

# The Insider's Guide to the Michigan Appellate Courts

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## I. Appellate Resources

A. **Court Websites and Dockets.** The official website of the Michigan appellate courts is <http://courts.michigan.gov/>, where attorneys can find opinions, recent and proposed court rule changes, statistical reports, biographies, and many other sources of information divided between two separate websites, one for the Michigan Court of Appeals, and one for the Michigan Supreme Court.

**Hot Tip:** For analysis of and links to Michigan appellate opinions and orders, visit the One Court of Justice Blog at [www.ocjblog.com](http://www.ocjblog.com).

Attorneys can search dockets online at [http://courts.michigan.gov/opinions\\_orders/case\\_search/pages/default.aspx](http://courts.michigan.gov/opinions_orders/case_search/pages/default.aspx) by case number, party name, or attorney. Although the online dockets do not yet contain hyperlinks to pleadings, as in PACER, they do contain links to official opinions and orders. In addition, the Michigan Supreme Court posts the briefing in any case where it has scheduled oral argument. Links to the individual cases scheduled for oral argument can be found at <http://courts.mi.gov/courts/michigansupremecourt/oral-arguments/pages/default.aspx>.

B. **Practice Guides.** Chief among practice guides, the official Michigan Rules of Court (Michigan Court Rules or “M.C.R.”) are available online at <http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Pages/current-court-rules.aspx>. The Michigan Court of Appeals also publishes online its Internal Operating Procedures (“I.O.P.”), <http://courts.mi.gov/courts/coa/clerksoffice/pages/iop.aspx>, which provide additional guidance for interpreting the Michigan Court Rules and insight into how the court of appeals processes cases.

There are three unofficial guides for advocates practicing in the Michigan appellate courts. The first, titled the *Michigan Appellate Handbook*, is a treatise published by the Michigan Institute of Continuing Legal Education (“ICLE”), which can be accessed at [www.icle.org](http://www.icle.org) for a fee. It has a practical focus and is updated annually. The second guide is a Thompson West publication titled *Civil Appeals*. The West treatise has a more academic focus and is authored by Michigan Supreme Court Justice Stephen J. Markman. The third guide, also published by Thompson West, is called *Michigan Court Rules Practice*. This treatise includes a useful digest of case authority interpreting and applying the appellate court rules.

The Michigan Supreme Court Historical Society has also published the *Michigan Supreme Court Historical Reference Guide*, available for purchase at <http://www.micourthistory.org/publications>.

C. **Contacting the Clerk's Office.** The Michigan Court of Appeals is divided into four districts, each with its own clerk's office (though any office is available to answer questions, even about cases originally filed in other districts). Contact information is available at <http://courts.mi.gov/courts/coa/clerksoffice/pages/contact.aspx>. The Michigan Supreme Court has its

own clerk's office; contact information is available at <http://courts.mi.gov/courts/michigansupremecourt/clerks/pages/default.aspx>. Neither the Supreme Court nor the court of appeals assigns case managers to individual cases. Advocates will find the personnel in both clerks' offices to be friendly and extraordinarily helpful.

**D. *Electronic Notices.*** Both the Michigan Supreme Court and the Michigan Court of Appeals offer an email service for next-day delivery of opinions and orders. Advocates can sign up through the courts' websites. Analysis of and links to Michigan appellate opinions and orders are also available through the One Court of Justice Blog, <http://www.ocjblog.com>.

**E. *Legislative History Resources.*** Michigan's legislative history is notoriously scant and difficult to find. For a guide to what is available and how to locate it, review the Chapter on *Sources of Michigan Legislative Information*, in the Legislative Service Bureau's Michigan Manual, at [https://www.legislature.mi.gov/\(S\(xiewdq4guoq2tf15xm1emse\)\)/documents/2015-2016/michiganmanual/2015-MM-P0263-p0266.pdf](https://www.legislature.mi.gov/(S(xiewdq4guoq2tf15xm1emse))/documents/2015-2016/michiganmanual/2015-MM-P0263-p0266.pdf).

**F. *Rule Amendments.*** For future rule changes, readers should visit the "Proposed and Recently Adopted Orders" section of the Michigan Supreme Court's website <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/>. Rules currently in effect can be found at <http://courts.mi.gov/courts/michigansupremecourt/rules/>.

## **II. Admission to Practice and Representation of Counsel**

**A. *General.*** Attorneys admitted to practice in Michigan need not seek any further admission to appear in the state's appellate courts.

**B. *Admission Pro Hac Vice.*** Out-of-state advocates seeking to enter an appearance in a Michigan case or proceeding must comply with Michigan's *pro hac vice* rule, M.C.R. 8.126, which provides for an out-of-state advocate's appearance in a maximum of five Michigan cases in a 365-day period. A Michigan attorney must file a motion and affidavit in the court where admission is sought and submit a copy of both to the Attorney Grievance Commission ("AGC"). The AGC must notify the court, within seven days, whether the out-of-state advocate has sought temporary admission in the past 365 days and, if so, how many times. For the privilege of practice in Michigan, the out-of-state lawyer must pay once annually a fee to the Michigan State Bar of \$135, regardless of the number of appearances. Each advocate admitted *pro hac vice* subjects himself or herself to the jurisdiction of Michigan's attorney disciplinary system.

**C. *Appearance of Counsel on Appeal.*** The first pleading filed by an appellant constitutes an appearance by the appellant's attorney. M.C.R. 2.117. Within 14 days after being served with a claim of appeal, the appellee shall file an appearance in the Court of Appeals and in the court from which the appeal is taken. M.C.R. 7.204(G). An appellee who does not file a timely appearance is not entitled to notice of further proceedings until an appearance is filed.

**D. *Withdrawal and Substitution of Counsel on Appeal.*** Withdrawal and substitution of counsel require leave of court and may be requested by motion. *See generally* M.C.R. 7.211 (court of appeals); M.C.R. 7.313 (Supreme Court).

**E. *Ethical Rules and Standards.*** The Michigan Rules of Professional Responsibility apply throughout Michigan's courts. There are no ethical rules or standards unique to Michigan appellate practice.

### III. The Appellate Court System

**A. Structure.** Michigan has a traditional, two-tier appellate structure, including an intermediate court of appeals and the highest court in the state, the Michigan Supreme Court. The court of appeals is divided into four districts: Detroit, Troy, Grand Rapids, and Lansing. Michigan Court of Appeals judges are elected by district but hear cases in all four districts, and opinions do not specify the district from which they originate.

**B. Mandatory Jurisdiction.** The Michigan Court of Appeals has jurisdiction to hear an appeal “of right” from a final judgment or order of a circuit court or court of claims, M.C.R. 7.203, and certain decisions of the Michigan probate courts and administrative agencies, Mich. Comp. Laws § 600.308. The Michigan Court Rules generally define a “final judgment” or “final order” in a civil case as “the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties.” M.C.R. 7.202(6)(a)(i). In other words, “A final order is an order which, by itself or in conjunction with previous orders, disposes of all of the claims of all of the parties or is an order which, although otherwise not final, disposes of at least one claim of one party and is certified as a final order under MCR 2.604(A).” *Dean v. Tucker*, 182 Mich. App. 27, 30, 451 N.W.2d 571 (1990). Final orders in a civil case also include those: designated by a trial court as final in a multi-party action; involving the custody of a minor; awarding or denying attorney fees and costs; or denying governmental immunity. M.C.R. 7.202(6)(a). Note, dismissal for lack of progress under M.C.R. 2.502 is not a final order or judgment, but an order denying a motion to reinstate the action is a final order. *Wickings v. Arctic Enters., Inc.*, 244 Mich. App. 125, 135–37, 624 N.W.2d 197 (2000).

**Hot Tip:** All final Michigan trial court orders must state that the order “resolves the last pending claim and closes the case.” M.C.R. 2.602. If retained before the final order is entered, ensure this magic language is included.

Final orders in a criminal case include those dismissing the case; imposing a sentence following conviction; imposing a sentence following the grant of a motion for resentencing; imposing a sentence following remand from an appellate court in an appeal of right; or imposing a sentence following revocation of probation. M.C.R. 7.202(6)(b). The court of appeals also has jurisdiction over and may entertain an action for superintending control, mandamus, habeas corpus, quo warranto, and certain original actions. M.C.R. 7.203(C).

**Hot Tip:** A post-judgment order that is not listed in M.C.R. 7.202(6)(a) is not appealable as of right but may be appealed by leave.

Michigan trial court judgments must state whether the order “resolves the last pending claim and closes the case.” M.C.R. 2.602. If retained before a final order is entered, ensure this magic language is included. But do not rely on this language to determine whether an order is final or not. The appellate court has the final say on whether the order is final. *McCarthy & Assocs., Inc. v. Washburn*, 194 Mich. App. 676, 680, 488 N.W.2d 785 (1992). Failure to timely appeal an order designated as non-final deprives the court of appeals of jurisdiction to hear the appeal as of right.

