Appeals & Opinions Benchbook - Second Edition

Content formerly part of the original MJI Circuit Court Benchbook



MICHIGAN JUDICIAL INSTITUTE © 2024

Michigan Supreme Court

- The Honorable Elizabeth T. Clement, *Chief Justice*
- The Honorable Elizabeth M. Welch, *MJI Supervising Justice*
- The Honorable Brian K. Zahra, *Justice*
- The Honorable David F. Viviano, *Justice*
- The Honorable Richard H. Bernstein, *Justice*
- The Honorable Megan K. Cavanagh, *Justice*
- The Honorable Kyra Harris Bolden, *Justice*
- The Honorable Thomas P. Boyd, *State Court Administrator*
- Elizabeth Rios-Jones, *Deputy State Court Administrator*
- Alicia Moon, *Supreme Court General Counsel*
- Larry S. Royster, *Supreme Court Chief of Staff and Supreme Court Clerk*

Michigan Judicial Institute Staff

- John R. Nizol, *Director*
- Alessa Boes, *Research Attorney Specialist*
- Amanda Clark, *Judicial Education Analyst*
- Anne M. DeMarco, *Program Assistant*
- Craig Dillon, *E-Learning Designer & LMS Administrator*
- Rachael Drenovsky, *Learning Center Coordinator*
- Amy Feinauer, *Program Assistant*
- Aaron D. Hanke, *Research Attorney*
- Amanda Joseph, *Administrative Assistant*
- Phoenix Hummel, *Research Attorney*
- Heather Leidi, *Operations Specialist*
- Adam Pfau, *Education Analyst*
- Jonah Sjoquist, *Continuing Judicial Education Staff Attorney*
- Danielle Y. Stackpole, *Publications Manager*
- Peter C. Stathakis, *Program Manager*

Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This benchbook was created in 2013 from material that was initially published in 2009. The text has been revised, reordered, and updated through January 24, 2024.

Note on Precedential Value

"A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this court rule." MCR 7.215(J)(1).

Several cases in this book have been reversed, vacated or overruled in part and/or to the extent that they contained a specific holding on one issue or another. Generally, trial courts are bound by decisions of the Court of Appeals "until another panel of the Court of Appeals or [the Supreme] Court rules otherwise[.]" *In re Hague*, 412 Mich 532, 552 (1982). While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated or overruled in its entirety. Some cases state that "an overruled proposition in a case is no reason to ignore all other holdings in the case." *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, "that portion of the Court of Appeals' opinion [had] no precedential effect and the trial court [was] not bound by its reasoning"). But see *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing MCR 7.215(J)(1) and stating that "a prior Court of Appeals decision that has been reversed on other grounds has no precedential value. . . . [W]here the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, no rule of law remains from the Court of Appeals decision." See also *People v James*, 326 Mich App 98 (2018) (citing *Dunn* and MCR 7.215(J)(1) and stating that the decision, "*People v Crear*, 242 Mich App 158, 165-166 (2000), overruled in part on other grounds by *People v Miller*, 482 Mich 540 (2008), . . . [was] not binding"). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part.

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. Because it is unclear how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

Acknowledgments

The *Appeals & Opinions Benchbook* derives from the *Michigan Circuit Court Benchbook: Civil Proceedings* and *Michigan Circuit Court Benchbook: Criminal Proceedings*, and contains much of the information that was previously found in the first and last chapters of those publications. The *Michigan Circuit Court Benchbook* was originally authored by Judge J. Richardson Johnson, 9th Circuit Court. In 2009, the *Michigan Circuit Court Benchbook* was revised and broken into three volumes: *Circuit Court Benchbook: Civil Proceedings—Revised Edition*; *Circuit Court Benchbook: Criminal Proceedings—Revised Edition*; and *Evidence Benchbook*. The three volumes were revised by MJI Research Attorneys Sarah Roth and Lisa Schmitz.

Work on the second edition of this benchbook was overseen by an Editorial Advisory Committee facilitated by MJI Publications Manager Sarah Roth. MJI Research Attorney Danielle Y. Stackpole revised this edition of the benchbook. Amy Feinauer, MJI Program Assistant, also assisted in the publication of this benchbook. MJI gratefully acknowledges the time, helpful advice, and expertise contributed by the Committee members, who are as follows:

- The Honorable Cynthia Meagher Arvant
  46th District Court

- The Honorable Michael C. Brown
  1st District Court

- The Honorable Kathleen A. Feeney
  17th Circuit Court

- The Honorable M. Randall Jurrens
  70th District Court

- The Honorable Jennifer A. Mazzuchi
  25th Circuit Court

- The Honorable Christopher M. Murray
  Michigan Court of Appeals

- The Honorable Randy L. Tahvonen
  29th Circuit Court

- The Honorable Jon A. Van Allsburg
  20th Circuit Court

The **Michigan Judicial Institute (MJI)** was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs and written materials for Michigan judges and court personnel. In addition to formal seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to **Michigan Judicial Institute, Hall of Justice, P.O. Box 30048, Lansing, MI 48909. (517) 373-7171.**

Table of Contents

Cover and Acknowledgments

Title Page i
Michigan Supreme Court ii
Michigan Judicial Institute Staff iii
Note on Precedential Value iv
Acknowledgments v

Chapter 1: General Appellate Issues

1.1 Basis for Parties' Positions 1-2
A. Party Must State Basis For Claim 1-2
B. Party Must Provide Record Supporting Claim 1-2
1.2 Establishing a Record for Review 1-2
A. Bench Trial 1-2
B. Required Findings of Fact/Conclusions of Law in Civil and Criminal Cases 1-4
C. Expanding Record on Remand 1-7
1.3 Doctrines Collateral Estoppel, Res Judicata and Law of the Case 1-8
A. Collateral Estoppel 1-8
B. Res Judicata 1-8
C. Law of the Case 1-9
1.4 Precedent 1-11
A. Vertical Stare Decisis in the Context of Legislative Amendments 1-11
B. Michigan Supreme Court 1-12
C. Michigan Court of Appeals 1-12
D. Circuit Court 1-13
E. United States Supreme Court 1-13
F. Sixth Circuit Court of Appeals 1-13
G. Attorney General 1-14
H. Dicta 1-14
I. Retroactivity of Judicial Decisions 1-14
J. Lack of Precedent - Case of First Impression 1-15
1.5 Remand 1-16
A. Authority to Remand 1-16
B. Process Upon Remand 1-16
1.6 Standard of Review 1-17
A. Generally 1-17
B. De Novo 1-18
C. Clear Error 1-18
D. Abuse of Discretion 1-18
E. Harmless Error 1-19
F. Which Standard of Review Should Be Employed? 1-20
G. Right Result—Wrong Reason 1-23

1.7 Statutory Construction and Interpretation 1-23
A. Generally 1-23
B. Conflict, Ambiguity, and Rules of Statutory Construction 1-25
C. Statutory Constitutional Challenges 1-29
D. Retroactivity of Statutes 1-31
E. Standard of Review 1-32

Chapter 2: Circuit Court Appeals

2.1 Appeals to Circuit Court 2-2
A. Standing 2-2
B. Exhaustion of Administrative Remedies 2-2
C. Jurisdiction 2-3
D. Venue 2-4
E. Stay of Proceedings and Bond 2-5
F. Appeal of Right 2-9
G. Appeal By Leave 2-13
H. Cross Appeal 2-17
I. Late Appeals 2-18
J. Record on Appeal 2-19
K. Motions 2-20
L. Briefs 2-21
M. Dismissal 2-22
N. Oral Argument 2-23
O. Decision and Judgment 2-23
P. Miscellaneous Relief 2-23
Q. Assessment of Costs in Civil Appeals 2-24
2.2 Administrative Appeals in General 2-24
A. Standard of Review 2-24
B. Application of Court Rules 2-26
2.3 Michigan Employment Security Act 2-27
A. Record on Appeal 2-27
B. Standard of Review 2-28
2.4 Appeals from Michigan Civil Service Commission Decisions 2-29
2.5 Appeals From and Objections to Parole Board Decisions 2-29
A. Decision to Deny Parole 2-29
B. Grounds for Grant of Parole 2-29
C. Appeal from Grant of Parole 2-31
D. Objection to Parole Recommendation in Certain Cases 2-36
E. Request for Early Parole 2-37
F. Appeal From Parole Revocation 2-37
2.6 Appeals from Agencies Governed by the Administrative Procedures Act 2-37
A. Timing Requirements in Appeals of Right 2-38
B. Manner of Filing in Appeals of Right, Interlocutory Appeals, and Late Appeals 2-38
C. Stay 2-39
D. Stipulations 2-40
E. Additional Evidence 2-40

F. Attorney Fees 2-41
G. Standard of Review 2-41
2.7 Motor Vehicle Code - Secretary of State 2-42
A. Manner of Filing an Appeal of Right 2-43
B. Stay 2-44
C. Stipulations 2-44
D. Hardship Review Hearing—§ 257.323(3) 2-44
E. Review of Secretary of State's Determination—§ 257.323(4) 2-45
2.8 Appeals of Decisions Regarding Concealed Pistol Licenses—§ 28.425d 2-46
A. Manner of Filing an Appeal of Right 2-47
B. Standard of Review 2-47
2.9 Appeals of Zoning Ordinance Determinations 2-48
A. Standing 2-48
B. Time Requirements and Subject Matter Jurisdiction 2-50
C. Manner of Filing 2-51
D. Bond 2-52
E. Record on Appeal 2-52
F. Standard of Review 2-52
2.10 Appeals from Agencies Not Governed by Another Rule 2-53
A. Time Requirements 2-53
B. Manner of Filing 2-54
C. Stay 2-54
D. Stipulations 2-55
E. Standard of Review 2-55
2.11 Appeals of Summary Proceedings 2-56
A. Appeals From Possessory Judgments 2-56
B. Appeals from Land Contract Forfeiture Judgments 2-58
C. Appeals by Leave 2-58

Chapter 3: Opinions

3.1 Opinions in General 3-2
3.2 Oral Opinions 3-3
3.3 Written Opinions 3-4
A. Generally 3-4
B. Specifically 3-5

Glossary

Chapter 1: General Appellate Issues

1.1. Basis for Parties' Positions 1-2
1.2 Establishing a Record for Review 1-2
1.3 Doctrines Collateral Estoppel, Res Judicata and Law of the Case 1-8
1.4 Precedent 1-11
1.5 Remand 1-16
1.6 Standard of Review 1-17
1.7 Statutory Construction and Interpretation 1-23

1.1 Basis for Parties' Positions

A. Party Must State Basis For Claim

"A party may not merely announce a position and leave it to [the reviewing court] to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265 (2007). "When a party merely announces a position and provides no authority to support it, [the reviewing court] consider[s] the issue waived." *Id*.

B. Party Must Provide Record Supporting Claim

"It is the appellant's obligation to secure the complete transcript of all proceedings in the lower court unless production of the full transcript is excused by order of the trial court or by stipulation of the parties. [The appellate court] limits its review to the record provided on appeal and will not consider any alleged evidence or testimony that is not supported by the record presented to the Court for review." *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 305 (1992) (internal citation omitted). See also MCR 7.109; MCR 7.210; MCR 7.310.

However, MCR 7.105(B)(5) only requires a complete transcript accompany certain applications for leave to appeal. See Section 2.1(F)(2) for information on the manner of filing an application for leave to appeal.

1.2 Establishing a Record for Review

A. Bench Trial[1]

"In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 2.517(A)(1). "The court may state the findings and conclusions on the record or include them in a written opinion." MCR 2.517(A)(3).[2] "A court must base its decision on testimony given in open court, not extrajudicial information." *Gubin v Lodisev*, 197 Mich App 84, 86 (1992).

A court's decision should include "[b]rief, definite, and pertinent findings and conclusions on the contested matters . . . without

[1] See the Michigan Judicial Institute's *Bench Trial Decision Checklist*.

[2] See Chapter 3 for more information on opinions.

overelaboration of detail or particularization of facts." MCR 2.517(A)(2). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176 (1995).

In a criminal bench trial, while it is unnecessary for "[t]he court [to] make specific findings of fact regarding each element of the [charged] crime, *People v Legg*, 197 Mich App 131, 134 (1992), the court's opinion should "manifest[] a finding" that the defendant committed the charged crime, *People v Davis*, 146 Mich App 537, 550-551 (1985).

Additionally, a trial judge's findings and verdict must be consistent. *People v Walker*, 461 Mich 908, 908 (1999). It is improper and unethical for a trial court to give a defendant a "waiver break" by dismissing charges in exchange for the defendant's waiver of a jury trial; "it is not within the power of the judicial branch to dismiss charges or acquit a defendant on charges that are supported by the case presented by the prosecutor." *People v Ellis*, 468 Mich 25, 26-28 (2003) (noting that due to double jeopardy principles "a judge that rewards a defendant for waiving a jury trial by 'finding' him not guilty of a charge for which an acquittal is inconsistent with the court's factual findings cannot be corrected on appeal"; "[d]espite the inability of the appellate process to correct the effects of an improper 'waiver break' in the form of inconsistent verdicts, . . . this judicial practice violates the law and a trial judge's ethical obligations").[3]

Committee Tips:

Knowing the applicable law makes finding the relevant facts easier. Consider ordering counsel to provide proposed findings of fact and conclusions of law before the trial.

When rendering a decision after a bench trial, it is recommended that the judge cover the following:

- *Applicable statutes;*
- *Applicable jury instructions;*
- *Burden of proof;*
- *Any presumptions that may apply;*

[3] See MCJC 1, MCJC 2B, and MCJC 3A(1).

• Findings of facts sufficient to show an appellate court that the trial judge was aware of the issues and correctly applied the appropriate law;

• Conclusions of law; and

• Entry of the appropriate judgment.

B. Required Findings of Fact/Conclusions of Law in Civil and Criminal Cases

"Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." MCR 2.517(A)(4).

Specific situations requiring a "finding" include, but are not limited to:

- **Jury instructions**—MCR 2.512(D)(3) (where the relevant jury instruction committee recommends that no instruction be given, "the court shall not give an instruction unless it specifically finds for reasons stated on the record that (a) the instruction is necessary to state the applicable law accurately, and (b) the matter is not adequately covered by other pertinent model civil jury instructions").

- *Batson*[4] **challenges—***People v Bell*, 473 Mich 275, 300 (2005) ("trial courts are well advised to articulate and thoroughly analyze each of the three steps set forth in *Batson* . . . in determining whether peremptory challenges were improperly exercised"; "[i]n doing so, trial courts should clearly state the Batson step that they are addressing and should articulate their findings regarding that step").

- **Impeachment by evidence of conviction of crime—**MRE 609(b) ("[t]he court must articulate, on the record, the analysis of each factor").

1. Findings Specific to Criminal Cases.

Specific situations requiring a "finding" in criminal cases include, but are not limited to:

---

[4] *Batson v Kentucky*, 476 US 79 (1986). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 12, and *Civil Proceedings Benchbook*, Chapter 7, for more information on *Batson*.

- **Joint representation of criminal defendants—**MCR 6.005(F)(3) ("[t]he court may not permit the joint representation unless [among other things, it] finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding").

- **Directed verdict of acquittal—**MCR 6.419(F) ("[t]he court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal").

- **Motion for a new trial—**MCR 6.431(B) ("[t]he court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record").

- **Probation violation hearings—**MCR 6.445(E)(2) ("[a]t the conclusion of the hearing, the court must make findings in accordance with MCR 6.403 and, if the violation is proven, whether the violation is a technical or non-technical violation of probation").

- **Deviating from the legislative sentencing guidelines—** MCL 769.34(3); see also *People v Lockridge*, 498 Mich 358, 392 (2015)[5] (in order to facilitate appellate review for reasonableness, the court must justify any sentence imposed outside the advisory minimum guidelines range).

- ***Walker* hearings—***People v Walker*, 374 Mich 331, 338 (1965) ("the trial judge, on the basis of [a] separate hearing and record made, determines [whether the defendant's] confession was . . . voluntarily given").[6]

- ***Wade*[7] hearings—***People v Kachar*, 400 Mich 78, 97 (1977)[8] ("the trial court must state on the record the reasons for determining whether the prosecution has established by clear and convincing evidence that the in-court identification has a sufficient independent

[5] For discussion of *Lockridge*, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 2*, Chapter 1.

[6] See the Michigan Judicial Institute's *Evidence Benchbook*, Chapter 3, for more information on *Walker* hearings.

[7] *United States v Wade*, 388 US 218 (1967). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 9, for more information on in-court identification.

[8] *Kachar* is a plurality opinion; accordingly, its reasoning is not authoritative. See *Negri v Slotkin*, 397 Mich 105, 109 (1976).

basis to purge the taint caused by the illegal confrontation").

- *Ginther* **hearings—***People v Ginther*, 390 Mich 436, 441-442 (1973) ("[w]hen a defendant asserts that his assigned lawyer is not adequate or diligent or . . . that his lawyer is disinterested, the judge should hear his claim and, if there is a factual dispute, take testimony and state his findings and conclusion").[9]

- **Entrapment hearings—***People v Juillet*, 439 Mich 34, 61 (1991) ("when the defense of entrapment is raised, the trial court must conduct an evidentiary hearing outside the presence of the jury . . . [and] make specific findings of fact on the entrapment issue").[10]

2. Findings Specific to Civil Cases

Specific situations requiring a "finding" in civil cases include, but are not limited to:

- **Order for adjournment**—MCR 2.503(D)(1) ("the [court's written or oral] order must state the reason for the adjournment").

- **Involuntary dismissal**—MCR 2.504(B)(2) ("[i]f the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517").

- **Motion for a new trial/to amend judgment**—MCR 2.611(F) ("the court shall give a concise statement of the reasons for the ruling, either in an order or opinion filed in the action or on the record").

- **Hearings and trials in domestic relations actions**—MCR 3.210(D) ("the court must make findings of fact as provided in MCR 2.517, except that (1) findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order, and (2) the court may distribute pension, retirement, and other deferred compensation rights with a qualified domestic relations order, without first making a finding with regard to the value of those rights").

---

[9] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 3*, Chapter 1, for more information on *Ginther* hearings.

[10] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 10, for more information on entrapment hearings.

- **Determining interests in land**—MCR 3.411(D) ("the court shall make findings determining the disputed rights in and title to the premises") and MCR 3.411(E) ("the court shall hear evidence and make findings, determining the value of the use of the premises").

- **Contempt proceedings**—*In re Contempt of Calcutt*, 184 Mich App 749, 758 (1990) ("[s]ince civil contempt actions are tried by the court without a jury, [the court] must make findings of fact, state its conclusions of law, and direct entry of the appropriate judgment").

C. Expanding Record on Remand

"The Court of Appeals [or a circuit court sitting as an appellate court] may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just . . . remand the case to allow additional evidence to be taken[.]" MCR 7.216(A)(5). See also MCR 7.112.

"While a matter is pending in the Supreme Court, the Court may, at any time, in addition to its general powers, . . . adjourn the case until further evidence is taken and brought before it" or "enter any judgment or order that ought to have been entered, and enter other and further orders and grant relief as the case may require[.]" MCR 7.316(A)(5); MCR 7.316(A)(7).

See Section 1.5 for additional information on the topic of remand.

Committee Tip:

Be sure to answer the questions presented in remand orders.

1.3 Doctrines Collateral Estoppel, Res Judicata and Law of the Case[11]

A. Collateral Estoppel

Collateral estoppel refers to "issue preclusion," and "precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined." *People v Gates*, 434 Mich 146, 154 (1990). See also *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 727 (1973). "Generally, the proponent of the application of collateral estoppel must show 'that (1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel.'" *People v Trakhtenberg*, 493 Mich 38, 48 (2012), quoting *Estes v Titus*, 481 Mich 573, 585 (2008).[12]

B. Res Judicata

Res judicata refers to "'claims preclusion,' which covers the preclusive effect of a judgment upon a subsequent proceeding on the basis of the same cause of action." *People v Gates*, 434 Mich 146, 154 n 7 (1990); *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 727 (1973) (res judicata "bars the reinstitution of the same cause of action by the same parties in a subsequent suit").

"There are three prerequisites to the application of the res judicata doctrine:

> (1) there must have been a prior decision on the merits;
>
> (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and
>
> (3) both actions must be between the same parties or their privies. . . . Michigan courts apply the res judicata doctrine broadly so as to bar claims that were actually

---

[11]For discussion of the "rule of mandate," which requires a lower court to strictly comply with the scope of an appellate remand order, see Section 1.5(B). For a summary of the requirements of the doctrines of collateral estoppel and res judicata, see the Michigan Judicial Institute's *Collateral Estoppel and Res Judicata Table*.

[12] For more information on collateral estoppel as it relates to civil cases, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 2. For discussion of collateral estoppel in the context of double jeopardy issues and crossover estoppel, see the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 1*, Chapter 9.

litigated as well as claims arising out of the same transaction which a plaintiff could have brought, but did not." *VanDeventer v Mich Nat'l Bank*, 172 Mich App 456, 464 (1988) (internal citations omitted).[13]

C. Law of the Case

"The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13 (2001) (internal citation omitted).[14] See also *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 302 Mich App 7, 16 (2013), quoting *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454 (1981) ("'if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same'"). "Trial courts are bound by the doctrine unless there has been a material change in the facts or an intervening change in the law." *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 407 (2020). "A trial court violates the law-of-the-case doctrine when it revisits a legal issue already ruled on by [a higher court]." *Id*.

"The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Ashker*, 245 Mich App at 13. Law of the case accords "finality to the litigated issues until the cause of action is fully litigated, including retrials or appeals, and the superseding doctrines of res judicata and collateral estoppel become effective." *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 729 (1973).

"[C]ourts have some discretion when applying the law-of-the-case doctrine under certain circumstances." *Ingham Co v Mich Co Rd Comm Self-Ins Pool (On Remand)*, 329 Mich App 295, 304 (2019), rev'd on other grounds 508 Mich 461 (2021).[15] See, e.g., *Locricchio v Evening News Ass'n*, 438 Mich 84, 109-110 (1991) (noting that there are instances where "the law of the case doctrine must yield to a competing doctrine"); *People v Robinson (After Second Remand)*, 227

[13] For more information on res judicata as it relates to civil cases, see the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 2.

[14] See Section 2.1(O) for information on when a judgment becomes effective. See also MCR 7.114(C); MCR 7.215(G); and MCR 7.315(C)(4).

[15] For more information on the precedential value of an opinion with negative subsequent history, see our note.

Mich App 28, 34 (1997) ("declin[ing] to apply a doctrine designed for judicial convenience in fairly administering the obligation to do justice so as to work an injustice"). "[T]he doctrine does not preclude reconsideration of a question if there has been an intervening change of law. For this exception to apply, the change of law must occur after the initial decision of the appellate court." *Ashker*, 245 Mich App at 13 (internal citation omitted).

"[T]he law-of-the-case doctrine [does] not apply to claims that were not decided on the merits[.]" *Brownlow v McCall Enterprises, Inc*, 315 Mich App 103, 112 (2016). Therefore, "the law of the case doctrine does not apply [to] prior orders denying leave to appeal [that] were not rulings on the merits of the issues presented." *People v Poole*, 497 Mich 1022, 1022 (2015). Additionally, "'[w]here an order of summary judgment is reversed and the case is returned for trial because an issue of material fact exists, the law of the case doctrine does not apply to the second appeal because the first appeal was not decided on the merits.'" *Brownlow*, 315 Mich App at 112, quoting *Borkus v Mich Nat'l Bank*, 117 Mich App 662, 666 (1982) (alteration in original). However, "application of the law-of-the-case doctrine [is not automatically barred] whenever there is a grant of summary disposition based on the presence of factual questions[.]" *Brownlow*, 315 Mich App at 113, 118 (holding that where the Court of Appeals "previously ruled [that] there was sufficient evidence of causation to go to a jury," "the law-of-the-case doctrine applie[d] to the issue of causation," and "[t]he trial court [on remand] erred by holding that defendant could seek summary disposition regarding causation") (citations omitted).

The "doctrine should not be invoked to preclude appellate review of a contested question of law that was presumed but not decided against a party in an interlocutory appeal if doing so would deprive the party of their right to appeal an unfavorable trial court decision on that issue," because "the goal of promoting consistency in judgments would not be furthered by application" of the doctrine under such circumstances. *Rott v Rott*, 508 Mich 274, 288, 288 n 1 (2021) (noting the "ruling should not be read as requiring judicial review of an issue that a party waived or conceded before filing its appeal by right").

The law of the case doctrine does not apply to decisions of the trial courts. *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 52-53 (2005) (trial court possessed unrestricted discretion in reviewing prior decisions made by the court). The doctrine also does not apply to arbitration proceedings. *Cipriano v Cipriano*, 289 Mich App 361, 375 (2010).

A party's assertion that an appellate court's prior decision was wrong "is not sufficient [reason] to justify ignoring the law-of-the-case doctrine[.]" *Ingham Co*, 329 Mich App at 304. However, "in criminal cases, a trial court retains the power to grant a new trial at any time where 'justice has not been done.'" *People v Herrera (On Remand)*, 204 Mich App 333, 340 (1994), quoting MCL 770.1. "[I]n criminal cases the law of the case doctrine does not automatically doom the defendant's arguments or automatically render them frivolous and worthy of sanctions." *Herrera*, 204 Mich App at 341.

Under the law of the case doctrine, "the trial court may not take action that is inconsistent with the judgment of [the Court of Appeals]," and "'[w]here the trial court misapprehends the law to be applied, an abuse of discretion occurs.'" *Augustine v Allstate Ins Co*, 292 Mich App 408, 425 (2011), quoting *Bynum v ESAB Group, Inc*, 467 Mich 280, 283 (2002) (trial court abused its discretion where it misapprehended the law to be applied, its action was inconsistent with the Court of Appeals' remand directive, and it failed to properly apply caselaw as explicitly directed by the Court of Appeals).[16]

Standard of Review. Whether the law of the case doctrine applies is a question of law subject to de novo review. *Ashker*, 245 Mich App at 13.

1.4 Precedent

A. Vertical Stare Decisis in the Context of Legislative Amendments

"The doctrine of vertical stare decisis . . . is the doctrine that a court must strictly follow decisions handed down by higher courts within the same jurisdiction." *In re AGD*, 327 Mich App 332, 339 (2019) (punctuation marks, quotation marks, and citation omitted). Where the Legislature amends a statutory provision, the Michigan Court of Appeals "remains bound to follow the Supreme Court's interpretation of [the] since-amended statute if the intervening amendment merely '*undermined*' the foundations of the Supreme Court's prior decision, but not if the intervening amendment '*clearly* . . . superseded' the Supreme Court's interpretation." *Id*. at 341. Where the "Legislature has entirely repealed or amended a statute to expressly repudiate a court decision, . . . lower courts have the power to make decisions without being bound by prior cases

[16] For discussion of the "rule of mandate," which is similar to, but distinct from, the law of the case doctrine, and which requires a lower court to strictly comply with the scope of an appellate remand order, see Section 1.5(B).

that were decided under the now-repudiated previous positive law." *Id*. at 341, quoting *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191 n 32 (2016). However, "when the operative statutory language interpreted by the Supreme Court in the previous case remains the same after amendment, the intervening amendment of the statute does not clearly overrule or supersede the Supreme Court's prior interpretation." *In re AGD*, 327 Mich App at 341.[17]

B. Michigan Supreme Court

Decisions. A Supreme Court decision is controlling if it is the decision of a majority of the justices who were sitting on the case. *Negri v Slotkin*, 397 Mich 105, 110 (1976). "'Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation[.]" *Id*. at 109.

