MICHIGAN COURT OF APPEALS

OFFICE OF THE CLERK

INTERNAL OPERATING PROCEDURES

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Important Note on the Use of the Internal Operating Procedures

These Internal Operating Procedures ("IOPs") are intended to memorialize the practices adopted by the clerk's office to move appellate papers through the Michigan Court of Appeals efficiently and in conformity with the Michigan Court Rules. Accordingly, each IOP is numbered to correspond to the court rule it implements. By describing in these IOPs how the clerk's office processes appeals and appellate papers, we hope that they will serve as useful guidelines to assist the public and Bar to better understand how properly to file appellate papers in this Court.

> **These IOPs do not constitute legal advice, do not have the force of law, and are not officially sanctioned by the Court of Appeals or the Michigan Supreme Court. The Michigan Court Rules, and the decisional law construing those rules, remain the authoritative, controlling law governing the procedural requirements of appellate practice.**

Because the IOPs are derived from the Michigan Court Rules and the practical processing requirements they entail in the clerk's office, the IOPs will be modified from time to time, without prior notice, to accommodate changes in the rules and the Court's evolving internal practices. Accordingly, as the IOPs need to be updated from time to time to reflect the evolving practices of the clerk's office, these IOPs may not reflect all recent changes in clerk's office practices and cannot be considered binding on the clerk's office.

We hope these IOPs will answer your basic procedural filing questions and aid you in preparing and filing your appellate papers. We welcome any comments you may have about the IOPs or the services of the clerk's office. If you have an appellate filing question not addressed in the court rules or the IOPs, please contact any one of our offices listed below. However, we ask that you bear in mind that staff of the clerk's office are not authorized to give legal advice or to answer substantive legal questions, such as questions regarding the finality of the order(s) being appealed or whether an application for leave would be appropriately filed rather than a claim of appeal. Clerk's office staff also cannot determine in advance of filing whether the Court of Appeals will have jurisdiction over an appeal in a particular case. (Revised 8/14.).

The IOPs are available electronically on the Clerk's Office page of the Court's website.

IOP 7.201 — Organization and Operation of Court of Appeals

IOP 7.201(B)(1) — Main Office of the Clerk

The main office of the Clerk of the Court is on the 2nd floor of the Hall of Justice, 925 West Ottawa St., Lansing, MI 48915. The mailing address is 925 West Ottawa St., P.O. Box 30022, Lansing, MI 48909-7522. The telephone number is (517) 373-0786. (Revised 10/02.)

IOP 7.201(B)(2) — District Offices

There are four district clerk's offices:

District I - Detroit - 14th Floor, Cadillac Place, 3020 West Grand Boulevard, Suite 14-300, Detroit, MI 48202-6020. The telephone number is (313) 972-5678. This district office generally handles the files in cases arising from the counties of Lenawee, Monroe, and Wayne. **Note**: the U.S. Postal Service does not deliver mail, including overnight- express mail, directly to the Detroit office. The mail is delivered to the post office at 60 W. Milwaukee Street in Detroit. It is collected there by a DTMB employee with all mail for the State offices in Cadillac Place. DTMB sorts the mail in Cadillac Place before delivery to the Court's office. This process may take 1-2 business days from the date of delivery to the Milwaukee Street location. Nonetheless, any mail is not considered "filed" until the date it is received in the Court's office. (Revised 5/19.)

District II - Troy - 8th Floor, Columbia Center, 201 West Big Beaver, Suite 800, Troy, MI 48084-4127. The telephone number is (248) 524-8700. This district office generally handles the files in cases arising from the counties of Genesee, Lapeer, Macomb, Oakland, and St. Clair. (Revised 2/14.)

District III - Grand Rapids - State of Michigan Office Building, 350 Ottawa N.W., Grand Rapids, MI 49503-2349. The telephone number is (616) 456-1167. This district office generally handles the files in cases arising from the counties of Allegan, Barry, Berrien, Branch, Calhoun, Cass, Hillsdale, Ionia, Jackson, Kalamazoo, Kent, Mason, Montcalm, Muskegon, Newaygo, Oceana, Ottawa, St. Joseph, Van Buren, and Washtenaw. (Revised 2/14.)

District IV - Lansing – 2nd Floor, Hall of Justice, 925 West Ottawa St., Lansing, MI 48915. The telephone number is (517) 373-0786. This district office generally handles the files in cases arising from the counties not listed above. **Note**: If you are submitting time-sensitive filings to the Lansing district office by overnight carrier, a private carrier is recommended to ensure delivery by the next day. The U.S. Postal Service will not deliver mail directly to the Hall of Justice, including overnight express mail. All US mail is delivered to the State Secondary Complex for sorting and delivery by DTMB staff. This process may take 1-2 business days. Nonetheless, any mail is not considered "filed" until the date it is received in the Court's

office. All U.S. mail should be addressed to 925 West Ottawa St., P.O. Box 30022, Lansing, MI 48909-7522. (Revised 5/19.)

Maps of the district office locations, along with driving directions and parking instructions, can be found on the Court's website under Maps and Directions. (Revised 10/12.)

IOP 7.201(B)(3)-1 — Filing of Papers

All district offices of the clerk are open from 9:00 AM to 5:00 PM, Monday through Friday, except on court holidays, see MCR 8.110(D)(2), or when closed by Court order. Papers may be filed in any one of the offices, by mail or personal delivery. (Revised 1/04.)

Practice Note: With regard to filings made in hard copy, the clerk's office will only accept and date-stamp papers that are received by clerk's office staff before 5:00 PM each day. Any filings that arrive in the office after 5:00 PM will be treated as received the following business day. See IOP 7.202(4)-2 for information on filings made through the e-filing system. (Revised 11/18.)

IOP 7.201(B)(3)-2 — Original Documents Appropriate for Clipping into the File

All parties or attorneys practicing before the Court of Appeals are urged to use electronic filing. In situations where e-filing is not used, filers should ensure that all original documents are in a form suitable for easy attachment to the file. The originals of all documents filed in the Court must be affixed in the file by punching two holes in the top edge and inserting them into an Acco clip. If the original documents are bound with glue, plastic, or other binding material, that binding must first be removed by Court staff before the original is inserted in the file. The same caveat applies to filings with right-hand tabs, as such tabs complicate the process of readying the papers for insertion into the file. Tabs at the bottom margin of the original are preferred. Provision of an original that meets these preferences will facilitate speedy docketing. (Revised 4/19.)

IOP 7.201(B)(3)-3 — Assignment of Docket Number

Upon the filing of initiating papers in the Clerk's Office of the Court, a Court of Appeals docket number will be assigned to the matter. This is a purely ministerial function that precedes a formal review of the papers for conformity with the court rules and compliance with jurisdictional mandates. The docket number is assigned to facilitate the efficient and accurate handling of the papers. (Revised 1/04.)

IOP 7.201(C) — Sessions of Court

In addition to the nine regular sessions of Court mentioned in the court rule, the Court of Appeals may employ other methods to dispose of cases, including scheduling additional sessions or deciding certain appeals without oral argument pursuant to MCR 7.214(E). The Court schedules regular sessions throughout the year. (Revised 2/11.)

IOP 7.201(D) — Judges and Staff

Legislation enacted in 2012 will eventually reduce the Court of Appeals bench from the former 28 judges to 24 judges, six from each district. MCL 600.303a. As of January 1, 2019, the Court has 25 judges, six in districts II, III, and IV, and seven in district I. Each judge has a judicial assistant and a law clerk (Revised 4/19).

When sitting in a session of the Court, judges are divided into panels of three. A computer program randomly rotates judicial assignments so that each judge sits with every other judge an approximately equal number of times over the years. Likewise, the city of oral argument is rotated for each judge. (Published 9/98.)

To assist the judges, the Court of Appeals has central research staff located in Detroit, Lansing and Grand Rapids. (Revised 9/02.)

IOP 7.201(F) — Courtrooms

Permanent courtrooms are located at:

Detroit – 14th Floor, Cadillac Place.

Lansing – 2nd Floor, Hall of Justice.

Grand Rapids - Main Floor, State of Michigan Building.

Maps of the courtroom locations, along with driving directions and parking instructions, can be found on the Court's website at Maps and Directions. (Revised 11/18.)

By court rule, oral argument may also be held in Marquette or another location designated by the chief judge. Typically, the Court will hold at least one hearing date annually at one of the state's law schools. MCR 7.201(F). (Revised 4/19.)

IOP 7.202 — Definitions

IOP 7.202(3) — "Entry Fee"; Motion to Waive Fees

No fee is required for a motion to waive fees, even if it is denied. Nor is a fee required for a motion for reconsideration of an order denying a fee waiver. See IOP 7.211(A)(2). (Revised 4/19.)

IOP 7.202(4)-1 — "Filing"

A document is "filed" when it is delivered to the clerk of the court and accepted by the clerk with the intent to enter it in the record. Upon delivery to any office of the Court of Appeals, a date stamp will be applied as a ministerial act indicating the date, time, and location of receipt of the document. Once the document and any filing fee are received and date stamped by the

clerk's office, the document is considered filed and cannot be returned at the request of the filing party. See IOP 7.201(B)(3)-1. (Revised 9/06.)

The earliest Court of Appeals date stamp on a document will serve as the date of filing for that document, even if it is moved from one office to another because the file is located in an office separate from the office where the document was initially accepted. Sequential date stamps will be applied to any document that is moved within the Court from one office to another. (Published 9/98.)

IOP 7.202(4)-2 — E-Filed Pleadings

Under the authority of Administrative Order 2014-23, the Michigan Court of Appeals offers electronic filing and service of pleadings on a voluntary basis in all categories of cases. (Revised 6/17.)

Through the ImageSoft TrueFiling system, users can initiate an appeal or original action in this Court, file all pleadings and forms with an electronic cover sheet that includes a proof of service, and electronically serve all filings on opposing parties that accept e-service. Electronic service through the ImageSoft TrueFiling system on a party or attorney appropriately selected from that system's list of registered filers is considered personal service in accordance with MCR 2.107(C)(1) or (2). Fee payment may also be made through this system. Parties interested in electronically filing in an existing case or initiating a new case are encouraged to review the E-Filing section of the Court's website and register for the ImageSoft TrueFiling system. (Revised 10/15.)

Practice Note: Electronic filings received by 11:59 PM on a business day will be docketed for that business day. Documents electronically filed or served after 11:59 PM or on a Saturday, Sunday, court holiday, or day on which the court is closed pursuant to court order will be docketed as having been filed or served on the next business day. See AO 2014-23, MCR 1.108; MCR 8.110(D)(2). *Parties and attorneys who wait to electronically file documents after normal business hours on the filing deadline do so at their own risk.* A document that is not successfully e-filed on or before 11:59 PM on its due date will be docketed as received on the following business day. If you believe that a transmission failure or system outage caused your e-filing to be delayed beyond the due date, AO 2014-23 provides a procedure for filing a motion to request that the filing be considered filed on the date of the unsuccessful transmission. (Revised 4/19.)

IOP 7.202-1 — Signatures

In addition to an original signature, the Court will accept signatures by consent, signatures by permission, facsimile signatures, block stamps, and signature stamps. The clerk's office will not accept filings with blank signature lines or omitting any symbol that could be construed as a signature. See MCR 1.109(E). (Revised 11/18.)

In multiple-party cases, all the parties' signatures need not be on the same page. Parties may submit a number of different copies of the signature page, each bearing one or more signatures of multiple attorneys. (Revised 1/01.)

IOP 7.202-2 — Time Requirements

The time for filing any time-sensitive document is calculated pursuant to the dictates of MCR 1.108, Computation of Time. While the rule itself should be consulted by anyone making filings in the Court, it may be summarized by noting that (1) the first day of the pertinent time period is the day after the day of the act or event which triggers the time to begin running, and (2) the last day of the pertinent time period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the Court is closed pursuant to court order, in which case the time ends on the next day that the Court is open. Saturdays, Sundays, etc., that fall within the time period (e.g., not on the last day) are counted the same as any other day. Although Lincoln's Birthday (February 12) and Columbus Day (2nd Monday in October) are not "court holidays" under MCR 8.110(D)(2), any filings/papers due on those days will be considered timely if received the next business day. See MCR 1.108; MCL 435.101. (Revised 10/13.)

When the time for filing runs from the service of another filing, it is important to note that service by mail is complete at the time of mailing under MCR 2.107(C)(3). The clerk's office will use the date of mailing on the proof of service to calculate the due date for any responsive pleading. (Revised 9/03.)

IOP 7.204 — Filing Appeal of Right; Appearance

IOP 7.204-1 — Assignment of Docket Number

Each claim of appeal is assigned an appellate docket number. Even if a prior claim of appeal or application for leave to appeal has been filed from the same lower court or tribunal case, a new claim of appeal will be assigned a new number. A postcard will be sent to the parties to advise that the appeal has been "received." The Court of Appeals docket number that is stated on this card should be included on all further filings in the matter. (Revised 5/07.)

The court rule only requires the filing of one copy of the claim of appeal and certain supporting documents. See MCR 7.204(B)-(C). Providing five copies is unnecessary and strongly discouraged because the additional copies are not retained. (Published 2/11.)

IOP 7.204-2 — Multiple Files; Multiple Docket Numbers

If a claim of appeal is filed that involves the same parties but two or more lower court or tribunal numbers, one Court of Appeals docket number will be assigned to the appeal. If a claim of appeal is filed that lists more than one lower court or tribunal number and has different parties, separate docket numbers will be assigned (corresponding to each of the lower court or

tribunal numbers). Multiple numbers are assigned in such cases to allow for preparation of the correct title for each case. (Revised 11/18.)

The assignment of multiple docket numbers does not prevent the Court from later consolidating the files, either because the same parties are involved or because the same issues are raised on appeal. (Published 9/98.)

IOP 7.204-3 — One File, Multiple Claims of Appeal

Even if multiple claims of appeal are filed, only one docket number may be assigned if the judgments or orders appealed were issued the same day by the same judge and represent a general appeal. For example, in one trial a defendant is convicted of charges brought under three separate lower court numbers, and he is sentenced on the same day by the same judge. Even if three separate claims of appeal are filed to correspond to each of the lower court numbers, the three claims of appeal will be assigned only one Court of Appeals docket number. (Published 9/98.)

IOP 7.204-4 — Initial Review of Claim of Appeal

Once a docket number is assigned to a case, that file is reviewed for critical filing defects and jurisdictional concerns. If there is a jurisdictional concern or if defects have not been corrected in response to a defective filing letter from the clerk's office, the matter may be referred for possible dismissal under MCR 7.201(B)(3) or MCR 7.203(F)(1). The Court does not notify either party that an appeal is considered eligible for dismissal due to lack of jurisdiction. Notice to the parties is conveyed when the order of dismissal is forwarded to them. (Revised 2/14.)

IOP 7.204-5 — Procedure When All Documents Have Not Been Filed

If the claim of appeal lacks a copy of the final order, the correct entry fee, a conforming proof of service [see MCR 7.204(C)(3)], the lower court register of actions, or another required item, a computer-generated "defect" letter may be issued to advise the appellant that the additional documents must be filed, or fee paid, within 21 days. See MCR 7.201(B)(3). A copy of the letter will be sent to all attorneys or parties who have been served with the claim of appeal (presuming their addresses are contained in the papers that were filed by the appellant). The clerk's office may send an additional letter, either before or after expiration of the 21-day period, if the appellant has made some attempt to correct the defect or if the clerk's office believes there was an inadvertent failure to correct the defect after the first letter was sent. The additional letter, if sent, sets out the further requirements of the Court. (Revised 2/14.)

IOP 7.204(B)(2)-1 — Entry Fee

The entry fee is set by statute, MCL 600.321. It is presently $375. If the filing is made through the e-filing system, the filer's registered credit card account will be charged the appropriate

fee. Filings made in paper form should be accompanied by a personal or corporate check made payable to the "State of Michigan." Cash will be accepted, but it must be in the proper amount; the clerk's office cannot make change or accept an overpayment. If the clerk's office determines that an inadequate entry fee was submitted, the outstanding amount will be requested by letter. (Revised 11/18.)

IOP 7.204(B)(2)-2 — Entry Fee When Multiple Lower Court Numbers

The entry fee is set by MCL 600.321, which states that "[t]his fee shall be paid only once for appeals that are taken by multiple parties from the same lower court order or judgment and can be consolidated." (Revised 11/18.)

Only a single fee is to be collected from (a) one party appealing a final trial court order or judgment, or (b) multiple parties filing multiple appeals from a final trial court order or judgment, so long as these multiple filings allow for efficient and purposeful consolidation for processing, hearing, and decision as a single appeal. (Revised 1/01.)

