribunal Case No. _____

[3] _____,

Defendant(s).

[4] **COMPLAINT FOR:**

- SUPERINTENDING CONTROL**
- MANDAMUS**
- HABEAS CORPUS**

[5] _____, plaintiff, requests that the Court of Appeals order

[6]

[7]

Date: _____

Signature

[8]

Brief in Support of Complaint

Five (5) copies of a brief in support of the complaint must be filed. The brief will state the relevant facts of the case, present your arguments to the Court of Appeals citing the legal authority supporting the arguments, and request the relief you want.

The brief must have the following general format characteristics: **MCR 7.212(B)**

- At least 1" margins on the top, bottom, and both sides (or the equivalent).
- Typed in at least 12-point type or printed legibly.
- Double-spaced. Footnotes and quotations can be single-spaced.
- The complaint and brief combined may be no more than 50 pages, not counting indexes and appendices.

The forms, examples, and instructions for each section of the brief are described below.

Brief Cover Page

The first page of the brief is a cover or title page, identifying the case and the type of document being filed. **MCR 7.212(C)(1)**

Needed Information:

You may photocopy the form on the facing page and simply type or print legibly the following information in the areas provided.

- [1] The **caption** as it appears on your Complaint (items [1] – [5]).
- [2] Although not required, it is worthwhile to put the date and your name and address on the cover page.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____ ,

Plaintiff,

[1]

v

Circuit Ct./Tribunal Case No. _____

_____ ,

Defendant(s).

Brief in Support of Complaint

[2]

Date: _____

Table of Contents Section

The next item required after the cover/title page, is the “Table of Contents,” which lists the section headings of the brief in support, and states the page numbers where each is located. **MCR 7.212(C)(2)** Each of the individual sections is explained in detail on the following pages. You may wish to wait until you have all the sections completed to fill in the section names and page numbers in the Table of Contents.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the information in the areas provided as described below.

- [1] You may number the pages of the indexes in the beginning of the brief or application in small roman numerals (i.e. i, ii, iii, etc.) and then, starting with the Statement of Facts, use Arabic numbers (i.e. 1, 2, 3, etc.) for the remainder of the brief.
- [2] Under each “Argument” section, write the *principal* point of your argument. It should be only one or two sentences.

An example might be:

The Court of Appeals should exercise superintending control over Judge Smith and require him to enter an order deciding the motion for new trial filed on December 1, 20XX.

Repeat the argument structure shown if there are additional arguments.

TABLE OF CONTENTS

	<u>Page No.</u>
Index of Authorities	ii
Jurisdictional Statement	iii [1]
Statement of Questions Involved	iv
Statement of Facts	1
Argument I:	[REDACTED]
Standard of Review	[REDACTED]
Preservation of Error:	[REDACTED]
Principal Point of Argument:	
[REDACTED]	
[2]	
Argument II:	[REDACTED]
Standard of Review	[REDACTED]
Preservation of Error:	[REDACTED]
Principal Point of Argument:	
[REDACTED]	
Relief Requested	[REDACTED]

Index of Authorities Section

The next section required in the brief in support is the "Index of Authorities," which lists all the legal citations to support your arguments, and all page number where each citation is mentioned. **MCR 7.212(C)(3)** Legal citations might be case law, statutes, court rules, legal treatise or encyclopedias, etc.

Again, you may wish to wait until the rest of the brief is completed, and come back and fill in the legal authority and page number references.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the authorities, citations, and page numbers where the authorities are mentioned.

First, list all **cases** cited in the brief or application in alphabetical order. Each case must have the complete citation, including the year of decision. Indicate all the pages on which each case is mentioned. A case citation might look like the following:

People v Peterson, 789 Mich App 456, 458 (2002)
Gerginson v GMC, 123 Mich 654, 666 (2001)

Second, list all Michigan **statutes** that you cite in the brief. If you cite statutes from another state, list them after the Michigan statutes. Indicate all the pages on which each statute is mentioned. A statute cite might look like the following:

MCL 600.2963

Third, list any **other legal authority** you cite in the brief. Indicate all the pages on which each authority is mentioned. A court rule cite might look like the following:

MCR 7.212(C)(3)

Use additional pages as needed.

INDEX OF AUTHORITIES

Page Nos.