Orders. Michigan Supreme Court orders "that include a decision with an understandable rationale establish binding precedent." *People v Giovannini*, 271 Mich App 409, 414 (2006). Furthermore, if a Michigan Supreme Court order "can be understood as adopting the reasoning of [a] dissenting opinion from [the Court of Appeals], . . . that dissent consequently constitutes binding precedent despite originally having been unpublished and not binding pursuant to MCR 7.215(C)(1)." *Tyra v Organ Procurement Agency of Mich*, 302 Mich App 208, 219 (2013), overruled in part on other grounds 498 Mich 68, 74 (2015).[18]

C. Michigan Court of Appeals

"A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). "The filing of an application for leave to appeal in the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." *Id*.

"An unpublished opinion [of the Court of Appeals] is not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). However, if a Michigan Supreme Court order "can be understood as adopting the reasoning of [a] dissenting opinion from [the Court of Appeals], . . . that dissent consequently constitutes binding precedent despite originally having been

[17]See Section 1.7(D) for information on the retroactivity of amended statutes.

[18]For more information on the precedential value of an opinion with negative subsequent history, see our note.

unpublished and not binding pursuant to MCR 7.215(C)(1)." *Tyra v Organ Procurement Agency of Mich*, 302 Mich App 208, 219 (2013), overruled in part on other grounds 498 Mich 68, 74 (2015)[19].

"A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule." MCR 7.215(J)(1).

"[W]hen the relevant language of a statute is amended, future panels are bound to hold that MCR 7.215(J) does not require them to adhere to earlier opinions that interpreted the pre-amendment version of the statute." *People v Williams*, 298 Mich App 121, 126 (2012), overruled in part on other grounds by *People v White*, 501 Mich 160, 164 (2017).[20]

D. Circuit Court

A circuit court is not bound by the decision of another circuit court. *People v Hunt*, 171 Mich App 174, 180 (1988).

E. United States Supreme Court

"[S]tate courts are bound by United States Supreme Court decisions construing federal law[.]" *People v Gillam*, 479 Mich 253, 261 (2007). However, a United States Supreme Court decision that is "'based on federal evidentiary grounds,' . . . is not binding on [state courts]." *People v Clary*, 494 Mich 260, 271 n 7 (2013), quoting *Jenkins v Anderson*, 447 US 231, 237 n 4 (1980).

"A plurality opinion of the United States Supreme Court . . . is not binding precedent." *People v Beasley*, 239 Mich App 548, 559 (2000).

F. Sixth Circuit Court of Appeals

State courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts "are free to follow or reject their authority." *People v Gillam*, 479 Mich 253, 261 (2007).

---

[19]For more information on the precedential value of an opinion with negative subsequent history, see our note. See Section 1.4(A) for information on vertical stare decisis.

[20]For more information on the precedential value of an opinion with negative subsequent history, see our note. See Section 1.7(D) for information on the retroactivity of amended statutes.

G. Attorney General

An attorney general's opinion is not binding authority. *People v Kildow*, 99 Mich App 446, 449 (1980); however, it can constitute persuasive authority. *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 398 (2008).

H. Dicta

Obiter dicta means "any statements and comments in an opinion concerning some rule of law or debated legal proposition not necessarily involved nor essential to determination of the case[.]" *People v Case*, 220 Mich 379, 382-383 (1922). However, "if a court intentionally addresses and decides an issue that is germane to the controversy in the case, the statement is not dictum even if the issue was not decisive." *People v Ogilvie*, 341 Mich App 28, 40 n 8 (2022) (citation omitted). "[O]biter dicta lacks the force of an adjudication and is not binding under the principle of stare decisis." *People v Borchard-Ruhland*, 460 Mich 278, 286 n 4 (1999).[21]

I. Retroactivity of Judicial Decisions[22]

"[T]he general rule is that judicial decisions are to be given complete retroactive effect." *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 240 (1986). "[P]rospective application has generally been limited to decisions which overrule clear and uncontradicted case law." *Id.* Moreover, "cases that properly interpret statutes, even if prior caselaw had held differently, 'restore[] legitimacy to the law' and, thus, are 'not a declaration of a new rule, but . . . a vindication of controlling legal authority[.]'" *Richard v Schneiderman & Sherman, PC*, 294 Mich App 37, 40 (2011), quoting *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 222 (2007) and vacated on other grounds 490 Mich 1001 (2012) (alterations in original).[23]

"With respect to criminal matters, both the United States Supreme Court and the Michigan Supreme Court consider three factors to determine whether a law should be applied retroactively or prospectively: '(1) the purpose of the new rule, (2) the general reliance on the old rule, and (3) the effect on the administration of justice.'" *People v Parker*, 267 Mich App 319, 326 (2005), quoting *Lincoln v Gen Motors Corp*, 231 Mich App 262, 309 (1998) (WHITBECK, P.J., concurring). "Before applying these factors, . . . the decision in

[21]See Section 1.4(A) for information on vertical stare decisis.

[22]See Section 1.7(D) for information on the retroactivity of statutes.

[23]For more information on the precedential value of an opinion with negative subsequent history, see our note.

question must satisfy a threshold criterion: namely, that 'the decision clearly establish[es] a new principle of law[.]'" *Parker*, 267 Mich App at 326-327, quoting *Lincoln*, 231 Mich App at 310 (alterations in original). Prospective application of a holding is appropriate when it decides an issue of first impression and the resolution of the issue was not clearly foreshadowed, or when it overrules settled precedent. *Parker*, 267 Mich App at 327. See Section 1.4(J) for more information on issues of first impression.

A defendant's right to due process may be violated when "'[t]he retroactive application of an unforeseeable interpretation of a criminal statute'" works to the defendant's detriment. *People v Johnson*, 302 Mich App 450, 464 (2013), quoting *People v Brown*, 239 Mich App 735, 750 (2000) (alterations in original). "[D]ue process is violated when the retroactive application of a judicial decision acts or operates as an ex post facto law[.]" *Johnson*, 302 Mich App at 464-465. However, a defendant is not "deprived of 'due process of law in the sense of fair warning that his contemplated conduct constitutes a crime'" when judicial interpretation of an applicable statute does not have "the effect of criminalizing previously innocent conduct." *Id*. at 465, quoting *Bouie v City of Columbia*, 378 US 347, 355 (1964) (emphasis omitted).

"In *Teague v Lane*, 489 US 288 (1989) . . ., the United States Supreme Court set forth the federal standard for determining whether a rule regarding criminal procedure should be applied retroactively to cases in which a defendant's conviction has become final." *People v Maxson*, 482 Mich 385, 388 (2008). "*Teague* established the 'general rule' that 'new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.'" *Maxson*, 482 Mich at 388, quoting *Teague*, 489 US at 310.

There are two exceptions to the general retroactivity bar set forth in *Teague*: "'courts must give retroactive effect to new substantive rules of constitutional law,'" and "'courts must give retroactive effect to new watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.'" *People v Barnes*, 502 Mich 265, 269 (2018), quoting *Montgomery v Louisiana*, 577 US 190, 198 (2016) (additional quotation marks and citations omitted).

J. Lack of Precedent - Case of First Impression

A *case of first impression* is "'[a] case that presents the court with an issue of law that has not previously been decided by any controlling legal authority *in that jurisdiction.*'" *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 368 (2019), quoting *Black's Law*

Dictionary (11th ed) (finding that an issue remains one of first impression where it has only been addressed by unpublished decisions).

1.5 Remand[24]

A. Authority to Remand

Remanding for additional evidence. "The Court of Appeals may, at any time, in addition to its general powers, in its discretion and on the terms it deems just . . . remand the case to allow additional evidence to be taken[.]" MCR 7.216(A)(5).

Motion to remand. "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 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." MCR 7.211(C)(1)(a).

B. Process Upon Remand

1. Jurisdiction

If a motion to remand is filed, all further proceedings are stayed in the Court of Appeals "until the motion is denied or the trial court proceedings are completed, unless the Court of Appeals orders otherwise." MCR 7.211(C)(1)(d).

2. Scope of Remand Order and Rule of Mandate

"On remand, the trial court may consider and decide any matters left open by the appellate court, and is free to make any order or direction in further progress of the case, not inconsistent with the decision of the appellate court, as to any question not presented or settled by such decision." *People v Kennedy*, 384 Mich 339, 343 (1971).

[24] This section discusses remand in the context of the Court of Appeals remanding to a trial court. Note, though, that a circuit court acting as an appellate court may remand the case to the district court pursuant to MCR 7.112 and MCR 7.216(A)(5), and a circuit court acting as an appellate court may receive a motion to remand pursuant to MCR 7.110 and MCR 7.211(C). Because the circuit court appeals court rules (subchapter 7.100) refer to the Court of Appeals court rules (subchapter 7.200), information in this section may be instructive to a circuit court sitting as an appellate court.

"When an appellate court remands a case with specific instructions, it is improper for a lower court to exceed the scope of the order." *People v Russell*, 297 Mich App 707, 714 (2012). The rule of mandate "embodies the well-accepted principle . . . that a lower court must strictly comply with, and may not exceed the scope of, a remand order." *Int'l Business Machines Corp v Dep't of Treasury*, 316 Mich App 346, 352-353 (2016). "The rule provides that any [lower] court that has received the mandate of an appellate court cannot vary or examine that mandate for any purpose other than executing it," and although the lower court may "decide anything not foreclosed by the mandate, . . . [it] commits "jurisdictional error" if it takes actions that contradict the mandate." *Id*. (quotation marks and citations omitted) (noting that "'[t]he rule of mandate is similar to, but broader than, the law of the case doctrine,'" "which is a discretionary doctrine that expresses the general practice of the courts and is not a limit on the power of the courts"[25]). Accordingly, where the Michigan Supreme Court reversed the decisions of the lower courts in favor of the defendant and remanded to the Court of Claims for entry of an order granting summary disposition in favor of the plaintiff, the Court of Claims lacked authority, on remand, to grant judgment in favor of the defendant on the basis of an intervening change in the law. *Id*. at 349-353 (noting that "[t]he Court of Claims was simply to perform the nondiscretionary, ministerial task of entering judgment in favor of [the plaintiff]," and concluding that it "erred by taking an action that contradicted the mandate, effectively exceeding the remand's jurisdictional scope").

See Section 1.2(C) for information on expanding the record on remand.

1.6 Standard of Review

A. Generally

The standard of review is one of the initial concerns in deciding any appeal. See MCR 7.111(B); MCR 7.212(C)(7).

[25]See Section 1.3(C) for more information on the law of the case doctrine.

Committee Tips:

The standard of review reflects the level of deference an appellate court gives to a decision of the lower court.

Generally, the standard of review on appeal will be:

- *de novo for questions of law;*
- *clearly erroneous for determinations of fact; and*
- *abuse of discretion for application of the law to the facts.*

B. De Novo

Questions of law are reviewed de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275 (2008); *People v Sierb*, 456 Mich 519, 522 (1998). Questions of law include the interpretation of statutes, court rules, and constitutional provisions. *Estes v Titus*, 481 Mich 573, 578-579 (2008); *In re Carey*, 241 Mich App 222, 226 (2000).

C. Clear Error

A lower court's findings of fact are reviewed for clear error. MCR 2.613(C). See also *Walters v Snyder*, 239 Mich App 453, 456 (2000). "In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Lanzo Constr Co*, 272 Mich App 470, 473 (2006).

D. Abuse of Discretion

Committee Tips:

Many decisions made by a trial judge are discretionary and are reviewed for an abuse of discretion.

It is prudent for a judge to recognize his or her discretion when making these types of decisions.

"At its core, an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269 (2003). "An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside this principled range of outcomes." *Id*. See also *Maldonado v Ford Motor Co*, 476 Mich 372, 388 (2006), which adopted the *Babcock* Court's articulation of the abuse of discretion standard as the "default standard." However, "by characterizing the 'principled outcomes' standard as the default standard, *Maldonado* recognized that another formulation could exist. Accordingly, a default abuse of discretion standard of review is an assumed or assigned standard of review unless the law instructs otherwise." *Shulick v Richards*, 273 Mich App 320, 324-325 (2006) (finding that the Michigan Supreme court has "instructed otherwise" with respect to child custody cases in *Fletcher v Fletcher*, 447 Mich 871 (1994)).

E. Harmless Error

"An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." MCR 2.613(A).

Similarly, "[n]o judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." MCL 769.26. See also MRE 103(a).

An appellate court "err[s] by applying harmless error analysis without first determining whether [a] trial court's order . . . was erroneous." *People v Muhammad*, 498 Mich 909, 909 (2015).

"A constitutional error does not automatically require reversal. . . . [M]ost constitutional errors can be harmless." *People v Solomon*, 220 Mich App 527, 535 (1996). "Violations of the

constitution that are subject to a harmless-error analysis are errors that 'occurred during the presentation of the case to the jury, and that may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.'" *Id*. at 536, quoting *Arizona v Fulminante*, 499 US 279, 307-308 (1991). See Section 1.6(F) for more information on constitutional errors.

F. Which Standard of Review Should Be Employed?

"[T]he standard for reviewing error on appeal depends upon two factors: first, whether the error is constitutional or nonconstitutional, and second, whether the error is preserved or forfeited." *People v Carines*, 460 Mich 750, 773 (1999).[26] Forfeiture is the failure to timely assert a right, whereas, waiver is the intentional relinquishment or abandonment of a known right. *Id.* at 762 n 7.

"Michigan generally follows the 'raise or waive' rule of appellate review." *Wells v State Farm Fire & Cas Co*, ___ Mich ___, ___ (2022) (quotation marks and citation omitted). "Therefore, a litigant preserves an issue for appellate review by raising it in the trial court . . . despite the trial court's failure to rule on it." *Id*. at ___ (quotation marks, citation, and alteration omitted). "[I]ssue preservation requirements only impose a general prohibition against raising an issue for the first time on appeal." *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227 (2020). "[A] party also need not preserve an objection to 'a finding or decision' made by the trial court, MCR 2.517(A)(7), or, at least under some circumstances, other acts or omissions undertaken sua sponte by a court." *Glasker-Davis*, 333 Mich App at 227-228. "[S]o long as the issue itself is not novel, a party is generally free to make a more sophisticated or fully-developed argument on appeal than was made in the trial court." *Id*. at 228.

"'What suffices for waiver depends on the nature of the right at issue.'" *People v Vaughn*, 491 Mich 642, 655 (2012), quoting *New York v Hill*, 528 US 110, 114 (2000). Certain constitutional rights, such as the right to counsel and the right to plead not guilty, "fall[] within [an] exceedingly narrow class of rights that are placed outside the general preservation requirements and require a personal and informed waiver." *Vaughn*, 491 Mich at 654-658 (holding that, "[a]lthough the violation of the right to a public trial is among the limited class of constitutional violations that are structural in

[26] "[T]he plain-error rule of *Carines* does not apply to civil cases and it is error to do so as it contradicts established Supreme Court precedent, which controls." *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg LLC*, ___ Mich App ___, ___ (2023) (noting "[t]his holding does not apply to termination of parental rights cases, which present different constitutional considerations").

nature," it "'does not necessarily affect qualitatively the guilt-determining process or the defendant's ability to participate in the process,'" and therefore remains subject to the *Carines*[27] forfeiture analysis) (citation omitted). See also *People v Davis*, 331 Mich App 699, 712 (2020) (although "[c]ounsel strategically and intentionally relinquished or abandoned the right to a public trial in order to vastly reduce the number of supporters for the victim in the courtroom in an effort to mask the fact that no one was there for defendant," counsel "did not *affirmatively* indicate an approval of the court's decision" to close the courtroom; accordingly, the Court reviewed the matter under the plain-error test).

1. Preserved Constitutional Error

"If the error is not a structural defect that defies harmless error analysis, the reviewing court must determine whether the beneficiary of the error has established that it is harmless beyond a reasonable doubt." *People v Carines*, 460 Mich 750, 774 (1999).[28] "A constitutional error is harmless if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *People v Shepherd*, 472 Mich 343, 347 (2005) (quotation marks, alteration, and citations omitted). If the error is structural, automatic reversal is required. *People v Anderson (After Remand)*, 446 Mich 392, 404-405 (1994).[29] Structural errors include "the total deprivation of the right to trial counsel, an impartial judge, excluding grand jury members who are the same race as defendant, denial of the right to self-representation, denial of the right to a public trial, and a constitutionally improper reasonable doubt instruction." *Id*. at 405.

2. Preserved Nonconstitutional Error

"The defendant has the burden of establishing a miscarriage of justice under a 'more probable than not' standard." *People v*

---

[27] *People v Carines*, 460 Mich 750 (1999). See Section 1.6(F)(1), Section 1.6(F)(2), and Section 1.6(F)(3) for further discussion of the *Carines* case.

[28] See Section 1.6(E) for more information on harmless error.

[29] See, however, *Weaver v Massachusetts*, 582 US ___, ___ (2017) (holding that although "a violation of the right to a public trial is a structural error," "when a defendant [first] raises [an unpreserved] public-trial violation via an ineffective-assistance-of-counsel claim, *Strickland*[*v Washington*, 466 US 668 (1984),] prejudice is not shown automatically[; i]nstead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or . . . to show that the particular public-trial violation was so serious as to render his or her trial fundamentally unfair"). See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 3*, Chapter 1, for a discussion of ineffective assistance of counsel.

Carines, 460 Mich 750, 774 (1999), quoting *People v Lukity*, 460 Mich 484 (1999).

3. Unpreserved Constitutional or Nonconstitutional Error

"Review of an unpreserved error is limited to determining whether a plain error occurred that affected substantial rights." *Rivette v Rose-Molina*, 278 Mich App 327, 328 (2008). A plain-error analysis applies to both constitutional and nonconstitutional errors that are not preserved for appellate review. *People v Carines*, 460 Mich 750, 774 (1999).

"Appellate courts may grant relief for unpreserved errors if the proponent of the error can satisfy the 'plain error' standard, which has four parts (the '*Carines* prongs'). The first three *Carines* prongs require establishing that (1) an error occurred, (2) the error was 'plain'—i.e., clear or obvious, and (3) the error affected substantial rights—i.e., the outcome of the lower court proceedings was affected." *People v Cain*, 498 Mich 108, 116 (2015). "If the first three elements are satisfied, the fourth *Carines* prong calls upon an appellate court to 'exercise its discretion in deciding whether to reverse,' and (4) relief is warranted only when the court determines that the plain, forfeited error resulted in the conviction of an actually innocent defendant or seriously affect[ed] the fairness, integrity or public reputation of [the] judicial proceedings . . . ." *Id*. (quotation marks and citation omitted; first alteration in original)." See also MRE 103(e) ("A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.")

When reviewing an unpreserved claim of error, "[c]ourt[s] should . . . engage[] in a fact-intensive and case-specific inquiry under the fourth *Carines* prong to assess whether, in light of any 'countervailing factors' on the record, leaving the error unremedied would constitute a miscarriage of justice, i.e., whether the fairness, integrity, or public reputation of the proceedings was seriously affected." *Cain*, 498 Mich at 128 (internal citation omitted). "Reversal is required only in the most serious cases, those in which the error contributed to the conviction of an actually innocent person or otherwise undermined the fairness and integrity of the process to such a degree that an appellate court cannot countenance that error." *Id*. at 119.

"A constitutional challenge to legislation that is not raised and addressed in the record below is not preserved for appellate

> review. . . . However, [an appellate court] may address unpreserved constitutional questions where no question of fact exists and the interest of justice and judicial economy so dictate." *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 538 (2003).
>
> "[A] defendant's inability to satisfy the [*Carines*] plain-error standard in connection with a specific trial court error does not necessarily mean that he or she cannot meet the ineffective-assistance standard regarding counsel's alleged deficient performance relating to that same error."[30] *People v Randolph*, 502 Mich 1, 22 (2018). "Courts must independently analyze each claim, even if the subject of a defendant's claim relates to the same error." *Id*.

G. Right Result—Wrong Reason

The reviewing court need not reverse a lower court's ruling if the lower court reached the correct result, albeit for the wrong reason. *Burise v City of Pontiac*, 282 Mich App 646, 652 n 3 (2009); *People v McLaughlin*, 258 Mich App 635, 652 n 7 (2003).

1.7 Statutory Construction and Interpretation

A. Generally

"The rules of statutory construction apply to both statutes and administrative rules." *Airgas Specialty Prod v Mich Occupational Safety and Health Admin*, ___ Mich App ___, ___ (2021) (quotation marks and citation omitted). The rules of statutory construction also apply to "provisions of a home rule city charter[.]" *Save Our Downtown v City of Traverse City*, ___ Mich App ___, ___ (2022).

"In the construction of the statutes of this state, the rules stated in sections [MCL 8.3a to MCL 8.3w] shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature." MCL 8.3. "All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a. MCL 8.5 provides for severability of a portion of an act found to be invalid by a court.

---

[30] See the Michigan Judicial Institute's *Criminal Proceedings Benchbook, Vol. 3*, Chapter 1, for more information on postjudgment motions and ineffective assistance of counsel.

The Michigan Penal Code contains its own rule of construction: "The rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed according to the fair import of their terms, to promote justice and to effect the objects of the law." MCL 750.2.

"When construing a statute, [a court's] primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute." *People v Hill*, 486 Mich 658, 667-668 (2010) (quotation marks and citation omitted). Courts must "construe a statute in light of the circumstances existing at the date of its enactment, not in light of subsequent developments. . . . The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted." *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 246-247, 258 (2005) (quotation marks and citations omitted) (holding that where the statute at issue did not define the term "loss," the court had to "ascertain the original meaning the word 'loss' had when the statute was enacted in 1912").[31]

"In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute, . . . [and] consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Shinholster v Annapolis Hosp*, 471 Mich 540, 549 (2004) (quotation marks and citations omitted). "A necessary corollary . . . is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 72 (2017) (quotation marks and citation omitted).

"A provision of law is ambiguous only if it irreconcilably conflict[s] with another provision or when it is *equally* susceptible to more than a single meaning." *In re Application of Indiana Mich Power Co for a Certificate of Necessity*, 498 Mich 881, 881 (2015) (alteration in original; quotation marks and citation omitted). See Section 1.7(B)(2) for more information on ambiguity.

Courts must "avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire and Cas Co v Old*

[31]See Section 1.7(B) for information on legislative history.

Republic Ins Co, 466 Mich 142, 146 (2002). A court "may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature." *Slis v Michigan*, 332 Mich App 312, 336 (2020).

"[U]ndefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art." *People v Thompson*, 477 Mich 146, 151 (2007). A lay dictionary may be consulted "when defining common words or phrases that lack a unique legal meaning." *Id*. at 151-152. "[I]t is best to consult a dictionary from the era in which the legislation was enacted." *In re Certified Question*, 499 Mich 477, 484-485 (2016). Additionally, in interpreting a word "as used in [a statute] 'according to the common and approved usage of the language,'" as required under MCL 8.3a, courts may consult the Corpus of Contemporary American English, which is "a tool that can aid in the discovery of 'how particular words or phrases are actually used in written or spoken English.'" *People v Harris*, 499 Mich 332, 347 (2016) (citation omitted).

When construing a statute that "was the result of a voter initiative, [the] goal is to ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself."*People v Kolanek*, 491 Mich 382, 397 (2012). "Initiative provisions are liberally construed to effectuate their purposes and facilitate rather than hamper the exercise of reserved rights by the people." *Save Our Downtown*, ___ Mich App at ___. "The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters." *Id*. at ___ (quotation marks and citation omitted). A court must presume "the voters intended the meaning plainly expressed in the initiative." *Id*. at ___.

B. Conflict, Ambiguity, and Rules of Statutory Construction

1. Conflict

Conflict Between Statute and Rule. "Generally, if a court rule conflicts with a statute, the court rule governs when the matter pertains to practice and procedure." *People v Watkins*, 277 Mich App 358, 363 (2007). "However, to the extent that the statute, as applied, addresses an issue of substantive law, the statute prevails." *Id.*

"[W]hen a statute and an administrative rule conflict, the statute necessarily controls." *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 366 (2016). However, "it is equally well settled . . . that agencies are bound to follow their own duly promulgated rules." *Id*. at 366-367 (finding that the administrative law judge did not abuse his

discretion in following the administrative agency's own rules where there was undeniable tension between the court rule and the agency rule, and the agency's "legal position was sufficiently grounded in law as to have at least some arguable merit").

Conflict Between Statute and Local Ordinance. "[A]n ordinance is preempted if it is in direct conflict with the state statutory scheme[.]" *RPF Oil Co v Genesee Co*, 330 Mich App 533, 538 (2019) (quotation marks and citation omitted). "A local regulation directly conflicts with a state statute if the regulation permits what the statute prohibits or prohibits what the statute permits." *Id*. at 538-539 (quotation marks and citation omitted) ("[a] county–like a city–may not enact an ordinance that conflicts with state law"). "State law may preempt a local government's law either through a direct conflict or through occupying the field of regulation which the municipality seeks to enter." *Id*. at 538 (quotation marks and citation omitted). "[A]n ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the statute." *DeRuiter v Byron Twp*, 505 Mich 130, 147 (2020) (holding that a local ordinance was not preempted by statute where restrictions imposed by the ordinance "add[ed] to and complement[ed] the limitations imposed by the [statute]" and the restrictions did not effectively prohibit the activity permitted by the statute).

2. Ambiguity

Doctrine of *In Pari Materia*. Statutory language, unambiguous on its face, "can be rendered ambiguous through its interaction with and its relation to other statutes." *People v Valentin*, 457 Mich 1, 6 (1998) (quotation marks and citation omitted). "Under the doctrine [of *in pari materia*], statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." *People v Mazur*, 497 Mich 302, 313 (2015). However, "[a]n act that incidentally refers to the same subject is not *in pari materia* if its scope and aim are distinct and unconnected." *Id*. "When there is a conflict between statutes that are read [*in pari materia*], the more recent and more specific statute controls over the older and more general statute." *O'Connell v Dir of Elections*, 316 Mich App 91, 99 (2016) (quotation marks and citation omitted). See also *Reynolds v Hasbany MD PLLC*, 323 Mich App 426, 433-434 (2018) (finding that where two statutes contain jurisdictional conflict, the more specific statute takes precedence over the more general statute). However, this presumption that "the more recent and

more specific statute will control" "[does] not apply unless . . . seemingly conflicting statutes are in fact ambiguous." *People v Hall*, 499 Mich 446, 458, 464 (2016).

"The application of *in pari materia* is not necessarily conditioned on a finding of ambiguity." *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 73 n 26 (2017) (holding that the Court of Appeals "erred in its narrow utilization of the *in pari materia* canon of construction," and noting that in *Int'l Business Machines Corp v Dep't of Treasury*, 496 Mich 642, 651-653 (2014) (plurality opinion), "the [Michigan Supreme] Court suggested the application of *in pari materia* to resolve a patent conflict between two unambiguous statutes").