The listing of multiple lower court numbers on an order or judgment is by itself of no consequence in determining the number of entry fees to be paid. If it can be and is determined at the time of filing that another party has previously paid the entry fee, the later appeal will be accepted without fee. If it cannot be or is not determined at the time of filing that another party has previously paid the entry fee, the second fee will be required and it is up to the parties to seek any appropriate refund of any excess fees paid from the Court upon a showing by affidavit that the parties cannot accomplish the proper allocation of fee responsibility between or among themselves. (Revised 2/14.)

IOP 7.204(C)(1) — Final Order

Under MCR 7.203(A), it is the final order that is appealable by right. A final order is not necessarily the last order. Therefore, as to a final order under MCR 7.202(6)(a)(i), the trial court or tribunal order that disposed of the last claim in the case (as opposed to an order on rehearing) is the required order. The clerk's office requires that the copy sent to the Court must either be a true copy provided by the trial court or tribunal clerk, or a copy showing the signature of the trial judge or tribunal. Proposed final orders are not accepted. (Revised 2/14.)

IOP 7.204(C)(2) — Transcript

The appellant is responsible for ensuring that the complete transcript is ordered and filed. When an appeal has been filed by the trial court on behalf of an indigent party with appointed counsel, it is counsel's responsibility to review the lower court file shortly after appointment and confirm that the transcripts of all necessary proceedings have been ordered from the proper court reporter(s). An appellant's obligation to ensure the filing of the transcript is set forth in MCR 7.210(B). Failure to comply with the requirements may result in dismissal

pursuant to MCR 7.217. See the IOPs on MCR 7.210 for more complete information on this subject. (Revised 4/19.)

IOP 7.204(C)(3) — Proof of Service

MCR 7.204(C)(3) requires that all parties be served. The court rule uses the word "parties," not the word "appellees." Thus, all parties at the lower court level must be served regardless whether they are intended to be appellees. Two exceptions have been carved out, such that appellant need not serve (1) a party who has been dismissed from the trial court proceedings by order pursuant to stipulation, or (2) a party who has been dismissed from the trial court proceedings for lack of service. If one of these exceptions applies, the appellant should advise the Court in writing on the proof of service. Proof of service of the claim of appeal is governed by court rule and must state the facts of service, including the manner, time, and place of service. See MCR 2.104(A) and MCR 2.107(C). When a party wishes to raise an issue with respect to service of the claim of appeal, it must be done through an appropriate motion filed with this Court. (Revised 4/19.)

IOP 7.204(C)(4) — Bond

The clerk's office does not determine compliance with MCR 7.204(C)(4) because the court rule does not establish a jurisdictional requirement and does not impact the merits of the appeal. (Published 9/98.)

IOP 7.204(C)(5) — Register of Actions

MCR 7.204(C)(5) requires the filing of the register of actions from the lower court, tribunal, or agency. See MCR 8.119(D)(1)(c). The copy of the register of actions filed with the appeal should, at a minimum, include the entry for the order appealed from or the order that gives jurisdiction to the Court of Appeals. If such is available, a true and accurate copy of the register of actions secured from the lower court's website will suffice. (Revised 5/06.)

IOP 7.204(C)(6) — Jurisdictional Checklist

A jurisdictional checklist must be filed with each claim of appeal. The form checklist may be obtained at any district office or from the Court Forms page on the Court's website. (Revised 11/18.)

IOP 7.204(D) — Form of Claim

The court rule sets forth the form of the claim of appeal. The claim of appeal provides notice to the parties of basic information from which they can take action to protect their interests. If the claim of appeal fails to list all parties or otherwise may be misleading to the Court or a party, the parties may be notified by letter that a corrected cover sheet for the claim of appeal must be filed. (Revised 2/14.)

MCR 7.204(D)(3)(a) requires that when the appeal involves a contest as to the custody of a minor child the claim must include a statement in capital letters notifying the Court of that fact. This requirement should be read to mean that the appeal involves an issue as to child custody, not merely that child custody was an issue decided in the lower court proceedings. If such information is omitted from the claim of appeal, a motion to amend the claim of appeal to add that notice must be filed in order to receive expedited treatment under the court rules. See MCR 7.210(B)(3)(b)(iii); 7.212(A)(1)(a)(i); 7.213(C). (Revised 4/19.)

Similarly, a statement in capital letters is required where the appeal involves "a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid." MCR 7.204(D)(3)(b). This applies only when the lower court ruled that such a provision was invalid, not where the issue was raised and rejected by the trial court. For example, MCR 7.204(D)(3)(c) would not apply to a trial court's rejection of a challenge to the constitutionality of a statute. (Revised 4/19.)

IOP 7.204(E) and (F) — Other Filing Requirements

The clerk's office does not determine compliance with either MCR 7.204(E) or (F). If the trial court or tribunal clerk refuses to transmit the record because the appellant failed to pay any fee required by MCR 7.204(E)(2), the clerk's office will send a letter to the appellant warning that the appeal will be dismissed if the fee is not paid within 21 days. (Revised 11/18.)

IOP 7.204(G)-1 — Time for Filing Appearances

MCR 7.204(G) provides that an appearance shall be filed within 14 days after being served with the claim of appeal. As a practical matter, the clerk's office will accept an appearance even if filed after expiration of the 14-day period. (Revised 4/19.)

IOP 7.204(G)-2 — Consequences of Appearance

MCR 7.204(G) provides for the filing of an appearance by an "appellee" within 14 days of service of the claim of appeal. The Court will also accept appearances from parties who may not intend to participate in the appeal. Such parties will be carried in the Court's records as they were carried on the records of the lower court. (Revised 11/18.)

Parties are required to serve all filings on any appellee that has filed an appearance. However, filings that are made within 14 days after the claim of appeal has been served must be served on all parties identified as appellees in the claim of appeal. Where the appeal involves only two parties (one appellant and one appellee), the appellant is required to serve all future filings on the appellee even if an appearance has not been filed. (Revised 5/06.)

Proof of service of filings in the appeal, and notice from the Court of activity in the appeal, will be directed only to parties appearing in propria persona and to the principal attorneys who

have signed the appearances for the parties. However, the attorney who signs the party's brief on appeal will be carried on the records of the Court as the principal attorney for that party from that point forward. See IOP 7.212(C)(9). The Court has the responsibility to notify only one attorney per party of calendar events in the Court. (Revised 5/06.)

If an attorney has moved or the file has been reassigned to another attorney within the law firm, the original attorney or firm is responsible for notifying the clerk's office of that fact. If the clerk's office becomes aware that an attorney has moved, but has not been notified that the case has been reassigned to another attorney in the former firm, the opinion or order will be sent to the original attorney at the new address. (Published 9/98.)

Once an attorney has appeared, and before the case has been scheduled for case call, that attorney may be removed from the appeal by stipulation to substitute or by motion to withdraw. After the case has been scheduled for case call, removal may occur only through a motion filed with the Court. A stipulation to substitute will not be accepted after the case has been scheduled for case call. (Revised 6/01.)

IOP 7.204(G)-3 — Signing of Appearance

The clerk's office has the responsibility to notify only one attorney per party of calendar events in the Court of Appeals. Regardless of how the attorneys are listed on the appearance, the attorney who actually signs the appearance will be listed as the attorney of record and will be sent all notices and letters in the matter, unless a different attorney from the same firm signs a subsequently filed brief. In such case, the name of the attorney who signs the brief will be substituted in the records of the Court. (Revised 1/01.)

IOP 7.204(H) — Time for Filing Docketing Statement

MCR 7.204(H) requires that a copy of the docketing statement be filed within 28 days after the claim of appeal or claim of cross appeal has been filed in a civil appeal. (Note: The same deadline applies after entry of an order granting an application for leave. MCR 7.205(D)(3).) If the docketing statement is not filed, the clerk's office will send a letter to the appellant or cross-appellant informing it that the appeal is subject to dismissal under MCR 7.217 if the docketing statement is not filed within 21 days after the date of the letter. If the docketing statement is not filed within that 21-day period, the matter will be referred to the chief judge for dismissal or other action under MCR 7.217. Filings received after the 21st day, but before dismissal, may be accepted, but costs may be assessed. (Revised 4/19.)

An appellee or cross-appellee may file a docketing statement in response to the docketing statement filed by the appellant or cross-appellant. The clerk's office will accept a docketing statement from any party at any time during the pendency of the appeal. (Revised 1/01.)

IOP 7.204(H)(1) — Form of Docketing Statement

The rule provides that "the docketing statement must contain the information required from time to time by the Court of Appeals through the office of the Chief Clerk." The standard docketing statement form, as well as the specialized form for certain domestic relations cases (those identified with case-type code suffixes of DM or DO), may be obtained at any district office or from the Court Forms page on the Court's website. The lower court register of actions is not the docketing statement contemplated by this court rule. (Revised 11/18.)

IOP 7.204-6 — Waiver of Parental Notification to Obtain Abortion

Appeals from a denial of a waiver of parental notification for a minor to obtain an abortion are treated as high-priority emergencies according to statute and court rule. See MCL 722.901 et seq.; MCR 3.615(K)(2) and (3). The Court will endeavor to decide the appeal within 72 to 96 hours of the filing of the claim of appeal. The minor's attorney will be notified by phone immediately upon entry of the order resolving the appeal. A motion for reconsideration of the order may be filed in accordance with MCR 7.215(I). Motions for reconsideration will be submitted immediately for decision. (Revised 1/10.)

Practice Note: To facilitate recognition of these appeals and to expedite handling, practitioners are advised to make every effort to alert the Court to the nature of the filing. The minor's attorney should telephone the clerk's office in advance to advise that the filing will be made. When filing the claim, the attorney or courier should alert the clerk accepting the filing of the emergency nature of the appeal. Most importantly, the claim of appeal should clearly indicate that it involves an appeal from the denial of a waiver of parental notification. That statement should be printed in bold-face, large-type print on the first page of the filing. (Revised 1/10.)

IOP 7.205 — Application for Leave to Appeal

IOP 7.205-1 — Assignment of Docket Number

Each application is assigned an appellate docket number. Even if a prior application for leave to appeal or claim of appeal has been filed from the same lower court or tribunal case, a new application for leave to appeal will be assigned a new number. (Published 9/98.)

IOP 7.205-2 — Multiple Files; Multiple Docket Numbers

If an application for leave is filed that involves the same parties but lists more than one lower court or tribunal number, one docket number will be assigned to the appeal. If an application for leave is filed that lists more than one lower court or tribunal number and has different parties, separate docket numbers will be assigned (corresponding to each of the lower court or tribunal numbers). Multiple numbers are assigned in such cases to allow for preparation of the correct title for each case. (Revised 11/18.)

The assignment of multiple docket numbers does not prevent the Court from later consolidating such files, either because the same parties are involved or because the same issues are raised on appeal. (Published 9/98.)

IOP 7.205-3 — Multiple Applications

If separate applications for leave to appeal are filed to appeal each lower court case or order, separate docket numbers will be assigned. There is no requirement that separate applications for leave to appeal be filed when all orders or cases can be conveniently contested in one application. However, if separate applications are filed, they will be treated accordingly. (Published 9/98.)

IOP 7.205-4 — Initial Review

Once a docket number is assigned to a case, Court staff will initially review the file to determine that all necessary paperwork and fees have been filed and paid as well as for jurisdictional concerns. (Revised 2/14.)

IOP 7.205-5 — Granting of Application

A new docket number is not assigned to the appeal if the Court of Appeals grants the application for leave to appeal. If the Court of Appeals denies leave to appeal and the Supreme Court later remands the case to the Court of Appeals to hear as on leave granted, the case will proceed under the original Court of Appeals docket number. (Revised 11/18.)

IOP 7.205-6 — When All Documents Have Not Been Filed

If the application lacks the order, correct entry fee, proof of service (see MCR 7.205(B)(6)), evidence that the transcript has been ordered, or other needed item or if it fails to conform to MCR 7.212(B) and (C), a computer-generated letter (a "defect" letter) will be issued to advise the appellant that the additional documents must be filed, or fee paid, within 21 days. See MCR 7.201(B)(3). A copy of the letter will be sent to all attorneys or parties who have been served with the application for leave to appeal. The clerk's office may send an additional letter, either before or after expiration of the 21-day period, if the appellant has made some attempt to correct the defect or if the clerk's office believes there was an inadvertent failure to correct the defect after the first letter was sent. The additional letter, if sent, sets out the further requirements of the Court. (Revised 2/14.)

IOP 7.205(B)(1) — Form of Application

The rule provides for a single document which the Court requires to conform to all requirements of MCR 7.212(B) and (C), including limiting the document to no more than 50 pages, using only 12-point type, including a jurisdictional statement, that clearly identifies and

provides the date of the order appealed, and referencing the standard of review and supporting authorities in each argument. (Revised 8/14.)

The Court strongly recommends that the appellant attach to its application for leave to appeal copies of relevant transcripts and pleadings as the Court does not receive the lower court record for purposes of considering whether to grant or deny applications for leave to appeal. The Court also strongly recommends the filing of an index of exhibits. See IOP 7.212(C)(7)-2. (Revised 8/14.)

In accordance with the Court's E-Filing "How To" Guides, practitioners should e-file their application/brief in a PDF file that is separate from their exhibits and also should bookmark their exhibits. (Published 8/14.)

IOP 7.205(B)(2) — Order Appealed

The order appealed in an application for leave is the order deciding the merits of the issue(s). (Published 9/98.)

IOP 7.205(B)(3) — Tribunal or Agency Record

The appellant is initially responsible for requesting that the tribunal or agency record be sent to the Court of Appeals and documenting that fact. Once this initial showing has been made, the clerk's office will assume the ultimate responsibility for actually securing the record. (Published 9/98.)

IOP 7.205(B)(4) — Transcript

An application for leave to appeal should be accompanied by a copy of the transcript as required by MCR 7.205(B) or evidence that the transcript has been ordered. Evidence will either be (1) a certificate signed by the court reporter stating that the transcript has been ordered or (2) a copy of a letter signed by the attorney and sent to the court reporter requesting the transcript. Upon docketing the file, the clerk's office will send a postcard to remind the appellant of the responsibility to provide the transcript. If the appellant fears that the transcript will not be timely filed, a motion to waive the transcript or to expedite transcript production may be filed. If the appellant fails to provide a copy of the transcript within the time required for the filing of a transcript under MCR 7.210(B)(3)(b), one warning letter will be sent to the appellant requesting the transcript. If a copy is then not provided, the appeal will be subject to dismissal. The Court may also deny or dismiss an application for leave to appeal if a subsequent review by a staff attorney leads to the conclusion that a necessary transcript was not ordered and filed. (Revised 4/19.)

IOP 7.205(B)(6) — Proof of Service

MCR 7.205(B)(6) requires that all "parties" be served. The court rule uses the word "parties," not the word "appellees." Thus, all parties who were involved at the lower court level must be served regardless whether they are intended to be appellees. Two exceptions have been carved out, such that the appellant need not serve (1) a party that has been dismissed from the trial court proceedings by order pursuant to stipulation, or a party that has been dismissed from the trial court proceedings for lack of service. If one of these exceptions applies, the appellant should advise the Court in writing on the proof of service. Proof of service of the application is governed by court rule and must state the facts of service, including the manner, time, and place of service. See MCR 2.104(A) and MCR 2.107(C). When a party wishes to raise an issue with respect to service of the application, it should be done by motion. (Revised 11/18.)

IOP 7.205(B)(7)-1 — Entry Fee

The entry fee is set by statute, MCL 600.321. Presently, the fee is $375. When multiple orders on the merits are appealed, the entry fee is $375 for each order being appealed (an order denying rehearing is not an order on the merits). However, only a single fee is required when the application for leave to appeal is from a final order, as defined by MCR 7.202(6)(a)(i), that could have been appealed of right and when the application seeks review of the multiple orders entered at the same time or prior to the final order. (Revised 11/18.)

If the filing is made through the e-filing system, the filer's registered credit card account will be charged the appropriate fee. Filings made in paper form should be accompanied by a personal or corporate check made payable to the "State of Michigan." Cash will be accepted, but it must be in the proper amount; the clerk's office cannot make change or accept an overpayment. If the clerk's office determines that an inadequate entry fee was submitted, the outstanding amount will be requested by letter. (Revised 11/18.)

