

Section 9: Selected Michigan Court Rules

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Section 9: Selected Michigan Court Rules

The following **excerpts** from Michigan Court Rules are the most relevant to the court reporter or recorder; however, it is recommended that the court reporter or recorder have access to all the rules. Even though this manual is revised quarterly, the court reporter, recorder, or operator should check for up-to-date court rules at: <http://courtofappeals.mijud.net/rules/>.

Chapter 1: Rules on Civil Procedure

A. Subchapter 2.300 Discovery

Rule 2.302 General Rules Governing Discovery

(B) Scope of Discovery.

(3) Trial Preparation; Materials.

- (b) Without the showing required by subrule (B)(3)(a), a party or a nonparty may obtain a statement concerning the action or its subject matter previously made by the person making the request. A nonparty whose request is refused may move for a court order. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.
- (c) For purposes of subrule (B)(3)(b), a statement previously made is
 - (i) a written statement signed or otherwise adopted or approved by the person making it; or
 - (ii) a stenographic, mechanical, electrical, or other recording, or a transcription of it, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(H) Filing and Service of Discovery Materials.

- (1) Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the court except as follows:
 - (a) If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;
 - (b) If discovery materials are to be used at trial they must be either filed or made an exhibit;
 - (c) The court may order discovery materials to be filed.

- (2) Copies of discovery materials served under these rules must be served on all parties to the action, unless the court has entered an order under MCR 2.107(F).
- (3) On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.
- (4) Removal and destruction of discovery materials are governed by MCR 2.316.

Rule 2.304 Persons Before Whom Depositions May be Taken

(A) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken

- (1) before a person authorized to administer oaths by the laws of Michigan, the United States, or the place where the examination is held;
- (2) before a person appointed by the court in which the action is pending; or
- (3) before a person on whom the parties agree by stipulation under MCR 2.302(F)(1).

A person acting under subrule (A)(2) or (3) has the power to administer oaths, take testimony, and do all other acts necessary to take a deposition.

(B) In Foreign Countries. In a foreign country, depositions may be taken

- (1) on notice before a person authorized to administer oaths in the place in which the examination is held, by either the law of that place or of the United States; or
- (2) before a person commissioned by the court, and a person so commissioned has the power by virtue of the commission to administer a necessary oath and take testimony; or
- (3) pursuant to a letter rogatory.

A commission or a letter rogatory may be issued on motion and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in another manner is impracticable or inconvenient; both a commission and a letter rogatory may be issued in a proper case. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [name of country]." Evidence obtained in response to a letter rogatory need not be excluded merely because it is not a verbatim transcript or the testimony was not taken under oath, or because of a similar departure from the requirements for depositions taken within the United States under these rules.

(C) Disqualification for Interest. Unless the parties agree otherwise by stipulation in writing or on the record, a deposition may not be taken before a person who is

- (1) a relative or employee of or an attorney for a party,
- (2) a relative or employee of an attorney for a party, or
- (3) financially interested in the action.

Rule 2.306 Depositions on Oral Examination

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; Conferring With Deponent.

- (1) Examination of Deponent.
 - (a) The person before whom the deposition is to be taken must put the witness on oath.
 - (b) Examination and cross-examination of the witness shall proceed as permitted at a trial under the Michigan Rules of Evidence.
 - (c) In lieu of participating in the oral examination, a party may send written questions to the person conducting the examination, who shall propound them to the witness and record the witness's answers.
- (2) Recording of Deposition. The person before whom the deposition is taken shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness.
 - (a) The testimony must be taken stenographically or recorded by other means in accordance with this subrule. The testimony need not be transcribed unless requested by one of the parties.
 - (b) While the testimony is being taken, a party, as a matter of right, may also make a record of it by nonsecret mechanical or electronic means, except that video recording is governed by MCR 2.315. Any use of the recording in court is within the discretion of the court. A person making such a record must furnish a duplicate of the record to another party at the request and expense of the other party.
- (3) Recording by Nonstenographic Means. The court may order, or the parties may stipulate, that the testimony at a deposition be recorded by other than stenographic means.
 - (a) The order or stipulation must designate the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A deposition in the form of a recording may be filed with the court as are other depositions.
 - (b) If a deposition is taken by other than stenographic means on order of the court,

a party may nevertheless arrange to have a stenographic transcription made at that party's own expense.

- (c) Before a deposition taken by other than stenographic means may be used in court it must be transcribed unless the court enters an order waiving transcription. The costs of transcription are borne by the parties as determined by the court.
- (d) Subrule (C)(3) does not apply to video depositions, which are governed by MCR 2.315.

(4) Objections During Deposition.

- (a) All objections made at the deposition, including objections to

- (i) the qualifications of the person taking the deposition,
- (ii) the manner of taking it,
- (iii) the evidence presented, or
- (iv) the conduct of a party,

must be noted on the record by the person before whom the deposition is taken.

Subject to limitations imposed by an order under MCR 2.302(C) or subrule (D) of this rule, evidence objected to on grounds other than privilege shall be taken subject to the objections.

- (b) An objection during a deposition must be stated concisely in a civil and nonsuggestive manner.
- (c) Objections are limited to
 - (i) objections that would be waived under MCR 2.308(C)(2) or (3), and
 - (ii) those necessary to preserve a privilege or other legal protection or to enforce a limitation ordered by the court.

(5) Conferring with Deponent.

- (a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).
- (b) A deponent may not confer with another person while a question is pending, except to confer with counsel to decide whether to assert a privilege or other legal protection.

(D) Motion to Terminate or Limit Examination; Sanctions; Asserting Privilege.

- (1) **Motion.** At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in a manner unreasonably to annoy, embarrass, or oppress the deponent or party, or that the matter inquired about is privileged, a court in which the action is pending or the court in the county or district where the deposition is being taken may order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in MCR 2.302(C). If the order entered terminates the examination, it may resume only on order of the court in which the action is pending.
 - (2) **Sanctions.** On motion, the court may impose an appropriate sanction—including the reasonable expenses and attorney fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of deponent or otherwise violates this rule.
 - (3) **Suspending Deposition.** On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for an order. MCR 2.313(A)(5) applies to the award of expenses incurred in relation to the motion.
 - (4) **Raising Privilege before Deposition.** If a party knows before the time scheduled for the taking of a deposition that he or she will assert that the matter to be inquired about is privileged, the party must move to prevent the taking of the deposition before its occurrence or be subject to costs under subrule (G).
 - (5) **Failure to Assert Privilege.** A party who has a privilege regarding part or all of the testimony of a deponent must either assert the privilege at the deposition or lose the privilege as to that testimony for purposes of the action. A party who claims a privilege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition. A party who asserts a privilege regarding medical information is subject to the provisions of MCR 2.314(B).
- (E) Exhibits.** Documents and things produced for inspection during the examination of the witness must, on the request of a party, be marked for identification and annexed to the deposition, if practicable, and may be inspected and copied by a party, except as follows:
- (1) The person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals.
 - (2) If the person producing the materials requests their return, the person conducting the examination or the stenographer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition. A party may move for an order that the original be annexed to and filed with the deposition, pending final disposition of the action.

(F) Certification and Transcription; Filing; Copies.

- (1) If transcription is requested by a party, the person conducting the examination or the stenographer must certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. A deposition transcribed and certified in accordance with subrule (F) need not be submitted to the witness for examination and signature.
- (2) On payment of reasonable charges, the person conducting the examination shall furnish a copy of the deposition to a party or to the deponent. Where transcription is requested by a party other than the party requesting the deposition, the court may order, or the parties may stipulate, that the expense of transcription or a portion of it be paid by the party making the request.
- (3) Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall, after transcription and certification:
 - (a) securely seal the transcript in an envelope endorsed with the title and file number of the action and marked "Deposition of [name of witness]", and promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk of that court for filing;
 - (b) give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

(G) Failure to Attend or to Serve Subpoena; Expenses.

- (1) If the party giving the notice of the taking of a deposition fails to attend and proceed with the deposition and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred in attending, including reasonable attorney fees.

Rule 2.307 Depositions on Written Questions

- (B) Taking of Responses and Preparation of Record.** A copy of the notice, any stipulation, and copies of all questions served must be delivered by the party who proposed the deposition to the person before whom the deposition will be taken as stated in the notice. The person before whom the deposition is to be taken must proceed promptly to take the testimony of the witness in response to the questions, and, if requested, to transcribe, certify, and file the deposition in the manner provided by MCR 2.306(C), (E), and (F), attaching the copy of the notice, the questions, and any stipulations of the parties.

