

Order

**Michigan Supreme Court
Lansing, Michigan**

June 28, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-19

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Proposed Amendment of
Subchapter 7.100 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendment of Subchapter 7.100 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The following proposal to amend Subchapter 7.100 of the Michigan Court Rules is presented as it was submitted to this Court by the Appellate Practice Section in its entirety below. While some of the language of the current subchapter has been retained, this proposal, if adopted, would replace the current language of Subchapter 7.100.

Therefore, changes are not identified in underlining and overstriking.]

Subchapter 7.100 Appeals to Circuit Court

Rule 7.101 Scope of Rules

- (A) Scope of Rules. The rules in this subchapter govern appeals to the circuit court.
- (B) Rules Do Not Affect Jurisdiction. These rules do not restrict or enlarge the appellate jurisdiction of the circuit court.

Committee Comment

The revised subchapter 7.100 is modeled after the rules governing appeals to the Court of Appeals in subchapter 7.200. MCR 7.102 lists definitions applicable to this

subchapter. MCR 7.103 outlines the appellate jurisdiction of the circuit court. This new subchapter is then organized into general and specific rules. MCR 7.104 through MCR 7.115 are general rules applicable to all circuit court appeals. MCR 7.116 through MCR 7.122 supplement the general rules and apply to categories of agency appeals.

MCR 7.101(A) changes former MCR 7.101(A)(1) to reflect that the general rules of this subchapter apply to all circuit court appeals, unless specific agency rules state differently.

MCR 7.101(B) is based on former MCR 7.101(A)(3).

Rule 7.102 Definitions

For purposes of this subchapter:

- (1) “agency” means any governmental entity other than a “trial court,” the decisions of which are subject to appellate review in the circuit court;
- (2) “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);
- (3) “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;
- (4) “clerk” means clerk of the court;
- (5) “court” means the circuit court;
- (6) “date of filing” means the date of receipt of a document by the “clerk;”
- (7) “entry” is as defined in MCR 7.204(A);
- (8) “final judgment” or “final order” is as defined in MCR 7.202(6);
- (9) “probate register” means clerk of the probate court; and
- (10) “trial court” means the district, probate, or municipal court from which the “appeal” is taken.

Committee Comment

MCR 7.102 is a new provision defining several terms used in subchapter 7.100. It is based on MCR 7.202.

Subrule (1) provides a broad definition of “agency” that differs from the definition in former MCR 7.105(A)(1). In addition to state agencies, the new definition includes county and local governmental entities such as zoning boards of appeals and concealed weapon licensing boards.

The new definition of “appeal” in MCR 7.102(2) reflects former MCR 7.101(A)(2) and clarifies that certain proceedings and motions are not appeals.

Subrule (4) clarifies that the term “clerk” refers to the office of the clerk of the court instead of courtroom personnel.

Subrules (5) and (10) establish that the term “court” refers to the circuit court acting in its appellate capacity, while the term “trial court” refers to the court from which the appeal is taken.

Rule 7.103 Appellate Jurisdiction of the Circuit Court

- (A) Appeal of Right. 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 of a probate court under MCR 5.801(C);
 - (3) a final order or decision of an agency governed by the Administrative Procedures Act, MCL 24.201 *et seq.*; and
 - (4) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.
- (B) Appeal by Leave. 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
- (5) a decision of the Michigan Parole Board to grant parole.

Committee Comment

MCR 7.103 is new and is based on MCR 7.203.

Subrule (A)(1) provides that the circuit court has appellate jurisdiction over district and municipal court final judgments and orders. Because municipal courts are now courts of record from which transcripts are available, this subrule eliminates former MCR 7.102's requirement that the circuit court retry the issues. Appeals from municipal courts, like appeals from district court, are now reviewed on the trial court record.

Subrule (A)(2) reflects the fact that the circuit court's jurisdiction over an appeal of right from the probate court is limited to final orders designated in MCR 5.801(C). The circuit court does not have appellate jurisdiction over final orders in probate court estate or trust proceedings.

MCR 7.103(B)(1) is based on former MCR 7.103(A).

Subrules (B)(2) through (5) are new and specify the categories of agency decisions from which the circuit court may grant leave to appeal.

Rule 7.104 Filing Appeal of Right

- (A) **Time Requirements.** The time limit for an appeal of right is jurisdictional. See MCR 7.103(A). Time is computed as provided in MCR 1.108. An appeal of right to the circuit court 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 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.
 - (3) If 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 subrule (2).
- (B) Manner of Filing. To vest the circuit court with jurisdiction in an appeal of right, an appellant must file with the clerk of the circuit court within the time for taking an appeal:
- (1) the claim of appeal, and
 - (2) the circuit court's appeal fee, unless the appellant is indigent.
- (C) Claim of Appeal.
- (1) *Form.*
 - (a) The caption of a claim of appeal shall comply with MCR 2.113(C)(1).
 - (b) In an appeal from a trial court, the claim of appeal should name the parties in the same order as they appear in the trial court, with the added designation "appellant" or "appellee."
 - (2) *Content.* The claim should state:

“[*name of appellant(s)*] claim[s] an appeal from the [*judgment or order*] entered on [*date*] in the [*name of trial court*] by [*name of judge*].”
 - (3) *Signature.* The appellant or the appellant's attorney must date and sign the claim of appeal.

- (D) Other Documents. The appellant shall file the following documents with the claim of appeal:
- (1) a copy of the judgment, order, or decision appealed;
 - (2) a copy of the certificate of the court reporter or recorder or a statement that the transcript has been ordered, in which case the certificate of the court reporter or recorder must be filed within 7 days. If there is nothing to be transcribed, the appellant must file a statement so indicating;
 - (3) in an agency appeal, a copy of a written request or order for a certified copy of the record to be sent to the circuit court;
 - (4) a copy of any appeal bond;
 - (5) proof that money, property, or documents have been delivered or deposited as required by law;
 - (6) a copy of the register of actions, if any;
 - (7) proof that the appeal fee of the trial court or agency has been tendered;
 - (8) anything else required by law to be filed; and
 - (9) proof that a copy of the claim of appeal and other documents required by this subrule were served on all parties, the trial court or agency, and any other person or officer entitled by law to notice of the appeal.
- (E) Service Requirements in Trial Court or Agency. Within the time for taking the appeal, the appellant shall serve in the trial court or agency from which the appeal is taken:
- (1) a copy of the claim of appeal;
 - (2) any fee required by law;
 - (3) any bond required by law as a condition for taking the appeal;
 - (4) in an agency appeal, a copy of a written request for a certified copy of the record to be sent to the circuit court; and

- (5) unless there is nothing to be transcribed, the certificate of the court reporter or recorder or a statement that the transcript has been ordered and payment for it made or secured. If a statement is filed, the certificate of the court reporter or recorder must be filed within 7 days.
- (F) Appearance. Within 14 days after being served with the claim of appeal, the appellee shall file an appearance in the circuit court identifying the individual appellate attorneys. An appellee who does not file an appearance is not entitled to notice of further proceedings.

Committee Comment

MCR 7.104 revises the procedure for filing an appeal of right set forth in former MCR 7.101. It is largely based on MCR 7.204, the rule governing appeals of right in the Court of Appeals.

The time requirements of subrules (A)(1) and (2)(a) are drawn from MCR 7.204(A)(1)(a) and (b). MCR 7.104(A)(1) and (2) are similar to former MCR 7.101(B)(1). Unless a specific rule provides otherwise, the new subrules explicitly apply to appeals from agencies as well as trial courts. MCR 7.104(A)(2)(b) is a new provision that is based on MCR 7.204(A)(1)(b). It clarifies that when a trial court or agency orders an extension of time in which to file a postjudgment motion, that order does not extend the time for filing a claim of appeal unless it was entered within the initial 21-day period. MCR 7.104(A)(3) is new. It specifies the time for taking an appeal of right when an indigent defendant in a criminal case has requested appointed appellate counsel.

Subrule (B) is based on MCR 7.204(B). It is consistent with former MCR 7.101(C)(1), except that it includes a provision recognizing the waiver of the circuit court's appeal fee when the appellant is indigent. See MCR 2.002(D).

MCR 7.104(C)(1) is a new provision that covers the contents of the caption of a claim of appeal. Subrules (C)(2) and (3) retain the form of a claim of appeal found in former MCR 7.101(C)(1), with two exceptions. First, subrule (C)(2) adds a requirement that the claim of appeal state the name of the trial judge. Second, because subrule (C)(1)(a) incorporates the caption requirements of MCR 2.113(C)(1), subrule (C)(3) eliminates the requirement that the appellant or the appellant's attorney supply an address and telephone number under his or her signature.

