

Appeals & Opinions Benchbook - Second Edition

*Content formerly part of the original MJI Circuit Court
Benchbook*



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Statements in this benchbook represent the professional judgment of the author and are not intended to be authoritative statements by the justices of the Michigan Supreme Court. This benchbook was created in 2013 from material that was initially published in 2009, and the text has been revised, reordered, and updated through April 22, 2026.

Note on Precedential Value

The Michigan Judicial Institute endeavors to present accurate, binding precedent when discussing substantive legal issues. “The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept.” *Hudson v Dep’t of Corrections*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). “Maintaining consistency in the law is one of the primary benefits of stare decisis, as it provides the public with some level of predictability in how the courts have interpreted the law.” *Plachta v Plachta*, ___ Mich App ___, ___ (2026). Generally, trial courts “must follow the published decisions of the Court of Appeals and the Michigan Supreme Court.” *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382 (2007).

Negative subsequent history. Several cases in this book have been reversed, vacated or overruled in part and/or to the extent that they contained a specific holding on one issue or another. While a case that has been fully reversed, vacated, or overruled is no longer binding precedent, it is less clear when an opinion is not reversed, vacated or overruled in its entirety. Some cases state that “an overruled proposition in a case is no reason to ignore all other holdings in the case.” *People v Carson*, 220 Mich App 662, 672 (1996). See also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (distinguishing between reversals in their entirety and reversals in part); *Graham v Foster*, 500 Mich 23, 31 n 4 (2017) (because the Supreme Court vacated a portion of the Court of Appeals decision, “that portion of the Court of Appeals’ opinion [had] no precedential effect and the trial court [was] not bound by its reasoning”). However, other cases provide that a “decision that has been reversed on other grounds has no precedential value.” *Dunn v Detroit Inter-Ins Exch*, 254 Mich App 256, 262 (2002), citing *Taylor v Kurapati*, 236 Mich App 315 (1999). See also *Horace v City of Pontiac*, 456 Mich 744, 754–755 (1998) (holding that where the Supreme Court reverses a Court of Appeals decision on one issue and does not specifically address a second issue in the case, “no rule of law remain[s] from the Court of Appeals decision”). Note that *Stein* specifically distinguished its holding from the *Dunn* holding because the precedent discussed in *Dunn* involved a reversal in its entirety while the precedent discussed in *Stein* involved a reversal in part. *Stein*, 303 Mich App at 389.

Because it may be unclear under certain circumstances how subsequent case history may affect the precedential value of a particular opinion, trial courts should proceed with caution when relying on cases that have negative subsequent history. The analysis presented in a case that is not binding may still be persuasive. See generally, *Dunn*, 254 Mich App at 264-266.

United States Supreme Court. Michigan courts are bound by “our state Supreme Court precedent, unless the United States Supreme Court has addressed a federal

constitutional question.” *People v Beasley*, 239 Mich App 548, 559 (2000). “A plurality opinion of the United States Supreme Court, however, is not binding precedent.” *Id.*, citing *Texas v Brown*, 460 US 730, 737 (1983).

Federal appellate and district courts. “Cases from foreign jurisdictions, which are not binding, can be persuasive.” *Bazzy v Citizens Ins Co of America*, ___ Mich App ___, ___ (2025) (cleaned up). Accordingly, state courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts “are free to follow or reject their authority.” *People v Gillam*, 479 Mich 253, 261 (2007).

Michigan Supreme Court. A Michigan “Supreme Court opinion becomes binding precedent for intermediate appellate and trial courts at the time a signed opinion is date-stamped and filed with the Clerk of the Supreme Court, unless” the opinion “specifically states that the opinion is effective at a different date.” *Riley v Northland Geriatric Center*, 425 Mich 668, 678 (1986). “The clear rule in Michigan is that a majority of the [Michigan Supreme] Court must agree on a ground for decision in order to make that binding precedent for future cases.” *People v Sexton*, 458 Mich 43, 65 (1998), quoting *People v Anderson*, 389 Mich 155, 170 (1973). See [MCR 7.315\(A\)](#) (“Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting.”). “Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding . . . under the doctrine of *stare decisis*.” *Negri v Slotkin*, 397 Mich 105, 109 (1976). However, “a [plurality] decision rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum is binding on the Court of Appeals and the trial courts.” *Id.* at 106. “If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties.” *Sexton*, 458 Mich at 65, quoting *Anderson*, 389 Mich at 170. In other words, “plurality opinions in which no majority of the participating justices agree with respect to the reasoning for the holding are not generally considered authoritative interpretations that are binding under the doctrine of *stare decisis*.” *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 613 (2010).

For information regarding the precedential value of an order or judgment issued by the Michigan Supreme Court, see the Michigan Judicial Institute’s [Appeals & Opinions Benchbook, Section 1.4\(B\)](#).

Michigan Court of Appeals. “A published opinion of the Court of Appeals has precedential effect under the rule of *stare decisis*.” [MCR 7.215\(C\)\(2\)](#). Accordingly, “the publication of an opinion of the Court of Appeals creates binding precedent until the Michigan Supreme Court enters a decision altering [the] Court’s decisions or its rationale.” *Esordi v Macomb Twp*, ___ Mich App ___, ___ (2025) (citation omitted). “A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or

after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in [MCR 7.215].” MCR 7.215(J)(1). “Under the plain terms of MCR 7.215(C)(2), all published decisions of [the] Court [of Appeals] issued prior to November 1, 1990, are binding, precedential decisions under stare decisis.” *Plachta*, ___ Mich App at ___. “They are *not* merely persuasive and are not on par with unpublished decisions.” *Id.* at ___. Although the Court of Appeals is “not strictly required to follow uncontradicted opinions . . . decided before November 1, 1990, those opinions are nonetheless considered to be precedent and entitled to significantly greater deference than are unpublished cases.” *People v Bensch*, 328 Mich App 1, 7 n 6 (2019) (quotation marks and citation omitted). See also *People v Schurr*, ___ Mich App ___, ___ n 6 (2024) (stating “decisions published before November 1, 1990, [are binding] only on the trial courts and only are precedent if uncontradicted”). In other words, “there is no difference in the precedential effect of a pre- versus post-1990 decision.” *Plachta*, ___ Mich App at ___. “Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal.” *Id.* at ___.

For more information regarding the precedential nature of Court of Appeals opinions, see the Michigan Judicial Institute’s [Appeals & Opinions Benchbook, Section 1.4\(C\)](#).

Acknowledgments

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

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

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1.1 Basis for Parties' Positions

A. Party Must State Basis For Claim

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

B. Party Must Provide Record Supporting Claim

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

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

1.2 Establishing a Record for Review

A. Bench Trial¹

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

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

¹ See the Michigan Judicial Institute's [Bench Trial Decision Checklist](#).

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

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

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

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

Committee Tips:

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

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

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

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

- *Findings of facts sufficient to show an appellate court that the trial judge was aware of the issues and correctly applied the appropriate law;*
 - *Conclusions of law; and*
 - *Entry of the appropriate judgment.*
-

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

“Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule.” [MCR 2.517\(A\)\(4\)](#). “But remand may be warranted when articulation of the trial court’s reasoning is necessary to facilitate appellate review.” *McNeal v Lincolnshire 2007 Ltd Dividend Housing Ass’n, LLC*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted) (concluding that “because [the] appeal follow[ed] a motion for summary disposition, which is reviewed de novo, the trial court’s failure to provide its reasoning did not impact [the Court’s] ability to perform appellate review”).

