

STATE OF THE LAW 2006
Appellate Practice Section

The most significant change to Michigan appellate practice in decades took place on January 1, 2005, when the Michigan Court of Appeals began a differentiated case management procedure that provides for an expedited docket in all summary disposition appeals. Following additional modifications that went into effect January 1, 2006, the key features of the Court's summary disposition procedures are as follows:

- The Claim of appeal must still be filed within 21 days.
- Cross appeals must be filed within 14 days after the claim of appeal is filed, rather than the 21 days specified in MCR 7.207.
- A docketing statement is not required, but the claim of appeal must be accompanied by (1) evidence the hearing transcript for the summary disposition motion has been ordered, (2) a statement that there is no record to transcribe, or (3) the parties' stipulation that the transcript has been waived.
- A party may move to remove the case from the summary disposition track to the standard track at any time, but motions filed most closely in time to discovery of the basis for removal will maximize the likelihood the motion will be granted.
- The appellant's brief must be filed within 56 days after the claim of appeal is filed, the appellee's brief within 28 days after appellant's brief is served, and the appellant's reply brief within 14 days after appellee's brief is served. Primary briefs are limited to 35 pages, the reply brief to 5 pages. The parties must file their respective trial court summary disposition briefs and exhibits with the Court of Appeals concurrently with the filing of the appeal briefs.
- There are no stipulated extensions of time to file a brief, but a party may move for a 14-day extension for good cause shown.
- Summary disposition appeals may be set for oral argument or simply be submitted to the Court based on the briefs. Either way, the panel must issue its opinion within 35 days.

The new procedure has a December 31, 2006 sunset provision, which is expected to be extended. Amended Administrative Order No. 2004-5 sets forth in detail all of the summary disposition appeal procedures and can be found at the Michigan Supreme Court's website, <http://www.courts.michigan.gov/supremecourt/resources/administrative/2004-5.pdf>.

The Michigan Court of Appeals has also implemented a number of process improvements, including standard-form motions and brief covers, and an online docket inquiry system that allows users to view docket entries based on case number, party name, or attorney name. Both the forms and the docket inquiry system can be found on the Court's website, <http://courtofappeals.mjud.net/>.

Michigan Civil Cases with Appellate Procedure Implications

January 1, 2005 through June 30, 2006

Coble v Green, ___ Mich App ___, 2006 WL 1653367 (2006) (in the absence of a court order, an attorney's duty to represent a client persist on appeal despite the client's failure to pay fees).

Costa v Community Emergency Medical Services, 475 Mich 403 (2006) (an order denying governmental immunity is a final order from which the government may immediately take an appeal by right, and unless the Court of Appeals orders otherwise, proceedings involving the government defendant must be stayed during the appeal).

Federated Insurance Co v Oakland County Road Commission, 475 Mich 286 (2006) (the Michigan Supreme Court lacks constitutional authority to hear nonjusticiable controversies, and the Michigan Attorney General lacks authority to intervene and appeal a nonjusticiable case).

Foreman v Foreman, 266 Mich App 132 (2005) (the law of the case doctrine is discretionary and merely expresses court practice, rather than a limit on court power).

Haliw v Sterling Heights, 471 Mich 700 (2005) (case evaluation sanctions do not include appellate fees).

John J Fannon Co v Fannon Products, LLC, 269 Mich App 162 (2005) (an order imposing sanctions is not final until the amount of fees and costs has been determined; further, the lower court's certification that an order is final does not end the inquiry for an appellate court).

Kemerko Clawson LLC v RXIV Inc, 269 Mich App 347 (2005) (standard of review is abuse of discretion when a party appeals from a trial court's decision not to entertain a motion filed after the scheduling order's deadline).

Kusmierz v Schmitt, 268 Mich App 731 (2005) (a party's satisfaction of a judgment does not moot the appeal where the payment was involuntarily satisfied via garnishment).

The Meyer and Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute, 266 Mich App 39 (2005) (an appellate motion must be filed to obtain sanctions for a vexatious appeal; raising the issue in an appeal brief is insufficient).

Midwest Energy Cooperative v Public Service Commission, 268 Mich App 521 (2005) (a utility that fails to seek a certificate of public convenience and necessity may not appeal to the Court of Appeals from an order that prohibits the utility from extending its electric service).

North Pointe Insurance Co v Steward, 265 Mich App 603 (2005) (taxation of appellate costs is a component of the litigation burden, not a reward or a punishment, and can include the costs of a letter of credit as well as the premiums for any appeal or stay bond).

PT Today, Inc v Commissioner of Office of Financial and Insurance Services, 466 Mich App 887 (2006) (where a trial court fails to specify its reasons for denying leave to amend, an appellate court will reverse unless the amendment would be futile).

Ross v Blue Care Network of Michigan, ___ Mich App ___, 2006 WL 1629150 (2006) (a circuit court's scope of review of a decision of the OFIS Commissioner under the PRIRA is limited to issues actually encompassed in the Commissioner's final decision).

Michigan Criminal Cases with Appellate Procedure Implications

January 1, 2005 through June 30, 2006

City of Riverview v Walters, 266 Mich App 341 (2005) (while the rules for appeals to circuit court do not contain a provision for reconsideration, the general court rules, specifically MCR 2.119(F), do; the "palpable error" language of that rule provides guidance to a court when it would be appropriate to grant reconsideration, but is not a mandatory requirement and does not restrict a court's discretion; a successor judge may grant a timely filed motion for reconsideration of a decision by the original judge; but the successor judge erred in reviewing factual issues and making credibility determinations de novo; proper procedure is to review the ultimate decision, denying a motion to quash search warrant and suppress statement, de novo, but to review the findings of fact for clear error, and to give deference to the original judge's determination of credibility of witnesses and not substitute its judgment for that of the trial court; circuit court's order reversing district court's denial of motions is remanded with instructions to reconsider the motion under the proper standards).

People v Bauder, 269 Mich App 174 (2005) (an objection to hearsay because "there is no chance to confront the actual declarant" does not preserve for appellate review a claim that evidence was not relevant, or didn't meet the standard for admissibility under the hearsay rules).

People v Gillis, 474 Mich 105 (2006) (an issue of jury instructions that involves questions of law is reviewed de novo; a trial court's determination whether a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion).

People v Giovannini, ___ Mich App ___, 2006 WL 1653367 (2006) (Supreme Court orders that decide a matter with an understandable rationale for the decision are binding precedent; but a Supreme Court that vacates a portion of a Court of Appeals opinion, finding the Court of Appeals unnecessarily decided the issue, is not an opinion on the merits and is not binding precedent on the substantive issue).

People v Pipes, 475 Mich 267 (2006) (error to admit each co-defendant's statement to the police against the other in a joint trial; but where defendants did not assert a *Bruton* issue, and represented that they would testify at trial (though they later did not), the *Bruton* issue was not preserved for trial; absent a showing of actual prejudice, actual innocence, or that the error "seriously affected the fairness, integrity or public reputation" of the trial, defendants were not entitled to reversal).

People v Sessions, 474 Mich 1120 (2006) (where a trial court's order discharging probation adopted the assertion that the defendant had complied with the terms and conditions of probation, and the order was never appealed, the prosecutor could not collaterally attack that order and

argue that the defendant had not “successfully” completed probation and was therefore a felon in possession of a firearm).

People v Shepherd, 472 Mich 343 (2005) (reinstating a conviction on the grounds that the error – introduction of the guilty plea transcript of a codefendant, as a statement against penal interest, held to violate the Confrontation Clause – was on the facts harmless beyond a reasonable doubt; Court notes that it was not necessary to reach the Confrontation Clause issue, and says that questions of constitutionality should not be reached if the case may be disposed of on other grounds).

People v Walters, 266 Mich App 341 (2005) (under the rules of criminal procedure, a trial court’s order or judgment is reviewable only on appeal; although a motion for rehearing or reconsideration is not an appeal, a circuit court has inherent authority when sitting as an appellate court to reconsider its decision; thus, the civil court rules regarding motions for rehearing or reconsideration do apply in criminal proceedings).

People v Willing, 267 Mich App 208 (2005) (when a structural error implicates a constitutional right, reversal is required, but if nonstructural, reversal is not required if the error was harmless beyond a reasonable doubt).