IOP 7.205(B)(7)-2 — Entry Fee; Multiple Lower Court Numbers

The entry fee is set by MCL 600.321, which states that "[t]his fee shall be paid only once for appeals that are taken by multiple parties from the same lower court order or judgment and can be consolidated." (Revised 11/18.)

Only a single fee is to be collected from (a) one party appealing a single trial court order or judgment, or from (b) multiple parties filing multiple appeals from a single trial court order or judgment, so long as these multiple filings allow for efficient and purposeful consolidation for processing, hearing and decision as a single appeal. (Revised 10/99.)

The listing of multiple lower court numbers on an order or judgment is by itself of no consequence in determining the number of entry fees to be paid. If it can be and is determined

at the time of filing that another party has previously paid the entry fee, the later appeal will be accepted without fee. If it cannot be or is not determined at the time of filing that another party has previously paid the entry fee, the second fee will be required and it shall be up to the parties to seek an appropriate refund of any excess fee from the Court upon a showing by affidavit that the parties cannot accomplish the proper allocation of fee responsibility between or among themselves. (Revised 2/14.)

IOP 7.205-7 — Court Has Jurisdiction and All Documents Filed

An application is initially reviewed for jurisdiction and completeness in the district in which it is filed. Except in emergency situations, the file is then transferred to the appropriate district office. See IOP 7.201(B)(2). However, applications for leave to appeal that are direct appeals from judgments of sentence entered pursuant to plea-based convictions are generally reviewed in the Lansing office. (Revised 8/14.)

IOP 7.205-8 — Court Lacks Jurisdiction or Not All Documents Filed

If Court staff determines that there is a jurisdictional concern or that the defects have not been corrected, the matter may be referred for dismissal under MCR 7.201(B)(3) or MCR 7.203(F)(1). The Court does not notify either party that an appeal is considered eligible for dismissal due to lack of jurisdiction. Notice to the parties is conveyed when the order of dismissal is forwarded to them. (Revised 2/14.)

IOP 7.205(C)-1 — Time to File Answer

The court rule requires that the answer be filed within 21 days of service of the application. By judicial policy, the clerk's office is authorized to accept answers that are filed after the deadline has passed, but the parties should note that they file untimely answers at their own risk. If there is insufficient time to forward a late answer to the judges before they sign an order disposing of the application, the late answer will not be accepted for filing and the filing party will be notified of that fact. (Revised 4/19.)

A formal extension of time to file an answer can only be secured by order of the Court pursuant to a motion for extension of time. See MCR 7.211(E)(2)(e), which gives the chief judge the authority to adjourn the hearing date for an application. A motion to extend time to file the answer need not be accompanied by the proposed answer, although such is strongly preferred. An extension of time granted under this rule will delay submission of the application until after the extended deadline has passed. (Revised 9/08.)

IOP 7.205(C)-2 — Form of Answer

Five copies of the answer must be filed. Generally, answers must conform to MCR 7.212(D). If an answer fails to conform, the appellee will be sent a letter advising that the answer is not in

conformity with the rule, with instructions as to what must be done to correct it. Submission of the application will not be delayed pending receipt of the corrected answer. (Revised 1/10.)

Under current Court policy, answers to applications for leave to appeal need not conform to MCR 7.212(D) in cases arising from (a) trial court orders entered pursuant to a defendant's guilty plea, or (b) trial court orders entered under MCR 6.500 et seq. Answers in these restricted categories of cases may be truncated pleadings, although the Court encourages appellees to include a recitation of the procedural history of the case in appeals under MCR 6.500 et seq. (Published 11/18.)

IOP 7.205(D) — Reply to Answer

Under MCR 7.205(D), an appellant may file a reply brief in response to an answer to an application. The reply must comply with the requirements of MCR 7.212(G). (Revised 11/18.)

The court rule permits the filing of a reply within 21 days of service of the answer. After this deadline, the matter is eligible for submission to a panel of judges for disposition. The Court encourages an appellant to notify the clerk's office of the intention to file a reply brief. If an appellant advises the Court that he or she will not be fling a reply brief, the matter will be eligible for submission earlier. In the event that a late answer is filed, appellants are advised to contact the clerk's office regarding their intention regarding the filing of a reply brief. (Published 8/14.)

For emergency and priority matters, submission of the applications may not be delayed the full 21 days for the filing of a reply under MCR 7.205(D); MCR 7.212(G). (Published 11/18.)

Appellants are advised to adhere to the 21-day period for filing replies to answers to applications for leave to appeal. The filing of untimely replies with motions seeking leave to do so will delay consideration and resolution of the application for leave to appeal. Therefore, appellants are discouraged from the practice of seeking additional time to file a reply brief, particularly if the application is designated as a priority. (Published 8/14.)

IOP 7.205(F)(1) — Notice That Action Required Within 56 Days

If the appellant believes that some action by the Court is necessary within 56 days of the date the application is filed, appellant should include a prominent notice on the cover sheet or first page of the application alerting the clerk's office to that fact. The notice should include the date by which action is required. See MCR 7.205(F)(1). (Revised 1/01.)

The application will be reviewed by a staff attorney in the appropriate district office to determine whether action within 56 days is required. If it is determined that the application should be submitted in more than 21 days but less than 56 days from the date of filing, the application will be designated as a "priority." [Note: In this context, the term "priority" is not meant to refer to priority cases under MCR 7.213(C).] If it is determined that the application

should not be treated as a priority, the appellant will be notified as soon as the determination is made. The appellant may then choose to file a motion for immediate consideration. (Revised 9/02.)

If it is determined that the application requires action in less than 21 days, the clerk's office will contact the appellant and request the filing of a motion for immediate consideration. See MCR 7.205(F)(2); IOP 7.205(F)(2)-1. (Revised 1/01.)

IOP 7.205(F)(2)-1 — Emergency Application: Filed with Motion for Immediate Consideration

If the appellant believes that some action by the Court is necessary within 21 days of the date the application is filed, the appellant should file a motion for immediate consideration with the application concisely stating why an immediate hearing is necessary. See MCR 7.205(F)(2). (Revised 1/01.)

The motion and application will be reviewed to determine whether action within 21 days is required. If it is determined that the application should be submitted within 21 days from the date of filing, the application will be designated as an "emergency." If it is determined that action within 21 days is not necessary, the clerk's office will notify the parties of that determination and the application will be designated as a priority. See IOP 7.205(F)(1). (Revised 11/18.)

If the motion and application are served on the appellee by mail, the matter may not be submitted to the panel until the first Tuesday 7 days after the date of service, unless the appellee acknowledges receipt. When the motion and application are served personally, the application is eligible for immediate submission. Eligibility for submission does not necessarily mean the pleadings will be submitted immediately to a panel. (Revised 8/14.)

Practice Note: When the filing is designated as an emergency (requiring action in less than 21 days), opposing counsel will be telephoned and advised that due to the emergency, the 21-day answer period has been shortened. Opposing counsel will be given a deadline for submitting an answer. If opposing counsel knows at that point that no answer will be filed, counsel should indicate that during the phone call, or notify the appropriate clerk's office immediately if that is determined later. Submission to a panel of judges will occur as quickly as necessary under the circumstances of the individual case, as outlined above. The panel will be advised of appellee's intentions regarding the filing of an answer. The panel may choose to issue an order before receipt of the answer. Appellants are advised that, in priority matters, submission of the application will not necessarily be delayed to allow for the filing of a reply under MCR 7.205(D), MCR 7.212(G). (Revised 8/14.)

The Michigan Rules of Professional Conduct oblige practitioners to demonstrate respect for those who serve the legal system. Practitioners also have a special responsibility for the quality of justice. Thus, civility toward court staff is expected. The clerk's office is sensitive to the

pressures on counsel and litigants. Court staff members strive to process applications in a timely and fair manner. Filers are required to be courteous toward staff at all times, but particularly so in emergency situations. (Published 8/14.)

Several options may be available to opposing counsel as to the timing of any answer. If counsel will affirm in writing that the action sought to be stayed will be voluntarily delayed until the Court rules on the emergency filing, submission may be delayed to provide opposing counsel time to draft a reply and to give the panel an opportunity to more carefully review the matter before issuing a ruling. If counsel cannot delay the action sought to be stayed, counsel may want to consider filing a rudimentary response accompanied by copies of all pleadings on which the trial court's ruling was based. This response will be considered the answer to the motion, so it should be as complete as possible within existing time constraints. (Published 9/98.)

All parties should be aware that the Court may issue an immediate ruling granting stay pending further review and order of the Court, and then issue a final ruling after a full review of the trial court's ruling, the transcript of the trial court hearing, and the parties' filings. This type of order will preserve the status quo while the Court more fully considers the matter. (Published 9/98.)

IOP 7.205(F)(2)-2 — Motions With Emergency Application

Motions are not submitted separately from the application. The application for leave to appeal and all filed motions will be submitted together to the hearing panel. It will be the panel's decision whether to decide some of the motions before deciding the application for leave to appeal. Related motions are not split from the application because the merits of the application may affect the panel's decision on certain motions, such as a motion for stay. (Published 9/98.)

For information on the filing of motions for stay with emergency applications for leave, see IOP 7.209. Note in particular the appellant's responsibility for meeting the requirements of MCR 7.209(A)(2) and (3). A motion to waive these requirements is the only alternative to providing the motion transcript and lower court order denying stay. (Published 9/98.)

IOP 7.205(G)(1) — Filing of Documents for Late Appeal

If an application for leave to appeal cannot be filed within the time provided by MCR 7.205(A), but can be filed within the time provided by MCR 7.205(G)(3), in addition to filing *all* the documents required by MCR 7.205(B), the appellant must explain the reason for the delay in filing the application. This explanation can be in the application itself or in a separate document. (Published 9/98.)

IOP 7.206 — Extraordinary Writs, Original Actions, and Enforcement Actions

IOP 7.206-1 — Same as Application for Leave to Appeal

Original actions and answers to original actions are treated the same as applications for leave to appeal and their answers. That includes the review by a staff attorney and notification of any defects. Original actions can be dismissed for failure to file in conformity with the rules or for lack of jurisdiction. The entry fee is also set by statute at $375. See the IOPs under 7.205. (Revised 11/18.)

The filing of an original, civil action will generally require the payment of an electronic filing system (EFS) fee of $25. That fee is required by statute for civil actions filed in the Court of Appeals. If fees are waived in the case, the EFS fee is also waived. A governmental entity is not required to pay the EFS fee. See MCL 600.1986. (Revised 4/19.)

An answer to the complaint shall be filed within 21 days of service of the complaint. By judicial policy, certain original actions are randomly assigned to any of the four district motion panels regardless of the district in which the action was filed. (Revised 11/18.)

Practice Note: Writs of superintending control, mandamus or habeas corpus may not be sought by motion in an existing action. Rather, request for such a remedy must be brought in an original proceeding. (Revised 1/01.)

IOP 7.206-2 — Headlee Cases

The Court of Appeals shares subject matter jurisdiction with the circuit court over original actions filed under the Headlee Amendment, Const 1963, art 9, §§ 25-34. Const 1963, art 9, § 32; MCL 600.308a. If commenced in the Court of Appeals, such a complaint is to be filed as an original proceeding under MCR 7.206. (Published 9/07.)

In a complaint in a Headlee action, practitioners are urged to plead the specific facts necessary to establish a cause of action. It is most helpful if documentation that is necessary to an understanding and resolution of the case is appended to each copy of the complaint and answer. Such documentation includes, but is not limited to, a copy of any municipal ordinance or charter provision at issue in the case and the minutes of public bodies. Practitioners are also expected to accompany their complaints and answers to complaints with briefs in support of their respective positions. MCR 7.206(D)(1)(b), (2)(b). (Published 9/07.)

Although the Court of Appeals has jurisdiction over Headlee cases as original actions, it is not generally contemplated that this Court will sit as a trier of fact in a trial court capacity. Practitioners should note that MCR 7.206(D)(3) contemplates that, when factual findings are necessary, the Court of Appeals may refer the matter to a "judicial circuit or tribunal or agency" to resolve the factual questions. See also MCL 600.308a(5). Practitioners should identify any questions of material fact they believe exist and supply documentation supporting their claims

that factual issues exist. If this Court concludes that material factual questions do exist, the Court may refer the matter to an appropriate finder of fact to allow discovery and to resolve the factual questions following an evidentiary hearing. (Published 9/07.)

If the Headlee case survives the preliminary hearing on the complaint under MCR 7.206(D)(3), a Court of Appeals judge may be appointed as Case Manager to confer with the parties on factual and legal issues to be determined in the case, identification of procedural motions that may need to be filed, and other issues necessary to development of the case for submission on the merits. (Published 9/07.)

IOP 7.207 — Cross Appeals

IOP 7.207-1 — Procedure for Review

Each claim of cross appeal is reviewed by clerk's office staff to ensure that all required documents have been filed and that the Court of Appeals has jurisdiction. If the claim of cross appeal lacks the order appealed (unless it is the same order appealed by the appellant) or proper proof of service, a letter will be sent to the cross-appellant requiring the additional documents within 21 days. See MCR 7.201(B)(3). A copy of the letter will be sent to all attorneys or parties served with the claim of cross appeal. The clerk's office may send an additional letter, either before or after expiration of the 21-day period, if the cross-appellant has made some attempt to correct the defect or if the clerk's office believes there was an inadvertent failure to correct the defect after the first letter was sent. The additional letter, if sent, sets out the further requirements of the Court. (Revised 2/14.)

IOP 7.207(B)-1 — Entry Fee

The Court of Appeals will not collect entry fees for cross appeals that are filed from the same lower court order or judgment as the direct appeal if an entry fee for the direct appeal has been paid. See MCL 600.321. Note that in this context, a direct appeal by right from a final judgment under MCR 7.202(6)(a)(i) encompasses all prior orders entered in that same case. However, in a cross appeal to an appeal by leave granted, the filing will be carefully scrutinized to determine whether the same lower court order or judgment is the subject of the cross appeal. If not, an entry fee must be paid. A cross appeal filed from an order granting a post-judgment motion under MCR 7.208(B)(5)(b) requires payment of an entry fee since the cross appeal is not from the same lower court order. The fee is presently set at $375. See IOP 7.204-2 and 7.204-3. (Revised 2/14.)

IOP 7.207(B)-2 — Proof of Service

The claim of cross appeal must be served on all parties, not just the cross-appellees, except when a party has been dismissed by stipulation or was never served with the complaint. See IOP 7.204(C)(3). (Revised 1/05.)

IOP 7.207(E) — Delayed Cross Appeal

If a party cannot timely file a claim of cross appeal, an application for leave to file a delayed (cross) appeal should be filed. The application must conform to all the filing requirements of MCR 7.205. However, see IOP 7.207(B)-1 concerning the payment of entry fees for cross appeals. If the application is granted, further pleadings on the cross appeal will be docketed in the underlying appeal. The order granting leave will set forth this requirement. (Revised 5/05.)

IOP 7.208 — Authority of Court or Tribunal Appealed From

IOP 7.208(A) — Stipulation to Amend Lower Court Judgment

After the claim of appeal is filed or leave to appeal is granted, the parties may use a stipulation to effect an amendment of the trial court order. This will often arise when the parties have reached a settlement and want to memorialize the settlement in the trial court before dismissing the appeal. The stipulation should be filed in the trial court, not the Court of Appeals. There is no need to move to remand from the Court of Appeals to the trial court for this purpose because the trial court and the Court of Appeals have concurrent jurisdiction. (Revised 5/07.)

IOP 7.208(B) — Post-Judgment Motions in Criminal Cases

Post-judgment motions filed under this court rule in the trial court should be copied to the Court of Appeals so that the file is current and the Court is aware that briefing will be delayed while the post-judgment proceedings are ongoing in the lower court. (Published 9/98.)

The Court of Appeals views the list of motions in this court rule as restrictive: new trial, judgment of acquittal, withdrawal of plea, or resentencing. No other motions filed in the trial court will be viewed as post-judgment motions under this court rule. (Revised 9/02.)

If the motion is timely filed in the trial court, proceedings on appeal are halted until the post-judgment motion is decided and the transcript is filed in the trial court. By court rule, the appellant's brief is due within 42 days after the trial court's decision or after filing of the transcript, whichever is later. MCR 7.208(B). That deadline cannot be extended by stipulation. Extension may only be obtained by motion for good cause shown. (Revised 5/08.)

If the motion is not timely filed in the trial court, the Court of Appeals will generally send a courtesy letter advising that appellate briefing will not be affected by the filing in the lower

court. The time for filing the motion in the trial court is jurisdictional and cannot be extended by stipulation between the parties, by motion in the trial court, or by motion in the Court of Appeals. (Revised 2/02.)