Rule 2.308 Use of Depositions in Court Proceedings**(C) Effect of Errors or Irregularities in Depositions.**

- (1) **Notice.** Errors or irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving notice.
- (2) **Disqualification of Person Before Whom Taken.** Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
- (3) **Taking of Deposition.**
 - (b) Errors and irregularities occurring at the deposition in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any other kind which might be cured if promptly presented, are waived unless seasonable objection is made at the taking of the deposition.
- (4) **Certification, Transcription, and Filing of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom it was taken are waived unless a motion objecting to the deposition is filed within a reasonable time.
- (5) **Harmless Error.** None of the foregoing errors or irregularities, even when not waived, or any others, preclude or restrict the use of the deposition, except insofar as the court finds that the errors substantially destroy the value of the deposition as evidence or render its use unfair or prejudicial.

Rule 2.315 Video Depositions

- (A) **When Permitted.** Depositions authorized under MCR 2.303 and 2.306 may be taken by means of simultaneous audio and visual electronic recording without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this rule.
- (B) **Rules Governing.** Except as provided in this rule, the taking of video depositions is governed by the rules governing the taking of other depositions unless the nature of the video deposition makes compliance impossible or unnecessary.
- (C) **Procedure.**
 - (1) A notice of the taking of a video deposition and a subpoena for attendance at the deposition must state that the deposition is to be visually recorded.
 - (2) A video deposition must be timed by means of a digital clock or clocks capable of

displaying the hours, minutes, and seconds. The clock or clocks must be in the picture at all times during the taking of the deposition.

- (3) A video deposition must begin with a statement on camera of the date, time, and place at which the recording is being made, the title of the action, and the identification of the attorneys.
- (4) The person being deposed must be sworn as a witness on camera by an authorized person.
- (5) More than one camera may be used, in sequence or simultaneously.
- (6) The parties may make audio recordings while the video deposition is being taken.
- (7) At the conclusion of the deposition a statement must be made on camera that the deposition is completed.

(D) Custody of Tape and Copies.

- (1) The person making the video recording must retain possession of it. The video recording must be securely sealed and marked for identification purposes.
- (2) The parties may purchase audio or audio-visual copies of the recording from the operator.

(E) Filing; Notice of Filing. If a party requests that the deposition be filed, the person who made the recording shall

- (1) file the recording with the court under MCR 2.306(F)(3), together with an affidavit identifying the recording, stating the total elapsed time, and attesting that no alterations, additions, or deletions other than those ordered by the court have been made;
- (2) give the notice required by MCR 2.306(F)(3), and
- (3) serve copies of the recording on all parties who have requested them under MCR 2.315(D)(2).

(F) Use as Evidence; Objections.

- (1) A video deposition may not be used in a court proceeding unless it has been filed with the court.
- (2) Except as modified by this rule, the use of video depositions in court proceedings is governed by MCR 2.308.
- (3) A party who seeks to use a video deposition at trial must provide the court with either

- (a) a transcript of the deposition, which shall be used for ruling on any objections, or
 - (b) a stipulation by all parties that there are no objections to the deposition and that the recording (or an agreed portion of it) may be played.
- (4) When a video deposition is used in a court proceeding, the court must indicate on the record what portions of the recording have been played. The court reporter or recorder need not make a record of the statements in the recording.
- (G) Custody of Video Deposition After Filing.** After filing, a video deposition shall remain in the custody of the court unless the court orders the recording stored elsewhere for technical reasons or because of special storage problems. The order directing the storage must direct the custodian to keep the recordings sealed until the further order of the court. Video depositions filed with the court shall have the same status as other depositions and documents filed with the court, and may be reproduced, preserved, destroyed, or salvaged as directed by order of the court.
- (H) Appeal.** On appeal the recording remains part of the record and shall be transmitted with it. A party may request that the appellate court view portions of the video deposition. If a transcript was not provided to the court under subrule (F)(3), the appellant must arrange and pay for the preparation of a transcript to be included in the record on appeal.
- (I) Costs.** The costs of taking a video deposition and the cost for its use in evidence may be taxed as costs as provided by MCR 2.625 in the same manner as depositions recorded in other ways.

Chapter 2: Rules for Proceedings in District Court

A. Subchapter 4.200 Landlord-Tenant Proceedings; Land Contract Forfeiture

Rule 4.201 Summary Proceedings to Recover Possession of Premises

- (E) Recording.** All landlord-tenant summary proceedings conducted in open court must be recorded by stenographic or mechanical means, and only a reporter or recorder certified under MCR 8.108 (G) may file a transcript of the record in a Michigan court.

Chapter 3: Rules for Proceedings in Probate Court and Family Division of Circuit Court

A. Subchapter 5.100 General Rules of Pleading and Practice

Rule 5.162 Form and Signing of Judgments and Orders

- (A) Form of Judgments and Orders.** A proposed judgment or order must include the name, address, and telephone number of the attorney or party who prepared it. All

judgments and orders of the court must be typewritten or legibly printed in ink and signed by the judge to whom the proceeding is assigned.

B. [Subchapter 5.800 Appeals](#)

Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A) **Procedure.** Except as modified by this subchapter, chapter 7 of these rules governs appeals from the probate court.

(B) **Record.**

- (1) An appeal from the probate court is on the papers filed and a written transcript of the proceedings in the probate court or on a record settled and agreed to by the parties and approved by the court. The appeal is not de novo.
- (2) The probate register may transmit certified copies of the necessary documents and papers in the file if the original papers are needed for further proceedings in the probate court. The parties shall not be required to pay for the copies as costs or otherwise.

C. [Subchapter 3.600 Miscellaneous Proceeding](#)

Rule 3.615 Parental Rights Restoration Act Proceedings

(A) **Applicable Rules.** A proceeding by a minor to obtain a waiver of parental consent for an abortion shall be governed by the rules applicable to civil proceedings except as modified by this rule.

(B) **Confidentiality, Use of Initials, Private File, Reopening.**

- (1) The court shall assure the confidentiality of the file, the assistance given the minor by court personnel, and the proceedings.
- (2) If requested by the minor, the title of the proceeding shall be by initials or some other means of assuring confidentiality. At the time the petition is filed, the minor shall file a Confidential Information Sheet listing the minor's name, date of birth, permanent residence, title to be used in the proceeding and the method by which the minor may be reached during the pendency of the proceeding. The Confidential Information Sheet and all other documents containing identifying information shall be sealed in an envelope marked confidential on which the case number has been written and placed in a private file. Confidential information shall not be entered into a computer file.
- (3) The court shall maintain only one file of all papers for each case. The file shall be inspected only by the judge, specifically authorized court personnel, the minor, her attorney, her next friend, the guardian ad litem, and any other person authorized by the minor. After the proceedings are completed, the file may be opened only by order of the court for good cause shown and only for a purpose specified in the

order of the court.

- (4) The file of a completed case shall not be destroyed until two years after the minor has reached the age of majority. The court shall not microfilm or otherwise copy the file.

(J) Hearing.

- (1) **Burden and Standard of Proof.** The petitioner has the burden of proof by preponderance of the evidence and must establish the statutory criteria at a hearing.
- (2) **Closed Hearing.** The hearing shall be closed to the public. The court shall limit attendance at the hearing to the minor, the minor's attorney, the next friend, the guardian ad litem, persons who are called to testify by the minor or with the minor's consent, necessary court personnel and one support person who would not be disqualified as a next friend by MCL 722.902(d).
- (3) All relevant and material evidence may be received.
- (4) The hearing may be conducted informally in the chambers of a judge.
- (5) The hearing shall commence and be concluded within 72 hours, excluding Sundays and holidays, of the filing of the petition, unless the minor consents to an adjournment. The order of the court shall be issued within 48 hours, excluding Sundays and holidays, of the conclusion of the hearing.

(K) Order.

- (2) **Order Denying Waiver, Notice of Appeal, Appointment of Counsel, Preparation of Transcript.** If the order denies relief, the court shall endorse the time and date on the order. The order shall be served on the minor's attorney or, if none, the minor along with
 - (a) a unified appellate document substantially in the form approved by the state court administrator which may be used as notice of appeal, claim of appeal, request for appointment of an attorney and order of transcript, and
 - (b) a notice that, if the minor desires to appeal, the minor must file the notice of appeal with the court within 24 hours.
- (3) **Appeal.**
 - (a) Upon receipt of a timely notice of appeal, the court must appoint counsel and order that the transcript be prepared immediately and two copies filed within 72 hours. If the minor was represented by counsel in the court proceedings, the court must reappoint the same attorney unless there is good cause for a different appointment. As soon as the transcript is filed, the court shall forward the file to the Court of Appeals.