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

- **Jury instructions**—[MCR 2.512\(D\)\(3\)](#) (where the relevant jury instruction committee recommends that no instruction be given, “the court shall not give an instruction unless it specifically finds for reasons stated on the record that (a) the instruction is necessary to state the applicable law accurately, and (b) the matter is not adequately covered by other pertinent model civil jury instructions”).
- **Batson⁴ challenges**—*People v Bell*, 473 Mich 275, 300 (2005) (“trial courts are well advised to articulate and thoroughly analyze each of the three steps set forth in *Batson* . . . in determining whether peremptory challenges were improperly exercised”; “[i]n doing so, trial courts should clearly state the Batson step that they are addressing and should articulate their findings regarding that step”).
- **Impeachment by evidence of conviction of crime**—[MRE 609\(b\)](#) (“[t]he court must articulate, on the record, the analysis of each factor”).

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

1. Findings Specific to Criminal Cases.

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

- **Joint representation of criminal defendants**—[MCR 6.005\(F\)\(3\)](#) (“[t]he court may not permit the joint representation unless [among other things, it] finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding”).
- **Directed verdict of acquittal**—[MCR 6.419\(F\)](#) (“[t]he court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal”).
- **Motion for a new trial**—[MCR 6.431\(B\)](#) (“[t]he court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record”).
- **Probation violation hearings**—[MCR 6.445\(E\)\(2\)](#) (“[a]t the conclusion of the hearing, the court must make findings in accordance with [MCR 6.403](#) and, if the violation is proven, whether the violation is a **technical** or non-technical violation of probation”).
- **Deviating from the legislative sentencing guidelines**— [MCL 769.34\(3\)](#); see also *People v Lockridge*, 498 Mich 358, 392 (2015)⁵ (in order to facilitate appellate review for reasonableness, the court must justify any sentence imposed outside the advisory minimum guidelines range).
- **Walker hearings**—*People v Walker*, 374 Mich 331, 338 (1965) (“the trial judge, on the basis of [a] separate hearing and record made, determines [whether the defendant’s] confession was . . . voluntarily given”).⁶
- **Wade**⁷ **hearings**—*People v Kachar*, 400 Mich 78, 97 (1977)⁸ (“the trial court must state on the record the reasons for determining whether the prosecution has

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

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

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

established by clear and convincing evidence that the in-court identification has a sufficient independent basis to purge the taint caused by the illegal confrontation”).

- **Ginther hearings**—*People v Ginther*, 390 Mich 436, 441-442 (1973) (“[w]hen a defendant asserts that his assigned lawyer is not adequate or diligent or . . . that his lawyer is disinterested, the judge should hear his claim and, if there is a factual dispute, take testimony and state his findings and conclusion”).⁹
- **Entrapment hearings**—*People v Juillet*, 439 Mich 34, 61 (1991) (“when the defense of entrapment is raised, the trial court must conduct an evidentiary hearing outside the presence of the jury . . . [and] make specific findings of fact on the entrapment issue”); *People v Jade*, ___ Mich App ___, ___ (2024) (“the test that Michigan courts must apply to determine whether the particular facts of a case constitute entrapment, and the ultimate decision whether entrapment occurred, also involve principles of law that are expressed in a body of common law developed in this state’s jurisprudence defining the standards and boundaries of the entrapment defense”).¹⁰

2. Findings Specific to Civil Cases

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

- **Order for adjournment**—[MCR 2.503\(D\)\(1\)](#) (“the [court’s written or oral] order must state the reason for the adjournment”).
- **Involuntary dismissal**—[MCR 2.504\(B\)\(2\)](#) (“[i]f the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in [MCR 2.517](#)”).
- **Motion for a new trial/to amend judgment**—[MCR 2.611\(F\)](#) (“the court shall give a concise statement of

⁸For more information on the precedential value of a plurality opinion or an opinion with negative subsequent history, see our [note](#).

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

¹⁰ See the Michigan Judicial Institute’s [Criminal Proceedings Benchbook, Vol. 1](#), Chapter 10, for more information on entrapment hearings.

the reasons for the ruling, either in an order or opinion filed in the action or on the record”).

- **Hearings and trials in domestic relations actions**—[MCR 3.210\(D\)](#) (“the court must make findings of fact as provided in [MCR 2.517](#), except that (1) findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order, and (2) the court may distribute pension, retirement, and other deferred compensation rights with a qualified domestic relations order, without first making a finding with regard to the value of those rights”).
- **Determining interests in land**—[MCR 3.411\(D\)](#) (“the court shall make findings determining the disputed rights in and title to the premises”) and [MCR 3.411\(E\)](#) (“the court shall hear evidence and make findings, determining the value of the use of the premises”).
- **Contempt proceedings**—*In re Contempt of Calcutt*, 184 Mich App 749, 758 (1990) (“[s]ince civil contempt actions are tried by the court without a jury, [the court] must make findings of fact, state its conclusions of law, and direct entry of the appropriate judgment”).

C. Expanding Record on Remand

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

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

See [Section 1.5](#) for additional information on the topic of remand.

Committee Tip:

Be sure to answer the questions presented in remand orders.

1.3 Doctrines of Collateral Estoppel, Judicial Estoppel, Res Judicata and Law of the Case¹¹

A. Collateral Estoppel

“Collateral estoppel bars relitigation of an issue in a new action.” *Hamood v Trinity Health Corp*, ___ Mich App ___, ___ (2024) (quotation marks and citation omitted). “Generally, collateral estoppel can be invoked when three elements are met: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel.” *Id.* at ___ (cleaned up). “In determining whether a party was given a full and fair opportunity to litigate an issue, a subsequent action is not precluded if the issue is one of law and the two actions involve claims that are substantially unrelated.” *Id.* at ___ (cleaned up).¹²

“Mutuality of estoppel occurs when the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him.” *Id.* at ___ (quotation marks and citation omitted). “But mutuality of estoppel is not mandatory in every situation.” *Id.* at ___ (quotation marks and citation omitted). “Whenever collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required.” *Id.* at ___ (quotation marks and citation omitted). “Allowing the defensive use of collateral estoppel even when mutuality does not exist enhances the efficient administration of justice and ensures more consistent judicial decisions.” *Id.* at ___

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

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

(cleaned up). “A judgment is considered a determination of the merits, and thereby triggers the doctrine of collateral estoppel on relitigation, even if the action has been resolved by summary disposition” *Id.* at ___ (quotation marks and citation omitted). “Collateral estoppel is strictly applied in that the issues in both cases must be identical, and not merely similar.” *Id.* at ___ (quotation marks and citation omitted). In *Hamood*, the Court of Appeals held that when a federal court ruled “that plaintiff did not provide notice of the sexual harassment until after her employment had ended,” the court had “decided a question of fact by a valid and final judgment, and plaintiff had a full and fair opportunity to litigate the issue.” *Id.* at ___. “It [did] not matter that the federal court made that finding in the context of the federal claim against [a co-defendant], and not [defendant], because mutuality of estoppel [was] not required in this situation.” *Id.* at ___. Accordingly, summary disposition was appropriate under [MCR 2.116\(C\)\(7\)](#) because “plaintiff was collaterally estopped from arguing the notice element of her hostile work environment claim.” *Hamood*, ___ Mich at ___.

