

MICHIGAN COURT OF APPEALS

Office of the Clerk



GUIDE TO HANDLING A CIVIL APPEAL

FOR PEOPLE REPRESENTING THEMSELVES

Court of Appeals Guide to Handling a Civil Appeal

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Contact Information

This manual and other helpful information is available on the Court of Appeals website at: <http://courts.mi.gov/courts/coa>

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Our offices are open from 9:00 a.m. until 5:00 p.m., Monday through Friday, except on Court holidays. You may contact and file documents at the location most convenient for you, but Clerk's Office staff may direct you to contact the office where your appeal is being managed.

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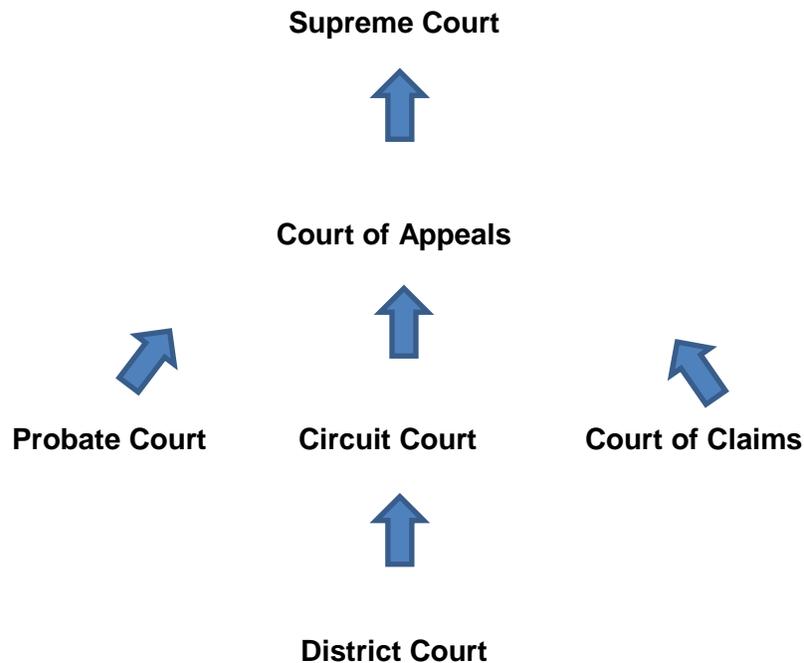
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Introduction

This guide describes the process of challenging an order of a court or administrative tribunal by filing an appeal in the Michigan Court of Appeals.

An **appeal** is a way to ask a court to correct an error that was made by a lower court. The Michigan Court of Appeals is the intermediate appellate court in this state. It is between the circuit courts and the Michigan Supreme Court.



As the diagram shows, an appeal is usually taken to the next higher court. Orders from the district court generally must be appealed to the circuit court. Orders of the circuit court are generally appealed to the Court of Appeals. Decisions of the Court of Appeals may be appealed to the Michigan Supreme Court.

If you file your appeal in the wrong court, your appeal will be dismissed and **you will lose any appeal fees that you paid.**

Even with this guide, pursuing an appeal without an attorney will be difficult. The person who files the appeal (the “appellant”) must follow many rules and file many documents. This guide provides basic information, including some forms, instructions, and examples for some of the documents that may be required. It is only a **procedural** guide.

- It does not give legal advice.

- It is not the law and does not replace the court rules or statutes.
- It will not help you know whether you will win.

An attorney has training to interpret and apply the law to your situation. This manual does not substitute for that, and this manual is not meant to encourage you to represent yourself. You should only proceed without an attorney after very serious consideration.

The legal requirements for pursuing an appeal are subject to change. The procedural requirements described in this manual are primarily based on the Michigan Court Rules (MCR). Those rules are adopted by the Michigan Supreme Court and govern all state courts in Michigan. Because the Supreme Court may change the rules, the information in this manual may become outdated.

Always check the current version of the court rules. The current version of the court rules may be found on the Court's website [here](#).

Legal Help:

- State Bar of Michigan [Legal Resource and Referral Center](#) has a lawyer referral service, legal aid resources, legal information resources, and other information.
- [Michigan Legal Help](#) is designed to help people handling their legal problems without an attorney.

The court rules numbered MCR 7.201 to 7.219 are the rules specifically written for the Court of Appeals, although other rules also apply.

Part I – Do I Want to Appeal?

This section explains some things you should consider before filing an appeal without the help of an attorney.

If you are reading this guide, you probably received a decision from a court, administrative agency, or tribunal that you do not like, and you hope that the Court of Appeals will change the result.

Filing an appeal is an important first step, but it is only the beginning of what can be a lengthy, expensive, and complicated process. Many cases end at an early stage because the Court dismisses them or denies permission to appeal. For most cases that get past the early stages, the outcome of the appeal does not change the trial court decision. For these reasons, you should seriously consider the following in deciding whether an appeal is the right choice for you.

Costs of an appeal

The costs for an appeal are significant, and they include:

1. **Entry Fee: \$375.** This is due when the appeal is filed and is set by statute. This fee and the motion fees charged by the Court of Appeals may be waived if you can show you are indigent. See Part V. But the other costs cannot be waived.
2. **Motion Fees: \$100-200 each.** Each time you file a motion in the Court of Appeals, you must pay a motion fee of \$100. If you file a motion for immediate consideration of another motion or a motion to expedite your entire appeal, you must pay a \$200 motion fee.
3. **Transcript Costs: Varies from \$0 to over \$500.** In most appeals, the appellant must have a court reporter make a transcript of every hearing that happened in the trial court. The price is currently \$1.75 per page and \$.30 per page for a copy. For example, a transcript of a one-hour hearing would be about 60 pages long and would cost

- You can file a motion to waive fees if you cannot pay the fees. If granted, the entry fee and any motion fees will be waived, but **not the cost of the transcripts or trial court fee.**
- You may be able to get some of these costs paid back to you by your opponent, **but only if you win the appeal.** If you lose the appeal, you may be ordered to pay your opponent's costs.

about \$105. If you have more than one hearing, the cost can quickly add up to several hundred dollars.

4. **Trial Court Fee: \$25.** By law, you are required to pay a fee to the trial court when you file a claim of appeal. This is meant to cover some of the costs of preparing and sending the court's files to the Court of Appeals.

Consider the work involved

In the trial court, you may have a chance to appear in court before the judge to explain your side and make arguments. You may also have been allowed to present evidence and call witnesses. An appeal is different.

In the Court of Appeals, you communicate with the Court in writing. You will need to file a document called a "brief." A brief is a written description of the facts and why you think the trial court made an error that caused the outcome of the case to be wrong. A brief must include certain parts and follow a certain format or the Court will reject it.

After your brief is filed, you may have the opportunity to come before the three judges who will decide your case. That hearing is called "oral argument." The time is very short, and there are no witnesses. If your appeal is by application (see Part IV), you must file a brief with your application and you will **not** have oral argument before the Court decides the application.

Before filing an appeal, you must be willing to put in the significant time and effort necessary to write a brief that is convincing and meets the requirements of the court rules. Because the brief is the way to communicate with the judges, the brief is the most important part of any appeal. Part VI discusses briefs in more detail.

Consider the odds of success

When deciding whether to start an appeal, you should know most appeals do not change the ruling of the trial court. Many appeals are dismissed on procedural grounds without the Court of Appeals considering the questions that the appellant wanted to raise. Even when all the procedural requirements are met and the Court considers the issues raised, most appeals do not change the trial court's decision. The odds of an unsuccessful outcome are even higher in an appeal taken by a person who is not represented by an attorney.

Consider the alternatives

Before beginning an appeal, you may want to look for alternatives. An alternative may be more likely to achieve a result that, even if somewhat disappointing, is a better choice than would be likely with an appeal.

Negotiating with your opponent may be possible. Your opponent in the case may be willing to reach an agreement with you to bring the case to an end.

Considering the costs, effort, and chance of success involved with an appeal, you may conclude accepting a trial court's decision is better in the long run than making the effort required by an appeal.

Court of Appeals statistics show that in appeals filed by people not represented by an attorney:

- More than half of appeals of right are dismissed for procedural defects.
- More than 90% of applications for leave to appeal are denied.

When an appeal is dismissed or denied, **the fees that were paid cannot be refunded.**

Part II – Is An Appeal Possible?

Court of Appeals jurisdiction

Before filing an appeal with the Court of Appeals, you should determine whether the Court of Appeals is the right court for the appeal and what type of appeal to file. Court of Appeals staff is not permitted to provide legal advice to help you make this determination.

The Court of Appeals has the legal authority to act only in certain types of cases. This authority is called “jurisdiction.” The jurisdiction of the Court of Appeals comes from the Michigan Constitution, statutes, and the Michigan Court Rules adopted by the Michigan Supreme Court.

Generally, the Court of Appeals has jurisdiction to review decisions of the circuit and probate courts, and some state agencies and tribunals, but there are limits to that authority. For example:

- If you do not file your appeal within the time set by court rule or statute, the Court cannot hear your appeal.
- If you file a claim of appeal when you do not have an appeal of right, the Court does not have jurisdiction to hear your appeal.
- If you file an appeal in the Court of Appeals from an order that should be appealed to the circuit court, the Court cannot hear your appeal.

A common mistake is filing an appeal of a district court order to the Court of Appeals. If you file the appeal in the Court of Appeals, it will be dismissed. Appeals of district court orders should be filed in circuit court. MCR 7.103. After the circuit court decides your appeal, you can appeal to the Court of Appeals by filing an application for leave, **not a claim of appeal.** MCR 7.202(A)(1)(a).