D. Subchapter 3.900 Proceedings Involving Juveniles**Rule 3.923 Miscellaneous Procedures**

- (E) **Electronic Equipment; Support Person.** The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

Rule 3.925 Open Proceedings; Judgments and Orders; Record; Confidentiality; Destruction of Court Files; Setting Aside Adjudications

- (B) **Record of Proceedings.** A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.
- (C) **Judgments and Orders.** The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.
- (D) **Public Access to Records; Confidential File.**
- (1) General. Records of the juvenile cases, other than confidential files, must be open to the general public.
 - (2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any other restriction imposed by state or federal law.
- (E) **Destruction of Court Files and Records.** This subrule governs the destruction of court files and records.
- (1) Destruction Generally; Effect. The court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.
 - (2) Delinquency Files and Records.
 - (a) The court must destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age.

- (b) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained as a nonpublic record.
 - (c) Except as provided by subrules (a) and (b), the court must destroy the files and records pertaining to a person's juvenile offenses, when the person becomes 30 years old.
 - (d) If the court destroys its files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.
- (3) Child Protective Files and Records.
- (a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.
 - (b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

(F) Setting Aside Adjudications and Convictions.

- (1) Adjudications. The setting aside of juvenile adjudications is governed by MCL 712A.18e.
- (2) Convictions. The court may only set aside a conviction as provided by MCL 780.621 et seq.

Rule 3.950 Waiver of Jurisdiction

(E) Grant of Waiver Motion.

- (1) If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must:
 - (a) Enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information.
 - (b) Make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record.

- (c) Advise the juvenile, orally or in writing, that
 - (i) the juvenile is entitled to appellate review of the decision to waive jurisdiction,
 - (ii) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right, and
 - (iii) if the juvenile is financially unable to retain an attorney, the court will appoint one to represent the juvenile on appeal.
 - (d) The court shall send, without cost, a copy of the order and a copy of the written opinion or transcript of the court's findings and conclusions, to the court having general criminal jurisdiction.
- (2) Upon the grant of a waiver motion, a juvenile must be transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived pursuant to this rule are not required to be kept separate and apart from adult prisoners.
- (F) Denial of Waiver Motion.** If the waiver motion is denied, the court shall make written findings or place them on the record. A transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion must be sent to the prosecuting attorney and the juvenile, or juvenile's attorney, upon request. If the juvenile is detained and the trial of the matter in the family division has not started within 28 days after entry of the order denying the waiver motion, and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

Rule 3.993 Appeals

(C) Procedure; Delayed Appeals.

- (1) **Applicable Rules.** Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.
- (2) **Delayed Appeals; Termination of Parental Rights.** The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.

Chapter 4: Criminal Procedure

A. Subchapter 6.000 General Provisions

Rule 6.001 Scope

- (A) **Felony Cases.** The rules in subchapters 6.000 - 6.500 govern matters of procedure in criminal cases cognizable in the circuit courts and in courts of equivalent criminal jurisdiction.
- (B) **Misdemeanor Cases.** MCR 6.001-6.004, 6.006, 6.102(D) and (F), 6.106, 6.125, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts.
- (C) **Juvenile Cases.** The rules in subchapter 6.900 govern matters of procedure in the district courts and in circuit courts and courts of equivalent criminal jurisdiction in cases involving juveniles against whom the prosecutor has authorized the filing of a criminal complaint as provided in MCL 764.1f.
- (D) **Civil Rules Applicable.** The provisions of the rules of civil procedure apply to cases governed by this chapter, except
- (1) as otherwise provided by rule or statute,
 - (2) when it clearly appears that they apply to civil actions only, or
 - (3) when a statute or court rule provides a like or different procedure.

Depositions and other discovery proceedings under subchapter 2.300 may not be taken for the purposes of discovery in cases governed by this chapter. The provisions of MCR 2.501(C) regarding the length of notice of trial assignment do not apply in cases governed by this chapter.

- (E) **Rules and Statutes Superseded.** The rules in this chapter supersede all prior court rules in this chapter and any statutory procedure pertaining to and inconsistent with a procedure provided by a rule in this chapter.

Rule 6.003 Definitions

For purposes of subchapters 6.000 - 6.800;

- (6) "Court reporter" includes a court recorder.

Rule 6.006 Video and Audio Proceedings

- (A) **Defendant in the Courtroom or at a Separate Location.** District and circuit courts may use two-way interactive video technology to conduct the following proceedings

between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

- (B) **Defendant in the Courtroom - Preliminary Examinations.** As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.
- (C) **Defendant in the Courtroom - Other Proceedings.** As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:
 - (1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;
 - (2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.
- (D) **Mechanics of Use.** The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

B. Subchapter 6.100 Preliminary Proceedings

Rule 6.102 Arrest on a Warrant

- (A) **Issuance of Warrant.** A court must issue an arrest warrant, or a summons in accordance with MCR 6.103, if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.
- (B) **Probable Cause Determination.** A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

Rule 6.104 Arraignment on the Warrant or Complaint

- (F) **Arraignment Procedure; Recording.** A verbatim record must be made of the arraignment.

Rule 6.106 Pretrial Release**(G) Custody Hearing.****(2) Hearing Procedure.**

- (b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes findings required to enter an order under subrule (B)(1), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

Rule 6.107 Grand Jury Proceedings

(A) Right to Grand Jury Records. Whenever an indictment is returned by a grand jury or a grand juror, the person accused in the indictment is entitled to the part of the record, including a transcript of the part of the testimony of all witnesses appearing before the grand jury or grand juror, that touches on the guilt or innocence of the accused of the charge contained in the indictment.

(B) Procedure to Obtain Records.

- (1) To obtain the part of the record and transcripts specified in subrule (A), a motion must be addressed to the chief judge of the circuit court in the county in which the grand jury issuing the indictment was convened.
- (2) The motion must be filed within 14 days after arraignment on the indictment or at a reasonable time thereafter as the court may permit on a showing of good cause and a finding that the interests of justice will be served.
- (3) On receipt of the motion, the chief judge shall order the entire record and transcript of testimony taken before the grand jury to be delivered to the chief judge by the person having custody of it for an in camera inspection by the chief judge.
- (4) Following the in camera inspection, the chief judge shall certify the parts of the record, including the testimony of all grand jury witnesses that touches on the guilt or innocence of the accused, as being all of the evidence bearing on that issue contained in the record, and have two copies of it prepared, one to be delivered to that attorney for the accused, or to the accused if not represented by an attorney, and one to the attorney charged with the responsibility for prosecuting the indictment.
- (5) The chief judge shall then have the record and transcript of all testimony of grand jury witnesses returned to the person from whom it was received for disposition according to law.

Rule 6.110 The Preliminary Examination

- (C) **Conduct of Examination.** . . . A verbatim record must be made of the preliminary examination.

Rule 6.113 The Arraignment on the Indictment or Information

- (D) **Preliminary Examination Transcript.** The court reporter shall transcribe and file the record of the preliminary examination if such is demanded or ordered pursuant to MCL 766.15.

C. Subchapter 6.300 Pleas**Rule 6.302 Pleas of Guilty and Nolo Contendere**

- (F) **Plea Under Advisement; Plea Record.** . . . A verbatim record must be made of the plea proceeding.

Rule 6.303 Pleas of Guilty But Mentally Ill

Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of MCR 6.302. In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity

- (D) **Report of Plea.** After accepting the defendant's plea, the court must forward to the center for forensic psychiatry a full report, in the form of a settled record, of the facts concerning the crime to which the defendant pleaded and the defendant's mental state at the time of the crime.

D. Subchapter 6.400 Trials**Rule 6.402 Waiver of Jury Trial by the Defendant**

- B) **Waiver and Record Requirements.** Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. . . . A verbatim record must be made of the waiver proceeding.

Rule 6.403 Trial by the Judge in Waiver Cases

When trial by jury has been waived, the court with jurisdiction must proceed with the trial.

The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 6.410 Jury Trial; Number of Jurors; Unanimous Verdict

- (A) **Number of Jurors.** Except as provided in this rule, a jury that decides a case must consist of 12 jurors. At any time before a verdict is returned, the parties may stipulate with the court's consent to have the case decided by a jury consisting of a specified number of jurors less than 12 . . . The stipulation and procedure described in this subrule must take place in open court and a verbatim record must be made.

Rule 6.414 Conduct of Jury Trial

- (B) **Court's Responsibility.** . . . The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

Rule 6.419 Motion for Directed Verdict of Acquittal

- (E) **Explanation of Rulings on Record.** The court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal and for conditionally granting or denying a motion for a new trial.