Cases Name and Citation:

[REDACTED]

[REDACTED]

Statutes:

[REDACTED]

[REDACTED]

Other:

[REDACTED]

[REDACTED]

Statement of Jurisdiction Section

The next section required in the brief is the “Statement of Jurisdiction,” which shows that the Court of Appeals has jurisdiction (i.e. the legal authority to review) your complaint. **MCR 7.212(C)(4)**

Needed Information:

[1]

You may photocopy the form on the facing page and check the box next to the type of original complaint you are filing. **MCR 7.212(C)(4)(a)**

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this complaint based on:

- MCR 7.203(C)(1) [superintending control]
- MCR 7.203(C)(2) [mandamus]
- MCR 7.203(C)(3) [habeas corpus]

Statement of Questions Involved Section

The next section required in the brief in support is a “Statement of Questions,” in which you will list all the legal questions or issues that you want the Court of Appeals to address. **MCR 7.212(C)(5)** Each question/issue that you list should be handled separately in your argument section. That is, Question I should correspond to Argument I, Question II to Argument II, etc.

Needed Information:

You may photocopy the form on the facing page and type or print legibly your **concisely** stated questions/issues separately. Each question/issue should have a corresponding number.

Examples of questions might be:

- I. Should the Court of Appeals exercise superintending control over Judge Smith and require him to enter an order deciding plaintiff’s motion for new trial filed on December 1, 20XX?

[NOTE: this example question aligns with the example “Principal Point of Argument” in the discussion of the “Table of Contents.” It will also align with the discussion of Argument I below.

- II. Is plaintiff being illegally detained because the Department of Corrections took away his sentencing credits without any cause? Should plaintiff be immediately released from prison?

Continue to serially number your questions as needed. Use additional pages as needed. [However, it is suggested that you raise only genuine issues. Mere volume does not help you win.]

STATEMENT OF QUESTIONS INVOLVED

I.



II.



Statement of Facts Section

The next section required is the "Statement of Facts," in which you should explain the facts relevant to your original action in a clear, concise and chronological manner. You must fairly state all the material facts, even when they are not favorable to you. You must also cite to any transcript or document which supports your statement of facts. **MCR 7.212(C)(6)**

Needed Information:

You may photocopy the form on the facing page and type or print legibly your statement of facts. Describe:

1. the nature of the action. State whether it is a complaint for superintending control, mandamus or habeas corpus, and a summary of the decision or inaction that has led to the filing of this complaint.
2. if this is a complaint for superintending control, the character of the pleadings and proceedings that took place below. Outline the substance of the proofs.
3. any rulings, decisions or orders issued, attaching copies of those in writing.
4. the content of any relevant documents or events. Attach copies when possible.
5. Anything else necessary to an understanding of the questions involved.

MCR 7.212(C)(6)

Use additional pages as needed.

STATEMENT OF FACTS

Arguments Section

The next section required in the brief in support is “Argument(s),” in which you present your legal analysis and answers to the questions/issues you presented in the “Statement of Questions.” **MCR 7.212(C)(7)** The arguments should correspond one-on-one with the “Statement of Questions” you presented earlier, and both should be in the same order as you listed the arguments in the “Table of Contents.”

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

[1] State the ***principal point*** of your first argument in CAPITAL or **boldface** lettering at the top of each argument. This statement should duplicate the first “Principal Point of Argument” in the “Table of Contents,” and it should answer the first question in the “Statement of Questions.”

[2] ***Standard of Review.*** The Court of Appeals’ review of an issue is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue, and a legal citation to authority in which that legal standard is provided. For example:

A question of law is reviewed de novo. *In Re Jude*, 228 Mich App 667 (1998).

However, other standards may be applicable, depending on the issues raised.

[3] ***Analysis.*** Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how the law applies to the facts of your case, and explain why this analysis should lead the judges to conclude that you are entitled to relief.

Repeat the above format for additional arguments. Use additional pages as needed.

ARGUMENT I

[1]

I.

Standard of Review:

[2]

Analysis:

[3]

Relief Requested Section And Signature

The last requirements for a brief in support is to provide a statement explaining what relief you want the Court of Appeals to provide, **MCR 7.212(C)(8)** and to sign the brief **MCR 7.212(C)(9)**.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the areas provided.

[1] State concisely what relief you want the Court of Appeals to provide to you. This might be a request that a lower court judge to rule on a motion, the warden of a prison to release you, a county clerk to allow you to vote, or other types of relief.

[2] Sign the brief. **MCR 7.212(C)(9)**

RELIEF REQUESTED

[1]



[2]



Signature

Proof of Service

You must serve (mail or hand deliver) one copy of the Complaint, brief in support, and all other attached documents on all other parties in your case. You must then provide proof of that service to the Court of Appeals. **MCR 7.206(D)(1)(c)**

Needed Information:

- [1] Enter the **caption** as it appears on the Complaint.