Sixth Circuit Civil Cases with Appellate Procedure Implications

January 1, 2005 through June 30, 2006

Appoloni v United States, 450 F3d 185 (2006) (the fact that parties have filed cross-motions for summary judgment does not necessarily mean that summary judgment for one or the other is appropriate; the appellate court must still analyze each of the motions on its own merits).

Brentwood Academy v Tennessee Secondary School Athletics Ass’n, 442 F3d 410 (2006) (an appellate court is not permitted to change its mind after it has remanded a case and the district court has already tried it).

Intera Corp v Henderson, 428 F3d 605 (2005) (rule requiring a party to file appeal as of right within 30 days of order or judgment’s entry is jurisdictional and mandatory).

In re Powerhouse Licensing, LLC, 441 F3d (2006) (trial court’s decision whether to certify an interlocutory order for appeal is discretionary and not subject to review).

Sixth Circuit Criminal Cases with Appellate Procedure Implications

January 1, 2005 through June 30, 2006

In re Bowen, 436 F3d 69 (2006) (Normally, a habeas petitioner may proceed on a successive petition only if he shows either (1) a new Supreme Court retroactive to him or (2) newly discovered evidence; however, a petition that raises an issue that could not reasonably have been raised the first time is not legally a successive petition).

Bowles v Russell, 432 F3d 668 (2005) (law of the case (prudential, not jurisdictional) bars litigating claims that have already been decided, either expressly or necessarily by implication).

Franklin v Anderson, 434 F3d 412 (2006) (before the federal court enforces a procedural default in a habeas proceeding, four steps must first be met: (1) the State has a regularly followed procedural default rule which the defendant did not meet, (2) the State actually relied on the rule in denying the constitutional claim, (3) the rule is adequate and independent, and (4) cause and prejudice. The rule must have been regularly followed and enforced at the time that the default occurred.).

Fulcher v Motley, 44 F3d 791 (2006) (exhaustion requires the petitioner to have adequately presented his constitutional claims to the State courts; citing the wrong cases to the State courts does not mean that the issue is not exhausted; in addition, invited error occurs when a litigant asks for a ruling and then claims error when the judge gave him what he wanted. It does not prevent a party from rearguing an issue that had previously been argued incorrectly).

Harries v Bell, 417 F3d 631 (2005) (a judge may conduct an evidentiary hearing in a habeas proceeding, even if the factors mandating him to are absent).

Linscott v Rose, 436 F3d 587 (2006) (Even though the petitioner raised the issue in his first appeal, where the error occurred again on resentencing, the limitations period starts from the second appeal ending).

In re Lott, 424 F3d 446 (2005) (although it should be used “only infrequently,” the All Writs Act permits mandamus relief when an extraordinary need exists to immediately review a nonfinal order; a district court’s decision in a 2254 habeas requiring the trial defense lawyer to testify despite the attorney-client privilege is such an extraordinary situation).

McMillan v Castro, 405 F3d 405 (2005) (where judicial bias or hostility has been exhibited at any stage of a trial court proceeding, the harmless error doctrine does not apply).

Post v Bradshaw, 422 F3d 419 (2005) (a motion that alleges either ineffective assistance during the first action or newly discovered evidence supporting the claim is a successive petition that may not be raised under 60(b)).

Souter v Jones, 395 F3d 577 (2005) (where a habeas petitioner can show a credible claim of actual innocence, the one year limitations period is equitably tolled, though the doctrine should be used only “sparingly”; in addition, the failure to object to an adverse conclusion in an R+R does not waive the right to appeal, even if adopted by the district judge, if the party prevailed on the overall recommendation).

Tyler v Mitchell, 416 F3d 500 (2005) (first raising an exhausted issue in a traverse (reply) in a habeas proceeding does not properly present an issue before the district court).

United States v Amiker, 414 F3d 606 (2005) (because it is not an agreement that the judge make the judicial findings, an agreement to be sentenced under the guidelines does not waive this issue).

United States v Brika, 416 F3d 514 (2005) (even though defendant and a court audience member signed affidavits that certain testimony had not been transcribed, no error occurred when the presiding judge did not hold an evidentiary hearing but listened to the tapes himself with the court reporter and then rejected the claim).

United States v Dotz, 446 F3d 632 (2006) (A criminal defendant has only 10 days to appeal. A timely filed Rule 35 motion does not toll the time for appealing; even though he may not have had access to his papers after he went to prison, a defendant has not shown excusable neglect where he did not go to prison for 11 days).

United States v Grenoble, 413 F3d 569 (2005) (although a pretrial motion is normally needed to preserve a venue objection for appeal, one is not needed where the defect is not apparent in the indictment itself).

United States v Oliver, 397 F3d 369 (2005) (if the error amounts to a higher sentence, the error is “plain” and requires a resentencing).

United States v Savoires, 430 F3d 376 (2005) (just because defendant jointly agreed to the jury instructions does not mean that issue is necessarily waived, especially where the prosecutor is just as much to blame; “[i]nvited error . . . does not foreclose relief when the interests of justice demand otherwise.”).

United States v Sharp, 442 F3d 946 (2006) (A defendant may bargain away his right to appeal. As long as the prosecutor explains the appeal waiver in court, the judge’s failure to either do so or specifically ask if the defendant understands the appeal waiver does not make it unenforceable; a defendant who waives all claims except the judge exceeding either the maximum penalty or the guidelines waives his right to challenge the restitution amount).

United States v Yoon, 398 F3d 802 (2005) (a plea agreement waiving right to appeal a sentence waives even a *Booker* error).

United States v Young, 424 F3d 499 (2005) (a party may file an interlocutory appeal if the order appealed from conclusively determines an important legal issue that cannot be appealed any other way).

White v Mitchell, 431 F3d 517 (2005) (an appellate court may base its ruling on procedural default in a habeas proceeding, even though the State had not argued it in the district court).

United States Supreme Court Cases with Appellate Procedure or Habeas Implications

January 1, 2005 through June 30, 2006

Bradshaw v Richey, 126 S Ct 602 (2005) (a state court’s interpretation of state appeal binds a federal court on habeas corpus).

Eberhart v United States, 126 S Ct 403 (2005) (a claim-processing rule, e.g., requiring that motion for new trial be filed within 7 days of verdict, though it establishes a rigid rule that must be followed, is not “jurisdictional” in the same sense as a rule governing subject-matter jurisdiction, and can be forfeited where the government does not assert the time limit)

Kane v Garcia Espitia, 126 S Ct 407 (2005) (a claim of no access to a law library is not a claim cognizable in federal habeas corpus).

Rice v Collins, 126 S Ct 969 (2006) (credibility determination of trial court that prosecutor tendered a permissible race-neutral explanation for dismissing a juror is not subject to being set aside in a habeas corpus petition).

Sanchez-Llamas v Oregon, 126 S Ct 2669 (2006) (The Vienna Convention requires authorities who detain a national of a foreign nation to advise the consulate of that nation of the detention and to advise the detainee of his rights under the convention; suppression of evidence is not an appropriate remedy for such a violation, and a state may apply its regular procedural default rules to Convention claims; neither the text of the treaty nor prior precedent applying the exclusionary rule in other settings supports suppression of evidence as a remedy for a violation)

United States v Gonzalez-Lopez, 126 S Ct 2557 (2006) (trial court’s deprivation of a criminal defendant’s choice of counsel is a structural error not subject to a harmless error analysis, and entitles the defendant to reversal of his conviction).

Washington v Recuenco, 126 S Ct 2546 (2006) (failure to submit a sentencing factor to the jury, where required under *Blakely v Washington* and *Apprendi v New Jersey*, is not a structural error; failure to submit whether a firearm was a “deadly weapon” to the jury was subject to harmless error analysis).

Woodford v Ngo, 126 S Ct 2378 (2006) (federal Prison Litigation Reform Act requires a prisoner to exhaust any available administrative remedies before bringing federal court challenge to prison conditions; this requires accordance with applicable procedural rules, including time deadlines, and failure to comply with time deadlines precludes bringing action in federal court).

Changes to the Internal Operating Procedures of the Michigan Court of Appeals

January 1, 2005 through June 30, 2006

IOP 7.201(B)(2) — District Offices. There are four district clerk’s offices:

District II - Troy - 8th Floor, Columbia Center, 201 West Big Beaver, Suite 800, Troy, MI 48084-4127. The telephone number is (248) 524-8700. This district office handles cases arising from the counties of Genesee, Macomb, Oakland, and Shiawassee. (Revised 1/05.)