3. Rules of Statutory Construction

Doctrine of *Noscitur a Sociis*. "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: [i]t is known from its associates. . . . This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." *In re LaFrance*, 306 Mich App 713, 725 (2014) ("conclud[ing] that [a] subparagraph [of a statute] must be interpreted in the context of its sister subparagraphs") (alteration in original; quotation marks and citations omitted).

***Expressio Unius est Exclusio Alterius* Canon.** "[T]he canon *expressio unius est exclusio alterius*, which states that the express mention of one thing implies the exclusion of other similar things, . . . [should not be applied] to overcome the plain meaning of the words [of a statute]." *People v Garrison*, 495 Mich 362, 372 (2014).

Last Antecedent Rule. "[T]he last antecedent rule[is] a rule of statutory construction that provides that 'a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation.'" *Hardaway v Wayne Co*, 494 Mich 423, 427 (2013), quoting *Stanton v Battle Creek*, 466 Mich 611, 616 (2002). "[T]he last antecedent rule should not be applied blindly"; for example, it should not be applied if it would render a portion of the statute redundant. *Hardaway*, 494 Mich at 428-429. "Moreover, the last antecedent rule does not mandate a construction based on the shortest antecedent that is grammatically feasible; when applying the last antecedent rule, a court should first consider what are the logical metes and bounds of the 'last' antecedent." *Id*. at 425, 427-429, 429 n 10 (noting that "[t]he last antecedent is the last *word, phrase, or*

clause that can be made an antecedent *without impairing the meaning of the sentence*," and holding that "the Court of Appeals . . . improperly applied the last antecedent rule" in construing the unambiguous text of the defendant's resolution where application of the rule "[took] what [was] grammatically an essential clause . . . and effectively render[ed] it a nonessential clause") (citations omitted).

Legislative Silence. In general, "'courts presume a different intent when a legislature omits words used in a *prior* statute on a similar subject.'" *People v English*, 317 Mich App 607, 616 (2016) (citation omitted). This rule of construction "is only applicable when the 'related statute' is a prior enactment." *Id.*; see also *People v Watkins*, 491 Mich 450, 482 (2012) (noting that "[i]t is one thing to infer legislative intent through silence in a simultaneous or subsequent enactment, but quite another to infer legislative intent through silence in an earlier enactment, which is only 'silent' by virtue of the subsequent enactment"); *People v Mullins*, 322 Mich App 151, 165-166 (2017) (noting that "[t]here are likely many reasons—policy and nonpolicy alike—why the Legislature would choose to amend one section of law without at the same time amending a related section, including interest, resources, politics, attention, etc.").

Legislative History. "[R]esort[ing] to legislative history of any form is proper *only* where a genuine ambiguity exists in the statute. Legislative history cannot be used to create an ambiguity where one does not otherwise exist." *In re Certified Question*, 468 Mich 109, 115 n 5 (2003) (the Court also "emphasize[d] that not all legislative history is of equal value, a fact that results in varying degrees of quality and utility of legislative history").

Revival. "[R]evival occurs when an amendment of a statute is repealed and the former version of the statute is revived by the repeal of the amendatory provision. Revival also applies when, instead of a legislative repeal of a statutory amendment, the courts find the amendment unconstitutional. When the amendment is constitutionally invalid, the statute behaves as if the amendment never existed." *People v Betts*, 507 Mich 527, 571 (2021) (citation omitted). "Michigan has a legislative preference against revival, MCL 8.4, but it refers only to the legislative context of revival wherein the Legislature has acted to repeal an amendatory provision, not necessarily to the context wherein the courts have struck a provision down as unconstitutional." *Betts*, 507 Mich at 533, 572-574 (finding revival was an inappropriate tool to remedy a constitutional violation regarding a 2011 amendment to the Sex Offenders Registration Act, which has since been amended by the

Legislature several times, "altering both the nature of the registry and the requirements imposed by it").

Rule of Lenity. "The 'rule of lenity' provides that courts should mitigate punishment when the punishment in a criminal statute is unclear." *People v Denio*, 454 Mich 691, 699 (1997). "The rule of lenity applies only if the statute is ambiguous or '"in absence of any firm indication of legislative intent."'" *People v Johnson*, 302 Mich App 450, 462 (2013), quoting *Denio*, 454 Mich at 700 n 12 (holding that "the rule of lenity does not apply when construing the Public Health Code[, MCL 333.1101 *et seq*.,] because the Legislature mandated in MCL 333.1111(2) that the code's provisions are to be 'liberally construed for the protection of the health, safety, and welfare of the people of this state'") (additional citations omitted). See also *Hall*, 499 Mich at 458, 464 (noting that the rule of lenity is a "tie-breaking canon[] of statutory interpretation" that "[does] not apply unless . . . seemingly conflicting statutes are in fact ambiguous").

In determining "whether the Legislature intended a single criminal transaction to give rise to multiple convictions," if "no conclusive evidence of legislative intent can be discerned, the rule of lenity requires the conclusion that separate punishments were not intended." *People v Perry*, 317 Mich App 589, 602, 604 (2016) (citations and quotation marks omitted). However, if there is a "clear indication of legislative intent and absence of ambiguity, the rule of lenity does not apply." *Id*. at 605-606.

C. Statutory Constitutional Challenges

Statutes are presumed to be constitutional and must be construed as constitutional unless it is readily apparent that they are unconstitutional. *People v Rogers*, 249 Mich App 77, 94 (2001). "A party challenging the constitutionality of a statute has the burden of proving its unconstitutionality," and "[a] party challenging the facial validity of a statute must show that no circumstances exist under which it would be valid." *People v Sands*, 261 Mich App 158, 160-161 (2004). See also *League of Women Voters of Mich v Secretary of State*, 331 Mich App 1 (2020).

"When a dispute arises regarding whether a properly enacted statute violates the Constitution, that dispute must be resolved by the courts, not by a single individual within the executive branch." *League of Women Voters of Mich*, 331 Mich App at 12 n 5 (noting the Legislature and the Governor do have a role "to play in resolving such a dispute if they choose to do so by repealing or amending the

statute at issue"). "[J]ust as a legislative body cannot legitimately enact a statute that is repugnant to the Constitution, nor can an executive-branch official effectively declare a properly enacted law to be void by simply conceding the point in litigation." *Id*. at 11.

"Generally, a criminal defendant may not defend on the basis that the charging statute is unconstitutionally vague or overbroad where the defendant's conduct is fairly within the constitutional scope of the statute." *Rogers*, 249 Mich App at 95. "In determining whether a statute is unconstitutionally vague or overbroad, a reviewing court should consider the entire text of the statute and any judicial constructions of the statute." *Id*. at 94.

1. Vagueness

A statute may be challenged for vagueness on the following three grounds:

> (1) that it is overbroad and impinges on First Amendment freedoms;
>
> (2) that it does not provide fair notice of the proscribed conduct; or
>
> (3) that it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether the law has been violated. *People v Rogers*, 249 Mich App 77, 94-95 (2001).

"To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application. For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *People v Sands*, 261 Mich App 158, 161 (2004) (internal citations omitted). "A statute is not vague if the meaning of the words in controversy can be fairly ascertained by referring to their generally accepted meaning." *People v Harris*, 495 Mich 120, 138 (2014).

"When a defendant's vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to

impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in [the] case." *People v Newton*, 257 Mich App 61, 66 (2003).

2. Overbreadth

"Facial overbreadth challenges to statutes have been entertained where a statute (1) attempts to regulate by its terms only spoken words, (2) attempts to regulate the time, place, and manner of expressive conduct, or (3) requires official approval by local functionaries with standardless, discretionary power.

* * *

A statute may be saved from being found to be facially invalid on overbreadth grounds where it has been or could be afforded a narrow and limiting construction by state courts or if the unconstitutionally overbroad part of the statute can be severed." *People v Rogers*, 249 Mich App 77, 95-96 (2001).

D. Retroactivity of Statutes[32]

"Whether a statute applies retroactively presents a question of statutory construction[.]" *People v Conyer*, 281 Mich App 526, 528 (2008). "The intent of the Legislature governs the determination whether a statute is to be applied prospectively or retroactively." *Id*. at 529. "A statute is presumed to operate prospectively 'unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect.'" *Id*., quoting *People v Russo*, 439 Mich 584, 594 (1992). "When determining whether a statute should be applied retroactively or prospectively, the primary and overriding rule is that legislative intent governs. All other rules of construction and operation are subservient to this principle." *Buhl v Oak Park*, 507 Mich 236, 243-244 (2021) (quotation marks and citation omitted).

"Amendments of statutes are generally presumed to operate prospectively unless the Legislature clearly manifests a contrary intent." *Conyer*, 281 Mich App at 529 (quotation marks, alteration, and citation omitted). "However, an exception to this general rule is recognized if a statute is remedial or procedural in nature." *Id*. "A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights." *Id*. "A statute that affects or creates substantive

[32] See Section 1.4(I) for information on retroactivity of judicial decisions.

rights is not remedial, and is not given retroactive effect, absent clear indication of legislative intent otherwise." *Id*. "[A] statute or amendment may not be applied retroactively if doing so would take away or impair vested rights acquired under existing laws, or create a new obligation and impose a new duty, or attach a new disability with respect to transactions or considerations already past. *Buhl*, 507 Mich at 246 (quotation marks, alterations, and citation omitted). "Conversely, then, a newly enacted statue or amendment should not be retroactively applied if doing so would relieve a party of a substantive duty." *Id*. at 247.

When conducting an inquiry into the Legislature's intent, courts should consider the following framework:

> "'First, . . . consider whether there is specific language providing for retroactive application. Second, in some situations, a statute is not regarded as operating retroactively merely because it relates to an antecedent event. Third, in determining retroactivity, . . . keep in mind that retroactive laws impair vested rights acquired under existing laws or create new obligations or duties with respect to transactions or considerations already past. Finally, a remedial or procedural act not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute.'" *Buhl*, 507 Mich at 244, quoting *LaFontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26, 38-39 (2014).

E. Standard of Review

Issues of statutory interpretation are reviewed de novo. *People v Babcock*, 469 Mich 247, 253 (2003).

Chapter 2: Circuit Court Appeals

Part A: General Procedural Rules & Information

2.1. Appeals to Circuit Court 2-2

Part B: Types of Appeals

2.2 Administrative Appeals in General..... 2-24

2.3 Michigan Employment Security Act 2-27

2.4 Appeals from Michigan Civil Service Commission Decisions..... 2-29

2.5 Appeals From and Objections to Parole Board Decisions 2-29

2.6 Appeals from Agencies Governed by the Administrative Procedures Act..... 2-37

2.7 Motor Vehicle Code - Secretary of State..... 2-42

2.8 Appeals of Decisions Regarding Concealed Pistol Licenses—§ 28.425d 2-46

2.9 Appeals of Zoning Ordinance Determinations 2-48

2.10 Appeals from Agencies Not Governed by Another Rule 2-53

2.11 Appeals of Summary Proceedings..... 2-56

Part A: General Procedural Rules & Information

2.1 Appeals to Circuit Court

The rules in MCR 7.101 *et seq*. govern the procedure for appealing to the circuit court. MCR 7.101(A). The rules set out in subchapter 7.100 of the Michigan Court Rules "do not restrict or enlarge the appellate jurisdiction of the circuit court." MCR 7.101(B).

A circuit court judge may not "review[] on appeal, as a circuit judge, decisions that he rendered while acting as a district court judge." *People v Ward*, 501 Mich 949, 949 (2018).

A. Standing

"[A]n individual (or his professional corporation) directly, personally, and financially affected and bound by [a] district court's order . . . has 'standing' to challenge that order in a higher court. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 232, 237 (2013). "[I]t is appropriate to evaluate [the appellant's] ability to bring an appeal under [an] 'aggrieved party'[1] rubric, as it generally applies to any appeal." *Id*. at 239 (holding that, under former MCR 7.101(A),[2] a nonparty attorney retained by a court-appointed receiver was *aggrieved* by the district court's postjudgment order awarding the attorney less remuneration than he sought, and that he therefore had standing to appeal the fee award despite his failure to move for intervention in the underlying action), citing *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286 (2006).

In addition to satisfying the *aggrieved party* requirements, "an appellant must also demonstrate that the underlying controversy is justiciable." *Matthew R Abel, PC*, 302 Mich App at 240.

B. Exhaustion of Administrative Remedies

"[W]hen an administrative scheme of relief exists an individual must exhaust those remedies before a circuit court has jurisdiction.[3] The doctrine of exhaustion of administrative

---

[1] See Section 2.1(F)(1) for more information on the aggrieved party rubric as it relates to appeals of right.

[2] The Court noted that although "the preamendment court rules govern[ed the] case[, t]he fundamental legal principles governing appellate standing remain[ed] unaffected by changes in the language of the applicable court rules[under ADM 2010-19, effective May 1, 2012]." *Matthew R Abel, PC*, 302 Mich App at 238.

[3] See Section 2.1(C) for additional information on jurisdiction.

remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court.

"The failure to object to a proposal for decision waives any objections not raised." *Meier v Pub Sch Employees' Retirement Sys*, ___ Mich App ___, ___ (2022) (quotation marks and citation omitted). "The waiver extinguishes any error and precludes appellate review." *Id*. at ___. "It is not sufficient to generally raise issues concerning an [administrative law judge's] decision. A plaintiff must specifically identify alleged errors so that the agency has an opportunity to correct them." *Id*. at ___.

However, the doctrine of exhaustion of administrative remedies does not apply "where the administrative appellate body cannot provide the relief sought[.]" *Connell v Lima Twp*, 336 Mich App 263, 282 (2021) (quotation marks and citations omitted). "Furthermore, when local law makes no provision for an administrative appeal, a party is not barred from filing a lawsuit in circuit court because of failure to exhaust his administrative remedies." *Id*. In *Connell*, it was determined that the rezoning decision at issue involved a legislative act rather than an administrative or quasi-judicial act. *Id*. at 266. Thus, "plaintiffs were not required to exhaust administrative remedies . . . and the circuit court erred by granting summary disposition to defendants on [this] ground[]." *Id*.

C. Jurisdiction

Circuit court. Jurisdiction vests in the circuit court after a claim of appeal is filed or leave to appeal is granted. MCR 7.107; see also MCL 600.8342(2). However, a "circuit court lacks jurisdiction over an untimely claim of appeal" because the "time limit for filing an appeal in circuit court is jurisdictional[.]" *Zelasko v Bloomfield Twp*, ___ Mich App ___, ___ (2023) (citing MCR 7.104(A) and *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393-394 (2019)).

Trial court or agency. "The trial court or agency may not set aside or amend the judgment, order, or decision appealed except by circuit court order or as otherwise provided by law. In all other respects, the authority of the trial court or agency is governed by MCR 7.208(C) through [MCR 7.208(J)]." MCR 7.107.

For additional information on jurisdiction, see Section 2.1(F) regarding appeals of right and Section 2.1(G) regarding appeals by leave.

Committee Tip:

Typically, judges rely on clerical staff to monitor appeal deadlines. It is suggested courts provide training and/or develop a written manual setting forth timing requirements so staff can accurately monitor and appropriately process appeals cases in accordance with applicable court rules.

D. Venue

"Appeals from the district court shall be to the circuit court in the county in which the judgment is rendered." MCL 600.8342(1).

If the venue of a civil action is improper, the court must change venue if a defendant timely moves, MCR 2.223(A)(1), or the court may change venue on its own initiative, MCR 2.223(A)(2); however, a plaintiff may not file a motion for a change of venue under MCR 2.223(A), *Dawley v Hall*, 501 Mich 166, 169-170 (2018).

Administrative agencies. Appeals from decisions of agencies governed by the Administrative Procedures Act (APA) "shall be filed in the circuit court for the county where petitioner resides or has his or her principal place of business in this state, or in the circuit court for Ingham county." MCL 24.303(1). Similarly, an appeal may be filed in the county where the appellant resides or in the circuit court for Ingham county from "any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law[.]" MCL 600.631.[4]

On a motion of a party, in an appeal from an order or decision of a state board, commission, or agency authorized to promulgate rules or regulations, the court may order a change of venue for the convenience of the parties or attorneys.[5] MCR 2.222.

Criminal cases. "An appeal from an interlocutory judgment or order in a felony, misdemeanor, or ordinance violation may be

[4]See Section 2.6 for discussion of appeals from agencies governed by the Administrative Procedures Act and Section 2.10 for appeals from agencies not governed by another rule.

[5] See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 2, for more information on change of venue.

taken, in the manner provided by court rules, by application for leave to appeal to the same court of which a final judgment in that case would be appealable as a matter of right[.]" MCL 770.3(2).

Michigan Employment Security Act. Venue for appeals under the Michigan Employment Security Act is determined under MCL 421.38(1).[6] MCR 7.116(D). Under MCL 421.38(1), "[t]he circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant's place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission[.]"

Michigan Parole Board. "An application for leave to appeal a decision of the parole board may only be filed in the circuit court of the sentencing county under MCL 791.234(11)." MCR 7.118(D)(4).[7]

Motor Vehicle Code - Secretary of State. Reviews of license denial, suspension, revocation, or restriction are brought before the circuit court in the person's county of residence, or, if the denial or suspension was made pursuant to an arrest for failing to provide proof of insurance, knowingly providing false proof of insurance, or refusing to submit to a chemical test, in the county where the arrest was made. MCL 257.323(1).[8]

Concealed pistol licenses. An appeal of "the notice of statutory disqualification, the failure to provide a receipt[9], or the failure to issue [a] license" must be filed in the circuit court where the appellant lives. MCL 28.425d(1).[10] "Failure of the county clerk to reinstate a concealed piston license under MCL 28.428(2) or [MCL 28.428(6)] shall be considered a failure to issue a license under MCL 28.425d unless otherwise noted by statute." MCR 7.121(B).

E. Stay of Proceedings and Bond

A motion for bond or stay pending appeal must be decided by the trial court before it may be filed in the circuit court. MCR 7.108(A)(1). "The motion must include a copy of the trial court's

[6] See Section 2.3 for discussion of appeals involving the Michigan Employment Security Act.

[7] See Section 2.5 for discussion of appeals from the Michigan Parole Board.

[8] See Section 2.7 for discussion of appeals under the Motor Vehicle Code.

[9] See MCL 28.425b(1), MCL 28.425b(9), and MCL 28.425/(3).

[10] See Section 2.8 for discussion of appeals regarding concealed pistol licenses.

opinion and order and a copy of the transcript of the hearing, unless its production has been waived." *Id*. "Except as otherwise provided by rule or law, the circuit court may amend the amount of bond, order an additional or different bond and set the amount, or require different or additional sureties, . . . remand a bond matter to the trial court, . . . grant a stay of proceedings in the trial court or stay the effect or enforcement of any judgment or order of a trial court on terms the circuit court deems just." MCR 7.108(A)(2).

1. Civil Proceedings[11]

"Unless otherwise provided by rule, statute, or court order, an execution [in a civil action] may not issue and proceedings may not be taken to enforce an order or judgment until expiration of the time for taking an appeal of right." MCR 7.108(B)(1).

Filing an appeal will not stay execution in a civil action unless:

> (1) the appellant files a stay bond;
>
> (2) the trial court grants a stay with or without a bond under MCR 3.604(L) (party unable to give bond because of poverty), MCR 7.209(E)(2)(b) (stay ordered by court "as justice requires or as otherwise provided by statute"), or MCL 600.2605 (party unable to give bond because of poverty). MCR 7.108(B)(2).

The bond must:

> "(a) recite the names and designations of the parties and the judge in the trial court; identify the parties for whom and against whom judgment was entered; and state the amount of the judgment, including any costs, interest, attorney fees, and sanctions assessed;
>
> (b) contain the promises and conditions that the appellant will:
>
> > (*i*) diligently file and prosecute the appeal to decision taken from the judgment or order stayed, and will perform and satisfy the

[11] In a civil infraction proceeding, appeal bond and stay is controlled by MCR 4.101(H)(1). See MCR 7.108(D). In some agency appeals, a stay may be granted only under certain conditions. See MCR 7.119(E), MCR 7.120(D), MCR 7.122(A)(2), and MCR 7.123(E).

> judgment or order stayed if it is not set aside or reversed;
>
> (*ii*) perform or satisfy the judgment or order stayed if the appeal is dismissed;
>
> (*iii*) pay and satisfy any judgment or order entered and any costs assessed against the principal on the bond in the circuit court, Court of Appeals, or Supreme Court; and
>
> (*iv*) do any other act which is expressly required in the statute authorizing appeal or ordered by the court;
>
> (c) be executed by the appellant along with one or more sufficient sureties as required by MCR 3.604; and
>
> (d) include the conditions provided in [MCR 4.201(O)(4)[12]] if the appeal is from a judgment for the possession of land." MCR 7.108(B)(3).

A copy of the bond must be served on all parties as prescribed in MCR 2.107[13], and objections must be filed and served within seven days after service of the notice of bond. MCR 7.108(B)(4)(a)-(b). "Objections to the amount of the bond are governed by MCR 2.602(B)(3)," and "[o]bjections to the surety are governed by MCR 3.604(E)." MCR 7.108(B)(4)(b). Hearings under MCR 7.108 may be held by telephone conference as provided in MCR 2.402.[14] MCR 7.108(B)(4)(e).

"If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter [an] order staying enforcement of the judgment or order pending all appeals." MCR 7.108(B)(4)(c). Unless otherwise ordered, the stay continues until jurisdiction is returned to the trial court, or until further order of an appellate court. *Id*. The stay order must be served on all parties as prescribed in MCR 2.107[15], and

---

[12]Formerly MCR 4.201(N). See ADM File No. 2020-08, effective November 6, 2023. MCR 7.108 has not been amended to reflect this change.

[13]"Notwithstanding any other provision of [MCR 2.107], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of [MCR 2.107(C)(4)]." MCR 2.107(G).

[14]See the Michigan Judicial Institute's *Civil Proceedings Benchbook*, Chapter 1, for information on communication equipment.

proof of service must be filed with the trial court. MCR 7.108(B)(4)(d).

"'[A] bond is required to secure a stay of proceedings to enforce the judgment during the appeal, it is not a condition of the right to appeal'"; therefore, an appellant's "failure to timely file a bond does not negate his right to appeal" where the circuit court accepts the appellant's late-posted bond. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 232, 236 n 1 (2013) (applying former MCR 7.101(C)(2)(b)[16] and quoting *Wright v Fields*, 412 Mich 227, 228 (1981)).

2. Criminal Proceedings

"A criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed. The granting of bond and its amount are within the discretion of the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases." MCR 7.108(C)(1).

If the trial court grants a bond, "the defendant must promise in writing:

> (a) to prosecute the appeal to decision;
>
> (b) if the sentence is one of incarceration, to surrender immediately to the county sheriff or as otherwise directed, if the judgment of sentence is affirmed on appeal or if the appeal is dismissed;
>
> (c) if the sentence is other than one of incarceration, to perform and comply with the judgment of sentence if it is affirmed on appeal or if the appeal is dismissed;
>
> (d) to appear in the trial court if the case is remanded for retrial or further proceedings or if a conviction is reversed and retrial is allowed;

---

[15] "Notwithstanding any other provision of [MCR 2.107], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of [MCR 2.107(C)(4)]." MCR 2.107(G).

[16] The Court noted that although "the preamendment court rules govern[ed the] case[, t]he fundamental legal principles governing appellate standing remain[ed] unaffected by changes in the language of the applicable Court Rules [under ADM 2010-19, effective May 1, 2012]." *Matthew R Abel, PC*, 302 Mich App at 238.

> (e) to remain in Michigan unless the court gives written approval to leave;
>
> (f) to notify the trial court clerk in writing of a change of address; and
>
> (g) to comply with any other conditions imposed by law or the court." MCR 7.108(C)(2).

If a bond is to be filed after conviction, the defendant must give notice to the prosecuting attorney of the time and place the bond will be filed. MCR 7.108(C)(3). "The bond is subject to the objection procedure provided in MCR 3.604." MCR 7.108(C)(3).

F. Appeal of Right[17]

In civil cases, timely appeals to the circuit court from final judgments and orders are by right unless a statute authorizes only appeal by leave; all other appeals are by leave. MCL 600.8342(2); MCR 7.103.

In a misdemeanor or ordinance violation case tried in municipal or district court, an aggrieved party generally has a right of appeal from a final order or judgment (except for an order or a judgment based on a plea of guilty or nolo contendere) to the circuit court in the county in which the misdemeanor or ordinance violation was committed. MCL 770.3(1)(b); MCR 7.103(A)(1).

1. Jurisdiction/Timing

"The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

> (1) a final judgment or final order of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;
>
> (2) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and
>
> (3) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law." MCR 7.103(A).[18] See also MCL

[17] See the Michigan Judicial Institute's *General Appeals of Right Table*.

[18] See Part B for discussion of specific types of circuit court appeals.

> 770.3(1) (specifying appeals of right in criminal cases).

Aggrieved party. "'To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency.'" *MCNA Ins Co v Dep't of Technology, Mgt and Budget*, 326 Mich App 740, 745 (2019), quoting *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290-292 (2006) (additional quotation marks and citation omitted). "'An aggrieved party is not one who is merely disappointed over a certain result. Rather, to have standing on appeal, a litigant must have suffered a concrete and particularized injury, . . . [and] must demonstrate an injury arising from either the actions of the trial court or the appellate court judgment rather than an injury arising from the underlying facts of the case.'" *MCNA Ins Co*, 326 Mich App at 745, quoting *Federated Ins Co*, 475 Mich at 290-292.

Final judgment or order. A district court's postjudgment order awarding attorney fees or costs constitutes a final order that is appealable as of right to the circuit court. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 232, 234, 243 (2013).

A circuit court "acting in its appellate capacity" has "authority under MCR 7.114(D) and MCR 2.119(F)" to reconsider and reverse "its own order of acquittal" because it is "not final" and "subject to appellate review or reconsideration." *People v Simmons*, ___ Mich ___, ___ (2022). Accordingly, the Michigan Supreme Court held that "any double jeopardy concerns related to [the circuit court's] prior determination of the defendant's innocence" were "eliminat[ed]." *Id*. at ___.

"The time limit for an appeal of right is jurisdictional." MCR 7.104(A).[19] An appeal of right must be taken within:

> "(1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or
>
> (2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from

[19] Timing for appeals from agency decisions may be controlled by a more specific court rule or statute. See, e.g., MCR 7.116(B) (appeal of right from decision of the Michigan Compensation Appellate Commission must be taken within 30 days after mailing), MCL 257.323(1) (appeal from Secretary of State's decision regarding operator's or chauffeur's license must be made within 63 days after the determination).

> the judgment, order, or decision, if the motion was filed within:
>
> > (a) the initial 21-day period, or
> >
> > (b) further time the trial court or agency may have allowed during that 21-day period." MCR 7.104(A).

However, "[i]f a criminal defendant requests appointment of an attorney within 21 days after entry of the judgment of sentence, an appeal of right must be taken within 21 days after entry of an order:

> (a) appointing or denying the appointment of an attorney, or
>
> (b) denying a timely filed motion described in [MCR 7.104(A)](2)." MCR 7.104(A)(3).