Rule 6.420 Verdict

- (A) **Return.** The jury must return its verdict in open court.

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(E) **Sentencing Procedure.**

- (1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court must, on the record: . . .

(F) **Advice Concerning the Right to Appeal; Appointment of Counsel.**

- (1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that . . .
- (2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that . . .

(G) Appointment of Lawyer; Trial Court Responsibilities in Connection With Appeal.**(2) Order to Prepare Transcript.** The appointment order also must

- (a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210,
 - (i) the trial or plea proceeding transcript,
 - (ii) the sentencing transcript, and
 - (iii) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and
- (b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System.

- (3) Order as Claim of Appeal; Trial Cases.** In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in subrules (G)(1) and (2) must be entered on a form approved by the State Court Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule (G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204 (see SCAO-approved form CC 403).

Rule 6.431 New Trial

- (B) Reasons for Granting.** On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

Rule 6.433 Documents for Postconviction Proceedings; Indigent Defendant

- (A) Appeals of Right.** An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425(F)(2), must order the preparation of the transcript.

- (B) Appeals by Leave.** An indigent defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.
- (1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.
 - (2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.
 - (3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, court clerk must provide a copy to the defendant.
- (C) Other Postconviction Proceedings.** An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.
- (1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available to the defendant.
 - (2) If the documents or transcripts have been filed with the court, the clerk must provide the defendant with copies of such materials without cost to the defendant.
 - (3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.
 - (4) Nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500.

Rule 6.435 Correcting Mistakes

- (A) Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.
- (B) Substantive Mistakes.** After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.

- (C) **Correction of Record.** If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.
- (D) **Correction During Appeal.** If a claim of appeal has been filed or leave to appeal granted in the case, corrections under this rule are subject to MCR 7.208(A) and (B).

E. Subchapter 6.500 Postappeal Relief

Rule 6.508 Procedure; Evidentiary Hearing; Determination

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

F. Subchapter 6.600 Criminal Procedure in District Court

Rule 6.610 Criminal Procedure Generally

- (A) **Precedence.** Criminal cases have precedence over civil actions.
- (C) **Record.** Unless a writing is permitted, a verbatim record of the proceedings before a court under subrules (D)-(F) must be made.
- (E) **Pleas of Guilty and Nolo Contendere.**
 - (4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:
 - (a) on the record,
 - (b) in a writing made part of the file, or
 - (c) in a writing referred to on the record.

If the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from the defendant orally on the record, a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

G. Subchapter 6.900 Rules Applicable to Juveniles Charged With Specified Offenses Subject to the Jurisdiction of the Circuit or District Court

Rule 6.901 Applicability

- (B) **Scope.** The rules apply to criminal proceedings in the district court and the circuit court

concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a specified juvenile violation instead of approving the filing of a petition in the family division of the circuit court. The rules do not apply to a person charged solely with an offense in which the family division has waived jurisdiction pursuant to MCL 712A.4.

Rule 6.911 Preliminary Examination

- (A) **Waiver.** The juvenile may waive a preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The magistrate shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.
- (B) **Transfer to Family Division of Circuit Court.** If the magistrate, following preliminary examination, finds that there is no probable cause to believe that a specified juvenile violation occurred or that there is no probable cause to believe that the juvenile committed the specified juvenile violation, but that some other offense occurred that if committed by an adult would constitute a crime, and that there is probable cause to believe that the juvenile committed that offense, the magistrate shall transfer the matter to the family division of the circuit court in the county where the offense is alleged to have been committed for further proceedings. If the court transfers the matter to the family division, a transcript of the preliminary examination shall be sent to the family division without charge upon request.

Rule 6.931 Juvenile Sentencing Hearing

(E) Juvenile Sentencing Hearing Procedure.

- (5) **Findings.** The court must make findings of fact and conclusions of law forming the basis for the juvenile probation and commitment decision or the decision to sentence the juvenile as though an adult offender. The findings and conclusions may be incorporated in a written opinion or stated on the record.

Chapter 5: Appellate Rules

A. Subchapter 7.100 Appeals to Circuit Court

Rule 7.101 Procedure Generally

(A) Applicability; Scope.

- (1) This rule applies to appeals to the circuit court from the district court and probate court, each referred to as "trial court" in MCR 7.101 and 7.103. The term "circuit court" includes the Recorder's Court of the City of Detroit as to appeals of which that court has jurisdiction. In appeals from probate court, the term "clerk" refers to the probate register.

(B) Time for Taking Appeal.

- (1) **Appeal of Right.** Except when another time is prescribed by statute or court rule, an appeal of right must be taken within
 - (a) 21 days after the entry of the order or judgment appealed from; or
 - (b) 21 days after the entry of an order denying a motion for new trial or judgment notwithstanding the verdict, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the original 21-day period.

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

- (2) **Appeal by Leave.** When an appeal of right is not available, or the time for taking an appeal of right has passed, the time for filing an application for leave to appeal is governed by MCR 7.103.

(C) Manner of Taking Appeal; Appeal of Right.

- (1) **Claim of Appeal.** To appeal of right, within the time for taking an appeal, an appellant must file a claim of appeal with the circuit court clerk and pay the fee, if required by law. The parties are named in the same order as they appeared in the trial court, but with the added designation "appellant" or "appellee". The claim must state:

"[Name of aggrieved party] claims an appeal from the [judgment or order] entered [date] in [name of the trial court]."

The appellant or the appellant's attorney must date and sign the claim of appeal and place his or her business address and telephone number under the signature.

- (2) **Other Requirements.** In addition to doing the acts required by subrule (C)(1), no later than the time the claim of appeal is filed, the appellant must do the following:
 - (d) Order in writing a copy of the full transcript and secure payment for it. On the appellant's motion, with notice to the appellee, the trial court may order that a lesser portion, or none, of the proceedings be transcribed. The appellee may file with the trial court a transcript of a portion of the proceedings not filed by the appellant. Except in appeals that the circuit court hears de novo, if a transcript of relevant proceedings cannot be obtained, the appellant may initiate procedures for preparation of a settled record in the manner provided in MCR 7.210(B)(2).
 - (e) File in the trial court exhibits in the appellant's possession.

- (3) **Notice and Proof of Service.** Within 7 days after the claim of appeal is filed, the appellant must serve on the appellee and on any other person entitled by rule or statute to notice of the appeal:
- (a) a copy of the claim of appeal;
 - (b) a statement specifying
 - (i) when an appeal bond, if any, was filed, the amount of the bond, and the sureties,
 - (ii) when the required fees were paid,
 - (iii) when an act was performed under subrule (C)(2)(c) and the nature of the act;
 - (c) a copy of the reporter's or recorder's certificate showing that
 - (i) the transcript has been ordered and payment secured, with the estimated date of completion,
 - (ii) the transcript has been furnished, or
 - (iii) there is no record to be transcribed.

Proof of service, the reporter's or recorder's certificate, and the required statement must be filed in the trial court and the circuit court.

(D) Appellee's Appearance; Cross Appeal.

- (1) **Notice of Appearance.** Within 14 days after being served with the claim of appeal, the required statement, and the reporter's or recorder's certificate, the appellee must file an appearance in the trial court and circuit court and file exhibits in his or her possession with the trial court clerk.
- (2) **Cross Appeal.** The appellee may take a cross appeal by filing a claim of cross appeal with his or her appearance. The provisions of this rule regarding an appeal govern a cross appeal.

(E) Effect of Appeal. The circuit court clerk shall assign a file number to an appeal when it is filed. The trial court retains jurisdiction until the trial court clerk sends the record to the circuit court clerk under subrule (F).

(F) Record on Appeal.

- (1) Within 28 days after filing the claim of appeal, the appellant must file with the trial court the transcript or a copy of the reporter's or recorder's certificate and a statement that the transcript is not yet available.