Subrules (D) and (E) adopt a procedure similar to MCR 7.204(C) and (E). This departs from former MCR 7.101(C) in many respects. The new MCR 7.104(D) adds several items that must be filed with the claim of appeal in the circuit court. Former MCR 7.101(C)(1) did not require attachment of any items when the claim of appeal was filed in the circuit court. MCR 7.104(D)(8) requires the appellant to file with the claim of

appeal proof that the claim of appeal and all mandated attachments were served on all parties, the trial court or agency, and any other person or officer entitled by law to notice of the appeal. This differs from former MCR 7.101(C)(3), which did not require service of the claim of appeal on the appellee and other persons until 7 days after the claim was filed in the circuit court. The new procedure repeals the previously required statement concerning any appeal bond, fees paid, and other acts performed under MCR 7.101(C)(3)(b).

Unlike former MCR 7.101(C)(2)(e), MCR 7.104(E) no longer requires the appellant to file exhibits in his or her possession with the trial court. Under the new MCR 7.109(C), the offering parties maintain exhibits in their possession unless otherwise ordered. Moreover, while MCR 7.104(E)(3) obligates the appellant to file in the trial court or agency “any bond required by law as a condition for taking the appeal,” the revised subchapter 7.100 eliminates the previous “bond for costs” under former MCR 7.101(C)(2)(b). This “bond for costs” was mandated in all appeals not arising from civil infractions, criminal cases, or summary proceedings for the possession of premises. In agency appeals, MCR 7.104(E)(4) now requires the appellant to file a written request with the agency to send a certified copy of the record to the circuit court.

While MCR 7.104(F) is largely consistent with former MCR 7.101(D)(1), it deletes the requirement that appellees file exhibits in their possession with the trial court. Under MCR 7.109(C), appellees maintain the exhibits they offered in their possession unless otherwise ordered.

Rule 7.105 Application for Leave to Appeal

- (A) Time Requirements. 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.
 - (3) If a criminal defendant, who has pled guilty or nolo contendere, requests appointment of an attorney 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 subrule (2).

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

- (1) a signed application for leave to appeal:
 - (a) stating the date and nature of the judgment, order, or decision appealed;
 - (b) concisely reciting the appellant's allegations of error and the relief sought;
 - (c) setting forth a concise argument in support of the appellant's position on each issue that conforms with MCR 7.212(C); and
 - (d) if the order appealed is interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;
- (2) a copy of the judgment, order, or decision appealed and the opinion or findings of the trial court or agency;
- (3) if the appeal is from a trial court, a copy of the register of actions;
- (4) if the appeal is from an agency, a copy of the written request or order for a certified copy of the record to be sent to the circuit court;
- (5) unless waived by stipulation of the parties or court order, a copy of certain transcripts as follows:
 - (a) in an appeal relating to an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court that conducted the hearing;
 - (b) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;

- (c) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;
 - (d) in an appeal from an order granting or denying a new trial, the portion of the transcript permitting the circuit court to determine whether the trial court's decision on the motion was for a legally recognized reason based on arguable support in the record;
 - (e) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion related to sentencing;
 - (f) in an appeal raising any other issue, the portion of the transcript substantiating the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge; or
 - (g) if the transcript is not yet available, the appellant must file a copy of the certificate of the court reporter or recorder or a statement that a transcript has been ordered, in which case the certificate of the court reporter or recorder must be filed within 7 days. If there is nothing to be transcribed, the appellant must file a statement so indicating within 7 days;
- (6) proof that a copy of the application was served on all other parties and that a notice of the filing of the application was filed with the trial court or agency. If service cannot be reasonably accomplished, the appellant may ask the circuit court to prescribe service under MCR 2.107(E); and
- (7) the circuit court's appeal fee, unless the appellant is indigent.
- (C) Answer. Any other party in the case may file, within 14 days of service of the application:
- (1) a signed answer to the application conforming to MCR 7.212(D), and
 - (2) proof that a copy was served on all other parties.
- (D) Decision.
- (1) There is no oral argument unless directed by the court.

- (2) Absent good cause, the court shall decide the application within 28 days of the filing date.
 - (3) The court may grant or deny leave to appeal or grant other relief. The court shall promptly serve a copy of the order on the parties and the trial court or agency.
 - (4) If an application is granted, MCR 7.104 governs further proceedings, except that:
 - (a) the filing of a claim of appeal is not required,
 - (b) the appellant must complete the acts required by MCR 7.104(D) and (E) within 7 days after the entry of the order granting leave to appeal, and
 - (c) an appellee may file a claim of cross appeal within 14 days after service of the order granting leave to appeal.
 - (5) Unless otherwise ordered, the appeal is limited to the issues raised in the application.
- (E) Immediate Consideration. When an appellant requires a decision on an application in fewer than 28 days, the appellant must file a motion for immediate consideration concisely stating why an immediate decision is required.
- (F) Late Appeal.
- (1) When an appeal of right or an application for leave was not timely filed, the appellant may file an application as prescribed under subrule (B) accompanied by a statement of facts explaining the delay. 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.
 - (2) A late application may not be filed more than 6 months after entry of:
 - (a) the order, judgment, or decision appealed;
 - (b) an order denying a motion for a new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was timely filed; or

- (c) an order denying a motion for new trial under MCR 6.610(H) or a motion to withdraw a plea under MCR 6.610(E)(7).

Committee Comment

MCR 7.105 is primarily drawn from MCR 7.205, the rule governing applications for leave to appeal in the Court of Appeals. It replaces former MCR 7.103 and includes more detailed procedures than the former rule.

The 21-day time requirement of subrule (A)(1) is consistent with former MCR 7.103(B)(1). Subrule (A)(2) is a new provision that tolls the time for filing an application for leave to appeal upon timely filing of certain motions.

Subrule (B) lists the items to be included in an application for leave to appeal and largely corresponds to MCR 7.205(B). Subrule (B)(1)(c) makes the Court of Appeals' briefing requirements applicable to circuit court applications. Unlike former MCR 7.103(B), subrule 7.105(B)(5) requires production or ordering of the transcript with the application, unless waived. The subrule eliminates the requirement of former MCR 7.103(B)(4) that an application be noticed for hearing in the circuit court.

Subrule (C) adds a provision explicitly allowing an answer to an application. It also makes the Court of Appeals' briefing requirements applicable to the answer.

Subrules (D)(1) and (2) are new. Subrule (D)(1) specifies that there is no oral argument on an application for leave to appeal unless the circuit court directs otherwise. Subrule (D)(2) requires a decision on the application within 28 days of the filing date absent good cause.

In addition to continuing that part of former MCR 7.103(B)(5) allowing the circuit court to grant or deny leave to appeal, subrule 7.105(D)(3) tracks MCR 7.205(D)(2) in permitting the circuit court to grant other relief as appropriate. Subrule (D)(4) is consistent with former MCR 7.103(C), except for the transcript production deadline.

Subrule (E) allows an appellant to move for immediate consideration when a decision on an application for leave to appeal is needed in fewer than 28 days. The subrule leaves matters such as the time to file an answer and briefing open for determination by the circuit court as circumstances warrant.

Subrule (F)(1) is based on MCR 7.205(F)(1) and former MCR 7.103(B)(6). The 6-month deadline for filing a late appeal set forth in subrule (F)(2) is also taken from former MCR 7.103(B)(6). Subrules (F)(2)(b) and (c) are new. Subrule (F)(2)(b) is intended to clarify when the 6-month period ends in instances where the party seeking leave to appeal filed a timely motion in the trial court or agency seeking reconsideration

of the order or decision being appealed. Subrule (F)(2)(c) is intended to clarify when the 6-month period ends in criminal cases in which the defendant has moved for a new trial or to withdraw a plea under MCR 6.610.

Rule 7.106 Cross Appeals

(A) Right of Cross Appeal.

(1) Any appellee may file a cross appeal when:

- (a) an appeal of right is filed, or
- (b) the circuit court grants leave to appeal.

(2) If there is more than one plaintiff or defendant in a civil action and one party appeals, 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.

(B) Time Requirements. A cross appeal must be filed with the clerk of the circuit court within 14 days after the claim of appeal is served on the cross appellant or the order granting leave to appeal is entered.

(C) 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.

(D) Additional Requirements. The cross appellant must perform the steps required by MCR 7.104(D) and (E) unless compliance with this subrule would duplicate the appellant's filing of the same document. The cross appellant is not required to order a transcript or file a court reporter's certificate, unless the initial appeal is dismissed.