Practice Note: In a situation where more than 56 days have elapsed since the commencement of the time for filing the appellant's brief, appointed counsel has filed a brief on appeal and the trial court subsequently allows that attorney to withdraw, the clerk's office policy is that no attorney can file a motion in the trial court that this Court will docket as a post-judgment motion. This policy is unaffected by this Court's decision to allow withdrawal of the previously filed brief, unless otherwise stated in the order. A motion to remand may be filed to seek permission to pursue the matter in the trial court. (Revised 1/01.)

IOP 7.208(G) — Appointment of Counsel

While an appeal involving an indigent person is pending in the Court of Appeals, the trial court retains the authority to appoint, remove, or replace an attorney. The Court views the trial court's authority as paramount on this question and will return to the filing party any motion for appointment or removal of counsel that has not been first presented to the trial court. (Published 9/98.)

IOP 7.209 — Bond; Stay of Proceedings

IOP 7.209(A)(1) — Effect of Appeal

The filing of a claim of appeal or application for leave to appeal generally does not automatically stay the effect or enforceability of the judgment or order appealed. A trial court or Court of Appeals order granting a motion for stay is required to affect this result. However, in an appeal from an order denying a party's claim of governmental immunity, the filing of an appeal will operate as an automatic stay of further proceedings in the case. MCR 7.209(A)(1); MCR 2.614(D). (Revised 9/08.)

IOP 7.209(A)(2) — Trial Court Motion for Stay or Bond

In the context of an appeal, the clerk's office will not submit a motion for stay or review of bond without proof that the motion was first presented to the trial court or citation to authority providing that the trial court lacks jurisdiction to decide the question. See e.g. MCL 600.1041, MCL 710.65(2). Elements of proof that are required by the court rule are (1) a copy of the trial court's order denying stay or bond, and (2) a copy of the transcript of the trial court hearing on the motion for stay or bond. This rule is strictly enforced by the clerk's office. Note that this is not the same as a criminal motion to review bond before trial under MCR 6.106(H)(1), which can be filed without initiating an appeal, and which has no filing or entry fee. (Revised 5/11.)

IOP 7.209(A)(3) — Transcript of Hearing; Order Denying Stay or Bond

If the moving party believes that a prior motion in the trial court would be futile or if the moving party cannot provide the trial court transcript and/or order denying stay or bond, a motion to waive those requirements must be filed with the motion for stay or bond in the Court of Appeals. A separate motion fee is required for the motion to waive the requirements of MCR 7.209(A)(2) or (3). See MCR 7.211 for general motion practice. (Published 9/98.)

IOP 7.209(B) — Trial Court Responsibility for Stay and Amount of Bond

Pursuant to MCR 7.209(B) and MCR 7.208(F), the trial court bears initial responsibility for, and authority over, stay and bond matters. (Revised 9/02.)

IOP 7.209(G) — Filing of Bond

The court rule requires that the bond must be filed with the clerk of the court that entered the order or judgment to be stayed. A copy of the bond may also be filed with the Court of Appeals, but the filing in the Court of Appeals is not required and it will not obviate the need to file the bond with the court that entered the order or judgment to be stayed. (Published 9/98.)

IOP 7.209(I) — Ex Parte Stay

Court policy discourages the use of the ex parte stay rule. Invariably, the Court requires that all parties be served with a motion for stay in the Court of Appeals before it is submitted on the motion docket. If the motion for stay is accompanied by a motion for immediate consideration under MCR 7.211(C)(6), and if both motions are personally served on all parties, the motions will be submitted to a panel of judges as quickly as can be arranged by the district office in which the motions are filed. In matters of extreme urgency, it is possible to accomplish service, filing, submission, and a ruling in a matter of hours. Thus, there is virtually no justification for invoking the provisions of the ex parte rule. See the practice note attached to IOP 7.205(F)(2)-1 for information on filing emergency papers. (Revised 11/18.)

In the exceptionally rare instance where circumstances appear to require immediate action, a motion for ex parte stay will be accepted and submitted to a panel without service on the opposing parties. In accordance with the court rule, the panel may issue an order staying proceedings until a proper motion can be filed, considered and decided. It should be noted that neither the filing nor service of the ex parte motion act to automatically stay proceedings. Proceedings are only stayed on order of the Court. (Published 5/07.)

Practice Note: The Court will accept a motion for stay only if there is an appeal already pending in the Court. A motion for stay filed in conjunction with an application for leave to appeal will be submitted to a panel at the same time as the application. (Published 8/14.)

IOP 7.210 — Record on Appeal

IOP 7.210(A)-1 — Record on Appeal

The record on which the appeal is reviewed consists of all original papers filed in the lower court or certified copies, the transcript of any testimony or other proceedings, and the exhibits introduced (or offered but excluded). One may not expand the record by filing in the Court of Appeals documents or transcripts that were not part of the record when the trial court issued the decision that is the subject of the appeal. Such submissions are subject to being stricken or returned by the Court of Appeals on its own motion or on the motion of opposing counsel. MCR 7.210 provides special rules concerning appeals from probate court and administrative tribunals and should be consulted in appeals from these judicial entities. (Published 9/98.)

IOP 7.210(A)-2 — Filing of Record Elements by Attorney or Party

When elements of the record are filed directly with the Court of Appeals by one of the attorneys, after the bulk of the record has been received from the lower court or tribunal, proof of service of that filing on opposing counsel must be provided to the Court of Appeals. If the newly filed element of the record has already been served on opposing counsel, a copy of the initial proof of that service must be provided to the Court. (Published 9/98.)

IOP 7.210(A)(4) — Stipulations as to Record

Written stipulations of the parties may be filed regarding any matters concerning the record, if the stipulation is made part of the record on appeal and sent to the Court of Appeals. (Published 9/98.)

IOP 7.210(B)(1)-1 — Transcript Production

The appellant is responsible for securing the timely filing of the complete transcript for appeal, not just the transcript(s) that the appellant believes are relevant to the appeal. However, the court rule provides various alternatives for filing less than the full transcript. See IOP 7.210(B)(1)-3. Regarding applications for leave to appeal, the transcript requirement is contained in MCR 7.205(B)(4), which generally requires a portion of the transcript that substantiates the legal issue raised. (Revised 8/14.)

In a criminal or termination of parental rights case where the appellant is represented by appointed counsel, the appellant's attorney is expected to review the lower court file shortly after appointment to ensure that the trial court has ordered all transcripts from the proper court reporter(s). Appointed counsel shall immediately order any necessary transcripts that were not included in the initial order prepared by the trial court. (Revised 5/04.)

In all other cases not involving appointed counsel, the appellant's attorney (or the appellant when the appellant is acting in pro per) is expected to order all transcripts contemporaneously with the filing of the claim of appeal or within 28 days of the order granting leave to appeal. (Revised 5/04.)

Note that under MCR 7.207(D), the cross-appellant is not responsible for the production and filing of the transcript unless the appellant abandons the initial appeal or it is dismissed. The cross-appellant then has 21 days within which to file pertinent documents indicating that the transcript has been ordered. (Published 9/98.)

IOP 7.210(B)(1)-2 — Late Transcript Orders

Failure to order all transcripts within approximately 28 days of the filing of the claim of appeal or grant of an application for leave to appeal will result in the determination that subsequently ordered transcripts are untimely. The time for filing the appellant's brief will be calculated from the date of filing of the last transcript that was filed within the original filing deadline, regardless when it was ordered. Counsel may generally preserve the timeliness of a brief filed after production of the late-ordered transcript by immediately moving in the Court of Appeals for an extension of time to order the transcript, including in the motion an explanation of why the transcript was not timely ordered initially. (Published 9/98.)

Upon receipt of a court reporter document indicating that a transcript was ordered more than 4 weeks from the filing of the claim of appeal or grant of application for leave, the clerk's office will send a letter to the appellant alerting counsel that the brief cannot be timed from the subject transcripts unless they are filed within the deadline for timely ordered transcripts. (Published 9/98.)

IOP 7.210(B)(1)-3 — Less Than Full Transcript

When the full transcript is theoretically available, but the appellant believes that less than a full transcript would be sufficient for appellate review, the court rule sets forth various alternatives for filing less than a full transcript: (1) the trial court may enter an order on the appellant's motion, MCR 7.210(B)(1)(c); (2) the parties may stipulate, MCR 7.210(B)(1)(d); or (3) the parties may agree on a settled statement of facts without procuring a transcript, MCR 7.210(B)(1)(e). Because the court rule is so flexible, absent a motion before the Court of Appeals, the Court discourages handling transcript production in any manner that is not covered by the rule. (Published 9/98.)

IOP 7.210(B)(2) — Transcript Unavailable

When the transcript cannot be produced, either through loss of the notes or video, or as a result of some other cause, the appellant must file a motion to settle the record and, when reasonably possible, a proposed statement of facts in the trial court or tribunal pursuant to the

procedure outlined in the court rule. MCR 7.210(B)(2). The clerk's office will monitor the Court of Appeals file for receipt of a settled statement of facts and the certifying order. If these documents are not filed, a letter will be sent to the appellant warning of the imminent dismissal of the appeal pursuant to MCR 7.217. See IOP 7.210(B)(3)(b)-1 & -2. (Revised 5/12.)

IOP 7.210(B)(3)(b)-1 — Time for Filing Transcript

The court rule establishes the time within which the court reporter is to file the transcript. See MCR 7.210(B)(3)(b). If the transcript is not timely filed, the clerk's office will send a reminder postcard to the court reporter at the reporter's address as carried in the records of the Michigan Court Reporting/Recording Board of Review. The computer program that generates the postcards does not provide copies to the attorneys or parties. The Court's view is that the appellant's attorney is responsible for monitoring the deadlines and should follow up with the court reporter when the transcript is late. If the court reporter files the transcript within 7 days of issuance of the postcard, no further action will be taken by the Court. (Revised 5/07.)

IOP 7.210(B)(3)(b)-2 — Late Transcript

If the transcript is overdue more than 7 days past the date set in the court rule, a 21-day warning letter will be sent to the appellant(s) with copies to the appellee(s) and the applicable court reporter. See MCR 7.217(A). The appellant is then on notice that some action must be taken within the next 21 days or else the appeal will be submitted to the Court on the first Tuesday that is 21 days after the date of the letter. Submission will be to the administrative motion docket for dismissal (if counsel is retained), or for remand for the appointment of substitute counsel (if counsel is appointed). Filings received after the 21st day may be accepted if the matter has not yet been dismissed by the Court, but costs may be assessed. (Revised 4/19.)

Three alternatives are available to the appellant upon receipt of a 21-day involuntary dismissal warning letter: (1) secure the filing of the transcript within the 21 days; (2) file a motion to show cause against the court reporter for failing to file the transcript in accordance with the court rule, MCR 7.210(B)(3)(f); or (3) file a motion to extend time for filing the transcript, MCR 7.210(B)(3)(b). Both motions must be served on opposing counsel and on the pertinent court reporter. Failure to take any action will result in submission of the appeal on the involuntary dismissal docket. (Revised 1/01.)

If a motion to show cause against the court reporter is filed and granted, the court reporter must file the transcript by the stated date or appear before the Court and explain the failure to file. If the transcript is not filed by the stated date, the court reporter must appear at the show cause hearing. Once the show cause date is set, the Court will monitor the situation and ensure the ultimate filing of the transcript. There is no need for counsel to appear at the show cause

hearing. In lieu of ordering a court reporter to appear at a show cause hearing, the Court may assess costs against the court reporter. (Revised 4/19.)

IOP 7.210(B)(3)(e) — Notice of Filing Transcript

The court reporter is responsible for filing a notice of filing transcript in the lower court and in the Court of Appeals, and to forward the notice of filing to the attorneys or parties. However, if counsel wishes to submit a copy of the notice of filing transcript with the Court of Appeals, the Court will accept the copy. The original transcript is filed in the trial court, not in Court of Appeals. If the original transcript is submitted to the Court, the Court will return it to the filing party so that it can be filed with the trial court. But see MCR 7.205(B)(4) concerning the filing of certain transcripts directly with the Court of Appeals when an application for leave to appeal is being filed. (Revised 4/19.)

IOP 7.210(B)(3)(f) — Discipline of Court Reporters

The Court of Appeals maintains a court reporter docket for each district. In disciplinary matters, orders to show cause may be issued, as well as orders assessing costs against court reporters. If a party's motion to show cause against a court reporter is granted, the Court will issue a show cause order that either requires an outstanding transcript to be filed within a stated period or directs the court reporter to appear before a panel of the Court to show cause why she or he should not be held in contempt. There is no need for a party or a party's attorney to appear at such a hearing. If the court reporter fails to file the transcript or does not appear as ordered, the matter will be referred to the panel for appropriate action (up to and including the issuance of a bench warrant for the court reporter). (Published 9/98.)

IOP 7.210(B)(3)(g) — More Than One Court Reporter

The court rule states that the court reporter who recorded the beginning of a proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it with the trial court, and giving notice of its filing to the Court of Appeals. This rule is qualified by the phrase: "unless the court has designated another person." The clerk's office interprets this rule to require that each court reporter is responsible for making his or her own filings. No single court reporter is held responsible for ensuring the filing of the entire transcript. (Published 9/98.)

IOP 7.210(C) — Exhibits Filed With the Court

If exhibits are received directly from a party under MCR 7.210(C), they will be returned to the clerk of the lower court or tribunal, along with the lower court record, for distribution unless the party specifically requested in writing that the documents be returned to the party. If specifically requested, the clerk's office will make every effort to return the exhibits to the party who sent them. (Revised 3/10.)

IOP 7.210(F) — Service of Record

Within 21 days after the transcript is filed with the trial court, the appellant in a civil or retained criminal appeal shall serve on each appellee a copy of the entire record on appeal. Proof of service on each appellee shall be filed with the Court of Appeals and is docketed in the file on appeal. (Revised 1/01.)

An appellee that is not properly served under this rule may move in the Court of Appeals to compel service. Note, however, that while the court rule directs service of the "entire record on appeal," it also provides that the appellee need not be served with copies of documents already in its possession. Thus, it will generally be sufficient to serve the transcript on the appellee, since that is the part of the lower court record that the appellee will not otherwise have in its possession. (Published 9/98.)

IOP 7.210(G) — Transmission of Record to Court of Appeals by Trial Court

Upon filing of the appellant's brief and expiration of the time for filing the appellee's brief, a record request postcard will be generated and mailed to the trial court, requesting that the lower court record be forwarded to the Court of Appeals. (Revised 5/07.)

If the complete record is not received within 21 days, a second request will be mailed. If the record is not received within 14 days of this second request, the Court may send to the trial court clerk a letter warning that if the record is not forwarded within the next 21 days, the trial court clerk must assume responsibility for reconstructing the record and advise the Court of Appeals of all efforts in that regard. Failure to properly respond to the 21-day warning letter will result in the matter being referred to the chief judge for appropriate action, including the issuance of an order to show cause in the name of the trial court clerk. (Revised 1/04.)

Simultaneously with the mailing of the record request to the trial court, a postcard notice will be sent to the parties under MCR 7.213(B), notifying them that they will be informed of the time and place of hearing 21 days before the first day of the session at which the matter will be submitted. See IOP 7.213(B). (Revised 1/01.)

IOP 7.211 — Motions in Court of Appeals

IOP 7.211-1 — Flexible Motion Practice

While MCR 7.211 lists and discusses various motions that may be filed in the Court of Appeals, the Court's motion practice is extremely flexible. Motions may be filed for forms of relief that are not specifically listed in the rule, and such motions will generally be accepted and submitted on a motion docket unless the requested relief must first be ruled upon in another forum (e.g., MCR 7.209 concerning motions for stay and bond on appeal; or MCR 7.208(G)

concerning the trial court's primary authority to appoint, remove, or replace an attorney appointed to represent an indigent person). (Published 9/98.)

IOP 7.211-2 — Defective Motions

During docketing, each motion will be reviewed for conformity with the court rule(s). Defects will be communicated to the filing party (with copies to opposing counsel and pro per parties) by defect letters requiring that corrected papers be filed within 14 days. Answering parties should note, however, that defects in motions will not automatically toll the time for filing an answer. (Revised 9/06.)

If the defects are not cured within the 14-day period, the motion will be submitted on the administrative motion docket for striking. In such event, the motion fee (if any) will not be refunded. A stricken motion may be refiled with the clerk's office after the defects have been cured. The required motion fee(s) must be submitted anew with the refiled motion(s). (Revised 9/06.)