- [2] Enter the **date** on which you served all other parties in this case, and check whether the service was by mail or hand-delivery.

- [3] Enter any other **documents** that you served, or delete any that you did not serve.

- [4] The **names and addresses of all the parties** that you served.

- [5] The **current date** and the **signature** of the person who actually served the documents. If you mailed the documents, you must sign the proof of service.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____ ,

Plaintiff,

[1]

v

Circuit Ct./Tribunal Case No. _____

_____ ,

Defendant(s).

PROOF OF SERVICE

[2]

On _____, I mailed hand-delivered a copy of:

Complaint for _____

[3]

Brief in support of complaint
Motion to Waive Fees/Affidavit of Indigency or Prisoner Account Statement
This Proof of Service
Other _____

[4]

to _____ at _____
at _____
at _____

[5]

Date: _____

Signature

Filing Fees

Needed Information:

You must pay the entry or filing fee before the Court of Appeals can review your original complaint. **MCR 7.206(D)(1)(d)** It is currently \$375. You may pay the fee by providing a check or money order in that amount, made payable to “State of Michigan.”

If you are indigent and cannot afford the fee, you may file a motion to waive fees instead. **MCR 7.202(3); MCR 7.219(G)** The Court of Appeals may grant the motion so that you will not have to pay any filing fee, or it may deny your motion and require that you pay all or just a portion of the filing fee. See the Motion to Waive Fees section on the following pages (64-70) of this manual for directions and forms to file a motion to waive fees.

Motion to Waive Fees

Affidavit of Indigency/Prisoner Account Statement

If you are indigent and cannot afford the filing fee, you may file a motion to waive fees. **MCR 7.202(3)** To support your request to waive fees, you must file either an affidavit of indigency or, if you are incarcerated, a prisoner account statement for the past 12 months.

Forms, examples and instructions for each of these documents are on the following pages.

Forms and Instructions – Motion to Waive Fees

Needed Information:

A form for a motion to waive fees is on the facing page. You may photocopy it and type or print legibly the following information in the areas provided.

- [1] The **caption** as it appears on your claim of appeal, application for leave to appeal or original complaint.

- [2] Your **name** as it appears in the caption.

- [3] The **current date** and your **signature**.

- [4] Type or print legibly your **full name, address and telephone number**. If you are incarcerated, this would include your prisoner number and the name and address of the facility where you are living.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____,

[1]

Plaintiff(s)/Appell _____,

v

Circuit Ct./Tribunal Case No. _____

_____,

Defendant(s)/Appell _____.

MOTION TO WAIVE FEES

[2]

_____, requests that the Court of Appeals waive the filing fees for this case because I cannot afford to pay them.

[3]

Date: _____

Signature

[4]

Affidavit of Indigency

If you are *incarcerated*, skip to the discussion of the prisoner account statement starting on p. 69.

Along with your motion to waive fees, you must provide an affidavit stating the facts that you believe will show the Court of Appeals that you cannot afford the filing fee.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the information requested in the space provided. If you need additional space, attach another sheet.

You must completely and truthfully fill out each section of the affidavit. Your signature on the form attests to the truthfulness of the statements you make, and you will be subject to legal consequences if it is determined that you misrepresented your financial condition. Your signature will be witnessed by a notary public.

Circuit Court Information Name: _____ Case No.: _____	STATE OF MICHIGAN COURT OF APPEALS Affidavit Concerning Financial Status	Court of Appeals Information Case No.: _____
Case Name: _____		
Name: _____	Address & Telephone No.: _____	

The following is information concerning my present financial status.

1. PUBLIC ASSISTANCE I am currently receiving public assistance because of indigency: <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the type of assistance and identify the government agency that provides it.	
2. RESIDENCE \$ _____ per month <input type="checkbox"/> Rent <input type="checkbox"/> Mortgage <input type="checkbox"/> Room/Board <input type="checkbox"/> Live with Relatives	
3. MARITAL STATUS <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ <div style="text-align: right; font-size: small;">Number</div>	
4. INCOME a. Employer name, address & telephone no.	b. Length of Employment c. Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ _____ Net: \$ _____
d. Other income (State monthly amount and source, such as DHS, VA, rent, pension, spouse, unemployment, etc. If no income, state NONE.)	
5. ASSETS (State value of car, home, bank deposits, bonds, stocks, etc. If no assets, state NONE.)	
6. OBLIGATIONS (Itemize monthly rent, installment payments, mortgage payments, child support, etc.)	