District IV - Lansing – 2nd Floor, Hall of Justice, 925 West Ottawa St., Lansing, MI 48915. The telephone number is (517) 373-0786. This district office handles cases arising from the 60 counties not listed above. Note: If you are submitting something to the Lansing district office by overnight carrier, such as UPS, FedEx, USPS Express mail or other commercial carrier, the package should be addressed to the street address: 925 West Ottawa St., Lansing, MI, 48915. For regular mail, the proper address is 925 West Ottawa St., P. O. Box 30022, Lansing, MI 48909-7522. (Revised 9/05.)

IOP 7.201(B)(3)-1 — Filing of Papers.

Except in exigent situations, such as when a decision is required within three days of filing, all claims of appeal that are received in Grand Rapids, Troy, and Detroit are forwarded to the Central division of the Lansing office for initial review. (Revised 1/05.)

IOP 7.202(4) — “Filing.” A document is “filed” when it is delivered to the clerk of the court and accepted by the clerk with the intent to enter it in the record. Upon delivery to any office of the Court of Appeals, a date stamp will be applied as a ministerial act indicating the date, time and location of receipt of the document. Once the document and any filing fee are received and date stamped by the clerk’s office, the document is considered “filed” and cannot be returned to the filing party. See IOP 7.201(B)(3)-1. (Revised 9/05.)

IOP 7.203(G) — Expedited Track for Summary Disposition Appeals. As authorized by MCR 7.203(G) and Administrative Order 2004-5 (as amended December 21, 2005), commencing January 1, 2005, the Court of Appeals implemented an expedited track for summary disposition appeals. The original administrative order applies to appeals filed on or after January 1, 2005, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. The amended administrative order applies to such appeals filed on or after January 1, 2006. The amended administrative order will not be applied to such appeals that were filed before January 1, 2006. Both the original and the amended administrative orders are available on the Court’s website at <http://courtofappeals.mijud.net/resources/9090.htm>. (Revised 1/06.)

All cases filed under either administrative order will automatically be placed on this track. New cases will be acknowledged with postcards that advise that the case is on the expedited track. In addition, the Court will send parties a letter notice advising of placement on the track and highlighting important distinctions pertaining to the expedited track. (Revised 1/06.)

IOP 7.203(G)-1 — Motion to Remove Appeal from Expedited Track. The principal means of removing a case from the expedited track is a motion to remove. See Admin Order 2004-5, ¶ 7 (as amended December 21, 2005). An interactive form motion to remove is available on the Court’s website, <http://courtofappeals.mijud.net>. The Court strongly urges all filers to complete the online form and print it for filing and service. The form motion focuses the issues and facilitates expedited processing by the Court. (Revised 1/06.)

IOP 7.203(G)-2 — Transcript Requirements for Expedited Track. For appeals on the expedited track that were filed after January 1, 2006, the appellant must order the transcript of

the hearing(s) on the motion for summary disposition unless the parties stipulate that the transcript is unnecessary or there is no record to transcribe. The court reporter or recorder must file the transcripts within 28 days of the order. Timely filing of the transcript will entitle the reporter or recorder to payment of the increased page rate of \$3.00 per original page and 50 cents per page for each copy. Untimely filing relegates the reporter or recorder to the standard rate of \$1.75 per original page and 30 cents per page for each copy. See Admin Order 2004-5, ¶ 8 (as amended December 21, 2005); MCL 600.2543. (Revised 1/06.)

IOP 7.203(G)-3 — Briefing Requirements for Expedited Track. The amendment to Administrative Order 2004-5 revised the briefing timelines for cases on the expedited track. However, the revised timelines only apply to appeals that were filed after January 1, 2006. Appeals filed before that date are governed by the timelines stated in the original administrative order. Both the original and the amended administrative orders are available on the Court's website at <http://courtofappeals.mijud.net/resources/9090.htm>. (Revised 1/06.)

Under the provisions of the amended administrative order, applying to appeals filed after January 1, 2006, appellant's brief is due within 56 days of the date the claim of appeal was filed, or within 28 days of the order granting an application for leave to appeal. And, appellee's brief is due within 28 days of service of appellant's brief. See Admin Order 2004-5, ¶ 9 (as amended December 21, 2005). (Revised 1/06.)

For appeals on the expedited track that were filed before January 1, 2006, appellant's brief is due within 28 days of the applicable triggering event as described in the original administrative order. Appellee's brief is due within 21 days of service of appellant's brief. (Revised 1/06.)

In all cases on the expedited track, appellant's and appellee's briefs are limited to 35 pages. Where the appeal is on leave granted, the parties may refile their application for leave, or response to the application, in place of a brief. A new cover sheet is required to reflect that the filing is intended to function as a brief and to indicate whether oral argument is requested or is not requested. The appellant may file a reply brief within 14 days of the filing of appellee's brief, limited to 5 pages in length. See Admin Order 2004-5, ¶ 9 (as amended December 21, 2005). (Revised 1/06.)

Briefs must be accompanied by the party's trial court summary disposition motion or response, brief, and appendices. But, the appellee's brief may omit these documents if they were included with appellant's brief. The appellant may also wish to include a copy of the transcript (if any) if it was completed after the lower court file was transmitted to the Court of Appeals. See Admin Order 2004-5, ¶ 9(C) (as amended December 21, 2005). (Revised 1/06.)

IOP 7.203(G)-4 — Motions to Extend Time For Filing Brief in Expedited Track Appeals. A party may file a motion to request an extension of time to file their brief. Admin Order 2004-5, ¶ 9(B)(3) (as amended December 21, 2005). The deadlines for such motions vary depending whether the appeal was filed before or after January 1, 2006. See IOP 7.203(G). An interactive form motion to extend time is available on the Court's website, <http://courtofappeals.mijud.net>. The Court strongly urges all filers to complete the online form

and print it for filing and service. The form motion focuses the issues and facilitates expedited processing by the Court. (Revised 1/06.)

IOP 7.203(G)-5 — Record on Appeal in Expedited Track Appeals. The Court of Appeals will request the lower court record from the trial court 28 days after jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court shall forward the record within 21 days of the request. See Admin Order 2004-5, ¶ 10 (as amended December 21, 2005). This allows for the record to be in the possession of the Court of Appeals when the case is ready to be prepared for submission and disposition. (Revised 1/06.)

IOP 7.203(G)-6 — Notice of Cases and Decision of the Court in Expedited Track Appeals. Within seven days after the filing of appellee’s brief, the parties will be notified that the case will be submitted as a calendar case on the expedited track. A later communication from the Court will indicate when submission is scheduled to occur. The opinion or order of the panel is to be issued no later than 35 days after submission to, or oral argument before, the panel. See Admin Order 2004-5, ¶¶ 11, 12 (as amended December 21, 2005). (Revised 1/06.)

IOP 7.204-1 — Claim of Appeal; Assignment of Docket Number. Each claim of appeal is assigned an appellate docket number. Even if a prior claim of appeal or application for leave to appeal has been filed from the same lower court or tribunal case, a new claim of appeal will be assigned a new number. A postcard will be sent to the parties to advise that the appeal has been “received.” The Court of Appeals docket number that is stated on this card should be included on all further filings in the matter. Where the case has been assigned to the expedited summary disposition track, the postcard will indicate that fact. See IOP 7.203(G). (Revised 1/05.)

IOP 7.204-5 — Claim of Appeal; Procedure When All Documents Have Not Been Filed.

Practice Note: For appeals proceeding on the expedited summary disposition track, failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court provides a minimum 7-day warning. Admin. Order 2004-5, ¶ 4(B) (as amended December 21, 2005). (Revised 1/06.)

IOP 7.204(C)(2) — Claim of Appeal; Transcript. It is the appellant’s responsibility to ensure that the complete transcript is ordered and filed. But, in appeals proceeding on the expedited summary disposition track, the appellant is only required to order the transcript of the hearing(s) on the motion for summary disposition. See Admin Order 2004-5, ¶ 8; IOP 7.203(G)-2 (as amended December 21, 2005).. Where an appeal has been filed by the trial court on behalf of an indigent party with appointed counsel, it is counsel’s responsibility to review the lower court file shortly after appointment and confirm that transcripts of all necessary proceedings have been ordered from the proper court reporter(s). The clerk’s office may use MCR 7.217 to require evidence that the transcript has been ordered if it is obvious that the requirements of MCR 7.210(B) were not met. See the IOPs on MCR 7.210 for more complete information on this subject. (Revised 1/05.)