To vest the Court of Appeals with jurisdiction to hear an appeal of right, the appellant must timely file a claim of appeal and filing fee. M.C.R. 7.204(A); *see generally* section IV.A, *infra*. The court then has jurisdiction to hear issues related not only to the final order but also to

other orders in the case. *Bonner v. Chicago Title Ins. Co.*, 194 Mich. App. 462, 472, 487 N.W.2d 807 (1992). The Court may even review orders denying post-judgment relief, if such orders are entered before the appeal is filed. *See, e.g., Unibar Maint. Servs., Inc. v. Saigh*, 283 Mich. App. 609, 612, 769 N.W.2d 911 (2009); *Snell v. UACC Midwest, Inc.*, 194 Mich. App. 511, 512, 487 N.W.2d 772 (1992); *see also Bell v. Mich. Council 25 of Am. Fed'n of State, County, Mun. Emps., AFL-CIO, Local 1023*, No. 246684, 2005 WL 356306, at \*9 (Mich. Ct. App. Feb. 15, 2005). This does not mean, however, that a party may wait until a second final order is entered, appeal that second order, and then challenge an initial final order in that appeal as a “related” order in the case. *Surman v. Surman*, 277 Mich. App. 287, 293–94, 745 N.W.2d 802 (2007). When a final order is entered, time for appealing that order begins to run, and a claim of appeal from that order must be timely filed. *Id.*

If a timely motion for post-judgment relief remains pending in the lower court, the court of appeals lacks jurisdiction to hear an appeal of right. *Jerico Constr., Inc. v. Quadrants, Inc.*, 257 Mich. App. 22, 37, 666 N.W.2d 310 (2003). When such a motion is timely filed under M.C.R. 7.204(A), it suspends the final judgment until the trial court enters an order denying the motion. *Id.* But the motion must be both filed *and* denied to reset the time for appeal. M.C.R. 7.204(A). For that reason, exercise extreme caution in withdrawing such a motion. Doing so prevents the trial court from entering an order denying the motion to reset the time for appeal, and the time to file a claim of appeal from the original final order may have lapsed. *See* sections V.A. and XXII.B for appeal time limitations and requirements.

An order entered after the claim of appeal has been filed is not subject to review as an issue presented in the instant appeal. *Gracey v. Grosse Pointe Farms Clerk*, 182 Mich. App. 193, 197, 452 N.W.2d 471 (1989). Depending on the nature of the order, the court of appeals will review the order through a motion filed in the instant appeal or through a separate appeal. Though its jurisdiction is limited, the trial court retains concurrent jurisdiction to enter certain orders, such as bond and stay orders. *See* M.C.R. 7.208. Generally, if the rules provide that the trial court retains authority “except as the Court of Appeals otherwise orders,” then the court of appeals will review the trial court’s exercise of that authority by motion. *See, e.g.,* M.C.R. 7.208(F), 7.209(H)(2); sections IV.C, VIII.D, *infra*; *see generally* section VIII, *infra*. But if the trial court’s post-appeal order qualifies as a final order—such as an award of attorney fees under M.C.R. 7.208(I)—the aggrieved party must timely file a claim of appeal from that order. *See, e.g., McIntosh v. McIntosh*, 282 Mich. App. 471, 484, 768 N.W.2d 325 (2009) (holding that a trial court’s decision on a post-appeal motion for attorney fees is a final order requiring a separate claim of appeal); *but see John J. Fannon Co. v. Fannon Prods., LLC*, 269 Mich. App. 162, 165, 712 N.W.2d 731 (2006) (holding that an order awarding attorney fees is not a final order if it does not specify the amount to be paid).

**C. Discretionary Jurisdiction.** In addition to its mandatory jurisdiction, the court of appeals also exercises discretionary jurisdiction, which it may invoke in response to an application for leave to appeal. The court may grant leave to appeal from a judgment order of the circuit court, court of claims, or recorder’s court which is interlocutory; a final judgment entered by the circuit court or the recorder’s court on appeal from any other court; a final order of an administrative agency or tribunal which by law is appealable to or reviewable by the court of appeals or the Supreme Court; any judgment or order appealable to the court of appeals by law or rule; or any judgment or order when an appeal of right could have been taken but was not timely filed. M.C.R. 7.203(B).

The Michigan Supreme Court’s jurisdiction is mostly discretionary, and is similarly prompted by an application for leave to appeal or, in rare instances, a complaint for superintending control. M.C.R. 7.303. The court may review a case pending in the court of appeals or after decision by the court of appeals; review a final order of the Attorney Discipline Board; provide an advisory opinion; respond to a certified question; exercise superintending control; or exercise other jurisdiction as provided by the Michigan Constitution or by law. M.C.R. 7.303(B). However, the court must review a Judicial Tenure Commission order. M.C.R. 7.303(A).

**D. Certification to Other Courts.** The Supreme Court may, at its discretion, issue an opinion to answer a certified question from a Michigan court, a federal court, or another state’s appellate court. M.C.R. 7.308; Mich. Comp. Laws § 600.215(2). Michigan has not adopted the Uniform Certification of Questions of Law Act, and the Michigan Court Rules do not contemplate a Michigan court requesting certification from a non-Michigan court.

**Hot Tip:** Certification is rare. In the 1990s, the Michigan Supreme Court refused a number of Sixth Circuit requests for certification, and the Sixth Circuit now rarely asks.

#### IV. Initiating the Appeal in the Court of Appeals

**A. Notice of Appeal.** A “claim of appeal” as of right in a civil case must be filed within 21 calendar days of the date of entry of the final judgment, or 21 days after the date of entry of an order denying a post-judgment motion for relief. M.C.R. 7.204(A)(1). *Note that the time limit is only 14 calendar days following an order terminating parental rights.* M.C.R. 7.204(A)(1)(c). An appeal of right in a criminal case must be filed within 42 calendar days of the date a trial court enters its final judgment or decision on a timely post-judgment motion, with certain exceptions when an indigent defendant requests appointment of counsel. M.C.R. 7.204(A)(2). Michigan applies a “prison mailbox rule,” which deems a claim of appeal to be filed once an appellant inmate deposits it in the outgoing mail at the correctional institution. M.C.R. 7.204(A)(2)(e). Such a filing should include a sworn statement stating the date of deposit and that first-class postage was prepaid. *Id.*

**Hot Tip:** If you miss the jurisdictional deadline to file a claim of appeal, you can still file an application for leave to appeal.

The date of entry is the date that the final order is signed. M.C.R. 2.602(A)(2). If multiple post-judgment motions are filed within the jurisdictional appeal period, the time for filing an appeal of right will not begin to run until all such motions are resolved. *Barnard Mfg. Co., Inc. v. Gates Performance Eng’g, Inc.*, 285 Mich. App. 362, 368, 775 N.W.2d 618 (2009). By contrast, filing a subsequent motion for reconsideration, after an order on a timely motion for post-judgment relief is denied, does not continue to toll the time for filing an appeal from the final judgment unless the motion for reconsideration itself was filed within the jurisdictional time period for appealing the final judgment. *Allied Elec. Supply Co., Inc. v. Tenaglia*, 461 Mich. 285, 288–89, 602 N.W.2d 572 (1999).

The time limit for an appeal of right is jurisdictional and cannot be extended, either by stipulation or by the trial court. M.C.R. 7.204(A). In two-party cases, the court of

**Hot Tip:** The claim of appeal and the appeal fee are the only requirements to secure appellate jurisdiction. Failure to comply with any other requirement will result only in a defect letter from the Court of Appeals with a 21-day cure period.

appeals provides a standard form for filing the claim of appeal, *see*

<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/appeals/mc55.pdf>. In addition, the appellant must pay the fee specified by Mich. Comp. Laws § 600.321 (currently \$375).

The claim of appeal must identify the final judgment or final order appealed from, even if the reversible error arose in a prior or subsequent order. *Nye v. Gable, Nelson & Murphy*, 169 Mich. App. 411, 415–16, 425 N.W.2d 797 (1988). The final order is not necessarily the last order entered in the case. *Dean v. Tucker*, 182 Mich. App. 27, 30, 451 N.W.2d 571 (1990); *see* M.C.R. 7.202(6) (defining “final judgment” or “final order”). As mentioned above, the Court may review issues related to other orders in the case as part of the appeal from the final order.

The procedure for requesting leave to appeal is different and requires filing and service of an application, not a claim of appeal. *See* section XXI.B, *infra*. Though the court has authority to treat an appeal as reviewable where the wrong procedure is used, it exercises this authority only in rare circumstances, such as where the parties and the court have failed to notice or raise the defect until late in the appeal. *See, e.g., Newton v. Mich. State Police*, 263 Mich. App. 251, 259, 688 N.W.2d 94 (2004) (“[W]e choose to treat the defective claim of appeal as an application for leave to appeal and to grant leave to consider the substantive issue raised by the appeal.”), *overruled on other grounds by Watts v. Nevils*, 477 Mich. 856, 720 N.W.2d 755 (2006).

**B. Docketing Statement.** Within 21 days after filing the claim of appeal, the appellant must file a docketing statement. The court of appeals provides a form for this, *see* <http://courts.michigan.gov/Courts/COA/forms/Documents/Docketing%20Statement.pdf>, or <http://courts.michigan.gov/Courts/COA/forms/Documents/Docketing%20Statement%20for%20Domestic%20Relations.pdf> (for a domestic relations appeal). Failure to file the docketing statement will result in a defect letter from the court of appeals with a 21-day cure period.

**C. Bonds and Stays.** In general, absent a trial court order or agreement among the parties, a final judgment is stayed only 21 days. M.C.R. 2.614(A); M.C.R. 7.205(E)(3). The trial court retains authority over stays and bonds, unless the court of appeals orders otherwise. M.C.R. 7.208(F). A stay can be secured via an appropriate supersedeas or appeal bond, M.C.R. 3.604 (typically in the amount of 125 percent of the judgment), or by posting a liability insurance policy. Mich. Comp. Laws § 500.3036. The court rules do not specifically contemplate use of an irrevocable letter of credit as security for a stay, though trial courts routinely allow that practice. *See generally* John Bursch, *The Use of Irrevocable Letters of Credit in Lieu of Stay Bonds*, [http://www.wnj.com/irrevocable\\_letters\\_article\\_jjb/](http://www.wnj.com/irrevocable_letters_article_jjb/). The vehicle for reviewing a trial court’s stay bond decision is the filing of a motion in the court of appeals. M.C.R. 7.209(D).

**Hot Tip:** A Michigan appellant can obtain a stay pending appeal by posting a liability insurance policy in lieu of a bond or other security.

Special rules may apply to governmental entities. An appeal from an order denying governmental immunity will automatically stay any and all proceedings until a final resolution is reached in the appellate courts. M.C.R. 2.614(D). This is true even when a genuine issue of fact exists as to whether governmental immunity applies. In all other appeals, the trial court cannot require the governmental entity to post a bond as a condition to filing an appeal or to staying further proceedings in the trial court. M.C.R. 2.614(E).