If the Court does not have jurisdiction to decide your appeal, the Court will order the appeal dismissed. Dismissal could occur at any time during the appeal, but dismissal usually happens shortly after the appeal is filed.

The appellant is responsible for determining if the appeal is within the Court's jurisdiction. This manual provides some guidelines, but other limitations may apply.

Two types of appeals

The Court of Appeals has jurisdiction to hear two different types of appeals: a claim of appeal and an application for leave to appeal. As the appellant, you have to choose which type of appeal is correct for your situation. Here is a summary of the two types:

1. **Claim of Appeal:** A claim of appeal may be filed when the law gives you the right to appeal the order that you want to challenge. When you have an appeal as of right, the Court of Appeals has to accept your appeal as long as you comply with the rules. The paperwork to begin an appeal as of right with a claim consists of forms and documents that the appellant must gather. The appellant does not have to file a brief right away; the brief is due later. If the necessary steps are followed, the Court will eventually decide the claim of appeal with a written decision called an "opinion." Filing a claim of appeal is discussed in detail in Part III.

- 2. Application for Leave to Appeal:** An application for leave to appeal can be filed when you do not have the right to appeal but you want to ask the Court of Appeals to allow you to appeal. Applications offer a way to challenge some decisions that cannot be appealed with a claim of appeal. Unlike with a claim of appeal, a brief is filed at the beginning. Usually, the Court will enter an order denying or granting the application. In rare cases, the Court will enter an order that grants some relief immediately. If the Court grants your application, then your appeal will go through the same process as in a claim of appeal, and the appeal will be resolved in an opinion. An application for leave to appeal is discussed in detail in Part IV.

Final order

Whether a claim of appeal or application for leave to appeal should be filed depends in part on the type of order you want to appeal.

Before filing an appeal, be sure the court or tribunal has signed an order. Sometimes, a court will announce a decision at a hearing and say that an order will be entered later. An appeal requires a written order that was entered before the appeal was filed. Do not file an appeal until after the judge has signed the order that you want to appeal. If an appeal is filed before a written order is signed, the appeal is considered to be too early, and it will be dismissed.

References to the Michigan Court Rules are indicated as “**MCR.**” So, “MCR 7.202(6)(a)” means section (6)(a) of court rule 7.202. The current court rules may be found online [here](#).

The law allows an appeal of right only from certain types of orders. For the most part, an order that can be appealed by right is one that the court rules call a “final order” from the circuit court. MCR 7.202(6)(a) defines “final order” in a civil case for an appeal to the Court of Appeals. Check the current version of MCR 7.202(6)(a) to decide if the order you want to appeal is a final order. If it is, then an appeal as of right using a claim of appeal may be possible.

At the time this manual was prepared, MCR 7.202(6)(a) included the following final order types:

- **The first judgment or order in circuit court that decides all the claims and liabilities of all the parties.** MCR 7.202(6)(a)(i). This order ends the circuit court case, meaning that every claim, counterclaim, or crossclaim in the case has been decided in some way. This type of order will often include a statement that says it “resolves the last pending claim and closes the case.”

An appeal from this type of order can also include arguments about other orders that were entered earlier in the case.

- **A postjudgment order that grants or denies a request for attorney fees and costs.** MCR 7.202(6)(a)(iv). “Postjudgment” means that the order must have been entered after the judgment in the case. If the order for attorney fees and costs was issued before the judgment, the order is not “postjudgment” and is not a final order under this definition. An appeal from an attorney fees and costs order is limited to only the part of the order that grants or denies attorney fees and costs. MCR 7.203(A)(1).
- **A postjudgment order that grants or denies a motion to change domicile or legal or physical custody of a minor.** MCR 7.202(6)(a)(iii). An appeal from this type of order is limited to a review of the custody or domicile order you are appealing. MCR 7.203(A)(1). A postjudgment order changing spousal or child support does not fall within this type of final order.

Other court rules and statutes allow for an appeal of right from other court orders or orders issued by an administrative agency or tribunal. These statutes and rules may change from time to time, and this manual cannot provide a full list of all final order types, but some examples are:

- A final order affecting your rights or interests in an estate or trust entered in the **probate court**. MCL 600.308. MCR 5.801(A) sets forth a wide variety of probate court orders that are deemed final orders that may be appealed by right to the Court of Appeals.
- In a child protective proceeding, an order of **the family division of the circuit court** that removes a child from a parent’s custody, an initial order of disposition, an order of disposition placing a minor under the supervision of the court, or an order terminating parental rights. MCR 3.993(A).
- In a **Personal Protection Order (PPO)** case, an order granting or denying a PPO, a ruling on a first motion to rescind or modify the PPO, or a sentence of criminal contempt. MCR 3.709.
- Certain **Michigan Public Service Commission orders**. MCL 462.26

References to the Michigan Compiled Laws are indicated as “**MCL.**” So, “MCL 600.308” means section 308 of chapter 600 of the laws of the State of Michigan. The Michigan Compiled Laws may be found online [here](#).

- **Tax Tribunal** final orders. MCL 205.753
- **Michigan Employment Relations Commission** final orders. MCL 423.23
- Certain **health profession disciplinary subcommittee** final decisions. MCL 333.16237

If you do not have a “final order” and a statute does not give you an appeal of right, you may be able to appeal, but you would file an application for leave to appeal, not a claim of appeal.

Time limits

The court rules set time limits for filing an appeal. If you do not file the appeal within the time limit, the Court of Appeals will not have authority to review the appeal, and the appeal will be dismissed.

For most civil cases, **21 days** is the key time limit. A claim of appeal must be filed with 21 days from the final order. MCR 7.204(A)(1). An application for leave to appeal must be filed within 21 days from the order being challenged. MCR 7.205(A). For both types of appeals, if you filed a motion for reconsideration or other relief in the trial court during the 21-day period, then you may wait to file your appeal until the trial court has decided your motion. The 21-day period for filing a claim of appeal or application will begin on the date of the order deciding that motion.

If the order you want to appeal was not served on you within 7 days of its signing, you may file your claim of appeal within 14 days of when it was served. See MCR 7.204(A)(3). To rely on this rule, you must file an affidavit with your claim of appeal that states the facts of the service delay. Your opponent will have 14 days to object. MCR 7.204(A)(3).

If you’ve missed the 21-day deadline for filing the application for leave or a claim of appeal, you may still be able to appeal. You may use the “late appeal” process described in MCR 7.205(G). This is basically the application process, but you must include an extra statement in your brief about why the appeal was late. In most cases, the late application may be filed within **6 months** of the order being appealed or an order denying a timely motion for reconsideration of that order. If you are appealing an order terminating parental rights, the time limit for a late appeal is **63 days**. See MCR 3.993(C)(2); MCR 7.205(G)(6).

Because an appeal that is not filed by the deadline will be dismissed, you need to be aware of when documents are considered to be filed.

Filing in the Court of Appeals

Documents are **not** filed when you place them in a mailbox or on the postmarked date of the mailing. They are only considered filed when they are received by the Court of Appeals. MCR 7.202(2) and (4). A document that is e-filed is considered received at the time shown on the e-filing, unless that is a weekend or Court holiday. For paper filings, the Court places a timestamp on the document when it is received. That timestamp shows the date that the Court considers the document to have been filed.

Prison mailbox rule. If a claim of appeal or application is received by the Court of Appeals after the time limits, and if you are an inmate in the custody of the Michigan Department of Corrections and submitted the claim or application without an attorney, the claim or application is considered presented for filing on the date of deposit of the item in the outgoing mail at the correctional institution. MCR 7.204(A)(2)(e); MCR 7.205(A)(3). The rule **ONLY** applies to the claim or application that starts the appeal—not to later filings in the appeal.

Part III – Claim of Appeal

If you have determined the type of order and the timing will allow you to have an appeal as of right, see Part II, this section will guide you through the steps.

Filing a Claim of Appeal

MCR 7.204 explains what needs to be filed for a claim of appeal. The required items are listed below. (Forms and examples of these items are included in the Part IX.)

- **Completed jurisdictional checklist.** This form is available on the Court’s website Forms page [here](#). It is a checklist of all the items needed for the claim of appeal and a statement of why you think that the order you are appealing is appealable by claim of appeal.
- **Claim of appeal.** A claim of appeal form is available on the Court’s website Forms page [here](#), but you may create your own claim of appeal by handwriting or typing one.
- **Filing fee.** The filing fee for a claim of appeal is \$375. You may pay by cash or by a check made out to “State of Michigan.” If you are e-filing, you will use a credit card. If you cannot afford to pay the entry fee, then you may file a motion to waive fees. See Part V.
- **Copy of the order you are appealing.** You must include a copy of the order that is the “final order” or other order that can be appealed as of right as discussed in Part II. It may be helpful to also provide a copy of any other orders that decided any claims against any parties or that decided a postjudgment motion, like a motion for reconsideration.
- **Register of actions.** This is the trial court or tribunal’s docket listing showing the actions that occurred in the case you are appealing. Some courts have the docket entries available online that you can print. Otherwise, contact the lower court or tribunal to get a copy.
- **Transcript order.** If you have ordered a transcript, provide some evidence of the order, such as a copy of the letter to the reporter. If there was a hearing and you have not ordered the transcript, you should contact the court reporter.

- **Proof of service.** This is your statement to confirm that you have given a copy of the claim of appeal and all the other documents to all the other parties in the case. The court rules require that you serve the documents on the other parties so that they have notice that an appeal has been filed. The proof of service must say how you served copies on them (by mail, hand delivery, or e-service through MiFILE), at what address you served each of them, and on what date.
- **Docketing statement.** This form is completed by you and allows you to describe your case. The form is available on the Court's website Forms page [here](#). This form does not have to be filed with the claim of appeal, but it must be filed within 28 days after you file the claim. Some appellants file it with the claim of appeal for convenience.