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

IOP 7.204(G)-2 — Claim of Appeal; Consequences of Appearance. MCR 7.204(G) provides for the filing of an appearance by an appellee within 14 days of service of the claim of appeal. The Court will also accept appearances from parties who may not intend to participate in the appeal. Such parties will be carried in the Court's records as they were carried on the records of the lower court. (Revised 5/06.)

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

Proof of service of filings in the appeal, and notice from the Court of activity in the appeal, will be directed only to parties appearing in propria persona and to the principal attorney who has signed the appearance for each party. However, the attorney that signs the party's brief on appeal will be carried on the records of the Court as the principal attorney for that party from that point forward. See IOP 7.212(C)(9). The Court of Appeals has the responsibility to notify only one attorney per party of calendar events in the Court of Appeals. (Revised 5/06.)

IOP 7.204(H) — Claim of Appeal; Time for Filing Docketing Statement.

Practice Note: No docketing statement is required for appeals proceeding on the expedited summary disposition track. But, if the case is removed from the expedited track, a docketing statement must be filed within 14 days of the order removing the case. See Admin Order 2004-5, ¶¶ 4(A), 7(E) (as amended December 21, 2005).. (Revised 1/06.)

IOP 7.204-8 — Claim of Appeal; Denial of Waiver of Parental Notification for Minor to Obtain Abortion. Appeals from a denial of a waiver of parental notification for a minor to obtain an abortion are treated as high-priority emergencies according to statute and court rule. See MCL 722.901 et seq.; MCR 3.615(K)(2) and (3). The Court will endeavor to decide the appeal within 72-96 hours of the filing of the claim of appeal. The minor's attorney will be notified by phone immediately upon entry of the order resolving the appeal. A motion for reconsideration of the order may be filed in accordance with MCR 7.215(I). Motions for reconsideration will be submitted immediately for decision. (Published 5/06.)

Practice Note: In order to facilitate recognition of these appeals and to expedite handling, practitioners are advised to make every effort to alert the Court to the nature of the filing. The minor's attorney should telephone the Clerk's Office in advance to advise that the filing will be made. When filing the claim, the attorney or courier should alert the clerk accepting the filing of

the emergency nature of the appeal. Most importantly, the claim of appeal should clearly indicate that it involves an appeal from the denial of a waiver of parental notification. The notification should be printed in bold-face, large-type print on the first page of the filing. (Published 5/06.)

IOP 7.205(B)(7)-1 — Application for Leave; Entry Fee. The entry fee is set by statute, MCL 600.321. Presently the fee is \$375. When multiple orders on the merits are appealed, the entry fee is \$375 for each order being appealed (an order denying rehearing is not an order on the merits). However, only a single fee is required where the application for leave to appeal is from a final order, as defined by MCR 7.202(6)(a)(i), that could have been appealed of right and where the application seeks review of the multiple orders entered at the same time or prior to the final order. If the clerk's office determines that an inadequate entry fee was submitted, the outstanding amount will be requested by letter. Fee payment may be made by personal or corporate check or money order. (Revised 9/05.)

IOP 7.207(B)-1 — Claim of Cross Appeal; Entry Fee. The Court of Appeals will not collect entry fees for cross appeals that are filed from the same lower court order or judgment as the direct appeal if an entry fee for the direct appeal has been paid. See MCL 600.321. Note that in this context, a direct appeal by right from a final judgment encompasses all prior orders entered in that same case. However, in a cross appeal to an appeal by leave granted, the filing will be carefully scrutinized to determine whether the same lower court order or judgment is the subject of the cross appeal. If not, an entry fee must be paid. A cross appeal filed from an order granting a postjudgment motion under MCR 7.208(B)(5)(b) requires payment of an entry fee since the cross appeal is not from the same lower court order. The fee is presently set at \$375. See IOP 7.204-2 and 7.204-3. (Revised 1/05.)

IOP 7.207(B)-2 — Time for Filing Cross Appeal in Expedited Track Appeals. In appeals proceeding on the expedited summary disposition track, the time for filing a claim of cross appeal is 14 days after the claim of appeal is filed or served on the cross appellant, whichever is later, or within 14 days after the date of the order granting leave to appeal. See Admin Order 2004-5, ¶ 2 (as amended December 21, 2005). (Revised 1/06.)

IOP 7.207(B)-3 — Claim of Cross Appeal; Proof of Service. The claim of cross appeal must be served on all parties, not just cross appellees. The two exceptions are if a party has been dismissed by stipulation or was never served with the complaint. See IOP 7.204(C)(3). (Revised 1/05.)

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

IOP 7.210(B)(1)-1 — Transcript Production. It is the appellant's responsibility to secure the timely filing of the complete transcript for appeal, not just the transcript(s) that appellant believes are relevant to the appeal. However, the court rule provides various

alternatives for filing less than the full transcript. See IOP 7.210(B)(1)-3. And, in appeals proceeding on the expedited summary disposition track, the appellant is only required to order the transcript of the hearing(s) on the motion for summary disposition. Also, the parties to a case proceeding on the expedited summary disposition track may avoid the necessity of procuring the transcript by filing a stipulation asserting that the transcript is unnecessary. See Admin Order 2004-5, ¶ 8; IOP 7.203(G)-2 (as amended December 21, 2005). (Revised 1/06.)

IOP 7.210(B)(3)(b)-1 — Time for Filing Transcript. The court rule states the time within which the court reporter is to file the transcript. See MCR 7.210(B)(3)(b). But see Admin Order 2004-5, ¶ 8 (as amended December 21, 2005), regarding the timeline for filing the transcript, if any, in an appeal proceeding on the expedited summary disposition track. If the transcript is not filed within the time prescribed, the clerk's office will send a reminder postcard to the court reporter at the reporter's address as carried in the records of the Michigan Court Reporting/Recording Board of Review. The computer program that generates the postcards does not provide copies to the attorneys or parties. The Court's view is that the appellant's attorney is responsible for monitoring the deadlines and should follow up with the court reporter when the transcript is late. If the court reporter files the transcript within 7 days of issuance of the postcard, no further action will be taken by the Court. (Revised 1/06.)

IOP 7.210(B)(3)(b)-2 — Late Transcript. If the transcript is overdue more than 7 days past the date set in the court rule, a 21-day warning letter will be sent to appellant(s) with copies to appellee(s) and the applicable court reporter. See MCR 7.217(A). The appellant is then on notice that some action must be taken within the next 21 days or the appeal will be submitted to the Court on the first Tuesday that is 21 days after the date of the letter. Submission will be to the administrative motion docket for dismissal (if counsel is retained), or for remand for the appointment of substitute counsel (if counsel is appointed). Filings received after the 21st day may be accepted if the matter has not yet been dismissed by the Court, but costs will be assessed. (Revised 1/06.)

IOP 7.210(G) — Transmission of Record to Court of Appeals by Trial Court. Upon filing of the appellant's brief and expiration of the time for filing appellee's brief, a record request postcard will be generated and mailed to the trial court, requesting that the lower court record be forwarded to the Court of Appeals. However, in appeals proceeding on the expedited summary disposition track, the record will be requested 28 days after jurisdiction is confirmed and any material filing deficiencies have been corrected. See Admin Order 2004-5, ¶ 10 (as amended December 21, 2005); IOP 7.203(G)-5. (Revised 1/06.)

IOP 7.211(C)-2 — Motion to Remove Appeal from Expedited Summary Disposition Track. A party seeking to remove an appeal from the expedited summary disposition track may file a motion to remove as provided in Admin Order 2004-5, ¶ 7 (as amended December 21, 2005). The motion must be in the form prescribed by the Court. An interactive form motion to remove is available on the Court's website at <http://courtofappeals.mijud.net>. The Court strongly urges parties to complete the online form, and print it for filing and service. The form motion focuses the issues and facilitates expedited processing by the Court. See also IOP 7.203(G)-1. (Revised 1/06.)