 Signature _____
Date

Subscribed and sworn to before me on _____, _____ County, Michigan <div style="text-align: center; font-size: small;">Date</div>	My commission expires: _____ Signature: _____ <div style="text-align: center; font-size: small;">Date Notary public</div>
Notary public, State of Michigan, County of _____	

Prisoner Account Statement

If you are incarcerated, you must provide a prisoner account statement with your motion to waive fees. You can obtain this document from the accounting office of the facility where you are living. The front page generally looks like the document on the facing page, followed by several pages showing the transactions to and from your prisoner account over the past 12 months.

STATE OF MICHIGAN - CIVIL ACTION

**CERTIFICATE OF PRISONER ACCOUNT ACTIVITY
AND AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS**

Prisoner-Plaintiff/Petitioner/Appellant name and number <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div>	v	Defendant's/Respondent's/Appellee's name <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div>
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CERTIFICATE OF PRISONER ACCOUNT ACTIVITY

I am employed by the Michigan Department of Corrections at the facility identified below, at which the prisoner identified as the Plaintiff/Petitioner/Appellant is currently incarcerated.

Attached is a computer printout which accurately reflects the current spendable balance and all activity within this prisoner's account during the preceding twelve months or, if the prisoner has been incarcerated for less than twelve months, for the period of incarceration. Code "C" on the printout represents a withdrawal from the account and code "D" represents a deposit to the account. The attached printout reflects, for the reported period, an average monthly account deposit (i.e., total deposits divided by number of months) of \$11.55, an average monthly account balance (i.e., total deposits minus total withdrawals divided by number of months) of \$0.12. There is a current spendable account balance of \$6.04.

Date: 06/16/99 Don Truitt / Assistant Business Manager
 Signature/Title

Ionia Maximum Correctional Facility
 Correctional Facility

RECEIVED
 COURT OF APPEALS
 CLERK
 JUNE 28 1999
 5:29

Note: Bottom section to be completed by prisoner and sent by prisoner to a Michigan court along with State civil pleading/claim of appeal.

AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS

1. I am the Plaintiff/Respondent/Appellant in the attached pleading/petition/claim of appeal.
2. I am asking the court for suspension of filing fees and costs because I am indigent as reflected in the Certificate of Prisoner Account Activity and attached computer printout.

[Signature]
 Prisoner's Signature

Subscribed and sworn to before me, a Notary Public,
 this 23rd day of June, 1999.

Gerald G

CSJ-276 6/97
4835-3276

My Commission Expires:

GERALD G, Notary Public
 Ingham County, Michigan
 "Acting in Ionia County"
 My Commission Expires January 20, 2003

Docketing Statement – Civil Cases Only

Within 28 days of filing a claim of appeal, **MCR 7.204(H)**, or entry of an order granting your application for leave to appeal, **MCR 7.205(E)(3)**, you must file a docketing statement in the Court of Appeals in a civil case.

Needed information/forms:

The form can be accessed on the Court of Appeals website at <http://courts.mi.gov/courts/coa> under Court Forms. It is also provided below.

Docketing Statement (2 pages)

Michigan Court of Appeals

DOCKETING STATEMENT

Case No:
Circuit:
Court of Appeals:

Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an **appellant** in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

1. Case Name:

Appellant
 Appellee

V

Appellant
 Appellee

Name of first Plaintiff

Address:

Telephone No:

Attorney Name:

Bar No: _____

Address:

Telephone No:

Name of first Defendant

Address:

Telephone No:

Attorney Name:

Bar No: _____

Address:

Telephone No:

2. A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

3. There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

4. I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.

5. Identify **all** the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.)	Date(s) Occurred	Court Reporter

6. **Nature of case:**

a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): _____.

b. Identify the procedural nature of the case being appealed.

- arbitration bench trial post-judgment action declaratory judgment
 interlocutory matter jury trial summary disposition
 administrative proceeding (specify agency) _____
 other (i.e. default judgment) _____

7. Briefly describe the nature of the action and the result in the trial court. Conclusory statements such as "the judgment of the trial court is not supported by law" are unacceptable. Attach additional pages as needed.