IOP 7.211-3 — Page Limits

See MCR 7.215(I) for page and other limitations on motions for reconsideration of opinions or orders of the Court. Defects as to page limits do not toll the time for filing an answer. (Revised 5/03.)

IOP 7.211(A)(2) — Entry Fee

In general, the filing of a motion requires payment of an entry fee. For most motions, the entry fee is presently set at $100. The entry fee for a motion for immediate consideration or a motion to expedite is $200. A prosecuting attorney is exempt from paying a fee when filing a motion for immediate consideration or a motion to expedite in an appeal arising out of a criminal proceeding. MCL 600.321. An entry fee is not required for 1) a motion to waive fees; 2) a motion for reconsideration of an order denying a motion to waive fees; or 3) a motion for reconsideration of an order dismissing an appeal or an original proceeding for lack of jurisdiction (see MCR 7.203(F)). (Revised 4/19.)

If one motion is filed that requests more than one type of relief, a separate fee must be submitted for each form of relief that is sought. For instance, if a party files one document moving to extend time to file a brief on appeal and seeking a stay in the trial court, two fees will be required. In such a case, the filer is well advised to file separate motions and should be aware that, in some cases, the clerk's office may require that the combined motions be refiled as separate motions. (Revised 5/15.)

If a party believes that more than one motion fee may be required because a motion requests alternative forms of relief, or if a party wonders whether a particular motion should be split into two separate documents, the clerk's office should be contacted in advance to clarify the

matter. When the document is received, clerk's staff will use the motion title to docket and process the motion. Where aligned parties in a case file a joint motion seeking one form of relief, only a single motion fee is required. (Revised 6/03.)

IOP 7.211(A)(3) — Supporting Briefs

Briefs are generally required in support of motions to dismiss, to affirm, or for peremptory reversal. But see IOP 7.211(C)(3) concerning exceptions to the general rule when filing motions to affirm. Supporting briefs may be filed in support of other motions. The court rule contemplates that the brief must conform to MCR 7.212(C) as much as possible. (Revised 1/01.)

IOP 7.211(A)(5) — Proof of Service

A party who wishes to raise an issue with respect to service of a motion must do so through an appropriate motion filed with this Court. (Published 2/11.)

IOP 7.211(B)-1 — Answers to Motions

A party may file an answer to a motion by filing five copies of the answer, together with a proof of service on opposing counsel. The time for filing answers to motions is specifically stated in the court rule. It should be noted that the court rule grants the Court discretion to dispose of certain routine administrative motions before the answer period has run. See MCR 7.211(B)(3). All other motions are eligible for submission to a panel of judges for disposition after the applicable deadline has passed. (Revised 2/14.)

By judicial policy, the clerk's office is authorized to accept an answer that is filed after the deadline has passed without an accompanying motion, but the parties should note that they file an untimely answer at their own risk. If there is insufficient time to forward a late answer to the panel before an order is signed, the late answer will be returned to the filer by the clerk's office. A party who seeks to ensure a panel's review of a late answer should file a motion to extend the filing deadline. It is useful if the late answer accompanies the motion to extend the filing deadline but it is not required. (Revised 11/18.)

If an answer is accompanied by a brief in support, it must conform to MCR 7.212(D) as much as possible. (Revised 9/08.)

Typically, the time for filing an answer is not tolled due to defects in a motion. The answering party may want to contact the clerk's office if there is a question whether the time has been tolled due to a defect. Likewise, a defective answer will not operate to delay submission of the motion to the panel while the defective answer is being cured. (Revised 1/01.)

IOP 7.211(B)-2 — Replies to Answers to Motions

There is no provision in the court rules for the filing of a reply to an answer to a motion. The clerk's office will return any reply to an answer that is not accompanied by a motion for leave to file it. (Revised 9/02.)

IOP 7.211(C)(1) — Motion to Remand

Motions to remand may be filed within the time for filing the appellant's brief, which is defined in MCR 7.212(A)(1)(a). An affidavit or offer of proof regarding the facts to be established at a hearing is required. Granting of a motion to remand, whether timely filed or not, will stay further proceedings in the Court until (a) issuance of the trial court order, or (b) filing of the remand proceeding transcripts, whichever is later. The order granting the motion will specify the time periods within which the trial court must hear the motion and file the transcript and order. (Published 9/98.)

The appellant's brief (if not already filed) must be filed within 21 days of the issuance of the trial court order or the filing of the remand proceeding transcript, whichever is later. MCR 7.211(C)(1)(e) and (f). Further time for filing the appellant's brief is possible only by order of the Court; a stipulation to extend time may not be filed. The brief filed by the appellant after remand will generally be its principal brief on appeal. If that brief was filed before the remand was granted or concluded, the clerk's office applies the 21-day time limit to the filing of a supplemental brief after remand. The clerk's office will monitor appeals on remand and request status reports at periodic intervals beginning shortly after the initial remand hearing was to be held. Status request letters will be sent to the trial judge as well as the attorneys and pro per parties of record. (Revised 11/18.)

IOP 7.211(C)(2) — Motion to Dismiss

These motions may not be filed after the case has been placed on a session calendar. A case is placed on a session calendar when the letter is mailed to the parties advising that the case will be submitted to a panel for final disposition. These letters are generally mailed three weeks before the beginning of the month in which the case will be heard. (Published 9/98.)

IOP 7.211(C)(3) — Motion to Affirm

A motion to affirm requires that the issues on appeal be so manifestly insubstantial that the plenary appeal process need not occur, or that the issues were not timely or properly raised. As a consequence, although no time period is specified within which such a motion must be brought (other than such a motion cannot be filed before the appellant's brief has been filed), a motion to affirm will have the most practical impact if brought immediately after the appellant's brief has been filed and well before the appeal has been placed upon the Court's session calendar. (Revised 2/14.)

A motion to affirm is to be accompanied by a supporting brief that substantially conforms to MCR 7.212(C), unless the appellant's principal brief argues that the trial court's findings are clearly erroneous, the trial court erred in applying established law, the trial court abused its discretion, or a sentence that is within the sentencing guidelines is invalid. MCR 7.211(A)(3)(a)-(d). In such a case, the motion itself must include a summary of the appellee's position, and the appellee need only attach to the motion those portions of the transcript that are pertinent to the issue(s) raised in the motion. See MCR 7.211(A)(3). (Revised 1/01.)

Under MCR 7.211(C)(3), a decision to grant a motion to affirm must be unanimous. (Published 9/98.)

IOP 7.211(C)(4) — Motion for Peremptory Reversal

This type of motion is meant to expedite reversal and resolution of the appeal. The appellant may file a motion for peremptory reversal at any time in the appeal. In an emergency situation, a motion for peremptory reversal may be used with a motion for immediate consideration to prompt consideration of the merits shortly after the claim of appeal is filed or leave to appeal is granted. Although no time period is specified within which such a motion must be brought, a motion for peremptory reversal will have the most practical impact if brought as early as possible in the appeal, and well before the appeal has been placed upon the Court's session calendar. The appellant also may file a motion for peremptory reversal in conjunction with an application for leave to appeal; the motion will be submitted to a panel at the same time as the application. (Revised 8/14.)

Under MCR 7.211(C)(4), a decision to grant a motion for peremptory reversal must be unanimous. (Published 9/98.)

IOP 7.211(C)(5)-1 — Motion to Withdraw

Under MCR 7.211(C)(5), a court-appointed attorney for an indigent appellant may move to withdraw from a frivolous appeal upon production of certain proofs. This includes attorneys appointed in cases involving termination of parental rights. The clerk's office will strictly enforce the requirements of the court rule because granting the motion may result in affirmance of the conviction(s) and sentence(s) or the termination of parental rights. Failure to meet all requirements of the court rule will result in the mailing of a 14-day warning letter detailing the defects in the motion. If the defects are not cured within 14 days, the motion will be submitted on the administrative motion docket for striking. The moving party may refile it at a later date as long as it conforms to the court rule. (Revised 1/07.)

Preparation of a motion to withdraw must include submission of a brief in support that raises potential issues and illustrates why those issues cannot succeed on appeal. A motion that requests reversal or remand on the merits is not a proper brief in support of a motion to withdraw. According to Court policy, a motion to withdraw filed in a criminal appeal must be

accompanied by the presentence information report, regardless of the issues raised in the brief. (Revised 1/07.)

Once the clerk's office determines that a motion to withdraw conforms to the court rule, a letter will be sent to the indigent client. The letter will advise that the motion will be submitted for decision on the first Tuesday that is 28 days after the date the client was served in a termination of parental rights case, or 56 days after the date of service in a criminal appeal. The letter will alert the client of the need to respond to the motion by that date. (Revised 1/07.)

IOP 7.211(C)(5)-2 — Motion for Guidance

When the appointed attorney is unable to locate his client or determine from the client whether to pursue the appeal, a motion for guidance may be filed under the authority of MCR 7.216(A)(7). Such motions are required to be served on the client at his or her last known address. If the motion for guidance is granted, the appeal is generally dismissed on the ground that the client has abandoned it. The order granting the motion and dismissing the appeal is mailed to the client as well as to the attorneys of record. Such orders permit the client to seek reinstatement of the appeal by filing a written communication requesting that the appeal be permitted to proceed. This written communication will be treated as a motion for reconsideration. (Revised 5/03.)

IOP 7.211(C)(6)-1 — Motion for Immediate Consideration

A motion for immediate consideration is not substantive, but is designed to expedite consideration of another accompanying or pending motion, application for leave, or original proceeding. The fee for a motion for immediate consideration is currently set at $200 per motion, and is in addition to the fee for the underlying motion. A prosecuting attorney is exempt from paying the fee in an appeal arising out of a criminal proceeding. MCL 600.321. (Revised 10/03.)

The rule requires that the moving party specify why immediate consideration is required. Because such motions receive priority attention, movants are well advised to consider whether proper grounds exist. See MCR 7.219(I). (Published 9/98.)

A motion for immediate consideration is a 7-day motion if served by mail. It must be personally served before filing in the Court of Appeals if it is to be submitted in less than 7 days. Personal service is defined in MCR 2.107(C)(1) or (2), and interpreted to include electronic service through the ImageSoft TrueFiling system. (Revised 4/13.)

IOP 7.211(C)(6)-2 — Motion to Expedite Appeal

If a party seeks to expedite the submission and/or decision of an entire appeal on the merits, a motion to expedite must be filed. The fee for a motion to expedite is currently set at $200. A

prosecuting attorney is exempt from paying the fee in an appeal arising out of a criminal proceeding. MCL 600.321. (Revised 10/03.)

An order granting a motion to expedite will afford the case priority on the case call calendar pursuant to MCR 7.213(C)(5). Absent specific language in the order, the appeal will proceed through the Court as provided by the court rules and subject to the standard procedures of the Court. Once the necessary filings have been made, priority status will provide expedited handling in the Court's research division and placement on the first available case call after the research process is complete. (Revised 5/03.)

If a party seeks decision by a specific date, the motion to expedite should clearly articulate that request and must state facts showing why decision by the requested date is required. In any event, a motion to expedite will not circumvent the briefing process. At best, an order granting a motion to expedite will set forth an abbreviated briefing schedule. If the motion to expedite requests action by a date that will necessitate an abbreviated briefing schedule, the parties should propose a schedule in the motion. (Revised 5/03.)

IOP 7.211(C)(7) — Confession of Error

If a prosecutor concurs in the relief requested by a defendant, a confession of error should be filed. It will be submitted on the administrative motion docket and, if the Court accepts the confession of error, an order will be entered that grants the relief. A confession of error should be contained in a separate pleading titled, "Confession of Error," to facilitate the speedy processing and disposition of the appeal. A motion fee is not required. (Revised 1/01.)

IOP 7.211(C)(8) — Vexatious Proceedings

Requests for damages or other disciplinary action for vexatious proceedings under MCR 7.216(C) must be brought in a separate motion. The Court will not entertain such a request that is contained in any other pleading, including a party's brief on appeal. Such a motion must be filed within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious. (Revised 9/03.)

IOP 7.211(C)(9) — Motion to Seal Court of Appeals File in Whole or in Part

The clerk's office processes motions to fully or partially seal a Court of Appeals file as mandated in the applicable court rules: MCR 7.211(C)(9) and MCR 8.119(I). While a motion to seal some or all of a Court of Appeals file is pending, all materials that are subject to that motion will be held under seal pending the Court's disposition of the motion. Motions to seal are submitted to three-judge panels. (Published 2/09.)

MCR 8.119(I)(5) directs that "A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record." Upon entry of an order that fully or partially seals materials in a Court of Appeals file, information concerning that file will be

removed from the Court's website in order to facilitate the clerk's office's ability to precisely enforce the order to seal. Individuals who seek access to any order or opinion or other non-sealed material in a file that is subject to an order to seal should call the Chief Clerk's office at (517) 373-2252. (The same instruction will appear on screen in response to case inquiries on the Court's website.) Calls to the Chief Clerk's office will be immediately transferred to the office where the file is located and a supervisor in that office will work with the caller to provide a copy of the order to seal and access to other documents that are consistent with the terms of the order to seal. (Published 2/09.)

IOP 7.211(C)-1 — Motion to Appear and Practice

On leave of the Court granted pursuant to MCR 8.126, a person licensed to practice law in another jurisdiction may appear and practice in a case in this Court. MCR 8.126 sets forth specific requirements for such motions. The Court will not submit any motion to appear and practice for decision unless it meets the requirements of the rule. (Revised 9/08.)

A motion for an out-of-state attorney to appear and practice in a case before the Court must be filed by an active member of the State Bar of Michigan who appears of record in the case. The motion to appear and practice must be accompanied by a certificate of good standing and an affidavit from the out-of-state attorney that comply with the requirements of MCR 8.126(A)(1)(a). The motion must also include an attestation from the Michigan attorney indicating that he/she has read the affidavit, has made a reasonable inquiry into the averments contained in it, believes that the averments are true, and agrees to ensure that the procedures of the rule are followed. Further, the motion must include the addresses and e-mail addresses of both attorneys. MCR 8.126(A)(1). Finally, the motion must include a copy of an acknowledgment letter from the State Bar of Michigan that the fee required under MCR 8.126(A)(1)(b) has been paid. (Revised 5/17.)

If the motion to appear and practice is granted, the Court will send a copy of the order to the Michigan attorney, the out-of-state attorney, and the State Bar of Michigan. MCR 8.126(A)(1)(c). The order will indicate the effective date of the out-of-state attorney's appearance. (Revised 5/17.)

Once the out-of-state attorney's appearance is effective, the attorney will be carried on the records of the Court as co-counsel to the Michigan attorney. Notices from the Court and service of filings by other parties will be provided to both the out-of-state attorney and the Michigan attorney. (Revised 5/17.)

IOP 7.211(D) — Argument of Motions

Submission of motions occurs on each Tuesday. The motions and answers are accumulated and submitted to regularly scheduled motion docket panels at each of the Court's locations. There is no right to oral argument of a motion. A party seeking to orally argue a motion must file a

motion for leave to accomplish that result. However, individuals practicing before the Court of Appeals should understand that oral argument on motions is rarely granted. (Published 9/98.)

IOP 7.211(E) — Decision on Motions

All motions in the Court of Appeals are decided through written orders. The orders are signed by the presiding judge or a designee, and forwarded to the clerk's office for entry and mailing. Copies are mailed to the attorneys of record and any pro per parties. Copies may also be mailed to the trial judge, the trial court clerk, the court reporter, the trial court supervisor of court reporters, and such other offices or entities as circumstances require or as directed by the panel. (Published 9/98.)

The date on a Court of Appeals order is the date that it was entered, filed, and docketed. This date may also be referred to as the date of the "Clerk's certification of the order," where a panel has directed that certain action be taken within a specified period from the "Clerk's certification." (Revised 9/02.)

Verbal communication of orders may be effected when circumstances require. In such cases, the clerk's office will use email or fax to convey a copy of the order to the attorneys, trial court, and other individuals as the case may require (the county sheriff, for instance). When an order is communicated by telephone, email or fax, a copy will also be mailed. (Revised 11/18.)

IOP 7.211(E)(2) — Administrative Motion Docket

The court rules permit the submission of certain specified motions to the chief judge or another designated judge acting alone. However, by the language of the court rule, the specified motions are not exhaustive. Accordingly, other types of motions may properly be submitted to a single judge as administrative motions. Unless otherwise stated in the court rules, administrative motions are 7-day motions. (Revised 2/14.)

