

Quick Tips for Filing Applications for Leave to Appeal in the Michigan Court of Appeals¹

by
Clare Cylkowski & Julie Isola
District 1 Commissioners

Filing

Applications for leave to appeal may be filed via electronic filing or may be filed on paper, including an original and four copies, by mail or in person. IOP² 7.201(B)(3)-1. If electronic filing is chosen, parties may file at any time of the day, including weekends and holidays, as the Court considers an application timely if it is efiled by midnight on the 21st day after the issuance of the order.³ Specific directions for efileing may be found on the Michigan Court of Appeals website: <http://courts.mi.gov/courts/coa/Pages/default.aspx>. IOP 7.202(4)-2.

TIP: The Court of Appeals actively encourages appellants to use the efileing system, which is voluntary, and the Court's website contains a Best Practices section regarding efileing. To facilitate the reading of efiled documents, practitioners should include electronic bookmarks to separate briefs, transcripts, and appendices, particularly in lengthy filings.

Service

To e-serve pleadings, an appellant first must ascertain that opposing counsel appears on the list of approved e-service recipients (located on the website). If not, the appellant must receive permission from opposing counsel for e-service. When using e-service, appellants must file a written statement that the parties have agreed to e-service

¹ The views in this article are those of the authors and do not necessarily reflect the position of the Judges of the Michigan Court of Appeals.

² "IOP" refers to the Court's Internal Operating Procedures, which are available via the Court's website at <http://courts.mi.gov/Courts/COA/clerksoffice/Pages/IOP.aspx>.

³ Michigan Court of Appeals Electronic Filing and Service Guidelines, ¶ 9. The guidelines are located at the Court's website, <http://courts.mi.gov/courts/coa/efiling/pages/guidelines.aspx>.

or that the parties appear on the list of approved e-service recipients.⁴ If the appellant cannot obtain a party's permission for e-service, the appellant must serve the pleadings by mail or personal service, yet still may efile the pleadings with this Court.⁵ Another method of service is via email; if that method is chosen, parties must file a stipulation that conforms to the court rules, see IOP 7.202-3.

Review

After an application for leave to appeal is filed, a District Commissioner reviews it for compliance with MCR 7.205(B) and for jurisdictional issues. IOP 7.205-4. District Commissioners are experienced staff attorneys who work in each District Office, with those offices located in Detroit, Lansing, Grand Rapids and Troy. IOP 7.205-4. At this stage, applications that have not been filed in the proper district (i.e., the district that includes the circuit court from which the case arose) generally are forwarded to the proper district for processing and decision. See IOP 7.201(B)(2) for a listing of the District Clerks' offices and the counties each office handles.

TIP: Do not file an application until the order being appealed has been signed. Applications from oral rulings will be submitted for dismissal.

Defects

When an application lacks necessary components under MCR 7.205(B), the Court will send a "defect letter" to advise the appellant that additional documents must be filed within 21 days. IOP 7.205-6. The Chief Judge and/or the Court may dismiss the application if the defect is not timely cured. MCR 7.201(B)(3), MCR 7.216(A)(10); IOP 7.205-8.

⁴ Michigan Court of Appeals Electronic Filing and Service Guidelines, ¶ 6.

⁵ Michigan Court of Appeals Electronic Filing and Service Guidelines, ¶ 6.

TIP: If the appellate pleading has a particular defect (e.g., an erroneous caption), a party should refile only the affected portion of the pleading and need not re-file the entire pleading.

Motions

The Court's motion practice is extremely flexible, IOP 7.211-1. Motion fees include \$100 per motion, except for motions for immediate consideration, which are set at \$200. IOP 7.211(A)(2).

TIP: Under judicial policy, appellees need not file a motion to allow a late answer, but they file an untimely answer at their own risk. IOP 7.211(B)-1. Appellants have no right to file a reply to appellee's answer, so a motion is required to file a reply to the answer. IOP 7.205(C)-3.

The court rule regarding motions for stay, MCR 7.209(A)(3), requires the filing of the trial court's order and the transcript denying the motion for stay. Appellants may not file a motion for stay with the Court unless an application or claim of appeal already is pending. IOP 7.209. A motion for stay is not submitted to a panel independently of the application; the pleadings are submitted together. IOP 7.205(E)(2)-2.

TIP: If a party is unable to meet the requirements of MCR 7.209, the party may file a motion to waive those requirements, IOP 7.205(E)(2)-2.

Transcripts

The appellant is responsible for providing a copy of the transcript to the Court of Appeals. MCR 7.205(B)(4). The court reporter generally files a copy of the transcript with the circuit court, but is not responsible for filing it with the Court of Appeals.

TIP: Order the transcript as soon after the hearing as possible, as court reporters have 91 days in which to complete the transcription. File the transcript in the Court of Appeals, with a proof of service on opposing counsel, as soon as it is available.

Emergencies & Priorities

When an appellant seeks a decision in fewer than 21 days, the appellant should file a motion for immediate consideration, concisely explaining why an immediate hearing is necessary. MCR 7.205(E)(2). Cases requiring action within seven days must be personally served because applications served by mail may not be submitted until the first Tuesday seven days after the date of service, unless the party served acknowledges receipt. MCR 7.205(E)(2).

TIP: In emergency situations, it is helpful to call ahead to the district office to advise that an application will be filed so that the Court can be prepared to immediately address the application if necessary.

If an appellant does not seek a decision in less than 21 days, but still requires action by a date certain (e.g., the trial date), the appellant may file a motion for immediate consideration. Also, if action is needed within 56 days of the date of filing, the appellant should display the pertinent date prominently on the cover page. See MCR 7.205(E)(1).

TIP: The Commissioner's Office may call and request that a party file a motion for immediate consideration if the matter falls outside of the 56-day parameter.

Submission & Decision

Once the application is determined to be free of defects and within the jurisdiction of the Court of Appeals and the answer period has expired, it is processed for submission to a panel of judges.⁶ A District Commissioner prepares a research report along with a proposed order. Cases generally are submitted on Tuesdays, but cases requiring emergency and/or priority treatment may be submitted on a special motion docket at any

⁶ A panel of three Court of Appeals Judges decides whether to grant or deny applications. The panel, which changes monthly, is comprised of Judges from the district where the case is submitted. MCR 7.201(D).

time during the week. No oral argument is held on applications unless otherwise ordered. MCR 7.205(D)(1). The judges thereafter deliberate and issue an order. In emergency situations, the Clerk's Office will call counsel, read the order, and offer to send it via facsimile transaction. In non-emergency cases, the Clerk's Office mails the orders. MCR 7.205(D)(2).

Reconsideration

If a party is unsatisfied with the Court's order, a motion for reconsideration may be filed within 21 days of the issuance of the order. MCR 7.215(I). Alternately, a party may choose to file an application for leave to appeal in the Michigan Supreme Court.