“One of the critical factors in applying collateral estoppel involves the determination of whether the respective litigants were parties or privy to a party to an action in which a valid judgment has been rendered.” *Synergy Spine & Orthopedic Surgery Ctr, LLC v State Farm Mut Auto Ins Co*, ___ Mich App ___, ___ (2024) (cleaned up). “It is a longstanding principle of law that, in this state, an assignee is in privity with the assignor only up to the time of the assignment and not thereafter.” *Id.* at ___. The doctrine of collateral estoppel does not preclude a plaintiff’s claim where the “plaintiff was neither a party in [the insured’s] case nor in privity with [the insured] with respect to the judgment that was entered *after* the assignment.” *Id.* at ___ (rejecting alternative basis for trial court’s ruling that “plaintiff’s claim [was] ‘derivative’ of [the insured’s], and thus, precluded by the judgment in [the insured’s] lawsuit”). However, “for the defensive use of collateral estoppel, [a plaintiff] is relieved from the mutuality requirement if defendant already had a full and fair opportunity to litigate the issues.” *Id.* at ___ (holding that “the proper narrowing of issues under collateral estoppel [did] not include that the requisite causal connection existed between [the insured’s] accidental bodily injury and plaintiff’s fees for use of its facility; rather, that [was] for plaintiff to prove”).

B. Judicial Estoppel

“Judicial estoppel is an equitable doctrine, which generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.” *Andros v Andros*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). Under the “prior success model” of

judicial estoppel, “a party who has *successfully* and unequivocally asserted a position in a prior proceeding is estopped from asserting an inconsistent position in a subsequent proceeding.” *Id.* at ___, quoting *Lichon v American Univ Ins Co*, 435 Mich 408, 416 (1990). “For judicial estoppel to apply, ‘there must be some indication that the court in the earlier proceeding accepted that party’s position as true,’ and ‘the claims must be wholly inconsistent.” *Andros*, ___ Mich App at ___, quoting *Paschke v Retool Indus*, 445 Mich 502, 510 (1994).

In order for a party to assert judicial estoppel based on a prior bankruptcy petition, “a reviewing court must find that

(1) the plaintiff assumed a position that was contrary to the one that she asserted under oath in the bankruptcy proceedings; (2) the bankruptcy court adopted the contrary position either as a preliminary matter or as part of a final disposition; and (3) the plaintiff’s omission did not result from mistake or inadvertence. In determining whether the plaintiff’s conduct resulted from mistake or inadvertence, the reviewing court considers whether: (1) the plaintiff lacked knowledge of the factual basis of the undisclosed claims; (2) the plaintiff had a motive for concealment; and (3) the evidence indicates an absence of bad faith. In determining whether there was an absence of bad faith, the reviewing court will look, in particular, at the plaintiff’s attempts to advise the bankruptcy court of the plaintiff’s omitted claim.” [*Andros*, ___ Mich App at ___ (cleaned up) (applying prior success model to bankruptcy proceedings).

“The purpose of the doctrine of judicial estoppel, especially in the context of bankruptcy proceedings, is to protect the judicial process, not the parties.” *Id.* at ___, quoting *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 489 (2012). In *Andros*, “[a]fter agreeing to repay her mother for the mortgage on a home she hoped to one day own, plaintiff . . . filed for bankruptcy and declared that she had no legal or equitable interest in the property.” *Andros*, ___ Mich App at ___. “When the mother-daughter relationship soured, her mother . . . sought to evict her.” *Id.* at ___. “In response, [plaintiff] sued her mother, asserting legal ownership and equitable claims to the home.” *Id.* at ___ (noting that plaintiff’s “claims for constructive trust, breach of contract, quiet title, and injunctive relief [were] all ultimately derived from her asserted ownership interest in the house”). “Because she unambiguously denied having any such ownership interest in her bankruptcy petition, [the *Andros* Court] affirm[ed] the trial court’s grant of summary disposition on those

counts.” *Id.* at ____ . “She is assuming a position contrary to the one she asserted in bankruptcy; the bankruptcy court adopted her prior position in discharging her debts; and her misstatement was not the result of any legally cognizable mistake or inadvertence.” *Id.* at ____ . “She knew she intended to own the house once it was paid off, her concealment helped secure bankruptcy relief, and she never corrected the record after the bankruptcy case began.” *Id.* at ____ . While “a close familial relationship” may explain plaintiff’s belief that she had an ownership interest in the house, “she represented to the bankruptcy court that she did not have an interest in the house, and the purpose of judicial estoppel is to protect the integrity of the judicial process.” *Id.* at ____ (holding that “judicial estoppel bars [plaintiff] from claiming ownership of the home she once disavowed, but it does not necessarily bar her [unjust enrichment or quantum meruit claim] seeking compensation for what she put into it”).

C. Res Judicata

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

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

- (1) there must have been a prior decision on the merits;
- (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and
- (3) both actions must be between the same parties or their privies. . . . Michigan courts apply the res judicata doctrine broadly so as to bar claims that were actually litigated as well as claims arising out of the same transaction which a plaintiff could have brought, but did not.” *VanDeventer v Mich Nat’l Bank*, 172 Mich App 456, 464 (1988) (internal citations omitted).¹³

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

D. Law of the Case

“The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case.” *Ashker v Ford Motor Co*, 245 Mich App 9, 13 (2001) (internal citation omitted).¹⁴ See also *Zaremba Equip, Inc v Harco Nat’l Ins Co*, 302 Mich App 7, 16 (2013), quoting *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454 (1981) (“if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same”). “The law-of-the-case doctrine applies ‘only to issues actually decided, either implicitly or explicitly, in the prior appeal.’” *Farmers Ins Exch v Hudson Ins Co*, ___ Mich App ___, ___ (2025), quoting *Grievance Admin v Lopatin*, 462 Mich 235, 260 (2000). “Trial courts are bound by the doctrine unless there has been a material change in the facts or an intervening change in the law.” *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 407 (2020). “A trial court violates the law-of-the-case doctrine when it revisits a legal issue already ruled on by [a higher court].” *Id.*

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

“The law-of-the-case doctrine is a judicially created, self-imposed restraint designed to promote consistency throughout the life of a lawsuit.” *Great Lakes Eye Institute, PC v Krebs*, ___ Mich ___, ___ (2025) (quotation marks and citation omitted). “The law-of-the-case doctrine merely expresses the practice of courts generally to refuse to reopen what has been decided, *not a limit to their power.*” *Id.* at ___ (quotation marks and citation omitted). “The application of the doctrine is limited to legal questions and requires that underlying facts remain materially the same.” *Id.* at ___ (cleaned up). “Further, where new evidence is presented, the law-of-the-case doctrine does not preclude a trial court on remand from revisiting a factual question underlying a legal determination.” *Id.* at ___ (holding that

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

“the law-of-the-case doctrine prevented the lower courts from revisiting the judgment that was granted in defendant’s favor,” but “did not preclude the trial court from considering newly introduced evidence to determine the appropriate attorney fee award” “[b]ecause neither the trial court nor the Court of Appeals had previously made an attorney fee determination”).