8. Briefly state the issues to be raised in this appeal. Attach additional pages as needed.

9. The amount and terms of the judgment appealed are:

10. Settlement negotiations. (Check all boxes that apply.)

- Settlement negotiations have been conducted or are scheduled.
 Settlement is unlikely.
 Other _____

Date

Signature

PROOF OF SERVICE

I certify that copies of this docketing statement and any attachments were served on all opposing parties/attorneys by regular mail at their last known addresses.

Date

Signature

WHAT is a Brief?

If this Court has jurisdiction over your claim of appeal or has issued an order granting your application for leave to appeal, you will eventually need to file an appellant's brief. You will need to state the relevant facts of the case and present your arguments to the Court of Appeals. You should research the law applicable to your case by, for example, conducting appropriate online research or research at a law library or the law section of a public library. The Clerk's Office of this Court cannot give you advice about the substantive law that may apply to your case or what legal arguments you should make in your brief. You should also request the relief you want. There is a specific format that you must use to write the brief which is described in the following pages.

WHEN Must the Appellant's Brief be Filed?

Criminal: In most cases, the appellant's brief is due 56 days after the claim of appeal has been filed, an order granting the application for leave to appeal was entered, or the timely ordered transcripts have been filed in the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(iii)**

An **exception** is if this is an interlocutory appeal (an application for leave to appeal filed before the proceedings in the circuit court have been completed), the appellant's brief is due 28 days after the order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(i)**

Civil: If this is a **child custody** or **termination of parental rights** case, the appellant's brief is due 28 days after the claim of appeal has been filed, an order granting the application for leave to appeal was entered, or the timely ordered transcripts have been filed with the circuit court, whichever is later. **MCR 7.212(A)(1)(a)(i)**

In all other cases, the appellant's brief is due 56 days after the claim of appeal has been filed, an order granting leave to appeal has been entered, or the timely ordered transcripts have been filed with the lower court, whichever is later. **MCR 7.212(A)(1)(a)(iii)**

This page is intentionally blank.

WHERE Must the Brief be Filed?

You must file your brief by mail or in person at any of the four (4) Court of Appeals clerk's offices. **MCR 7.201(B)(2)** The addresses for those offices are listed on page i at the front of this manual.

NOTE: Your brief is not "filed" until it has been received by a clerk of the Court of Appeals. **MCR 7.202(2)&(4)** Thus, the brief is not yet "filed" when you place it in the mailbox. It is filed when it reaches the Court of Appeals. The clerk's office will stamp all the documents it receives with the date and time of arrival.

HOW Must the Brief be Filed?

You must file five **(5) copies** of your brief, which must have the following general format characteristics: **MCR 7.212(B)**

- At least 1" margins on the top, bottom, and both sides (or the equivalent).
- Typed in at least 12-point type or printed legibly.
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, not counting indexes and appendices.

You must also serve all other parties to the appeal with a copy of the brief. A proof of service is provided at the end of the discussion regarding the appellant's brief.

The forms, examples and instructions for each section of the brief are described on the following pages.

Forms, Instructions and Examples – Appellant’s Brief

Brief Cover Page

The first page of the brief is a cover or title page, identifying the case and the type of document being filed. **MCR 7.212(C)(1)**

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1] The **caption** as shown on previous documents filed with the Court of Appeals, with the addition of the Court of Appeals case number.
- [2] Check whether or not you are requesting **oral argument**. If you are incarcerated, it is not likely that you will be able to appear and argue, so you would *not* request it.
- [3] Although not required, it is worthwhile to put the date and your name and address on the cover page.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

[1]

_____ ,

Plaintiff(s)-Appel____(s),

Court of Appeals No. _____

v

Lower Ct./Tribunal No. _____

_____ ,

Defendant(s)-Appel____(s).

[2]

ORAL ARGUMENT REQUESTED
 NOT REQUESTED

APPELLANT'S BRIEF

[3]

Date: _____



Table of Contents Section

The next item required after the cover/title page, is the “Table of Contents,” which lists the section headings of the brief or application, and states the page numbers where each is located. **MCR 7.212(C)(2)** Each of the individual sections is explained in detail on the following pages. You may wish to wait until you have all the sections completed to fill in the sections and page numbers in the Table of Contents.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the pertinent information in the areas provided as described below.

- [1] You may number the pages of the indexes in the beginning of the brief or application in small roman numerals (i.e. i, ii, iii, etc.) and then, starting with the Statement of Facts, use Arabic numbers (i.e. 1, 2, 3, etc.) for the remainder of the brief.
- [2] Under each “Argument” section, write the *principal* point of your argument. It should be only one or two sentences.