Can't Get All These Documents in Time to File Your Claim of Appeal?

At a minimum, you must file the claim of appeal form within 21 days of the order you're appealing. If some of the other items are missing, the clerk's office will send you a letter explaining what is missing and you will have 21 days to correct it. MCR 7.210(B)(3).

When your documents are ready, you will choose how to file them with the Court. You may file your documents electronically, by mail, or in person at one of the four Court of Appeals offices.

Assignment of the docket number. After you file your claim and other documents, your appeal will be assigned a Court of Appeals docket number. The Court will notify you within a few days of the 6-digit docket number that was assigned. You will use this number for any other filings for the rest of the case.

Initial review by the Court. Court staff will review the claim of appeal within a few days after it is filed. If any items are missing, the Court will send you a letter telling you what is missing. If you do not file the missing items within 21 days, the appeal may be dismissed.

Review will also look at whether the Court has jurisdiction over your claim of appeal. See Part II of this manual for information on this. If the Court finds that it does not have jurisdiction, the Court will issue an order that dismisses the appeal for lack of jurisdiction. If you believe that the Court is wrong in that determination, you can file a motion for reconsideration to have the Court take

another look at it. No motion fee is required for the motion. See MCR 7.203(F)(2).

Once all the items for a claim of appeal are filed and if the Court's initial review indicates that the Court has jurisdiction, the case will proceed to transcript production.

Transcript production

The next phase of the appeal focuses on getting the transcripts prepared and filed with the lower court clerk.

Before you filed the claim of appeal, you should have ordered the transcript from the court reporter and paid the deposit. Once the reporter receives the order, the court reporter is required to file a form called "Stenographer's Certificate" with the Court of Appeals. If the reporter does not file the certificate, the Court will send you and the reporter a letter. It is your responsibility to make sure the certificate is filed. If it is not filed, your appeal could be dismissed.

The court rules give the reporter a certain amount of time to complete the transcript. MCR 7.210(B)(3) provides the time limits. For most civil cases, the time limit is 91 days from the day you order the transcript. The rule sets a shorter time limit for some types of cases. When the court reporter has completed the transcript, the reporter will file it with the trial court and file a form called "Notice of Filing Transcript" with the Court of Appeals. If the deadline to complete the transcript passes and the Court has not received the notice of filing transcript, the Court will send a letter to you and the reporter. It is your responsibility to make sure the Court receives the notice of filing transcript. If it is not filed with the Court within the proper time, your appeal could be dismissed.

During the time the transcript is being prepared, you may be able to begin legal research and working on some parts of the brief.

Briefing

In this stage, the appellant and the appellee present their arguments to the judges in written documents called "briefs."

The time limit for filing the brief depends on whether you made a timely request for transcripts and the type of appeal you have. The time limits for the appellant's brief are found in MCR 7.212(A). For most civil cases where the transcript was ordered shortly after the claim of appeal was filed, the time limit will be 56 days from when the transcript was filed in the trial court. Some cases (for example, child custody) have a 28-day deadline.

The brief is the most important part of your claim of appeal. See Part VI.

After your appellant's brief is filed, any appellee may choose to file a brief. An appellee is not required to file a brief. You do not win just because the appellee does not file a brief. If an appellee brief is filed, you may file a reply brief, 10 pages or less, within 21 days.

Oral argument and decision

Several months will go by from the time the briefing is done until the case is scheduled for oral argument. If you are entitled to oral argument, you will be notified by mail or e-mail of the date, time, and location. You will have the chance to speak to a panel of three judges for about 15 minutes. Your opponent may have the same opportunity. If both you and your opponent will participate in oral argument, then you may each have 30 minutes. If no one is entitled to oral argument, the case will still be set for submission on a particular date.

The Court's judgment will be in the form of a written opinion. Most opinions are issued within a few weeks after oral argument or submission. The opinion will be mailed or e-mailed to you.

If you think the Court made a mistake, you may file a motion for reconsideration of the opinion. See Part V. That motion must be filed within 21 days of the date on the opinion; late motions will be returned without a decision. MCR 7.215(I). The motion will be decided by the judges who issued the opinion. Once the opinion has been issued and any motion for reconsideration decided, the appeal in the Court of Appeals is over, and the Court will close its case file.

The court rules for the Supreme Court begin at MCR 7.300. This manual does not cover proceedings in the Supreme Court.

Part IV – Application for Leave to Appeal

If you have determined the type of order and the timing will allow you to file an application for leave to appeal, see Part II, this section will guide you through the steps.

Filing an Application for Leave to Appeal

MCR 7.205 explains what needs to be filed for an application for leave to appeal. The required items are listed below. (Forms and examples of some of these items are found in the Part IX.)

- **An application for leave to appeal in the form of a brief.** Briefs are discussed in Part VI. If your application is a “Late Appeal” under MCR 7.205(G), include a short statement explaining the reason it was not filed within 21 days.
- **Filing fee.** If you are appealing one order, the filing fee for an application for leave to appeal is \$375. You may pay by cash or by a check made out to “State of Michigan.” If you are e-filing, you will use a credit card. If you cannot afford to pay the entry fee, then you may file a motion to waive fees. See Part V.
- **Copy of the order you are appealing.** You must include a copy of the order or judgment that you are appealing, along with any opinion or findings of fact the lower court issued. If the court was reviewing an order or findings of another court or tribunal, also provide a copy of that order or findings.
- **Register of actions.** This is the trial court or tribunal’s docket listing showing the actions that occurred in the case you are appealing. Some courts have the docket entries available online that you can print. Otherwise, contact the lower court or tribunal to get a copy.
- **Transcript.** You must provide the Court with a copy of a transcript of any hearings that concerned the issues that you are raising in your application. This is necessary so the Court can review the lower court’s decision. If the transcript you have ordered is not ready, you should file a statement to show that you have ordered the transcript from the court reporter. If there were no hearings, you can file a statement with the application saying that there are no transcripts to be filed.

- **Proof of service.** This is a statement from you to confirm that you have given a copy of the application and all the other documents to all the other parties in the case. The court rules require you to serve the documents on the other parties so that they have notice that an appeal has been filed. The proof of service must say how you served copies on them (electronically, by mail, or by hand delivery), at what address you served each of them, and on what date.
- **Tribunal Record.** If the appeal is from an order of an administrative agency or tribunal, you must file a statement showing that you ordered the record of your case from that agency or tribunal (a copy of the letter you sent requesting the record is sufficient). You will have to pay the agency any fee they may require for sending the record to the Court.

Can't Get All These Documents in Time to File Your Application?

At a minimum, you must file the application within the filing deadline. The Court cannot extend the deadlines. If some of the items are missing from the application, the clerk's office will send you a letter explaining what is missing and you will have 21 days to correct it. MCR 7.201(B)(3).

Assignment of the docket number. After you file your application for leave to appeal, your appeal will be assigned a Court of Appeals docket number. The Court will send you a notice within a few days that will tell you the 6-digit docket number that was assigned. You will use this number for any other filings for the rest of the case.

Initial review by the Court. Court staff will review the application within a few days after it is filed. If the review finds that the Court does not have jurisdiction over the appeal, an order dismissing your application will be issued. If any items are missing from the application, the Court will send you a letter telling you what is missing. If you do not file the missing items within 21 days, an order may be issued dismissing your application.

Next steps

After you file the application, the other parties (“appellees”) may file an answer. The court rules give appellees 21 days to answer, but the Court will accept an answer to an application at any time before the Court decides the case. Even if

the appellee chooses not to file an answer, the Court may still rule against you. If an answer is filed, you may file a reply. MCR 7.205(D).

If you have ordered a transcript, the Court may wait to review your case until you file the transcript. Sometimes, the Court will decide the case without a transcript.

Usually, the Court considers applications for leave to appeal in the order in which they are ready for a decision. Some types of cases (custody, for example) are considered sooner.

When the application is ready to be decided, it will be submitted to three judges for decision. You will not have any oral argument or hearing in front of the judges. The judges will review the materials that have been submitted by the parties to make the decision.

The decision of the panel of judges will be in a written order. In most cases, the Court simply denies the application in an order with one sentence. Sometimes, the Court grants the application. In rare instances, the Court orders some form of relief instead of granting the application.

If the application is denied, the order deciding the application ends your appeal. You may file a motion for reconsideration of the order within 21 days. MCR 7.215(I). But if you do not, or if your motion for reconsideration is denied, your appeal is concluded, and the Court will close the case file.

The court rules for the Supreme Court begin at MCR 7.300. This manual does not cover proceedings in the Supreme Court.

If your application is granted

If the Court issues an order granting your application for leave to appeal, then the appeal will be handled in the same way the Court handles a claim of appeal described in Part III of this manual. You will have to file a docketing statement and may have to order additional transcripts. You will need to file an appellant's brief, which you can adapt from your application brief. The Court's decision to grant your application does not mean the Court will rule in your favor when it decides the appeal in an opinion.

Part V – Motions

A motion is a written request to the Court to take some action or to treat a matter differently than the Court would do otherwise. For example, the court rules require an appellant to pay a fee to start the appeal. Instead of paying the fee, the appellant may file a motion to ask the Court to waive fees. Another common use for motions is to ask the Court for more time. For example, the court rules provide a time period for filing a brief. If a party wants more time, the party may file a motion to ask the Court for an extension of time to file the brief.