“[C]ourts have some discretion when applying the law-of-the-case doctrine under certain circumstances.” *Ingham Co v Mich Co Rd Comm Self-Ins Pool (On Remand)*, 329 Mich App 295, 304 (2019), rev’d on other grounds 508 Mich 461 (2021).¹⁵ See, e.g., *Locricchio v Evening News Ass’n*, 438 Mich 84, 109-110 (1991) (noting that there are instances where “the law of the case doctrine must yield to a competing doctrine”); *People v Robinson (After Second Remand)*, 227 Mich App 28, 34 (1997) (“declin[ing] to apply a doctrine designed for judicial convenience in fairly administering the obligation to do justice so as to work an injustice”). “[T]he doctrine does not preclude reconsideration of a question if there has been an intervening change of law. For this exception to apply, the change of law must occur after the initial decision of the appellate court.” *Ashker*, 245 Mich App at 13 (internal citation omitted).

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

The “doctrine should not be invoked to preclude appellate review of a contested question of law that was presumed but not decided

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

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

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

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

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

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

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

1.4 Precedent

A. Vertical Stare Decisis

“The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept.” *Hudson v Dep’t of Corrections*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). “Maintaining consistency in the law is one of the primary benefits of stare decisis, as it provides the public with some level of predictability in how the courts have interpreted the law.” *Plachta v Plachta*, ___ Mich App ___, ___ (2026). “The doctrine of vertical stare decisis . . . is the doctrine that a court must strictly follow decisions handed down by higher courts within the same jurisdiction.” *In re AGD*, 327 Mich App 332, 339 (2019) (punctuation marks, quotation marks, and citation omitted). Accordingly, trial courts “must follow the published decisions of the Court of Appeals and the Michigan Supreme Court.” *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382 (2007).

Where the Legislature amends a statutory provision, the Michigan Court of Appeals “remains bound to follow the Supreme Court’s interpretation of [the] since-amended statute if the intervening amendment merely ‘undermined’ the foundations of the Supreme Court’s prior decision, but not if the intervening amendment ‘clearly . . . superseded’ the Supreme Court’s interpretation.” *In re AGD*, 327 Mich App at 341. Where the “Legislature has entirely repealed or amended a statute to expressly repudiate a court decision, . . . lower courts have the power to make decisions without being bound by prior cases that were decided under the now-repudiated previous positive law.” *Id.* at 341, quoting *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191 n 32 (2016). However, “when the operative statutory language interpreted by the Supreme Court in the previous case remains the same after amendment, the intervening amendment of the statute does not clearly overrule or supersede the Supreme Court’s prior interpretation.” *In re AGD*, 327 Mich App at 341.¹⁷

B. Michigan Supreme Court

Opinion/Decision. The “rule of law enunciated in a Supreme Court opinion’ . . . is ‘determinative of the legal question involved’ and becomes binding precedent.” *People v Winburn*, ___ Mich App ___, ___ n 4 (2025), quoting *Riley v Northland Geriatric Ctr*, 425 Mich 668, 680 (1986). “Language set forth in a footnote can constitute binding precedent if the language creates a ‘rule of law’ and is not

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

merely dictum.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 438 (2008).

“An opinion must be written and bear the authoring justice’s name or the label ‘Per Curiam’ or ‘Memorandum Opinion.’” [MCR 7.315\(A\)](#). “Each justice deciding a case must sign an opinion.” *Id.* A Michigan “Supreme Court opinion becomes binding precedent for intermediate appellate and trial courts at the time a signed opinion is date-stamped and filed with the Clerk of the Supreme Court, unless” the opinion “specifically states that the opinion is effective at a different date.” *Riley v Northland Geriatric Center*, 425 Mich 668, 678 (1986).

“The clear rule in Michigan is that a majority of the [Michigan Supreme] Court must agree on a ground for decision in order to make that binding precedent for future cases.” *People v Sexton*, 458 Mich 43, 65 (1998), quoting *People v Anderson*, 389 Mich 155, 170 (1973). See [MCR 7.315\(A\)](#) (“Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting.”). “Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding . . . under the doctrine of *stare decisis*.” *Negri v Slotkin*, 397 Mich 105, 109 (1976). However, “a [plurality] decision rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum is binding on the Court of Appeals and the trial courts.” *Id.* at 106. “If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties.” *Sexton*, 458 Mich at 65, quoting *Anderson*, 389 Mich at 170. In other words, “plurality opinions in which no majority of the participating justices agree with respect to the reasoning for the holding are not generally considered authoritative interpretations that are binding under the doctrine of *stare decisis*.” *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 613 (2010).

Order or judgment. “A Supreme Court order or judgment pursuant to an opinion is strictly limited in its scope to the particular parties involved in the appeal, as opposed to the rule of law enunciated in a Supreme Court opinion, which is determinative of the legal question involved and becomes binding precedent.” *Winburn*, ___ Mich App at ___ n 4 (quotation marks and citation omitted).

“An order of the Supreme Court is binding precedent if ‘it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision.’” *Stephens v Dep’t of Corr*, ___ Mich App ___, ___ n 3 (2025), quoting *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369

(2012). See also *People v Giovannini*, 271 Mich App 409, 414 (2006) (Michigan Supreme Court orders “that include a decision with an understandable rationale establish binding precedent”). Accordingly, if a Michigan Supreme Court order “can be understood as adopting the reasoning of [a] dissenting opinion from [the Court of Appeals], . . . that dissent consequently constitutes binding precedent despite originally having been unpublished and not binding pursuant to [MCR 7.215\(C\)\(1\)](#).” *Tyra v Organ Procurement Agency of Mich*, 302 Mich App 208, 219 (2013), overruled in part on other grounds 498 Mich 68, 74 (2015).¹⁸

A Supreme Court order or judgment that is routinely issued pursuant to an opinion “does not become effective until after the time period for the filing of a motion for rehearing expires, or a timely-filed motion for rehearing is disposed of” under [MCR 7.315\(C\)](#). *Winburn*, ___ Mich App at ___ n 5. However, if the order or judgment is *not* issued pursuant to an opinion under [MCR 7.315\(C\)](#), it is “entered on the date of filing” and “effective the date it is entered.” *Winburn*, ___ Mich App at ___, quoting [MCR 7.315\(D\)](#). In *Winburn*, the Court of Appeals held that a 1995 Supreme Court remand order “was not an order or judgment issued pursuant to an opinion under [MCR 7.315\(C\)](#),” but rather was an order entered pursuant to [MCR 7.315\(D\)](#). *Winburn*, ___ Mich App at ___ (“The order is found in the Michigan Reporter under the ‘Actions on Applications’ section, is labeled as an order (not as an opinion), makes no reference to any related opinion, and does not itself fit the requirements for a Supreme Court opinion found in our court rules, either in 1995 or presently.”). “Defendant’s case was never placed on the calendar or heard by the Supreme Court; rather, defendant’s application was disposed of via order absent the issuance of any opinion.” *Id.* at ___. “There simply [was] no evidence in the record from which to conclude that the 1995 remand order was ‘an order or judgment pursuant to an opinion’ under [MCR 7.315\(C\)](#) which, unless otherwise ordered, would not have become effective until either the time for filing a motion for rehearing had elapsed or a timely-filed motion for rehearing had been disposed of by the Court.” *Winburn*, ___ Mich App at ___; see [MCR 7.315\(C\)\(4\)](#). “Under [MCR 7.315\(D\)](#), the Supreme Court’s 1995 order therefore became effective the day it was entered, September 13, 1995, and subject-matter jurisdiction was re-invested in the trial court on that day.” *Winburn*, ___ Mich App at ___. “Defendant’s filing of a motion for reconsideration in the Supreme Court did not stay that investiture.” *Id.* at ___; see [MCR 7.311\(G\)](#).