IOP 7.212(A)(1)-1 — Briefs; Appellant; Time to File. The time to file the appellant's brief starts to run when the last timely ordered transcript has been filed with the trial court. The time does not run from the attorney or party's receipt of the notice of filing or from receipt of the actual transcript. If the transcript is already filed or where no transcript will be procured, the time starts when the claim of appeal is filed or the application for leave to appeal is granted. If the appellant's brief is filed before any or all of the transcripts have been filed with the trial court, the time for filing the appellant's brief will be calculated from the date of filing of the latest transcript filed prior to the filing of the appellant's brief or, if no transcripts have been filed, from the filing of the claim of appeal or entry of the order granting the application for leave to appeal. The late ordering of a transcript, absent permission from the Court of Appeals, does not extend the time to file the appellant's brief. See IOP 7.210(B)(1)-2. [Note: For appeals proceeding on the expedited summary disposition track, the time to file appellant's brief is set forth in Admin Order 2004-5, ¶ 9(as amended December 21, 2005). See IOP 7.203(G)-3.] (Revised 1/06.)

IOP 7.212(A)(1)-2 — Briefs; Appellant; Motion to Extend Time When Due in 56 Days. Extensions of time to file an appellant's brief are allowed by stipulation or by motion before the Court. If the time to file the appellant's brief is 56 days, by policy an extension of an additional 56 days is possible. The extension can be achieved by motion alone or by stipulation of the parties followed by a motion. (Revised 1/06.)

If a motion for extension of 56 days is granted, a stipulation may not be filed for further extensions. If a stipulation is filed for an extension of 28 days, a motion for extension of an additional 28 days will generally be granted. An extension by stipulation can generally be secured retroactively, such as by filing the stipulation with the brief. Regardless when it is filed, all extensions of time will run from the date of the events described in MCR 7.212(A)(1)(a)(iii). However, once a case is on case call, appellant may not file a retroactive stipulation to extend time in an effort to render an untimely brief timely and gain oral argument before the panel. A motion for oral argument must be filed in this instance. (Revised 1/06.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court's website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be completed online, then printed for filing and service. (Revised 1/06.)

IOP 7.212(A)(1)-3 — Briefs; Appellant; Motion to Extend Time When Due in Less than 56 Days.

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court's website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be completed online, then printed for filing and service. (Revised 1/06.)

IOP 7.212(A)(1)-4 — Briefs; Appellant; Motion to Extend Time in Expedited Track Appeals. The time for filing a party's brief in an appeal proceeding on the expedited summary disposition track may be extended for 14 days on motion for good cause shown. See Admin Order 2004-5, ¶ 9(B)(3) (as amended December 21, 2005). An interactive form motion to extend

time is available on the Court's website at <http://courtofappeals.mijud.net>. The Court strongly urges parties to complete the online form and print it for filing and service. The form motion focuses the issues and facilitates expedited processing by the Court. See also IOP 7.203(G)-4. (Revised 1/06.)

IOP 7.212(A)(2)-1 — Briefs; Appellee; Time to File. The time to file the appellee's brief starts when the appellant's brief is served on appellee. The brief is served when it is mailed or personally delivered. MCR 2.107(C)(3). Even if the appellant's brief does not comply with MCR 7.212(C), the time to file the appellee's brief will generally not be tolled. The answering party may want to contact the clerk's office if there is a question whether the time has been tolled due to a defect. [Note: For appeals proceeding on the expedited summary disposition track, the time to file appellee's brief is set forth in Admin Order 2004-5, ¶ 9 (as amended December 21, 2005). See IOP 7.203(G)-3.] (Revised 1/06.)

IOP 7.212(A)(2)-2 — Briefs; Appellee; Motion to Extend Time When Due in 35 Days. Extensions of time to file an appellee's brief are allowed by stipulation or by motion before the Court. If the time to file the appellee's brief is 35 days, by policy an extension of an additional 56 days is possible. The extension can be achieved by motion alone or by stipulation of the parties followed by a motion. (Revised 1/06.)

If a motion for extension of 56 days is granted, a stipulation may not be filed for further extensions. If a stipulation is filed for extension of 28 days, a motion for extension of an additional 28 days will generally be granted. An extension by stipulation can generally be secured retroactively, such as by filing the stipulation with the brief. Regardless when it is filed, all extensions of time will run from the date of the events described in MCR 7.212(A)(2)(a)(ii). However, once a case is on case call, appellee may not file a retroactive stipulation to extend time in an effort to render an untimely brief timely and gain oral argument before the panel. A motion for oral argument must be filed in this instance. (Revised 1/06.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court's website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be completed online, then printed for filing and service. (Revised 1/06.)

IOP 7.212(A)(2)-3 — Briefs; Appellee; Motion to Extend Time When Due in Less than 35 Days.

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court's website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be completed online, then printed for filing and service. (Revised 1/06.)

IOP 7.212(A)(2)-4 — Briefs; Appellee; Motion to Extend Time in Expedited Track Appeals. The time for filing a party's brief in an appeal proceeding on the expedited summary disposition track may be extended for 14 days on motion for good cause shown. See Admin Order 2004-5, ¶ 9(B)(3) (as amended December 21, 2005). An interactive form motion to extend

time is available on the Court's website at <http://courtofappeals.mijud.net>. The Court strongly urges parties to complete the online form and print it for filing and service. The form motion focuses the issues and facilitates expedited processing by the Court. See also IOP 7.203(G)-4. (Revised 1/06.)

IOP 7.212(A)(4)-1 — Briefs; Appellant Brief Late. Unless an involuntary dismissal warning has been sent, the only penalty for a late brief is the loss of oral argument. If an involuntary dismissal warning has been sent and the 21-day period has expired, but the appeal has not been dismissed, the brief will be accepted for filing and costs will be assessed. However, in an appeal proceeding on the expedited summary disposition track, if appellant's brief is not filed within 7 days after the due date, the Court will issue an order assessing costs and warning that the appeal will be dismissed if the brief is not filed within 14 days of the original deadline. The Court will issue an order dismissing the appeal if the brief is not filed within that 14-day period. The order dismissing the case may assess additional costs. See Admin Order 2004-5, ¶ 9(B)(4) (as amended December 21, 2005). (Revised 1/06.)

IOP 7.212(B) — Briefs; Length and Form. Page 1 of a brief starts with the statement of facts. Neither the appellant's brief nor the appellee's brief may exceed 50 pages unless an order, pursuant to motion, has been entered permitting a longer brief. However, in appeals proceeding on the expedited summary disposition track, the parties' briefs may not exceed 35 pages. See Admin Order 2004-5, ¶ 9(C) (as amended December 21, 2005). Motions for leave to file briefs in excess of 50 pages must be filed at least 21 days before the due date of the brief. These motions are disfavored, however, and will be granted only for extraordinary and compelling reasons. An untimely motion for leave to file a brief in excess of 50 pages will be returned. (Revised 1/06.)

IOP 7.212(C) — Briefs; Appellant's Brief.

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

IOP 7.212(D) — Briefs; Appellee's Brief.

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

IOP 7.212(E) — Briefs on Cross Appeal.

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

IOP 7.212(F)-1 — Briefs; Supplemental Authority. Such a filing may only cite and discuss new published authority released subsequent to the date the party filed its last brief or supplemental authority. New issues may not be raised in a supplemental authority. The body of the supplemental authority cannot exceed one page. The caption may be on a preceding page and the signature block alone may be on a subsequent page. But the text of the supplemental authority cannot exceed one page. If the body exceeds one page, it must be accompanied by a motion. Unless accompanied by a motion, the supplemental authority will be returned if it (1) fails to conform with the requirements that it not exceed one page, or (2) cites other than new published authority. (Revised 1/05.)

If a party files a supplemental authority after the filing of the brief, and then another new case is released after filing of the first supplemental authority, the subsequent supplemental authority will be accepted. However, all new authority the party wishes to raise should be contained in a single supplemental authority, rather than in multiple supplemental authorities. The clerk will require a motion for leave to file a supplemental authority raising authority that could have been included in a prior or contemporaneously filed supplemental authority. (Revised 1/05.)

IOP 7.212(F)-3 — Briefs; Administrative Order 2004-6, Standard 4. An administrative order of the Michigan Supreme Court provides that indigent defendants represented by appointed counsel may raise issues in this Court that their attorneys decline to raise. The defendant may raise these issues by filing one brief, with or without an appropriate accompanying motion. Only one such filing by defendant will be permitted. Defendant's filing must be received by the Court within 84 days after the filing of appellant's brief by defendant's counsel. However, if the case is noticed for submission within that 84-day period, the filing must be received no later than 7 days before the date of submission or within the 84-day period, whichever is earlier. (Revised 5/06.)

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

Practice Note: Parties filing a brief with the Court are strongly encouraged to use the Court's form cover page for their brief. The brief cover page form can be found on Court's website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be

completed online, then printed and attached to each copy of the brief. The cover page includes a proof of service section and is designed to assist parties in meeting all the court rule requirements, thereby reducing the potential for defects. (Revised 1/06.)