- (2) After the appellant makes the filing under subrule (F)(1), the clerk or register of the trial court shall
 - (a) ensure that the docket entries are correct and ready for transmittal;
 - (b) ensure that all exhibits have been filed;
 - (c) ensure that all relevant documents and papers from the court file are ready for transmittal; and
 - (d) determine that the required fees have been paid and required bond filed.
 - (3) If the record is ready for transmittal, the court shall sign an order transmitting the record. The trial court may eliminate exhibits from the record.
 - (4) If the transcript is not yet available, the trial court shall postpone transmittal of the record, enter an order to facilitate the preparation of the record, and notify the circuit court of the postponement and of the estimated date of transmittal.
 - (5) The trial court clerk must send the record to the circuit court clerk and notify the parties of the transmittal.
- (G) Dismissal of an Appeal.** If an appellant does not comply with subrule (C)(2) or (F)(1), the appeal may be considered abandoned, and the trial court may dismiss the appeal on 7 days' notice to the parties, unless the trial court or circuit court has granted a motion for further time. The trial court clerk must promptly notify the circuit court of a dismissal, and the circuit court shall dismiss the claim of appeal. Compliance with subrule (F)(1) after the 28-day period does not preclude dismissal of the appeal unless the appellant shows a reasonable excuse for the late compliance.
- (H) Stay of Proceedings.**
- (1) **Civil Actions.**
 - (a) Unless otherwise provided by rule or ordered by the trial court, an execution may not issue and proceedings may not be taken to enforce an order or judgment until the expiration of the time for taking an appeal under subrule (B).
 - (b) An appeal does not stay execution unless
 - (i) the appellant files a stay bond to the opposing party as provided by this rule or by law; or
 - (ii) the appellant is exempted by law from filing a bond or is excused from filing a bond under MCL 600.2605 or MCR 3.604(L) and the trial court grants a stay on motion.

- (iii) a party appeals a trial court's denial of the party's claim of governmental immunity, and the appeal is pending.
- (c) The stay bond must be set by the trial court in an amount adequate to protect the opposing party. If the appeal is by a person against whom a money judgment has been entered, it must be not less than 1-1/4 times the amount of the judgment. The bond must:
- (i) recite the names and designations of the parties and the judge in the trial court, identify the parties for whom and against whom judgment was entered, and state the amount recovered;
 - (ii) contain the conditions that the appellant
 - (A) will diligently prosecute the appeal to a decision and, if a judgment is rendered against him or her, will pay the amount of the judgment, including costs and interest;
 - (B) will pay the amount of the judgment, if any, rendered against him or her in the trial court, including costs and interest, if the appeal is dismissed;
 - (C) will pay any costs assessed against him or her in the circuit court; and
 - (D) will perform any other act prescribed in the statute authorizing appeal; and
 - (iii) be executed by the appellant with one or more sufficient sureties as required by MCR 3.604.

If the appeal is from a judgment for the possession of land, the bond must include the conditions provided in MCR 4.201(N)(4).

- (d) Unless otherwise provided in this rule, the filing of a bond stays all further proceedings in the trial court under the order or judgment appealed from. If an execution has issued, it is suspended by giving notice of the bond to the officer holding the execution.

(2) **Probate Proceedings.**

- (a) The probate court has continuing jurisdiction to decide other matters arising out of a proceeding in which an appeal is filed.
- (b) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

(3) **Civil Infractions.** An appeal bond and stay in a civil infraction proceeding is governed by MCR 4.101(G).

- (4) **Criminal Cases.** Unless a bond pending appeal is filed with the trial court, a criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed. The granting of bond and the amount of it are within the discretion of the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases.
 - (5) **Request for Stay Filed in Circuit Court.** If a request for a stay pending appeal is filed in the circuit court, the court may condition a stay on the filing of a new or higher bond than otherwise required by these rules with appropriate conditions and sureties satisfactory to the court.
- (I) Filing and Service of Briefs.**
- (1) Within 21 days after the trial court clerk notifies the parties that the record on appeal has been sent to the circuit court, the appellant must file a brief in the circuit court and serve it on the appellee. The appellee may file and serve a reply brief within 21 days after the appellant's brief is served on the appellee. The appellant's brief must comply with MCR 7.212(C), and the appellee's brief must comply with MCR 7.212(D).
 - (2) Before the brief is due, a party may withdraw the transcript and exhibits by giving the clerk a written receipt for them. A party may use them only to prepare the brief and must return them to the clerk when the party is finished. The court may order their return by a specified date.
- (K) Oral Arguments.** A party who has filed a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in boldface type on the title page of the party's brief.
- (L) Setting for Hearing.** Within 14 days after the appellee's brief is filed or within 14 days after the time for filing it has expired, the circuit court clerk shall
- (1) schedule the case for argument and notify the parties by mail, if a party has requested oral argument; or
 - (2) if no party has requested oral argument, submit the file to the judge to whom the appeal is assigned for decision.
- (M) Judgment in Circuit Court; Process.** After the appeal is decided or dismissed, the circuit court clerk shall promptly send to the trial court clerk a copy of the judgment, order, or opinion entered in the circuit court and all documents previously received from the trial court. The trial court issues further process.
- (N) Control of Appeal Process.**
- (1) If the trial court postpones transmittal of the record or transmittal is otherwise delayed, the circuit court may on its own initiative exercise superintending control over the trial court, the court reporter or recorder, or other personnel to prevent delay.

- (2) The circuit court may on the appellee's motion or its own initiative issue an order to show cause why the appeal should not be dismissed. An order to show cause is not required for a dismissal under subrules (G) or (J).
 - (3) A party may obtain interlocutory review of the appellate process by filing a motion in the circuit court under the rules governing motion practice.
 - (4) The circuit court may accelerate the appellate process on a party's motion.
- (O) Costs.** Costs in an appeal to the circuit court may be taxed as provided in MCR 2.625. A prevailing party may tax only the reasonable costs incurred in the appeal, including:
- (1) the cost of an appeal or stay bond;
 - (2) the transcript;
 - (3) documents required for the record on appeal;
 - (4) fees paid to the clerk or to the trial court clerk incident to the appeal;
 - (5) taxable costs allowed by law in appeals to the Supreme Court (MCL 600.2441); and
 - (6) other expenses taxable under applicable court rules or statutes.
- (P) Vexatious Proceedings.**
- (1) The circuit court may, on its own initiative or the motion of a party, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
 - (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

Rule 7.102 Appeals from Municipal Courts

- (A) Time for Taking Appeal.** To appeal of right from a municipal court, an appellant must comply with MCR 7.101(B) and (C)(1).
- (B) Procedure on Appeal.** Except when inapplicable because of subrule (C), MCR 7.101 governs procedure on appeal.
- (C) Review in Circuit Court.** Review in the circuit court is a retrial of the issues on evidence introduced in the circuit court. Depositions in the trial court may be used. The

circuit court may render any judgment or enter any order that should have been rendered or entered in the trial court, and may grant other relief as may be required for the just disposition of the appeal.

Rule 7.103 Application for Leave to Appeal

(B) Procedure.

- (4) The application must be noticed for hearing in the circuit court at least 14 days after its filing. The circuit court may shorten the notice period on a showing of a need for immediate consideration.
 - (6) An application under subrule (A)(2) or an application that is not timely under subrule (B)(1), must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application. A delayed application may not be filed more than 6 months after entry of the order of judgment on the merits.
- (C) Leave To Appeal Granted.** Immediately after an order granting leave to appeal is entered, the appellant must file a copy with the trial court and serve a copy on the appellee. MCR 7.101 governs further proceedings, except that:
- (1) the appellant must perform the acts required by MCR 7.101(C) within 7 days after the entry of the order granting leave to appeal; however, filing and service of a claim of appeal are not required;
 - (2) an appellee may file a claim of cross appeal within 14 days after service of the order granting leave to appeal; and
 - (3) the appellant must perform the acts required by MCR 7.101(F)(1) within 28 days after the entry of the order granting leave to appeal.

Rule 7.104 Appeals from Administrative Agencies

(A) Appeals Under MCL 600.631. An appeal in the circuit court under MCL 600.631 is governed by MCR 7.101 and 7.103, except that the bond requirements do not apply.

(B) Appeals Under Michigan Employment Security Act.

- (1) To obtain review of an order or decision of the Michigan Employment Security Board of Review, a party must file in the circuit court
 - (a) a claim of appeal within 30 days after the mailing to the party of the board of review's decision (see MCR 7.101[C][1]); and
 - (b) proof that a copy was served on the board of review and all interested parties.

The board of review is not an appellee. The timely filing of the claim of appeal constitutes the taking of an appeal. Failure to take any further steps to pursue the appeal is governed by MCR 7.101 (G), (J), and (N).