IOP 7.212 — Briefs

IOP 7.212(A)(1)-1 — Time to File Appellant's Brief

The time to file the appellant's brief starts to run when the last timely ordered transcript has been filed with the trial court. The time does not run from the attorney or party's receipt of the notice of filing or from receipt of the actual transcript. If the transcript is already filed or when no transcript will be procured, the time starts when the claim of appeal is filed or the application for leave to appeal is granted. However, if a stipulated statement of facts is filed pursuant to MCR 7.210(B)(1)(e), or a certified statement of facts is procured under MCR 7.210(B)(2), in lieu of the transcript, the Court's policy is to time the filing of the brief from the date the statement of facts was filed in the trial court, so long as it was filed within the time for filing the transcript or any later date allowed by leave of the Court. (Revised 9/07.)

If the appellant's brief is filed before all of the transcripts have been filed with the trial court, the timeliness of the brief will be calculated from the date of filing of the last transcript filed prior to the filing of the appellant's brief. If no transcripts have been filed, the brief will be timed from the filing of the claim of appeal or entry of the order granting the application for leave to appeal. The late ordering of a transcript, absent permission from the Court of Appeals, does not extend the time to file the appellant's brief. See IOP 7.210(B)(1)-2. (Revised 4/19.)

If the transcript has not been timely filed and an involuntary dismissal warning letter has been sent, the appellant must secure the filing of the transcript within 21 days of the date of the warning letter or take some action to ensure filing of the transcript, such as filing a motion to show cause against the court reporter, in order for the brief to be timed from the late filing of the transcript. See IOP 7.210(B)(3)(b)-2. (Revised 1/01.)

Practice Note: In the event that the appellant files a brief without the complete transcript as required by the rule, the appellee should file an appropriate motion for relief in the Court of Appeals. (Published 9/98.)

IOP 7.212(A)(1)-2 —Motion to Extend Time to File Appellant's Brief

Extensions of time to file an appellant's brief are allowed by stipulation or by motion before the Court. If the time to file the appellant's brief is 56 days, by policy an extension of an additional 56 days is possible. The extension can be achieved by motion alone or by stipulation of the parties followed by a motion. (Revised 11/18.)

If a motion for extension of 56 days is granted, a stipulation may not be filed for further extensions. If a stipulation is filed for an extension of 28 days, a motion for extension of an additional 28 days will generally be granted. An extension by stipulation can generally be secured retroactively, such as by filing the stipulation with the brief. Regardless when it is filed, all extensions of time will run from the date of the events described in MCR 7.212(A)(1)(a)(iii). However, once a case is on case call, an appellant may not file a retroactive stipulation to extend time in an effort to render an untimely brief timely and gain oral argument before the panel. A motion for oral argument must be filed in this instance. (Revised 11/18.)

If the appellant's brief is due in less than 56 days, as in certain criminal appeals and all custody matters, an extension can only be gained by a motion filed in the Court of Appeals. Except in custody matters, the Court will generally extend the time for an additional 28 days. In custody matters, an extension of time will only be granted for good cause shown. As a general matter, good cause will be limited to unexpected events that directly impact the ability to timely file the brief. The press of business or a heavy workload will typically not constitute good cause for an extension of time. When the motion is premised on workload considerations, at a minimum the motion should identify the cases and the courts in which filing deadlines are converging,

and specify the least amount of additional time that would be required to file the brief. (Revised 11/18.)

The date of filing is the date the brief is received by the clerk's office. See IOP 7.202(4). (Revised 11/18.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court Forms page of the Court's website. The one-page form can be completed online and then printed for filing and service. (Revised 11/18.)

IOP 7.212(A)(2)-1 — Time to File Appellee's Brief

The time to file the appellee's brief starts when the appellant's brief is served on the appellee. The brief is served when it is mailed or personally delivered. MCR 2.107(C)(3). A party who wishes to raise an issue with respect to service of a brief must do so through an appropriate motion filed with this Court. (Revised 2/11.)

Even if the appellant's brief does not comply with MCR 7.212(C), the time to file the appellee's brief will generally not be tolled. The answering party may want to contact the clerk's office if there is a question whether the time has been tolled due to a defect. (Revised 5/07.)

Practice Note: If the appellant's brief is filed before the full transcript has been ordered, the appellee may wish to move to strike the appellant's brief or to compel the appellant to order the full transcript. In the latter event, the appellee should request that the time for filing its brief not begin to run until the full transcript is both ordered and filed. To avoid delay, the appellee is cautioned to pursue the ordering of the full transcript as early in the appeal process as possible. (Published 9/98.)

IOP 7.212(A)(2)-2 — Motion to Extend Time to File Appellee's Brief

Extensions of time to file an appellee's brief are allowed by stipulation or by motion before the Court. If the time to file the appellee's brief is 35 days, by policy an extension of an additional 56 days is possible. The extension can be achieved by motion alone or by stipulation of the parties followed by a motion. (Revised 11/18.)

If a motion for extension of 56 days is granted, a stipulation may not be filed for further extensions. If a stipulation is filed for extension of 28 days, a motion for extension of an additional 28 days will generally be granted. An extension by stipulation can generally be secured retroactively, such as by filing the stipulation with the brief. Regardless when it is filed, all extensions of time will run from the date of the events described in MCR 7.212(A)(2)(a)(ii). However, once a case is on case call, an appellee may not file a retroactive stipulation to extend time in an effort to render an untimely brief timely and gain oral argument before the panel. A motion for oral argument must be filed in this instance. (Revised 11/18.)

If the appellee's brief is due in less than 35 days, as in certain criminal appeals and all custody matters, an extension can only be gained by a motion filed and granted. Except in custody matters, the Court will generally extend the time for an additional 21 days. In custody matters, an extension of time will only be granted for good cause shown. As a general matter, good cause will be limited to unexpected events that directly impact the ability to timely file the brief. The press of business or a heavy workload will typically not constitute good cause for an extension of time. When the motion is premised on workload considerations, it should identify the cases and the courts in which filing deadlines are converging, and specify the least amount of additional time that would be required to file the brief. (Revised 11/18.)

The date of filing is the date the brief is received by the clerk's office. See IOP 7.202(4). (Revised 11/18.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court Forms page of the Court's website. The one-page form can be completed online and then printed for filing and service. (Revised 11/18.)

IOP 7.212(A)(4)-1 — Filing Appellant's Brief Late

Unless an involuntary dismissal warning has been sent, the only penalty for a late brief is the loss of oral argument. If an involuntary dismissal warning has been sent and the 21-day period has expired, but the appeal has not been dismissed, the brief will be accepted for filing and costs may be assessed. (Revised 5/07.)

If the appeal has been involuntarily dismissed or remanded to the trial court for the appointment of substitute counsel (in cases where the appellant is represented by appointed counsel), a motion to reinstate the appeal or a motion for reconsideration of the order to remand must accompany the filing of the brief. See IOP 7.217 for a complete discussion of the involuntary dismissal procedure. (Revised 5/03.)

IOP 7.212(A)(4)-2 — Filing Appellee's Brief Late

The only penalty for a late brief is the loss of oral argument. The clerk's office will accept an appellee's late brief as long as an opinion or order has not been entered disposing of the appeal and the brief can be forwarded to the panel for consideration before the panel's opinion or order is filed with the Clerk of the Court. See IOP 7.217(A)-5, paragraph 3, concerning appointed counsel's failure to file an appellee brief on behalf of a defendant-appellee in appeals filed by a prosecutor's office. (Revised 1/01.)

IOP 7.212(B) — Length and Form of Briefs

Page 1 of a brief starts with the statement of facts. A brief may not exceed 50 pages unless an order has been entered permitting a longer brief. See MCR 7.212(B) for the requirements of a motion for leave to file a brief in excess of 50 pages. (Revised 4/19.)

The left and right margins together must be at least a total of 2 inches. Each margin may be set at 1 inch, or the two margins may be set at varying sizes so that together they total no less than 2 inches. This policy accommodates the use of paper that has been pre- printed with vertical lines at 1.5 inches and .5 inches on the left and the right margins, respectively. All type must be at least 12-point type, including footnotes. (Published 9/98.)

The top and bottom margins must also be at least a total of 2 inches. It is recommended that a top margin of 1 inch and a bottom margin of 1 inch be used. Page numbers may be included in the 1-inch bottom margin. *(Published 9/98.)*

Practice Note: Any statement of facts or arguments contained in an attachment to a brief, or contained in another brief, that is incorporated by reference into the body of the brief will be counted toward the page limit. (Published 5/07.)

IOP 7.212(C) — Appellant's Brief Requirements

The appellant's brief must comply with all the filing requirements stated in MCR 7.212(C). The clerk's office reviews the brief to insure that it conforms to the court rule. If the appellant's brief does not comply with one or more parts of the rule, a letter will be sent to the appellant, with a copy to the appellee(s), informing the appellant of the non- conforming section(s) of the brief and what the appellant must do to correct the brief. The letter will give the appellant 14 days to correct the defect(s). The appellant may only correct the defects; no other changes to the brief will be accepted. Typically, the time to file the appellee's brief continues to run while awaiting cure of defects of the appellant's brief. The appellee may want to contact the clerk's office if there is a question whether the time has been tolled due to a defect. (Revised 9/06.)

If the amendment(s) that are then submitted still do not correct the defect(s), the clerk's office will return that part of the amended material that does not correct the defect and take other appropriate action. If no response is received, the matter is placed on the administrative motion docket to have the brief stricken. (Published 9/98.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 1/06.)

IOP 7.212(C)(4) — Jurisdictional Statement

As set forth in the court rule, the jurisdictional statement must include a timeline of the critical dates establishing that the appeal was timely filed under the applicable court rules to verify that the Court has jurisdiction. Appellants also must clearly identify the order appealed and state the date it was signed or entered. The jurisdictional statement must identify the statute, court rule, or court decision believed to confer jurisdiction on the Court of Appeals, MCR 7.212(C)(4)(a). Appellants appealing or seeking leave to appeal a probate court order pursuant to the jurisdiction conferred by MCR 5.801(A)—(B) should cite the precise subsection under which the appellant believes the Court of Appeals has jurisdiction. If the jurisdictional statement is missing, the clerk's office will send a letter informing the appellant of the defect pursuant to IOP 7.212(C). (Revised 8/14.)

IOP 7.212(C)(5) — Statement of Questions Involved

If the statement of questions is omitted entirely, or if the statement fails to comply with the court rule in a manner that affects the substantial rights of the parties, the clerk's office will send a letter informing the appellant of the defect pursuant to IOP 7.212(C). (Revised 1/01.)

IOP 7.212(C)(6) — Statement of Facts

If the statement of facts fails to include references to the transcript, the pleadings, or other document or paper filed with the trial court, the clerk's office will send a letter advising that the brief is defective. If the statement of facts is not corrected to include references to the transcript, the pleadings, or other document or paper filed with the trial court, the appellant's brief may be stricken in accordance with IOP 7.212(I). (Revised 1/01.)

IOP 7.212(C)(7)-1 — Standard of Review

If the appellant fails to include the standard of review for each issue or fails to cite supporting authority, the clerk's office will send a letter informing the appellant of the defect pursuant to IOP 7.212(C). (Revised 1/01.)

IOP 7.212(C)(7)-2 — Lower Tribunal Opinion or Order

MCR 7.212(C)(7) references the appellant's obligation to reproduce in or attach to the appellant's brief a "constitution, statute, ordinance, administrative rule, court rule, rule of evidence, judgment, order, written instrument, or document" that must be considered to determine the issue presented. Pursuant to this rule, the Court strongly recommends that the appellant reproduce in the brief or attach in the appendix a copy of any lower tribunal opinion (whether in writing or in a transcript) or order that relates to the issue presented. If this recommendation is not followed, the Court may conclude that all or part of the appeal has been inadequately presented or abandoned. (Revised 11/18.)

IOP 7.212(C)(7)-3 — Presentence Report

The appellant's attorney must send a copy of the presentence report to the Court if an argument is presented that concerns the sentence. 1945-46 OAG No. O-2840 advises that the presentence report is a confidential document. The Staff Comment to the 1991 amendment to the court rule states that: "Because the copy is sent to the court for its review (not 'filed' with the court), it is not included in the appellate court's public file." (Revised 1/10.)

IOP 7.212(C)(9) — Signature

IOP 7.202-1 details the types of "signature" that will be accepted by the clerk's office. A signature is also required on the proof of service. See MCR 2.114(C). (Revised 1/01.)

The records of the Court will reflect that the signing attorney filed the brief, regardless whether a more senior attorney is listed in the signature block. Once the brief has been filed, the signing attorney's name will be retained on the case header as the attorney who is principally responsible for the appeal. (Published 9/98.)

IOP 7.212(C)(10) – Appendix

The court rule provides that in civil appeals the appellant's brief must include a separately filed appendix. The form and content of the appendix is set forth in MCR 7.212(J). The clerk's office will send a defect letter if the required appendix is not filed with the brief. (Published 11/18.)

IOP 7.212(D) — Appellee's Brief

The appellee's brief must comply with all the filing requirements set forth in MCR 7.212(C) and (D). The clerk's office will review the brief to insure that it conforms to the court rules. If the appellee's brief does not comply with one or more parts of the rules, a letter will be sent to the appellee, with a copy to the appellant, informing the appellee of the non-conforming section of the brief and advising what the appellee must do to correct the brief. The letter will give the appellee 14 days to correct the defect unless the case has already been placed on the case call. The appellee may only correct the defects. If the amendment(s) that are then submitted still do not correct the defect(s), the clerk's office will return that part of the amended material that fails to correct the defect and take other appropriate action. If no response to the letter is received and the case has not been placed on a case call, the matter will be placed on the administrative motion docket to have the brief stricken. (Revised 9/06.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.212(D)(2)-1 — Response to Jurisdictional Statement

If the appellee fails either to respond to the appellant's jurisdictional statement or to include its own jurisdictional statement, the clerk's office will send a letter informing the appellee of the defect pursuant to IOP 7.212(D). (Published 9/98.)

IOP 7.212(D)(2)-2 — Response to Standard of Review

If the appellee fails either to respond to the appellant's standard of review or to include its own standard of review, the clerk's office will send a letter informing the appellee of the defect pursuant to IOP 7.212(D). (Published 9/98.)

IOP 7.212(D)(3)-1 — Response to Statement of Questions Involved

If the appellee fails either to respond to the appellant's statement of questions involved or to include its own statement of questions involved, the clerk's office will send a letter informing the appellee of the defect pursuant to IOP 7.212(D). (Revised 1/01.)

IOP 7.212(D)(3)-2 — Response to Statement of Facts

If the appellee fails either to respond to the appellant's statement of facts or to include its own statement of facts, the clerk's office will send a letter informing the appellee of the defect pursuant to IOP 7.212(D). If the appellee prepares its own statement of facts, it must contain references to the transcript, the pleadings, or other document or paper filed with the trial court. See IOP 7.212(C)(6). (Revised 1/01.)

IOP 7.212-1 — Adoptive Briefs

A party may adopt a brief filed by another party. The adoptive brief should include a cover sheet with the case information and a text page that states that the party is adopting the brief of /appellant or /appellee, and include the signature of the attorney. The cover sheet must include a statement regarding whether the party requests oral argument; a request for oral argument on the adopted brief will not act as a request for oral argument from the adopting party. A party may not adopt another party's brief and then file its own brief in addition to the adopted brief. The adopting party's rights to oral argument are not affected by the fact that the brief is adoptive rather than original. (Revised 2/02.)

IOP 7.212(E) — Briefs on Cross Appeal

A party may file a joint brief, such as an appellant/cross-appellee brief or an appellee/cross-appellant brief or a reply/cross-appellee brief. A combined appellee/cross-appellant brief filed by the date the appellee's brief is due will be docketed as timely filed. A combined appellant/cross-appellee brief filed by the date the cross-appellee brief is due will be docketed as timely filed. A combined reply/cross-appellee brief filed by the date the cross-appellee brief

is due will be docketed as timely filed. If a party chooses to file a joint brief as described, the brief is subject to the 50-page limit in MCR 7.212(B). The brief must be clearly designated as a joint brief, and the appellee or cross-appellee or reply section may only be filed if the appellant or cross-appellant or appellee has filed its brief. The party may also file separate briefs if that format is preferred. (Revised 10/15.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.212(F)-1 — Supplemental Authority

Such a filing may only cite and discuss new published authority released subsequent to the date the party filed its last brief or supplemental authority. New issues may not be raised in a supplemental authority. The body of the supplemental authority cannot exceed one page. The caption may be on a preceding page and the signature block alone may be on a subsequent page. But the text of the supplemental authority cannot exceed one page. If the body exceeds one page, it must be accompanied by a motion. Unless accompanied by a motion, the supplemental authority will be returned if it (1) fails to comply with the requirement that it not exceed one page, or (2) cites other than new published authority. (Revised 1/05.)