- (E) Dismissed Appeal. If the initial appeal is dismissed, the cross appeal may continue. If there is a transcript to be produced and the certificate of the court reporter or recorder has not been filed, the cross appellant must file the certificate within 14 days after the order dismissing the appeal. If there is nothing to be transcribed, the cross appellant must file a statement so indicating within 14 days after the order dismissing the appeal.
- (F) Delayed Cross Appeal. A party seeking leave to take a delayed cross appeal must proceed under MCR 7.105(F).

Committee Comment

MCR 7.106 corresponds to former MCR 7.101(D)(2). Except for the 14-day time requirement, the rule is based on MCR 7.207.

Rule 7.107 Authority of Trial Court or Agency

After a claim of appeal is filed or leave to appeal is granted, jurisdiction vests in the circuit court. 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 (I).

Committee Comment

MCR 7.107 is a new rule that is based in part on MCR 7.208. It explicitly provides that once a claim of appeal is filed or leave to appeal is granted, jurisdiction over the case vests with the circuit court. The trial court retains authority over matters listed in MCR 7.208(C) through (I).

Under former MCR 7.101(G) and (J), a trial court had the authority to dismiss a circuit court appeal when the appellant failed to timely perfect the appeal or file an appellate brief. Former MCR 7.101(N) recognized that both the trial court and the circuit court had control of the appeal and authorized the circuit court's interlocutory review of the trial court's appellate process. MCR 7.107 changes this practice and makes it clear that the appellate process is controlled by the circuit court.

Rule 7.108 Stay of Proceedings; Bond; Review

- (A) General Provisions.
 - (1) A motion for bond or a stay pending appeal may not be filed in the circuit court unless such a motion was decided by the trial court. The motion must

include a copy of the trial court's opinion and order and a copy of the transcript of the hearing, unless its production has been waived.

- (2) 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. The circuit court may also remand a bond matter to the trial court. The circuit court may 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.

(B) Civil Actions.

- (1) *Automatic Stay.* Unless otherwise provided by rule, statute, or court order, an execution 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.
- (2) *Effect of Appeal.* An appeal does not stay execution unless:
 - (a) the appellant files a bond in an amount not less than 1-1/4 times the amount of the judgment or order being enforced, including any costs, interest, attorney fees, and sanctions assessed to date of filing the bond. When the bond is filed, the judgment or order shall automatically be stayed even though objections to the bond or surety may be filed, or
 - (b) the trial court grants a stay with or without bond under MCR 3.604(L), MCR 7.209(E)(1), or MCL 600.2605. The stay order must conform to any condition expressly required by the statute authorizing review.
- (3) *Bond Form and Content.* 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 promise 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 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(N)(4) if the appeal is from a judgment for the possession of land.
- (4) *Notice of Bond; Objections; Stay Orders.*
- (a) A copy of a bond and any accompanying power of attorney or affidavit must be promptly served on all parties in the manner prescribed in MCR 2.107. At the same time, the party seeking the stay shall file a proposed stay order pursuant to MCR 2.602(B)(3). Proof of service must be filed promptly with the trial court in which the bond has been filed.
 - (b) Objections shall be filed and served within 7 days. Objections to the amount of the bond are governed by MCR 2.602(B)(3). Objections to the surety are governed by MCR 3.604(E).
 - (c) If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter the order staying enforcement of the judgment or order pending all appeals. Unless otherwise ordered, the stay shall continue until jurisdiction is again vested in the trial court or until further order of an appellate court.
 - (d) Any stay order must be promptly served on all parties in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the trial court.
 - (e) All hearings under this rule may be held by telephone conference as provided in MCR 2.402.

- (5) For good cause shown, the trial court may set the amount of the bond in a greater or lesser amount adequate to protect the interests of the parties.
- (6) A bond may be secured under MCL 600.2631.
- (7) If an execution has issued, it is suspended by giving notice of filing of the bond to the officer holding the execution.

(C) Criminal Cases.

- (1) *Immediate Effect.* 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.
- (2) *Bond Form and Content.* If a bond is granted, 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;
 - (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.
- (3) *Notice of Bond; Objections.* A criminal defendant filing a bond after conviction shall give notice to the prosecuting attorney of the time and place the bond will be filed. The bond is subject to the objection procedure provided in MCR 3.604.

- (D) Civil Infractions. An appeal bond and stay in a civil infraction proceeding is governed by MCR 4.101(G)(1).
- (E) Probate Actions.
 - (1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.
 - (2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

Committee Comment

MCR 7.108 revises former MCR 7.101(H). MCR 7.108, like its predecessor, is divided into a series of subrules specific to civil actions, criminal cases, civil infractions, and probate actions. The bond for costs under former MCR 7.101(C)(2)(b) has been eliminated, unless the underlying statute or ordinance specifically provides otherwise.

MCR 7.108(A)(1) is new and is based on MCR 7.209(A)(2) and (3).

In civil actions, MCR 7.108(B) retains many of the features of former MCR 7.101(H)(1). Subrule (B)(2)(a) clarifies that the amount of the bond is calculated by adding the amount of the judgment or order, including costs, interest, attorney fees, and sanctions.

MCR 7.108(B)(3)(b)(iii) also expands the conditions of the bond found in former MCR 7.101(H)(1)(c)(ii)[C] to include the payment of any judgment or order and any costs assessed against the principal on the bond. This subrule is based on MCR 7.209(F)(1)(b).

MCR 7.108(B)(4) is new. It requires service of a copy of the bond on the parties and provides a procedure for objecting to the amount of the bond or the surety. Additionally, it allows all hearings on the bond to be conducted by telephone conference as provided in MCR 2.402.

Two other provisions, not found in former MCR 7.101(H), have been included in MCR 7.108(B). First, for good cause shown and if the amount is adequate to protect the interests of the parties, MCR 7.108(B)(5) permits the court to set the bond in a greater or lesser amount. MCR 7.108(B)(5). Second, MCR 7.108(B)(6) allows bonds to be secured under MCL 600.2631.

MCR 7.108(C)(1) governs criminal cases and restates former MCR 7.101(H)(4). Subrule (C)(2), listing the required conditions of the bond, is new. It is based on MCR 7.209(F)(2), but additionally requires the defendant to comply with any other conditions imposed by law or the court.

MCR 7.108(C)(3) is a new provision and is based on MCR 7.209(G)(2).

MCR 7.108(D) governs appeal bonds and stays in civil infraction proceedings. It is identical to former MCR 7.101(H)(3).

The provisions regarding probate actions are unchanged from former MCR 7.101(H)(2).

Rule 7.109 Record on Appeal

- (A) Content of Record. Appeals to the circuit court are heard on the original record.
 - (1) *Appeal From Trial Court.* The record is as defined in MCR 7.210(A)(1).
 - (2) *Appeal From Agency.* The record is as defined in MCR 7.210(A)(2).
 - (3) *Excluded Evidence.* The record on appeal must include the substance of the excluded evidence or the transcript of proceedings in the trial court or agency excluding it. Excluded exhibits must be maintained by the party offering them.
 - (4) *Stipulations.* The parties may stipulate in writing regarding any matters relevant to the trial court or agency record if the stipulation is made a part of the record on appeal and sent to the circuit court.
- (B) Transcript.
 - (1) *Appellant's Duties; Orders; Stipulations.*
 - (a) The appellant is responsible for securing the filing of the transcript as provided in this rule. Unless otherwise provided by circuit court order or this subrule, the appellant shall order the full transcript of testimony and other proceedings in the trial court or agency. Under MCR 7.104(D)(2), a party must serve a copy of any request for transcript preparation on the opposing party and file a copy with the circuit court.

- (b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.
 - (c) 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.
 - (d) The parties may stipulate that no transcript or some portion less than the full transcript be filed.
 - (e) The parties may agree on a statement of facts without procuring the transcript and the statement signed by the parties may be filed with the trial court or agency and sent as the record of testimony in the action.
- (2) *Transcript unavailable.* When a transcript of the proceedings in the trial court or agency cannot be obtained, the appellant shall file a settled statement of facts using the procedure in MCR 7.210(B)(2) unless a statute provides otherwise.
- (3) *Duties of Court Reporter or Recorder.*
- (a) Certificate. Within 7 days after a transcript is ordered by a party or the court, the court reporter or recorder shall furnish a certificate stating that the transcript has been ordered and payment for it made or secured and that it will be filed as soon as possible or has already been filed.
 - (b) Time for Filing.
 - (i) The court reporter or recorder shall file the transcript in the trial court or agency within:
 - [A] 14 days for an application for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case;
 - [B] 28 days in an appeal of a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo

contendere or an appeal from the dismissal or reduction of a felony charge following a preliminary examination; or

[C] 56 days in all other cases.