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

Advisory opinions on statutes. “In addition to issuing binding opinions, [the Michigan] Supreme Court is empowered to issue advisory opinions on statutes.” *Ruggiero v Unnamed Genesee Co Pub Body*, ___ Mich App ___, ___ (2025), citing Const 1963, art 3, § 8.¹⁹ “As suggested by the important questions of law requirement, the request for an advisory opinion must particularize any claims of unconstitutionality.” *Ruggiero*, ___ Mich App at ___ (quotation marks and citation omitted). “Advisory opinions are not binding but only hold potential persuasive value.” *Id.* at ___. In *Ruggiero*, the Court of Appeals held that *In re 1976 PA 267*, 400 Mich 660 (1977), was not an advisory opinion or binding decision. *Ruggiero*, ___ Mich App at ___. “There was no case in controversy nor were there parties before the Court; the Court issued a letter addressed to various political figures, including the Governor of Michigan and the Speaker of the House of Representatives, which was signed by all seven justices.” *Id.* at ___. “The letter was issued on July 18, 1977, after 1976 PA 267 became effective on March 31, 1977.” *Ruggiero*, ___ Mich App at ___. “Furthermore, the letter was issued *sua sponte*, not at the request of the Governor or either house of the legislature.” *Id.* at ___. “Therefore, because the letter was issued after the effective date of the statute, and not at the request of the political branches, it could not have been an advisory opinion under Const 1963, art 3, § 8.” *Ruggiero*, ___ Mich App at ___.

C. Michigan Court of Appeals

Published opinions. “A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis.” [MCR 7.215\(C\)\(2\)](#). Accordingly, “the publication of an opinion of the Court of Appeals creates binding precedent until the Michigan Supreme Court enters a decision altering [the] Court’s decisions or its rationale.” *Esordi v Macomb Twp*, ___ Mich App ___, ___ (2025) (citation omitted).

“The **filing** of an application for leave to appeal in the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.” [MCR 7.215\(C\)\(2\)](#).

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

¹⁹“Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law *but before its effective date*.” Const 1963, art 3, § 8 (emphasis added).

“Under the plain terms of [MCR 7.215\(C\)\(2\)](#), all published decisions of [the] Court [of Appeals] issued prior to November 1, 1990, are binding, precedential decisions under stare decisis.” *Plachta*, ___ Mich App at ___. “They are *not* merely persuasive and are not on par with unpublished decisions.” *Id.* at ___. Although the Court of Appeals is “not strictly required to follow uncontradicted opinions . . . decided before November 1, 1990, those opinions are nonetheless considered to be precedent and entitled to significantly greater deference than are unpublished cases.” *People v Bensch*, 328 Mich App 1, 7 (2019) (quotation marks and citation omitted). See also *People v Schurr*, ___ Mich App ___, ___ n 6 (2024) (stating “decisions published before November 1, 1990, [are binding] only on the trial courts and only if uncontradicted”). In other words, “there is no difference in the precedential effect of a pre- versus post-1990 decision.” *Plachta*, ___ Mich App at ___. “Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal.” *Id.* at ___.

“Published decisions of the Court of Appeals issued on or after November 1, 1990, are precedentially binding.” *Ruggiero v Unnamed Genesee Co Pub Body*, ___ Mich App ___, ___ n 4 (2025). See [MCR 7.215\(J\)\(1\)](#) (“A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in [[MCR 7.215](#)].”); see also *Joseph v Nat’l Gen Ins Co*, ___ Mich App ___, ___ n 3 (2025) (“Although *Kalin* is not strictly binding pursuant to [MCR 7.215\(J\)\(1\)](#) [initially known as the ‘first-out rule’] because it was issued before November 1, 1990, [*Kalin* is] a published opinion, [and] is nevertheless binding under the rule of stare decisis [under [MCR 7.215\(C\)\(2\)](#)].”).

Conflicting opinions. “When a panel is confronted with two conflicting opinions published after November 1, 1990, the panel is obligated to follow the first opinion issued.” *Bradley v Westfield Ins Co*, ___ Mich App ___, ___ (2024) (quotation marks and citation omitted). However, “when the relevant language of a statute is amended, future panels are bound to hold that [MCR 7.215\(J\)](#) does not require them to adhere to earlier opinions that interpreted the pre-amendment version of the statute.” *People v Williams*, 298 Mich App 121, 126 (2012), overruled in part on other grounds by *People v White*, 501 Mich 160, 164 (2017).²⁰ While the Court of Appeals “is not

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

strictly required to follow uncontradicted opinions from [the Court of Appeals] decided before November 1, 1990, they are nevertheless considered to be precedent and entitled to significantly greater deference than are unpublished cases.” *Ruggiero*, ___ Mich App at ___ n 4 (cleaned up).

Unpublished opinions. “Although [MCR 7.215\(C\)\(1\)](#) provides that unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value.” *In re DRRR Guardianship*, ___ Mich App ___, ___ n 10 (2025) (quotation marks and citation omitted); see [MCR 7.215\(C\)\(1\)](#) (“An unpublished opinion [of the Court of Appeals] is not precedentially binding under the rule of stare decisis.”). However, if a Michigan Supreme Court order “can be understood as adopting the reasoning of [a] dissenting opinion from [the Court of Appeals], . . . that dissent consequently constitutes binding precedent despite originally having been unpublished and not binding pursuant to [MCR 7.215\(C\)\(1\)](#).” *Tyra v Organ Procurement Agency of Mich*, 302 Mich App 208, 219 (2013), overruled in part on other grounds 498 Mich 68, 74 (2015).²¹

D. Circuit Court

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

E. United States Supreme Court

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

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

F. Foreign Jurisdictions: Other States and Federal Courts

“Cases from foreign jurisdictions, which are not binding, can be persuasive.” *Bazzy v Citizens Ins Co of America*, ___ Mich App ___, ___ (2025) (cleaned up). “Caselaw from sister states and federal courts is not binding precedent but may be relied on for its

²¹For more information on the precedential value of an opinion with negative subsequent history, see our [note](#). See [Section 1.4\(A\)](#) for information on vertical stare decisis.

persuasive value.” *Esordi v Macomb Twp*, ___ Mich App ___, ___ n 4 (2025) (quotation marks and citation omitted). Accordingly, state courts are not bound by the decisions of lower federal courts construing federal law, and Michigan courts “are free to follow or reject their authority.” *People v Gillam*, 479 Mich 253, 261 (2007).