A motion may be filed at the same time as a claim of appeal or an application for leave to appeal. A motion may also be filed in an existing appeal. But in nearly every situation, a motion may not be filed when there is no pending case in the Court. A motion submitted without a pending case will be rejected or returned by the Clerk’s Office without a decision by the Court.

The fee for filing most motions is \$100. There is no cost to file a motion to waive fees. The fee for a motion for immediate consideration is \$200.

The requirements for filing most motions are in MCR 7.211. That rule has specific requirements that apply to some motions.

Forms for some motions are on the Court’s website [here](#). If a form is not available, you must create your own motion. Use your Court of Appeals caption to identify the appeal and state the type of motion that you are filing (for example, Motion for Reconsideration). Then explain why you are making the request. If the explanation is longer than a few sentences, you may want to write the motion in numbered paragraphs. Be specific about the action that you want the Court to take. If you need an extension of time, for example, state the extension date you are requesting.

When a motion is filed, the other parties to the appeal are given a chance to respond in writing by filing an answer to the motion.

Some types of motions are decided by one judge. Other types of motions are decided by a panel of three judges. See MCR 7.211(E)(2) for more

information. There is no hearing on motions at the Court of Appeals. The judge

In general, a motion should request only one type of relief. For example, if you want an extension of time to file a brief and you want to file a brief that is longer than allowed by the court rules, you should file two separate motions.

or judges will decide to grant or deny the motion by reviewing the motion and any answer filed. The Court's decision will be shown in a written order that is sent to the parties.

The following paragraphs describe some motions that may be important to your appeal, including some motions that are filed in urgent situations.

Motion to Waive Fees

If you cannot afford the filing fee, you may file a motion to waive fees. MCR 7.202(3). The motion must be filed with either an affidavit concerning financial status form or, if you are incarcerated, a prisoner account statement for the past 12 months. Filing a motion to waive fees is free. If the Court denies the motion, you will have to pay the filing fee of \$375 and fees for any motions you filed other than the motion to waive fees. The fees must be paid within 21 days or the appeal will be dismissed. The affidavit concerning financial status and an example of the motion are in Part IX.

Motion for Stay

In general, the filing an appeal does not stop the effect of an order entered by the circuit court. This is discussed in MCR 7.209(A). But a party may file a motion to ask this Court for a stay of proceedings to stop the effect of a lower court order. MCR 7.209(A) includes these requirements:

- A motion for stay must have been filed and decided first by the trial court.
- The trial court's opinion and order must be filed with the motion for stay in the Court of Appeals.
- The transcript of the trial court's hearing on the motion for stay must be filed with the motion for stay in the Court of Appeals.

If you want to stop the effect of a court order before you can satisfy the requirements of MCR 7.209, you may file a motion to waive those requirements (discussed below).

According to the court rules, a party served with a motion for stay has 14 days to file an answer. MCR 7.211(B)(1)(d). The motion for stay may be submitted to a panel of judges on the Tuesday after the answer period has expired. If you think the situation requires action sooner than that, you may file a motion for immediate consideration (discussed below).

Motion to Waive the Requirements of MCR 7.209

Sometimes, due to the urgent nature of the situation, a party may find it difficult to meet the requirements for filing a motion for stay. For example, it may be difficult to get the transcript of the hearing prepared quickly. In that situation, a party may file a motion that asks the Court to waive some or all of those requirements. That motion should be filed as a separate document from the motion for stay. The motion may be labeled as, “Motion to Waive the Requirements of MCR 7.209(A).” There is a separate \$100 motion fee for that motion.

Motion for Immediate Consideration

Sometimes, a party wants the Court to review a motion sooner than the usual time provided in the court rules. For example, under MCR 7.211(B)(1)(d), the time period for answering a motion for stay is normally 14 days from time that the motion was served on that party. If a stay is needed before the 14 days passes, a motion for immediate consideration should be filed. The fee for a motion for immediate consideration is \$200.

Motion for Reconsideration

If the Court released an opinion or an order and you believe that the Court made an error or was misled, you may file a motion for reconsideration. The requirements are in MCR 7.215(I). The motion must be filed within 21 days after the date that is stamped on the order or opinion. The Court cannot accept a late motion for reconsideration. MCR 7.215(I)(4).

Part VI – Appeal Briefs

A brief is a written document that provides the important facts of the case, sets out the applicable law, and explains why the law and facts mean that the court should decide the case in your favor. Your appellant’s brief or a brief in support of an application is your chance to explain your views to the judges. A sample brief is included in the Part IX.

As you write the brief, keep in mind the limited role of the Court of Appeals as a reviewing court. In other words, the Court looks at your arguments to review the ruling of a lower court or tribunal for errors. To determine whether the trial court made a mistake, the Court considers the information that had been presented to the court or tribunal at the time of the ruling. For that reason, the brief should focus on the facts and evidence presented to the court and the issues that the court decided.

In many cases, three briefs will be filed. First, the appellant will file a brief. Next, an appellee may file a brief to respond to the arguments that the appellant made. An appellee is not required to file a brief. Lastly, if an appellee has filed a brief, the appellant may file a reply brief of no more than 10 pages to discuss the arguments made by the appellee.

If there is no response from the appellee, the Court will review the arguments in your brief, the record, and the challenged ruling. The appellee's failure to file a response does not mean that the Court will rule for you.

Deadline for filing the brief

For a **claim of appeal**, the deadline for filing a brief is addressed in MCR 7.212(A). Basically, you need to know how many days you are allowed and when the time starts. For a civil appeal on the usual schedule, the time for the brief is 56 days. Some appeals (like child custody and termination of parental rights) have an expedited schedule so the brief is due in 28 days. The time starts from the event that occurred latest:

- the claim of appeal was filed
- transcripts that you ordered are filed by the reporter in the lower court
- the Court of Appeals entered an order granting your application for leave to appeal

For an **application for leave to appeal**, the brief is due at the time that the application is filed. If you file an application without a brief, the Court will send a letter informing you that your application is defective. You will have to cure the defect by filing the brief within 21 days. If the defect is not cured, the Court will dismiss the application. No refunds are given.

Formatting and length of an appeal brief

The court rules have specific requirements for the format of briefs. They are listed at MCR 7.212(B).

- At least 1-inch margins on the top, bottom, and both sides
- Typed in at least 12-point type or printed legibly
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, beginning with the Statement of Facts and not counting indexes and appendices

Required sections of an appeal brief

The court rules also require that an appellant’s brief and a brief in support of an application have certain sections. They are discussed below in the order that they will appear in your finished brief.

Title page. This first page identifies that the document is for your case and that it is your brief. Use the caption from other documents, which will show the Court of Appeals docket number. For the appellant’s brief, you will indicate if you want oral argument before the judges. Write “ORAL ARGUMENT REQUESTED” or “ORAL ARGUMENT NOT REQUESTED.”

Table of Contents. This list shows each of the required sections of the brief and the page where it begins. You will need to finish the brief before you prepare the Table of Contents.

Index of Authorities. This shows the legal sources that are mentioned in the brief and the page numbers where each citation is mentioned. MCR 7.212(C)(3). Case law, statutes, court rules, and legal treatises are examples of legal sources. You will need to finish the brief before you prepare the Index. Once the rest of the brief is finished, list all cases cited in the brief or application in alphabetical order. Indicate all the pages of the brief where which each case is mentioned. A case citation might look like the following:

People v Peterson, 789 Mich App 456, 458 (2002)

Gerginson v GMC, 123 Mich 654, 666 (2001)

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

MCL 600.2963

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

MCR 7.212(C)(3)

Statement of Jurisdiction. This is a short explanation why the Court of Appeals has jurisdiction (in other words, the legal authority) to review your appeal. MCR 7.212(C)(4). Here are examples:

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For this claim of appeal, the Court has jurisdiction because the claim was filed within 21 days of a final order entered on July 1, 2020. MCR 7.203(A).

For this application for leave to appeal, the Court has jurisdiction because the application was filed under MCR 7.205(A). The order being challenged was entered on July 1, 2020, and a motion for reconsideration was filed on July 15, 2020. The trial court denied the motion on July 22, 2020. This application was filed on August 1, 2020.

For this delayed application for leave to appeal, the Court has jurisdiction under MCR 7.205(G). It was filed within 6 months of the July 1, 2020, order being appealed.

Statement of Delay. In a brief for a delayed application for leave to appeal, include a short explanation of the reasons that the appeal was not filed within 21 days. MCR 7.205(G)(1).

Statement of Questions. Here you will list the legal questions or issues that you want the Court of Appeals to consider. MCR 7.212(C)(5). This list is very important because it will be the guide for the argument section of the brief.

To prepare the Statement of Questions, you must determine the issues you want the Court to decide. Think about the issues that were presented to the trial court. Which issues do you think the court should have decided differently? For example, if a lawsuit ended because the trial court granted your opponent's motion, you could look at the arguments that were made in the motion and any response to the motion. What arguments did the trial court agree with? Can you find legal authority to show that the court was wrong?

The issues for your case will depend on the specific circumstances of your case. Looking at the following examples may help you write your issues.

- ✓ Did the trial court err in granting the defendant's motion for summary disposition because there were genuine issues of material fact that should be decided at trial?
- ✓ Did the trial court abuse its discretion by admitting certain evidence at trial?
- ✓ Was the trial court's finding of fact on this custody factor clear error?
- ✓ Did the trial court fail to follow the process required by this statute?

On the other hand, here are some examples that are NOT legal issues for an appeal:

- ⊗ Is the decision unfair?
- ⊗ Why didn't the trial judge believe me?
- ⊗ Will the Court of Appeals help me?
- ⊗ Did I do everything I could to win?