If a party files a supplemental authority after the filing of the brief, and then another new case is released after filing of the first supplemental authority, the subsequent supplemental authority will be accepted. (Revised 8/15.)

IOP 7.212(F)-2 — Supplemental Briefs

Absent leave of the Court, there is no provision for the filing of a supplemental brief. If a motion to file a supplemental brief is granted, a response brief will be permitted. The time for filing such a response will be set in the order granting leave to file the initial supplemental brief. If no deadline is set, a response brief may be filed at any time before the appeal is decided. (Revised 10/99.)

IOP 7.212(F)-3 — Administrative Order 2004-6, Standard 4 Supplemental Briefs

An administrative order of the Michigan Supreme Court provides that indigent defendants represented by appointed counsel may raise issues in this Court that their attorneys decline to raise. The defendant may raise these issues by filing one brief, with or without an appropriate accompanying motion. Only one such filing by the defendant will be permitted. The defendant's filing must be received by the Court within 84 days after the filing of the

appellant's brief by defense counsel. However, if the case is noticed for submission within that 84-day period, the filing must be received no later than 7 days before the date of submission or within the 84-day period, whichever is earlier. (Revised 5/06.)

The time for filing a Standard 4 brief may be extended only by order of the Court on a motion by counsel showing good cause for the delay. Good cause requires a showing that circumstances beyond the defendant's control have frustrated the defendant's ability to prepare the brief within the time provided. The motion to extend time should specifically identify the circumstances causing the delay. The more significant the extension requested, the more critically the Court will assess the facts purported to be good cause. A motion to extend time will have the most chance of success if it is accompanied by the Standard 4 brief. (Revised 5/06.)

The Court will accept a brief in response to the Standard 4 brief filed by the plaintiff without leave of the Court. A reply brief to the plaintiff's responsive brief will not be accepted without leave of the Court. (Revised 9/07.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.212(G)-1 — Time to File Reply Briefs

The time to file a reply brief starts when the appellee's brief is served. The appellee's brief is served when it is mailed or personally delivered. MCR 2.107(C). A party who wishes to raise an issue with respect to service of a brief must do so through an appropriate motion filed with this Court. (Revised 2/11.)

Typically, even if the appellee's brief does not comply with MCR 7.212(D), the time to file the reply brief will begin to run. The party filing the reply brief may want to contact the clerk's office if there is a question whether the time has been tolled due to a defect. (Revised 1/05.)

If the reply brief is not filed (received) within 21 days after service of the appellee's brief, the reply brief will be returned by the clerk's office and the appellant must file a motion to extend time to file the reply brief. A party may file a single reply brief responding to multiple appellee briefs timed from the last appellee brief filed. The parties cannot stipulate to an extension of time to file the reply brief, but the Court's policy is to grant a motion to extend the time an additional 14 days. (Revised 5/07.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court Forms page of the Court's

website. The one-page form can be completed online and then printed for filing and service. (Revised 11/18.)

Even if the appellee's brief is filed shortly before or after the case has been placed on a case call, a reply brief will be accepted as long as an opinion or order has not been issued in the case and the brief can be forwarded to the panel for consideration before the opinion or order is filed with the clerk's office. Any reply brief received that cannot be forwarded to the panel prior to issuance of the opinion or order disposing of the appeal will be returned with an appropriate explanation. (Published 9/98.)

There is no court rule that permits the filing of a reply brief by an appellee. Consequently, a reply brief that is filed by an appellee will be returned. (Published 9/98.)

IOP 7.212(G)-2 — Form of Reply Brief

The 10-page limit for a reply brief will be enforced even where the appellant files a single reply brief to multiple appellees' briefs. If the reply brief does not comply with the rule, a letter will be sent advising that the deficiencies must be corrected. If the defects are not addressed within the time stated in the letter, the matter will generally be submitted for an order striking the brief. (Revised 4/19.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.212(H) — Amicus Curiae Briefs

An amicus curiae brief must conform to MCR 7.212(C) or (D) to the extent possible. However, since an amicus brief can only be filed pursuant to an order of the Court, it is that order that controls the acceptance of that amicus brief. The brief is limited to the issues raised by the parties, and the motion must be filed not later than 21 days after the appellee's brief is filed. If multiple appellee's briefs are filed on different days, the Clerk's Office will treat a motion to file an amicus brief as timely if it is filed within 21 days after the filing of the latest-filed appellee's brief. (Revised 8/14.)

If a party has obtained leave to file an amicus brief in response to an application for leave to appeal and leave is granted, the party may file an amicus brief after the appellee's brief is filed without further leave of the Court. In such case, the party must file 5 copies of the brief, even if it is identical to the brief filed in connection with the application. (Revised 1/05.)

There is no provision in the court rules for a response to an amicus brief. The clerk's office will return any response to an amicus brief that is not accompanied by a motion for leave to file the response. (Revised 1/05.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.212(I) — Non-Conforming Briefs

By court rule, the Court has the authority to strike a brief that is substantially non-conforming without prior notification to the party. Alternatively, if a brief does not comply with the applicable court rules for that brief, the clerk's office will notify the parties by letter of the defects contained within the brief and give the filing party 14 days to correct the defects. If no effort is made to correct the defects within that 14-day period, the matter is placed on the administrative motion docket to have the brief stricken. If an effort is made to correct the defects, but not all the defects have been corrected, the party may be given a further opportunity to correct the defects. (Revised 9/06.)

IOP 7.213 — Calendar Cases

IOP 7.213(B) — Notice of Calendar Cases

After the appellee's brief has been filed or the time to file that brief has expired, the parties are sent a postcard informing them that the case will be placed on the next available case call session. There may be a time lag between the time this postcard is sent and when the case is actually placed on a case call. During this period, the lower court or tribunal record is obtained by the Court and the case is screened by the research division for preparation of a staff report. (Published 9/98.)

It is advisable at this stage to inform the Court of any scheduling conflicts a party or attorney may have in the next few months. When possible, the Court will accommodate such conflicts. However, to facilitate the movement of cases onto case call, the Court will not honor notices of unavailability that cover the first two weeks of any subsequent month in which the party or attorney was not available for case call. (Revised 11/11.)

IOP 7.213(C) — Priority Cases

The case types listed in MCR 7.213(C) and cases that the Court orders expedited are given priority status in scheduling matters on the calendar. (Revised 9/02.)

IOP 7.213(D)-1 — Arrangement of Calendar

The parties are notified in writing at least 21 days before their case is heard as to the date, location, and panel that will hear the case. The parties are also notified as to the order in which the cases will be heard. The current case call schedules are available on the Case Call Schedule page of the Court's website. The letter will state the date by which further motions in such cases should be filed, which date will provide the judges with sufficient time to review the motions and issue orders before the date of oral argument. If necessary, motions for oral argument and motions to adjourn will be submitted to the panel before the proper notice of hearing date. Opposing counsel will be alerted by telephone when this occurs. A party can ensure expedited processing if the motion is accompanied by a personally served motion for immediate consideration. (Revised 11/18.)

IOP 7.213(D)-2 — Law Student Presentation of Oral Argument under MCR 8.120(D)

Under MCR 8.120, law students and recent law graduates are authorized to appear at oral argument before the Court on behalf of parties in conjunction with their service to legal aid clinics and public/nonprofit defender offices, or pursuant to legal training programs. A motion must be filed by the supervising attorney, not the student or recent graduate, after receiving notice that the case has been assigned to a case call panel. A motion filed before placement of a case on call may be returned as premature. (Revised 11/18.)

The motion for oral argument by a law student or recent law graduate must be accompanied by (1) written consent of the indigent client agreeing to the student's representation, and (2) written certification that the student has complied with the requirements of MCR 8.120(C). Oral argument by the student or graduate may be suspended at any time if a majority of the panel determines that representation by the student or graduate is professionally inadequate and substantial justice requires suspension. The supervising attorney must be present in the courtroom during argument in order to complete any argument that was suspended during the student's or graduate's presentation. (Revised 11/18.)

IOP 7.213(D)-3 — Judicial Disqualifications

The Court screens cases to identify potential conflicts based on even minimal involvement of a current Court of Appeals judge at the trial court level. When a conflict is discovered, the case is flagged to disqualify that judge from being selected for the panel that will decide the case. If, upon assignment of a case, a judge on the panel discovers a prior connection to the case, the judge will decide whether recusal is necessary. When the judge decides that recusal is not necessary, the clerk's office will communicate to the parties the nature of the judge's prior connection to the case and the fact that the judge has determined that the connection is sufficiently remote as not to require recusal. If a party disagrees with that decision, an appropriate motion may be filed addressing the matter. (Revised 9/02.)

A party seeking to disqualify a judge of the Court may file a motion to disqualify under MCR 2.003. A motion to disqualify is initially submitted to the challenged judge for decision. If the challenged judge denies the motion, the party may request that the motion be referred to the chief judge for decision. If the challenged judge is the chief judge, the matter will be referred to the State Court Administrator for assignment to another judge of the Court for decision. See MCR 2.003(C)(3). (Revised11/18.)

IOP 7.214 — Argument of Calendar Cases

IOP 7.214-1 — Media in the Courtroom

The Court of Appeals follows the media procedure outlined in Administrative Order 1989-1. *(Revised 1/01.)*

IOP 7.214-2 — Courtroom Decorum

The tables in the courtrooms are reserved for counsel or parties in propria persona who are endorsed to present oral argument. The tables are not to be occupied by parties or amici curiae who are not endorsed. (Revised 11/18.)

IOP 7.214-3 — Audio Recordings of Oral Argument

For a period of at least one year after oral argument, audio recordings of arguments are maintained on the Court's case management system and on the Court's public website. After one year, the audio file will be purged and it will no longer be available. An individual seeking access to a recording of an oral argument should go the Court's website Case Search page to access the docket listing for the case in question. If either party presented argument for that case, a link to the audio recording will be available on the docket listing under the docket event titled "Oral Argument Audio." If there is no link to the recording and there is an event titled "Oral Argument Audio Purged" farther down the docket, the audio is no longer available. If the link does not work, or it is missing with no indication that it has been purged, contact the clerk's office for further information. (Revised 5/19.)

Transcripts of the oral argument are not prepared by the Court for internal use, and a transcript will not be provided or certified by the Court. (Revised 11/18.)

IOP 7.214(A) — Request for Argument

The request for oral argument must appear on the cover sheet of the appellant's or appellee's brief. If the appellant or appellee fails to place it on the cover sheet of the brief, that party may file an amended cover sheet requesting oral argument if the amended cover sheet is filed within the time that party's brief was due. For example, if the appellee filed the appellee's brief on the 30th day, but failed to request oral argument, an amended cover sheet requesting oral

argument may be filed without leave of the Court if filed by the 35th day (because the appellee's brief is due within 35 days of service of appellant's brief). (Revised 11/18.)

If the party cannot file an amended cover sheet within the due date of that party's brief, the party must then file a motion for oral argument. By policy, a motion for oral argument, if filed prior to the case being placed on the case call, will be granted if that party's brief was filed within the extension time that the Court would have permitted. (The normal extension is an additional 8 weeks. See IOP 7.212(A)(1)-2). If the brief was filed past the normal extension period, the party is better served by waiting until the case has been placed on the case call before filing its motion for oral argument. (Published 9/98.)

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on the Court Forms page of the Court's website. The one-page form can be completed online and then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist the parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 11/18.)

IOP 7.214(C) — Action Taken at Oral Argument

If a panel at oral argument gives permission to a party or parties to file additional documents or take other action, the presiding judge is responsible for completing a case call information sheet and giving it to the court officer. That information sheet is then forwarded to the district clerk of the district where the argument was held. The filing of subsequent documents is controlled by that information sheet. Any documents that are received by the clerk's office that are unaccompanied by a motion and that do not comply with the instructions on the case call information sheet will be returned by the clerk's office. (Revised 1/01.)

Parties should never forward correspondence or pleadings directly to the judges on the panel. If case papers are received by a judge's office, they are withheld from the judge's attention and immediately forwarded to the clerk's office for handling. (Revised 1/01.)

IOP 7.214(E) — Decision Without Oral Argument

The parties will be notified in writing if a case is submitted to a panel without oral argument pursuant to MCR 7.214(E). If a party believes oral argument is necessary in the case, the party should immediately file a motion for oral argument before the panel. The panel has the discretion, even absent a motion, to determine that the case requires oral argument. If this occurs, the parties will be notified of the date and location of the hearing before that panel. (Revised 4/03.)

IOP 7.215 — Opinions, Orders, Judgments, and Final Process for Court of Appeals

IOP 7.215(B) — Standards of Publication - Practice Note

If a party believes that one of the standards of publication delineated in MCR 7.215(B) is met in a case, the party's brief may include a statement that publication is warranted. The pertinent standard should be cited. (Published 9/98.)

IOP 7.215(E)(2) — Issuance of the Opinion or Order

The opinions and orders are sent to all attorneys of record. A copy is also sent to the trial court or tribunal and the clerk of the trial court or tribunal. If an attorney has moved or the file has been reassigned to another attorney within the firm, it is the responsibility of the original attorney to notify the Court of Appeals of that fact. If the Court of Appeals becomes aware that an attorney has moved but has not been notified that the case has been reassigned to another attorney, the opinion or order will be sent to the original attorney at the new address. (Revised 5/03.)

On all opinions, the date of issuance will be printed on the title page of the opinion. On published opinions, the time of release will also be indicated on the title page. Parties should be aware that published opinions are subject to revision until final publication in the Michigan Appeals Reports. (Revised 4/19.)

Opinions of the Court of Appeals are issued on Tuesday and Thursday of each week. All opinions are available on the Court's website on the day following issuance. Electronic copies of the Court's decisions may be found on the Opinions and Orders page of the website. (Revised 11/18.)

IOP 7.215(F) — Execution of Judgment, Return of Record

Under MCR 7.210(H), the lower court record is returned to the trial court or tribunal clerk after decision. This occurs after expiration of the time in which a timely motion for reconsideration could be filed in the Court of Appeals or an application for leave to appeal could be filed in the Supreme Court. If neither pleading is filed, the record will then be returned. (Revised 9/03.)

IOP 7.215(H) — Expedited Notice to Prosecutor of Certain Orders and Opinions

In a criminal case, when the prosecutor has filed and properly served a notice of a victim's request for information, the Court is required to electronically transmit certain orders and opinions to the prosecutor coincident with the issuance of the order or opinion. See MCR 7.215(H); MCL 780.768a(1)(d); MCL 780.796(1)(d); MCL 780.828(1)(d). Such delivery is required for an order or opinion that reverses a conviction, vacates a sentence, remands the case for new trial, or denies the prosecutor's appeal. In such case, the order or opinion will be

transmitted to the prosecutor at the fax number or e-mail address provided by the prosecutor in the notice. (Revised 5/03.)

A blank notice of a victim's request for information form is carried on the Court Forms page of the Court's website. Service of the notice on all other parties to the appeal is required. The notice must be filed with the Court prior to issuance of an order or opinion that meets the criteria. (Revised 11/18.)

IOP 7.215(I)(1)-1 — Time to File Motion for Reconsideration

A motion for reconsideration of an opinion or order must be filed within 21 days of the order or opinion sought to be reconsidered. (Revised 5/03.)

IOP 7.215(I)(1)-2 — Form of Motion for Reconsideration

A motion for reconsideration cannot exceed 10 pages and must be a single document including all facts, arguments, and citations to authorities. If a motion for reconsideration exceeds 10 pages, the moving party will be notified in writing that the motion for reconsideration does not comply with the page limit and will be given an opportunity to submit a motion for reconsideration within 7 days that does not exceed 10 pages. (Revised 2/14.)

IOP 7.215(I)(1)-3 — Attachment of Order or Opinion

All motions for reconsideration must be accompanied by a copy of the order or opinion of which reconsideration is sought. (Revised 5/03.)

IOP 7.215(I)(2)-1 — Length of Answer to Motion for Reconsideration

An answer to a motion for reconsideration cannot exceed 7 pages. If the answer to the motion for reconsideration exceeds 7 pages, the answer will not be accepted for filing. The clerk's office will attempt to notify the answering party in a timely fashion that an amended answer not exceeding 7 pages needs to be filed, but the Court will not delay submission of the motion for reconsideration while waiting for a conforming answer. (Revised 5/03.)