**D. Other Initial Documents.** At the time of filing the notice of appeal, the appellant must also file a copy of the judgment or order appealed from; a copy of a certificate from the court reporter or a statement by the attorney that the transcript has been ordered; a proof of service; a true copy of the bond (if applicable); a copy of the register of actions of the lower court, tribunal, or agency; and a jurisdictional checklist, a form that the court of appeals provides, *see* <http://courts.michigan.gov/Courts/COA/forms/Documents/Jurisdictional%20Checklist.pdf>.

M.C.R. 7.204(C). If the case involves custody of a minor child or a dispute as to the validity of a provision of the Michigan Constitution, a Michigan statute, a rule or regulation of the Michigan Administrative Code, or any other action of the legislative or executive branch of state government, that fact must be stated in capital letters on the claim of appeal. M.C.R. 7.204(D)(3). In addition, the appellant must file with the trial court a copy of the claim of appeal; a fee (typically \$25); the bond (if applicable); and the court reporter certificate or statement by the attorney that the transcript has been ordered. M.C.R. 7.204(E).

**E. Docketing of the Appeal.** The court of appeals and Supreme Court maintain an electronic docket for all appeals which is searchable and accessible online at <http://courts.michigan.gov/courts/coa/pages/casesearch.aspx>. Docket entries in appeals to the Supreme Court from the court of appeals will also appear on the court of appeals docket. The Court of Appeals often takes a week or more to update the docket, depending on which district is responsible for the appeal.

**F. Intervention in Pending Appeals.** A party may intervene on appeal by filing an appropriate motion. M.C.R. 2.209.

## **V. Record Composition and Transmittal**

Once the court of appeals' initial requirements have been satisfied and the appropriate trial court transcripts have been ordered, the trial court is responsible for compiling and sending to the court of appeals the trial court record. That record includes original documents filed in the lower court, any transcripts, and exhibits introduced into evidence. M.C.R. 7.210(A)(1). Parties may file written stipulations about the record, M.C.R. 7.210(A)(4), though it is impermissible to add non-record evidence by stipulation. *Lorland Civic Ass'n v. Dimatteo*, 10 Mich. App. 129, 137–38, 157 N.W.2d 1 (1968). If your opponent attempts to submit non-record documents on appeal, the appropriate response is a motion to strike. John Bursch, *Striking Nonrecord Evidence*, [http://www.wnj.com/striking\\_nonrecord\\_evidence\\_jjb\\_article/](http://www.wnj.com/striking_nonrecord_evidence_jjb_article/).

## **VI. Appellate Mediation or Conference Programs.**

The Michigan Court of Appeals' Settlement Program was suspended in 2009 due to budget cuts.

## **VII. Filing and Service Requirements**

**A. Filing and E-filing.** All pleadings filed in Michigan trial courts must include a caption with the name, business address, telephone number, and state bar number of all attorneys who have appeared in the action. M.C.R. 2.113. Many Michigan appellate attorneys also follow this convention. All pleadings must also be signed, either by a Michigan attorney or an attorney admitted in Michigan *pro hac vice*. M.C.R. 7.2114(C). The signature certifies that the attorney has read the document; that the document is well grounded in fact and is warranted by existing

law or a good-faith argument for the extension, modification, or reversal of existing law; and that the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

E-filing is available in the court of appeals and Michigan Supreme Court through the ImageSoft TrueFiling system, but it remains voluntary for now. *See generally* [http://courts.mi.gov/opinions\\_orders/e-filing/pages/default.aspx](http://courts.mi.gov/opinions_orders/e-filing/pages/default.aspx).

**B. Service.** The appellant must serve her initial appeal filing on all counsel of record in the trial court. M.C.R. 7.204(C)(3). But a party who does not file an appearance within 14 days after being served with the claim of appeal is not entitled to notice of further proceedings until an appearance is filed. M.C.R. 7.204(G). Proof of service is governed by M.C.R. 2.104 and 2.107. Some or all parties to a case may agree to electronic service by email, following the procedures in M.C.R. 2.107(C)(4).

## VIII. Motions

**A. Motions in General.** A motion is made in the court of appeals by filing five copies of the motion; the entry fee, *see* Mich. Comp. Laws § 600.321 (currently \$100); and for a motion to dismiss, to affirm, or for peremptory reversal, five copies of a supporting brief. M.C.R. 7.211. A supporting brief may be filed with any other motion. A brief in support of a motion must conform to the court rule for appellate merits briefing, *see* sections X & XI, *infra*. *Id.* A party filing an answer to the motion must respond within 21 days after service for a motion to dismiss, to remand, or to affirm; within 35 days after service for a motion seeking peremptory reversal; within 56 days for a motion to withdraw as the appointed appellate attorney; within 14 days for a motion for reconsideration, to stay proceedings, to strike a pleading, to file an amicus brief, to hold an appeal in abeyance, or to reinstate an appeal; and within seven days for all other motions. M.C.R. 7.211(B).

Motions in the court of appeals are submitted on Tuesday of each week. M.C.R. 7.211(D). There is no oral argument on motions, unless the court so orders, *id.*, and such orders are rare, *but see, e.g., Gracey v. Grosse Pointe Farms Clerk*, 182 Mich. App. 193, 197, 452 N.W.2d 471 (1989). The court of appeals assigns a motion panel each month for each of the court's four district offices. The motions panel will resolve any motion unless it is purely administrative, *see* M.C.R. 7.211(E), in which case the motion can be decided by the chief judge or another designated judge acting alone. *Id.*

Except in rare instances, the court will resolve a motion, even motions for peremptory action, by issuing an order, often with little explanation of the court's decision. But "where the issue presented in the motion is of some importance and the court wishes to explain its action to the parties, the issue may be resolved by opinion instead of or in addition to an order." *Gracey*, 182 Mich. App. at 198, 452 N.W.2d 471.

**B. Motion for Extension of Time.** Michigan's appellate courts will not extend time to file a notice of appeal or application for leave to appeal (*see* section XXII.B.4 regarding late appeals), but may grant extensions for other filings. M.C.R. 7.216(B). To determine whether the time to file has expired, consult both the applicable court rule and M.C.R. 1.108. Except as discussed below, obtaining an extension of time requires the filing of a motion which shows good cause for delay or lack of culpable negligence of the party or attorney. M.C.R. 7.216.

For briefs, the court of appeals routinely grants extensions of time as a matter of policy. The parties may stipulate to a 28-day extension of the time to file an appellant's or appellee's brief by filing a signed stipulation with the appropriate court. M.C.R. 7.212(A)(1)(a)(iii), (2)(a)(ii). An additional 28-day extension will be granted as a matter of course upon filing a motion. Thus, a party may obtain an extension of up to 56 days from the court as a matter of policy, either by stipulation then motion, or by motion. I.O.P. 7.212(A). This extension of time to file a principal brief will even be granted retroactively, after the deadline has passed and the brief has been filed, but not after the case is noticed for case call. I.O.P. 7.212(A)(1)-2. The court of appeals will also routinely grant a motion to extend the deadline for a reply brief by an additional 14 days. I.O.P. 7.212(G)-1. Use the motion form found online.

The Supreme Court will frequently grant a motion requesting a two-week extension of the time to file a brief, but the court will not rule on the motion until after the party's brief is filed. The motion should be filed before the original brief deadline.

**C. Motion for Extension of Length.** A motion for leave to exceed the page limitations must be filed at least 21 days before the due date of the brief and will only be granted for "extraordinary and compelling reasons." M.C.R. 7.212(B).

**D. Motion for Stay or Injunction Pending Appeal.** A party may file a motion in the court of appeals or the Supreme Court to stay further trial court proceedings or stay execution of the trial court's or court of appeals' judgment. M.C.R. 7.209(D), (H), 7.305(I). But the court of appeals will not accept such a motion unless the party submits proof (i.e., a trial court order or hearing transcript) that it first requested such relief from the trial court or that the trial court lacked jurisdiction or authority to grant such relief. I.O.P. 7.209(A)(2); *see, e.g.*, Mich. Comp. Laws § 600.1041 (prohibiting stay of certain orders unless entered by the appellate court). A party may file a motion for ex parte stay whenever it is necessary to allow a motion in the trial court or court of appeals to be heard. M.C.R. 7.209(H).

The Supreme Court and court of appeals also have authority to suspend, modify, restore, or grant an injunction during the pendency of an appeal. M.C.R. 2.614(F), 7.216(A)(7), 7.316(A)(7). Again, it is imperative to seek such relief in the trial court first, before filing such a request in the court of appeals. *Cf.* I.O.P. 7.209(A)(2). When a stay bond or stay order has been filed in the court of appeals, it operates to stay proceedings through final disposition in the Supreme Court, unless otherwise ordered. M.C.R. 7.305(I).

**E. Motion for Immediate Consideration (Emergency Motion).** A party may file a motion for immediate consideration to expedite hearing on another motion. The motion must state facts showing why immediate consideration is required. M.C.R. 7.211(C)(6). An answer must be filed within seven days after service, or within such time as the court of appeals directs. M.C.R. 7.211(B). If the motion is served personally, it may be submitted to the court for decision immediately on filing. M.C.R. 7.211(C)(6). If mail service is used, motions may not be submitted to the court for decision until the first Tuesday seven days after the date of service, unless the party served acknowledges receipt. *Id.* To request immediate consideration, the movant must pay an additional filing fee. *See* Mich. Comp. Laws § 600.321 (currently \$200). The clerk's office appreciates a call before the motion for immediate consideration is filed.

**Hot Tip:** When filing a motion for immediate consideration, the clerk's office appreciates a call before the filing.

Though not specifically mentioned in the court rules, the Supreme Court will entertain a motion for immediate consideration of another motion or an application for leave to appeal.