- (ii) The circuit court may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.
 - (c) Copies. Additional copies of the transcripts required by the appellant may be ordered from the court reporter or recorder. Photocopies of the transcript furnished by the court reporter or recorder may also be made.
 - (d) Form of Transcript. The transcript must be prepared in the form provided by MCR 7.210(B)(3)(d).
 - (e) Notice. Immediately after the transcript is filed, the court reporter or recorder shall notify the circuit court and all parties that it has been filed and file in the circuit court an affidavit of mailing of notice to the parties.
 - (f) Discipline. A court reporter or recorder failing to comply with the requirements of these rules is subject to disciplinary action, including punishment for contempt of court.
 - (g) Responsibility When More Than One Reporter or Recorder. In a case in which portions of the transcript must be prepared by more than one reporter or recorder, the person who recorded the beginning of the proceeding is responsible for ascertaining that the entire transcript has been prepared, filing it, and giving the notice required by subrule (B)(3)(e), unless the court has designated another person.
- (C) Exhibits. Unless otherwise ordered by the circuit court, trial court, or agency, the offering parties shall maintain exhibits in their possession.
 - (D) Reproduction of Records. The trial court or agency shall procure copies of file contents as provided in MCR 7.210(D).
 - (E) Record on Motion. If, before the complete record on appeal is sent to the circuit court, a party files a motion that requires the circuit court to have the record, the

trial court or agency shall, on request of a party or the circuit court, send the circuit court the documents needed.

- (F) **Service of the Record.** Within 14 days after the transcript is filed with the trial court or agency, the appellant shall serve a copy of the entire record on appeal, including the transcripts and exhibits in his or her possession, on each appellee. However, copies of documents the appellee already possesses need not be served. On request, the appellant shall make available to the appellee exhibits incapable of being copied. Proof that the record was served must be promptly filed with the circuit court and the trial court or agency. If the filing of a transcript has been excused as provided in subrule (B), the record shall be served within 14 days after the filing of the transcript substitute.
- (G) **Transmission of Record.**
- (1) Within 14 days after the complete transcript has been filed or a certified copy of the record has been requested, the trial court or agency shall promptly send the record to the circuit court, except for those things omitted by written stipulation of the parties. The trial court may order removal of exhibits, if any, from the record. Weapons, drugs, or money are not to be sent unless requested by the circuit court. The trial court or agency shall append a certificate identifying the name of the case, listing the papers with reasonable definiteness, and indicating that the required fees have been paid and any required bond filed. The record transmitted shall include:
- (a) a register of actions in the case;
 - (b) any exhibits on file;
 - (c) all documents and papers from the court file;
 - (d) all transcripts;
 - (e) all opinions, findings, and orders of the trial court or agency; and
 - (f) the order or judgment appealed.
- (2) Transcripts and all other documents which are part of the record on appeal must be attached in one or more file folders or other suitable hard-surfaced binders showing the name of the trial court or agency, the title of the case, and the file number.

- (3) The trial court or agency must immediately notify the parties when the record is transmitted to the circuit court.
- (H) Return of Record. After deciding the appeal, the circuit court shall promptly send the original record with a certified copy of its order and any written opinion:
 - (1) to the clerk of the Court of Appeals if a timely application for leave to appeal is filed in the Court of Appeals, or
 - (2) to the clerk of the trial court or agency from which the record was received if no timely application for leave to appeal is filed in the Court of Appeals.
- (I) Notice of Return of Record. The trial court or agency clerk shall promptly notify all parties of the return of the record.

Committee Comment

MCR 7.109 is based on MCR 7.210 and contains several important changes in practice from the predecessor rule, MCR 7.101(F).

Subrule (A) defines the record on appeal and corresponds to MCR 7.210(A).

Subrule (B) outlines the duties of the appellant and court reporter or recorder. This new rule shortens the time for ordering the transcript and for filing the court reporter's or recorder's certificate. In conjunction with MCR 7.104(D)(2), the appellant must now file proof of ordering the transcript along with the claim of appeal. The reporter's or recorder's certificate must be filed within 7 days. Subrule (B)(3)(b) establishes new deadlines for filing transcripts in circuit court appeals. The prior rule, MCR 7.101(F), required production of either the transcript or the certificate within 28 days.

MCR 7.109(C) establishes a new rule directing the parties to maintain exhibits in their possession unless ordered otherwise. This reflects the fact that courts and agencies are reluctant to accept exhibits for filing.

Under MCR 7.109(F), the appellant now has the duty to serve a copy of the transcript on the appellee. Under the former rule, the appellee had to obtain its own copy.

Subrule (G) provides that the trial court or agency clerk must transmit the record to the circuit court within 14 days after the transcript is filed. Under the prior rule, MCR 7.101(F)(2), there was no deadline. Subrule (G) also standardizes the contents and form of the record to be transmitted.

MCR 7.109(H) and (I) are new subrules. Subrule (H) directs the circuit court to either send the record to the Court of Appeals if a timely application for leave to appeal is filed or to return the record to the trial court or agency if an application is not filed. Subrule (I) requires the court to notify the parties when the record has been returned.

Rule 7.110 Motion in Circuit Court Appeals

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

Committee Comment

MCR 7.110 is new. It provides that appellate motion practice is conducted under the rule that governs general motion practice, with an added provision that the circuit court must decide appellate motions within 28 days after the hearing date. Additionally, the rule makes it clear that a party may bring special motions, such as motions to remand, to affirm, or for peremptory reversal.

Rule 7.111 Briefs

(A) Time for Filing and Service.

(1) *Appellant's Brief.*

(a) Within 21 days after the trial court or agency notifies the parties that the record on appeal has been sent to the circuit court, the appellant must file a brief conforming to MCR 7.212(C) and serve it on all other parties to the appeal. The time may be extended for 14 days by stipulation and order or by an order granting a motion for extension. The filing of a motion does not stay the time for filing a brief.

(b) If an appellant does not file a brief within the time provided by subrule (A)(1)(a), the appeal may be considered abandoned, and the circuit court may dismiss the appeal on 14 days' notice to the parties. Compliance with subrule (A)(1)(a) after notice is sent does not preclude a dismissal of the appeal unless the appellant shows a reasonable excuse for the late filing.

(2) *Appellee's Brief.* Within 21 days after the appellant's brief is served on the appellee, the appellee may file a brief. The brief must conform to MCR 7.212(D) and must be served on all other parties to the appeal. The time may be extended for 14 days by stipulation and order or by an order

granting a motion for extension. The filing of the motion does not stay the time for filing a brief.

- (3) *Briefs in Cross Appeals.* The filing and service of briefs by a cross appellant and a cross appellee are governed by subrules (A)(1) and (2).
 - (4) *Earlier Filing and Service.* For good cause shown, the circuit court may grant a motion to shorten the time for filing and serving briefs.
 - (5) *Late Filing.* Any party failing to timely file and serve a brief under these rules forfeits oral argument. For good cause shown, the court may grant a motion to reinstate oral argument.
- (B) Length and Form of Briefs. The appellant's brief must comply with MCR 7.212(B) and (C), and the appellee's brief must comply with MCR 7.212(B) and (D).¹
 - (C) Request for Oral Argument. A party filing a timely brief is entitled to oral argument by writing "ORAL ARGUMENT REQUESTED" in capital letters or boldface type on the title page of the brief.
 - (D) Nonconforming Briefs. 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 this rule, it may order the party filing the brief to correct the deficiencies within a specified time or it may strike the nonconforming brief.

Committee Comment

MCR 7.111(A)(1)(a) and 7.111(A)(2) correspond to former MCR 7.101(I)(1). These subrules now provide that the time for filing a brief may be extended for 14 days by stipulation and order or by an order granting a motion for extension.

MCR 7.111(A)(1)(b) corresponds to former MCR 7.101(J) and clarifies that the circuit court is responsible for dismissing an appeal if an appellant fails to file a timely brief.

¹ Note that the Court adopted an amendment of MCR 7.101 and 7.105 in ADM File No. 2009-14 to clarify that the page limit for district court appeal briefs is the same as for briefs filed in the Court of Appeals. The amendment became effective after the committee submitted its proposal to the Court in this file. In addition, contrary to the reference in the committee comment, there is no language in the proposal that would establish a page limit of half the limit in Court of Appeals briefs, i.e., 25 pages.

MCR 7.111(A)(3) is a new subrule governing briefs in cross appeals. It is consistent with MCR 7.212(E).

MCR 7.111(A)(4) and (5) are new and correspond to MCR 7.212(A)(3) and (4) respectively. MCR 7.111(A)(5) also allows the court to reinstate oral argument.