Because the time limit for an appeal to the circuit court is jurisdictional, a court is deprived of jurisdiction when an appeal of right is not timely filed. See MCR 7.104(A); *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393 (2020). Thus, failing to timely file a claim of appeal "destroys the right to appeal[.]" *Hoffman v Security Trust Co*, 256 Mich 383, 385 (1931); see also *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79, 82 (1985). However, an appellant may file either an application for leave to appeal or a late appeal. See MCR 7.103(B)(1)(b); MCR 7.105(G); *Schlega*, 147 Mich App at 82. See Section 2.1(I) for information on late appeals and Section 2.1(G) for information on appeals by leave.

2. Manner of Filing

For jurisdiction to vest with the circuit court, an appellant must timely file:

- the claim, which must be signed by the appellant or the appellant's attorney;[20] and
- the appeal fee, unless the appellant is indigent.[21] MCR 7.104(B)-(C).

[20] See MCR 7.104(C)(1)-(2) for additional requirements regarding the form and content of the claim of appeal.

[21] MCL 600.2529(5) requires the court to order the appeal fee waived or suspended, in whole or in part, if the appellant shows by affidavit indigency or inability to pay.

In addition to the claim of appeal, an appellant must also file the following documents:

- a copy of the judgment, order, or decision appealed;
- an indication that the transcript has been ordered or that there is nothing to be transcribed;
- in an agency appeal, a copy of a request or order for a certified copy of the record to be sent to the circuit court;
- a true copy of the bond, if a bond has been filed;
- proof that money, property, or documents have been delivered or deposited as required by law;
- a copy of the register of actions, if any;
- proof that the appeal fee of the trial court or agency has been tendered;
- anything else required by law to be filed; and
- proof that all parties, the trial court or agency, and any other person entitled to notice of the appeal have been served. MCR 7.104(D).

MCR 7.104(E) requires the appellant to timely serve on the trial court or agency from which the appeal is taken:

- a copy of the claim of appeal;
- any fee required by law;
- any bond required by law[22]; and
- a copy of a written request that a certified copy of the record be sent to circuit court in an agency appeal, or an indication that the transcript has been ordered and payment made or secured, unless there is nothing to be transcribed in an appeal from a trial court.

Jurisdiction vests in the circuit court under MCR 7.104(A)(1) and MCR 7.104(B) when a defendant timely files an appeal and fees are paid or waived. See *People v Simmons (On*

[22] However, an appellant's "failure to timely file a bond does not negate his right to appeal[]" where the circuit court accepts the appellant's late-posted bond. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 238, 236 n 1 (2013). See Section 2.1(E) for additional discussion of bond requirements.

Reconsideration), 388 Mich App 70, 77 (2021), rev'd in part on other grounds ___ Mich ___ (2022).[23] "This is true regardless of whether defendant properly serve[s] the prosecution with [the] claim of appeal because the service-of-process provisions contained in the court rules 'are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant.' MCR 2.105(J)(1). Thus, even if [a] defendant [does] not properly serve [the] claim of appeal on the prosecution, it [does] not divest the circuit court of jurisdiction to enter [a] judgment of acquittal." *Simmons*, 388 Mich App at 77-78.

An appellee must file an appearance in the circuit court within 14 days after being served with the claim of appeal. MCR 7.104(F). "An appellee who does not file an appearance is not entitled to notice of further proceedings." *Id*.

G. Appeal By Leave[24]

1. Jurisdiction/Timing

"The circuit court may grant leave to appeal from:

> (1) a judgment or order of a trial court when
>
> > (a) no appeal of right exists, or
> >
> > (b) an appeal of right could have been taken but was not timely filed;
>
> (2) a final order or decision of an agency from which an appeal by leave to the circuit court is provided by law;
>
> (3) an interlocutory order or decision of an agency if an appeal of right would have been available for a final order or decision and if waiting to appeal of right would not be an adequate remedy;
>
> (4) a final order or decision of an agency if an appeal of right was not timely filed and a statute authorizes a late appeal; and

[23]For more information on the precedential value of an opinion with negative subsequent history, see our note.

[24]See the Michigan Judicial Institute's *General Appeals by Leave Table*.

> (5) a decision of the Michigan Parole Board to grant parole."[25] MCR 7.103(B).

"All appeals from final orders and judgments based upon pleas of guilty or nolo contendere shall be by application." MCL 600.8342(4). See also MCL 770.3(1)(d). Additionally, a party may apply for leave to appeal to the circuit court from an interlocutory judgment or order in a felony, misdemeanor, or ordinance violation case. MCL 770.3(2).[26]

"An application for leave to appeal must be filed with the clerk of the circuit court within:

> (1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or
>
> (2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision if the motion was filed within:
>
> > (a) the initial 21-day period, or
> >
> > (b) such further time as the trial court or agency may have allowed during that 21-day period." MCR 7.105(A).

Additionally, if a defendant who has pleaded guilty or nolo contendere requests appointment of counsel within 21 days after entry of the judgment or sentence, "an application must be filed within 21 days after entry of an order:

> (a) appointing or denying the appointment of an attorney, or
>
> (b) denying a timely filed motion described in [MCR 7.105(A)](2)." MCR 7.105(A)(3).

In criminal cases, if the time for an appeal has passed, the court may still grant leave to appeal "upon conditions prescribed by court rules." MCL 770.3(3).

See Section 2.1(I) for information on late appeals.

---

[25] See Section 2.5 for discussion of appealing a Michigan Parole Board decision.

[26] Either a criminal defendant or the prosecution may raise an issue related to an interlocutory decision in an appeal of right from a final decision. *People v Torres*, 452 Mich 43, 59 (1996).

2. Manner of Filing

To apply for leave to appeal, MCR 7.105(B) requires an appellant to file:

- a signed application for leave to appeal;[27]
- a copy of the judgment, order, or decision appealed and the opinion or findings of the trial court or agency;
- in a trial court appeal, a copy of the register of actions;
- in an agency appeal, a copy of a request or order for a certified copy of the record to be sent to the circuit court;
- unless waived by stipulation of the parties or by trial court order, a copy of the relevant transcript or portion of transcript,[28] or an indication that a transcript has been ordered or that there is nothing to be transcribed;
- proof that all parties, the trial court or agency, and any other person entitled to notice of the claim have been served[29]; and
- the appeal fee, unless the appellant is indigent.[30]

3. Answer

Within 21 days of service of the application, a signed answer that conforms to MCR 7.212(D), and proof of service of the answer, may be filed. MCR 7.105(C).

4. Reply

"Within 7 days after service of the answer, the appellant may file a reply brief that conforms to MCR 7.212(G)." MCR 7.105(D).

---

[27] See MCR 7.105(B)(1)(a)-(d) for additional requirements regarding the content of the application.

[28] See MCR 7.105(B)(5), identifying specific transcripts required, depending on the nature of the appeal.

[29] "If service cannot be reasonably accomplished, the appellant may ask the circuit court to prescribe service under MCR 2.107(E)[.]" MCR 7.105(B)(6).

[30] MCL 600.2529(5) requires the court to order the appeal fee waived or suspended, in whole or in part, if the appellant shows by affidavit of indigency or inability to pay.

5. Decision on Application

The circuit court decides the application without oral argument, unless it otherwise directs. MCR 7.105(E)(1). Absent good cause, the decision must be made within 35 days of the filing date. MCR 7.105(E)(2).

The court may grant or deny leave to appeal or grant other relief,[31] and it must promptly serve a copy of the order on the parties and the trial court or agency. MCR 7.105(E)(3).

If the application is granted, further proceedings are governed by MCR 7.104, except that:

- the appellant need not file a claim of appeal. MCR 7.105(E)(4)(a);
- within seven days after the order granting leave is entered, the appellant must file the documents required by MCR 7.104(D) and make service on the trial court as required by MCR 7.104(E); and
- an appellee may file a cross appeal claim within 14 days after the court serves the order granting leave to appeal. MCR 7.105(E)(4).

"Unless otherwise ordered, the appeal is limited to the issues raised in the application." MCR 7.105(E)(5).

Indeed, while MCR 7.105 "governs applications for leave to appeal," "once the circuit court grants the application, the rules under MCR 7.104—concerning appeals as of right—govern the subsequent proceedings[.]" *People v Segura*, ___ Mich App ___, ___ (2023). The "documents required under MCR 7.104(D), including 'proof that the appeal fee of the trial court or agency has been tendered,' must be submitted within seven days after the circuit court grants an application for leave to appeal." *Segura*, ___ Mich App at ___ (citing MCR 7.105(E)(4)(b)). In *Segura*, defendant asserted that MCR 7.105 does not require proof of a filing fee. *Segura*, ___ Mich App at ___. However, the Court determined the defendant failed to provide any "'proof that the appeal fee of the trial court or agency [had] been tendered'" as required by MCR 7.104(D)(7). *Segura*, ___ Mich App at ___. "The circuit court was aware of this and gave notice of the deficiency through its clerk. The circuit court properly dismissed the appeal after defendant failed to

[31]The circuit court may grant miscellaneous relief as set forth in MCR 7.216. MCR 7.112. If the circuit court grants leave to appeal, miscellaneous relief may include a final decision on the merits of the appeal if preparation of the record is not necessary to resolution of the issues. MCR 7.216(A)(7).

remedy the deficiency despite having 14 days to do so." *Id*. at ___. Accordingly, "defendant failed to show mistake, inadvertence, or neglect to justify reinstatement of the appeal, and the circuit court abused its discretion when it granted defendant's motion for reconsideration." *Id*. at ___ (noting the "proper medium was a motion for reinstatement, and the standard for granting such a motion was to show 'mistake, inadvertence, or excusable neglect'" under MCR 7.113(A)(2) because "defendant was moving for reinstatement of a *dismissal*" rather than "reconsideration of the decision on a *motion*").

6. Immediate Consideration

"When an appellant requires a decision on an application in fewer than 35 days, the appellant must file a motion for immediate consideration concisely stating why an immediate decision is required." MCR 7.105(F).

H. Cross Appeal

Any appellee may file a cross appeal when an appeal of right is filed or when the circuit court grants leave to appeal. MCR 7.106(A)(1).

In a civil appeal with more than one plaintiff or defendant, "any other party may file a cross appeal against all or any of the other parties as well as against the party who first appealed. If the cross appeal operates against a party not affected by the first appeal or in a manner different from the first appeal, that party may file a further cross appeal." MCR 7.106(A)(2).

1. Timing

A cross appeal must be filed within 14 days after the cross appellant is served with the claim of appeal or after the order granting leave to appeal is entered. MCR 7.106(B); see also MCR 7.105(E)(4)(c). A party seeking leave to file a cross appeal after that time must proceed under MCR 7.105(F). MCR 7.106(F).

2. Manner of Filing

"To file a cross appeal, the cross appellant must file:

> (1) a claim of cross appeal in the form required by MCR 7.104(C);
>
> (2) any required fee;

> (3) a copy of the judgment, order, or decision from which the cross appeal is taken; and
>
> (4) proof that a copy of the claim of cross appeal was served on all parties." MCR 7.106(C).

A cross appellant must also file the documents required by MCR 7.104(D) and make service on the trial court or agency as required by MCR 7.104(E), unless doing so would duplicate the appellant's filing of the same document. MCR 7.106(D). The cross appellant need not order a transcript or file a court reporter's certificate unless the initial appeal is dismissed. *Id*.

3. Initial Appeal Dismissed

"If the initial appeal is dismissed, the cross appeal may continue." MCR 7.106(E). Within 14 days after the order dismissing the initial appeal, the cross appellant must file either the certificate of the court reporter or recorder if there is a transcript to be produced, or a statement indicating that there is nothing to be transcribed. *Id*.

I. Late Appeals

When an appeal of right or an application for leave has not been timely filed, an appellant may file a late application, following the procedures for filing an application for leave set forth in MCR 7.105(B), accompanied by a statement of facts explaining the delay. MCR 7.105(G)(1). "The answer may challenge the claimed reasons for the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application." *Id*. Notwithstanding, a late application may not be filed more than six months after entry of the order, judgment, or decision appealed; or after entry of an order denying a motion for a new trial, for rehearing or reconsideration, or for other relief from judgment, order or decision, if the motion was timely filed; or after entry of an order denying a motion for a new trial under MCR 6.610(H) or to withdraw a plea under MCR 6.610(F)(8). MCR 7.105(G)(2).

Notwithstanding MCR 7.105(G), "[t]he circuit court may grant leave to appeal from . . . a final order or decision of an agency if an appeal of right was not timely filed *and* a statute authorizes a late appeal[.]" MCR 7.103(B)(4) (emphasis added). The circuit court erred "to the extent that [it] concluded that it had the ability to consider [an] untimely [zoning board] appeal as a late application for leave to appeal" because MCL 125.3606(3), which governs zoning board appeals, "does not authorize an appeal by leave granted or a late

appeal." *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 395 (2020).

J. Record on Appeal

"Appeals from the district court shall be on a written transcript of the record made in the district court or on a record settled and agreed to by the parties and approved by the court." MCL 600.8341. See also MCR 7.109(A) ("[a]ppeals to the circuit court are heard on the original record"). "In reviewing whether an agency's decision was supported by competent, material, and substantial evidence on the whole record, a court must review the entire record." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 432 (2017) (quotation marks and citation omitted).

The record must include the substance of any excluded evidence or the transcript of proceedings excluding it. MCR 7.109(A)(3). The parties may stipulate in writing regarding any matters relevant to the record "if the stipulation is made a part of the record on appeal and sent to the circuit court." MCR 7.109(A)(4).

The appellant must serve a copy of the entire record on appeal on each appellee within 14 days after the transcript (or transcript substitute) is filed with the trial court or agency. MCR 7.109(F).[32] The trial court or agency must promptly send the record to the circuit court, along with a certificate identifying the name of the case, listing the papers included, and indicating that the required fees have been paid and any required bond has been filed. MCR 7.109(G)(1).[33] Weapons, drugs, or money are not to be sent unless requested by the circuit court, and the trial court may order the removal of any exhibits from the record. *Id*. The circuit court must send written notice to the parties when it receives the filed record. MCR 7.109(G)(3). If a motion is filed before the complete record on appeal is sent to the circuit court, the trial court or agency must, on request, send the circuit court the documents needed to decide the motion. MCR 7.109(E).

"On the appellant's motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant." MCR 7.109(B)(1)(b).[34]

---

[32] See MCR 7.109(B)-(D) for detailed rules regarding the filing of the transcript, the duties of the court reporter or recorder, exhibits, and the reproduction of records.

[33] See MCR 7.109(G)(1)(a)-(f) and MCR 7.109(G)(2) for additional rules regarding the contents of the transmitted record and transcripts. See MCR 7.109(H) for rules regarding the return of the record.

Committee Tip:

If the transcripts in an appeal from district court are lengthy, but not all transcripts are required to resolve the issues on appeal, a motion to settle the record may establish that less than all of the transcripts will comprise the record on appeal.

K. Motions

1. Generally

"Motion practice in a circuit court appeal is governed by MCR 2.119. Motions may include special motions identified in MCR 7.211(C).[35] Absent good cause, the court shall decide motions within 28 days after the hearing date." MCR 7.110.

2. Motions for Rehearing or Reconsideration

A circuit court, acting as an appellate court in review of a district court order or judgment, may reconsider its own previous order or judgment on the matter; motions for reconsideration are governed by MCR 2.119(F). MCR 7.114(D). "No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs." MCR 2.119(F)(2).

MCR 2.119(F)(3) provides:

> "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."

[34] See Section 2.9(E) for information regarding the record in an appeal of a zoning board decision.

[35] "Special motions" under MCR 7.211(C) include: motions to remand, to dismiss, and to affirm; confessions of error by the prosecutor; and requests for damages or other disciplinary action for bringing vexatious proceedings.

However, MCR 2.119(F)(3) "does not categorically prevent a trial court from revisiting an issue even when [a] motion for reconsideration presents the same issue already ruled on; in fact, it allows considerable discretion to correct mistakes." *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754 (2014); see also *People v Walters*, 266 Mich App 341, 350 (2005) (adherence to the palpable error provision contained in MCR 2.119(F)(3) is not required; rather, the provision offers guidance to a court by suggesting when it may be appropriate to grant a party's motion for reconsideration).

Where a different judge is seated in the circuit court that issued the ruling or order for which a party seeks reconsideration, the judge reviews the prior court's factual findings for clear error. *Walters*, 266 Mich App at 352. The fact that the successor judge is reviewing the matter for the first time does not authorize the judge to conduct a de novo review. *Id.* at 352-353.

L. Briefs

"Within 28 days after the circuit court provides written notice under MCR 7.109(G)(3) that the record on appeal is filed with the circuit court, the appellant *must* file a brief[.]" MCR 7.111(A)(1)(a). An appellee *may* file a brief within 21 days after being served with the appellant's brief. MCR 7.111(A)(2). The appellant *may* file a reply brief within 14 days after service of the appellee's brief. MCR 7.111(A)(3).

The time for an appellant or an appellee to file a brief may be extended by stipulation or by the circuit court, but the filing of a motion to extend the time does not stay the time for filing a brief. MCR 7.111(A)(1)(a); MCR 7.111(A)(2).

If an appellant fails to timely file a brief, the appeal may be considered abandoned and dismissed on 14 days' notice to the parties. MCR 7.111(A)(1)(b). The filing of a conforming brief after notice is sent does not preclude dismissal unless the appellant provides a reasonable excuse for the late filing. *Id*.

Timing for briefs in cross appeals is the same as for direct appeals. MCR 7.111(A)(4). The circuit court may not abridge the appellant's right to file a reply brief. *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 442-443 (2017) (holding that the circuit court's scheduling order, which provided that the claimant-appellant was not entitled to a reply brief, "clearly violated [her] right to file a reply brief under the plain and unambiguous language of MCR 7.111(A)(3)," but that she was not entitled to relief because she did

not establish that the violation "affected the outcome of the proceedings").

All briefs must conform to MCR 7.212(B) (governing length and form of briefs). See MCR 7.111(B). In addition to these requirements, the appellant's brief must conform to MCR 7.212(C); the appellee's brief must conform to MCR 7.212(D); and the appellant's reply brief must conform to MCR 7.212(G). MCR 7.111(A)(1)(a); MCR 7.111(A)(2)-(3); MCR 7.111(B). Additionally, all briefs must be served on all other parties to the appeal. MCR 7.111(A)(1)(a); MCR 7.111(A)(2)-(4). "If, on its own initiative or on a party's motion, the circuit court concludes that a brief does not substantially comply with the requirements in [MCR 7.111], it may order the party filing the brief to correct the deficiencies within a specified time or it may strike the nonconforming brief." MCR 7.111(D).

M. Dismissal

1. Involuntary

"If the appellant fails to pursue the appeal in conformity with the court rules, the circuit court will notify the parties that the appeal shall be dismissed unless the deficiency is remedied within 14 days after service of the notice." MCR 7.113(A)(1). The appeal may be reinstated if, within 14 days of the involuntary dismissal, the appellant shows mistake, inadvertence, or excusable neglect. MCR 7.113(A)(2).

Committee Tip:

Incomplete or incorrectly filed appeals can be brought to the attention of the appellant by issuing a 14-day Notice of Intent to Dismiss. Though the court should not provide legal advice as to how to satisfactorily file the appeal, it can direct appellant to the court rule(s) that remain(s) unsatisfied.

---

2. Voluntary

If the parties file a signed stipulation agreeing to dismiss the appeal or the appellant files an unopposed motion to withdraw the appeal, the circuit court must enter an order of dismissal. MCR 7.113(B).

3. Notice

Immediately on its entry, a copy of an order dismissing an appeal must be sent to the parties and the trial court or agency. MCR 7.113(C).

N. Oral Argument

A party is entitled to oral argument if it has filed a timely brief with "ORAL ARGUMENT REQUESTED" in capital letters or boldface type on the title page of the brief. MCR 7.111(C). Any party failing to timely file and serve a brief forfeits oral argument, although the court may grant a motion to reinstate oral argument for good cause shown. MCR 7.111(A)(6).

When a party makes a request in accordance with MCR 7.111(C), the circuit court must schedule oral argument "unless it concludes that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument." MCR 7.114(A).

O. Decision and Judgment

The circuit court must decide the appeal by either an oral or a written opinion, and issue an order.[36] MCR 7.114(B). "The court's order is its judgment." *Id*.

A judgment is effective:

- after expiration of the period for filing a timely application for leave to appeal in the Court of Appeals;
- after the Court of Appeals decides a case for which an application for leave is filed; or
- after a time period otherwise ordered by the circuit court or the Court of Appeals. MCR 7.114(C).

Enforcement of the judgment is to be obtained in the trial court or agency after the record is returned as provided in MCR 7.109(H). MCR 7.114(C).

P. Miscellaneous Relief

"In addition to its general appellate powers, the circuit court may grant relief as provided in MCR 7.216."[37] MCR 7.112.

[36] See Chapter 3 for information on issuing opinions.

Q. Assessment of Costs in Civil Appeals

MCR 7.115(A) provides that "the prevailing party in a civil case" is generally entitled to costs. The clerk of the court receives the certified or verified bill of costs, verifies the bill, addresses any objections, and taxes the available costs. See MCR 7.115(B)-(D). The clerk's action "will be reviewed by the circuit court on motion of either party filed within 7 days from the date of taxation, but on review only those affidavits or objections that were previously filed with the clerk may be considered by the court." MCR 7.115(E). "A prevailing party may tax only the reasonable costs and fees incurred in the appeal, including" those listed in MCR 7.115(F).

Part B: Types of Appeals

2.2 Administrative Appeals in General[38]

"An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law[.] . . ." MCL 600.631. See also Const 1963, art 6, § 28.

A. Standard of Review

Circuit court standard of review. Appellate review of "final decisions, findings, rulings and orders of any administrative officer or agency. . . shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record." Const 1963, art 6, § 28. "Substantial evidence is any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *Mich Ed Ass'n Political Action Comm v Secretary of State*, 241 Mich App 432, 444 (2000). In reviewing an agency's decision, "a court must review the entire record." *Lawrence v Mich Unemployment*

[37] MCR 7.216 authorizes the Court of Appeals to grant various forms of relief, including permitting amendments or additions to the transcript or record, remanding to the trial court, drawing inferences of fact, granting a new trial, or dismissing an appeal or the original proceeding.

[38] See Section 2.6 for information on appeals governed by the Administrative Procedures Act. See Section 2.10 for information on appeals from agencies not governed by another rule.

Ins Agency, 320 Mich App 422, 432 (2017) (quotation marks and citation omitted). In an agency appeal, "the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. . . ." MCR 7.210(A)(2); see also MCR 7.109(A)(2).

"To determine whether an administrative agency's determination is adjudicatory in nature, courts compare the agency's procedures to court procedures to determine whether they are similar. Quasi-judicial proceedings include procedural characteristics common to courts, such as a right to a hearing, a right to be represented by counsel, the right to submit exhibits, and the authority to subpoena witnesses and require parties to produce documents." *Natural Resources Defense Council v Dep't of Environmental Quality*, 300 Mich App 78, 86 (2013). "The promulgation of an agency rule does not constitute a decision by the agency that is judicial or quasi-judicial in nature; therefore, Const 1963, art 6, § 28, does not apply to" "emergency rules promulgated by [the] Department of Health and Human Services[.]" *Slis v Michigan*, 332 Mich App 312, 318, 343 (2020).

Court of Appeals standard of review. The Court of Appeals "reviews a lower court's review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings." *Braska v Challenge Mfg Co*, 307 Mich App 340, 351-352 (2014) (quotation marks and citation omitted). This is essentially a clearly erroneous standard of review. *Id*. at 352. Questions regarding the proper application of statutes and court rules are reviewed de novo. *Lawrence*, 320 Mich App at 433.

1. Non-Contested Cases

"[W]hen a hearing is not required, courts review an agency decision only under the 'authorized by law' standard; the substantial-evidence test does not apply[.]" *Henderson v Civil Serv Comm*, 321 Mich App 25, 39, 41, 44 (2017) (rejecting the plaintiffs' "argument that the . . . competent, material, and substantial evidence standard, [in Const 1963, art 6, § 28 and MCL 24.306(1)(d)], applie[d]" in an uncontested agency case, and holding that the circuit court "exceeded . . . the authorized-by-law standard by reweighing the evidence, making credibility decisions, and substituting its judgment for that of the [Civil Service Commission]"). An agency's decision is not authorized by law if it is "in violation of a statute [or constitution], in excess of the statutory authority or jurisdiction

of the agency, made upon unlawful procedures resulting in material prejudice, or . . . is arbitrary and capricious[.]" *Henderson*, 321 Mich App at 44 (quotation marks, alterations, and citation omitted).

2. Contested Cases

Where "the determination whether [a] hearing officer's decision is 'authorized by law,' Const 1963, art 6, § 28, . . . turns on statutory interpretation," the issue "is a question of law [that the appellate court] reviews de novo." *Detroit Pub Sch v Conn*, 308 Mich App 234, 246 (2014). "'Respectful consideration' of an agency's statutory interpretation is not akin to 'deference'; . . . [w]hile an agency's interpretation can be a helpful aid in construing a statutory provision with a 'doubtful or obscure' meaning, [the] courts are responsible for finally deciding whether an agency's interpretation is erroneous under traditional rules of statutory construction." *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 363 (2016).

B. Application of Court Rules

"[A]ppeals shall be made in accordance with the rules of the supreme court." MCL 600.631. Specific rules cover appeals from decisions:

- arising under the Michigan Employment Security Act, MCR 7.116,[39]
- of the Michigan Civil Service Commission, MCR 7.117,[40]
- of the Michigan Parole Board, MCR 7.118,[41]
- of agencies governed by the Administrative Procedures Act (APA), MCR 7.119,[42]
- arising under the Michigan Vehicle Code, MCR 7.120,[43]
- involving concealed pistol licenses, MCR 7.121,[44]

[39]See Section 2.3 for information about appeals arising under the Michigan Employment Security Act.

[40]See Section 2.4 for information about appeals from the Michigan Civil Service Commission.

[41]See Section 2.5 for information about appeals of Michigan Parole Board decisions.

[42]See Section 2.6 for information regarding appeals of agencies governed by the APA.

[43]See Section 2.7 for information on appeals regarding licensing under the Michigan Vehicle Code.

[44]See Section 2.8 for information regarding appeals involving concealed pistol licenses.

- of zoning ordinance determinations, MCR 7.122,[45] and
- of agencies not governed by another rule, MCR 7.123.[46]

2.3 Michigan Employment Security Act[47]

The Michigan Employment Security Act (MESA) addresses venue and sets forth its own scope of judicial review of decisions by an administrative law judge (ALJ) and the Michigan Compensation Appellate Commission (MCAC). MCL 421.38(1). See Section 2.1(D) for information on venue and Section 2.1(B) regarding judicial review.

Procedures specific to appeals under the MESA are set forth in MCR 7.116. Unless provided otherwise in MCR 7.116, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.116(A).[48] A party must file "[a]n appeal of right from an order or decision of the Michigan Compensation Appellate Commission . . . within 30 days after the mailing of the commission's decision." MCR 7.116(B); see also MCL 421.38(1). "[T]he claim of appeal shall conform with MCR 7.104 and must include statements of jurisdiction and venue,"[49] and "proof that the claim of appeal was served on the Michigan Compensation Appellate Commission and all interested parties must be filed in the circuit court." MCR 7.116(C). "The unemployment agency is a party to any appeal under MCL 421.38(3), but the Michigan Compensation Appellate Commission is not[.]" MCR 7.116(C).