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

If the reply brief is not filed (received) within 21 days after service of appellee’s brief, the reply brief will be returned by the clerk’s office and appellant must file a motion to extend time to file the reply brief. However, in appeals proceeding on the expedited summary disposition track, a reply brief is due within 14 days after service of appellee’s brief. See Admin Order 2004-5, ¶ 9(D) (as amended December 21, 2005). A party may file a single reply brief responding to multiple appellee briefs timed from the last appellee brief filed. The parties cannot stipulate to an extension of time to file the reply brief, but the Court’s policy for regular track appeals is to grant a motion to extend the time an additional 14 days. (Revised 1/06.)

Practice Note: Parties filing a motion to extend time for filing a brief are strongly encouraged to use the motion to extend time form that is available on the Court’s website at <http://courtofappeals.mijud.net/resources/forms.htm>. The one-page form can be completed online, then printed for filing and service. (Revised 1/06.)

IOP 7.212(G)-2 — Briefs; Reply Brief; Form of Brief. The body of the reply brief cannot exceed 10 pages in length and must include a table of contents and index of authorities. The table of contents and index of authorities are not included in the 10-page count. If a party files a joint reply brief to multiple appellees’ briefs, the joint reply brief is subject to the 10-page limit in MCR 7.212(G). However, for appeals proceeding on the expedited summary disposition track, a reply brief is limited to 5 pages. See Admin Order 2004-5, ¶ 9(D) (as amended December 21, 2005). (Revised 1/06.)

The clerk’s office reviews the brief to insure that it conforms to the court rule or administrative order. If the reply brief does not comply with one or more parts of the rule, a letter will be sent to the appellant, with a copy to the appellee(s), informing the appellant of the non-conforming section(s) and what the appellant must do to correct the brief. The letter will give appellant a period of time to correct the defect(s) unless the case has already been placed on a case call. If no response to the letter is received and the case has not been placed on a case call, the matter is placed on the administrative motion docket to have the brief stricken. (Revised 1/05.)

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

IOP 7.212(H) — Amicus Briefs. An amicus brief must conform to MCR 7.212(C) or (D) to the extent possible. However, since an amicus brief can only be filed pursuant to an order

of the Court, it is that order that controls the acceptance of that amicus brief. The brief is limited to the issues raised by the parties, and the motion must be filed not later than 21 days after the appellee's brief is filed. (Revised 1/05.)

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

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

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

IOP 7.213(D)-2 — Judicial Disqualifications.

A party seeking to disqualify a judge of the Court may file a motion to disqualify. The Court follows the procedures set forth in MCR 2.003 for such requests. A motion to disqualify is initially submitted to the challenged judge for decision. If the challenged judge denies the motion, the party may request that the motion be referred to the chief judge for decision. If the challenged judge is the chief judge, the matter will be referred to the State Court Administrator for assignment to another judge of the Court for decision. See MCR 2.003(C)(3). (Revised 5/06.)

IOP 7.214-2 — Audio Recordings of Oral Argument. For a period of at least one year after oral argument, audio recordings of the arguments are maintained for the Court's internal use. An individual seeking access to a recording of oral argument must file a motion stating the reason(s) for the request, together with a motion fee and proof of service on all attorneys or parties who appeared in the appeal. (Revised 9/05.)

If the motion is granted, the Clerk's Office will arrange a time during which the audio recording of oral argument will be played, and such time will be communicated in a notice that is sent to all parties with this order. The preferred method is to play the recording in a courtroom, on courtroom equipment, with a court officer in attendance to enforce the terms of the order. Alternate arrangements (on Court property) can be made where necessary in the discretion of the district clerk. Individuals having notice of the motion and the order will be permitted to attend and take notes. Second-generation audiotape recordings may not be made during the playing of the original recording of oral argument. (Revised 9/05.)

Transcripts of the oral argument are not prepared by the Court for internal use, and a transcript will not be provided or certified by the Court for external use. Upon notice to the Court,

however, the moving party may secure a transcript by engaging the services of a court reporter who attends the playing of the audio recording for the purpose of creating a transcript. The court reporter will not be permitted to copy the recording and work from the copy; the reporter must work from the original audio recording on Court property. There is no additional Court fee for this process. The Court will not certify a transcript that is produced under this procedure. (Revised 9/05.)

IOP 7.214(A) — Request for Argument.

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

IOP 7.216(A)(7)-2 – Bankruptcy of a Party. Any party who becomes aware of a proceeding in bankruptcy that may cause or impose a stay of proceedings of a case pending in this Court should immediately file written notice with the clerk's office. Any bankruptcy stay order should be attached to the notification, and the filing should include an explanation why the bankruptcy proceedings impact the pending case. An opposing statement from any other party to the pending case may be promptly filed. It is recommended that all filings be served on all parties to the appeal, with proof of service provided to the clerk's office. The parties are urged to address the impact of the new bankruptcy provisions on any automatic stay that may have entered. In particular, the parties should confirm that the automatic stay has not been terminated under 11 USC 362(e). (Revised 1/06.)

If it is concluded that the bankruptcy stay does not apply to the case, the clerk's office will notify the parties by letter and further pursuit of a stay of proceedings must be by formal motion. If it appears that the bankruptcy stay applies to the appeal, the clerk's office will recommend that the Court enter an order directing the administrative closure of the pending case until such time as the bankruptcy stay has been lifted, the bankruptcy proceedings have been dismissed, or a party to the case has obtained relief from the stay. The order will permit the administrative reopening of the case upon the clerk's office receipt of notice of one of the above events. A party who believes that the order was improperly entered may file a motion for reconsideration under MCR 7.215(I). (Revised 6/05.)

Upon receipt of an order of the bankruptcy court that permits continuation of the appeal, the clerk's office will recommend that the Court enter an order reopening the appeal and it will resume where it left off when it was administratively closed. When an order terminating bankruptcy proceedings appears to prohibit the reopening of state court actions, the clerk's office will recommend that the Court enter an order that denies reopening until/unless the party obtains an express order from the bankruptcy court allowing the continuation of the state action. New briefing will not be permitted except upon leave of the Court. (Revised 6/05.)

IOP 7.217(D) — Reinstatement. Where an appeal or original action is dismissed pursuant to MCR 7.217(A), the appellant or plaintiff may file a motion for reinstatement of the case as provided in MCR 7.217(D). A motion for reinstatement may be filed within 21 days of the date of the order dismissing the appeal or original action. If the dismissal was ordered under a different rule [such as MCR 7.201(B)(3), MCR 7.211(C)(2), or MCR 7.216(A)(10)] or if the case was closed by order denying an application for leave to appeal, the proper method for seeking to reopen the case is a motion for reconsideration under MCR 7.215(I). The Chief Judge will decide all untimely motions for reinstatement. The time for filing an answer to a motion for reinstatement is 7 days. MCR 7.211(B)(2)(e). (Revised 5/05.)

IOP 7.218(B) — Stipulation to Dismiss. If the parties agree to dismiss the case, a stipulation to dismiss may be filed under this rule. The stipulation must bear the signature of each attorney or party that is still active in the case (a party that was earlier dismissed or who never appeared is not required to sign). See IOP 7.202-1 for information on the types of “signatures” that are accepted by the clerk’s office. In all cases, the caption on the stipulation must match the order appealed from, and any lower court number that is stated on the face of the filing must match the lower court number of the appeal being dismissed. (Revised 5/05.)

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

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

Changes to the Michigan Appellate Court Rules

Criminal

MCR 6.310(c): reduces the time for filing a motion to withdraw plea to six months. MCL 6.429 & 6.431 also limit the time for filing a motion to correct an invalid sentence or for a new trial to six months. (Proposal to restrict time for filing an application for leave to appeal to the Court of Appeals to six months is still pending.)

MCR 6.428: allows for the reissuance of a judgment in a case where a defendant’s appellate remedies were lost because his counsel failed to protect those remedies.

General Appellate

Amendment of Rule 7.204 of the Michigan Court Rules

On order of the Court, dated November 2, 2004, the need for immediate action having been found, the notice requirements are dispensed with and the following amendment of Rule 7.204 of

the Michigan Court Rules is adopted, effective immediately. MCR 1.201(D). The amendment will be considered at a future public hearing by the Court. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

[additions are indicated by underlining.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1) An appeal of right in a civil action must be taken within

(a)-(b) [Unchanged.]