IOP 7.215(I)(2)-2 — Time to File Answer to Motion for Reconsideration

An answer to a motion for reconsideration must be filed within 14 days after the motion is served on the party. (Revised 5/03.)

By judicial policy, the clerk's office is authorized to accept an answer that is filed after the deadline has passed without an accompanying motion, but the parties should note that they file an untimely answer at their own risk. If there is insufficient time to forward a late answer to the panel before an order is signed, the late answer will be returned to the filer by the clerk's office. A party who seeks to ensure a panel's review of a late answer should file a motion to

extend the filing deadline. It is useful if the late answer accompanies the motion to extend the filing deadline but it is not required. (Revised 11/18.)

IOP 7.215(I)(4) — Late Motions for Reconsideration

The clerk's office cannot accept any motion for reconsideration that is not filed within the 21-day period provided in the court rule. A late motion for reconsideration will be returned by the clerk's office. (Revised 5/03.)

IOP 7.215(J) — Resolution of Conflicts in Court of Appeals Decisions

Panels of the Court of Appeals are generally not permitted to issue opinions with results that conflict with earlier published opinions of the Court issued on or after November 1, 1990. However, a subsequent panel may issue an opinion that follows a rule of law established by such an earlier published opinion only because it is required to do so while stating in its opinion that it would have reached a different result but for the controlling nature of a prior published decision of this Court. (Revised 2/14.)

Once such an opinion is published, MCR 7.215(J) provides the mechanism by which the conflict may be resolved. The polling procedure contained in MCR 7.215(J)(3)(a) will not be invoked if the Michigan Supreme Court has granted leave to appeal in the controlling case. Thus, the parties in the second appeal are responsible for monitoring the Supreme Court's orders granting leave to appeal and for understanding the impact of such an order on their time for reconsideration or application for leave in the second case. (Revised 5/03.)

IOP 7.216 — Miscellaneous Relief

IOP 7.216(A) — Relief Obtainable

The Court of Appeals uses this court rule as the basis for unique relief that is not provided for in any other rule. A motion filed under this rule must conform to MCR 7.211 and state the subsection of this rule on which the motion is based. (Published 9/98.)

IOP 7.216(A)(7)-1 — Miscellaneous Relief

This subsection of MCR 7.216 provides the basis for the filing of a motion for guidance in an appointed counsel case. See IOP 7.211(C)(5)-2. (Revised 1/01.)

IOP 7.216(A)(7)-2 — Bankruptcy of a Party

Any party who becomes aware of a proceeding in bankruptcy that may cause or impose a stay of proceedings of a case pending in this Court should immediately file written notice with the clerk's office. Any bankruptcy stay order should be attached to the notification, and the filing should include an explanation why the bankruptcy proceedings impact the pending case. An

opposing statement from any other party to the pending case may be promptly filed. It is recommended that all filings be served on all parties to the appeal, with proof of service provided to the clerk's office. The parties are urged to address the impact of the bankruptcy provisions on any automatic stay that may have entered. In particular, the parties should confirm that the automatic stay has not been terminated under 11 USC 362(e). (Revised 1/06.)

If it appears that the bankruptcy stay does not apply to the case, the clerk's office will notify the parties by letter. In that situation, further pursuit of a stay of proceedings must be by formal motion. If it is concluded that the bankruptcy stay applies to the appeal, the clerk's office will recommend that the Court enter an order directing the administrative closure of the appeal. When the bankruptcy stay has been removed, the case may be reopened on motion. A party who believes that the order was improperly entered may file a motion for reconsideration under MCR 7.215(I). (Revised 2/11.)

When a case is reopened, the appeal will typically resume where it left off when it was administratively closed. New briefing will not be permitted in a re-opened case except upon leave of the Court. (Revised 10/13.)

IOP 7.216(A)(10) — Administrative Dismissal

This subsection of MCR 7.216 is commonly used by the Court as the basis for administrative dismissals on the Court's own motion for lack of jurisdiction or failure to pursue the appeal in conformity with the rules. (Revised 11/18.)

IOP 7.216(B) — Allowing Act after Expiration of Time

This rule may be used to secure the Court's permission to accomplish a non-jurisdictional act after the expiration of the customary time. Such permission is secured by motion conforming to MCR 7.211. The motion must establish that there was good cause for the delay or that the delay was not due to the culpable negligence of the party or attorney. An example of a motion under this rule is a motion to extend time to order a transcript. (Published 9/98.)

IOP 7.216(C) — Vexatious Proceedings

A party may move for damages or other appropriate action under MCR 7.211(C)(8) when an entire appeal or a proceeding in an appeal is vexatious. A motion filed under MCR 7.211(C)(8) must be filed within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious. (Revised 9/03.)

The court rule sets forth specific bases for an assertion of a vexatious appeal or proceeding in subsections (C)(1)(a) and (C)(1)(b). Parties moving for relief under this rule are well advised to ensure that their motions meet the parameters stated in these subsections of the rule. Case law may be consulted to determine how this rule has been applied in the past. Where damages are sought, they may not exceed the party's actual expenses occasioned by the vexatious

activity and additional punitive damages not exceeding actual damages. They are not related to or affected by the size of the judgment in the trial court. (Revised 2/14.)

IOP 7.217 — Involuntary Dismissal of Cases

IOP 7.217(A)-1 — Notifying Parties of Possible Involuntary Dismissal

This rule is employed by the Court to exercise control over its docket. The clerk's office maintains case management lists that are referenced to the filing deadlines for the docketing statement, stenographer's certificate, notice of filing transcript, and appellant's brief (or cross-appellant's brief). When one of these filings is overdue, the clerk's office will mail to the appropriate party a letter warning that if the deficiency is not cured within 21 days of the date of the letter, the appeal will be submitted on the involuntary dismissal docket. (Revised 9/13.)

IOP 7.217(A)-2 — Remedying the Deficiency before Dismissal

Filing of the missing docketing statement, stenographer's certificate, transcript, or brief within 21 days of the clerk's letter, in the form required by the Court, will completely cure the deficiency. Curing the deficiency after 21 days, but before submission on the involuntary dismissal docket will avoid dismissal but may still result in the assessment of costs against the attorney. See MCR 7.219(I). The current practice of the Court is to impose costs of $250. Filing the missing document after an order is entered dismissing the appeal will not automatically reinstate the appeal. The appellant must file a motion for reinstatement under MCR 7.217(D). See IOP 7.217(D). (Revised 4/19.)

IOP 7.217(C) — Other Action; Remand for Appointment of Substitute Counsel

Because a party is entitled to the effective assistance of appointed counsel on appeal, the Court will not dismiss appeals that are brought by appointed counsel. Rather, remand for the appointment of substitute counsel and the imposition of costs is the customary sanction for an appointed attorney's failure to file the stenographer's certificate, transcript, or brief. (Revised 9/13.)

In criminal appeals filed by a prosecutor's office, appointed counsel for the defendant- appellee is required to file an appellee's brief on the defendant's behalf or risk remand for the appointment of substitute counsel under the process described in this IOP. (Revised 9/13.)

IOP 7.217(D) — Reinstatement

When an appeal or original action is dismissed pursuant to MCR 7.217(A), the appellant or plaintiff may file a motion for reinstatement of the case as provided in MCR 7.217(D). A motion for reinstatement may be filed within 21 days of the date of the order dismissing the appeal or original action. Untimely motions for reinstatement will be accepted and submitted to the Chief

Judge under MCR 7.217(D)(2). The time for filing an answer to a motion for reinstatement is 14 days. MCR 7.211(B)(2)(d). (Revised 9/13.)

A motion for reinstatement has the most potential for success if it is accompanied by the filing (or evidence of the filing) that was formerly omitted, such as the missing stenographer's certificate, notice of filing transcript, or the missing brief. Further, the motion for reinstatement must show mistake, inadvertence, or excusable neglect on the part of the moving party. However, even if reinstatement is granted, any costs assessed in the dismissal order will generally be affirmed. (Revised 9/13.)

The rule allowing the filing of an untimely motion for reinstatement applies only to dismissals under MCR 7.217. It does not apply to dismissal orders issued under MCR 7.203(F)(1), MCR 7.201(B)(3), MCR 7.211(C)(2) or MCR 7.216(A)(10). Dismissal under those rules may only be challenged by filing a motion for reconsideration under MCR 7.215(I) within 21 days. "The clerk will not accept for filing a late motion for reconsideration." MCR 7.215(I)(4), See also *In re Fergeanu Hartfield*, unpublished order of the Court of Appeals, issued March 18, 2010 (Docket No. 295075)(denying the plaintiff's complaint for superintending control/mandamus and motion to compel the chief clerk to docket a motion for correction of the record and reinstatement of an appeal of right), *lv den* 488 Mich 853; 788 NW2d 7 (2010). (Revised 9/13.)

An order remanding for the appointment of substitute counsel, as described in IOP 7.217(C) above, is not a dismissal and, therefore, a motion for reinstatement under MCR 7.217(D) is inapplicable. Rather, a motion for reconsideration under MCR 7.215(I) is applicable and must be brought within 21 days. (Revised 9/13.)

IOP 7.218 — Voluntary Dismissal of Cases

IOP 7.218(A) — Dismissal by Appellant

This rule provides the vehicle by which an appellant or plaintiff in an original action may successfully dismiss his or her own case without the necessity of securing the signatures of every opposing counsel or party on a stipulation to dismiss. A motion to withdraw the case under this rule will be held by the clerk's office until the first Tuesday that is 7 days from the date of service of the motion on the other parties. If no answer in opposition is filed, a clerk's order of dismissal will be entered. (Revised 1/01.)

If an answer in opposition is filed within 7 days from the date of service, the matter will be submitted to a panel of three judges for disposition. As with any other motion, a motion fee is required in support of a motion to withdraw. (Revised 1/01.)

IOP 7.218(B) — Stipulation to Dismiss

If the parties agree to dismiss the case, a stipulation to dismiss may be filed under this rule. The stipulation must bear the signature of each attorney or party that is still active in the case. (A party that was earlier dismissed or who never appeared is not required to sign). See IOP 7.202-1 for information on the types of "signatures" that are accepted by the clerk's office. In all cases, the caption on the stipulation must match the order appealed from, and any lower court number that is stated on the face of the filing must match the lower court number of the appeal being dismissed. (Revised 5/05.)

If the case has not gone to a case call panel, a clerk's order of dismissal will be entered when a conforming stipulation to dismiss the case is filed. The clerk's order will be sent to the parties and to the trial court judge and clerk. The clerk's order will dismiss the case without reference to prejudice or costs, regardless of the terms stated in the stipulation. (Revised 5/05.)

If the case has gone to a case call panel, it is discretionary with the panel to accept a stipulation to dismiss. If the Court accepts the stipulation, the Court's order of dismissal will typically order dismissal without reference to prejudice, regardless of what the stipulation specifies. (Revised 9/05.)

Partial dismissals by stipulation may be secured by signature of all of the parties. For instance, one of multiple appellants or appellees may be dismissed without dismissing the entire appeal. Or when more than one lower court number is represented in a single appeal, a dismissal of that part of the appeal represented by just one of those numbers may be effected. (Revised 1/01.)

Parties are advised not to submit proposed orders with stipulations to dismiss under this rule. The clerk's office will always enter its own order of dismissal. (Revised 11/18.)

Stipulations to dismiss will not trigger a clerk's order of dismissal if fees are outstanding, if the case involves a class action, or if the case has been submitted on a session calendar. In the latter two instances, an order of a three-judge panel of the Court is required. (Revised 1/01.)

IOP 7.219 — Taxation of Costs; Fees

IOP 7.219(A) — Right to Costs

Prevailing parties in civil cases are entitled to costs except as the Court otherwise directs. If the order or opinion is silent on costs, the prevailing party is entitled to costs. (Published 9/98.)

IOP 7.219(B) — Time for Filing a Bill of Costs

The prevailing party's certified or verified bill of costs must be filed with the clerk's office and served on all other parties within 28 days after the date on the dispositive order, the opinion,

or the order denying reconsideration. If the Supreme Court reverses the decision of the Court of Appeals, the new prevailing party may file a bill of costs with the Court of Appeals clerk's office within 28 days of the Supreme Court decision. If the deadline is missed, the right to costs is waived. (Revised 5/03.)

Each item in the bill must be specified. If the bill of costs lacks sufficiently specific information to allow the clerk to tax costs, the clerk will request additional information to verify the costs. (Published 9/98.)

IOP 7.219(C) — Objections

Any party may file objections to the bill of costs. Objections must be filed within 7 days after service of the bill of costs. The objecting party must serve all other parties with the objections. (Revised 1/19.)

Under the court rule, a party against whom costs are to be taxed must file all pertinent objections to those costs before they are taxed by the clerk's office. The clerk's office does not have the authority to decline to award challenged costs that appear to be legitimate. However, the challenge must still be made by the objecting party before taxation because "only objections which were previously filed with the clerk may be considered by the Court" on a subsequent motion for review. See IOP 7.219(E). (Published 9/98.)

IOP 7.219(D) — Taxation

Costs will be taxed against the losing party or parties by the clerk's office after that office verifies the bill. Costs are "taxed" by the issuance of a letter indicating the amount taxed. Even if no party files an objection, the clerk will only tax those costs that are allowed by the rules. (Published 9/98.)

IOP 7.219(E) — Review of Taxation of Costs

The clerk's taxation of costs may be challenged by either party through the filing of a motion for review of taxation within 7 days from the date on the letter of taxation. The motion for review of taxation may not raise or present new matters. The panel that issued the dispositive opinion or order in the appeal will review the taxation on the basis of the affidavits in support of the costs and the objections against the costs that were previously filed with the clerk's office. (Published 9/98.)

IOP 7.219(F)-1 — Costs Taxable

The rule enumerates the types of costs that may be taxed in favor of the prevailing party. Attorney fees are not taxable as costs. Further, the prevailing party is only allowed the standard amount to be paid for preparation of the transcript. (Published 9/98.)

IOP 7.219(F)-2 — Briefs

The prevailing party may only tax costs for their own appellant's brief, appellee's brief, reply brief, or supplemental brief. Neither a brief in support of an application nor a brief in support of a motion is taxable. Costs for printing another party's briefs are not taxable. If exhibits or appendices are attached to a taxable brief, the clerk will tax those items at 10 cents a page. (Revised 11/18.)

IOP 7.219(G)-1 — Fees Paid to Clerk

Fees paid to the clerk under this subsection may be taxed as costs in favor of the prevailing party. These fees are normally the entry fee and any motion fees paid. (Published 9/98.)

Practice Note: Each party is responsible for collecting the taxable costs assessed against another party. If the party owing costs has not paid within a reasonable period of time, the letter taxing costs may be presented to the trial court for judgment and execution under MCR 7.215(F)(1)(b). (Revised 6/01.)

IOP 7.219(G)-2 — Waiver of Fees

A party may move to waive fees owing to the Court by filing a motion conforming to MCR 7.211 that is accompanied by an affidavit disclosing the reason for the inability to pay the fee. Under MCR 2.002(C), receipt of public assistance requires the suspension of the fees. (Published 9/98.)

IOP 7.219(I)-1 — Assessment of Costs for Violation of Rules

The Court is authorized to assess costs against a party or an attorney when a violation of the court rules has occurred. The principal use of this authority is found in the orders issued on the involuntary dismissal docket. See IOP 7.217. (Published 9/98.)

IOP 7.219(I)-2 — Collection of Costs Assessed by the Court

The Court's power to assess costs against attorneys or parties is backed by a carefully monitored and vigorously enforced collection procedure. (Published 9/98.)

Failure to timely pay costs results in (1) the generation of a warning letter sent by first-class mail, followed by (2) the issuance of an order to appear before the Court and show cause why the debtor should not be held in contempt for failure to pay the costs that have been assessed. If the debtor does not appear in response to a show cause order, the Court may enter an order directing the clerk's office to prepare and issue a bench warrant for the arrest of the debtor or it may take such other action as deemed appropriate. If an order to show cause is issued, imposition of additional costs is likely. (Revised 9/02.)

Service of the orders to show cause may be effectuated by first-class mail or by personal service by a Court Officer employed by the Court or by the Michigan State Police. Bench warrants are always referred to the State Police for handling. (Revised 9/02.)

Individuals who dispute costs that have been assessed against them should challenge the costs within the time provided for a motion for reconsideration. Individuals who are unable to promptly repay costs assessed against them are encouraged to contact the clerk's office to make arrangements for payment. (Revised 5/03.)