MCR 7.111(B) adopts MCR 7.212(B) with two exceptions. First, the page limit for a circuit court brief is one-half of the page limit allowed for a brief in the Court of Appeals. Second, the standard for granting a motion to exceed the page limit is less stringent.

MCR 7.111(C) is taken from former MCR 7.101(K).

MCR 7.111(D) is new and corresponds to MCR 7.212(I).

Rule 7.112 Miscellaneous Relief

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

Committee Comment

MCR 7.112 is a new rule. It clarifies that the circuit court has the appellate powers set forth in MCR 7.216 and incorporates former MCR 7.101(P), which governed vexatious proceedings.

Rule 7.113 Dismissal

(A) Involuntary Dismissal.

- (1) *Dismissal.* 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.
- (2) *Reinstatement.* Within 14 days after the date of the dismissal order, the appellant may move for reinstatement by showing mistake, inadvertence, or excusable neglect.

(B) Voluntary Dismissal. In all cases where 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 shall enter an order of dismissal.

- (C) Notice of Dismissal. Immediately upon entry, a copy of an order dismissing an appeal must be sent to the parties and the trial court or agency.

Committee Comment

MCR 7.113 is based on MCR 7.217 and MCR 7.218. Under former MCR 7.101(G) and (J), both the trial court and circuit court had the authority to dismiss an appeal. MCR 7.113 vests exclusive authority in the circuit court to dismiss an appeal. The new rule also increases the appellant's time to cure a deficiency from 7 to 14 days. Subrule (A)(2) adds a reinstatement procedure.

Rule 7.114 Taxation of Costs, Fees.

- (A) Right to Costs. Except as the circuit court otherwise directs, the prevailing party in a civil case is entitled to costs.
- (B) Time for Filing. Within 28 days after the dispositive order, opinion, or order denying rehearing is mailed, the prevailing party may file a certified or verified bill of costs with the clerk and serve a copy on all other parties. Each item claimed in the bill must be specified. Failure to file a bill of costs within the time prescribed waives the right to costs.
- (C) Objections. Any other party may file objections to the bill of costs with the clerk within 7 days after a copy of the bill is served. The objecting party must serve a copy of the objections on the prevailing party and file proof of that service.
- (D) Taxation. The clerk will promptly verify the bill and tax those costs available.
- (E) Review. The action by the clerk 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.
- (F) Taxable Costs and Fees. A prevailing party may tax only the reasonable costs and fees incurred in the appeal, including:
 - (1) printing of briefs, or if briefs were typewritten, a charge of \$1 per original page;
 - (2) obtaining any stay bond;
 - (3) the transcript and necessary copies of it;

- (4) documents required for the record on appeal;
- (5) fees paid to the clerk or to the trial court clerk incident to the appeal;
- (6) taxable costs and fees allowed by law in appeals under MCL 600.2441;
- (7) the additional costs incurred when a party to an appeal under the Administrative Procedures Act unreasonably refused to stipulate to shortening the record as provided in MCL 24.304(2); and
- (8) other expenses taxable under applicable court rules or statutes.

Committee Comment

MCR 7.114 corresponds to former MCR 7.101(O). It is based on MCR 7.219, MCR 2.625, and MCL 600.2441.

Rule 7.115 Decision and Effect of Judgment, Reconsideration

- (A) Oral Argument. If requested in accord with MCR 7.111(C), the court shall 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.
- (B) Decision. The circuit court shall decide the appeal by oral or written opinion and issue an order. The court's order is its judgment.
- (C) Effect of Judgment. Unless otherwise ordered by the circuit court or the Court of Appeals, a judgment is effective after expiration of the period for filing a timely application for leave to appeal or, if such an application is filed, after the Court of Appeals decides the case. Enforcement is to be obtained in the trial court or agency after the record is returned as provided in MCR 7.109(H).
- (D) Reconsideration. A motion for reconsideration is governed by MCR 2.119(F).

Committee Comment

MCR 7.115(A) is new and allows the circuit court to dispense with oral argument if certain conditions are met.

MCR 7.115(B) is new and is consistent with MCR 7.215(E)(1). It specifies that all appeals must be decided by oral or written opinion and issuance of an order. Administrative Order 2003-7 sets the time guidelines for deciding circuit court appeals.

Subrule (C) is new and consistent with MCR 7.215(F).

Subrule (D) is also new. It clarifies that a circuit court has the authority to decide a motion for reconsideration.

Rule 7.116 Appeals Under the Michigan Employment Security Act

- (A) **Scope.** This rule governs appeals to the circuit court under the Michigan Employment Security Act, MCL 421.1 *et seq.* Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.
- (B) **Time Requirements.** An appeal of right from an order or decision of the Michigan Employment Security Board of Review must be taken within 30 days after the mailing of the board's decision.
- (C) **Manner of Filing.** Except as provided in subrule (B), the claim of appeal shall conform with MCR 7.104 and must include statements of jurisdiction and venue. In addition, proof that the claim of appeal was served on the board of review and all interested parties must be filed in the circuit court. The Michigan Employment Security Commission is a party to any appeal under MCL 421.38(3), but the board of review is not a party to the appeal.
- (D) **Venue.** Venue is determined under MCL 421.38(1).
- (E) **Appearance of Appellee.** Within 14 days after service of the claim of appeal, the appellee must file an appearance in the circuit court.
- (F) **Record on Appeal.** Within 42 days after the claim of appeal is served on the board of review, or within further time as the circuit court allows, the board of review must transmit to the clerk of the circuit court a certified copy of the record of proceedings before the referee and the board of review. The certified record must comply with MCL 421.36(3). The board of review must notify the parties that the record was transmitted.
- (G) **Standard of Review and Decision on Appeal.** Under MCL 421.38, the circuit court may reverse an order or decision of the board of review 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. In all other respects, MCR 7.115 applies.

Committee Comment

MCR 7.116 is based on former MCR 7.104(B) and MCL 421.1 *et seq.*, particularly MCL 421.38.

MCR 7.116(C) adds the requirement that the claim of appeal include statements of jurisdiction and venue. Subrule (G) is included to identify the standard of review under MCL 421.38.

MCR 7.116 deletes former MCR 7.104(B)(5), which referenced class appeals.

Rule 7.117 Appeals from the Michigan Civil Service Commission

- (A) **Scope.** This rule governs appeals to the circuit court from the Michigan Civil Service Commission. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.
- (B) **Procedure.** An appeal from a decision of the Michigan Civil Service Commission must comply with MCR 7.119.
- (C) **Commission as Party.** An appeal challenging any decision, rule, or regulation of the Michigan Civil Service Commission must name the Commission as a party and must serve the Commission at the Office of the State Personnel Director in Lansing, Michigan.

Committee Comment

MCR 7.117 is based on former MCR 7.104(C) and Michigan Civil Service Commission Rule 8-7.9.

Rule 7.118 Appeals from the Michigan Parole Board

- (A) **Scope.** This rule governs appeals to the circuit court from the Michigan Parole Board. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.
- (B) **No Appeal of Right.** There is no appeal of right from a decision of the parole board.
- (C) **Access to Reports and Guidelines.** Upon request, the prosecutor, the victim, and the prisoner shall receive the parole eligibility report, any prior parole eligibility reports that are mentioned in the parole board's decision, and any parole guidelines that support the action taken.
- (D) **Application for Leave to Appeal.**

- (1) *Parties.*
 - (a) Only the prosecutor or a victim may file an application for leave to appeal.
 - (b) The prisoner shall be the appellee.
 - (c) The parole board may move to intervene as an appellee.
- (2) *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.
- (3) *Manner of Filing.* An application for leave must comply with MCR 7.105, must include statements of jurisdiction and venue, 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.
 - (a) Service on the parole board, the victim, or the prosecutor must be accomplished by certified mail, return receipt requested, in compliance with MCR 2.105(A)(2).
 - (b) Service on a prisoner incarcerated in a state correctional facility must be accomplished by serving the application for leave on the warden or administrator, along with the form approved by the State Court Administrative Office for personal service on a prisoner. Otherwise, service must be accomplished by certified mail, return receipt requested, as described in MCR 2.103(C) and MCR 2.104(A)(2) or in compliance with MCR 2.105(A)(2). In addition to the pleadings, service on the prisoner must also include a notice in a form approved by the State Court Administrative Office advising the prisoner that:
 - (i) the prisoner may respond to the application for leave to appeal through retained counsel or in propria persona, although no response is required, and
 - (ii) if an order of parole is issued under MCL 791.236 before the completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required.