- (2) Within 14 days after service of the claim of appeal, the appellee must file an appearance in the circuit court. A cross appeal may be filed with the appearance. See MCR 7.101(D).
 - (3) Within 42 days after the claim of appeal is served on the board of review or within further time the circuit court allows, the board of review must send to the circuit court clerk a certified copy of the record of proceedings before the referee and the board of review and notify the parties of the transmittal.
 - (4) The appeal is heard by the circuit court on the certified record. Briefs and oral argument are governed by MCR 7.101(I), (K), and (L).
- (C) **Appeals From Michigan Civil Service Commission.** An appeal from a decision of the Michigan Civil Service Commission is governed by the provisions for appeals from administrative agencies in the Administrative Procedures Act. MCL 24.201 *et seq.*

B. Subchapter 7.200 Court of Appeals

Rule 7.201 Organization and Operation of Court of Appeals

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

- (1) The court shall appoint a chief clerk who is subject to the requirements imposed on the Supreme Court clerk in MCR 7.319. The clerk's office must be located in Lansing and be operated under the court's direction. With the court's approval, the clerk may appoint assistant and deputy clerks.
- (2) Papers to be filed with the court or the clerk must be filed in the clerk's office in Lansing or with a deputy clerk in Detroit, Troy, or Grand Rapids. Fees paid to a deputy clerk must be forwarded to the clerk's office in Lansing. Claims of appeal, applications, motions, and complaints need not be accepted for filing until all required documents have been filed and the requisite fees have been paid.
- (3) If a case is accepted for filing without all of the required documents, transcripts, or fees, the appellant, or the plaintiff in an original action under MCR 7.206, must supply the missing items within 21 days after the date of the clerk's notice of deficiency. The chief judge or another designated judge may dismiss the appeal and assess costs if the deficiency is not remedied within that time.

Rule 7.204 Filing Appeal of Right; Appearance

- (A) **Time Requirements.** The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For

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

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

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

- (2) An appeal of right in a criminal case must be taken
 - (a) in accordance with MCR 6.425(F)(3);
 - (b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425(G)(1);
 - (c) within 42 days after entry of the judgment or order appealed from; or
 - (d) within 42 days after the entry of an order denying a motion for a new trial, for directed verdict of acquittal, or to correct an invalid sentence, if the motion was filed within the time provided in MCR 6.419(B), 6.429(B), or 6.431(A), as the case may be.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless

the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

...

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

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

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

- (1) a copy of the judgment or order appealed from;
- (2) a copy of the certificate of the court reporter or recorder filed under subrule (E)(4), a statement by the attorney that the transcript has been ordered (in which case the certificate of the court reporter or recorder must be filed as soon as possible thereafter), or a statement by the attorney that there is no record to be transcribed; [see SCAO-approved form CC 402]

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

- (1) a copy of the claim of appeal;
- (2) any fee required by law;
- (3) any bond required by law as a condition for taking the appeal; and
- (4) unless there is no record to be transcribed, the certificate of the court reporter or recorder stating that a transcript has been ordered and payment for it made or secured, and that it will be filed as soon as possible or has already been filed.

Rule 7.205 Application for Leave to Appeal

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

- (1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or
- (2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or

judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period.

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

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

- (1) 5 copies of an application for leave to appeal (one signed), stating the date and nature of the judgment or order appealed from; concisely reciting the appellant's allegations of error and the relief sought; setting forth a concise argument, conforming to MCR 7.212(C), in support of the appellant's position on each issues; and, if the order appealed from is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;
- (2) 5 copies of the judgment or order appealed from; of the register of actions of the lower court, tribunal, or agency; of the opinion or findings of the lower court, tribunal, or agency; and of any opinion or findings reviewed by the lower court, tribunal, or agency;
- (3) if the appeal is from an administrative tribunal or agency, or from a circuit court on review of an administrative tribunal or agency, evidence that the tribunal or agency has been requested to send its record to the Court of Appeals;
- (4) 1 copy of certain transcripts, as follows:
 - (a) in an appeal relating to the evidence presented at an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court which conducted the hearing;
 - (b) in an appeal from the circuit court or recorder's court after appeal from another court, the transcript of proceedings in the court reviewed by the circuit court or recorder's court;
 - (c) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;
 - (d) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;
 - (e) in an appeal from an order granting or denying a new trial, such portion of the transcript of the trial as, in relation to the issues raised, permits the court to determine whether the trial court's decision on the motion was for a legally

recognized reason and based on arguable support in the record;

- (f) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion relating to sentencing;
- (g) in an appeal raising any other issue, such portion of the transcript as substantiates the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge.

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

- (5) if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;
 - (6) proof that a copy of the filed documents was served on all other parties;
 - (7) the entry fee.
- (C) **Answer.** Any other party in the case may file with the clerk, within 21 days of service of the application,
- (1) 5 copies of an answer to the application (one signed) conforming to MCR 7.212(D), except that transcript page references are not required unless a transcript has been filed; and
 - (2) proof that a copy was served on the appellant and any other appellee.

(D) **Decision.**

- (1) There is no oral argument. The application is decided on the documents filed and, in an appeal from an administrative tribunal or agency, the certified record.
- (2) The court may grant or deny the application; enter a final decision; grant other relief; request additional material from the record; or require a certified concise statement of proceedings and facts from the court, tribunal, or agency whose order is being appealed. The clerk shall enter the court's order and mail copies to the parties.
- (3) If an application is granted, the case proceeds as an appeal of right, except that the filing of a claim of appeal is not required and the time limits for the filing of a cross appeal and for the taking of the other steps in the appeal, including the filing of the

court reporter's or recorder's certificate if the transcript has not been filed (14 days), run from the date the order granting leave is certified.

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

Rule 7.207 Cross Appeals

- (B) **Manner of Filing.** To file a cross appeal, the cross appellant shall file with the clerk a claim of cross appeal in the form required by MCR 7.204(D) and the entry fee
 - (1) within 21 days after the claim of appeal is filed with the Court of Appeals or served on the cross appellant, whichever is later, if the first appeal was of right; or
 - (2) within 21 days after the clerk certifies the order granting leave to appeal, if the appeal was initiated by application for leave to appeal. . .
- (C) **Additional Requirements.** The cross appellant shall perform the steps required by MCR 7.204(E) and (F), except that the cross appellant is not required to order a transcript or file a court reporter's or recorder's certificate unless the initial appeal is abandoned or dismissed. Otherwise the cross appeal proceeds in the same manner as an ordinary appeal.
- (D) **Abandonment or Dismissal of Appeal.** If the appellant abandons the initial appeal or the court dismisses it, the cross appeal may nevertheless be prosecuted to its conclusion. Within 21 days after the clerk certifies the order dismissing the initial appeal, if there is a record to be transcribed, the cross appellant shall file a certificate of the court reporter or recorder that a transcript has been ordered and payment for it made or secured and will be filed as soon as possible or has already been filed.

Rule 7.210 Record on Appeal

- (A) **Content of Record.** Appeals to the Court of Appeals are heard on the original record.
 - (1) **Appeal From Court.** In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.
 - (2) **Appeal From Tribunal or Agency.** In an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except

those summarized or omitted in whole or in part by stipulation of the parties. Testimony not transcribed when the certified record is sent for consideration of an application for leave to appeal, and not omitted by stipulation of the parties, must be filed and sent to the court as promptly as possible.

- (3) **Excluded Evidence.** The substance or transcript of excluded evidence offered at a trial and the proceedings at the trial in relation to it must be included as part of the record on appeal.
- (4) **Stipulations.** The parties in any appeal to the Court of Appeals may stipulate in writing regarding any matters relevant to the lower court or tribunal or agency record if the stipulation is made a part of the record on appeal and sent to the Court of Appeals.

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

- (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Except in cases governed by MCR 3.977(I)(3) or MCR 6.425(F)(2) or as otherwise provided by Court of Appeals order or the remainder of this subrule, the appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals.
- (b) In an appeal from probate court in an estate or trust proceeding, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.
- (c) On the appellant's motion, with notice to the appellee, the trial court or tribunal may order that some portion less than the full transcript (or no transcript at all) be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant. The filing of the motion extends the time for filing the court reporter's or recorder's certificate until 7 days after entry of the trial court's or tribunal's order on the motion.
- (d) The parties may stipulate that some portion less than the full transcript (or none) be filed.
- (e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or tribunal clerk and sent as the record of testimony in the action.

- (2) **Transcript Unavailable.** When a transcript of the proceedings in the trial court or tribunal cannot be obtained from the court reporter or recorder, the appellant shall file a settled statement of facts to serve as a substitute for the transcript.
- (d) The statement of facts and the certifying order must be filed with the trial court or tribunal clerk and a copy of the certifying order must be filed with the Court of Appeals.
- (3) **Duties of Court Reporter or Recorder.**
- (a) Certificate. Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating:
- (i) that the transcript has been ordered, that payment for the transcript has been made or secured, that it will be filed as soon as possible or has already been filed, and the estimated number of pages for each of the proceedings requested;
 - (ii) as to each proceeding requested, whether the court reporter or recorder filing the certificate recorded the proceeding; and if not,
 - (iii) the name and certification number of the court reporter or recorder responsible for the transcript of that proceeding.
- (b) Time for Filing. The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within
- (i) 14 days after it is ordered for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
 - (ii) 28 days after it is ordered in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere;
 - (iii) 42 days after it is ordered in any other interlocutory criminal appeal or custody case;
 - (iv) 91 days after it is ordered in other cases.