Repeat the argument structure shown if there are additional arguments.

TABLE OF CONTENTS

	<u>Page No.</u>	
Index of Authorities	ii	
Jurisdictional Statement	iii	[1]
Statement of Questions Involved	iv	
Statement of Facts	1	
Argument I:	[REDACTED]	
Standard of Review	[REDACTED]	
Preservation of Error:	[REDACTED]	
Principal Point of Argument:		
[REDACTED]		[2]
Argument II:	[REDACTED]	
Standard of Review	[REDACTED]	
Preservation of Error:	[REDACTED]	
Principal Point of Argument:		
[REDACTED]		
Relief Requested	[REDACTED]	

Index of Authorities Section

The next section required in the brief or application is the “Index of Authorities,” which lists all the legal citations to support your arguments, and all page number where each citation is mentioned. **MCR 7.212(C)(3)** Legal citations might be case law, statutes, court rules, legal treatise or encyclopedias, etc.

Again, you may wish to wait until the rest of the brief or application is completed, and come back and fill in the legal authorities and page numbers references.

Needed Information:

You may photocopy the form on the facing page and type or print legibly the authorities, citations, and page numbers where the citations are mentioned.

First, list all **cases** cited in the brief or application in alphabetical order. Each case must have the complete citation, including the year of decision. Indicate all the pages on which each case is mentioned. A case citation might look like the following:

People v Peterson, 789 Mich App 456, 458 (2002)
Gerginson v GMC, 123 Mich 654, 666 (2001)

Second, list all Michigan **statutes** that you cite in the brief. If you cite statutes from another state, list them after the Michigan statutes. Indicate all the pages on which each statute is mentioned. A statute cite might look like the following:

MCL 600.2963

Third, list any **other legal authority** you cite in the brief. Indicate all the pages on which each authority is mentioned. A court rule citations might look like the following:

MCR 7.212(C)(3)

Use additional pages as needed.

INDEX OF AUTHORITIES

Page Nos.

Cases Name and Citation:

[REDACTED]

[REDACTED]

Statutes:

[REDACTED]

[REDACTED]

Other:

[REDACTED]

[REDACTED]

Statement of Jurisdiction Section

The next section required in the brief or application is the “Statement of Jurisdiction,” which shows that the Court of Appeals has jurisdiction over (i.e. the legal authority to review) your appeal. **MCR 7.212(C)(4)**

Needed Information:

You may photocopy the form on the facing page and place a check mark in the box next to the statement that applies to your appeal, as described below. **MCR 7.212(C)(4)(a)**

- [1] If you filed a **claim of appeal**, check the first box.
- [2] If you filed/are filing a **timely application**, check the second box.
- [3] If you filed/are filing a **delayed application**, check the third box.

STATEMENT OF JURISDICTION

- [1] The Court of Appeals has jurisdiction over this **claim of appeal** under MCR 7.203(A).
- [2] The Court of Appeals has jurisdiction over this **timely-filed application** for leave to appeal under MCR 7.205(A).
- [3] The Court of Appeals has jurisdiction over this **delayed application** for leave to appeal under MCR 7.205(G).

Statement of Questions Section

The next section required in the brief or application is a “Statement of Questions,” in which you will list all the legal questions or issues that you want the Court of Appeals to consider. **MCR 7.212(C)(5)** Each question/issue that you list should be handled separately in your argument section. That is, Question I should correspond to Argument I, Question II should correspond to Argument II, etc.

Needed Information:

You must **concisely** state each question/issue separately, and each should have a corresponding number.

Examples of questions in a **criminal** case might be:

- I. Was sufficient evidence presented at trial to convict defendant of armed robbery when none of the witnesses saw a gun?
- II. Is a new trial required because the prosecutor’s misconduct, when he implied that he had additional information regarding defendant’s guilt that was not admissible?

Examples of questions in a **civil** case might be:

- I. Did the trial court err in admitting evidence of plaintiff’s unfaithfulness during the marriage and considering his “fault” in dividing the marital property in a 70-30 split?
- II. Did the circuit court err in affirming the Department of Corrections’ decision that plaintiff’s acts of throwing food constituted a “major misconduct?”
- III. Did the trial court err in determining that termination of respondent’s parental rights was in the best interests of the children?

You may photocopy the form on the facing page and type or print legibly your numbered statement of questions in the area provided. Use additional pages as needed. However, it is suggested that you concisely raise only genuine issues. Mere volume does not help you win an appeal.