For each question, list the trial court's answer and your answer.

Statement of Facts. This section is where you set out the facts relevant to your appeal. MCR 7.212(C)(6). Many people will begin working on the brief by writing the Statement of Facts.

In the Statement of Facts, you will tell the judges the important facts about your case. Tell the story, but do not include opinions or arguments in this section. As you write the Statement of Facts, focus on the information that is important to the order that you are challenging and the issues that you want to raise.

The Statement of Facts must include citations to the record. When you state something as a fact, the judges need to know where to find evidence to support the statement. The citations may be to a pleading (like a complaint), a transcript, an exhibit to a motion, for example. The judges will check to make sure the evidence you are citing was presented to the trial court or tribunal.

You may find it helpful to consider these tips when you write your Statement of Facts:

- Begin with a few sentences to describe what the case is basically about. For example:

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

- Identify the main people or parties in the case and how they relate to each other.

- Explain the main events in the order they happened. Provide important dates.
- Discuss what legal action was taken and what rulings were made before the appeal or application was filed.

Argument. This section is where you present your legal analysis for each of the questions/issues you listed in the “Statement of Questions.” MCR 7.212(C)(7). The arguments match up with the “Statement of Questions” you presented earlier. In other words, Issue I is discussed in Argument I, Issue II is discussed in Argument II, etc. Each argument has subsections for Preservation of Error and Standard of Review.

To begin, copy your first question from the Statement of Questions. Use CAPITAL LETTERS or **boldfaced** type.

Then, in the **Preservation of Error** subsection, state when and where the issue was brought to the attention of the lower court or tribunal. Give the page reference to the transcript or other documents to show where the issue was preserved for appeal.

Next, include a **Standard of Review** subsection. Determining the standard of review requires some understanding of the law and this Court’s role as an appellate court.

The Court of Appeals reviews the decisions of another court or tribunal for error. An appeal is not a do-over or a retrial, and the Court does not necessarily change every decision that the judges disagree with. The law recognizes that for some decisions, the trial court is in a better position to assess the situation than the Court of Appeals would be. For this reason, there are different levels of review for different types of decisions. The term, “Standard of Review,” describes the different levels of that review for error.

To understand the idea of standard of review, some non-lawyers find it helpful to compare it to the instant replay review that is used in sports. In the National Football League, certain rulings on the football field may be the subject of a challenge. The officials review the recording of the play. The ruling that was made on the field will be overturned only if a designated official determines that “clear and obvious visual evidence warrants a change.” The phrase, “clear and obvious visual evidence” is the standard of review for determining whether the ruling on the field will be overturned.

There are three standards of review the Court of Appeals applies most often. The standard that is used depends on the type of ruling the Court is reviewing.

Clear error. When the challenged ruling includes findings of fact, this Court will review those findings for clear error. The Court will find clear error when the Court has a definite and firm conviction that a mistake was made. *Miller-Davis Co v Abrens Construction Inc*, 495 Mich 161, 172 (2014). This standard recognizes that factual findings often require the trial court to determine which witnesses are credible, and because the trial court observes those witnesses, that court is in a better position to determine the credibility than this Court is.

Abuse of discretion. For some decisions, the trial court will have choices about how a matter should be handled. When a court rule or statute states a court “may” take some action, the word “may” often indicates the court will choose between some options. In other words, the court has discretion. When a court has discretion about a ruling, the Court of Appeals will review the trial court’s decision for an abuse of discretion. An abuse of discretion occurs when the trial court chooses an outcome that is “outside the range of principled outcomes.” *Maldonado v Ford Motor Co*, 476 Mich 372, 388 (2006).

De novo. “De novo” means “from the beginning,” or “anew.” When this standard applies, the Court of Appeals considers the case or issue independently—as if the trial court had not ruled and the issue was being decided for the first time by the Court of Appeals. This standard applies to legal issues, such as how a statute should be interpreted. This standard also applies to rulings on motions for summary disposition.

After you determine and write the standard of review that you think applies to the issue, you should explain how the law supports a decision in your favor. This is where you provide legal analysis.

The court rules do not require the analysis to follow a certain format. You may find it helpful to be familiar with a format that is taught in many law schools.

- Summarize the issue you are addressing in a sentence or two.
- State the law that applies to the issue. You may have found a statute or a court rule that applies to your case. The law may also be from published decisions of the Court of Appeals or the Supreme Court. Decisions that have similar facts are especially helpful.

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- Explain how the law applies to the facts of your case.
- State the conclusion that you think that the Court should reach.

After you complete the analysis for your first issue, start a new section for the next question. Copy your second question from the Statement of Questions and follow the steps outlined above.

After you have analyzed each of the questions that you listed in your Statement of Questions, continue to the Relief Requested section.

Relief Requested. In this section, state what relief you want the Court of Appeals to provide. MCR 7.212(C)(8). For example, you may want the Court to reverse the order appealed and remand for entry of an order in your favor. Or for an application, you may ask the Court to reverse the order appealed or grant the application for leave to appeal to review the decision further.

Signature. You must sign the brief at the end. MCR 7.212(C)(9).

Appendix. The court rules list certain documents that you collect and provide as an appendix. See MCR 7.212(J) for the required documents.

Part VII – Glossary

Administrative tribunal: Administrative agency acting in a judicial or quasi-judicial capacity, with procedures that are similar to courts. The term is important to determining if an order is appealable by a claim of appeal or by application.

Appeal: A request made to a higher court for review of the lower court’s or administrative tribunal’s decision to determine if it was correct.

Appellant: A person or entity who files an appeal.

Appellee: A person or entity against whom an appeal has been filed.

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

Brief: A written document submitted by a party to an appeal that states the important facts of the case, sets out the applicable law, and explains how the law and facts mean the court should decide an issue in a certain way.

Caption: Heading on court documents to identify the case that the documents should be filed in. The caption shows the docket number, the parties’ names, and their relationship to the case (such as “plaintiff-appellant”).

Clerk of the Court: An officer of the court in charge of managing the flow of cases through the court, maintaining court records and providing other administrative support to the court and judges. Each district office has a district clerk, who reports to the chief clerk.

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

Clerk’s Office: The Clerk’s Office is the division of the Court of Appeals that accepts filings and records them on the Court’s docket.

Court rules: The procedural rules that govern the courts. Chapter 7.200 of the Michigan Court Rules contains most of the court rules for the Court of Appeals. See MCR 7.201 through MCR 7.219.

District court: District courts are at the lowest level of the state courts. Decisions of the district court are appealed to the circuit court.

Docket entries: See “**Register of actions.**”

Final order: This legal term has several definitions. MCR 7.202. The term is important for determining whether the order may be appealed by a claim of appeal or by an application.

Interlocutory order: An order that does not end the case. Most interlocutory orders must be appealed by an application for leave to appeal instead of a claim of appeal.

IOP: An acronym for Internal Operating Procedures. These are explanations of the practices of the Clerk’s Office in regard to applying the Michigan Court Rules. The numbering relates to the court rules. The IOPs are available on the Court’s website [here](#).

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

Motion: A request by a party to the court for a decision on an issue relating to the appeal. Some examples are a motion to waive fees and a motion to extend time to file a brief.

Notice of Filing Transcript: A document completed by a court reporter that shows when the court reporter filed a transcript with the lower court.

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

Order: A short written decision by a court.

Oral argument: A hearing in front of the panel of judges assigned to a case where the parties or their attorneys summarize their arguments from the briefs and answer the judges’ questions regarding the case.

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

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

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

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

Pro se: See Pro per.

Proof of service: A document that states how a party gave copies of a court filing to the other parties. Documents may be served by first-class mail, hand delivery, or electronically if the party has signed up for e-filing through MiFILE. When you file a document with the Court of Appeals, you must send a copy to the other parties and provide the Court of Appeals with a proof of service.

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

Remand: To send back. When a court has jurisdiction of a case and some action needs to be taken by a lower court, the higher court may remand to that lower court. The Court of Appeals may remand to the circuit court. The Supreme Court may remand to the Court of Appeals or to the circuit court.

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

Reverse: When the Court reverses an order or judgment, the Court has determined that the ruling was in error and it must be set aside. Usually, the Court will further indicate that a different ruling must be made.

Standard of review: A legal term that describes the different levels of the Court’s review for error. “Clear error,” “abuse of discretion,” and “de novo” are the most common standards of review.

Stenographer’s Certificate: A form prepared and signed by a court reporter that shows that a transcript has been ordered.

Transcript: A written, word-for-word record of what was said in a proceeding. It is prepared by a court reporter.

Tribunal: See Administrative tribunal.

Vacate: To set aside or cancel an order or judgment, usually without replacing it with a contrary judgment. See Reverse.

Part VIII – FAQ

How does the Court count days when calculating a deadline?

The website for the Court of Appeals has a calculator to measure time [here](#). You may also use a calendar to determine the due date. To determine the due date for a filing, count the day after the triggering act or event as “Day 1” and continue counting each day after, including weekends and holidays, until you reach the number of days allowed by the deadline. For example, if the triggering event was an order entered on a Tuesday and the filing deadline is 21 days, you would count Wednesday as Day 1, Thursday as Day 2, Friday as Day 3, and so on until you reach Day 21. Your filing is due on Day 21. Because most deadlines in the court rules are stated in 7-day increments, the deadline day will usually be the same day of the week as the triggering event. If the end of the deadline falls on a weekend or court holiday, your deadline is extended until the next day that the court is open. So, in the example above, if the court was closed on Day 21, the deadline would be extended until the next day the court was open.