**F. Motion for Peremptory Reversal or to Affirm.** A party may file a motion for peremptory reversal or motion to affirm in the court of appeals to obtain speedy resolution of the appeal when it is “manifest that the questions sought to be reviewed are so unsubstantial as to need no argument or formal submission.” M.C.R. 7.211(C)(3), (4). The decision to grant either such motion must be unanimous. A motion for peremptory reversal may be filed at any time, though it is best to file it early in the appeal. I.O.P. 7.211(C)(4). A motion to affirm can only be filed after the appellant files her brief. M.C.R. 7.211(C)(3). When emergency action is required, a motion for peremptory reversal accompanied by a motion for immediate consideration can prompt consideration of the merits shortly after filing the claim of appeal. I.O.P. 7.211(C)(4).

**G. Motion to Expedite Appeal.** When circumstances warrant speedy resolution of the appeal, but do not justify peremptory reversal, a party may file a motion to expedite appeal stating facts that demonstrate the urgency. I.O.P. 7.211(C)(6)-2. If granted, the court of appeals will assign the case priority status on the case call calendar and expedited handling in the research division. *Id.* If a decision by a specific date is desired, request it in the motion and state facts supporting the request. *Id.* If a decision by the date requested would require a shortened briefing schedule, propose a briefing schedule in the motion after consultation with all parties, and indicate such consultation in the motion. *Id.*

**H. Motion for Reconsideration or Rehearing.** See section XVII, *infra*.

**I. Local Practice.** Typically parties will not object to motions for additional time or length (though concurrence is not necessary, either). When filing an emergency motion (a motion accompanied by a motion for immediate consideration), the expected courtesy is to call the court and opposing counsel *before* filing.

## IX. Briefing Schedule

**A. Rules and Scheduling Orders.** Generally, appellants must file their principal brief within 56 days from the date that the claim of appeal is filed, leave to appeal is granted, or the transcript is filed *in the lower court*, whichever is later. M.C.R. 7.212(A); *see also* M.C.R. 7.312(E)(1). Time *does not* run from counsel’s receipt of the transcript. M.C.R. 7.212(A). Note the following two exceptions: First, the time for filing briefs in the court of appeals is shorter for child custody cases and criminal interlocutory appeals. Second, if substitute counsel is appointed in a criminal case, time runs from the date substitute counsel is appointed or the transcript is filed, whichever is later. M.C.R. 7.212(A).

The appellee’s brief must be filed within 35 days from the date of service (not the date of filing) of appellant’s brief. The date of service is the date the brief was hand delivered or deposited in the U.S. mail, M.C.R. 2.107(C), so calculate the brief deadline based on the appellant’s proof of service,

**Hot Tip:** If the appellant’s brief is filed before the transcript, appellees may file a motion to strike or compel the appellant to order the full transcript, if applicable. I.O.P. 7.212(A).

**Hot Tip:** The parties may stipulate to a 28-day extension for principal briefs, and will automatically receive an extension of up to 56 days from the Court as a matter of policy, either by stipulation then motion, or by motion. I.O.P. 7.212(A). Use the motion form found online.

not the date you actually received the brief.

Appellants may file a reply brief within 21 days from the date of service of appellee’s brief. M.C.R. 7.212(G); *see also* M.C.R. 7.312(E)(3).

In child custody cases and criminal interlocutory appeals, the appellant’s brief must be filed within 28 days, and the appellee’s brief must be filed within 21 days.

Late filing or service of a party’s brief will result in forfeiture of the right to participate in oral argument. M.C.R. 7.212(A)(4); 7.312(J)(3). (Consult M.C.R. 1.108 for information on calculating time for filing.) Should this occur, follow the procedures described in section XV.A, *infra*. As discussed in section IX.B, significant extensions of time to file briefs are routinely granted as a matter of policy in the court of appeals, and much shorter extensions are frequently granted in the Supreme Court.

**B. Cross-Appeals.** Additional briefs may be filed separately to address issues on cross-appeal. Cross-appeal briefs are subject to the same deadlines and requirements as the principal briefs. M.C.R. 7.212(E).

## X. Briefing Format and Citations

**A. Physical Requirements.** Unless otherwise ordered by the court, briefs in the Michigan Court of Appeals and Michigan Supreme Court are limited to 50 pages double-spaced (though Michigan appellate judges all say that shorter is better). The tables, indices, appendices, “Jurisdictional Statement,” and “Statement of Questions Involved” do not count against the 50-page limit. M.C.R. 7.212(B), 7.312(A); *see* I.O.P. 7.212(C). Quotations and footnotes may be single-spaced. Briefs must be written in 12-point or greater type with at least one-inch margins. Motions to file in excess of the page limit must be filed at least 21 days before the brief is due. M.C.R. 7.212(B). “Such motions are disfavored and will be granted only for extraordinary and compelling reasons.” *Id.* Any statement of facts or argument contained in an attachment to a brief, or in a brief incorporated by reference, will be counted against the page limit. I.O.P. 7.212(B).

**Hot Tip:** Any statement of facts or argument contained in an attachment to a brief, or in a brief incorporated by reference will be counted against the page limit.

**B. Citation Form Rules and Conventions.** Michigan has adopted the *Michigan Uniform System of Citation*, which deviates substantially from the standard in *The Bluebook: A Uniform System of Citation*. For instance, no periods may be used in the abbreviations of a citation (except for signals); parallel citations are separated by semicolons rather than commas; and introductory signals are not italicized. For example: *People v. Ferency*, 133 Mich. App. 526, 351 N.W.2d 225 (1984); *see, e.g., State v. Gallion*, 572 P.2d 683 (Utah 1977); 28 U.S.C. 1291; (Trial Tr 6). For court of appeals cases, the year of release for publication is the date of decision. The Michigan citation format deviates from *Bluebook* in a number of other ways as well. However, for matters not covered by the citation system, defer to *Bluebook*.

### C. Citable Authorities

All Michigan authorities are citable. The date of publication is the effective date for purposes of stare decisis. M.C.R. 7.215(J)(1). Do not rely on opinions published before November 1, 1990, to the exclusion of more recent cases or

**Hot Tip:** The court of appeals is not bound by its opinions that were published prior to November 1, 1990. M.C.R. 7.215(J)(1).

persuasive argument. Such decisions are not binding on the Court of Appeals.

Unpublished opinions of the Court of Appeals are not precedentially binding on any court. M.C.R. 7.215(C). A party may not cite an unpublished opinion for propositions of law for which there is published authority. *Id.* If unpublished opinions are cited in a filing, the party must explain why published authority is not adequate and how the opinion is relevant to the issues presented. *Id.* A copy must be supplied to the court and opposing parties with the filing. *Id.*

## XI. Brief Contents.

In general, briefs filed in calendar cases in the Michigan Court of Appeals and the Michigan Supreme Court must conform to the provisions of M.C.R. 7.212.

A. **Appellant’s Brief.** The appellant’s brief must contain the following sections in the order listed:

1. **Title Page.** The title page must state “**ORAL ARGUMENT REQUESTED**” or “**ORAL ARGUMENT NOT REQUESTED.**” If applicable, the title page must also include the following in capital letters or boldface type: “**THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.**” M.C.R. 7.212(C)(1). The court of appeals encourages use of the title-page form found on the court’s website at <http://courts.michigan.gov/Courts/COA/forms/Pages/Standard.aspx>.

**Hot Tip:** Oral argument is forfeited if not properly requested in accordance with the rules. If this should occur, follow the procedures set forth in Section XIV.A, *infra*.

2. **Table of Contents.** A table of contents is required and must list the subject headings in the brief. M.C.R. 7.212(C)(2).

3. **Table of Authorities.** A table of authorities is required, listing in alphabetical order the full citation of all case authorities cited, in addition to other authorities. M.C.R. 7.212(C)(3).

4. **Statement of the Basis of Jurisdiction.** The brief must state the basis of the court’s jurisdiction and include the following information: (1) the court rule or statute believed to confer jurisdiction on the court of appeals; (2) the date that the order or judgment appealed from was signed or entered into the lower court’s register of actions; (3) the date of any motion claimed to toll the time for appeal; and (4) as applicable, the date the request for appointment was filed, the date the claim of appeal was filed, or the date of the order granting leave to appeal or leave to proceed under M.C.R. 7.206. If the order appealed does not resolve all the claims against all the parties, then provide sufficient information for the court to determine whether it has jurisdiction. M.C.R. 7.212(C)(4).

5. **Statement of Questions Involved.** In Michigan, the statement of questions presented is treated as the pleading for purposes of appeal. Each issue must be numbered separately and be followed by the trial court’s answer or the statement that the trial court failed to answer it, and the appellant’s answer. When possible, answer with “Yes” or “No.” M.C.R. 7.212(C)(5). Draft the questions broadly enough to cover the strongest arguments for reversal, but not to so broadly as to be ineffective in

**Hot Tip:** Issues not presented in the “Statement of Questions Involved” are waived. *Brausch v. Brausch*, 283 Mich. App. 339, 770 N.W.2d 77 (2009).

focusing the court’s attention on the reversible error at hand. The questions presented are typically the court’s first impression of the merits of the appeal and should be carefully crafted.

**6. Statement of Facts.** The statement of facts must contain, at a minimum, specific citations to the record showing (a) the nature of the action, (b) the character of pleadings and proceedings, (c) the key evidence, while indicating which facts are in dispute, (d) the dates of important instruments and events, (e) the rulings and orders of the trial court, (f) the verdict and judgment, and (g) any other information necessary to deciding the questions involved. M.C.R. 7.212(C)(6). In contrast, briefs filed in the Michigan Supreme Court must refer to the appendix, rather than the record. M.C.R. 7.312(B).

