MICHIGAN COURTS NEWS RELEASE
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About Supreme Court Procedure

Most cases that come to the Michigan Supreme Court start out in a state trial court. A party who disagrees with the trial court's decision can appeal to the Michigan Court of Appeals. The party who is unsuccessful in the Michigan Court of Appeals can then appeal to the Michigan Supreme Court, the "court of last resort" in the state of Michigan. In fact, most cases come to the Michigan Supreme Court on appeal from the Michigan Court of Appeals.

The Court of Appeals and Supreme Court are both appellate courts. That means that those courts do not try cases, or decide disputed facts, have juries or witnesses. Instead, they review the *record* of cases decided in the lower courts and determine if a *legal error* occurred that warrants a retrial or some other change in the original outcome. But, unlike the state Court of Appeals, the Supreme Court considers appeals in a relatively small number of cases. Most appeals to the Supreme Court are by "leave only," meaning that the Court is not obligated to hear and decide those cases. When a case comes to the Court on an application, the Court will grant leave only if the Court is persuaded that the case involves legal issues of great significance to Michigan.

The disappointed party in the lower courts who appeals to the Supreme Court, called an *appellant*, must file an *application for leave to appeal*. In the application, the appellant tries to persuade the Supreme Court that the decision of the lower court was incorrect and ought to be overturned.

Other parties to the case, called the *appellees*, have an opportunity to file written responses to the application. The appellees typically argue that the lower court made the correct decision and that the Supreme Court should let the lower court's ruling stand. In other words, deny leave to appeal.

For each application, a lot of research and discussion takes place among members of the Court. Only after that occurs do the seven justices decide whether to grant or deny leave.

In most of the approximately 2,000 applications that the Supreme Court receives each year, the Court *denies* leave because the appellant has not convinced a majority of justices that they need to change or overturn the lower court ruling.

In a few cases, when the legal issue is clear, the Supreme Court will enter an order affirming, reversing, or modifying the lower court's decision without granting leave. The

Court may also send the case back to the lower court for further consideration. This is known as *remanding* the case.

In cases where the Court does grant leave to appeal, it does so because a majority of the justices is persuaded that there is a substantial legal issue at stake. It might be a point of law that is not very clear and is causing problems in a lot of cases in lower courts, or it might involve an issue of great public interest. Such an issue might involve interpreting a new statute or a provision of the Michigan Constitution. In cases where leave is granted, the Court asks the appellant and appellee to submit written arguments (called "Briefs"), which set out the facts and legal arguments in support of the parties' positions.

The Court also schedules oral arguments in the cases when the Court grans leave. Beginning in October and generally ending in May, several days each month the Court hears oral arguments. This is an opportunity for attorneys to emphasize and clarify the information they already presented in their written briefs. More important, oral argument assists the justices in reaching a decision. Each side has 30 minutes for argument.

As the justices prepare for oral argument, each justice reads the briefs and researches the legal issues. As part of that process, questions and concerns arise; oral argument helps the justices address those questions and concerns with the parties' attorneys.

When the arguments are concluded for the day, the justices go to their conference room to discuss the cases and register their tentative votes. One of the justices in the majority will be assigned the job of writing the majority opinion.

Once the initial opinion has circulated, one or more of the justices may write a *concurrence,* meaning an opinion that agrees with the majority but makes additional points, or a *dissent,* meaning an opinion that disagrees with the majority opinion. Sometimes a justice will concur as to the majority's legal conclusions but dissent from their application to the facts in that case. Alternatively, you can have a justice who concurs in the result, but disagrees as to the rationale.

A justice can, and frequently does, change his or her tentative vote as the various draft opinions are circulated and revised. When the justices are finally satisfied with the opinion, it is released to the public. The Court's opinions are posted on the Court's website and are also published in hardback books.

Oral Arguments on Application

This case is being heard as an "oral argument on application." The Supreme Court orders oral arguments on application in cases where the Court is deciding whether to grant leave to appeal or take some other action, such as sending the case back to a lower court for further proceedings. Generally, there is no oral argument on applications for leave to appeal – *unless* the Court orders it, as in this case. In an oral argument on application, each side gets 15 minutes for argument, rather than the 30 minutes for each side in cases where the Court has already granted leave.