(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights under the Juvenile Code, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other post-judgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or

(d) [Unchanged.]

(2)-(3) [Unchanged.]

(B)-(H) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.204(A)(1)(c) clarifies that the 14-day time limit for seeking an appeal from an order terminating parental rights or entry of an order denying postjudgment relief from an order terminating parental rights is limited to appeals from orders entered under the Juvenile Code. This limitation is consistent with MCL 710.65, which provides a 21-day limit for appeals from orders entered under the Adoption Code.

The staff comment is not an authoritative construction by the Court.

Amendment of Rule 7.201 of the Michigan Court Rules

On order of the Court, dated January 4, 2005, the need for immediate action having been found, the notice requirements are dispensed with and the following amendment of Rule 7.201 of the Michigan Court Rules is adopted, effective immediately. MCR 1.201(D).

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.201 Organization and Operation of Court of Appeals

(A) [Unchanged.]

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

(1) [Unchanged.]

(2) Papers to be filed with the court or the clerk must be filed in the clerk’s office in Lansing or with a deputy clerk in Detroit, ~~Southfield~~ Troy, or Grand Rapids. Fees paid to a deputy clerk must be forwarded to the clerk’s office in Lansing. Claims of appeal, applications, motions, and complaints need not be accepted for filing until all required documents have been filed and the requisite fees have been paid.

(3) [Unchanged.]

(C)-(H) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.201(B)(2) replaces the reference to Southfield with a reference to Troy. This amendment corresponds with the Court of Appeals November 29, 2004, relocation of its Southfield office to Troy.

The staff comment is not an authoritative construction by the Court.

Amendment of Rule 7.203 of the Michigan Court Rules

By order dated October 5, 2004, this Court adopted the amendment of Rule 7.203 of the Michigan Court Rules, effective immediately, to process appeals arising solely from orders granting or denying motions for summary disposition in accordance with Administrative Order No. 2004-5, which was also adopted October 5, 2004, effective January 1, 2005. Notice and an opportunity for comment at the January 27, 2005, public hearing having been provided, and consideration having been given, the amendment of Rule 7.203 is retained.

Amendment of Rule 7.204 of the Michigan Court Rules

By order dated November 2, 2004, this Court adopted the amendment of Rule 7.204 of the Michigan Court Rules with immediate effect. Notice and an opportunity for comment at the January 27, 2005, public hearing having been provided, and consideration having been given, the amendment of Rule 7.204 is retained.

Amendment of Rule 7.217 of the Michigan Court Rules

On order of the Court, dated March 8, 2005, the amendment of Rule 7.217 of the Michigan Court Rules adopted October 19, 2004, having been considered by the Court at a public hearing, the Court further amends Rule 7.217, effective immediately.

[The present language is amended as indicated below.

New text is shown in underlining and deleted text in overstriking.]

Rule 7.217 Involuntary Dismissal of Cases

(A)-(C) [Unchanged.]

(D) Reinstatement.

(1) Within 21 days after the date of the clerk's notice of dismissal pursuant to this rule, the appellant or plaintiff may seek relief from dismissal by showing mistake, inadvertence, or excusable neglect.

(2) ~~The clerk will not accept for filing a late motion for reinstatement.~~ The chief judge of the Court of Appeals will decide all untimely motions for reinstatement of an appeal.

STAFF COMMENT: The March 8, 2005, amendment of MCR 7.217(D)(2) requires the chief judge of the Court of Appeals to decide all untimely motions for reinstatement of an appeal that is involuntarily dismissed for want of prosecution.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the court.

Amendment of Rule 7.302 of the Michigan Court Rules

On order of the Court, dated May 31, 2005, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and

consideration having been given to the comments received, the following amendment of Rule 7.302 of the Michigan Court Rules is adopted, effective September 1, 2005.

[Additions are indicated below in underlining and deletions are shown in strikeout.]

Rule 7.302 Application for Leave to Appeal

(A)-(B) [Unchanged.]

(C) When to File.

(1)-(3) [Unchanged.]

(4) Decisions Remanding for Further Proceedings. If the decision of the Court of Appeals remands the case to a lower court for further proceedings, an application for leave may be filed within 28 days in appeals from orders terminating parental rights, 42 days in other civil cases, or 56 days in criminal cases, after

(a) the Court of Appeals decision ordering the remand, ~~or~~

(b) the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing of a decision remanding the case to the lower court for further proceedings,
or

~~(b)~~(c) the Court of Appeals decision disposing of the case following the remand procedure, in which case an application may be made on all issues raised in the Court of Appeals, including those related to the remand question.

(5)-(6) [Unchanged.]

(D)-(H) [Unchanged.]

STAFF COMMENT: The amendment of MCR 7.302(C)(4), effective September 1, 2005, allows a party to seek leave to appeal in the Michigan Supreme Court from the denial of a motion for rehearing of a Court of Appeals decision to remand a case to the trial court. The amendment also adds language that clarifies that a 28-day time limit applies to applications for leave to appeal in appeals from orders terminating parental rights.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

Amendment of Rule 7.211 of the Michigan Conduct Rules

On order of the Court, dated June 28, 2005, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.211 of the Michigan Court Rules is adopted, effective September 1, 2005.

[Additions are indicated below in underlining.]

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(8) [Unchanged.]

(9) Motion to Seal Court of Appeals File in Whole or in Part.

- (a) Trial court files that have been sealed in whole or in part by a trial court order will remain sealed while in the possession of the Court of Appeals. Public requests to view such trial court files will be referred to the trial court.
- (b) Materials that are subject to a protective order entered under MCR 2.302(C) may be submitted for inclusion in the Court of Appeals file in sealed form if they are accompanied by a copy of the protective order. A party objecting to such sealed submission may file an appropriate motion in the Court of Appeals.
- (c) Except as otherwise provided by statute or court rule, the procedure for sealing a Court of Appeals file is governed by MCR 8.119(F).
- (d) Any party or interested person may file an answer in response to a motion to seal a Court of Appeals file within 7 days after the motion is served on the other parties, or within 7 days after the motion is filed in the Court of Appeals, whichever is later.
- (e) An order granting a motion shall include a finding of good cause, as defined by MCR 8.119(F)(2), and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (f) An order granting or denying a motion to seal a Court of Appeals file in whole or in part may be challenged by any person at any time during the pendency of an appeal.

STAFF COMMENT: The September 1, 2005, amendment of MCR 7.211(C) creates new subrule (9) to clarify the procedure for motions to seal Court of Appeals files and to unseal previously sealed files. The rule incorporates by reference the procedures for sealing files in the trial courts set forth in MCR 8.119(F). The amendment also contains additional language unique to cases pending in the Court of Appeals.

The staff comment is not an authoritative construction by the Court.

Amendment of Rule 7.205 of the Michigan Court Rules

On order of the Court, dated October 18, 2005, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.205 of the Michigan Court Rules is adopted, effective January 1, 2006.

[The present language is amended as indicated by underlining for new text and strikeout for text that is deleted.]

Rule 7.205 Application for Leave to Appeal

(A)-(E) [Unchanged.]

(F) Late Appeal.

(1)-(3) [Unchanged.]

(4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for judgment directed verdict of acquittal, to withdraw a plea, or for resentencing to correct an invalid sentence, if the motion was filed within the ~~12~~ 6-month period prescribed in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.431(A), or if

- (a) the defendant has filed a delayed request for the appointment of counsel pursuant to MCR 6.425~~(F)~~(G)(1) within the 12-month period,

- (b) the defendant or defendant's lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the delayed request for counsel, unless the transcript has already been filed or has been ordered by the court under MCR 6.425(~~F~~)(G)(2), and
- (c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the docket or calendar entries, or other documentation showing that the application is filed within the time allowed.

(5) [Unchanged.]

(G)[Unchanged.]

STAFF COMMENT: The October 18, 2005, amendment of MCR 7.205 reflects recently approved amendments of MCR 6.310, MCR 6.425, MCR 6.429, and MCR 6.431.

The staff comment is not an authoritative construction by the Court.

Amendments of Rules 7.203 and 7.209 of the Michigan Court Rules

On order of the Court, dated December 21, 2005, the following corrections of Rules 7.203 and 7.209 of the Michigan Court Rules are made, effective January 1, 2006.

[The present language is amended as indicated below.]