- (c) Proof of service must be promptly filed with the clerk of the circuit court and must include a copy of the return receipt and, in the case of the prisoner, a copy of the certificate of service executed by the appropriate prison official.
- (4) *Venue.* 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(9).
- (E) *Late Application.* A late application for leave to appeal may be filed under MCR 7.105(F).
- (F) *Stay of Order of Parole.*
 - (1) An order of parole issued under MCL 791.236 shall not be executed until 28 days after the mailing of the notice of action.
 - (2) If an order is issued under MCL 791.235 before completion of appellate proceedings, a stay may be granted in the manner provided by MCR 7.108, except that no bond is required.
- (G) *Decision to Grant Leave to Appeal.*
 - (1) The circuit court shall make its determination within 28 days after the application for leave to appeal is filed.
 - (2) If the court does not make its determination within 28 days, the court shall enter an order to produce the prisoner before the court for a show cause hearing to determine whether the prisoner shall be released on parole pending disposition of the appeal.
- (H) *Procedure After Leave to Appeal Granted.* If leave to appeal is granted, MCR 7.105(D)(4) applies along with the following:
 - (1) *Record on Appeal.*
 - (a) The record on appeal shall consist of the prisoner's central office file at the Department of Corrections and any other documents considered by the parole board in reaching its decision.
 - (b) Within 14 days after being served with an order granting leave to appeal, the parole board shall send copies of the record to the circuit

court and the other parties. In all other respects, the record on appeal shall be processed in compliance with MCR 7.109.

- (c) The expense of preparing and serving the record on appeal may be taxed as costs to a non-prevailing appellant, except that expenses may not be taxed to an indigent party.
- (2) *Briefs.* Briefs must comply with MCR 7.111, except:
- (a) the appellant's brief is due 28 days after the record is served on the parties, and
 - (b) the appellee's brief, if filed, is due 21 days after the appellant's brief is served on the appellee.
- (3) *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.
- (4) *Remand to the Parole Board.* On motion by a party or on the court's own motion, the court may remand the matter to the parole board for an explanation of its decision.
- (a) 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.
 - (b) The time for filing briefs on appeal under subrule (G)(2) is tolled while the matter is pending on remand.
- (I) *Subsequent Appeal to the Court of Appeals.* An appeal of a circuit court decision is by emergency application for leave to appeal to the Court of Appeals under MCR 7.205(E), and the Court of Appeals shall expedite the matter.
- (J) *Parole Board Responsibility After Reversal or Remand.*

- (1) 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.
- (2) 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.
- (3) An appeal to the Court of Appeals does not affect the board's jurisdiction to act under this subsection.

Committee Comment

MCR 7.118 is based on former MCR 7.104(D) and MCL 791.234.

Subrule (B) is new and reiterates existing law. See MCL 791.234(9). Subrule (D)(3) adds the requirements that the application for leave to appeal include statements of jurisdiction and venue. Subrule (D)(3)(b) updates the service requirements in former MCR 7.104(D)(2)(c).

Rule 7.119 Appeals from Agencies Governed by the Administrative Procedures Act

- (A) **Scope.** This rule governs an appeal to the circuit court from an agency decision where MCL 24.201 *et seq.* applies. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply.
- (B) **Appeal of Right.**
 - (1) *Time Requirements.* Judicial review of a final decision or order shall be by filing a claim of appeal in the circuit court within 60 days after the date of mailing of the notice of the agency's final decision or order. If a rehearing before the agency is timely requested, then the claim of appeal must be filed within 60 days after delivery or mailing of the notice of the agency's decision or order on rehearing, as provided in the statute or constitutional provision authorizing appellate review.
 - (2) *Manner of Filing.*
 - (a) **Claim of Appeal - Form.** The claim of appeal shall conform 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. Except where otherwise provided by law, the agency or another party to the case may become an appellee by filing an appearance within 21 days after service of the claim of appeal.
- (b) Claim of Appeal – Content. 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).
- (c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).
- (d) Other Documents. In addition to the claim of appeal, the appellant shall also comply with MCR 7.104(D).
- (e) Filing Requirements in the Agency. The appellant must comply with MCR 7.104(E).
- (f) Service. In addition to the service requirements found in MCR 7.104(D)(7), the appellant must also serve the Attorney General.
- (3) *Appearance*. The appellee shall file an appearance within 14 days that complies with MCR 7.104(F).

- (C) Application for Interlocutory Appeal. A preliminary procedural or intermediate agency action or ruling is not immediately reviewable, except that a court may grant interlocutory appeal of a preliminary, procedural, or intermediate decision by an agency only on a showing that review of the final decision would not be an adequate remedy.
- (1) *Time Requirements.* An application for interlocutory appeal must be filed with the court within 14 days of the decision.
 - (2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must:
 - (a) include a jurisdictional statement citing:
 - (i) the statute, rule, or other authority enabling the agency to conduct proceedings, and
 - (ii) the statute or constitutional provision authorizing appellate review of the agency's decision or order in the circuit court;
 - (b) include a statement of venue with supporting facts;
 - (c) set forth why review of the agency's final decision will not be an adequate remedy; and
 - (d) state the relief sought.
 - (3) *Answer.* An appellee may file an answer to an application for interlocutory appeal under MCR 7.105(C). The circuit court may require the filing of an answer.
 - (4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.
- (D) Late Appeal. The appellant may file an application for late appeal if permitted by statute.
- (1) *Time Requirements.* Unless inconsistent with the statute authorizing the appeal, the application must be filed within six months after entry of the agency decision or order.
 - (2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must include:

- (a) a statement citing the statute authorizing a late appeal;
 - (b) a statement of facts explaining the delay; and
 - (c) include statements of jurisdiction and venue complying with subrules (C)(2)(b) and (c).
- (3) *Answer.* An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.
- (4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.
- (E) Stay of Enforcement. The filing of an appeal does not stay enforcement of the agency's decision or order.
- (1) A party may file a motion seeking a stay in the circuit court.
 - (2) For purposes of this subrule, the agency is entitled to notice even if it has not filed an appearance in the appeal.
 - (3) The court may order a stay on appropriate terms and conditions 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
 - (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.
 - (4) If the motion for stay is granted, the circuit court may set appropriate terms and conditions for the posting of a 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.
- (5) *Temporary Stay.*
 - (a) The circuit court may grant a temporary stay of enforcement without written notice only if:
 - (i) it clearly appears from 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 agency, but was unsuccessful.
 - (b) A temporary stay may be granted by the court until a hearing can be held. A hearing on a motion to dissolve a temporary stay will be heard on 24 hours' notice, or less on order of the court for good cause shown, and takes precedence over all matters except previously filed matters of the same character.
- (F) **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.
- (G) **Additional Evidence.** A motion to present proofs of alleged irregularity in procedure before the agency, or to allow the taking of additional evidence before the agency, is timely only if it is filed with or included with the claim of appeal or application. The appellant shall promptly notice the motion for decision. If the court orders the taking of additional evidence, the time for filing briefs is stayed until the taking of the evidence is completed.
- (H) **Decision.** 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.
 - (1) If the agency's decision or order is not supported by competent, material, and substantial evidence on the whole record, the court shall specifically identify the finding or findings that lack support.

- (2) If the agency's decision or order violates the constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed.

Committee Comment

MCR 7.119 is based on the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, particularly MCL 24.301, MCL 24.302, and MCL 24.306. MCR 7.119 substantially changes the procedures in former MCR 7.105.

Not every agency as defined in MCR 7.102(1) is subject to the APA. An agency is subject to the APA if:

1. the agency meets the definition of an agency in MCL 24.203(2);
2. a statute or constitutional provision subjects the agency to the APA; or
3. an agency with rulemaking power adopts a rule subjecting itself to the APA.

The rule's most fundamental change is that judicial review under the APA is now initiated by a claim of appeal or an application for leave to appeal rather than a petition for review. The new rule promotes uniformity in all circuit court appeals. It is consistent with MCL 24.302. As a result, the designation of the parties as "petitioner" and "respondent" under former MCR 7.105 has been changed to "appellant" and "appellee."

Subrule (B) includes the 60-day time requirement from MCL 24.304(1) and identifies the form, content, and other requirements of a claim of appeal.

The general briefing rules in MCR 7.111 apply to appeals governed by the APA. MCR 7.111(A) decreases the time to file briefs under former MCR 7.105(K)(1) from 28 to 21 days. Stipulations for extension of time must now be accompanied by an order, and the time for an extension has been decreased from 28 days to 14 days. Reply briefs have been eliminated.

Rule 7.120 Licensing Appeals Under the Michigan Vehicle Code

- (A) **Scope.** This rule governs appeals to the circuit court under the Michigan Vehicle Code, MCL 257.1 *et seq.*, 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 indorsement. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.

(B) Appeal of Right.