**7. Summary of Argument.** In the Michigan Supreme Court, briefs exceeding 20 pages must include a summary of the argument that succinctly and clearly condenses the argument without merely repeating the headings in the argument. M.C.R. 7.312(B)(2). The clerks of the court will carefully examine every brief to ensure it includes a statement of the standard of review for each issue.

**8. Argument.** The argument section should include a separate header for each argument and state the applicable standard of review for each issue. Each header must state the principal point of the argument. Each statement of the standard of review must be supported with authority and specific page references to the record that show whether the issue was preserved for appeal. Facts must be supported with citations to the record. The text of statutes, rules, regulations, lower court decisions, or written instruments which are necessary to determining the issues on appeal must be reproduced in the brief or an addendum. M.C.R. 7.212(C)(7).

**Hot Tip:** The clerks of the court will carefully examine every brief to ensure it includes a statement of the standard of review for each issue.

**9. Statement of Relief Requested.** The statement of the relief requested must describe the language requested in the order from the court. M.C.R. 7.212(C)(8).

**10. Signature Block.** All briefs must be signed by at least one attorney of record. M.C.R. 2.114(C), 7.212(C)(9).

**11. Miscellaneous.** The court rules do not provide for an “Introduction” section, but it is standard practice to insert an Introduction before the “Statement of Facts” in the principal briefs and reply brief. A party’s brief may also state, at the conclusion of the brief, the reasons why oral argument should be heard and why the court’s ultimate opinion should be published under the standards enumerated in section XVII.C, *infra*. M.C.R. 7.214(E)(2); I.O.P. 7.215(B).

**12. Attachments to Brief.** All unpublished opinions and opinions from other states should be attached in an addendum to the brief. *See* M.C.R. 7.215(C). The trial court will send the entire record to the court of appeals; nonetheless, exhibits may be used to provide easy reference to key evidence or to lower court opinions. If the argument concerns sentencing, the appellants must send the presentence report to the court with the brief. M.C.R. 7.212(C)(7).

**B. Appellee’s Brief.** The appellee’s brief must conform to the same requirements as the appellant’s brief with two exceptions: First, the appellee must state whether the jurisdictional summary or standards of review in the appellant’s brief are complete and correct, and if they are not correct, provide a counterstatement of jurisdiction or

**Hot Tip:** In lieu of filing its own brief, a party may adopt another party’s brief and still participate in oral argument. I.O.P. 7.212-1.

standards of review with supporting authority. M.C.R. 7.212(D). Second, unless the appellee agrees with the appellant’s “Statement of Questions Involved” or “Statement of Facts,” the appellee must include a counterstatement of the questions involved and a counterstatement of facts pointing out the inaccuracies and deficiencies in the appellant’s statement of facts. *Id.* While the court rules provide that the appellant’s statement should not be repeated, it is standard practice for appellee’s counterstatement of facts to restate pertinent facts in order to tell the appellee’s story in a cohesive fashion.

**C. Reply Briefs.** Reply briefs are limited to 10 pages and may only be used to rebut the arguments in the appellee’s or cross-appellee’s brief. M.C.R. 7.212(G). Extensions of time to file a reply brief are granted by motion only, but a motion for a 14-day extension will be granted as a matter of policy. *Id.*

**D. Cross-Appeals.** Separate cross-appeal briefs are allowed. The cross-appellant’s brief must conform to the requirements for the appellant’s brief, and the cross-appellee’s brief must conform to the requirements for the appellee’s brief. M.C.R. 7.212(E); *see also* M.C.R. 7.312(G). For a detailed discussion of when a cross appeal is prudent or required under Michigan law, *see* John Bursch, *The Cross Appeal Revisited*, [http://www.wnj.com/cross\\_appeal\\_revisited\\_jjb\\_article/](http://www.wnj.com/cross_appeal_revisited_jjb_article/).

**E. Defective Briefs.** The court of appeals may strike a brief that does not substantially conform to the rules. M.C.R. 7.212(I). However, the clerk’s office typically will send a letter informing the party of the defect and allowing 14 days to cure, though the court has authority to strike the brief if it is substantially nonconforming. I.O.P. 7.212(I); *see* M.C.R. 7.212(I). Defects in a party’s brief will not always toll the filing deadline for another party’s brief. *E.g.*, I.O.P. 7.212(C), (G)-1. When in doubt, contact the clerk’s office. *Id.*

## **XII. Appendices and Excerpts of Record.**

The Michigan Supreme Court encourages an appellant and appellee to file an appendix. *See* M.C.R. 7.312(D). In the court of appeals, excerpts from the record may be attached to the appellant’s brief as exhibits. Do not file an appendix in the court of appeals.

**Hot Tip:** Pay careful attention to the content and formatting requirements for appendices under M.C.R. 7.312(D). Practitioners frequently fail to comply with those rules and improperly insert portions of the record that are irrelevant to the court’s decision.

**A. Process for Compiling.** The appellant and appellee are responsible for compiling their respective appendices. Alternatively, the parties may stipulate to prepare a joint appendix. M.C.R. 7.312(D)(3). While the rules also permit a stipulation that each party will prepare a supplemental appendix containing portions of the record not covered in the joint appendix, supplemental appendices are highly disfavored. If the parties cannot completely agree on the scope of the appendix, they should not file a joint appendix.

**B. Filing Procedures.** Appendices are filed with the principal briefs. M.C.R. 7.312(D).

**C. Content and Format.** Appendices must be bound separately from the brief and titled “Appellant’s Appendix” or “Appellee’s Appendix.” *See* M.C.R. 7.312(D)(2), (4) for a list of the specific items that must be included in the appendix and the order in which they must be organized. In the appellant’s appendix each page must be followed by the letter “a” (*e.g.*, 1a), and in the appellee’s appendix each page must be followed by the letter “b” (*e.g.*, 1b). *Id.*

Appellee’s appendix may only contain parts of the record that are not included in the Appellant’s appendix. M.C.R. 7.312(D)(4).

Appendices must be printed on both sides of the page (duplex printing). M.C.R. 7.312(D)(1). The pages of the appendix must be numbered separately from the brief. M.C.R. 7.312(D)(2). Each page of the appendix must display a header that briefly describes the character of the document, such as the name of the testifying witness or the nature of the document. *Id.* For example: “Trial testimony of Jane Doe”; “Sales Contract 5/12/04”; “Exhibit A to Motion for Summary Disposition”; “Trial Court Opinion 6/14/07.” The appendix must also have a cover page of heavy yellow paper containing a caption that conforms to the description in M.C.R. 7.312(D)(1).

An appendix that fails to substantially conform to the rules in M.C.R. 7.312(D) will be rejected and will not satisfy the time limitations for filing of appendices. M.C.R. 7.312(D), (J).

### **XIII. Amicus Curiae Practice**

**A. Participation as of Right or by Motion.** Generally, an amicus curiae brief may be filed only on leave granted by the court of appeals or the Michigan Supreme Court. M.C.R. 7.212(H); 7.312(H)(1). Participation in the Michigan Supreme Court is by right only if the brief is presented on behalf of the State of Michigan, its people, its agencies, or its officials by the attorney general; or on behalf of any political subdivision of the state by its legal officer, an authorized agent, or an association representing the political subdivision; or on behalf of the Prosecuting Attorneys Association of Michigan or Criminal Defense Attorneys of Michigan. M.C.R. 7.312(H)(2). In its order granting leave to appeal, the Michigan Supreme Court often invites specific organizations to participate as amici, including the Michigan Defense Trial Counsel and interested sections of the State Bar of Michigan. In that case, a motion is not required.

**Hot Tip:** Though not contemplated in the court rules, both appellate courts regularly grant motions to file amicus briefs on applications for leave to appeal. Increase your odds by submitting a proposed brief *with* the motion for leave to file the amicus brief.

**B. Timing.** The amicus brief must be filed within 21 days after the brief of the appellee is filed, unless otherwise directed by the court. M.C.R. 7.212(H), 7.312(H)(3).

**C. Content and Format.** Amicus briefs filed in the court of appeals and Michigan Supreme Court must conform to the length and form requirements of M.C.R. 7.212(B). Amicus briefs filed in the Michigan Supreme Court must also conform to the requirements in M.C.R. 7.312. These requirements are summarized in section XI.A, *supra*. Best practice is to also include a “Statement of Interest” after the tables discussing the amicus party’s interest in the case.

**D. Responses to Amicus Briefs.** Michigan’s court rules do not expressly provide for a response to an amicus brief. Leave to file a response may be requested by motion, I.O.P. 7.212(H), but such motions are not routinely granted.

### **XIV. Supplemental Authorities**

**A. Submission as of Right or By Motion.** Supplemental *published* authorities may be filed in the court of appeals without leave. A party may file a one-page, double-spaced, communication titled “supplemental authority” to present new authority that was released after the party

filed its brief. The caption may appear on the preceding page and the signature block on a subsequent page. Do not cite unpublished opinions. Also, do not raise new issues or repeat arguments or authority already found in the brief. Only discuss how the new authority applies to the case. Supplemental authority exceeding the one-page limit must be accompanied by a motion. *See generally* M.C.R. 7.212(F); I.O.P. 7.212(F)-1. If another new case is released after filing the first supplemental authority, the court will accept the subsequent supplemental authority. I.O.P. 7.212(F)-1.

In the Michigan Supreme Court, a party may file a supplemental authority as provided in M.C.R. 7.212(F). M.C.R. 7.312(I).

**B. Response.** A response to the supplemental authority may be filed by motion only. However, an opposing party is free to submit its own supplemental-authority communications.

## XV. Oral Argument

**A. Argument as of Right or by Motion; Waiver.** Though oral argument is typically granted if preserved, the court of appeals may dispose of any case without oral argument if the panel unanimously agrees that the dispositive issues have been authoritatively decided, oral argument would not aid the court, or the appeal lacks merit. M.C.R. 7.214(E).