When is a document considered “filed” with the Court of Appeals?

Except when the prison mailbox rule applies, documents are **not** filed when you place them in a mailbox or on the postmarked date of the mailing. They are only considered filed when they are received by the Court of Appeals. MCR 7.202(2) and (4). A document that is e-filed is considered received at the time shown on the e-filing, unless that is a weekend or Court holiday. For paper filings, the Court places a timestamp on the document when it is received. That timestamp shows the date that the Court considers the document to have been filed.

Under the prison mailbox rule, if a claim of appeal or application is received by the Court of Appeals after the time limits, and if you are an inmate in the custody of the Michigan Department of Corrections and submitted the claim or application without an attorney, the claim or application is considered presented for filing on the date of deposit of the item in the outgoing mail at the correctional institution. MCR 7.204(A)(2)(e); MCR 7.205(A)(3). The rule **ONLY** applies to the claim or application that starts the appeal—not to later filings in the appeal.

How do I file documents with the Court of Appeals?

You have three options. You may electronically file documents with the Court of Appeals. (Instructions for e-filing are on the Court’s website [here](#).) You may mail your documents to the Court of Appeals at one of the four offices listed on page ii. Finally, you may deliver your documents by hand to one of the four offices.

How do I appeal a decision of the district court?

A district court order may be appealed to the circuit court if certain requirements are met. The court rules for appeals to circuit court are in the chapter that begins at MCR 7.101. The Court of Appeals does not have jurisdiction to review a district court order; if you file an appeal in this Court from a district court order, the appeal will be dismissed. If the district court’s order has been appealed to circuit court, and the circuit court has entered an order that you want to appeal, you may be able to appeal by filing an application if certain requirements are met. The Court does not have jurisdiction over a claim of appeal from a circuit court order on appeal from another court, such as a district court. MCR 7.203(A).

Who do I have to provide copies of my claim of appeal or application to?

When you file a claim of appeal or an application for leave to appeal, you are required to send (“serve”) copies on all the parties to the action at the lower court level, even those parties that are not affected by the order. MCR 7.204(C)(3) and 7.205(B)(6). The Court’s internal operating procedures (IOP) provide for two exceptions to the service requirement. An appellant does not have to serve (1) a party who has been dismissed from the trial court proceedings by order pursuant to stipulation, or (2) a party who was 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.

How can I contact the judges?

Communication with the judges of this Court must be by formal pleadings filed in accordance with the Court rules. The judges are not allowed to respond to correspondence directly. Pursuant to Court policy and Canon 3(A)(4) of the Code of Judicial Conduct, a response by one of the judges would constitute an improper ex parte communication. Requests for information, pleadings,

correspondence, or other documents related to an appeal should be directed to the attention of the Court Clerk.

Does the Court of Appeals send out a scheduling order?

No. The times for the steps in the appeal are determined by the court rules. Many actions in the course of the appeal are calculated from the timing of earlier events. The Court is not able to predict when they will occur. Parties are notified shortly before a claim of appeal case is scheduled to be heard.

What are some free online resources for legal research?

[Google Scholar](#) provides one way to research the law. This search tool allows you to enter words that are important to your case, select “Case Law,” and then narrow the results to find cases that are similar to yours. In addition, the published decisions of the Michigan Court of Appeals and the Michigan Supreme Court for approximately 12 years are available online [here](#).

How long will it take for my case to be decided?

Many factors affect how long it will take for an appeal to be decided, including the time for transcript preparation, briefing, and processing within the Court. In 2019, the average time from the claim of appeal to the opinion for civil appeals that were not expedited was about 15 months. An order deciding an application for leave to appeal will usually be entered in less than 8 months.

Part IX – Forms and Examples

Claim of Appeal

This form is designed to be used where there are two parties. The form is used for circuit court appeals, as well as appeals in the Court of Appeals. It is available online [here](#).

Approved, SCAO STATE OF MICHIGAN JUDICIAL <input type="checkbox"/> CIRCUIT <input type="checkbox"/> DISTRICT COUNTY <input type="checkbox"/> IN THE COURT OF APPEALS	Original - Court of Appeals/Circuit court 1st copy - Trial court CLAIM OF APPEAL	JIS CODE: COA 2nd copy - Appellee 3rd copy - Appellant CASE NO. CIRCUIT DISTRICT PROBATE
Court address _____		Court telephone no. _____
Plaintiff's/Petitioner's name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee	v	Defendant's/Respondent's name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee
Plaintiff's attorney, bar no., address, and telephone no.		Defendant's attorney, bar no., address, and telephone no.
<input type="checkbox"/> Probate In the matter of _____ Other interested party(ies) of probate matter _____		
1. _____ claims an appeal from a final judgment or order entered on Name _____ in the _____ Court of the State of Michigan, Date _____ Court name and number or county by <input type="checkbox"/> district judge <input type="checkbox"/> circuit judge <input type="checkbox"/> probate judge <input type="checkbox"/> district court magistrate Name of judge or district court magistrate _____ Bar no. _____		
2. Bond on appeal is <input type="checkbox"/> filed. <input type="checkbox"/> attached. <input type="checkbox"/> waived. <input type="checkbox"/> not required.		
3. <input type="checkbox"/> a. The transcript has been ordered. <input type="checkbox"/> b. The transcript has been filed. <input type="checkbox"/> c. No record was made.		
<input type="checkbox"/> 4. THIS CASE INVOLVES <input type="checkbox"/> a. A CONTEST AS TO THE CUSTODY OF A MINOR CHILD. <input type="checkbox"/> b. AN ADULT OR MINOR GUARDIANSHIP UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE OR UNDER THE MENTAL HEALTH CODE. <input type="checkbox"/> c. AN INVOLUNTARY MENTAL HEALTH TREATMENT CASE UNDER THE MENTAL HEALTH CODE. <input type="checkbox"/> d. 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.		
Date _____	Appellant/Attorney signature _____	
PROOF OF SERVICE		
I certify that copies of this claim of appeal and bond (if required) were served on		
Name _____	on _____	by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail.
Name _____	on _____	by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail.
Name _____	on _____	by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail.
Date _____	Signature _____	
MC 55 (9/17) CLAIM OF APPEAL MCR 4.401(D), MCR 7.104(C), MCR 7.108(C)(3), MCR 7.204(D)		

Example of claim of appeal (more than 2 parties). This claim of appeal shows how a claim may be prepared without a form.

STATE OF MICHIGAN COURT OF APPEALS	
REBECCA CLOONKER and GEORGE CLOONKER, Plaintiffs-Appellees.	
v	No. [REDACTED] Maple Circuit Court
WILL COYOTE, doing business as ONE MAN AND A LAPTOP, Defendant,	LC No. 19-111111-CK
and JOSH KRAYGE, Defendant-Appellant.	

CLAIM OF APPEAL

I, Josh Krayge, defendant, claim an appeal in the Michigan Court of Appeals from the judgment entered on 10/22/19 by Maple Circuit Court Judge Rose Morover.

Date: 10/26/19

Signature: /s Josh Krayge
3456 W. Washington Blvd
Adams, MI 10000
(999) 867-5309

Jurisdictional checklist

The form is available online [here](#).

Trial Court/Tribunal Name: 	Court of Appeals, State of Michigan Jurisdictional Checklist	CASE NO. Trial Court/Tribunal: Court of Appeals:
Case Name: _____ v _____		
INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. ALL of the numbered items are required. Check each box as you confirm that each item is being filed.		
<input type="checkbox"/> 1. A signed claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]		
<input type="checkbox"/> 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)		
<input type="checkbox"/> 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)		
<input type="checkbox"/> 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).		
<input type="checkbox"/> a. No transcript will be filed. [MCR 7.204(C)(2).]		
<input type="checkbox"/> b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]		
<input type="checkbox"/> c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]		
<input type="checkbox"/> d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]		
<input type="checkbox"/> e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]		
<input type="checkbox"/> f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]		
<input type="checkbox"/> g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]		
<input type="checkbox"/> 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (Even if a party is not an appellee, they must be served.)		
<input type="checkbox"/> 6. A current register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]		
Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)		
<input type="checkbox"/> The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(A). [MCR 7.203(A)(1).] Please specify which category of final order applies: _____		
<input type="checkbox"/> The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____ _____		
_____ Date	_____ Preparer's Signature	
4/19		

Example of complete jurisdictional checklist

<p>Trial Court/Tribunal Name: Maple Circuit Court</p>	<p>Court of Appeals, State of Michigan</p> <p>Jurisdictional Checklist</p>	<p>CASE NO. Trial Court/Tribunal: 19-111111-CK Court of Appeals:</p>
<p>Case Name: <u>Rebecca and George Cloonker</u> v <u>Will Coyote and Josh Krayge</u></p> <p>INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. ALL of the numbered items are required. Check each box as you confirm that each item is being filed.</p> <p><input checked="" type="checkbox"/> 1. A signed claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]</p> <p><input checked="" type="checkbox"/> 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)</p> <p><input checked="" type="checkbox"/> 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)</p> <p><input checked="" type="checkbox"/> 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. No transcript will be filed. [MCR 7.204(C)(2).]</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]</p> <p style="margin-left: 20px;"><input type="checkbox"/> d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]</p> <p style="margin-left: 20px;"><input type="checkbox"/> e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]</p> <p style="margin-left: 20px;"><input type="checkbox"/> f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]</p> <p style="margin-left: 20px;"><input type="checkbox"/> g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]</p> <p><input checked="" type="checkbox"/> 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (<i>Even if a party is not an appellee, they must be served.</i>)</p> <p><input checked="" type="checkbox"/> 6. A current register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]</p> <p>Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)</p> <p><input checked="" type="checkbox"/> The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(A). [MCR 7.203(A)(1).] Please specify which category of final order applies: <u>MCR 7.202(6)(a)</u></p> <p><input type="checkbox"/> The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____</p> <p style="margin-top: 20px;"><u>10/28/19</u> <u>/s Josh Krayge</u></p> <p>Date Preparer's Signature</p>		
<p>4/19</p>		

Motion to Waive Fees example

STATE OF MICHIGAN COURT OF APPEALS	
REBECCA CLOONKER and GEORGE CLOONKER Plaintiffs-Appellees.	
v	No. [REDACTED] Maple Circuit Court
WILL COYOTE, doing business as ONE MAN AND A LAPTOP, Defendant,	LC No. 19-111111-CK
and JOSH KRAYGE, Defendant-Appellant.	