- (1) *Time Requirements.* The time for filing an appeal of right is governed by MCL 257.323(1).
- (2) *Manner of Filing.*
 - (a) Claim of Appeal – Form. The claim of appeal shall conform to the requirements of MCR 7.104(C)(1), except that the party aggrieved by the Secretary of State’s determination is the appellant.
 - (b) Claim of Appeal – Content. 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.
 - (c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).
 - (d) Other Documents. The appellant must attach as exhibits accompanying the claim of appeal:
 - (i) a copy of the Secretary of State’s determination, and
 - (ii) any affidavits supporting the claim of appeal.

- (e) Service. The appellant shall serve the claim of appeal on all parties.
 - (3) *Appearance.* The appellee shall file an appearance within 14 days that complies with MCR 7.104(F).
- (C) Application for Late Appeal.
- (1) *Time Requirements.* An application for late appeal must be filed within the time set forth in MCL 257.323(1).
 - (2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must comply with MCR 7.120(B)(2)(b) and must include a statement showing good cause for the delay.
 - (3) *Answer.* An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.
 - (4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.
- (D) Stay of Enforcement. 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. The appellant may file for a stay of enforcement under MCL 257.323a. The appellant shall serve a copy of the order granting or denying the stay on the Secretary of State. The Secretary of State may file a motion challenging the stay.
- (E) 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.
- (F) Proceedings Under MCL 257.323(3).
- (1) *Briefs.* The court may require briefs and may enter an order setting a briefing schedule. Unless otherwise ordered, briefs must comply with MCR 7.111.
 - (2) *Hearing.* The court shall schedule a hearing under MCL 257.323(2). During the hearing, the court may take testimony and examine all the facts and circumstances relating to the denial, suspension, or restriction of the person's license under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f.

- (3) *Decision.* For denials, suspensions, or restrictions of the person's license under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f, the circuit court may affirm, modify, or set aside the restriction, suspension, or denial. The circuit court, however, shall not order the Secretary of State to issue a restricted or unrestricted chauffeur's license that would permit the person to drive a commercial motor vehicle that hauls hazardous materials.
 - (4) *Appellant's Responsibility After Decision.* Pursuant to MCL 257.323(3), the appellant shall file a certified copy of the circuit court's order with the Secretary of State's office in Lansing within 7 days after entry of the order for denials, suspensions, or restrictions of the person's license arising under MCL 257.303(1)(d), MCL 257.320, MCL 257.904(10), MCL 257.904(11), MCL 257.310d, or for a first violation of MCL 257.625f.
- (G) Proceedings Under MCL 257.323(4).
- (1) *Briefs.* Unless otherwise ordered, the parties must file briefs complying with MCR 7.111.
 - (2) *Oral Argument.* If requested in accord with MCR 7.111(C), the court shall 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.
 - (3) *Decision.* The court shall confine its consideration to a review of the record prepared under MCL 257.322, MCL 257.625f, or MCL 257.204a for statutory legal issues and shall not grant restricted driving privileges. The court shall set aside the Secretary of State's determination only if the appellant's substantial rights have been prejudiced because the determination is:
 - (a) in violation of the Constitution of the United States, the Michigan constitution, or a statute;
 - (b) in excess of the Secretary of State's statutory authority or jurisdiction;
 - (c) made upon unlawful procedure that results in material prejudice to the appellant;

- (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; or
- (f) affected by other substantial and material error of law.

Committee Comment

Former subchapter 7.100 did not address licensing appeals under the motor vehicle code. This new rule establishes uniform procedures and practices for these appeals.

Consequently, even though the Code refers to a “petition,” MCR 7.120 uses the terms “claim of appeal” and “application for late appeal.” The parties are referred to individually as “appellant” or “appellee.” Under MCR 7.120(B), a claim of appeal must include the information required in MCL 257.323 and concise statements of the nature of proceedings before the Secretary of State, jurisdiction, and venue along with citations to pertinent statutes.

MCR 7.120(C) governs applications for late appeals and comports with MCL 257.323(1).

MCR 7.120(D) addresses stays of enforcement and comports with MCL 257.323a.

Consistent with other rules in this subchapter, MCR 7.120(E) permits stipulations.

MCR 7.120(F) governs proceedings under MCL 257.323(3).

MCR 7.120(G) governs proceedings under MCL 257.323(4).

There were substantial amendments to the Michigan Vehicle Code in 1992 and 1999. Driver’s license appeals are governed by the law in effect at the time the offense was committed. MCL 257.320e. This rule governs procedure in all Michigan Vehicle Code appeals unless the law in effect at the time of the offense provided otherwise.

Rule 7.121 Appeals From Concealed Weapon Licensing Boards

- (A) **Scope.** This rule governs appeals to the circuit court from a final determination of a concealed weapon licensing board refusing to restore rights under MCL 28.424 or denying, failing to issue, revoking, or suspending a license to carry a concealed pistol. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply.

(B) Appeal of Right.

(1) *Time Requirements.* Time requirements are governed by MCR 7.104(A).

(2) *Manner of Filing.*

(a) Claim of Appeal – Form. The claim of appeal shall conform with the requirements of MCR 7.104(C)(1), except that:

(i) the license applicant is the appellant, and

(ii) the board is the appellee.

(b) Claim of Appeal – Content. The claim of appeal must:

(i) state:

[A] “[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the county*] Concealed Weapon Licensing Board,” or

[B] “[*Name of appellant*] claims an appeal from the failure of the [*name of the county*] Concealed Weapon Licensing Board to issue a decision on the application for a license by [*date*],” and

(ii) include concise statements of the following:

[A] the nature of the proceedings before the board, including citation to the statute authorizing the board’s decision;

[B] citation to the statute or Const 1963, art 6 § 28 authorizing appellate review;

[C] the facts on which venue is based.

(c) Signature. The claim of appeal must be signed as stated in MCR 7.104(C)(3).

(d) Other Documents. In addition to the documents required under MCR 7.104(D), the claim of appeal shall include a copy of the

board's decision and any materials accompanying the board's decision. If the appeal is from the board's failure to issue a timely decision, the claim of appeal shall state the date on which the application was filed and shall include a statement addressing whether the application complied with MCL 28.425b(1), (5), and (9).

- (e) **Service.** The appellant shall serve the claim of appeal on all parties.
 - (f) **Request for Certified Record.** Within the time for filing a claim of appeal, the appellant shall send a written request to the board to send a certified copy of the record to the circuit court.
- (3) **Appearance.** The appellee shall file an appearance within 14 days that complies with MCR 7.104(F).
- (C) **Hearing De Novo from Denial of License for Grounds Specified in MCL 28.425b(7)(n).**
- (1) **Briefs.** The court may require briefs and may enter an order setting a briefing schedule. Unless otherwise ordered, briefs must comply with MCR 7.111.
 - (2) **Hearing.** The court shall hold a hearing de novo that comports with MCL 28.425d(1). Any determination that the appellant is unfit under MCL 28.425b(7)(n) shall be based on clear and convincing evidence.
 - (3) **Decision.** The circuit court shall enter an order either affirming the board's denial or finding the applicant qualified under MCL 28.425b(7)(n) and ordering the board to issue a license.
- (D) **Procedure in All Other Appeals.**
- (1) **Briefs.** Unless otherwise ordered, the parties must file briefs complying with MCR 7.111.
 - (2) **Oral Argument.** If requested in accord with MCR 7.111(C), the court shall hold oral argument within 14 days after the appellee's brief was filed or due. The court may dispense with oral argument under MCR 7.115(A).
 - (3) **Decision.** The court shall confine its consideration to a review of the record. If the court determines that the denial of a license was clearly erroneous, the court shall order the board to issue a license as required by

the act. If the court determines that the board erroneously refused to restore rights pursuant to MCL 28.424(3), the court shall order the board to restore the applicant's rights. If the court determines that the board erroneously revoked or suspended a license, the court shall order the board to reinstate the license. If the court determines that the board failed to issue a license pursuant to MCL 28.425b(13), the court shall order the board to act on the application within 14 days. The court shall retain jurisdiction to review the board's decision.

- (E) Notice of Decision. The circuit court shall serve the parties with a copy of its order resolving the appeal.
- (F) Costs and Attorney Fees.
 - (1) *Arbitrary and Capricious Board Decision.* If the court determines that the decision of the board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order the state to pay 1/3 and the county in which the concealed weapon licensing board is located to pay 2/3 of the actual costs and actual attorney fees of the applicant in appealing the denial.
 - (2) *Frivolous Appeal.* If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the board in responding to the appeal.