The right to participate in oral argument is forfeited if a party's principal brief on appeal or cross-appeal is untimely or fails to request oral argument as described in section XI.A.1, *supra*. M.C.R. 7.214(A), 7.312(J)(3). Forfeiture can be avoided, however, in several ways. First, if the time to file has not expired, file an amended cover sheet. I.O.P. 7.214(A). Second, the parties may stipulate to a retroactive 28-day extension of the time to file a brief after the deadline has passed and the brief has been filed, but not after the case is placed on the session calendar for oral argument. I.O.P. 7.212(A)(1)-2. Third, a motion requesting oral argument that is filed before the case is placed on case call will be granted as a matter of policy if the party's brief was filed within the 56-day extension time normally permitted. I.O.P. 7.214(A). Finally, if the brief was filed after the normal extension period, a motion requesting oral argument may still be filed (though they are frequently denied), but it is best to wait until the case has been placed on the session calendar. *Id.*

**Hot Tip:** Motions requesting oral argument that are filed before the case is placed on case call will be granted if the party's *brief* was filed within the normal 56-day extension timeframe described in Section VIII.A, *supra*.

**B. Procedures for Granting and Calendaring Oral Argument.** Parties will be notified of the panel, date, time, location, and order in which the cases will be called at least 21 days before the first day of the session in which oral argument will be heard. M.C.R. 7.213(D), 7.214(C). The notice will indicate "oral argument preserved" next to each party who preserved the right to participate in oral argument. The notice will also indicate the deadline for filing motions related to the calendar. Currently, the average time from completion of briefing to oral argument is approximately nine months.

**C. Identification of Panel Members.** The notice of case call will identify the judges on the panel who will hear oral argument and decide the case. *See* M.C.R. 7.213(D).

**Hot Tip:** It is common for the court to call cases at the bottom of the case call an hour or two earlier than expected. Always be there at the beginning of the call and take other work in case things move slowly.

**D. *The Day of Argument.*** In the court of appeals, it is important to arrive before case call begins, even if the case is last on the case call. Frequently, parties in an earlier case will fail to appear or will settle, and the court will immediately proceed to the next case. Counsel who are not present when their case is called lose their opportunity to argue. When multiple parties on one side of the appeal are represented by separate counsel, the appellants or the appellees share the oral argument time allowed for their side of the appeal and are responsible for dividing that argument time between themselves.

In both the Supreme Court and the court of appeals, each party is generally allowed 30 minutes for argument, M.C.R. 7.214(B), 7.314(B)(1), and the appellant may reserve time for rebuttal. If only one side is represented, that side will only be permitted 15 minutes to argue. *Id.* The Court discourages counsel from using the entire 30 minutes.

In the Supreme Court, each party is allowed 15 minutes for a case being argued on application for leave to appeal. M.C.R. 7.314(B)(2).

## **XVI. Decisions**

**A. *Effective Date.*** An opinion or order of the court of appeals is its judgment. M.C.R. 7.215(E). Generally, the opinion is not effective until the time to file an application for leave to appeal in the Michigan Supreme Court has expired. M.C.R. 7.215(F)(1). But the court may order that its decision have immediate effect. M.C.R. 7.215(F)(2). Such an order typically appears at the end of the opinion.

**B. *Internal Procedures for Disposing of Cases.*** The court of appeals issues its opinions on Tuesdays and Thursdays of each week. The opinions are available online the following day, I.O.P. 7.215(E)(2), and at the One Court of Justice Blog, [www.ocjblog.com](http://www.ocjblog.com).

The State Court Administrative Office publishes reports and statistics concerning the performance of the Michigan Supreme Court, Michigan Court of Appeals, and lower courts. These reports may be found at <http://courts.mi.gov/education/stats/>. According to the latest report, over the last few years the Michigan Court of Appeals has decided approximately 90 percent of its cases within 18 months.

**C. *Draft Decisions.*** Michigan's appellate courts do not issue draft decisions.

**D. *Published or Unpublished Decisions.*** The court of appeals issues published and unpublished opinions. An opinion must be published if it accomplishes one of the following: establishes a new rule of law; construes, or determines the validity of, a provision of a constitution, statute, ordinance or rule; alters an existing rule of law or extends it to a new factual context; reaffirms a principle of law not applied in a recently reported decision; involves an issue of continuing public interest; criticizes existing law; or creates or resolves an apparent conflict of authority. M.C.R. 7.215(B). Requests for publication may be filed within 21 days of an unpublished opinion or within 21 days of a timely motion for reconsideration. Responses from other parties are due within 14 days of service. M.C.R. 7.215(D).

**Hot Tip:** The court of appeals often publishes a decision after release in response to a request for publication, but only a party may request publication. M.C.R. 7.215(D).

The court of appeals is only bound to follow its prior published opinions issued on or after November 1, 1990. M.C.R. 7.215(J)(1). For purposes of stare decisis and citation, the

effective date of the opinion is the date of publication. *Id.* Unpublished opinions of the court of appeals are not precedentially binding, M.C.R. 7.215(C); citation to such decisions is barred when on-point published authority is available.

Obviously, all Supreme Court decisions are precedentially binding on the lower courts. Even Supreme Court peremptory orders are binding precedent “when they can be understood.” *John J. Fannon Co. v. Fannon Prods., LLC*, 269 Mich. App. 162, 165, 712 N.W.2d 731 (2006).

## **XVII. Motions for Reconsideration, Rehearing, and Rehearing En Banc**

### **A. Motions for Reconsideration**

**1. Grounds.** The court of appeals will accept a motion for reconsideration of an order or an opinion if it is filed within 21 days of the date of the order or the date stamped on the opinion. M.C.R. 7.215(I). The motion must satisfy the standard set forth in M.C.R. 2.119(F)(3), by demonstrating a “palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” M.C.R. 7.215(I)(1). Timely filing a motion for reconsideration in the court of appeals will delay the effect of the judgment, unless the court of appeals orders that the judgment have immediate effect. M.C.R. 7.215(F).

In the Supreme Court, motions for reconsideration apply to orders only. To seek reconsideration of an opinion, the party should file a motion for rehearing, as discussed below. Timely filing a motion for reconsideration in the Supreme Court will not delay the effect of the order. M.C.R. 7.311(G). Effective January 1, 2014, the Supreme Court will apply the same “palpable error” standard as the court of appeals. See Administrative Order 2013-12.

**2. Briefing.** In the court of appeals, a motion for reconsideration must contain all facts, arguments, and citations to authorities in a single document that is no more than 10 pages long. A copy of the opinion or order to be reconsidered must be attached to the motion. An opposing party may file an answer, not to exceed seven pages, within 14 days after the motion is served. M.C.R. 7.215(I). The Supreme Court Rules do not impose a page limit, but the best practice is to comply with the limitations in the court of appeals. An answer to a motion for reconsideration may be filed in the Supreme Court at any time before an order is entered on the motion. M.C.R. 7.311(C). There is no oral argument in the court of appeals or the Supreme Court unless ordered by the court.

### **B. Motions for Rehearing**

**1. Grounds.** A party may file a motion for rehearing in the Supreme Court within 21 days after the date stamped on the opinion. Timely filing a motion for rehearing will delay issuance of the court’s judgment order until the motion is denied, or if granted, until at least 21 days after the court issues its opinion on rehearing. M.C.R. 7.311(F)(2). Effective January 1, 2014, the Supreme Court will apply the same “palpable error” standard to rehearing motions as the court of appeals applies to reconsideration motions. See Administrative Order 2013-12.

**2. Briefing.** The motion must include reasons why the court should modify its opinion. An opposing party may file an answer within 14 days of being served (date of mailing). M.C.R. 7.311(F). There is no oral argument unless ordered by the court.

**C. Special Panels (Rehearing En Banc).** Michigan's court rules do not contemplate motions for rehearing en banc. However, if a panel releases an opinion that indicates the panel's disagreement with a previous binding decision, the chief judge must initiate a process for determining whether to rehear the issue via a conflict resolution panel. Within 28 days, the chief judge will poll the judges on the court of appeals to determine whether the issue is outcome determinative and warrants rehearing by a conflict resolution panel. Following the poll, the court of appeals will issue an order reporting the result of the poll. If a special panel is convened, it will include seven judges who were not involved in the conflicting decisions, and the panel will limit its review to the specific issue in controversy. M.C.R. 7.215(J). If a special panel is convened, the parties may file supplemental briefs and are entitled to oral argument unless the panel unanimously agrees to dispense with oral argument.

**Hot Tip:** The process for rehearing en banc tolls the time for filing a motion for reconsideration or leave to appeal in the Michigan Supreme Court until the process has concluded and a final decision has been reached. No poll will take place and no special panel will convene once the Supreme Court has granted leave to appeal. M.C.R. 7.215(J).

## **XVIII. Costs and Attorney Fees**

**A. Taxable Costs.** The prevailing party in a civil case is entitled to certain costs. A verified bill of costs must be filed with the clerk and served on all other parties within 28 days after the dispositive order, opinion, or order denying reconsideration is mailed. Taxable costs include the printing of briefs, any appeal or stay bond, the transcript and necessary copies, documents required for the record on appeal, fees paid incident to the appeal, taxable costs allowed under Mich. Comp. Laws § 600.2441 in appeals to the Supreme Court, or those available under other applicable court rules. M.C.R. 7.219; *see also* M.C.R. 2.625 (generally governing taxation of costs); M.C.R. 7.319 (incorporating M.C.R. 7.219 by reference).

**B. Other Recoverable Expenses.** There are no other recoverable expenses under the appellate court rules.

**C. Attorney Fees.** At the appellate level, attorney fees (up to two times the actual fees) may be awarded as a sanction for vexatious appeals. M.C.R. 7.216(C), 7.316(C). In the court of appeals, a party seeking attorney fees must file a motion under M.C.R. 7.211(C)(8) within 21 days after the date of the order or opinion that disposes of the vexatious matter. A request for attorney fees contained in any other pleading (such as a brief) will not be treated as a motion under M.C.R. 7.211(C)(8). In the Michigan Supreme Court, the party must file a motion before the case is placed on the session calendar. M.C.R. 7.316(C). Counsel should also consider whether the applicable statute creating the right or cause of action at issue also provides for recovery of attorney fees, though such fees would typically be recovered in the trial court following resolution of all appeals.