Rule 7.203 Jurisdiction of the Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(~~7~~)(6), except a judgment or order of the circuit court

(a) on appeal from any other court or tribunal;

(b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

An appeal from an order described in MCR 7.202(~~7~~)(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right.

(2) A judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule;

(B)-(G) [Unchanged.]

Rule 7.209 Bond; Stay of Proceedings

(A)-(D) [Unchanged.]

(E) Stay of Proceedings by Trial Court.

(1) Except as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires.

- (a) When the stay is sought before an appeal is filed and a bond is required, the party seeking the stay shall file a bond, with the party in whose favor the judgment or order was entered as the obligee, by which the party promises to
 - (i) perform and satisfy the judgment or order stayed if it is not set aside or reversed; and
 - (ii) prosecute to completion any appeal subsequently taken from the judgment or order stayed and perform and satisfy the judgment or order entered by the Court of Appeals or Supreme Court.
 - (b) If a stay is sought after an appeal is filed, any bond must meet the requirements set forth in subrule 7.209(F).
 - (2) If a stay bond filed under this subrule substantially meets the requirements of subrule (F), it will be a sufficient bond to stay proceedings pending disposition of an appeal subsequently filed.
 - (3) The stay order must conform to any condition expressly required by the statute authorizing review.
 - (4) If a government party files a claim of appeal from an order described in MCR 7.202(7)(6)(a)(v), the trial court shall stay proceedings regarding that party during the pendency of the appeal, unless the Court of Appeals directs otherwise.
- (F)-(I) [Unchanged.]

STAFF COMMENT: The amendments of MCR 7.203(A) and 7.209(D), effective January 1, 2006, recognize numbering changes in MCR 7.202.

Amendment of Rule 7.211 of the Michigan Court Rules

On order of the Court, dated January 31, 2006, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.211 of the Michigan Court Rules is adopted, effective May 1, 2006.

[Additions are indicated by underlining and deletions are indicated by strikeover]

Rule 7.211 Motions in Court of Appeals

(A)-(B) [Unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1) Motion to Remand.

(a) Within the time provided for filing the appellant's brief, the appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show:

(i) that the issue is one that is of record and that must ~~should~~ be initially decided by the trial court; or

- (ii) that development of a factual record is required for appellate consideration of the issue. ~~A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.~~

A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.

(b)-(d) [Unchanged.]

(2)-(9) [Unchanged.]

(D)-(E) (Unchanged.)

Amendment of Rules 7.204 and 7.205 of the Michigan Court Rules

On order of the Court, dated February 23, 2006, the following corrections of Rules 7.204 and 7.205 of the Michigan Court Rules are made, effective May 1, 2006.

[The present language is amended as indicated below.]

Rule 7.204 Filing Appeal of Right; Appearance

(A)-(B) [Unchanged.]

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

(1)-(4) [Unchanged.]

(5) a copy of the ~~docket or calendar entries~~ register of actions of the lower court, tribunal, or agency; and

(6) [Unchanged.]

(D)-(H) [Unchanged.]

Rule 7.205 Application for Leave to Appeal.

(A) [Unchanged.]

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

(1) [Unchanged.]

(2) copies of the judgment or order appealed from, of the ~~calendar or docket entries~~ register of actions of the lower court, tribunal, or agency, of the opinion or findings of the lower court, tribunal, or agency, and of any opinion or findings reviewed by the lower court, tribunal, or agency.

(3)-(7) [Unchanged.]

(C)-(E) [Unchanged.]

(F) Late Appeal.

(1)-(3) [Unchanged.]

(4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for to appeal within 21 days after the trial court decides a motion for a new trial, for judgment of acquittal, to withdraw a plea, or for resentencing, if the motion was filed within the 12-month period, or if

(a)-(b) [Unchanged.]

- (c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the ~~docket or calendar entries~~ register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

(5) [Unchanged.]

(G)[Unchanged.]

STAFF COMMENT: The amendment of MCR 7.204(C)(5) makes the terminology consistent with current usage. See MCR 8.119(D)(1)(c). The amendment also clarifies the distinction between the lower court register of actions and the Court of Appeals docketing statement referred to in MCR 7.204(H) and 7.205(D)(3).

The staff comment is not an authoritative construction by the Court.

Amendment of Rule 7.213 of the Michigan Court Rules

On order of the Court, dated February 23, 2006, the need for immediate action having been found, the notice requirements of MCR 1.201 are dispensed with and the following amendment of Rule 7.213 of the Michigan Court Rules is adopted, effective immediately. Public comments on this amendment, however, may be submitted to the Supreme Court Clerk in writing or electronically until *December 31, 2006*, at: P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-17. Your comments will be posted, along with the comments of others, at www.courts.mi.gov/supremecourt/resources/administrative/index.htm. This amendment will then be considered at a future public hearing following the comment deadline.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 7.213 Calendar Cases

(A)-(B) [Unchanged.]

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

(1)-(3) [Unchanged.]

(4) appeals from all cases involving election issues, including, but not limited to, recall elections and petition disputes;

~~(45)-(56)~~ [Renumbered, but otherwise unchanged.]

STAFF COMMENT: The amendment of Rule 7.213(C), effective immediately, of the Michigan Court Rules would require the Court of Appeals to give priority to appeals involving election cases.

The staff comment is not an authoritative construction by the Court.

Amendment of Rule 7.205 of the Michigan Court Rules

AMENDMENT TO ORDER

On order of the Court, dated March 28, 2006, the order of February 23, 2006 is amended to correct a clerical error, effective May 1, 2006. MCR 7.205(F)(4) is amended as follows:

Rule 7.205 Application for Leave to Appeal

(F) Late Appeal.

(1)-(3) [Unchanged.]

(4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for judgment directed verdict of acquittal, to withdraw a plea, or for resentencing to correct an invalid sentence, if the motion was filed within the ~~42~~ 6-month period prescribed in MCR 6.310(C), MCR 6.419(B), MCR 6.429(B), and MCR 6.43 1(A), or if

(a)-(b) [Unchanged.]

(c) the application for leave to appeal is filed in accordance with the provisions of this rule within 42 days after the filing of the transcript. If the transcript was filed before the order appointing or denying the appointment of counsel, the 42-day period runs from the date of that order.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

STAFF COMMENT The amendment corrects the opening sentence of subrule (F)(4).

The staff comment is not an authoritative construction by the Court.

Authors

John J. Bursch is a partner at Warner Norcross & Judd LLP, where he chairs the firm's Appellate Practice Group. A former clerk for Judge Loken on the United States Court of Appeals for the Eighth Circuit, he is an elected member of the State Bar's Appellate Practice Section Council and the Publications Chair for the ABA's Council of Appellate Lawyers (CAL). Mr. Bursch has written numerous articles on appellate practice and procedure for *The Appellate Practice Section Newsletter*, *Certworthy*, *For the Defense*, *The Appellate Practice Journal*, and *Appellate Issues*, and he routinely assists other practitioners in preparing motions and appeals in the Michigan Court of Appeals, Michigan Supreme Court, Sixth Circuit Court of Appeals, and United States Supreme Court. He can be contacted by telephone at 616.752.2474, by e-mail at jbursch@wnj.com, or through the firm's website at www.wnj.com.

Ann Herzberg is a 1978 graduate of Michigan State University and a 1981 graduate of the Ohio State University College of Law. After four years in private practice, she joined the Michigan

Court of Appeals in 1985. She has remained with the court in various capacities in the Research Division since that time, and is currently the Research Coordinator. Her duties include the preparation of the Michigan Appellate Digest.

Timothy K. McMorrow is the Chief Appellate Attorney for the Kent County Prosecutor's Office, where he has been employed since 1982. He is a graduate of the University of Notre Dame and the University of Michigan Law School. He is a past Chair of both the Appellate Practice Section and the Criminal Law Section of the State Bar, an adjunct instructor of criminal law and criminal procedure at Grand Rapids Community College, and a former adjunct instructor at Thomas M. Cooley Law School.

Jerry Schrotenboer, UCLA class of 1981, is the Jackson County Chief Appellate Prosecuting Attorney, a special assistant Attorney General, and a special assistant US Attorney (Eastern District). Before joining the prosecutor's office in 1986, he clerked for the Michigan Court of Appeals and Michigan's Eastern District. He argues regularly in the Michigan Court of Appeals, when the need arises in both the Michigan Supreme Court and the Sixth Circuit, and once in the US Supreme Court.