Committee Comment

MCR 7.121 is new and is based on the Concealed Weapon Act, MCL 28.421 *et seq.*

MCR 7.121(B) sets forth the procedure for filing a claim of appeal from a final order of a concealed weapon licensing board.

Subrule (C) governs the procedure for appeals from denial of a license for grounds specified in MCL 425b(7)(n). These appeals are by a hearing de novo.

Subrule (D) governs the procedure in all other appeals.

Subrule (E) incorporates the costs and attorney fees provisions of MCL 28.424d(3).

Rule 7.122 Appeals From Zoning Ordinance Determinations

(A) Scope.

- (1) This rule governs appeals 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. Unless this rule provides otherwise, MCR 7.101 through MCR 7.115 apply. This rule does not apply to legislative decisions of a city, village, township, or county, such as the adoption of or amendment to a zoning ordinance.
- (2) This rule does not restrict the right of a party to bring a complaint for relief against a city, village, township or county relating to a determination under a zoning ordinance. An appeal under this section may be joined with a complaint for declaratory relief, injunctive relief, equitable relief, money damages, or other available relief.
- (3) An appeal under this section is an appeal of right.

(B) Time Requirements. An appeal under this rule must be filed within the time prescribed by the statute applicable to the appeal. If no time is specified in the applicable statute, 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.

(C) Manner of Filing.

- (1) *Claim of Appeal – Form.* 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 shall be designated as the board, commission, or other entity that made the determination.
- (2) *Claim of Appeal – Content.* 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 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.
- (3) *Signature.* The claim of appeal must be signed as stated in MCR 7.104(C)(3).
- (4) *Other Documents.* The appellant must attach to the claim of appeal a copy of the order and/or minutes of the officer or entity from which the appeal is taken.
- (5) *Service.* Upon filing the claim of appeal, the appellant, shall serve a copy of the claim of appeal and all attachments upon the clerk of the city, village, township, or county. Service shall be in the manner provided in MCR 2.107, and appellant shall promptly file a proof of service with the court.
- (D) **Bond.** An appellant shall not be required to post a bond unless so ordered by the court.
- (E) **Record on Appeal; Transmittal of the Record.**
 - (1) 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.
 - (2) Within 28 days after service of the claim of appeal, the clerk of the city, village, township, or county from which the appeal is taken must file the record with the court.

- (3) If the record is not available within 28 days after service of the claim of appeal, the clerk of the city, village, township or county from which the appeal is taken shall notify the court of the estimated date of transmittal of the record.
 - (4) If the clerk of the city, village, township or county postpones transmittal of the record or transmittal is otherwise delayed, the court may on motion or its own initiative exercise superintending control over the clerk to prevent delay.
 - (5) The clerk of the city, village, township or county from which the appeal is taken must notify the appellant and appellee of the transmittal of the record to the court.
 - (6) 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.
- (F) Briefs. Unless otherwise ordered, the parties must file briefs complying with MCR 7.211.
- (G) Decision.
- (1) *Appeals under MCL 125.3606.*
 - (a) In an appeal from a city, village, township or county board of zoning appeals, the court shall apply the standard of review under MCL 125.3606(1).
 - (b) 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. The zoning board of appeals may modify the findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court.
 - (c) The court may affirm, reverse, or modify the decision of the board of appeals.
 - (2) *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.

- (H) Notice of Decision. The court shall serve the parties with a copy of its order resolving the appeal.

Committee Comment

This Rule is new and is based upon the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.* The rule is intended to clarify the procedures for taking an appeal from a determination under a zoning ordinance.

Subrule (C)(1) sets forth the designation of the parties to the appeal.

Subrules (C)(2) and (4) identify the contents of the claim of appeal and what must be attached.

Subrule (E) specifies the contents of the record and the party responsible for transmitting the record to the circuit court.

Subrule (G) sets forth the different standards of review for appeals from city, village, township, and county zoning boards of appeal and appeals from final determinations under a zoning ordinance where no right of appeal to a zoning board of appeals exists.

Rule 7.123 Appeals From Agencies not Governed by Another Rule

- (A) Scope. This rule governs an appeal to the circuit court from an agency decision that is not governed by another rule in this subchapter. Unless this rule provides otherwise, MCR 7.101 through 7.115 apply.
- (B) Appeal of Right.
- (1) *Time Requirements.* Time requirements are governed by MCR 7.104(A).
 - (2) *Manner of Filing.*
 - (a) Claim of Appeal – Form. The claim of appeal shall conform to the requirements of MCR 7.119(B)(2)(a).
 - (b) Claim of Appeal – Content. The claim of appeal must:

- (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 is based.
- (c) **Signature.** The claim of appeal must be signed as stated in MCR 7.104(C)(3).
- (d) **Other Documents.** The appellant must also comply with MCR 7.104(D).
- (e) **Filing Requirements in the Agency.** The appellant must comply with MCR 7.104(E).
- (f) **Service.** The appellant must comply with MCR 7.104(D)(7).
- (3) **Appearance.** The appellee shall file an appearance within 14 days that complies with MCR 7.104(F).
- (C) **Application for Leave to Appeal or for Interlocutory Appeal.**
 - (1) **Time Requirements.** An application must comply with MCR 7.105(A).
 - (2) **Manner of Filing.** An application must comply with MCR 7.105 and MCR 7.112(B)(2)(b)(ii). An application for interlocutory appeal shall also state why review of the agency’s final decision will not be an adequate remedy.
 - (3) **Answer.** An appellee may file an answer to an application that complies with MCR 7.105(C). The circuit court may require the filing of an answer.
 - (4) **If Application is Granted.** If the application is granted, the appeal proceeds as an appeal of right.

- (D) Late Appeal. The appellant may file an application for late appeal if permitted by statute.
- (1) *Time Requirements.* Unless inconsistent with the statute authorizing late appeal, the application must be filed within six months after entry of the agency decision or order.
 - (2) *Manner of Filing.* In addition to the requirements of MCR 7.105(B), the application must include:
 - (a) a statement citing the statute authorizing a late appeal;
 - (b) a statement of facts explaining the delay; and
 - (c) statements of jurisdiction and venue complying with MCR 7.120(B)(2)(b)(ii).
 - (3) *Answer.* An appellee may file an answer to the application for late appeal under MCR 7.105(C). The circuit court may require the filing of an answer.
 - (4) *If Application is Granted.* If the application is granted, the appeal proceeds in the same manner as an appeal of right.
- (E) Stay of Enforcement. The filing of an appeal or an application for leave to appeal does not stay enforcement of the agency's decision or order.
- (1) A party may file a motion seeking a stay in the circuit court.
 - (2) For purposes of this subrule, the agency is entitled to notice even if it has not filed an appearance in the appeal.
 - (3) The court may order a stay on appropriate terms and conditions 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

- (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.
- (4) If the motion for stay is granted, the circuit court may set appropriate terms and conditions for the posting of a 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.
- (5) *Temporary Stay.*
 - (a) The circuit court may grant a temporary stay of enforcement without written notice only if:
 - (i) it clearly appears from 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 agency, but was unsuccessful.
 - (b) A temporary stay may be granted by the court until a hearing can be held. A hearing on a motion to dissolve a temporary stay will be heard on 24 hours' notice, or less on order of the court for good cause shown, and takes precedence over all matters except previously filed matters of the same character.
- (F) 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.
- (G) Decision. 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.

- (1) If the agency's decision or order is not supported by competent, material, and substantial evidence on the whole record, the court shall specifically identify the finding or findings that lack support.
- (2) If the agency's decision or order violates the constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed.

Committee Comment

MCR 7.123 broadens former MCR 7.104(A). In addition to appeals under MCL 600.631, this rule applies to all agency appeals not governed by the APA or another specific court rule. It includes appeals under Const 1963, art 6, § 28 or under statutes governing state and local boards, commissions, agencies, and councils.

MCR 7.123(B) adopts the form of a claim of appeal found in MCR 7.119(B)(2)(a). It requires concise statements of the nature of the proceedings before the agency, jurisdiction, and venue. The designation of parties as "petitioner" and "respondent" under the former rules has been changed to "appellant" and "appellee."

MCR 7.123(C) and (D) adopt the form of applications for leave found in MCR 7.105. These subrules require the same concise statements of proceedings, jurisdiction, and venue.

MCR 7.123(E), (F), and (G) add provisions regarding stay of enforcement, stipulations, and standard of review.

Staff Comment: This proposal was submitted to the Court in May 2010 by the Circuit Court Appellate Rules Revision Committee. The committee was comprised of appellate practice attorneys and judges (including circuit, district, and Court of Appeals judges). It is published for comment as submitted.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by October 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-19. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2011

Corbin R. Davis

Clerk