STATEMENT OF QUESTIONS INVOLVED

I.



II.



Statement of Facts Section

The next section required is the “Statement of Facts,” in which you should explain the facts relevant to your appeal. You must fairly state all the material facts, even when they are not favorable to you. **MCR 7.212(C)(6)** In an interlocutory application, you must state the facts which show how you would suffer substantial harm by waiting for the final judgment before appealing. **MCR 7.205(B)(1)**

In addition, you must indicate where in the lower court/tribunal record each fact is stated or shown. That might be a transcript page, the complaint or petition that was filed to start the action, or any other pleading or document that was admitted or offered in the lower court or tribunal.

Needed Information:

You may photocopy the form on the facing page and type or print legibly your statement of facts.

State the relevant facts of the case in a clear, concise and chronological manner. This should include the nature of the action, a description of the proceedings, including dates of important documents and events, the substance of the proofs that were given, the material rulings made by the court/tribunal, and the decision of the court/tribunal.

A suggested outline might be:

1. Introduction: a short synopsis of the type of case, nature of the case, and result of the case. For example:

This appeal involves a divorce action in which custody is at issue. After a five-day trial, the trial court awarded physical custody of the two minor children to the father. The mother appeals.

2. Next paragraphs: chronological description, **as supported by the record**, of the relevant evidence, events and rulings involved in this case.
3. Closing paragraph: The resulting verdict/decision of the trial court or tribunal, and the basis of that decision.

Use additional pages as needed.

STATEMENT OF FACTS

Arguments Section

The next section required in the brief or application is “Argument(s),” in which you present your legal analysis and answers to the questions/issues you presented in the “Statement of Questions.” **MCR7.212(C)(7)** The arguments should correspond one-on-one with the “Statement of Questions” you presented earlier, and both should be in the same order as you listed the arguments in the “Table of Contents.”

Needed Information:

You may photocopy the form on the facing page and type or print legibly the following information in the areas provided.

- [1]** State the ***principal point*** of your first argument in CAPITAL or **boldface** lettering at the top of each argument. This statement should duplicate the first “Principal Point of Argument” in the “Table of Contents,” and it should answer the first question in the “Statement of Questions.”
- [2]** ***Standard of Review.*** The Court of Appeals’ review of an appeal is limited by the legal standard imposed on it. Your legal research will need to include what that standard is for each issue, and a legal citation to authority in which that legal standard is provided. The three main standards under which the Court of Appeals can review issues is abuse of discretion, *de novo*, and clear error. However, there are other standards that apply to particular issues.
- [3]** ***Preservation of Error.*** Give the page reference to the transcript or other documents to show where the issue was preserved for appeal: that is, where it was discussed in the proceedings or documents filed in the lower court or tribunal.
- [4]** ***Analysis.*** Thoroughly, but concisely, cite and explain the applicable law for the issue involved, show how it applies to the facts of your case, and explain why it should lead the judges to conclude that you are entitled to relief.

Repeat the above format for additional arguments. Use additional pages as needed.

ARGUMENT(S)

[1]

I.

Standard of Review:

[2]

Preservation of Error:

[3]

Analysis:

[4]

Relief Requested Section and Signature

The last requirements for a brief or application is to provide a statement explaining what relief you want the Court of Appeals to provide **MCR 7.212(C)(8)** and to sign the brief. **MCR 7.212(C)(9)**

Needed Information:

You may photocopy the form on the facing page and type or print legibly the relief you request and sign your name in the areas provided.

- [1] State concisely what **result** you want from this appeal. For example, do you want a new trial, complete acquittal, a reversal of a money judgment, etc.

Examples in a **criminal** case might be:

Based on the analysis in this brief, defendant-appellant requests this Court to reverse his conviction for armed robbery, and remand to the trial court for a new trial.

or

Based on the above analysis, defendant-appellant requests this Court to reverse his sentence, and remand to the trial court for resentencing without consideration of his prior convictions.

Examples in a **civil** case might be:

Based on the analysis in this brief, plaintiff-appellant requests this Court to reverse the grant of summary disposition in favor of defendant-appellee, and remand to the lower court for completion of discovery and trial.