**D. Objections and Replies.** Objections to a bill of costs must be filed within seven days of service of the bill of costs. M.C.R. 7.219.

## **XIX. Review in the Michigan Supreme Court**

### **A. Review by Leave Granted.**

**1. Timing.** A party has 42 days in civil cases, or 56 days in criminal cases, from the time the court of appeals mails notice of entry of its order, files its opinion, denies a timely motion for reconsideration, or disposes of the case following remand, to file an application for leave to appeal in the Michigan Supreme Court. The time limits above are reduced to 28 days in appeals from an order terminating parental rights. M.C.R. 7.305(C)(2). The Supreme Court will not consider requests or motions to extend the time to file.

When the court of appeals remands for further proceedings, a party has two options for seeking leave to appeal in the Michigan Supreme Court. The first option is to wait until the remand proceedings have concluded and the court of appeals has entered a final order disposing of the case following those proceedings. The second option is to appeal from the decision ordering further proceedings on remand or from the order denying reconsideration of that decision within 42 days in other civil cases, 28 days in appeals from an order terminating parental rights, or 56 days in criminal cases. M.C.R. 7.305(C)(5).

A party may file an application for leave to appeal *before* decision by the court of appeals (a “bypass” appeal) under certain rare circumstances, though such appeals are highly disfavored. In that case, the application for leave to appeal must be filed within 42 days after the claim of appeal, application for leave to appeal, or original action is filed in the court of appeals or the court of appeals enters an order granting an application for leave to appeal. M.C.R. 7.305(C)(1).

Late applications will not be accepted in the Michigan Supreme Court. M.C.R. 7.305(C)(4). Unlike the court of appeals, *there is no provision for a delayed application for leave to appeal in the Michigan Supreme Court.* The Court will, however, apply the prison mailbox rule discussed above in section V.A. *Id.*

**2. Content and Format.** The application for leave to appeal is the party’s opportunity to persuade the Michigan Supreme Court that the case should be reviewed on one or more of the grounds set forth in M.C.R. 7.305(B). Under M.C.R. 7.305(B), the application must demonstrate that:

- (1) the appeal calls into substantial question the validity of a legislative act;
- (2) the appeal involves “legal principles of major significance to the state’s jurisprudence”;
- (3) the decision of the court of appeals was clearly erroneous and will result in manifest injustice;
- (4) the decision conflicts with another decision of the court of appeals or the Michigan Supreme Court; or
- (5) the issue has “significant public interest” and the case is by or against a state entity.

**Hot Tip:** Applications and especially briefs in opposition to applications should focus on whether the application satisfies the grounds for granting discretionary review that M.C.R. 7.305(B) enumerates.

If the application is filed before the decision of the court of appeals, the applicant must also show that substantial harm will result from delay in adjudication, or that the appeal is from a ruling that invalidates a provision of the Michigan Constitution, a Michigan statute, or any other act of the legislative or executive branch of state government. M.C.R. 7.305(B)(4).

Applications for leave to appeal are limited to 50 pages and must conform to the formatting requirements for briefs filed in the court of appeals as detailed in section X.A, *supra*. M.C.R. 7.305(A)(1). The application must contain the following information:

***Statement of the Judgment or Order Appealed and Relief Sought.*** This statement is the Michigan Supreme Court’s first impression of the merits of the application. It should focus solely on the grounds for granting leave detailed above.

***Statement of Questions Presented.*** The application must include a statement of the questions that would be presented for review if leave to appeal were granted.

***Table of Contents.*** The table of contents must be formatted like briefs in the court of appeals. M.C.R. 7.305(A)(1)(c).

***Table of Authorities.*** The table of authorities must be formatted like briefs in the court of appeals. *Id.*

***Statement of Facts and Proceedings.*** The application should concisely state the essential proceedings and facts that militate reversal of the court of appeals’ decision, indicating which facts are in dispute, the dates of important instruments and events, the rulings and orders of the trial court, and the verdict and judgment. Each factual statement should be supported by a citation to the record. M.C.R. 7.305(A)(1)(d).

***Argument.*** Each argument should be prefaced with a header stating the principal point of the argument. For each issue, include a statement of the applicable standard of review with supporting authority and specific page references to the record that show whether the issue was preserved for appeal. Facts stated in the argument section must be supported with specific page references to the record. The text of statutes, rules, regulations, lower court decisions, or written instruments which are necessary to determining the issues on appeal must be reproduced in the brief or an addendum. If the argument concerns sentencing, the appellants must send the presentence report to the court with the brief. M.C.R. 7.305(A)(1)(e).

The information above should be presented in the order listed above. The application must also be accompanied by (1) 4 copies of any opinion, findings, or judgment of the trial court or tribunal and 4 copies of the opinion or order of the Court of Appeals, (2) a proof of service of the application on all other parties, (3) a notice of filing of the application on the court of appeals and trial court, and (4) the applicable fee. M.C.R. 7.305(A)(2)–(4). Like the court of appeals, the Michigan Supreme Court has authority to require correction of a nonconforming brief or strike a nonconforming brief. M.C.R. 7.305(F).

**3. Responses and Replies.** Any party may answer the application for leave to appeal by filing 4 copies (1 signed) of an answer and proof of service within 28 days of service of the application. M.C.R. 7.305(D). The appellant

**Hot Tip:** An opposing party should always file a brief in opposition because the Michigan Supreme Court enters a peremptory order on the application in a shockingly high percentage of all applications. Not filing an opposition brief may mean losing the opportunity to dissuade the court from entering an adverse peremptory decision.

may file a brief in reply to an answer, not to exceed 10 pages, limited to rebutting the arguments in the opposing brief. M.C.R. 7.305(E).

**4. Cross-Appeal.** Applications for leave to appeal as cross-appellant may be filed within 28 days after the appellant’s application is filed. The cross-appellant’s application is subject to the same requirements as the appellant’s application and must likewise justify review under the grounds detailed above and set forth in M.C.R. 7.305(A). M.C.R. 7.307(A).

**5. Process for Consideration and Disposition.** An application is initially reviewed by the Michigan Supreme Court Commissioner’s Office. The priority for assignment to a commissioner for review is determined by M.C.R. 7.305(C). Those not given priority are assigned on a first-in/first-out basis. The commissioner will prepare a report for the justices on each application, which quotes the issues stated by the appellant, summarizes the facts and arguments of the parties and rulings of the lower courts, and recommends an order to be issued or other action. The commissioner’s office reports to the justices on approximately 200 applications for leave to appeal each month. Most reports are considered on an “Order to Enter” basis, which means that unless one justice objects by the specified date, the order recommended by the commissioner automatically enters. *Supreme Court Processing of Cases and Administrative Matters* §§ D, E, at <http://courts.mi.gov/Courts/MichiganSupremeCourt/Clerks/ClerksOfficeDocuments/MSC%20Case%20Processing.pdf>.

Only one-third of all applications will ultimately be submitted for conference consideration, where the justices debate and decide what action to take on the application. Cases submitted for consideration at the weekly Thursday conference include those where one justice objected to the commissioner’s order or in which the commissioner’s recommendation is to grant leave or peremptory relief. At the conference, the court may decide to either deny leave to appeal, take peremptory action, ask the opposing party to respond, hold the case in abeyance, request a further analysis by a justice or the commissioner, place the case on a session calendar for oral argument on the application (discussed in more detail below), issue an opinion per curiam, or grant leave to appeal. Issuing an opinion per curiam or taking peremptory action requires five votes. All other decisions require only a majority of four votes. *Id.*

If the court schedules oral argument on the application, i.e., a “mini-oral argument” (“MOA”), it will ordinarily permit the parties to submit supplemental briefs, limited to 50 pages, which must be filed within 28 days. Each side will be permitted 15 minutes to argue. *Id.* Following argument, the court may decide the case or simply grant the application for further briefing and full merits arguments.

The Michigan Supreme Court receives approximately 2,500 applications each year but only grants leave to appeal in about 2 percent of all cases. *See Dawn Yeaton, Does the Michigan Supreme Court need a Midnight Visit from the Ghost of Chief Justice William Howard Taft?*, 13 Mich. App. Prac. J. 4, 5 (2009). For approximately 10 percent of all applications, the Michigan Supreme Court will enter an order other than denial of leave to appeal. *Id.* at 9 n.22.

**B. Further Briefing on Grant of Review.** Appellant’s brief and appendix must be filed within 56 days after leave to appeal is granted. M.C.R. 7.312(E)(1). Appellee’s brief must be filed within 35 days after being served

**Hot Tip:** The Michigan Supreme Court will frequently grant a motion requesting a two-week extension of the time to file a brief. The motion should be filed before the original brief deadline, but the court will not rule on the motion until after the party’s brief is filed.

appellant's brief and appendix. M.C.R. 7.312(E)(2). Each party must file 14 copies of the brief with the court, serve two copies on each attorney who has appeared on behalf of a separate party, serve one copy on the attorney general in a criminal case or in a case in which the state is a party of interest, and file a proof of service. M.C.R. 7.312(F).

Briefs filed in the Michigan Supreme Court must comply with the same formatting, length, and content requirements as briefs filed in the court of appeals, discussed in sections XI and XI, *supra*. In addition, the Michigan Supreme Court's rules require the brief to be printed on only one side of numbered pages. M.C.R. 7.312(A). Briefs in the Michigan Supreme Court must also have a cover page of heavy paper, formatted as described in M.C.R. 7.312(C), and colored blue for appellant, red for appellee, green for intervenor or amicus curiae, and gray for any reply brief. Of course, when e-filing, no colored cover page is required.