MOTION TO WAIVE FEES

I, Josh Krayge, request that the Court of Appeals waive the filing fees for this case because I cannot afford to pay them. My affidavit of financial status is being filed with this motion.

Date: 10/28/2019 /s/ Josh Krayge

Affidavit Concerning Financial Status

This form is available online [here](#).

Circuit Court Information Name: _____ Case No.: _____	STATE OF MICHIGAN COURT OF APPEALS Affidavit Concerning Financial Status	Court of Appeals Information Case No.: _____
Case Name: _____		
Name: _____	Address & Telephone No.: _____	
The following is information concerning my present financial status.		
1. PUBLIC ASSISTANCE I am currently receiving public assistance because of indigency: <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the type of assistance and identify the government agency that provides it. _____		
2. RESIDENCE \$ _____ per month <input type="checkbox"/> Rent <input type="checkbox"/> Mortgage <input type="checkbox"/> Room/Board <input type="checkbox"/> Live with Relatives		
3. MARITAL STATUS <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ Number		
4. INCOME a. Employer name, address & telephone no. _____	b. Length of Employment _____	
c. Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ _____ Net: \$ _____		
d. Other income (State monthly amount and source, such as DHS, VA, rent, pension, spouse, unemployment, etc. If no income, state NONE.) _____		
5. ASSETS (State value of car, home, bank deposits, bonds, stocks, etc. If no assets, state NONE.) _____		
6. OBLIGATIONS (Itemize monthly rent, installment payments, mortgage payments, child support, etc.) _____		
_____ Signature	_____ Date	
Subscribed and sworn to before me on _____, _____ County, Michigan Date		
My commission expires: _____ Signature: _____ Date Notary public		
Notary public, State of Michigan, County of _____		
COURT OF APPEALS AFFIDAVIT CONCERNING FINANCIAL STATUS		
Aug 2009		

Example of completed Affidavit Concerning Financial Status

Circuit Court Information Name: <u>Maple</u> Case No.: <u>111111-CK</u>	STATE OF MICHIGAN COURT OF APPEALS Affidavit Concerning Financial Status	Court of Appeals Information Case No.: _____
Case Name: <u>Cloonker v Coyote and Krayge</u>		
Name: <u>Josh Krayge</u>		Address & Telephone No.: <u>3456 W. Washington Blvd, Adams MI 10000</u>
The following is information concerning my present financial status.		
1. PUBLIC ASSISTANCE I am currently receiving public assistance because of indigency: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the type of assistance and identify the government agency that provides it. <u>Food stamps/"SNAP" Department of Health and Human Services</u>		
2. RESIDENCE \$ <u>400</u> per month <input checked="" type="checkbox"/> Rent <input type="checkbox"/> Mortgage <input type="checkbox"/> Room/Board <input type="checkbox"/> Live with Relatives		
3. MARITAL STATUS <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ <small>Number</small>		
4. INCOME a. Employer name, address & telephone no. <u>Self-employed</u>		b. Length of Employment <u>2 years</u>
		c. Average pay <input type="checkbox"/> weekly <input checked="" type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ <u>200</u> Net: \$ _____
d. Other income (State monthly amount and source, such as DHS, VA, rent, pension, spouse, unemployment, etc. If no income, state NONE.) <u>None.</u>		
5. ASSETS (State value of car, home, bank deposits, bonds, stocks, etc. If no assets, state NONE.) <u>2000 Ford Mustang, \$5000</u>		
6. OBLIGATIONS (Itemize monthly rent, installment payments, mortgage payments, child support, etc.) <u>Rent \$400 Utilities (gas, water, electricity) \$100</u>		
Signature: <u><i>Josh Krayge</i></u>		Date: <u>10/26/2019</u>
Subscribed and sworn to before me on _____, _____ County, Michigan <small>Date</small>		
My commission expires: _____ Signature: _____ <small>Date</small> <small>Notary public</small>		
Notary public, State of Michigan, County of _____		
COURT OF APPEALS AFFIDAVIT CONCERNING FINANCIAL STATUS		
<small>Aug 2008</small>		

Docketing Statement

This 2-page form is available online [here](#).

Michigan Court of Appeals		Case No: Circuit: <input style="width: 100%;" type="text"/> Court of Appeals: <input style="width: 100%;" type="text"/>
DOCKETING STATEMENT		
Please read before completing form.		
<p>➤ MCR 7.204(H) and 7.205(E)(3) require an appellant in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.</p> <p>➤ This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.</p> <p>➤ The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.</p>		
1. Case Name:		
<input type="checkbox"/> Appellant <input type="checkbox"/> Appellee	v	<input type="checkbox"/> Appellant <input type="checkbox"/> Appellee
Name of first Plaintiff		Name of first Defendant
Address:		Address:
Telephone No:		Telephone No:
Attorney Name: Bar No: _____		Attorney Name: Bar No: _____
Address:		Address:
Telephone No:		Telephone No:
<p>2. <input type="checkbox"/> A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.</p> <div style="border: 1px solid black; padding: 5px; min-height: 20px;">Identify and explain.</div>		
<p>3. <input type="checkbox"/> There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.</p> <div style="border: 1px solid black; padding: 5px; min-height: 20px;">Specify case name, lower court number, appellate court number(s), and citation, if available.</div>		
<p>4. <input type="checkbox"/> I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.</p> <div style="border: 1px solid black; padding: 5px; min-height: 20px;">Specify case name, lower court number, appellate court number(s), and citation, if available.</div>		
1		

Court of Appeals Guide to Handling a Civil Appeal

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

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

6. **Nature of case:**

- a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): _____.
- b. Identify the procedural nature of the case being appealed.
- arbitration bench trial post-judgment action declaratory judgment
- interlocutory matter jury trial summary disposition
- administrative proceeding (specify agency) _____
- other (i.e. default judgment) _____

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

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

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

10. Postjudgment settlement negotiations. (Check all boxes that apply.)

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

Date

Signature

Provide the Proof of Service on a separate form.

Example of a completed Docketing Statement

Michigan Court of Appeals DOCKETING STATEMENT	Case No: Circuit: 19-111111-CK Court of Appeals: 987654	
Please read before completing form.		
<ul style="list-style-type: none">➤ MCR 7.204(H) and 7.205(E)(3) require an appellant in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.➤ This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.➤ The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.		
1. Case Name:		
<input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Appellee	v	<input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Appellee
Rebecca Cloonker <small>Name of first Plaintiff</small>		Josh Krayge <small>Name of first Defendant</small>
Address: [redacted] Telephone No: [redacted]		Address: 3456 W. Washington Blvd, Adams MI 10000 Telephone No: (999) 867-5309
Attorney Name: Quincy Jacstone Bar No: 01212 Address: 1234 W. Truman St., Buchanan MI 20000 Telephone No: (111) 867-5309		Attorney Name: NONE Bar No: [redacted] Address: [redacted] Telephone No: [redacted]
2. <input type="checkbox"/> A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.		
Identify and explain. [redacted]		
3. <input type="checkbox"/> There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.		
Specify case name, lower court number, appellate court number(s), and citation, if available. None. [redacted]		
4. <input type="checkbox"/> I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.		
Specify case name, lower court number, appellate court number(s), and citation, if available. None. [redacted]		
1		

Court of Appeals Guide to Handling a Civil Appeal

5. Identify all the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.)	Date(s) Occurred	Court Reporter
Hearing	6/28/2019	S. Smith
Trial	9/2/2019, 9/3/2019	S. Smith

6. Nature of case:

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

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

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

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

The Cloonkers sued for breach of contract and claimed that they are entitled to a refund of the money they paid for entertainment at their wedding reception. One defendant settled. Krayge moved for summary disposition. The trial court denied the motion. At the end of trial, the jury found in favor of the Cloonkers.

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

Did the trial court err in denying Krayge's motion for summary disposition where there was no contract between the Cloonkers and Krayge and they were not third-party beneficiaries of the contract between Krayge and the other defendant?

Did the trial court err by allowing the jury to award damages for emotional distress?

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

\$25,000 in favor of the Cloonkers.

10. Postjudgment settlement negotiations. (Check all boxes that apply.)

- Postjudgment settlement negotiations have been conducted or are scheduled.
 Settlement is unlikely.
 Other I would like to settle if the Cloonkers will _____

10/28/19

Date

/s/ Josh Krayge

Signature

Provide the Proof of Service on a separate form.

Proof of service example

STATE OF MICHIGAN	
IN THE COURT OF APPEALS	
REBECCA CLOONKER and GEORGE CLOONKER,	Court of Appeals Case No. 987654
Plaintiffs-Appellees,	
v	Maple Circuit Court Case No. 19-111111-CK
WILL COYOTE, doing business as ONE MAN AND A LAPTOP,	
Defendant,	
and	
JOSH KRAYGE,	
Defendant-Appellant.	