G. Attorney General

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

H. Dicta

Obiter dicta means “any statements and comments in an opinion concerning some rule of law or debated legal proposition not necessarily involved nor essential to determination of the case[.]” *People v Case*, 220 Mich 379, 382-383 (1922). However, “if a court intentionally addresses and decides an issue that is germane to the controversy in the case, the statement is not dictum even if the issue was not decisive.” *People v Ogilvie*, 341 Mich App 28, 40 n 8 (2022) (citation omitted). “[O]biter dicta lacks the force of an adjudication and is not binding under the principle of stare decisis.” *People v Borchard-Ruhland*, 460 Mich 278, 286 n 4 (1999).²²

I. Retroactivity of Judicial Decisions²³

Generally. “Ordinarily, judicial decisions are to be given complete retroactive effect.” *People v Barnes*, 502 Mich 265, 268 (2018) (quotation marks and citation omitted). “Rules determined in opinions that apply retroactively apply to all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the appellate court’s announcement of the rules.” *Flamont v Dep’t of Corrections*, ___ Mich App ___, ___ (2024) (cleaned up). “But judicial decisions which express new rules normally are not applied retroactively to other cases that have become final.” *Barnes*, 502 Mich at 268. “New legal principles, even when applied retroactively, do not apply to cases already closed, because at some point, the rights of the parties should be considered frozen and a conviction final. *Id.* at 268 (cleaned up). “Thus, as to those cases that have become final, the general rule allows only prospective application.” *Id.*

²²See [Section 1.4\(A\)](#) for information on vertical stare decisis.

²³See [Section 1.7\(D\)](#) for information on the retroactivity of statutes.

“However, there are ‘certain special concerns—related to collateral review of state criminal convictions—that affect’ how courts determine whether a case should be considered closed.” *Id.*, quoting *Reynoldsville Casket Co v Hyde*, 514 US 749, 758 (1995). “In essence, these ‘special concerns’ amount to exceptions to the general rule of nonretroactivity for closed cases, allowing a new legal rule to be applied on collateral review to an otherwise closed case.” *Barnes*, 502 Mich at 268. “Both federal and state rules govern the retroactive application of new legal principles to criminal cases that are otherwise final but subject to collateral review.” *Id.* at 268-269.

New rule of law. “A rule of law is *new* for purposes of resolving the question of its retroactive application either when an established precedent is overruled or when an issue of first impression is decided which was not adumbrated by any earlier appellate decision.” *People v Robinson*, ___ Mich ___, ___ (2026) (cleaned up). “Put another way, a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.” *Id.* at ___ (cleaned up). “As a general matter, ‘judicial decisions which express new rules normally are not applied retroactively to other cases that have become final.’” *Id.*, quoting *Barnes*, 502 Mich at 268. “When determining whether an opinion applies retroactively, therefore, [courts] must first consider the ‘threshold question’ of whether that ‘decision amounts to a new rule of law.’” *Robinson*, ___ Mich at ___, quoting *League of Women Voters v Secretary of State*, 508 Mich 520, 566 (2022).

In *Robinson*, the Michigan Supreme Court determined that the Court of Appeals erred when it held that *People v Peeler*, 509 Mich 381 (2022), “did not announce a new rule of law.” *Robinson*, ___ Mich at ___. “First, *Peeler* unquestionably ended the existing and judicially accepted practice of allowing one-person grand juries to issue indictments.” *Id.* at ___. “Second, *Peeler* decided an issue of first impression which was not adumbrated by any earlier appellate decision.” *Id.* at ___ (cleaned up). “Until *Peeler*, no appellate court had ruled on whether the one-man grand jury law allowed judges to issue indictments.” *Id.* at ___. “Finally, no existing precedent dictated that the trial court in *Peeler* reject the legitimacy of the indictment.” *Id.* at ___ (applying presumption that *Peeler* did not apply retroactively and holding that neither the federal nor the state retroactivity test for new rules demanded retroactive application of *Peeler* as it “did not announce a new substantive rule of constitutional law”).

The Michigan Supreme Court “does not announce a new rule of law when it overrules a decision of the Court of Appeals that misinterpreted a statute contrary to the statute’s plain language, legislative intent, and existing precedent because in that situation,

the Supreme Court has reaffirmed the existing law that was misinterpreted by the Court of Appeals.” *Flamont*, ___ Mich App at ___ (quotation marks and citation omitted). In *Flamont*, the Court of Appeals observed that *Christie v Wayne State Univ*, 511 Mich 39 (2023), which overruled *Tyrrell v Univ of Mich*, 335 Mich App 254 (2020), “clearly declared the meaning of the law as it existed, based on the unambiguous statutory language, and corrected a relatively short-lived misinterpretation of the law that had served to thwart the legislative intent and the mandated result.” *Flamont*, ___ Mich App at ___ (quotation marks and citation omitted) (concluding that *Christie* had full retroactive effect because its holding did not constitute a new rule). See also *Hudson v Dep’t of Corrections*, ___ Mich App ___, ___ (2025) (holding “the statement in *Flamont* that *Christie* is fully retroactive was not dictum”).

Federal retroactivity analysis. “In *Teague v Lane*, 489 US 288 (1989), . . . the United States Supreme Court set forth the federal standard for determining whether a rule regarding criminal procedure should be applied retroactively to cases in which a defendant’s conviction has become final.” *People v Maxson*, 482 Mich 385, 388 (2008). “*Teague* established the ‘general rule’ that ‘new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced.’” *Maxson*, 482 Mich at 388, quoting *Teague*, 489 US at 310.²⁴

Under the federal retroactivity test, “courts must give retroactive effect to new substantive rules of constitutional law.” *Robinson*, ___ Mich at ___, quoting *Montgomery v Louisiana*, 577 US 190, 198 (2016).²⁵ “Substantive rules include rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Robinson*, ___ Mich at ___ (quotation marks and citations omitted).

²⁴ “Notably, the United States Supreme Court has explained that state courts are not required to adopt *Teague*’s retroactivity framework for state retroactivity purposes.” *Poole*, ___ Mich at ___. “Accordingly, that the United States Supreme Court has abandoned the *Linkletter* test for federal retroactivity purposes says nothing about how Michigan courts continue to assess retroactivity in the state context, given that [the Michigan Supreme] Court adopted the *Linkletter* test to serve as its own retroactivity standard in *Hampton*.” *Poole*, ___ Mich at ___. “Since *Teague*, Michigan courts have continued to apply the *Linkletter-Hampton* factors to determine whether a new rule of criminal law applies retroactively to final judgments on collateral review.” *Poole*, ___ Mich at ___.

²⁵ “Until 2021, United States Supreme Court precedent provided two exceptions to the presumption against retroactivity: (1) opinions announcing a new substantive rule of constitutional law, and (2) opinions announcing a watershed rule of criminal procedure.” *Robinson*, ___ Mich at ___ n 3 (quotation marks and citations omitted). See *Edwards v Vannoy*, 593 US 255, 272 (2021) (eliminating the watershed rule exception from the federal test).

In *Robinson*, the Michigan Supreme Court held that *Peeler*, 509 Mich at 400, “did not announce a new substantive rule of constitutional law.” *Id.* at _____. “First, *Peeler* concerned the process of getting to trial.” *Id.* at ____; see *id.* at _____ (“*Peeler* unquestionably ended the existing and judicially accepted practice of allowing one-person grand juries to issue indictments.”). “It did not concern categorical constitutional guarantees that place certain criminal laws and punishment altogether beyond the State’s power to impose.” *Id.* at _____ (quotation marks and citations omitted). “Instead, *Peeler* regulated the manner of determining a defendant’s culpability.” *Id.* at _____ (cleaned up). “Second, [the Court’s] holding in *Peeler* was ‘statutory,’ not constitutional.” *Id.* at _____ (citation omitted). “Consequently, the federal test d[id] not demand retroactive application of *Peeler*.” *Id.* at _____.