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

- (c) **Copies.** Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder or photocopies may be made of the transcript furnished by the court reporter or recorder.
 - (d) **Form of Transcript.** The transcript must be filed in one or more volumes under a hard-surfaced or other suitable cover, stating the title of the action, and prefaced by a table of contents showing the subject matter of the transcript with page references to the significant parts of the trial or proceedings, including the testimony of each witness by name, the arguments of the attorneys, and the jury instructions. The pages of the transcript must be consecutively numbered on the bottom of each page. Transcripts with more than one page, reduced in size, printed on a single page are permitted and encouraged, but a page in that format may not contain more than four reduced pages of transcript.
 - (e) **Notice.** Immediately after the transcript is filed, the court reporter or recorder shall notify the Court of Appeals and all parties that it has been filed and file in the Court of Appeals an affidavit of mailing of notice to the parties.
 - (f) **Discipline.** A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action by the courts, including punishment for contempt of court, on the court's own initiative or motion of a party.
 - (g) **Responsibility When More Than One Reporter or Recorder.** In a case in which portions of the transcript must be prepared by more than one reporter or recorder, unless the court has designated another person, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e).
- (C) **Exhibits.** Within 21 days after the claim of appeal is filed, a party possessing any exhibits offered in evidence, whether admitted or not, shall file them with the trial court or tribunal clerk, unless by stipulation of the parties or order of the trial court or tribunal they are not to be sent, or copies, summaries, or excerpts are to be sent. Xerographic copies of exhibits may be filed in lieu of originals unless the trial court or tribunal orders otherwise. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk shall return the exhibits to the parties who filed them.
- (D) **Reproduction of Records.** Where facilities for the copying or reproduction of records are available to the clerk of the court or tribunal whose action is to be reviewed, the clerk, on a party's request and on deposit of the estimated cost or security for the cost, shall procure for the party as promptly as possible and at the cost to the clerk the requested number of copies of documents, transcripts, and exhibits on file.

- (E) **Record on Motion.** If, before the time the complete record on appeal is sent to the Court of Appeals, a party files a motion that requires the Court of Appeals to have the record, the trial court or tribunal clerk shall, on request of a party or the Court of Appeals, send the Court of Appeals the documents needed.
- (F) **Service of Record.** Within 21 days after the transcript is filed with the trial court clerk, the appellant shall serve a copy of the entire record on appeal, including the transcript and exhibits, on each appellee. However, copies of documents the appellee already possesses need not be served. Proof that the record was served must be promptly filed with the Court of Appeals and the trial court or tribunal clerk. If the filing of a transcript has been excused as provided in subrule (B), the record is to be served within 21 days after the filing of the transcript substitute.
- (G) **Transmission of Record.** Within 21 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk shall append a certificate identifying the name of the case and the papers with reasonable definiteness and shall include as part of the record:
- (1) a register of actions in the case;
 - (2) all opinions, findings, and orders of the court or tribunal; and
 - (3) the order or judgment appealed from.

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

- (H) **Return of Record.** After the Court of Appeals disposes of an appeal, the Court of Appeals shall promptly send the original record, together with a certified copy of the opinion, judgment, or order entered by the Court of Appeals
- (1) to the Clerk of the Supreme Court if an application for leave to appeal is filed in the Supreme Court, or
 - (2) to the clerk of the court or tribunal from which it was received when
 - (a) the period for an application for leave to appeal to the Supreme Court has expired without the filing of an application, and
 - (b) there is pending in the Court of Appeals no
 - (i) timely motion for reconsideration,

- (ii) timely petition for a special panel under MCR 7.215(I), or
- (iii) timely request by a judge of the Court of Appeals for a special panel under MCR 7.215(I),

and the period for such a timely motion, petition, or request has expired.

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

Chapter 6: Administrative Rules of Court

A. Subchapter 8.100 General Administrative Orders

Rule 8.108 Court Reporters and Recorders

- (A) **Scope of Rule.** This rule prescribes the duties of court reporters and recorders, the procedure for certifying them, the effect of noncertification, objections to certification, and display requirements.

(B) **Attendance at Court; Taking Testimony.**

- (1) The court reporter or recorder shall attend the court sessions under the direction of the court and take a verbatim record of the following:
 - (a) the voir dire of prospective jurors;
 - (b) the testimony;
 - (c) the charge to the jury;
 - (d) in a jury trial, the opening statements and final arguments;
 - (e) the reasons given by the court for granting or refusing any motion made by a party during the course of a trial; and
 - (f) opinions and orders dictated by the court and other matters as may be prescribed by the court.

This subrule does not apply to actions tried in the small claims division of the district court or in the municipal courts. In the probate court proceedings, the reporter or recorder shall take a verbatim record of proceedings as required by law and chapter 5 of these rules.

- (2) The court reporter or recorder who begins to record a case shall take the record of the entire case unless he or she shows good cause for failure to do so or is otherwise excused by the court.
- (C) **Records Kept.** The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in his or her office.
- (D) **Transfer of Records; Inspection.** If the court reporter or recorder dies, resigns, is removed from office, or leaves the state, his or her records in each case must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records subject to the direction of the court. The records are a part of the record of each case and are subject to inspection in the same manner as other records. On order of the court, a transcript may be made from the records and filed as a part of the record in the case.
- (E) **Furnishing Transcript.** The court reporter or recorder shall furnish without delay, in legible English, a transcript of the records taken by him or her (or any part thereof) to any party on request. The reporter or recorder is entitled to receive the compensation prescribed in the statute on fees from the person who makes the request.
- (F) **Filing Transcript.**
- (1) On order of the trial court, the court reporter or recorder shall make and file in the clerk's office a transcript of his or her records, in legible English, of any civil or criminal case (or any part thereof) without expense to either party; the transcript is a part of the records in the case.
 - (2) Except when otherwise provided by contract, the court reporter or recorder shall receive from the appropriate governmental unit the compensation specified in the statute on fees for a transcript ordered by a court.
- (G) **Certification.**
- (1) Certification Requirement.
 - (a) Only reporters, recorders, or voice writers certified pursuant to this subrule may record or prepare transcripts of proceedings held in Michigan courts or of depositions taken in Michigan pursuant to these rules. This rule applies to the preparation of transcripts of videotaped courtroom proceedings or videotaped or audiotaped depositions, but not to the recording of such proceedings or depositions by means of videotaping. An operator holding a CEO certification under subrule (G)(7)(b) may record proceedings but may not prepare transcripts.

- (b) Proceedings held pursuant to MCR 6.102 or 6.104 need not be recorded by persons certified under this rule; however, transcripts of such proceedings must be prepared by court reporters, recorders, or voice writers certified pursuant to this rule.
 - (c) An indigent party who is represented by a nonprofit legal aid program providing free civil legal services to the indigent may use persons who are not certified pursuant to this rule to transcribe and file depositions taken by videotaping or audiotaping. Such depositions shall be otherwise prepared and certified in accordance with this rule.
 - (d) Any person who acts in the capacity of a court reporter or recorder shall not maintain an action in the courts of this state for the collection of compensation for the performance of an act for which certification is required by this rule without alleging and proving that the person was certified under this rule at the time of the performance of the act. "Person" refers to both individuals and the entity or entities for which a court reporter or recorder performs services.
 - (e) Any other court rule notwithstanding, an objection to the status of a court reporter's or recorder's certification or lack thereof must be placed on the record at the outset of the court proceeding or deposition or that objection is waived. If the objection is waived, the use of transcripts of the court proceeding or deposition for any purpose provided in these rules shall be allowed.
 - (f) Prior to the beginning of any deposition taken under these rules, the court reporter or recorder must display to all counsel initially present, and to each other person attending the deposition who is not represented by counsel, proof that the reporter or recorder has been certified as required by this rule. Proof of such certification, by certification number, shall also be displayed on the title page and certificate page of each court and deposition transcript and on the stationery and business cards, if any, of each court reporter or recorder required to be certified by this rule.
- (2) Court Reporting and Recording Board of Review.
- (a) The Supreme Court shall appoint a Court Reporting and Recording Board of Review, composed of
 - (i) a Court of Appeals judge, to be the chairperson,
 - (ii) a circuit judge,
 - (iii) a probate judge,