The appellee must file an appearance within 14 days of being served with the claim of appeal. MCR 7.116(E).

A. Record on Appeal

"Within 42 days after the claim of appeal is served on the Michigan Compensation Appellate Commission, or within further time as the circuit court allows, the Michigan Compensation Appellate Commission must transmit to the clerk of the circuit court a certified copy of the record of proceedings before the administrative law judge and the Michigan Compensation Appellate Commission,"

---

[45] See Section 2.9 for information regarding appeals of zoning ordinance determinations.

[46] See Section 2.10 for information regarding appeals of agencies not governed by another rule.

[47] See the Michigan Judicial Institute's *Michigan Employment Security Act Appeals Table*.

[48] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[49] See Section 2.1(E)(1) for information about jurisdiction.

and "notify the parties that the record was transmitted." MCR 7.116(F).

"The circuit court . . . did not err when it considered the certified record presented by the MCAC in its entirety," including "files of the [Michigan Unemployment Insurance Agency] that were not presented to the ALJ"; "[b]ecause MCR 7.116 does not otherwise limit the scope of the record on appeal, the general definition of 'record on appeal' from an agency decision in MCR 7.109(A)(2) applies," and "the record before the circuit court [therefore] properly included 'all documents, files, pleadings, testimony, and opinions and orders' of the tribunal and the agency." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 432-435 (2017) (quoting MCR 7.210(A)(2) and noting that "[w]hile this expansive definition seemingly conflicts with the limited scope of the record described in MCL 421.34 and MCL 421.38" of the MESA, a court rule prevails in a purely procedural conflict between a court rule and a statute).

B. Standard of Review

The circuit court "may reverse an order or decision of the Michigan Compensation Appellate Commission only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record." MCR 7.116(G). See also MCL 421.38(1). "Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence." *Trumble's Rent-L-Center, Inc v Employment Security Comm*, 197 Mich App 229, 233 (1992) (internal citation omitted).

"A reviewing court is not at liberty to substitute its own judgment for a decision of the MCAC that is supported with substantial evidence." *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193-194 (2015). "The Court of Appeals then reviews a circuit court's decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings[.]" *Id*. at 194-195 ("the circuit court erred when it discounted the stated policy of [plaintiff's] employer and, instead, credited [plaintiff] with complying with a nonexistent policy") (quotation marks and citation omitted).

2.4 Appeals from Michigan Civil Service Commission Decisions

MCR 7.117 governs circuit court appeals to the circuit court from the Michigan Civil Service Commission; they must comply with the requirements set forth in MCR 7.119.[50] MCR 7.117(A)-(B). Unless provided otherwise in MCR 7.117, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.117(A).[51] The appeal "must name the commission as a party," and the appellant "must serve the commission at the Office of the State Personnel Director in Lansing[.]" MCR 7.117(C).

2.5 Appeals From and Objections to Parole Board Decisions[52]

A. Decision to Deny Parole

Michigan prisoners cannot seek judicial review of the denial of parole by the parole board absent circumstances giving rise to a complaint for habeas corpus or a writ of mandamus to compel compliance with a statutory duty. *Morales v Parole Bd*, 260 Mich App 29, 39-42, 52 (2003).[53]

B. Grounds for Grant of Parole

While the court has no role in granting parole, see MCL 791.234(11), it may be helpful to understand the process when reviewing an appeal or objection.

"[A] prisoner's release on parole is discretionary with the parole board." MCL 791.234(11). See also MCL 791.235(1). "There is no entitlement to parole." *Id*. "'A prisoner has no constitutionally protected or inherent right to parole, only a hope or expectation of it.'" *People v Mack*, 265 Mich App 122, 129 (2005), quoting *Morales v Parole Bd*, 260 Mich App 29, 48 (2003).

---

[50]See Section 2.6 for more information on procedures set forth in MCR 7.119. See also the Michigan Judicial Institute's *Administrative Procedures Act and Michigan Civil Service Commission Appeals Table*.

[51] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[52]See the Michigan Judicial Institute's *Michigan Parole Board Appeals Table*.

[53]The parole board's decision to depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole must state in writing substantial and compelling objective reasons for the departure. MCL 791.233e(6). Substantial and compelling objective reasons for departure from the parole guidelines are limited to the circumstances set forth in MCL 791.233e(7).

"The Legislature has entrusted the decision whether to grant . . . parole to the Parole Board." *In re Parole of Johnson*, 219 Mich App 595, 596 (1996). See also MCL 791.234(7). The board must have "reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." MCL 791.233(1)(a). The Department of Corrections (DOC) "shall promulgate rules under the administrative procedures act of 1969, . . . MCL 24.201 to [MCL] 24.328, that prescribe the parole guidelines." MCL 791.233e(5). However, the parole board may depart from the guidelines[54]; in doing so, it must provide, in writing, substantial and compelling objective reasons for the departure. MCL 791.233e(6).[55] In addition, "[t]he Board should consider a prisoner's sentencing offense when determining whether to grant parole to a prisoner, but 'the Board must also look to the prisoner's rehabilitation and evolution throughout his or her incarceration.'" *In re Parole of Spears*, 325 Mich App 54, 60 (2018), quoting *In re Elias*, 294 Mich App 507, 544 (2011). However, the parole guidelines set forth in statute "'form the backbone of the parole-decision process.'" *Spears*, 325 Mich App at 60 quoting *Elias*, 294 Mich App at 512.

To facilitate the decision-making process surrounding the granting of parole (in addition to other purposes), the DOC prepares and considers several reports, including the transition accountability plan (TAP), a phased plan that attempts to integrate a prisoner's transition from prison to the community. *Spears*, 325 Mich App at 61. The Michigan Court of Appeals "has [not] set forth standards relative to a defendant's TAP," except to require that it, among other relevant documents, be considered by the Board when determining whether to grant parole. *Id*. at 66, citing *In re Parole of Haeger*, 294 Mich App 549 (2011). In *Haeger*, the Parole Board's grant of parole was properly reversed in part because no TAP appeared in the record. *Id*. at 551-552. In *Spears*, the circuit court incorrectly determined that *Haeger* requires a TAP be "current or robust." *Spears*, 325 Mich App at 64. "[R]ather, review [of the Board's decision] should begin by determining whether the Board reviewed a TAP that was prepared for [the] defendant," and if that has

[54]A departure may be in the form of denying parole to a prisoner who has a high probability of parole under the guidelines or granting parole to a prisoner who has a low probability of parole under the guidelines. See MCL 791.233e(6).

[55]Effective December 12, 2018, 2018 PA 339 amended MCL 791.233e(6) to require that the reason for a departure be objective, in addition to substantial and compelling. However, the amendment applies "only to prisoners whose controlling offense was committed on or after [December 12, 2018.]" MCL 791.233e(13). See MCL 791.233e(7) for list of substantial and compelling objective reasons when denying parole to a prisoner who has a high probability of parole under the guidelines (not applicable to prisoners serving a life sentence). MCL 791.233e does not provide a similar list for departures involving low probability prisoners.

occurred, there is no basis for a circuit court to conclude "that the Board . . . failed to consider defendant's readiness for release based on defendant's suitable and realistic parole plan." *Id*. at 64-65 (quotation marks and citation omitted). "Therefore, the [*Spears*] circuit court, by injecting its own criteria into defendant's TAP, effectively substituted its judgment for that of the Board's when it reversed the Board's grant of parole[.]" *Id*. at 67-68.

"Once the Board enters an order granting parole, it has discretion to rescind that order for cause before the prisoner is released and after the Board conducts an interview with the prisoner." *In re Parole of Hill*, 298 Mich App 404, 411 (2012). See also MCL 791.236(2). "After a prisoner is released on parole, the prisoner remains in the legal custody and control of the Department of Corrections and the Board retains discretion to revoke parole for cause and in accord with statutorily proscribed [sic] procedural guidelines." *Hill*, 298 Mich App at 411. See also MCL 791.238; MCL 791.240a.[56]

C. Appeal from Grant of Parole

There is no appeal of right from a parole board decision. MCR 7.118(B). Only the prosecutor of the county from which the prisoner was committed or a victim may apply for leave to appeal. MCR 7.118(D)(1)(a); MCR 7.103(B)(5); MCL 791.234(11). Generally, the prisoner will be the appellee; however, the parole board may move to intervene as an appellee. MCR 7.118(D)(1)(c).

MCR 7.118 governs appeals to the circuit court from the parole board. MCR 7.118(A). Unless provided otherwise in MCR 7.118, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.118(A).[57]

1. Application for Leave to Appeal

a. Time Requirements

"An application for leave to appeal must be filed within 28 days after the parole board mails a notice of action granting parole and a copy of any written opinion to the prosecutor and the victim, if the victim requested notification under MCL 780.771." MCR 7.118(D)(2).

"A late application for leave to appeal may be filed under MCR 7.105(G)." MCR 7.118(E).

---

[56] See Section 2.5(F) for information on appeals following the revocation of parole.

[57] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

b. Manner of Filing

"An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue,[58] and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under MCL 780.771." MCR 7.118(D)(3).[59]

c. Access to Reports or Guidelines

The prosecutor, the victim, and the prisoner are entitled, upon request, to receive applicable reports and parole guidelines. MCR 7.118(C).

d. Response

The prisoner must be notified, in a form approved by SCAO,[60] that he or she may respond to the application for leave to appeal through counsel or in propria persona, and that, if indigent, he or she is entitled to appointment of counsel. MCR 7.118(D)(3)(b)(*i*).

2. Stay of Order of Parole

An order of parole issued under MCL 791.236 must not be executed until 28 days after the notice of action has been mailed. MCR 7.118(F)(1). The prisoner must be notified, in a form approved by SCAO,[61] that "if an order [of parole] is issued under MCL 791.236 before completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required." MCR 7.118(D)(3)(b)(*ii*).

A stay may also be granted in the manner provided by MCR 7.108, except that no bond is required, if an order [of parole] is issued under MCL 791.235 before completion of appellate proceedings. MCR 7.118(F)(2).

---

[58] See Section 2.1(C) and Section 2.1(F)(1) for information on jurisdiction and Section 2.1(D) for information on venue.

[59] See MCR 7.118(D)(3)(a)-(c) for detailed rules regarding service on the parole board, the victim, the prosecutor, and the prisoner.

[60] See SCAO Form CC 404.

[61] See SCAO Form CC 404.

3. Decision to Grant Leave to Appeal

The circuit court must either make its determination whether to grant leave within 28 days after the application is filed, or enter an order to produce the prisoner for a show cause hearing to determine whether to release the prisoner on parole pending disposition of the appeal. MCR 7.118(G)(1)-(2).

4. Procedure After Granting Leave to Appeal

"If leave to appeal is granted, MCR 7.105(E)(4) [(generally governing the circuit court's decision on an application for leave to appeal)] applies," together with additional rules specifically governing the record and briefs in parole board appeals. MCR 7.118(H).[62]

a. Burden of Proof

"The appellant has the burden of establishing that the decision of the parole board was

> (a) in violation of the Michigan Constitution, a statute, an administrative rule, or a written agency regulation that is exempted from promulgation pursuant to MCL 24.207, or
>
> (b) a clear abuse of discretion." MCR 7.118(H)(3).

b. Remand to the Parole Board

The circuit court, on its own motion or a party's motion, may remand the matter to the parole board for an explanation of its decision. MCR 7.118(H)(4). "The parole board shall hear and decide the matter within 28 days of the date of the order, unless the board determines that an adjournment is necessary to obtain evidence or there is other good cause for an adjournment." MCR 7.118(H)(4)(a). "The time for filing briefs on appeal under [MCR 7.118](H)(2) is tolled while the matter is pending on remand." MCR 7.118(H)(4)(b).

---

[62] See MCR 7.118(H)(1) for rules governing the record on appeal from a parole board decision. See MCR 7.118(H)(2) for rules that, in addition to the general rules set out in MCR 7.111, govern briefs on appeal from a parole board decision.

5. Review of Parole Board's Decision

Where a "prisoner's parole-guidelines score [gives] him a high probability of parole, the Parole Board [is] required to grant parole absent substantial and compelling reasons for a departure." *In re Wilkins Parole*, 506 Mich 937, 937 (2020).[63] A circuit court errs "by ignoring this restriction on the Parole Board's exercise of its discretion" when reversing the Parole Board's decision if the record otherwise demonstrates that "the Parole Board's decision to grant parole fell within the range of principled outcomes[.]" *Id*. (finding the circuit court "also impermissibly substituted its judgment for that of the Parole Board").

"[E]ven if there are substantial and compelling reasons to deny parole, a grant of parole is not an automatic abuse of discretion." *In re Parole of McBrayer*, ___ Mich ___, ___ (2023). In *McBrayer*, the Michigan Supreme Court held that "the lower courts failed to respect the Legislature's grant of discretion to the board, improperly submitting their judgment for that of the board." *Id*. at ___. "Although the Court of Appeals majority acknowledged that the Parole Board's decisions are reviewed for an abuse of discretion, its analysis effectively reweighed the evidence without affording proper deference to the board. This contravened the scheme established by the Legislature." *Id*. at ___.

Under MCL 791.233e(6), "the Parole Board may depart from the guidelines and deny parole to a prisoner with a 'high probability' parole score when there are 'substantial and compelling reasons' to do so." *McBrayer*, ___ Mich at ___. "[W]hen such reasons exist, the board *may* depart from the parole guidelines" but "is not required to do so because . . . discretion [vests] in the Parole Board." *Id*. at ___ (cleaned up). "The mere existence of substantial and compelling reasons for departure is not sufficient for a reviewing court to conclude that the Parole Board abused its discretion by choosing not to depart from the guidelines." *Id*. at ___ (noting the Court of Appeals analysis was incomplete because the majority only considered "whether there were substantial and compelling reasons for departure from the guidelines and ended its analysis there").

First, "a reviewing court must consider whether there are substantial and compelling reasons to deny parole to a prisoner with a high-probability guidelines score." *McBrayer*,

[63] See Section 2.5(B) for discussion of grounds for grant of parole.

___ Mich at ___. "[I]f substantial and compelling reasons exist and the Parole Board nonetheless granted parole, the second question is whether the choice not to depart constituted a clear abuse of discretion." *Id*. at ___. "[T]he Parole Board abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes." *Id*. at ___. "This standard entitles the Parole Board to great deference" and "reviewing courts must not substitute their own judgment for that of the board." *Id*. at ___.

The *McBrayer* Court opined that "the majority simply concluded that, because there were substantial and compelling reasons for departure from the parole guidelines, the Parole Board had abused its discretion." *McBrayer*, ___ Mich at ___ (although the "Court of Appeals identified legitimate factors weighing against parole," "the Parole Board supported its decision with a significant amount of relevant evidence"). "Given the considerations favoring parole in this case, even when compared with those weighing against," the Court concluded that "it was within the range of reasonable and principled outcomes for the board not to depart from the parole-guidelines recommendation[.]" *Id*. at ___.

6. Parole Board Responsibility After Reversal or Remand

"If a decision of the parole board is reversed or remanded, the board shall review the matter and take action consistent with the circuit court's decision within 28 days." MCR 7.118(J)(1).

"If the circuit court order requires the board to undertake further review of the file or to reevaluate its prior decision, the board shall provide the parties with an opportunity to be heard." MCR 7.118(J)(2).

7. Costs

"The expense of preparing and serving the record on appeal may be taxed as costs to a nonprevailing appellant, except that expenses may not be taxed to an indigent party." MCR 7.118(H)(1)(c).

8. Appeal from Circuit Court to Court of Appeals

"An appeal of a circuit court decision is by application for leave to appeal to the Court of Appeals under MCR 7.205, and the Court of Appeals shall expedite the matter." MCR 7.118(I).

An appeal to the Court of Appeals does not affect the parole board's jurisdiction to review the matter upon reversal or remand or to provide for a hearing as set out in MCR 7.118(J)(1)-(2). MCR 7.118(J)(3).

D. Objection to Parole Recommendation in Certain Cases

Before granting parole to a prisoner under MCL 791.234(13)-(17) (parole in cases involving certain drug offenses) or MCL 791.235(10) (medical parole), the parole board must provide notice to the prosecuting attorney in the county where the prisoner was convicted. MCL 791.234(18). At the same time, it must notify "any known victim or, in the case of a homicide, the victim's immediate family" when it is considering medical parole under MCL 791.235(10). MCL 791.234(18).

Within 30 days of receiving this notice, "[t]he prosecuting attorney or victim or, in the case of a homicide, the victim's immediate family, may object to the parole board's decision to recommend parole by filing a motion in the circuit court in the county in which the prisoner was convicted[.]" MCL 791.234(19). A motion to object "must be heard by the sentencing judge or the judge's successor in office." *Id*. If the prosecutor is objecting, he or she "may seek an independent medical examination of the prisoner being considered for [medical] parole[.]" *Id*. "If an appeal is initiated under this subsection, a subsequent appeal under [MCL 791.234(11)] may not be initiated upon the granting of parole." MCL 791.234(19).

At a hearing on an objection to the parole board's recommendation, both of the following apply:

> "(a) The prosecutor and the parole board may present evidence in support of or in opposition to the determination that a prisoner is medically frail, including the results of any independent medical examination.
>
> (b) The sentencing judge or the judge's successor shall determine whether the prisoner is eligible for parole as a result of being medically frail." MCL 791.234(20).

The court's decision "is binding on the parole board with respect to whether a prisoner must be considered medically frail or not." MCL 791.234(21). However, the court's decision "is subject to appeal by leave to the court of appeals granted to the department, the prosecuting attorney, or the victim or victim's immediate family in the case of a homicide." *Id*.

E. Request for Early Parole

"Pursuing a request for written approval [from the sentencing judge or their successor] for early parole eligibility under MCL 769.12(4)(a) does not constitute an appeal of a decision by the Parole Board." *People v Grant*, 329 Mich App 626, 636 (2019). "Therefore, a circuit court owes no deference to the Parole Board under the 'clear abuse of discretion' standard when deciding whether to approve eligibility for early parole." *Id*. Additionally, "a court's decision regarding eligibility for early parole does not implicate any concerns about the deprivation of a constitutional guarantee of life, liberty, or property without due process of law." *Id*. at 637.

F. Appeal From Parole Revocation

"After a prisoner is released on parole, the prisoner's parole order is subject to revocation at the discretion of the parole board for cause[.]" MCL 791.240a(1). Because a parole revocation "is not part of a criminal prosecution, . . . the full panoply of rights due a defendant in such a proceeding does not apply[.]" *Morrisey v Brewer*, 408 US 471, 480 (1972). If the Department of Corrections (DOC) fails to comply with the timelines for revocation proceedings, the proper remedy is a complaint for an order of mandamus. *Jones v Dep't of Corrections*, 468 Mich 646, 658 (2003).

Chapter 6 of the Administrative Procedures Act (APA), MCL 24.301 to MCL 24.306, applies to judicial review of parole revocation hearings. *Penn v Dep't of Corrections*, 100 Mich App 532, 540 (1980). A petition for review of a parole revocation decision must be filed in the circuit court within 60 days of the parole revocation. MCL 24.303—MCL 24.304. However, the APA is not the only avenue of judicial review available to an accused parolee. *Triplett v Deputy Warden*, 142 Mich App 774, 779 (1985). If an accused parolee fails to seek relief in the circuit court within the 60-day APA time limit, he or she may still file an action for habeas corpus. *Id.* See MCR 3.303 for information on filing for habeas corpus to inquire into the cause of detention.

2.6 Appeals from Agencies Governed by the Administrative Procedures Act[64]

MCR 7.119 governs appeals from an agency decision to which the Administrative Procedures Act (APA), MCL 24.201 *et seq*., applies. MCR

[64]See the Michigan Judicial Institute's *Administrative Procedures Act and Michigan Civil Service Commission Appeals Table*.

7.119(A). Unless provided otherwise in MCR 7.119, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.119(A).[65] The APA applies to "a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action. Subject to [MCL 24.315(5)], agency includes the municipal employees retirement system and the retirement board created by the municipal employees retirement act of 1984, . . . MCL 38.1501 to [MCL 38.1555]." MCL 24.203(2). For purposes of the APA, "[a]gency does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, the state civil service commission[66], or an association of insurers created under the insurance code of 1956, . . . MCL 500.100 to [MCL] 500.8302, or other association or facility formed under [the insurance code of 1956] as a nonprofit organization of insurer members." MCL 24.203(2).[67]

A. Timing Requirements in Appeals of Right

A person must file a petition for review of an agency's final decision or order within 60 days of the mailing of the notice of the agency's decision or order. MCR 7.119(B)(1). An application for interlocutory appeal of a preliminary procedural or intermediate agency action or ruling must be filed within 14 days of the decision. MCR 7.119(C). If a late appeal is permitted by statute, the late application must be filed within six months after entry of the decision or order. MCR 7.119(D).

B. Manner of Filing in Appeals of Right, Interlocutory Appeals, and Late Appeals

Appeals of right. A claim of appeal must comply with the requirements of MCR 7.104(C)(1), "except that:

> (*i*) the party aggrieved by the agency decision is the appellant and is listed first in the caption; and
>
> (*ii*) the party seeking to sustain the agency's decision is the appellee; or
>
> (*iii*) if there is no appellee, then the caption may read 'In re [*name of appellant or other identification of the subject of the appeal*],' followed by the designation of the appellant.

[65] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[66] See Section 2.4 for information on appeals from Michigan Civil Service Commission decisions.

[67] See Section 2.10 for information on appeals from agencies not governed by the APA.

> Except where otherwise provided by law, the agency or other party to the case may become an appellee by filing an appearance within 21 days after service of the claim of appeal." MCR 7.119(B)(2)(a).

"The claim of appeal must:

> (*i*) state '[*Name of appellant*] claims an appeal from the decision entered on [*date*] by [*name of the agency*],' and
>
> (*ii*) include concise statements of the following:
>
> > [A] the statute, rule, or other authority enabling the agency to conduct the proceedings;
> >
> > [B] the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court; and
> >
> > [C] the facts on which venue is based under MCL 24.303(1)."[68] MCR 7.119(B)(2)(b).

The claim must be signed in accordance with MCR 7.104(C)(3), and comply with MCR 7.104(D) regarding the filing of other documents. MCR 7.119(B)(2)(c)-(d). The appellant must serve the agency with the items set forth in MCR 7.104(E), complete service as set forth in MCR 7.104(D)(9), and serve the Attorney General. MCR 7.119(B)(2)(e)-(f).

Interlocutory and late appeals. The manner of filing of an interlocutory appeal is governed by MCR 7.119(C), and the filing of a late appeal is governed by MCR 7.119(D).

C. Stay

"The filing of an appeal or an application for leave to appeal does not stay enforcement of the agency's decision or order." MCR 7.119(E). However, a party may file a motion for a stay. MCR 7.119(E)(1). The agency is entitled to notice of such a motion even if it has not filed an appearance in the appeal. MCR 7.119(E)(2). The court may order a stay if it finds that:

> "(a) the moving party will suffer irreparable injury if a stay is not granted;
>
> (b) the moving party made a strong showing that it is likely to prevail on the merits;

[68] See Section 2.1(D) for information on venue.

> (c) the public interest will not be harmed if a stay is granted; and
>
> (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted." MCR 7.119(E)(3).

If the court grants a stay, it must "set appropriate terms and conditions for the posting of bond

> (a) in the amount required by any applicable statute authorizing the appeal, or
>
> (b) in an amount and with sureties that the circuit court deems adequate to protect the public and the parties when there are no statutory instructions." MCR 7.119(E)(4).

The court may issue a temporary stay of enforcement without written notice if:

> "(*i*) it clearly appears from the facts alleged in the motion that immediate and irreparable injury will result if a stay is not entered before a hearing, and
>
> (*ii*) the moving party certifies to the court in writing that it made reasonable efforts to contact the other parties and agencies, but was unsuccessful." MCR 7.119(E)(5)(a).

A temporary stay remains in place until a hearing can be held. MCR 7.119(E)(5)(b). A motion to dissolve a temporary stay must be heard within 24 hours, or less if the court finds good cause. *Id*. Such a motion takes precedence over all matters other than similar motions. *Id*.

D. Stipulations

"The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court." MCR 7.119(F).

E. Additional Evidence

The appellant may file a motion "to present proofs of [an] alleged irregularity in procedure before the agency, or to allow the taking of additional evidence before the agency," if the motion is "filed with or included with the claim of appeal or application." MCR 7.119(G). The time for filing briefs is stayed until the evidence is taken. *Id*.

F. Attorney Fees

"The plain language of MCL 600.2421d provides for 'judicial review of the final action of a presiding officer in a contested case pursuant to [MCL 24.325].' MCL 24.325 provides judicial review of a final action taken by the presiding officer under MCL 24.323 in regard to costs and fees." *Ayotte v Dep't of Health and Human Servs*, 337 Mich App 29, 43 (2021) (alteration in original). Because a circuit court's authority is limited to judicial review of a presiding officer's decision regarding attorney fees, MCL 24.325, a circuit court lacks jurisdiction to award attorney fees under MCL 24.323(1). *Ayotte*, 337 Mich App at 41. Additionally, "[t]he plain language of MCL 24.323(1) requires the 'presiding officer' to determine that the position of the agency was frivolous under one of the conditions identified in [MCL 24.323(1)(a)-(c)] before an award of attorney fees and costs can be made. Clearly, the circuit court was not a 'presiding officer,'" as defined in MCL 24.322(4). *Ayotte*, 337 Mich App at 41, 49 (holding the circuit court erred in awarding attorney fees and costs under MCL 24.323(1) and MCL 600.2421d where "there was no final action on that issue for the circuit court to review" "[b]ecause the presiding officer did not make a determination regarding attorney fees").

G. Standard of Review[69]

"Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

> (a) In violation of the constitution or statute.
>
> (b) In excess of the statutory authority or jurisdiction of the agency.
>
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
>
> (d) Not supported by competent, material and substantial evidence on the whole record.
>
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
>
> (f) Affected by other substantial and material error of law." MCL 24.306(1).

[69] See Section 2.2(A) for the general standard of review applicable to administrative appeals.

The circuit court may affirm, reverse, modify, or remand the decision or order for further proceedings. MCL 24.306(2). See also MCR 7.119(H).

The court must specifically identify any findings that lack support if the agency's decision or order is not supported by competent, material, and substantial evidence. MCR 7.119(H)(1). The court must specifically identify any conclusions of law that are being reversed if the agency's decision or order violates the Constitution or a statute, is affected by material error of law, or is affected by unlawful procedure that resulted in material prejudice to a party. MCR 7.119(H)(2).