The issues to be argued on appeal are limited to those raised in the application, unless the court further limits or expands the issues on appeal in its order granting the application. M.C.R. 7.305(H)(4)(a). The court may grant a motion requesting to brief and argue additional issues not raised in the application or in the order granting leave to appeal. M.C.R. 7.305(H)(4)(b).

If a case has not been decided by the end of the term in which it was orally argued, a party may file a supplemental brief. *See* M.C.R. 7.313(E).

**C. Oral Argument.** The Michigan Supreme Court has absolute discretion to direct a case to be submitted on the briefs without oral argument. M.C.R. 7.31(B)(2). Oral argument is typically permitted, and the Michigan Supreme Court will notify the parties at least 21 days before the first day of the monthly session of the date, time, and order in which the cases will be heard. M.C.R. 7.313(B), (C); 7.314(A). The Michigan Supreme Court publishes online its calendar of cases pending oral argument or decision and provides summaries of the cases, as well as links to the merits briefs at <http://courts.mi.gov/courts/michigansupremecourt/oral-arguments/pages/default.aspx>.

To preserve oral argument, a party must advise the clerk of its desire to participate in oral argument at least 21 days before the first day of the session in which the case will be heard. M.C.R. 7.313(B)(2). If neither party preserves the right to oral argument, the case will be submitted on the briefs. *Id.* Preserving the right to participate in oral argument and the time allotted for oral argument are further discussed in section XV, *supra*.

**D. Disposition.** All of the cases granted leave to appeal that are orally argued in a term are expected to be decided by the close of that term on July 31 of each year.

**Hot Tip:** If a case has not been decided by the end of the term in which it was orally argued, a party may file a supplemental brief. The case can also be scheduled for resubmission by requesting re-argument within 14 days after the beginning of the new term. M.C.R. 7.313(E).

## **XX. Mandate.**

Michigan's appellate courts do not issue mandates.

## **XXI. Interlocutory Review**

**A. *Interlocutory Appeals as of Right.*** Michigan appellate courts do not hear appeals of interlocutory orders or judgments as of right. Appeals of right are only available from final orders. M.C.R. 2.604(A), 7.203(A). However, the court rules define certain otherwise interlocutory orders as “final orders.” M.C.R. 7.202(6)(a). For instance, an order denying governmental immunity is a final order. M.C.R. 7.202(6)(a)(v). In receivership and similar actions, if the trial court expressly determines there is no just reason for delay, it may direct that an otherwise interlocutory order constitutes a final order. M.C.R. 2.604(B).

**B. *Appeals by Leave Granted.*** The Michigan Court of Appeals may grant leave to appeal from the following: an interlocutory order, a final order not timely appealed as of right, a final order of a circuit court on appeal from another court or agency, a final order of an administrative agency or tribunal which is by law appealable to the court of appeals or Michigan Supreme Court, or any other judgment appealable to the court of appeals by law. M.C.R. 7.203(B). Denial of leave to appeal an interlocutory order will not preclude the appellate courts from ultimately reviewing the issue on appeal from the final order or final judgment. *Great Lakes Realty Corp. v. Peters*, 336 Mich. 325, 328–29, 57 N.W.2d 901 (1953).

**1. *Timing.*** Applications to the Michigan Court of Appeals must be filed within 21 days from the date of entry of the order or judgment appealed. M.C.R. 7.205(A). If a post-judgment motion for new trial, reconsideration, or other relief from the order or judgment appealed is timely filed in the trial court within 21 days from the order sought to be appealed, the time to file an application for leave to appeal runs from the date of entry of the trial court’s order on the post-judgment motion. *Id.* The court will apply the prison mailbox rule discussed above in section V. *Id.*

**2. *Form and Content of the Application.*** An application for leave to appeal in the court of appeals must contain the following sections:

***Statement of the Judgment or Order Appealed and Relief Sought.*** Concisely describe the date and nature of the judgment appealed from, the allegations of error, and, if the appeal is interlocutory, the substantial harm that the appellant would suffer by waiting for a final order. M.C.R. 7.205(B)(1). As in the Michigan Supreme Court, this statement should be carefully crafted, as it is the court’s first impression of the merits of the application.

***Argument conforming to M.C.R. 7.212(C).*** This requirement essentially incorporates the content requirements for principal briefs. The application should therefore include all components of a brief. The statement of facts and material proceedings and the argument should include specific citations to the record or transcript if one is available. *Id.* See also sections X and XI, *supra*, describing the requirements for principal briefs.

***Statement of Substantial Harm in Awaiting Final Judgment.*** In an interlocutory appeal, state the facts which show that the appellant would suffer substantial harm if forced to wait for a final judgment. *Id.*

**3. *Filing.*** The signed application for leave to appeal and four copies must be filed along with the following:

- (1) five copies of the judgment or order appealed from;

- (2) five copies of the register of actions of the lower court;
- (3) five copies of any opinion or findings of the lower court, tribunal, or agency;
- (4) five copies of any opinion or findings reviewed by the lower court, tribunal, or agency;
- (5) portions of the transcript described in M.C.R. 7.205(C)(4) or the certificate of the court reporter or statement of the appellant's attorney that the transcript has been requested or that there is no record to be transcribed;
- (6) in an appeal from probate court, the probate court's certification of the issue;
- (7) proof of service; and
- (8) the entry fee.

M.C.R. 7.205(B). If the application is not timely filed, a late application for leave to appeal must then be filed in accordance with M.C.R. 7.205(F), as further described below. If any of the other documents or the correct entry fee are not timely filed, a computer-generated letter will advise the applicant of the defect and require the applicant to cure the defect within 21 days to avoid dismissal of the appeal. I.O.P. 7.205-6.

**4. Late Appeals.** If an appeal as of right or an application for leave to appeal is not timely filed, an appellant may file a delayed application for leave to appeal to the Michigan Court of Appeals up to six months after entry of the order or judgment appealed. M.C.R. 7.205(F)(1), (3). If a post-judgment motion for new trial, rehearing or reconsideration, or other relief from the order or judgment appealed is timely filed in the trial court, the six-month time to file a delayed application for leave to appeal runs from entry of the order on the post-judgment motion. *Id.* In criminal cases, special exceptions apply to this general six-month limitation where a timely post-judgment or post-sentencing motion is filed, or an indigent makes a delayed request for appointment of counsel. M.C.R. 7.205(F)(2), (4).

If the court of appeals dismisses an appeal for lack of jurisdiction within 21 days before the expiration of the 6-month late application period, or after the 6-month period has expired, a party may still file a delayed application for leave to appeal within 21 days of the dismissal or within 21 days of a timely motion for reconsideration of the dismissal. M.C.R. 7.205(F)(5).

When parental rights are terminated, the limit for filing a late appeal is 63 days. M.C.R. 7.205(F); *see* M.C.R. 3.993(C)(2).

In addition to filing all of the documents required for a regular application for leave, a party filing a delayed application must include 5 copies of a statement of facts explaining the delay and serve one copy of that statement on all other parties. *Id.* If relying on the provision in M.C.R. 7.205(F)(5), note the prior claim of appeal and its dismissal.

**5. Answer.** Any party may file an answer within 21 days of being served with the application. M.C.R. 7.205(C). The answer should resemble and conform to the requirements of an appellee's brief. *Id.*

**Hot Tip:** The clerk's office may, and routinely does, accept answers after 21 days, unless there is insufficient time to forward the answer to the panel before it disposes of the application. I.O.P. 7.205(C)-2.

**6. Reply to Answer.** The court rules do not presently provide for filing a reply to the answer. However, a reply brief may be filed along with

a motion requesting leave to file a reply. I.O.P. 7.205(C)-3. As of January 1, 2014, a reply brief may be filed as a matter of course, without requesting leave. See Administrative Order 2011-31.

**C. *Emergency Application for Leave.*** An appellant may file an application for emergency appeal in the court of appeals. If the order appealed requires action from the court within 56 days of the date the application is filed, a prominent notice must be given on the cover of the application along with the date by which action is required. M.C.R. 7.205(E).

If an applicant requires a hearing in less than 21 days, the appellant must file a motion for immediate consideration explaining why an immediate hearing is required. *Id.* If the application and motion are personally served on counsel for all parties under M.C.R. 2.107(C)(1) or (2), the application may be heard by the court immediately on filing. *Id.* If it is mailed, it will not be heard until the first Tuesday at least seven days after the application and motion were mailed, unless the party served acknowledges service before then. *Id.*

**Hot Tip:** Though not specifically mentioned in the court rules, the Michigan Supreme Court will entertain a motion for immediate consideration of another motion or an application for leave to appeal.

When an emergency application is received that requires action in less than 21 days, the court will contact opposing counsel by phone to advise when the motion will be submitted and to ask whether an answer will be filed. If opposing counsel will affirm in writing that the action sought to be stayed will be voluntarily delayed until after the court rules on the emergency application, then the submission may be delayed to provide opposing counsel additional time to answer the application and give the panel more time to carefully review the matter before ruling. If delay of the action is not possible, the opposing party may file a rudimentary response, with copies of all pleadings on which the trial court's ruling was based, as its answer to the application. I.O.P. 7.205(E)(2)-1.

**D. *Extraordinary Writs.*** The Michigan Court Rules allow the filing of a complaint for superintending control, mandamus, habeas corpus, or quo warranto in the Michigan Court of Appeals. M.C.R. 7.206. Aside from the specific requirements and deadlines under M.C.R. 7.206, the general rules of pleading under M.C.R. 2.111–2.114 apply. M.C.R. 7.206(A). Whereas a complaint against trial court actions or inactions should be filed in the court of appeals, the Michigan Supreme Court has original jurisdiction to hear matters involving the administrative supervision of the courts. *Lapeer County Clerk v. Lapeer Cir. Judges*, 465 Mich. 559, 640 N.W.2d 567 (2002).

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