State retroactivity analysis. “It is well established that the general rule is that judicial decisions are to be given complete retroactive effect.” *League of Women Voters*, 508 Mich at 564 (quotation marks and citation omitted). “But there are well-established exceptions to this rule.” *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 266 (2007) (KELLY, J., concurring in part and dissenting in part) (observing that “courts should consider the equities involved” and “[c]ourt decisions should have the goal of reaching justice”). If “injustice might result from full retroactivity, [the Michigan Supreme] Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect.” *League of Women Voters*, 508 Mich at 565, quoting *Lindsey v Harper Hosp*, 455 Mich 56, 68 (1997).

Prospective application of a holding is appropriate when it decides an issue of first impression, and the resolution of the issue was not clearly foreshadowed, or when it overrules settled precedent. *People v Parker*, 267 Mich App 319, 327 (2005).²⁶ Accordingly, “complete prospective application has generally been limited to decisions which overrule clear and uncontradicted case law.” *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 240 (1986); see also *Rowland*, 477 Mich at 267 (opinion of the Court) (“[A] holding that overrules settled precedent may properly be limited to prospective application.”).

Linkletter-Hampton factors. When determining whether a judicial decision should be applied retroactively or prospectively, Michigan courts take into account the *Linkletter-Hampton* factors: “(1) the purpose of the new rule; (2) the general reliance on the old rule; and (3) the effect on the administration of justice.” *People v Poole*, ____ Mich ____, ____ (2025), quoting *People v Hampton*, 384 Mich 669, 674

²⁶See [Section 1.4\(J\)](#) for more information on issues of first impression

(1971) (articulating standard set by the United States Supreme Court in *Linkletter v Walker*, 381 US 618 (1965)²⁷).

Procedure versus substance. The “primary focus concerns whether a past holding is procedural or substantive.” *Poole*, ___ Mich at ___ (“[T]he initial question is whether [a] holding was merely procedural, or whether it concerned substantive rights of a fundamental nature.”). “When considering procedural rules governing trial conduct, the *Linkletter-Hampton* criteria play a predominant role.” *Poole*, ___ Mich at ___, quoting *People v Gay*, 407 Mich 681, 706 (1980). “However, when non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application.” *Poole*, ___ Mich at ___, quoting *Gay*, 407 Mich at 706. “The *Linkletter-Hampton* considerations may be addressed, but only in the rare instance will they have determinative effect.” *Id.* at ___. “Thus, the importance of the *Linkletter-Hampton* factors is greatly circumscribed when substantive rules or rights are implicated in a holding, and retrospective application is favored.” *Poole*, ___ Mich at ___.

“Substantive rules set forth categorical constitutional guarantees that place certain criminal laws and punishment altogether beyond the State’s power to impose.” *Id.* at ___ (cleaned up). “It follows that when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful.” *Poole*, ___ Mich at ___ (quotation marks and citation omitted). “Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating the *manner of determining* the defendant’s culpability.” *Id.* at ___ (quotation marks and citation omitted).

In *Poole*, the Michigan Supreme Court held that *People v Parks*, 510 Mich 225 (2022) (holding that a mandatory life sentence without the possibility of parole was cruel or unusual punishment for 18-year-old defendants under the Michigan Constitution), applied retroactively to cases where the period for direct review had expired when *Parks* was decided. *Poole*, ___ Mich at ___. The *Poole* Court held that the *Parks* rule was substantive because it “necessarily carries a significant risk that a defendant . . . faces a punishment that

²⁷ “In *Teague v Lane*, 489 US 288, 302-303 the United States Supreme Court departed from the use of the *Linkletter* test, noting that it had been subject to much criticism.” *Poole*, ___ Mich at ___. “Notably, the United States Supreme Court has explained that state courts are not required to adopt *Teague*’s retroactivity framework for state retroactivity purposes.” *Poole*, ___ Mich at ___. “Accordingly, that the United States Supreme Court has abandoned the *Linkletter* test for federal retroactivity purposes says nothing about how Michigan courts continue to assess retroactivity in the state context, given that [the Michigan Supreme] Court adopted the *Linkletter* test to serve as its own retroactivity standard in *Hampton*.” *Poole*, ___ Mich at ___. “Since *Teague*, Michigan courts have continued to apply the *Linkletter-Hampton* factors to determine whether a new rule of criminal law applies retroactively to final judgments on collateral review.” *Poole*, ___ Mich at ___.

the law cannot impose upon him.” *Poole*, ___ Mich at ___ (quotation marks and citation omitted). “Although . . . a substantive rule is typically accorded retroactive application, . . . the *Linkletter-Hampton* factors continue to have limited utility, given that they may have a determinative effect in the rare case.” *Poole*, ___ Mich at ___. “In other words, a substantive rule might not be applied retroactively if the *Linkletter-Hampton* factors strongly indicate otherwise.” *Poole*, ___ Mich at ___ (“An examination of the *Linkletter-Hampton* factors is thus necessary to confirm whether *Parks* should have retroactive application.”).

“The first [*Linkletter-Hampton*] factor, concerning the purpose of the new rule, favor[ed] retroactive application of *Parks* because *Parks* declared mandatory life-without-parole sentences unconstitutional for an entire class.” *Poole*, ___ Mich at ___ (overruling “mistaken holding that the first factor focuses on whether a rule is concerned with a defendant’s guilt or innocence,” referring to *People v Carp*, 496 Mich 440 (2014)). “The second factor, concerning reliance, also favor[ed] retroactive application because reliance on pre-*Parks* caselaw [was] detrimental to that group of defendants who received mandatory life-without-parole sentences for crimes committed when they were 18 years old, but whose cases were already finished on direct review when *Parks* was decided.” *Poole*, ___ Mich at ___. “The third factor, concerning the administration of justice, [did] not favor retroactive application, given the use of judicial resources and the impact of resentencing hearings on those affected by the underlying crimes.” *Id.* at ___. “However, on balance, the application of the *Linkletter-Hampton* factors reaffirm[ed] [the Michigan Supreme Court’s] conclusion that *Parks* [was] entitled to retroactive application as a substantive rule[.]” *Poole*, ___ Mich at ___.

In *Robinson*, the Michigan Supreme Court held that “the *Linkletter-Hampton* factors do not support applying [*Peeler*, 509 Mich at 381] retroactively on collateral review.” *Robinson*, ___ Mich at ___. “With respect to the purpose of the new rule, . . . *Peeler* concern[ed] the process of getting to trial, not the fairness of the trial itself.” *Id.*; see *id.* at ___ (“*Peeler* ended the existing and judicially accepted practice of allowing one-person grand juries to issue indictments.”). “Because the rule’s purpose is unrelated to the fairness of a trial, the first *Linkletter-Hampton* factor [did] not favor retroactive application.” *Id.* at ___. “With respect to the general reliance on the old rule, it is undisputed that before *Peeler*, prosecutors and judges relied upon the unchallenged assumption that the one-man grand jury law allowed judges to issue criminal indictments.” *Id.* at ___ (quotation marks omitted). “The second *Linkletter-Hampton* factor therefore weigh[ed] against *Peeler*’s retroactive application.” *Id.* at ___. “Finally, although the exact number of defendants subjected to

the errors identified in *Peeler* [was] unknown, the practice appear[ed] to have been used with some regularity over many decades in some courts.” *Id.* at _____. “Calling into question convictions in numerous cases in which defendants were convicted following a fair trial under the most stringent beyond-a-reasonable-doubt standard would therefore hinder unnecessarily the administration of justice in Michigan.” *Id.* at _____. “For that reason, the third *Linkletter-Hampton* factor also weigh[ed] against *Peeler*’s retroactive application.” *Id.* at _____. “Thus, the *Linkletter-Hampton* factors do not support applying *Peeler* retroactively on collateral review.” *Id.* at _____.