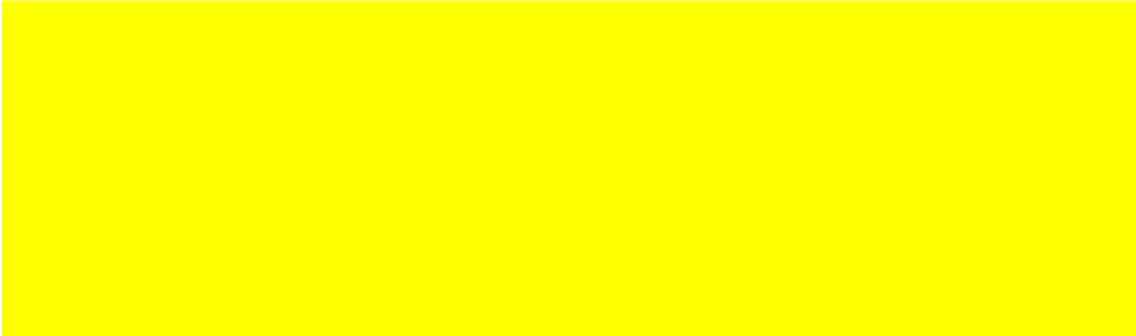
or

Based on the above analysis, defendant-appellant requests this Court to reverse the judgment of \$1,000,000 against him, and remand to the lower court for a new trial on damages.

- [2] You must **sign** the brief or application.

RELIEF REQUESTED

[1]



[2]



Signature

Proof of Service

You must serve (mail or hand deliver) one copy of the Appellant's Brief on all other parties in your case. You must then provide proof of that service to the Court of Appeals. **MCR 7.212(A)(1)(b)**

Needed Information:

- [1] Enter the **caption** as it appears on the brief

- [2] Enter the **date** on which you served all other parties in this case, and check whether the service was by mail or hand-delivery.

- [3] The **names and addresses of all the parties** that you served.

- [4] The **current date** and the **signature** of the person who actually served the documents. If you mailed the documents, you must sign the proof of service.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

_____ ,

[1] Plaintiff(s)-Appell_____,

Court of Appeals No. _____

v

Lower Ct./Tribunal No. _____

_____ ,

Defendant(s)-Appell_____.

PROOF OF SERVICE

[2] On _____, I mailed hand-delivered a copy of the Appellant's brief to:

[3] _____ at _____
_____ at _____
_____ at _____

[4] Date: _____

Signature

Glossary of Terms

Appeal: A request made to a higher court for review of the lower court's or administrative tribunal's decision to determine if it was correct. The party that appeals is called the "appellant," the other party is the "appellee."

Application for leave to appeal: A request to a court to grant an appeal when the requesting party does not have an automatic right to an appeal.

Brief: A written document submitted by a party to an appeal that states the facts of the case, sets out the applicable law, and explains why the court should decide the case in that party's favor.

Clerk of the court: An officer of the court in charge of managing the flow of cases through the court, maintaining court records and providing other administrative support to the court and judges.

Claim of appeal: An appeal that a party has a right to file and have the judges review and decide. The right is given by statute or court rule.

Complaint: A document which initiates an original action.

Court rule: The procedural rules that govern how an appeal or original action can be filed and conducted. The Michigan Court Rules (MCR) 7.201 - 7.219 govern actions in the Court of Appeals.

Docket Entries: See "**Register of Actions.**"

Jurisdiction: The legal authority of a court to hear and decide a case.

Motion: A request by a party to the court for a decision on an issue relating to the appeal. An example would be a motion to waive fees.

Opinion: A court's written explanation of its decision.

Order: A short written decision by a court.

Oral argument: A hearing in front of the panel of judges assigned to a case that allows the parties or their attorneys to summarize their positions and answer any questions regarding the case.

Original action: A case initiated or originated in a court. Even though the Court of Appeals is generally a Court where appeals are filed, there are certain actions which can be originated in it.

Panel: A group of judges assigned to decide the case. In the Court of Appeals, judges generally sit in panels of three.

Party: A litigant in a case. In an appeal, a party is usually referred to as appellant or appellee.

Pleadings: Documents filed in a court which outline a party's position. Claims of appeal, applications for leave to appeal and complaints are all pleadings.

Pro Per: An abbreviated version of the Latin phrase "in propria persona," meaning "on one's own behalf." Pro per refers to a party who presents his/her own case without an attorney.

Record: The written account of the lower court proceedings in a case, including pleadings, transcripts of testimony and exhibits.

Register of Actions: A chronological list created by a court detailing all of the actions that occurred in a case. This is also known as "Docket Entries."

Transcript: A written, word-for-word record of what was said in a proceeding.

Diagram of Basic Appeal Process

In the Court of Appeals