In reviewing a decision of an administrative law judge (ALJ) to award or deny attorney fees and costs under MCL 24.323(1)(c) in a contested case under the APA, "whether an argument has 'legal merit' is not the proper legal question to be considered by the circuit court; . . . [r]ather, the standard, as set forth in MCL 24.323(1)(c), is whether the [agency's] legal position 'was devoid of *arguable* legal merit.'" *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 365 (2016), quoting MCL 24.323(1)(c) (emphasis added by the Court of Appeals). "A claim is not frivolous merely because the party advancing the claim does not prevail on it; . . . [i]nstead, a claim is devoid of *arguable* legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent." *Grass Lake*, 316 Mich App at 365 (applying, as "highly persuasive," authority "interpreting the nearly identical language found in MCL 600.2591(3)(a)," and holding that the ALJ properly denied the petitioner's request for attorney fees; "although the [agency] did not prevail in the [underlying] contested case, its legal position was sufficiently grounded in law so as to have at least some *arguable* legal merit; . . . and hence it was not frivolous under MCL 24.323(1)(c)") (quotation marks and citations omitted).

2.7 Motor Vehicle Code - Secretary of State[70]

"A person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license, a vehicle group designation, or an indorsement on a license or revoking, suspending, or restricting an operator's or chauffeur's license, vehicle group designation, or an indorsement may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed under [MCL 257.625f] or under the order of a

[70]See the Michigan Judicial Institute's *Licensing (Michigan Vehicle Code) Appeals Table*.

trial court under [MCL 257.328] or, in all other cases, in the circuit court in the person's county of residence." MCL 257.323(1).

"[MCR 7.120] governs appeals to the circuit court under the Michigan Vehicle Code . . . from a final determination by the Secretary of State pertaining to an operator's license, a chauffeur's license, a vehicle group designation, or an endorsement." MCR 7.120(A). Unless provided otherwise in MCR 7.120, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.120(A).[71]

In an appeal of right or late appeal, a person must file a petition for review within 63 days of a final determination by the Secretary of State (SOS). MCL 257.323(1). However, for good cause shown, the court may allow the person to file the petition within 182 days of the final determination. *Id*. See also MCR 7.120(B)(1); MCR 7.120(C)(1).[72] See MCR 7.120(C) for additional information on applications for late appeal.

A. Manner of Filing an Appeal of Right

A claim of appeal must conform to the requirements of MCR 7.104(C)(1), except that the party aggrieved by the Secretary of State's decision is the appellant. MCR 7.120(B)(2)(a).

> "The claim of appeal must:
>
> (*i*) state the appellant's full name, current address, birth date, and driver's license number;
>
> (*ii*) state '[*name of appellant*] claims an appeal from the decision on [*date*] by the Secretary of State'; and
>
> (*iii*) include concise statements of the following:
>
> [A] the nature of any determination by the Secretary of State;
>
> [B] the statute authorizing the Secretary of State's determination;
>
> [C] the subsection of MCL 257.323 under which the appeal is taken; and
>
> [D] the facts on which venue is based."[73] MCR 7.120(B)(2)(b).

---

[71] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[72] With the prosecutor's consent, a peace officer may file a petition for review within the same time frames. MCL 257.323(1). See also MCL 257.625f(8).

In addition, the claim of appeal must be signed and dated by the appellant or the appellant's attorney as provided in MCR 7.104(C)(3). MCR 7.120(B)(2)(c). The appellant must attach a copy of the determination from which the appeal is taken and any affidavits supporting the claim of appeal. MCR 7.120(B)(2)(d).

B. Stay

"The filing of a claim of appeal or an application for late appeal does not stay enforcement of the Secretary of State's decision or order." MCR 7.120(D). However, "[t]he appellant may file for a stay of enforcement under MCL 257.323a," and "[t]he Secretary of State may file a motion challenging the stay." MCR 7.120(D). The appellant must serve a copy of the order granting or denying the request on the Secretary of State. *Id*.

C. Stipulations

"The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court." MCR 7.120(E).

D. Hardship Review Hearing—§ 257.323(3)

"The court may require briefs and may enter an order setting a briefing schedule." MCR 7.120(F)(1). The court must schedule a hearing under MCL 257.323(2). MCR 7.120(F)(2). "Except as otherwise provided in [MCL 257.323], in reviewing a determination resulting in a denial, suspension, restriction, or revocation under this act, the court shall confine its consideration to a review of the record prepared under [MCL 257.322] or [MCL 257.625f] or the driving record created under [MCL 257.204a] for a statutory legal issue[.] . . ." MCL 257.323(4).

Subject to the restrictions in MCL 257.323(3), "[t]he court may affirm, modify, or set aside"[74] the SOS's decision after hearing testimony and examining all the facts and circumstances related to the decision if the decision was made under:

- physical or mental disability, MCL 257.303(1)(d);
- unsafe driving, MCL 257.320;
- driving with a suspended license, MCL 257.904(10)-(11);

[73] See Section 2.1(D) for information on venue.

[74] See MCL 257.323(4) for criteria that must be met in order to set aside the SOS's decision.

- driving in violation of a probationary condition, MCL 257.310d; or

- a first violation of MCL 257.625f (refusal to submit to a chemical test under the implied consent statute). MCL 257.323(3).

The court "may determine that the petitioner is eligible for full driving privileges or, if the petitioner is subject to a revocation under [MCL 257.303], may determine that the petitioner is eligible for restricted driving privileges." MCL 257.323(4). See MCL 257.323c and MCL 257.323(4)-(8) for more information on ordering the SOS to issue a restricted license.

MCL 257.323a(1) provides in relevant part:

> "[T]he court may enter an ex parte order staying the suspension or revocation subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court[.]"

However, the court is not authorized to enter an ex parte order staying a denial, suspension, or restriction on the basis of hardship. MCL 257.323a(2).

E. Review of Secretary of State's Determination—§ 257.323(4)

In reviewing a determination of the SOS resulting in a denial, suspension, restriction, or revocation of driving privileges, the court "may determine that the petitioner is eligible for full driving privileges or, if the petitioner is subject to a revocation under [MCL 257.303], may determine that the petitioner is eligible for restricted driving privileges." MCL 257.323(4).

"Unless otherwise ordered, the parties must file briefs complying with MCR 7.111." MCR 7.120(G)(1). The court must schedule oral argument if a party makes a request in accordance with MCR 7.111(C), "unless it concludes that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument." MCR 7.120(G)(2).

Before setting aside the Secretary of State's determination, the court must either make a determination that the petitioner is eligible for full driving privileges according to the criteria set out in MCL 257.323(4)(a)[75], or make a determination that the petitioner is eligible for review of a revocation or denial under MCL 257.303 or

eligible for restricted driving privileges according to the criteria set out in MCL 257.323(4)(b). "Except as otherwise provided in [MCL 257.323], in reviewing [the Secretary of State's] determination, . . . the court shall confine its consideration to a review of the record prepared under [MCL 257.322 or MCL 257.625f] or the driving record created under [MCL 257.204a] for a statutory legal issue[.]" MCL 257.323(4); see also MCR 7.120(G)(3). "Judicial review of an administrative licensing sanction under [MCL 257.303] must be governed by the law in effect at the time the offense was committed or attempted." MCL 257.320e(6).

If the court determines that the petitioner is eligible for restricted driving privileges under MCL 257.323(4)(b), the court must issue an order that contains certain information set out in MCL 257.323(5)(a)-(e), including "[a] requirement that each motor vehicle operated by the petitioner be equipped [(at the petitioner's expense)] with a properly installed and functioning ignition interlock device for a period of not less than 1 year before the petitioner will be eligible to return to the secretary of state for a hearing." MCL 257.323(5)(b). The court must also notify the secretary of state of its determination that a petitioner is eligible for restricted driving privileges through the issuance of an order under MCL 257.323(5). MCL 257.323(8). Additionally, if the petitioner intends to operate a vehicle owned by his or her employer, the court must notify the employer of the petitioner's obligation under MCL 257.323(5)(b) to operate a vehicle only if it is equipped with an ignition interlock device. MCL 257.323(6).[76] The court does not "retain jurisdiction over a license issued under [MCL 257.323]." MCL 257.323(8).

2.8 Appeals of Decisions Regarding Concealed Pistol Licenses—§ 28.425d[77]

Appeals to the circuit court under MCL 28.425d are governed by MCR 7.121. MCR 7.121(A). Unless provided otherwise in MCR 7.121, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.121.[78] Timing of the appeal of right is governed by MCR 7.104(A). MCR 7.121(C)(1).

[75] See also MCR 7.120(G)(3).

[76] This requirement is not applicable to a vehicle operated by an individual who is self employed that uses the vehicle for both business and personal use. MCL 257.323(6).

[77] See the Michigan Judicial Institute's *Concealed Pistol Licensing Appeals Table*.

[78] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

A. Manner of Filing an Appeal of Right

The claim of appeal must conform with MCR 7.104(C)(1), "except that:

> (*i*) the license applicant or licensee is the appellant, and
>
> (*ii*) the county clerk, department of state police, or entity taking the fingerprints may be the appellee." MCR 7.121(C)(2)(a).

"The claim of appeal must state whether the appellant is appealing a statutory disqualification, failure to issue a receipt, or failure to issue a concealed pistol license, and the fact on which venue[79] is based." MCR 7.121(C)(2)(b). The claim must also be signed in compliance with MCR 7.104(C)(3). MCR 7.121(C)(2)(c). The appellant must serve the claim of appeal on all parties, and within the time for filing an appeal, send a written request to the county clerk to send a certified copy of the record to the circuit court. MCR 7.121(C)(2)(d)-(e).

The parties must file briefs that comply with MCR 7.111, unless otherwise ordered by the court. MCR 7.121(C)(4). If a party makes a request for oral argument in accordance with MCR 7.111(C), the court must hold oral argument within 14 days after the appellee's brief was filed or due, unless it concludes that the briefs and record adequately present the facts and legal arguments, and the court's deliberation would not be significantly aided by oral argument. MCR 7.121(C)(5); MCR 7.114(A).

B. Standard of Review

The appeal is "determined by a review of the record for error." MCL 28.425d. If the court determines that the notice of statutory disqualification, failure to provide a receipt, or failure to issue a license "was clearly erroneous or was arbitrary and capricious," the court must order the county clerk to issue a license or receipt as required by the Firearms Act.[80] MCL 28.425d(2). The court may also order the entity to refund any filing fees incurred by the applicant in filing the appeal, to the degree of the entity's responsibility. MCL 28.425d(2). Upon a finding that an entity's decision was arbitrary and capricious, the court must order that the entity pay the applicant the actual costs and attorney fees associated with the appeal. MCL 28.425d(3). However, the court must order the applicant to pay the actual costs and actual attorney fees of the

[79] See Section 2.1(D) for information on venue.

[80] MCL 28.421 *et seq*.

entity upon a finding that the applicant's appeal was frivolous. MCL 28.425d(4).

The court must serve the parties with a copy of its order resolving the appeal. MCR 7.121(D).

2.9 Appeals of Zoning Ordinance Determinations[81]

"[A]ppeals to the circuit court from a determination under a zoning ordinance by any officer, agency, board, commission, or zoning board of appeals, and by any legislative body of a city, village, township, or county authorized to enact zoning ordinances" are governed by MCR 7.122. MCR 7.122(A)(1). Unless provided otherwise in MCR 7.122, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.122(A).[82] MCR 7.122 does not preclude a party from filing a complaint for relief relating to a determination under a zoning ordinance. MCR 7.122(A)(2). An appeal under MCR 7.122 is an appeal of right. MCR 7.122(A)(3).

A. Standing

"The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under [MCL 125.3606]." MCL 125.3605. "[T]he 'aggrieved party' standard, which applies to appeals . . . under MCL 125.3605, also applie[s] to appeals of zoning decisions where there [is] no provision for review by a zoning board of appeals." *Ansell v Delta Co Planning Comm*, 332 Mich App 451, 456 (2020) (finding "appellants were obliged to show themselves to be parties aggrieved by the zoning decisions below in order to invoke judicial review in the circuit court").

"Neither the [Michigan Zoning Enabling Act[83]] nor any of Michigan's previous zoning statutes explicitly require one to own real property in order to be 'aggrieved' by local land-use decisions or to prove 'aggrieved' status by comparison to other property owners who are similarly situated." *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 586 (2022). "[T]o be a 'party aggrieved' under MCL 125.3605 and MCL 125.3606, the appellant must meet three criteria." *Id*. at 595 (holding that "'aggrieved' must be given the same meaning in both MCL 125.3604(1) and MCL

[81] See the Michigan Judicial Institute's *Zoning Ordinance Determination Appeals Table*.

[82] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[83] MCL 125.3101 *et seq*.

125.3605"). "First, the appellant must have participated in the challenged proceedings by taking a position on the contested decision, such as through a letter or oral public comment." *Saugatuck*, 509 Mich at 595. "Second, the appellant must claim some legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the challenged decision." *Id*. at 595. "Third, the appellant must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community." *Id*. at 595. "Factors that can be relevant to this final element of special damages include but are not limited to: (1) the type and scope of the change or activity proposed, approved, or denied; (2) the nature and importance of the protected right or interest asserted; (3) the immediacy and degree of the alleged injury or burden and its connection to the challenged decision as compared to others in the local community; and (4) if the complaining party is a real-property owner or lessee, the proximity of the property to the site of the proposed development or approval and the nature and degree of the alleged effect on that real property." *Id*. at 596.

The *Saugatuck* Court reaffirmed that "mere ownership of real property that is adjacent to a proposed development or that is entitled to statutory notice, *without a showing of special damages*, is not enough to show that a party is aggrieved." *Saugatuck*, 509 Mich at 596. The Court also stated that "*generalized* concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision." *Id*. at 597. However, the Court cautioned that "a specific change or exception to local zoning restrictions might burden certain properties or individuals' rights more heavily than others." *Id*. at 597. "A party who can present some evidence of such disproportionate burdens likely will have standing to appeal under MCL 125.3605 and MCL 125.3606." *Saugatuck*, 509 Mich at 597 (noting that "it is possible that an individual or entity could be a 'person' under MCL 125.3604(1)" pursuant to the definition contained in MCL 125.3102(q), but not a 'party' for purposes of MCL 125.3605" unless they also participated in lower proceedings concerning the development).

"The aggrieved party standard required by MCL 125.3605 is limited to the context of who may appeal the administrative actions of zoning officials as discussed in that statutory section." *Sakorafos v Lyon Twp*, ___ Mich App ___, ___ (2023). "The requirement of showing aggrieved party status *does not* apply to a plaintiff bringing a claim of nuisance per se under MCL 125.3407." *Sakorafos*, ___ Mich App at ___ ("[s]tanding is thus measured by a different standard

than that used to measure aggrieved party status"). Thus, "a plaintiff's injury need not be unique in the community to confer standing to abate a nuisance per se." *Id*. at ___. The "correct standard is whether plaintiffs can show damages of a special character distinct and different from the injury suffered by the public generally." *Id*. at ___ (quotation marks and citation omitted). The *Sakorafos* Court held that the trial court clearly erred when it "applied the aggrieved party test applicable to a party seeking to appeal a zoning decision under MCL 125.3605." *Sakorafos*, ___ Mich App at ___ (noting that "the trial court . . . conflated the test for standing with that of aggrieved party status" by concluding that the plaintiffs "lacked standing to initiate suit for nuisance" because they "had not demonstrated unique damages as described in the aggrieved party test"). Further, "although MCL 125.3407 provides for the enforcement of a zoning ordinance, a municipality has discretion in doing so and courts generally will not interfere with the municipality's decisions." *Sakorafos*, ___ Mich App at ___. The Court of Appeals opined that "the Township has discretion in the enforcement of its ordinances, and plaintiffs' ability to seek abatement of the nuisance per se created by the alleged zoning violation provides an equitable remedy to achieve enforcement of the ordinance." *Id*. at ___ (holding that the trial court "did not err by determining that plaintiffs are not entitled to a writ of mandamus").

Although "the right to appeal a zoning decision does not restrict the right of a party to bring a separate complaint for relief relating to a zoning determination under certain circumstances" under MCR 7.122(A)(2), a "circuit court correctly concluded that the gravamen of plaintiffs' original action . . . [was] to overturn the [Township Board's] decision approving [plaintiff's] site plan and special use of the property, i.e., a de facto appeal of the [Township Board's] decision." *Zelasko v Bloomfield Twp*, ___ Mich App ___, ___ (2023) (noting that plaintiffs did not assert separate causes of action and "merely allege[d] defects in the [Township Board's] decision and the decision-making process in approving [plaintiff's] site plan and special use").

B. Time Requirements and Subject Matter Jurisdiction

Time requirements. The time for filing an appeal is governed by the statute applicable to the appeal. MCR 7.122(B). If the applicable statute does not specify a time, "the appeal must be filed within 30 days after the certification of the minutes of the board or commission from which the appeal is taken or within 30 days after the board or commission issued its decision in writing, whichever deadline comes first." *Id*. See also MCL 125.3606.

Subject matter jurisdiction. Because the "time limit for filing an appeal in circuit court is jurisdictional," circuit courts lack "jurisdiction over an untimely claim of appeal." *Zelasko v Bloomfield Twp*, ___ Mich App ___, ___ (2023) (citing MCR 7.104(A) and *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393-394 (2019)). In *Zelasko*, the Court of Appeals observed that the "plaintiffs could not invoke the circuit court's subject matter jurisdiction to review the decision of the Township Board by filing an original action in the circuit court," concluding that "[b]ecause plaintiffs' original action in the circuit court was simply a challenge to the Board's decision outside of the appellate process, plaintiffs' complaint was an impermissible collateral attack of the Township Board's decision." *Zelasko*, ___ Mich App at ___. Indeed, "plaintiffs only could invoke the circuit court's subject matter jurisdiction to review the [Township Board's] decision by appeal of that decision to the circuit court." *Id*. at ___. Thus, "[b]ecause plaintiffs did not challenge the [Township Board's] decision by filing a timely appeal to the circuit court, the circuit court correctly concluded that it lacked subject matter jurisdiction over the dispute." *Id*. at ___.

C. Manner of Filing

"The claim of appeal shall conform to the requirements of MCR 7.104(C)(1), except that:

> (a) the party aggrieved by the determination shall be designated the appellant; and
>
> (b) the city, village, township, or county under whose ordinance the determination was made shall be designated the 'appellee,' except that when a city, village, township, county, or an officer or entity authorized to appeal on its behalf, appeals a determination as an aggrieved party, then the appellee(s) shall be designated as the board, commission, or other entity that made the determination and the party that prevailed before the board, commission, or other entity that made the determination." MCR 7.122(C)(1).

"The claim of appeal must:

> (a) state '[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the officer or entity*]'; and
>
> (b) include concise statements of the following:
>
> > (*i*) the nature of the determination by the officer or entity;

(*ii*) the statute authorizing the officer or entity's proceedings and determination;

(*iii*) the statute or constitutional provision under which the appeal is taken;

(*iv*) the facts on which venue[84] is based;

(*v*) the grounds on which relief is sought, stated in as many separate paragraphs as there are separate grounds alleged; and

(*vi*) the relief sought." MCR 7.122(C)(2).

The appeal must be signed as set forth in MCR 7.104(C)(3). MCR 7.122(C)(3). The appellant must attach a copy of the order and/or minutes of the officer or entity from which the appeal is taken, or otherwise indicate there is no document to attach. MCR 7.122(C)(4). The parties must file briefs that comply with MCR 7.111 unless the court orders otherwise. MCR 7.122(F).

D. Bond

A bond is not required unless otherwise ordered by the court. MCR 7.122(D).

E. Record on Appeal

"The record includes the original or a copy certified by the city, village, township, or county clerk of the application, all documents and material submitted by any person or entity with respect to the application, the minutes of all proceedings, and any determination of the officer or entity." MCR 7.122(E)(1). "Motions regarding the contents of the record or to prepare a transcript of proceedings before the officer or entity must be filed within 21 days after transmission of the record to the court." MCR 7.122(E)(6).

F. Standard of Review

Appeals under MCL 125.3606. For an appeal from a city, village, township, or county board of zoning appeals, the court must review the record and decision to ensure that the decision:

- is in compliance with the constitution and statutes of Michigan;

[84] See Section 2.1(D) for information on venue.

- complies with proper procedure;
- is supported by competent, material, and substantial evidence; and
- is representative of a reasonable exercise of discretion by the zoning board of appeals as provided by law. MCL 125.3606(1); MCR 7.122(G)(1)(a).

"If the court finds the record inadequate to review the decision or finds that additional material evidence exists that with good reason was not presented, the court shall order further zoning board of appeals proceedings on conditions that the court considers proper." MCR 7.122(G)(1)(b). "The zoning board of appeals may modify the findings and decision as a result of the new proceedings or may affirm the original decision." *Id*.

The court may either affirm, reverse, or modify the board's decision. MCR 7.122(G)(1)(c). The court must serve a copy of its order resolving the appeal on all parties. MCR 7.122(H).

Other appeals. "In an appeal from a final determination under a zoning ordinance where no right of appeal to a zoning board of appeals exists, the court shall determine whether the decision was authorized by law and the findings were supported by competent, material, and substantial evidence on the whole record." MCR 7.122(G)(2).

2.10 Appeals from Agencies Not Governed by Another Rule

Appeals from agencies not governed by any of the specific rules proceed as provided by MCR 7.123. Unless provided otherwise in MCR 7.123, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.123(A).[85]

A. Time Requirements

Timing is the same as for appeals in civil cases: appeals of right are governed by MCR 7.104(A) and applications for leave to appeal and interlocutory appeals must comply with MCR 7.105(A). MCR 7.123(B)-(C).[86] A late appeal may be filed if permitted by statute, and must comply with MCR 7.123(D).

---

[85] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

[86] See the Michigan Judicial Institute's *General Appeals of Right Table* and *General Appeals by Leave Table*.

B. Manner of Filing

Appeal of right. A claim of appeal must be signed by the appellant or the appellant's attorney as provided in MCR 7.104(C)(3). MCR 7.123(B)(2)(c). The claim must also:

> "(*i*) state '[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the agency*],' and
>
> (*ii*) include concise statements of the following:
>
> > [A] the nature of the proceedings before the agency;
> >
> > [B] citation to the statute, rule, or other authority enabling the agency to conduct the proceedings;
> >
> > [C] citation to the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court; and
> >
> > [D] the facts on which venue[87] is based." MCR 7.123(B)(2)(b).

Appeal by application for leave. Applications for leave to appeal must comply with MCR 7.105 and MCR 7.112(B)(2)(b)(*ii*). MCR 7.123(C)(2). An application seeking leave to appeal must "also state why review of the agency's final decision will not be an adequate remedy." *Id*.

C. Stay

"The filing of an appeal or an application for leave to appeal does not stay enforcement of the agency's decision or order." MCR 7.123(E). However, a party may file a motion for a stay. MCR 7.123(E)(1). The agency is entitled to notice of such a motion even if it has not filed an appearance in the appeal. MCR 7.123(E)(2). The court may order a stay if it finds that:

> "(a) the moving party will suffer irreparable injury if a stay is not granted;
>
> (b) the moving party made a strong showing that it is likely to prevail on the merits;
>
> (c) the public interest will not be harmed if a stay is granted; and

[87] See Section 2.1(D) for information on venue.

> (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted." MCR 7.123(E)(3).

If the court grants a stay, it must "set appropriate terms and conditions for the posting of bond:

> (a) in the amount required by any applicable statute authorizing the appeal, or
>
> (b) in an amount and with sureties that the circuit court deems adequate to protect the public and the parties when there are no statutory instructions." MCR 7.123(E)(4).

The court may issue a temporary stay of enforcement without written notice if: (*i*) it clearly appears from the facts alleged in the motion that immediate and irreparable injury will result if a stay is not entered before a hearing, and (*ii*) the moving party certifies to the court in writing that it made reasonable efforts to contact the other parties and agencies, but was unsuccessful." MCR 7.123(E)(5)(a).

A temporary stay may be extended until a hearing can be held. MCR 7.123(E)(5)(b). A motion to dissolve a temporary stay must be heard within 24 hours, or less if the court finds good cause. *Id*. Such a motion takes precedence over all matters other than similar motions. *Id*.

D. Stipulations

"The parties may stipulate regarding any issue on appeal or any part of the record on appeal if the stipulation is embodied in an order entered by the court." MCR 7.123(F).

E. Standard of Review

"The court may affirm, reverse, remand, or modify the decision of the agency and may grant further relief as appropriate based on the record, findings, and conclusions." MCR 7.123(G). The court must specifically identify the finding or findings that lack support if it determines the agency's decision or order was not supported by competent, material, and substantial evidence. MCR 7.123(G)(1). The court must identify the agency's conclusions of law that are being reversed if it determines the agency's decision or order violates the constitution or a statute, is affected by material error, or is affected by an unlawful procedure that resulted in material prejudice to a party. MCR 7.123(G)(2).

2.11 Appeals of Summary Proceedings

"Any party aggrieved by the determination or judgment of the court under [the Summary Proceedings Act[88]] may appeal to the circuit court of the same county. The appeal shall be made in the same manner as an appeal in other civil actions from the same court, with bond and procedure as provided by court rules." MCL 600.5753.

"The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from . . . a final judgment or final order of a district . . . court[.]" MCR 7.103(A)(1). The aggrieved party must file an appeal of right no later than ten days after entry of judgment.[89] MCR 4.201(O)(2); MCR 4.202(L).

A. Appeals From Possessory Judgments[90]

Unless otherwise provided by MCR 4.201(O), appeals from possessory judgments "must comply with MCR 7.101 through [MCR] 7.115."[91] MCR 4.201(O)(1).

1. Stay of Eviction Order

Unless the trial court orders a stay of the order of eviction, the order must be issued as provided in MCR 4.201(M).[92] MCR 4.201(O)(3)(a).

However, all proceedings are stayed, including orders of eviction that have been issued but not executed, when "a claim of appeal [is filed] together with a bond or escrow order of the court[.]" MCR 4.201(O)(3)(b).

2. Appeal Bond

The bond must "include the conditions provided in MCR 4.201(O)(4) if the appeal is from a judgment for the possession of land." MCR 7.108(B)(3)(d).

---

[88] MCL 600.5701 *et seq*.

[89] Although MCR 7.104(A)(1)-(2) permits appeals within 21 days after entry of the judgment from which the appeal is taken, MCR 4.201(O)(2)'s ten-day deadline governs because it is the more specific rule. See *People v McEwan*, 214 Mich App 690, 694 (1995) (noting that the Court of Appeals "construes court rules according to the same basic principles that govern statutory interpretation").

[90] See the Michigan Judicial Institute's *Landlord-Tenant or Land Contact Appeals Table*.

[91] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court.

[92] See the Michigan Judicial Institute's *Residential Landlord-Tenant Law Benchbook*, Chapter 4, for information on orders of eviction.

a. Landlord Appeals

When a landlord appeals a possession judgment, the landlord must file a bond providing that he or she will pay the appeal costs if he or she loses the appeal. MCR 4.201(O)(4)(a).

b. Tenant Appeals

When a tenant appeals a possession judgment, the tenant must file a bond providing that he or she will pay for the following if he or she loses the appeal:

> "(*i*) the appeal costs,
>
> (*ii*) the amount due stated in the judgment, and
>
> (*iii*) damages from the time of forcible entry, the detainer, the notice to quit, or the demand for possession." MCR 4.201(O)(4)(b).