PROOF OF SERVICE

I certify that a copy of the documents listed below:

Claim of Appeal, Jurisdictional Checklist, Register of Actions, Motion to Waive Fees,

Affidavit Concerning Financial Status

and this proof of service were served by first-class mail to:

Quincy Jacstone (attorney for the Cloonkers)
1776 Jefferson St.
Madison, MI 20000

I did not serve Will Coyote because the claims against him were dismissed by stipulation.

Date of Service: ___10/28/19___

Signature: /s/ Josh Kravge

Brief example – Appellant’s brief

STATE OF MICHIGAN	
IN THE COURT OF APPEALS	
REBECCA CLOONKER and GEORGE CLOONKER,	Court of Appeals No. 987654
Plaintiffs-Appellees,	Maple Circuit Court No. 19-111111-CK
v	
WILL COYOTE, doing business as ONE MAN AND A LAPTOP,	
Defendant,	
and	
JOSH KRAYGE,	
Defendant-Appellant.	

DEFENDANT-APPELLANT JOSH KRAYGE BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

Josh Krayge
In propria persona
3456 W. Washington Blvd
Adams, MI 10000
Telephone: 999-867-5309

Brief example – Appellant’s brief (cont.)

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Statement of Questions	iv
Statement of Facts	1
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The Appendix is being filed as a separate document.

Brief example – Appellant’s brief (cont.)

INDEX OF AUTHORITIES

Cases

Case v Consumers Power Co,
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Maiden v Rozwood,
461 Mich 109; 597 NW2d 817 (1999), reh den 461 Mich 1205 (1999) 3

Vanerian v Charles L Pugh Co Inc,
279 Mich App 431; 761 NW2d 108 (2008) 3

Statutes/Court Rules/Other Authorities

MCL 691.1405 3

MCR 2.116(C)(10) 2, 3

MCR 7.202(6)(a) iii

MCR 7.203 iii

MCR 7.204(A)(1)(b) iii

Brief example – Appellant’s brief (cont.)

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction under MCR 7.203. The claim of appeal was filed from a final order under MCR 7.202(6)(a). The final order was a judgment in favor of the Cloonkers and against Krayge. The Cloonkers’ claim against Coyote had already been dismissed. The claim was filed within the time allowed by the court rules. Within 21 days of the judgment, Krayge filed a motion for reconsideration. The trial court denied the motion, and Krayge filed the claim within 21 days of that order. MCR 7.204(A)(1)(b).

Brief example – Appellant’s brief (cont.)

STATEMENT OF QUESTIONS

- I. DID THE TRIAL COURT ERR IN DENYING DEFENDANT KRAYGE’S MOTION FOR SUMMARY DISPOSITION WHERE KRAYGE DID NOT HAVE A CONTRACT WITH PLAINTIFFS?

Defendant-Appellant says: Yes.

Plaintiffs-Appellees says: No.

The Circuit Court said: No.

- II. DID THE TRIAL COURT ERR BY INSTRUCTING THE JURY THAT PLAINTIFFS COULD RECOVER DAMAGES FOR EMOTIONAL DISTRESS?

Defendant-Appellant says: Yes.

Plaintiffs-Appellees says: No.

The Circuit Court said: No.

Brief example – Appellant’s brief (cont.)

STATEMENT OF FACTS

I, Josh Krayge, own an American mini pig named “Buttons.” (Appx G-6.) Will Coyote owns an entertainment business named “One Man and a Laptop.” The business was mostly to provide entertainment at wedding receptions. Coyote used a laptop and some speakers to provide music. (Appx G-7.)

George Cloonker contacted Coyote to ask about services that he could provide at the Cloonkers’ upcoming wedding reception. (Appx B, 48-55). In addition to music, the Cloonkers wanted a pig to perform at the reception because the couple had met at “Farm Animal Encounter.” (Tr I, 15.) Coyote agreed to help the Cloonkers locate a performing pig. (Tr I, 20; Tr II, 19.)

Using Internet searches, Coyote found Krayge and Buttons. Coyote called and asked Krayge about the tricks that Buttons could perform. (Tr II, 30.) Krayge told Coyote about Buttons’s tricks, including squealing on command, waving, and “dancing,” which is turning circles. (Tr II, p 35.) Krayge said he was in the process of teaching Buttons several new tricks. (Tr II, 37.) One new trick was carrying items on his back, which Coyote suggested could be adapted for a wedding reception. (Tr II, 37.)

Coyote told the Cloonkers about Krayge and Buttons. The Cloonkers signed a contract with Coyote. (Appx D.) Coyote and Krayge also made a deal. (Appx E.)

During the months that followed, Krayge worked with Buttons to practice the tricks that had been requested. (Tr II, 45, 55-56, 62.) Buttons learned to carry a plate on his back. (Tr II, 63.) On the day of the Cloonkers’ wedding reception, Buttons squealed on command, danced, and waved as planned. (Tr I, 30-35; Tr II, 45-50.) Near the time to cut the cake, Krayge took Buttons to a side room to change into a special suit that would hold a plate. (Tr II, 51.) George

Brief example – Appellant’s brief (cont.)

urged Krayge to hurry because the cake had been cut and guests were waiting. (Tr I, 30.)

When the preparations were finished, Buttons carried a plate with a slice of wedding cake toward the table where the Cloonkers were seated. (Tr I, 40.) Buttons was about 10 feet away when a boy ran forward and tried to touch him. (Tr II, 67.) Buttons was startled. As he ran, the plate fell, guests scrambled to get away, and the “Sweetheart Table” was knocked over. (Tr II, 68.) Once Buttons could be captured, he and Krayge left the building. (Tr II, 79.)

The Cloonkers demanded a return of the contract price from Coyote and sued both Coyote and Krayge for breach of contract. (Appx B.) Coyote settled with the Cloonkers, and that claim was dismissed. (Appx F.)

Krayge filed a motion for summary disposition pursuant to MCR 2.116(C)(10). (Appx G.) He argued that he did not have a contract with the Cloonkers. His agreement was with Coyote. The trial court agreed with the Cloonkers that they were beneficiaries of the contract between Coyote and Krayge. (Motion hearing, 15.) Krayge applied for leave to appeal, but this Court denied the application. (Appx H.) After a trial, a jury found in favor of the Cloonkers and awarded damages for breach of contract and emotional damages. (Appx A.) Krayge filed this claim of appeal.

ARGUMENT I

- I. DID THE TRIAL COURT ERR IN DENYING DEFENDANT KRAYGE’S MOTION FOR SUMMARY DISPOSITION WHERE KRAYGE DID NOT HAVE A CONTRACT WITH PLAINTIFFS?

PRESERVATION OF ISSUE

Krayge preserved this issue by raising it before the trial court in the motion for summary disposition. (Appendix G, p 12.)

Brief example – Appellant’s brief (cont.)

STANDARD OF REVIEW

The Court of Appeals reviews a trial court’s order denying summary disposition *de novo* on appeal. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999), *reh den* 461 Mich 1205 (1999). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a plaintiff’s claim. *Id.*

ANALYSIS

The trial court denied Krayge’s motion for summary disposition because the court agreed with the plaintiffs that they could be considered third-party beneficiaries of the contract that Coyote had with Krayge. The trial court’s ruling was wrong because the requirements for them to be third-party beneficiaries are not met here.

MCL 691.1405 is the statute that addresses third party beneficiaries. It states:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

In *Vanerian v Charles L Pugh Co Inc*, 279 Mich App 431, 435; 761 NW2d 108 (2008),

the Court stated:

A person is a third-party beneficiary of a contract only when that contract establishes that a promisor has undertaken a promise directly to or for that person. By using the modifier directly, the Legislature intended to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompasses a third party, directly referred to in the contract, before the third party is able to enforce the contract. An objective standard is to be used to determine, from the form and meaning of the contract itself, whether the promisor undertook to give or to do or to refrain from doing something directly to or for the person claiming third-party beneficiary status.

Brief example – Appellant’s brief (cont.)

Plaintiffs were not third-party beneficiaries of the agreement between Coyote and Krayge. The agreement did not mention the Cloonkers. (Appx E.) Krayge and Coyote only agreed that whenever Coyote needed a performing pig at an event, Krayge would provide Buttons for \$150 hour. (Appendix D.) Because the evidence showed that the Cloonkers were not third-party beneficiaries of the agreement between Coyote and Krayge, the trial court erred by denying Krayge’s motion for summary disposition.

ARGUMENT II

- II. DID THE TRIAL COURT ERR BY INSTRUCTING THE JURY THAT PLAINTIFFS COULD RECOVER DAMAGES FOR EMOTIONAL DISTRESS?

PRESERVATION OF ISSUE

Krayge preserved this issue by objecting to the jury instructions. (Tr I, 89.)

STANDARD OF REVIEW

The Court of Appeals reviews claims of errors in jury instructions *de novo*. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

[THE REST OF THIS SECTION IS OMITTED FROM THE SAMPLE.]

Brief example – Appellant’s brief (cont.)

RELIEF REQUESTED

Defendant-Appellant Krayge respectfully requests that this Court vacate the Cloonkers’ judgment against Krayge and remand the case for entry of summary disposition in Krayge’s favor.

Respectfully submitted:

/s/ Josh Krayge
10/31/2019

Brief example – Appellant’s brief (cont.)

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[NOTE: THE INDEX AND APPENDIX SHOULD BE FILED SEPARATELY FROM THE BRIEF. THE APPENDIX IS OMITTED FROM THIS SAMPLE.]