- (iv) a district judge,
 - (v) a court reporter who is an employee of a Michigan court,
 - (vi) a court recorder who is an employee of a Michigan court,
 - (vii) a court reporter who is not an employee of a Michigan court,
 - (viii) a court recorder who is not an employee of a Michigan court, and
 - (ix) an attorney.
- (b) Appointments to the board shall be for terms of 4 years. A board member may be reappointed to a new term. Initial appointments may be of different lengths so that no more than 3 terms expire in the same year. The Supreme Court may remove a member at any time.
- (c) If a position on the board becomes vacant because of death, resignation, or removal, or because a member is no longer employed in the capacity in which he or she was appointed, the board shall notify the Supreme Court Clerk and the Court shall appoint a successor to serve the remainder of the term.
- (d) The state court administrator shall assign a staff person to serve as board secretary.
- (3) Certification by Testing.
- (a) At least twice each year the board shall administer an examination testing knowledge and speed, and, as to a recorder, operator, or voice writer, familiarity with basic logging techniques and minor repair and maintenance procedures. The board shall determine the passing score.
 - (b) In order to be eligible for registration for an examination, an applicant must
 - (i) be at least 18 years of age,
 - (ii) be a high school graduate, and
 - (iii) not have been under sentence for a felony for a period of two years.
 - (c) In addition, an applicant for the certified shorthand reporter examination must have satisfactorily completed a post-high school approved, accredited, or recognized course of study in court reporting and submitted documentation of same prior to testing.

- (d) An applicant for the CER/CSMR/CEO examination must have satisfactorily completed a post-high school board-approved workshop or course of study, or other board-approved curriculum and submitted documentation of same prior to testing.
 - (e) All CERs/CSMRs/CEOs who are fully certified by December 31, 2005, are exempt from the requirements of subparagraph (d).
 - (f) The registration fee is \$60.
- (4) Reciprocal Certification. A reporter, recorder, operator, or voice writer certified in another state may apply to the board for certification based on the certification already obtained.
- (5) Temporary Certification. A new reporter, recorder, operator, or voice writer may receive one temporary certification to enable him or her to work until the results of the next test are released. If the person does not take the test, the temporary certification may not be extended unless good cause is shown. If the person takes the test and fails, the board may extend the temporary certification.
- (6) Renewal, Review, and Revocation of Certification.
- (a) Certifications under this rule must be renewed annually. The fee for renewal is \$30. Renewal applications must be filed by August 1. A renewal application filed after that date must be accompanied by an additional late fee of \$100. The board may require certified reporters, recorders, operators, and voice writers to submit, as a condition of renewal, such information as the board reasonably deems necessary to determine that the reporter, recorder, operator, or voice writer has used his or her reporting or recording skills during the preceding year.
 - (b) The board must review the certification of a reporter, recorder, operator, or voice writer who has not used his or her skills in the preceding year, and shall determine whether the certification of such a reporter, recorder, operator, or voice writer may be renewed without the necessity of a certification test.
 - (c) The board may review the certification of a reporter, recorder, operator, or voice writer and may impose sanctions, including revoking the certification, for good cause after a hearing before the board.
 - (d) If, after a reporter's, recorder's, operator's, or voice writer's certification is revoked or voided by the board and the reporter, recorder, operator, or voice writer applies to take the certification examination and passes, the board may issue a conditional certification for a prescribed period imposing restrictions or conditions that must be met for continued certification. At the end of the conditional period, an unconditional certification may be issued.

- (7) Designations. The board shall assign an identification number to each person certified. A court reporter or recorder must place the identification number assigned on his or her communications with the courts, including certificates, motions, affidavits, and transcripts. The board will use the following certification designations:
- (a) certified electronic recorder (CER),
 - (b) certified electronic operator (CEO),
 - (c) certified shorthand reporter (CSR), and
 - (d) certified voice writer/stenomask reporter (CSMR).

The designations are to be used only by reporters, recorders, operators, or voice writers certified by the board. A reporter, recorder, operator, or voice writer may be given more than one designation by passing different tests.

Rule 8.109 Mechanical Recording of Court Proceedings

- (A) **Official Record.** If a trial court uses audio or video recording devices for making the record of court proceedings, it shall use only recording devices that meet the standards published by the State Court Administrative Office.
- (B) **Other Recordings.** On motion of an attorney or of a party appearing on his or her own behalf, a court may permit audio recording of a part or all of a proceeding and may permit photographic recording of visual exhibits. The court may regulate the manner of audio or photographic recording so that it does not disrupt the proceeding. An audio or photographic recording made under this rule may be used solely to assist in the prosecution or defense during the proceeding recorded; it may not be used publicly.

Rule 8.110 Chief Judge Rule

(C) **Duties and Powers of Chief Judge.**

- (3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:
- (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work;

- (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;
 - (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D);
- (6) A chief judge may delegate administrative duties to a trial court administrator or others.

Rule 8.119 Court Records and Reports; Duties of Clerks

(C) Filing of Papers. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1).

(E) Access to Records. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

- (1) Unless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3).
- (2) If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the reasonable cost of reproduction. If the clerk prefers, the requesting person may be permitted to make copies at personal expense under the direct supervision of the clerk. Except for copies of transcripts or as otherwise directed by statute or court rule, a standard fee may be established for providing copies of papers on file.
- (3) A court is not required to create a new record, except to the extent required by furnishing copies of a file, paper, or record. A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (F).
- (4) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to
 - (a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

- (b) specify the reasonable cost of reproduction of records provided under subrule (E)(2); and
- (c) specify the process for determining costs under subrule (E)(3).

(F) Sealed Records.

- (1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless
 - (a) a party has filed a written motion that identifies the specific interest to be protected,
 - (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
 - (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (2) In determining whether good cause has been shown, the court must consider
 - (a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and
 - (b) the interest of the public.
- (3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.
- (4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C).
- (5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
- (6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the

action. See MCR 8.116(D).

- (7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

B. Subchapter 8.200 Administrative Rules Applicable in District Court

Rule 8.202 Payment of Assigned Attorneys and Transcript Costs

- (B) **Appeals.** If an indigent defendant appealing to circuit court from a district or municipal court conviction is entitled to an assigned attorney or a transcript, the cost shall be paid by the same political subdivision or divisions that were responsible for or would have been responsible for paying an assigned attorney under subrule (A).

C. Subchapter 8.300 Administrative Rules Applicable in Probate Court

Rule 8.302 Documents and Files

Original orders and letters of authority, after being recorded, must be placed in the files of the court. For security purposes, testamentary documents of deceased persons, bonds, orders, and such other documents as the court directs must be copied by microfilming or other means promptly after filing or issuance and preserved in the records of the court separately from the files. In addition, the clerk of every probate court shall maintain court records and make reports as prescribed by MCR 8.119.

Chapter 7: Special Proceedings and Actions

A. Subchapter 3.200 Domestic Relations Actions

Rule 3.215 Domestic Relations Referees

(D) Conduct of Hearings.

- (4) An electronic or stenographic record must be kept of all hearings.
 - (a) The parties must be allowed to make contemporaneous copies of the record if the referee's recording equipment can make multiple copies simultaneously and if the parties supply the recording media. A recording made under this rule may be used solely to assist the parties during the proceeding recorded or, at the discretion of the trial judge, in any judicial hearing following an objection to the referee's recommended order; it may not be used publicly.

- (b) If ordered by the court, or if stipulated by the parties, the referee must provide a transcript, verified by oath, of each hearing held. The cost of preparing a transcript must be apportioned equally between the parties, unless otherwise ordered by the court.
- (c) At least 7 days before the judicial hearing, a party who intends to offer evidence from the record of the referee hearing must provide notice to the court and each other party. If a stenographic transcript is necessary, except as provided in subrule (4)(b), the party offering the evidence must pay for the transcript.
- (d) If the court on its own motion uses the record of the referee hearing to limit the judicial hearing under subrule (F), the court must make the record available to the parties and must allow the parties to file supplemental objections within 7 days of the date the record is provided to the parties. Following the judicial hearing, the court may assess the costs of preparing a transcript of the referee hearing to one or more of the parties. This subrule does not apply when a party requests the court to limit the judicial hearing under subrule (F) or when the court orders a transcript to resolve a dispute concerning what occurred at the referee hearing.

B. Subchapter 3.700 Personal Protection Proceedings

Rule 3.705 Issuance of Personal Protection Orders

(B) Hearings.

- (3) The hearing shall be held on the record.

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(H) The Violation Hearing.

- (4) *Judicial Findings.* At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.