"The court may waive the bond requirement of [MCR 4.201(O)(4)(b)(*i*) (payment of the appeal costs)] on the grounds stated in MCR 2.002(C) or [MCR 2.002(F)[93]]." MCR 4.201(O)(4)(b). MCR 2.002(C) and MCR 2.002(F) require the trial court to waive the payment of fees based on a party's receipt of public assistance or a party's indigence, respectively; it no longer authorizes the waiver of costs. Note that MCR 2.002, as amended, also contemplates fee waiver for individuals represented by certain legal services programs. See MCR 2.002(D).[94] However, MCR 4.201 has not been amended to reflect these changes.

c. Escrow

The court must enter an escrow order under MCR 4.201(I)(2) for appeals in which the landlord was awarded possession.[95] MCR 4.201(O)(4)(c). The court must require the tenant to make escrow payments during the pendency of the appeal. *Id*.

---

[93]Formerly MCR 2.002(D). See ADM File No. 2002-37 and ADM File No. 2018-20, effective January 23, 2019. MCR 4.201(N)(4)(b) has not been amended to reflect this change.

[94]"Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process." MCR 2.002(L).

[95]See the Michigan Judicial Institute's *Residential Landlord-Tenant Law Benchbook*, Chapter 4, for information on escrow orders.

Generally, the escrow order entered pursuant to the tenant's appeal of the possession judgment may not be retroactive; that is, it may not include "arrearages preceding the date of the posttrial escrow order[.]" *Id*. However, if a pretrial escrow order was entered under MCR 4.201(I)(2), "the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal." MCR 4.201(O)(4)(c).

"If it is established that an appellant cannot obtain sureties or make a sufficient cash deposit, the court must permit the appellant to comply with an escrow order." MCR 4.201(O)(4)(d).

B. Appeals from Land Contract Forfeiture Judgments[96]

"Except as otherwise provided by [MCR 4.202] or by law, the rules applicable to other appeals to circuit court (see MCR 7.101–[MCR] 7.115) apply to appeals from judgments in land contract forfeiture cases."[97] MCR 4.202(L).

C. Appeals by Leave

"The circuit court may grant leave to appeal from . . . a judgment or order of a trial court when (a) no appeal of right exists, or (b) an appeal of right could have been taken but was not timely filed[.]" MCR 7.103(B)(1).[98]

[96]See the Michigan Judicial Institute's *Landlord-Tenant or Land Contract Appeals Table*.

[97] See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court.

[98]See Section 2.1(G) for information on appeals by leave in circuit court.

Chapter 3: Opinions

3.1. Opinions in General 3-2
3.2 Oral Opinions 3-3
3.3 Written Opinions 3-4

3.1 Opinions in General

There is a distinction between a court's orders and its opinions; an order is the actual judgment[1], while an opinion consists of the factual and legal conclusions supporting the judgment. See generally *Black's Law Dictionary* (11th ed). "[C]ourts speak through their judgments and decrees, not their oral statements or written opinions." *Tiedman v Tiedman*, 400 Mich 571, 576 (1977). However, an opinion may be required in some circumstances.

Opinion required. In circuit court appeals, a circuit court must "decide [an] appeal by oral or written opinion and issue an order." MCR 7.114(B). "The court's order is its judgment." *Id*. A court commits error by failing to issue an oral or written opinion when deciding an appeal. *People v Anderson*, 501 Mich 175, 181 n 2 (2018) (finding "the circuit court erred by treating the prosecutor's appeal as a 'motion' and 'denying' the 'motion' without issuing an oral or written opinion"; however, the issue was deemed abandoned because the prosecutor did not seek relief for the error).

In criminal bench trials, "[t]he court must state its findings and conclusions on the record or in a written opinion made a part of the record." MCR 6.403. The same is required when sentencing a juvenile in an automatic waiver proceeding, see MCR 6.931(E)(5)[2], and when conducting a contempt hearing for a PPO or minor PPO violation, see MCR 3.708(H)(4) and MCR 3.987(G).

Committee Tip:

Although MCR 6.403 is not applicable to district courts pursuant to MCR 6.001, it is suggested that district courts also state their findings and conclusions on the record or in a written opinion made a part of the record in criminal bench trials.

In civil cases, when ruling on a motion for judgment notwithstanding the verdict or for a new trial, the court must concisely state the reasons for its

[1] "Each judgment must state, immediately preceding the judge's signature, whether it resolves the last pending claim and closes the case. Such a statement must also appear on any other order that disposes of the last pending claim and closes the case." MCR 2.602(A)(3).

[2] In automatic waiver proceedings where the court retains jurisdiction over the juvenile, places the juvenile on probation, and commits the juvenile to state wardship, the court must send a copy of the order and written opinion or transcript of the findings and conclusions of law to the Department of Health and Human Services. See MCR 6.931(F)(4).

ruling "either in a signed order or opinion filed in the action, or on the record." See MCR 2.610(B)(3); MCR 2.611(F).

Committee Tip:

Trial courts should specify the subrule of MCR 2.116(C) relied on when granting or denying a motion for summary disposition. This will assist the appellate court in determining which standard to apply and what evidence to consider.

Opinion discretionary. Although in a civil bench trial or civil trial with an advisory committee, the court must find the facts and state conclusions of law under MCR 2.517(A)(1), it "may state the finding and conclusions on the record or include them in a written opinion," MCR 2.517(A)(3) (emphasis added).[3] Similar language applies to proceedings involving waiver of jurisdiction over a juvenile and designating a case involving a juvenile. See MCR 3.950(E)(1)(b)[4]; MCR 3.952(D)(1)(b).

Sealing opinion. "A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record." MCR 8.119(I)(6).

3.2 Oral Opinions[5]

When issuing an oral opinion, the court should clearly articulate the following on the record:

- The facts of the case as found by the judge. It is useful to state what facts are not in dispute.
- The issue(s) in the case.
- The appropriate standard of review used in reaching the decision.
- Any "off-the-record" agreements between the judge and the parties affecting the decision.

---

[3]With certain exceptions specified in MCR 3.210(D), MCR 2.517 is generally applicable to domestic relations matters. See MCR 3.210(D).

[4] When waiving jurisdiction of a juvenile, the court must send without cost, a copy of the order and written opinion or transcript of the courts findings and conclusions, to the court with general criminal jurisdiction. See MCR 3.950(E)(1)(d).

[5]See also the Michigan Judicial Institute's *Bench Trial Decision Checklist*.

- The final decision. Judges must avoid any ambiguity as to the final conclusion, or they risk confusing the appellate court, which will likely result in a remand.

Stating the decision on the record as detailed above helps assure that:

- Litigants and attorneys know the basis of the decision.
- The public has confidence in the fairness of the proceeding and the logic sustaining the ruling.
- The appellate court has an adequate statement of all the pertinent facts and reasoning surrounding the trial judge's decision, allowing it to grant the trial court the high level of deference deserved in fact-finding matters.

Committee Tip:

Although courts speak through their judgments and decrees, not their oral statements or written opinions, it may be helpful to preface an oral decision with the following statement: "everything the court rules today is immediately enforceable as if reduced to writing."

3.3 Written Opinions[6]

A. Generally

The best opinion is clear, concise, and written in the active voice. This style has been termed the "agent/action" style. This writing style adopts the mandates of the plain language movement. Each sentence assigns responsibility, defines action, and states its consequences. In the following example, the second sentence illustrates the characteristics of the agent/action style:

- There was aggression in appellant Jones's pursuit of appellee Smith.
- Appellant Jones pursued appellee Smith aggressively.

[6]See also the Michigan Judicial Institute's *Bench Trial Decision Checklist*.

Avoid footnotes, personalizing the argument, and the passive voice. Write to the inevitable conclusion.

Courts may reference the *Michigan Appellate Opinion Manual* to ensure opinions are consistent in style, structure, and format with respect to quotations and citations of authority.

B. Specifically

Opinion writing involves four basic steps: research, oral argument, planning the opinion, and writing the opinion.

1. Research

Become familiar with the case by reading the briefs and the case file. Determine whether the briefs appear to accurately state the applicable law. Do any additional research necessary after reading the briefs.

2. Oral Argument

Although oral argument is not always required, a final decision should not be made before oral argument because occasionally the attorneys raise new issues or information that affects the course of the opinion. However, a rough draft of the opinion can usually be drafted before oral argument.

3. Planning the Opinion

Develop an outline for the opinion being drafted and have a clear idea of where information will fit into the outline. Determine what issues will be decided. If the case turns on a procedural issue, do not plan an opinion addressing gratuitous substantive issues. However, if the result would be the same, stating so makes the opinion even stronger.

Also, consider your audience and the aim of the opinion. Is the decision primarily for the attorneys, or will another court or administrative agency be looking to the opinion for guidance?

If assisted by a law clerk, discuss the proposed opinion with them, examining the structure, rationale, and the result.

4. Writing the Opinion

Committee Tip:

Drafting an opinion based on bad briefing tends to lead to a poorly written opinion. It may be best to write "from scratch" rather than working from poorly researched, thought out, or written briefs.

An opinion consists of the following parts, which may or may not be labeled.

Introduction: An opening section used to establish the identity of the parties; state how the case came about; identify the dominant issue; and state the court's resolution of the issue. Starting the opinion in this manner has two advantages: (1) the relevance of the facts that follow is immediately apparent, and (2) the opinion is naturally focused on the crucial issues in the case and is built on that foundation.

Statement of Facts: The statement should identify the who, what, where, when, why, and how of the case in chronological order. It should include all facts relevant to the outcome of the decision in clear, concise language. The statement of facts constitutes the facts as found by the court. Avoid quotations, excerpts from pleadings, and citations. Facts included in the written opinion should be vital and accurate. It is useful to state what facts are not in dispute. Including only essential facts saves the appellate court time and allows it to quickly become familiar with the case. Erroneous "facts" undermine the credibility of the trial court even if the errors are not outcome-determinative.

Issue(s): Sometimes it will be helpful to include a separate section that states the issue(s) being addressed by the court. If used, the statement of the issue(s) should be clear and concise. It is useful to state the issues that are not being argued. Discuss and dispense with multiple issues in order of importance/ difficulty. Do not raise or discuss issues that have not been raised by the parties. Recognize the arguments of the losing party, but do not grant them undeserved attention.

Standard of Review: This section should clearly state the standard the court is applying to the facts in the decision. Citations are a vital part of this section of the opinion.

Discussion (Analysis or Conclusions of Law): This section should start with a concise statement or paragraph setting out the law applicable to the issue at hand. If there is more than one issue, a statement of the applicable law should immediately precede the discussion. Use citations, but avoid string citations and lengthy quotations. After stating the applicable law, apply the law to the facts as stated in the statement of facts, ending with your conclusion.

Conclusion: Succinctly restate a conclusion that includes the reasons for the decision. The restatement is particularly important if multiple issues were addressed in the opinion.

Judgment/Order: The court must enter an order upon issuing an opinion. See generally MCR 2.517(A)(1); MCR 6.427; MCR 7.114(B) (note that this is a non-exhaustive list; other court rules may exist that address order/opinion requirements in specific types of proceedings).

Committee Tip:

An order should conclude with a statement that orders the decision being made. Typical language for ordering a decision is: "It is so ordered." While using this phrase is one way to conclude a variety of decisions (motion, trial, appeal, etc.), there is no authority requiring the use of this exact verbiage.

---

5. Notice of Opinion in Civil Action

"The court clerk must deliver, in the manner provided in MCR 2.107[7], a copy of the judgment, final order, written opinion, or findings entered in a civil action to the attorney or party who sought the order, judgment, opinion or findings." MCR 8.105(C). Except where e-Filing has been implemented, the clerk may charge the reproduction fee authorized by the court's local administrative order under MCR 8.119(H)(8) if an attorney or party does not provide at least one copy when filing a proposed order or judgment. MCR 8.105(C).

[7] "Notwithstanding any other provision of [MCR 2.107], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of [MCR 2.107(C)(4)]." MCR 2.107(G).

Glossary

A

Activities of daily living

- For purposes of MCL 791.235, *activities of daily living* "means basic personal care and everyday activities as described in 42 CFR 441.505, including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring from 1 physical position to another, including, but not limited to, moving from a reclining position to a sitting or standing position." MCL 791.235(22)(a).

Agency

- For purposes of subchapter 7.100 of the Michigan Court Rules, *agency* "means any governmental entity other than a 'trial court,' the decisions of which are subject to appellate review in the circuit court[.]" MCR 7.102(1).

Appeal

- For purposes of subchapter 7.100 of the Michigan Court Rules, *appeal* "means judicial review by the circuit court of a judgment, order, or decision of a 'trial court' or 'agency,' even if the statute or constitutional provision authorizing circuit court appellate review uses a term other than 'appeal.' 'Appeal' does not include actions commenced under the Freedom of Information Act, MCL 15.231 *et seq*., proceedings described in MCR 3.302 through MCR 3.306, and motions filed under MCR 6.110(H)[.]" MCR 7.102(2).

Appeal fee

- For purposes of subchapter 7.100 of the Michigan Court Rules, *appeal fee* "means the fee required to be paid to the circuit court

upon filing an appeal and any fee required to be paid to the 'trial court' or 'agency' in conjunction with the appeal[.]" MCR 7.102(3).

C

Clerk

- For purposes of subchapter 7.100 of the Michigan Court Rules, *clerk* "means clerk of the court[.]" MCR 7.102(4).

- For purposes of supchapter 7.200 of the Michigan Court Rules, *clerk* "means the Court of Appeals clerk, unless otherwise stated[.]" MCR 7.202(1).

Court

- For purposes of MCR subchapter 7.100, *court* "means the circuit court[.]" MCR 7.102(5).

D

Date of filing

- For purposes of subchapter 7.100 of the Michigan Court Rules, *date of filing* "means the date of receipt of a document by the 'clerk'[.]" MCR 7.102(6).

Department

- For purposes of the Department of Corrections Act, MCL 791.201 *et seq.*, *department* means the Department of Corrections. See MCL 791.201.

E

Entry

- For purposes of subchapter 7.100 of the Michigan Court Rules, *entry* "is as defined in MCR 7.204(A)[.]" MCR 7.102(7). MCR 7.204(A) defines that term to mean "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."

F

Filing

- For purposes of subchapter 7.200 of the Michigan Court Rules, *filing* "means the delivery of a document to the clerk and the receipt and acceptance of the document by the clerk with the intent to enter it in the record of the court or the electronic transmission of data and documents through the electronic filing system as provided in MCR 1.109(G)[.]" MCR 7.202(4).

Final judgment or final order

- For purposes of subchapter 7.100 of the Michigan Court Rules, *final judgment* or *final order* "is as defined in MCR 7.202(6)[.]" MCR 7.102(8). MCR 7.202(6) defines those terms to means:

  "(a) In a civil case,

  (*i*) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order;

  (*ii*) an order designated as final under MCR 2.604(B);

  (*iii*) in a domestic relations action, a postjudgment order that, as to a minor, grants or denies a motion to change legal custody, physical custody, or domicile;

  (*iv*) a postjudgment order awarding or denying attorney fees and costs under court rule or other law;

  (*v*) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity; or

  (*vi*) in a foreclosure action involving a claim for remaining proceeds under MCL 211.78t, a postjudgment order deciding the claim.

  (b) In a criminal case,

(*i*) an order dismissing the case;

(*ii*) the original sentence imposed following conviction;

(*iii*) a sentence imposed following the grant of a motion for resentencing;

(*iv*) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; or

(*v*) a sentence imposed following revocation of probation." MCR 7.202(6).

M

Medically frail

- For purposes of MCL 791.234, *medically frail* "means that term as defined in [MCL 791.235(22)]. MCL 791.235(22)(c) states that the term "describes an individual who is a minimal threat to society as a result of his or her medical condition, who has received a risk score of low on a validated risk assessment, whose recent conduct in prison indicates he or she is unlikely to engage in assaultive conduct, and who has 1 or both of the following:

  (*i*) A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to do 1 or more of the following without personal assistance:

    (A) Walk.

    (B) Stand.

    (C) Sit.

  (*ii*) A permanent or terminal disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform 2 or more activities of daily living."

O

Order of eviction (writ of restitution)

- MCL 600.5744 addresses issuing a writ of restitution, and indicates it is "a writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following:

  (a) Leaving the property in an area open to the public or in the public right-of-way.

  (b) Delivering the property to the sheriff as authorized by the sheriff." MCL 600.5744(1).

R

Record

- For purposes of MCR 7.109, *record* is defined in MCR 7.210(A)(1)-(2). MCR 7.109(A)(1)-(2). MCR 7.210(A)(1)-(2) provide the following definitions:

  "(1) *Appeal From Court*. In an appeal from a lower court, the record consists of the original documents filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health Code, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

  (2) *Appeal From Tribunal or Agency*. In an appeal from an administrative tribunal or agency, the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. Testimony not transcribed when the certified record is sent for consideration of an application for leave to appeal, and not omitted by stipulation of the parties, must be filed and sent to the court as promptly as possible.

T

Technical probation violation

- For purposes of subchapters 6.000-6.800 of the Michigan Court Rules, *technical probation violation* "means any violation of the terms of a probation order, including missing or failing a drug test, excluding the following:

  (a) A violation of an order of the court requiring that the probationer have no contact with a named individual.

  (b) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.

  (c) The consumption of alcohol by a probationer who is on probation for a felony violation of MCL 257.625.

  (d) Absconding, defined as the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days." MCR 6.003(7).

Trial court

- For purposes of subchapter 7.100 of the Michigan Court Rules, *trial court* "means the district court or municipal court from which the 'appeal' is taken." MCR 7.102(9).

Subject Matter Index

A

Appeals
- arising under the Michigan Employment Security Act 2-27
- arising under the Motor Vehicle Code 2-42
- from administrative agencies in general 2-24
- from administrative agency in general
  - application of court rules 2-26
  - attorney fees and costs 2-26
  - contested cases 2-26
  - non-contested cases 2-25
  - standard of review 2-24
- from agencies governed by the Administrative Procedures Act 2-37
- from agencies not governed by another rule 2-53
- from Michigan Civil Service Commission decisions 2-29
- from parole board decisions
  - denial of parole 2-29
  - grant of parole 2-31
    - application 2-31
    - grounds 2-29
    - stay 2-32
  - objection to parole recommendation 2-36
  - parole revocation 2-37
- from Secretary of State 2-42
- law of the case 1-9
- of decisions regarding concealed pistol licenses 2-46
- of summary proceedings 2-56
- of zoning ordinance determinations 2-48
- to circuit court 2-2
  - bond 2-5
  - briefs 2-21
  - by leave 2-13
  - costs in civil cases 2-24
  - cross appeal 2-17
  - decision and judgment 2-23
  - dismissal 2-22
  - exhaustion of administrative remedies 2-2
  - jurisdiction 2-3
  - miscellaneous relief 2-23
  - motions 2-20
    - reconsideration 2-20
    - rehearing 2-20
  - of right 2-9
  - oral argument 2-23
  - record on appeal 2-19
  - standing 2-2

stay of proceedings 2-5
venue 2-4
Attorney fees and costs
review of agency determination 2-26

C

Case of first impression 1-15
Collateral estoppel 1-8

L

Law of the case 1-9

O

Objection
medical parole recommendation 2-36
parole recommendation in certain drug cases 2-36
Opinions
oral 3-3
written 3-4
Overbreadth 1-31

P

Precedent
attorney general opinion 1-14
case of first impression 1-15
circuit court 1-13
dicta 1-14
lack of 1-15
legislative amendments affecting caselaw 1-11
Michigan Court of Appeals 1-12
Michigan Supreme Court 1-12
retroactivity 1-14
Sixth Circuit Court of Appeals 1-13
United States Supreme Court 1-13
vertical stare decisis 1-11

R

Record for review
bench trial 1-2
conclusions of law 1-4
findings of fact 1-4
on remand 1-7
Remand

authority to 1-16
jurisdiction 1-16
process upon 1-16
rule of mandate 1-16
scope of order 1-16
Res judicata 1-8
Retroactivity of statutes 1-31

S

Standard of review
abuse of discretion 1-18
clear error 1-18
de novo 1-18
findings of fact 1-18
harmless error 1-19
preserved constitutional error 1-21
preserved nonconstitutional error 1-21
questions of law 1-18
right result-wrong reason 1-23
unpreserved constitutional or nonconstitutional error 1-22
which standard to use 1-20
Statutory constitutional challenges 1-29
overbreadth 1-31
retroactivity 1-31
void for vagueness 1-30
Statutory construction 1-23
conflict between statute and local ordinance 1-26
conflict between statute and rule 1-25
expressio unius est exclusio alterius 1-27
generally 1-23
in pari materia 1-26
last antecedent rule 1-27
legislative history 1-28
legislative silence 1-28
noscitur a sociis 1-27
omission of words used in prior version of statute 1-28
revival 1-28
rule of lenity 1-29
Statutory interpretation
standard of review 1-32

V

Void for vagueness 1-30

Z

Zelasko v Bloomfield Twp, ___ Mich App ___ (2023) 2-50

Tables of Authority

Cases

Michigan Statutes

Michigan Court Rules

Michigan Rules of Evidence

Michigan Code of Judicial Conduct

Cases

A

Admiral Ins Co v Columbia Cas Ins Co, 194 Mich App 300 (1992) 1-2
Airgas Specialty Prod v Mich Occupational Safety and Health Admin, ___ Mich App ___ (2021) 1-23
Ansell v Delta Co Planning Comm, 332 Mich App 451 (2020) 2-48
Arizona v Fulminante, 499 US 279 (1991) 1-20
Ashker v Ford Motor Co, 245 Mich App 9 (2001) 1-9, 1-10, 1-11
Associated Builders & Contractors v Lansing, 499 Mich 177 (2016) 1-12
Augustine v Allstate Ins Co, 292 Mich App 408 (2011) 1-11
Ayotte v Dep't of Health and Human Servs, 337 Mich App 29 (2021) 2-41

B

Batson v Kentucky, 476 US 79 (1986) 1-4
Borkus v Mich Nat'l Bank, 117 Mich App 662 (1982) 1-10
Bouie v City of Columbia, 378 US 347 (1964) 1-15
Brackett v Focus Hope, Inc, 482 Mich 269 (2008) 1-18
Braska v Challenge Mfg Co, 307 Mich App 340 (2014) 2-25
Brownlow v McCall Enterprises, Inc, 315 Mich App 103 (2016) 1-10
Buhl v Oak Park, 507 Mich 236 (2021) 1-31
Burise v City of Pontiac, 282 Mich App 646 (2009) 1-23
Bynum v ESAB Group, Inc, 467 Mich 280 (2002) 1-11

C

CAF Investment Co v Saginaw Twp, 410 Mich 428 (1981) 1-9
Cain v Waste Mgt, Inc (After Remand), 472 Mich 236 (2005) 1-24
Cipriano v Cipriano, 289 Mich App 361 (2010) 1-10
Connell v Lima Twp, 336 Mich App 263 (2021) 2-3

D

Dawley v Hall, 501 Mich 166 (2018) 2-4
DeRuiter v Byron Twp, 505 Mich 130 (2020) 1-26
Detroit Pub Sch v Conn, 308 Mich App 234 (2014) 2-26
Dunn v Detroit Inter-Ins Exch, 254 Mich App 256 (2002) 1-iv

E

Estes v Titus, 481 Mich 573 (2008) 1-8, 1-18

F

Federated Ins Co v Oakland Co Rd Comm, 475 Mich 286 (2006) 2-2, 2-10
Fletcher v Fletcher, 447 Mich 871 (1994) 1-19

G

Glasker-Davis v Auvenshine, 333 Mich App 222 (2020) 1-20
Graham v Foster, 500 Mich 23 (2017) 1-iv
Grass Lake Improvement Bd v Dep't of Environmental Quality, 316 Mich App 356 (2016) 1-25, 2-26, 2-42
Gubin v Lodisev, 197 Mich App 84 (1992) 1-2

H

Hardaway v Wayne Co, 494 Mich 423 (2013) 1-27
Henderson v Civil Serv Comm, 321 Mich App 25 (2017) 2-25
Hodge v US Security Assoc, Inc, 497 Mich 189 (2015) 2-28
Hoffman v Security Trust Co, 256 Mich 383 (1931) 2-11
Hyde v Univ of Mich Bd of Regents, 426 Mich 223 (1986) 1-14

I

In re AGD, 327 Mich App 332 (2019) 1-11
In re Application of Indiana Mich Power Co for a Certificate of Necessity, 498 Mich 881 (2015) 1-24
In re Carey, 241 Mich App 222 (2000) 1-18
In re Certified Question, 468 Mich 109 (2003) 1-28
In re Certified Question, 499 Mich 477 (2016) 1-25
In re Contempt of Calcutt, 184 Mich App 749 (1990) 1-7
In re Elias, 294 Mich App 507 (2011) 2-30
In re Hague, 412 Mich 532 (1982) 1-iv
In re LaFrance, 306 Mich App 713 (2014) 1-27
In re Parole of Haeger, 294 Mich 549 (2011) 2-30
In re Parole of Hill, 298 Mich App 404 (2012) 2-31
In re Parole of Johnson, 219 Mich App 595 (1996) 2-30
In re Parole of McBrayer, ___ Mich ___ (2023) 2-34
In re Parole of Spears, 325 Mich App 54 (2018) 2-30, 2-30
In re Wilkins Parole, 506 Mich 937 (2020) 2-34
Ingham Co v Mich Co Rd Comm Self-Ins Pool (On Remand), 329 Mich App 295 (2019) 1-9, 1-11
Ingham Co v Mich Co Rd Comm Self-Ins Pool, 508 Mich 461 (2021) 1-9
Int'l Business Machines Corp v Dep't of Treasury, 316 Mich App 346 (2016) 1-17
Int'l Business Machines Corp v Dep't of Treasury, 496 Mich 642 (2014) 1-27

J

Jenkins v Anderson, 447 US 231 (1980) 1-13

Jones v Dep't of Corrections, 468 Mich 646 (2003) 2-37

L

LaFontaine Saline, Inc v Chrysler Group, LLC, 496 Mich 26 (2014) 1-32
Lawrence v Mich Unemployment Ins Agency, 320 Mich App 422 (2017) 2-19, 2-21, 2-24, 2-28
League of Women Voters of Mich v Secretary of State, 331 Mich App 1 (2020) 1-29
Lincoln v Gen Motors Corp, 231 Mich App 262 (1998) 1-14
Locricchio v Evening News Ass'n, 438 Mich 84 (1991) 1-9

M

Macomb Co Dep't of Human Servs v Anderson, 304 Mich App 750 (2014) 2-21
Maldonado v Ford Motor Co, 476 Mich 372 (2006) 1-19
Matthew R Abel, PC v Grossman Investments Co, 302 Mich App 232 (2013) 2-2, 2-8, 2-10, 2-12
MCNA Ins Co v Dep't of Technology, Mgt and Budget, 326 Mich App 740 (2019) 2-10
Meier v Pub Sch Employees' Retirement Sys, ___ Mich App ___ (2022) 2-3
Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute, 266 Mich App 39 (2005) 1-10
Mich Ed Ass'n Political Action Comm v Secretary of State, 241 Mich App 432 (2000) 2-24
Montgomery v Louisiana, 577 US 190 (2016) 1-15
Morales v Parole Bd, 260 Mich App 29 (2003) 2-29, 2-29
Morrisey v Brewer, 408 US 471 (1972) 2-37

N

Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd, 275 Mich App 256 (2007) 1-2
Natural Resources Defense Council v Dep't of Environmental Quality, 300 Mich App 78 (2013) 2-25
Negri v Slotkin, 397 Mich 105 (1976) 1-5, 1-12
New York v Hill, 528 US 110 (2000) 1-20

O

O'Connell v Dir of Elections, 316 Mich App 91 (2016) 1-26

P

Penn v Dep't of Corrections, 100 Mich App 532 (1980) 2-37
People v Anderson (After Remand), 446 Mich 392 (1994) 1-21
People v Anderson, 501 Mich 175 (2018) 3-2
People v Babcock, 469 Mich 247 (2003) 1-19, 1-32
People v Barnes, 502 Mich 265 (2018) 1-15
People v Beasley, 239 Mich App 548 (2000) 1-13

People v Bell, 473 Mich 275 (2005) 1-4
People v Betts, 507 Mich 527 (2021) 1-28
People v Borchard-Ruhland, 460 Mich 278 (1999) 1-14
People v Brown, 239 Mich App 735 (2000) 1-15
People v Cain, 498 Mich 108 (2015) 1-22
People v Carines, 460 Mich 750 (1999) 1-20, 1-21, 1-21, 1-21, 1-22
People v Carson, 220 Mich App 662 (1996) 1-iv
People v Case, 220 Mich 379 (1922) 1-14, 1-14
People v Clary, 494 Mich 260 (2013) 1-13
People v Conyer, 281 Mich App 526 (2008) 1-31
People v Crear, 242 Mich App 158 (2000) 1-iv
People v Davis, 146 Mich App 537 (1985) 1-3
People v Davis, 331 Mich App 699 (2020) 1-21
People v Denio, 454 Mich 691 (1997) 1-29
People v Ellis, 468 Mich 25 (2003) 1-3
People v English, 317 Mich App 607 (2016) 1-28
People v Garrison, 495 Mich 362 (2014) 1-27
People v Gates, 434 Mich 146 (1990) 1-8, 1-8
People v Gillam, 479 Mich 253 (2007) 1-13, 1-13
People v Ginther, 390 Mich 436 (1973) 1-6
People v Giovannini, 271 Mich App 409 (2006) 1-12
People v Grant, 329 Mich App 626 (2019) 2-37
People v Hall, 499 Mich 446 (2016) 1-27, 1-29
People v Harris, 495 Mich 120 (2014) 1-30
People v Harris, 499 Mich 332 (2016) 1-25
People v Herrera (On Remand), 204 Mich App 333 (1994) 1-11
People v Hill, 486 Mich 658 (2010) 1-24
People v Hunt, 171 Mich App 174 (1988) 1-13
People v James, 326 Mich App 98 (2018) 1-iv
People v Johnson, 302 Mich App 450 (2013) 1-15, 1-29
People v Juillet, 439 Mich 34 (1991) 1-6
People v Kachar, 400 Mich 78 (1977) 1-5
People v Kennedy, 384 Mich 339 (1971) 1-16
People v Kildow, 99 Mich App 446 (1980) 1-14
People v Kolanek, 491 Mich 382 (2012) 1-25
People v Lanzo Constr Co, 272 Mich App 470 (2006) 1-18
People v Legg, 197 Mich App 131 (1992) 1-3
People v Lockridge, 498 Mich 358 (2015) 1-5
People v Lukity, 460 Mich 484 (1999) 1-22
People v Mack, 265 Mich App 122 (2005) 2-29
People v Maxson, 482 Mich 385 (2008) 1-15
People v Mazur, 497 Mich 302 (2015) 1-26
People v McEwan, 214 Mich App 690 (1995) 2-56
People v McLaughlin, 258 Mich App 635 (2003) 1-23
People v Miller, 482 Mich 540 (2008) 1-iv
People v Muhammad, 498 Mich 909 (2015) 1-19
People v Mullins, 322 Mich App 151 (2017) 1-28
People v Newton, 257 Mich App 61 (2003) 1-31
People v Ogilvie, ___ Mich App ___ (2022) 1-14
People v Parker, 267 Mich App 319 (2005) 1-14
People v Perry, 317 Mich App 589 (2016) 1-29

People v Poole, 497 Mich 1022 (2015) 1-10
People v Randolph, 502 Mich 1 (2018) 1-23
People v Robinson (After Second Remand), 227 Mich App 28 (1997) 1-9
People v Rogers, 249 Mich App 77 (2001) 1-29, 1-30, 1-31
People v Russell, 297 Mich App 707 (2012) 1-17
People v Russo, 439 Mich 584 (1992) 1-31
People v Sands, 261 Mich App 158 (2004) 1-29, 1-30
People v Segura, ___ Mich App ___ (2023) 2-16
People v Shepherd, 472 Mich 343 (2005) 1-21
People v Sierb, 456 Mich 519 (1998) 1-18
People v Simmons, ___ Mich ___ (2022) 2-10, 2-13
People v Simmons, 388 Mich App 70 (2021) 2-12
People v Solomon, 220 Mich App 527 (1996) 1-19
People v Thompson, 477 Mich 146 (2007) 1-25
People v Torres, 452 Mich 43 (1996) 2-14
People v Trakhtenberg, 493 Mich 38 (2012) 1-8
People v Valentin, 457 Mich 1 (1998) 1-26
People v Vaughn, 491 Mich 642 (2012) 1-20
People v Walker, 374 Mich 331 (1965) 1-5
People v Walker, 461 Mich 908 (1999) 1-3
People v Walters, 266 Mich App 341 (2005) 2-21
People v Ward, 501 Mich 949 (2018) 2-2
People v Watkins, 277 Mich App 358 (2007) 1-25
People v Watkins, 491 Mich 450 (2012) 1-28
People v White, 501 Mich 160 (2017) 1-13
People v Williams, 298 Mich App 121 (2012) 1-13
Pioneer State Mut Ins Co v Wright, 331 Mich App 396 (2020) 1-9

Q

Quality Market v Detroit Bd of Zoning Appeals, 331 Mich App 388 (2020) 2-11, 2-19

R

Reynolds v Hasbany MD PLLC, 323 Mich App 426 (2018) 1-26
Richard v Schneiderman & Sherman, PC, 294 Mich App 37 (2011) 1-14
Richard v Schneiderman & Sherman, PC, 490 Mich 1001 (2012) 1-14
Risk v Lincoln Charter Twp Bd of Trustees, 279 Mich App 389 (2008) 1-14
Rivette v Rose-Molina, 278 Mich App 327 (2008) 1-22
Rott v Rott, 508 Mich 274 (2021) 1-10
Rowland v Washtenaw Co Rd Comm, 477 Mich 197 (2007) 1-14
RPF Oil Co v Genesee Co, 330 Mich App 533 (2019) 1-26

S

Sabbagh v Hamilton Psychological Servs, PLC, 329 Mich App 324 (2019) 1-15
Sakorafos v Lyon Twp, ___ Mich App ___ (2023) 2-49

Saugatuck Dunes Coastal Alliance v Saugatuck Twp, ___ Mich ___ (2022) 2-48, 2-49, 2-49, 2-49
Save Our Downtown v City of Traverse City, ___ Mich App ___ (2022) 1-23, 1-25
SBC Health Midwest, Inc v City of Kentwood, 500 Mich 65 (2017) 1-24, 1-27
Schlega v Detroit Bd of Zoning Appeals, 147 Mich App 79 (1985) 2-11
Shinholster v Annapolis Hosp, 471 Mich 540 (2004) 1-24
Shulick v Richards, 273 Mich App 320 (2006) 1-19
Slis v Michigan, 332 Mich App 312 (2020) 1-25, 2-25
Stanton v Battle Creek, 466 Mich 611 (2002) 1-27
State Farm Fire and Cas Co v Old Republic Ins Co, 466 Mich 142 (2002) 1-24
STC, Inc v Dep't of Treasury, 257 Mich App 528 (2003) 1-23
Stein v Home-Onwers Ins Co, 303 Mich App 382 (2013) 1-iv

T

Teague v Lane, 489 US 288 (1989) 1-15
Tiedman v Tiedman, 400 Mich 571 (1977) 3-2
Tolas Oil & Gas Exploration Co v Bach Servs & Mfg LLC, ___ Mich App ___ (2023) 1-20
Topps-Toeller, Inc v Lansing, 47 Mich App 720 (1973) 1-8, 1-8, 1-9
Triple E Produce Corp v Mastronardi Produce, Ltd, 209 Mich App 165 (1995) 1-3
Triplett v Deputy Warden, 142 Mich App 774 (1985) 2-37
Trumble's Rent-L-Center, Inc v Employment Security Comm, 197 Mich App 229 (1992) 2-28
Tyra v Organ Procurement Agency of Mich, 302 Mich App 208 (2013) 1-12, 1-13
Tyra v Organ Procurement Agency of Mich, 498 Mich 68 (2015) 1-12, 1-13

U

United States v Wade, 388 US 218 (1967) 1-5

V

VanDeventer v Mich Nat'l Bank, 172 Mich App 456 (1988) 1-9

W

Walters v Snyder, 239 Mich App 453 (2000) 1-18
Weaver v Massachusetts, 582 US ___ (2017) 1-21
Wells Estate v State Farm Fire & Cas Co, ___ Mich ___ (2022) 1-20
Wright v Fields, 412 Mich 227 (1981) 2-8

Z

Zaremba Equip, Inc v Harco Nat'l Ins Co, 302 Mich App 7 (2013) 1-9
Zelasko v Bloomfield Twp, ___ Mich App ___ (2023) 2-3, 2-51

Michigan Statutes

MCL 8.3 1-23
MCL 8.3a 1-23, 1-23, 1-25
MCL 8.3w 1-23
MCL 8.4 1-28
MCL 8.5 1-23
MCL 15.231 1-1
MCL 24.201 2-9, 2-30, 2-37
MCL 24.203(2) 2-38, 2-38
MCL 24.207 2-33
MCL 24.301 2-37
MCL 24.303 2-37
MCL 24.303(1) 2-4, 2-39
MCL 24.304 2-37
MCL 24.306 2-37, 2-37
MCL 24.306(1) 2-25, 2-41
MCL 24.306(2) 2-42
MCL 24.315(5) 2-38
MCL 24.322(4) 2-41
MCL 24.323 2-41
MCL 24.323(1) 2-41, 2-41, 2-41, 2-41, 2-42, 2-42, 2-42, 2-42
MCL 24.325 2-41, 2-41, 2-41
MCL 24.328 2-30
MCL 28.421 2-47
MCL 28.425b(1) 2-5
MCL 28.425b(9) 2-5
MCL 28.425d 2-5, 2-46, 2-47
MCL 28.425d(1) 2-5
MCL 28.425d(2) 2-47, 2-47
MCL 28.425d(3) 2-47
MCL 28.425d(4) 2-48
MCL 28.425l(3) 2-5
MCL 28.428(2) 2-5
MCL 28.428(6) 2-5
MCL 38.1501 2-38
MCL 38.1555 2-38
MCL 125.3101 2-48
MCL 125.3102(q) 2-49
MCL 125.3407 2-49, 2-50
MCL 125.3604(1) 2-48, 2-49
MCL 125.3605 2-48, 2-48, 2-48, 2-48, 2-49, 2-49, 2-49, 2-50
MCL 125.3606 2-48, 2-48, 2-49, 2-50, 2-52
MCL 125.3606(1) 2-53
MCL 125.3606(3) 2-18
MCL 211.78t 1-3
MCL 257.204a 2-44, 2-46
MCL 257.303 2-45, 2-45, 2-45, 2-46
MCL 257.303(1) 2-44

MCL 257.310d 2-45
MCL 257.320 2-44
MCL 257.320e(6) 2-46
MCL 257.322 2-44, 2-46
MCL 257.323 2-43, 2-44, 2-46, 2-46
MCL 257.323(1) 2-5, 2-10, 2-43, 2-43, 2-43
MCL 257.323(2) 2-44
MCL 257.323(3) 2-44, 2-45
MCL 257.323(4) 2-44, 2-44, 2-45, 2-45, 2-45, 2-45, 2-46, 2-46, 2-46
MCL 257.323(5) 2-46, 2-46, 2-46, 2-46
MCL 257.323(6) 2-46, 2-46
MCL 257.323(8) 2-46, 2-46
MCL 257.323a 2-44
MCL 257.323a(1) 2-45
MCL 257.323a(2) 2-45
MCL 257.323c 2-45
MCL 257.328 2-43
MCL 257.625 1-6
MCL 257.625f 2-42, 2-44, 2-45, 2-46
MCL 257.625f(8) 2-43
MCL 257.904(10) 2-44
MCL 333.1101 1-29
MCL 333.1111(2) 1-29
MCL 421.34 2-28
MCL 421.38 2-28
MCL 421.38(1) 2-5, 2-5, 2-27, 2-27, 2-28
MCL 421.38(3) 2-27
MCL 500.100 2-38
MCL 500.8302 2-38
MCL 600.631 2-4, 2-24, 2-26
MCL 600.2421d 2-41, 2-41
MCL 600.2529(5) 2-11, 2-15
MCL 600.2591(3) 2-42
MCL 600.2605 2-6
MCL 600.5701 2-56
MCL 600.5744 1-5
MCL 600.5744(1) 1-5
MCL 600.5753 2-56
MCL 600.8341 2-19
MCL 600.8342(1) 2-4
MCL 600.8342(2) 2-3, 2-9
MCL 600.8342(4) 2-14
MCL 750.2 1-24
MCL 769.12(4) 2-37
MCL 769.26 1-19
MCL 769.34(3) 1-5
MCL 770.1 1-11
MCL 770.3(1) 2-9, 2-9, 2-14
MCL 770.3(2) 2-5, 2-14
MCL 770.3(3) 2-14
MCL 780.771 2-31, 2-32

MCL 791.201 1-2, 1-2
MCL 791.233(1) 2-30
MCL 791.233e 2-30
MCL 791.233e(5) 2-30
MCL 791.233e(6) 2-29, 2-30, 2-30, 2-30, 2-34
MCL 791.233e(7) 2-29, 2-30
MCL 791.233e(13) 2-30
MCL 791.234 1-4
MCL 791.234(7) 2-30
MCL 791.234(11) 2-5, 2-29, 2-29, 2-31, 2-36
MCL 791.234(13) 2-36
MCL 791.234(18) 2-36, 2-36
MCL 791.234(19) 2-36, 2-36
MCL 791.234(20) 2-36
MCL 791.234(21) 2-36
MCL 791.235 2-32, 1-1
MCL 791.235(1) 2-29
MCL 791.235(10) 2-36, 2-36
MCL 791.235(22) 1-1, 1-4, 1-4
MCL 791.236 2-32, 2-32
MCL 791.236(2) 2-31
MCL 791.238 2-31
MCL 791.240a 2-31
MCL 791.240a(1) 2-37

Michigan Court Rules

MCR 1.109(G) 1-3
MCR 2.002 2-57, 2-57
MCR 2.002(C) 2-57, 2-57
MCR 2.002(D) 2-57, 2-57
MCR 2.002(F) 2-57, 2-57
MCR 2.002(L) 2-57
MCR 2.105(J) 2-13
MCR 2.107 2-7, 2-7, 2-7, 2-8, 3-7, 3-7
MCR 2.107(C) 2-7, 2-8, 3-7
MCR 2.107(E) 2-15
MCR 2.107(G) 2-7, 2-8, 3-7
MCR 2.116(C) 3-3, 1-3, 1-3
MCR 2.119 2-20
MCR 2.119(F) 2-10, 2-20, 2-20, 2-20, 2-21, 2-21
MCR 2.222 2-4
MCR 2.223(A) 2-4, 2-4, 2-4
MCR 2.402 2-7
MCR 2.503(D) 1-6
MCR 2.504(B) 1-6
MCR 2.512(D) 1-4
MCR 2.517 1-6, 1-6, 3-3
MCR 2.517(A) 1-2, 1-2, 1-3, 1-3, 1-4, 1-20, 3-3, 3-3, 3-7
MCR 2.602(A) 3-2
MCR 2.602(B) 2-7
MCR 2.604(B) 1-3
MCR 2.610(B) 3-3
MCR 2.611(F) 1-6, 3-3
MCR 2.613(A) 1-19
MCR 2.613(C) 1-18, 1-18
MCR 3.210(D) 1-6, 3-3, 3-3
MCR 3.302 1-1
MCR 3.303 2-37, 2-37
MCR 3.306 1-1
MCR 3.411(D) 1-7
MCR 3.411(E) 1-7
MCR 3.604 2-7, 2-9
MCR 3.604(E) 2-7
MCR 3.604(L) 2-6
MCR 3.708(H) 3-2
MCR 3.950(E) 3-3, 3-3
MCR 3.952(D) 3-3
MCR 3.987(G) 3-2
MCR 4.101(H) 2-6
MCR 4.201 2-57
MCR 4.201(I) 2-57, 2-58
MCR 4.201(M) 2-56
MCR 4.201(N) 2-7, 2-56, 2-57

MCR 4.201(O) 2-7, 2-56, 2-56, 2-56, 2-56, 2-56, 2-56, 2-57, 2-57, 2-57, 2-57, 2-57, 2-58, 2-58
MCR 4.202 2-58
MCR 4.202(L) 2-56, 2-58
MCR 6.001 3-2
MCR 6.003(7) 1-6
MCR 6.005(F) 1-5
MCR 6.110(H) 1-1
MCR 6.403 1-5, 3-2, 3-2
MCR 6.419(F) 1-5
MCR 6.427 3-7
MCR 6.431(B) 1-5
MCR 6.445(E) 1-5
MCR 6.610(F) 2-18
MCR 6.610(H) 2-18
MCR 6.931(E) 3-2
MCR 6.931(F) 3-2
MCR 7.101 2-2, 2-27, 2-27, 2-29, 2-29, 2-31, 2-31, 2-38, 2-38, 2-43, 2-43, 2-46, 2-46, 2-48, 2-48, 2-53, 2-53, 2-56, 2-56, 2-58, 2-58
MCR 7.101(A) 2-2, 2-2
MCR 7.101(B) 2-2
MCR 7.101(C) 2-8
MCR 7.102(1) 1-1
MCR 7.102(2) 1-1
MCR 7.102(3) 1-2
MCR 7.102(4) 1-2
MCR 7.102(5) 1-2
MCR 7.102(6) 1-2
MCR 7.102(7) 1-2
MCR 7.102(8) 1-3
MCR 7.102(9) 1-6
MCR 7.103 2-9
MCR 7.103(A) 2-9, 2-9, 2-56
MCR 7.103(B) 2-11, 2-14, 2-18, 2-31, 2-58
MCR 7.104 2-16, 2-16, 2-27
MCR 7.104(A) 2-3, 2-10, 2-11, 2-11, 2-11, 2-11, 2-12, 2-46, 2-51, 2-53, 2-56
MCR 7.104(B) 2-11, 2-12
MCR 7.104(C) 2-11, 2-17, 2-38, 2-39, 2-43, 2-44, 2-47, 2-47, 2-51, 2-52, 2-54
MCR 7.104(D) 2-12, 2-16, 2-16, 2-16, 2-18, 2-39, 2-39
MCR 7.104(E) 2-12, 2-16, 2-18, 2-39
MCR 7.104(F) 2-13
MCR 7.105 2-16, 2-16, 2-32, 2-54
MCR 7.105(A) 2-14, 2-14, 2-14, 2-53
MCR 7.105(B) 1-2, 2-15, 2-15, 2-15, 2-15, 2-18
MCR 7.105(C) 2-15
MCR 7.105(D) 2-15
MCR 7.105(E) 2-16, 2-16, 2-16, 2-16, 2-16, 2-16, 2-16, 2-17, 2-33
MCR 7.105(F) 2-17, 2-17
MCR 7.105(G) 2-11, 2-18, 2-18, 2-18, 2-31
MCR 7.106(A) 2-17, 2-17
MCR 7.106(B) 2-17

MCR 7.106(C) 2-18
MCR 7.106(D) 2-18
MCR 7.106(E) 2-18
MCR 7.106(F) 2-17
MCR 7.107 2-3, 2-3
MCR 7.108 2-7, 2-7, 2-32, 2-32
MCR 7.108(A) 2-5, 2-6
MCR 7.108(B) 2-6, 2-6, 2-7, 2-7, 2-7, 2-7, 2-7, 2-8, 2-56
MCR 7.108(C) 2-8, 2-9, 2-9, 2-9
MCR 7.108(D) 2-6
MCR 7.109 1-2, 1-5
MCR 7.109(A) 2-19, 2-19, 2-19, 2-25, 2-28, 1-5
MCR 7.109(B) 2-19, 2-19
MCR 7.109(E) 2-19
MCR 7.109(F) 2-19
MCR 7.109(G) 2-19, 2-19, 2-19, 2-19, 2-21
MCR 7.109(H) 2-19, 2-23
MCR 7.110 1-16, 2-20
MCR 7.111 2-22, 2-33, 2-45, 2-47, 2-52
MCR 7.111(A) 2-21, 2-21, 2-21, 2-21, 2-21, 2-21, 2-21, 2-21, 2-22, 2-22, 2-22, 2-22, 2-23
MCR 7.111(B) 1-17, 2-22, 2-22
MCR 7.111(C) 2-23, 2-23, 2-45, 2-47
MCR 7.111(D) 2-22
MCR 7.112 1-7, 1-16, 2-16, 2-23
MCR 7.112(B) 2-54
MCR 7.113(A) 2-17, 2-22, 2-22
MCR 7.113(B) 2-22
MCR 7.113(C) 2-23
MCR 7.114(A) 2-23, 2-47
MCR 7.114(B) 2-23, 3-2, 3-7
MCR 7.114(C) 1-9, 2-23, 2-23
MCR 7.114(D) 2-10, 2-20
MCR 7.115 2-27, 2-27, 2-29, 2-29, 2-31, 2-31, 2-38, 2-38, 2-43, 2-43, 2-46, 2-46, 2-48, 2-48, 2-53, 2-53, 2-56, 2-56, 2-58, 2-58
MCR 7.115(A) 2-24
MCR 7.115(B) 2-24
MCR 7.115(E) 2-24
MCR 7.115(F) 2-24
MCR 7.116 2-26, 2-27, 2-27, 2-28
MCR 7.116(A) 2-27
MCR 7.116(B) 2-10, 2-27
MCR 7.116(C) 2-27, 2-27
MCR 7.116(D) 2-5
MCR 7.116(E) 2-27
MCR 7.116(F) 2-28
MCR 7.116(G) 2-28
MCR 7.117 2-26, 2-29, 2-29
MCR 7.117(A) 2-29, 2-29
MCR 7.117(C) 2-29
MCR 7.118 2-26, 2-31, 2-31
MCR 7.118(A) 2-31, 2-31

MCR 7.118(B) 2-31
MCR 7.118(C) 2-32
MCR 7.118(D) 2-5, 2-31, 2-31, 2-31, 2-32, 2-32, 2-32, 2-32
MCR 7.118(E) 2-31
MCR 7.118(F) 2-32, 2-32
MCR 7.118(G) 2-33
MCR 7.118(H) 2-33, 2-33, 2-33, 2-33, 2-33, 2-33, 2-33, 2-33, 2-35
MCR 7.118(I) 2-35
MCR 7.118(J) 2-35, 2-35, 2-36, 2-36
MCR 7.119 2-26, 2-29, 2-29, 2-37, 2-38
MCR 7.119(A) 2-37, 2-38
MCR 7.119(B) 2-38, 2-39, 2-39, 2-39, 2-39
MCR 7.119(C) 2-38, 2-39
MCR 7.119(D) 2-38, 2-39
MCR 7.119(E) 2-6, 2-39, 2-39, 2-39, 2-40, 2-40, 2-40, 2-40
MCR 7.119(F) 2-40
MCR 7.119(G) 2-40
MCR 7.119(H) 2-42, 2-42, 2-42
MCR 7.120 2-26, 2-43, 2-43
MCR 7.120(A) 2-43, 2-43
MCR 7.120(B) 2-43, 2-43, 2-43, 2-44, 2-44
MCR 7.120(C) 2-43, 2-43
MCR 7.120(D) 2-6, 2-44, 2-44
MCR 7.120(E) 2-44
MCR 7.120(F) 2-44, 2-44
MCR 7.120(G) 2-45, 2-45, 2-46, 2-46
MCR 7.121 2-26, 2-46, 2-46, 2-46
MCR 7.121(A) 2-46
MCR 7.121(B) 2-5
MCR 7.121(C) 2-46, 2-47, 2-47, 2-47, 2-47, 2-47, 2-47
MCR 7.121(D) 2-48
MCR 7.122 2-27, 2-48, 2-48, 2-48, 2-48
MCR 7.122(A) 2-6, 2-48, 2-48, 2-48, 2-48, 2-50
MCR 7.122(B) 2-50
MCR 7.122(C) 2-51, 2-52, 2-52, 2-52
MCR 7.122(D) 2-52
MCR 7.122(E) 2-52, 2-52
MCR 7.122(F) 2-52
MCR 7.122(G) 2-53, 2-53, 2-53, 2-53
MCR 7.122(H) 2-53
MCR 7.123 2-27, 2-53, 2-53
MCR 7.123(A) 2-53
MCR 7.123(B) 2-53, 2-54, 2-54
MCR 7.123(C) 2-54
MCR 7.123(D) 2-53
MCR 7.123(E) 2-6, 2-54, 2-54, 2-54, 2-55, 2-55, 2-55, 2-55
MCR 7.123(F) 2-55
MCR 7.123(G) 2-55, 2-55, 2-55
MCR 7.202(1) 1-2
MCR 7.202(4) 1-3
MCR 7.202(6) 1-3, 1-3, 1-4

MCR 7.204(A) 1-2, 1-2
MCR 7.205 2-35
MCR 7.208(C) 2-3
MCR 7.208(J) 2-3
MCR 7.209(E) 2-6
MCR 7.210 1-2
MCR 7.210(A) 2-25, 2-28, 1-5, 1-5
MCR 7.211(C) 1-16, 1-16, 1-16, 2-20, 2-20
MCR 7.212(B) 2-22
MCR 7.212(C) 1-17, 2-22
MCR 7.212(D) 2-15, 2-22
MCR 7.212(G) 2-15, 2-22
MCR 7.215(C) 1-12, 1-12, 1-12, 1-13
MCR 7.215(G) 1-9
MCR 7.215(J) 1-iv, 1-iv, 1-iv, 1-13, 1-13
MCR 7.216 2-16, 2-23, 2-24
MCR 7.216(A) 1-7, 1-16, 1-16, 2-16
MCR 7.310 1-2
MCR 7.315(C) 1-9
MCR 7.316(A) 1-7, 1-7
MCR 8.105(C) 3-7, 3-7
MCR 8.119(H) 3-7
MCR 8.119(I) 3-3

Michigan Rules of Evidence

MRE 103 1-19, 1-22
MRE 609 1-4
MRE 609(b) 1-4

Michigan Code of Judicial Conduct

MCJC 1 3
MCJC 2B 3
MCJC 3A(1) 3