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

J. Lack of Precedent - Case of First Impression

A *case of first impression* is “[a] case that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction.” *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 368 (2019), quoting *Black’s Law Dictionary* (11th ed) (finding that an issue remains one of first impression where it has only been addressed by unpublished decisions).

K. Overruling Precedent

“Stare decisis ensures ‘uniformity, certainty, and stability in the law[.]’” *Stokes v Swofford*, ___ Mich ___, ___ (2024) (citation omitted). However, “precedents can be revisited if wrongly decided.” *Id.* at _____. “A decision is wrongly decided if it misunderstood or misconstrued a plainly worded statute or if it has fallen victim to a subsequent change in the law.” *Id.* at _____ (quotation marks and citation omitted). Courts apply “a three-part test to examine the effects of overruling a previous incorrect judicial decision: (1) whether the questioned decision defies practical workability, (2) whether reliance interests would work an undue hardship if the

decision were overturned, and (3) whether changes in the law or facts no longer justify the decision.” *Id.* at ___ (quotation marks omitted), citing *Robinson v Detroit*, 462 Mich 439, 464 (2000).

In *Stokes*, the Michigan Supreme Court overruled in part *Woodward v Custer*, 476 Mich 545 (2006), “because the test adopted by the *Woodard* Court regarding the evaluation of specialists in medical malpractice actions [was] inconsistent with the statutory language in [MCL 600.2169](#).” *Stokes*, ___ Mich at ___. “*Woodard* provided a skewed and inaccurate construction of [MCL 600.2169](#), which [had] resulted in highly qualified experts being disqualified.” *Stokes*, ___ Mich at ___. Specifically, “*Woodard* incorrectly conflated the terms ‘specialty’ and ‘subspecialty’ in a manner that was inconsistent with and changed the meaning of the plain language of the statute, and it failed to highlight the significant discretion provided to trial courts under [MCL 600.2169\(2\)](#) and (3) to exclude experts even when such experts qualify under [[MCL 600.2169\(1\)](#)].” *Stokes*, ___ Mich at ___ (holding that “the words ‘specialist’ and ‘specialties’ as used in [MCL 600.2169\(1\)](#) are defined as the specialties recognized by . . . nationally recognized physician umbrella-certifying organizations” and “that the ‘matching’ requirement under [MCL 600.2169](#) is limited to the relevant board certification specialty and does not require matching of subspecialties”).

Addressing the first *Robinson* factor, the *Stokes* Court concluded that “*Woodard* defies practical workability” because its application “led to inconsistent and untenable results in subsequent cases.” *Stokes*, ___ Mich at ___. Next, the Court found that “reliance interests”—the second *Robinson* factor—“do not favor retention of *Woodard*’s interpretation of [MCL 600.2169](#).” *Stokes*, ___ Mich at ___. “In assessing reliance interests, ‘the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone’s expectations that to change it would produce not just readjustments, but practical real-world dislocations.’” *Stokes*, ___ Mich at ___, quoting *Robinson*, 462 Mich at 466. “‘In fact, should a court confound those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interest.’” *Stokes*, ___ Mich at ___, quoting *Robinson*, 462 Mich at 467 (emphasis omitted). “‘When that happens, a subsequent court, rather than holding to the distorted reading because of the doctrine of stare decisis, should overrule the earlier court’s misconstruction.’” *Id.* (holding that “*Woodard* departed from the plain meaning of [MCL 600.2169](#)”).

The *Stokes* Court observed that “overruling *Woodard* would not rob litigants of their protected interests in securing appropriate experts, for the right itself is statutorily guaranteed.” *Stokes*, ___ Mich at ___. Michigan courts do “not recognize the need to alter litigation

strategy as a sufficient reliance interest preventing the overruling of precedent.” *Id.* at ___ (“[T]here is no reliance interest when litigants need to adjust their litigation strategy.”). “Such a circumstance would apply to any overruling of precedent and is not a compelling reason to prevent a flawed interpretation of the law from being corrected.” *Id.* at ___ (“There is no reason to doubt that Michigan lawyers are well-equipped to modify their expert selections in line with an accurate interpretation of [MCL 600.2169](#)[.]”).

Turning to the final *Robinson* factor, “whether the law or relevant facts have changed such that the prior decision can no longer stand,” the *Stokes* Court held that “the totality of the remaining factors weigh in favor of overruling *Woodard* in part” due to “the instability of the decision and its lack of justification moving forward.” *Stokes*, ___ Mich at ___ (holding that “*Woodard* was in part wrongly decided and must be overruled in part”).

1.5 Remand²⁸

A. Authority to Remand

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

Motion to remand. “The appellant may move to remand to the trial court. The motion must identify an issue sought to be reviewed on appeal and show: (i) that the issue is one that is of record and that must be initially decided by the trial court; or (ii) that development of a factual record is required for appellate consideration of the issue. A motion under this subrule must be supported by affidavit or offer of proof regarding the facts to be established at a hearing.” [MCR 7.211\(C\)\(1\)\(a\)](#).

²⁸ This section discusses remand in the context of the Court of Appeals remanding to a trial court. Note, though, that a circuit court acting as an appellate court may remand the case to the district court pursuant to [MCR 7.112](#) and [MCR 7.216\(A\)\(5\)](#), and a circuit court acting as an appellate court may receive a motion to remand pursuant to [MCR 7.110](#) and [MCR 7.211\(C\)](#). Because the circuit court appeals court rules (subchapter 7.100) refer to the Court of Appeals court rules (subchapter 7.200), information in this section may be instructive to a circuit court sitting as an appellate court.

B. Process Upon Remand

1. Jurisdiction

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

2. Scope of Remand Order and Rule of Mandate

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

“When an appellate court remands a case with specific instructions, it is improper for a lower court to exceed the scope of the order.” *People v Russell*, 297 Mich App 707, 714 (2012). The rule of mandate “embodies the well-accepted principle . . . that a lower court must strictly comply with, and may not exceed the scope of, a remand order.” *Int’l Business Machines Corp v Dep’t of Treasury*, 316 Mich App 346, 352-353 (2016). “The rule provides that any [lower] court that has received the mandate of an appellate court cannot vary or examine that mandate for any purpose other than executing it,” and although the lower court may “decide anything not foreclosed by the mandate, . . . [it] commits “jurisdictional error” if it takes actions that contradict the mandate.” *Id.* (quotation marks and citations omitted) (noting that “[t]he rule of mandate is similar to, but broader than, the law of the case doctrine,” “which is a discretionary doctrine that expresses the general practice of the courts and is not a limit on the power of the courts”²⁹). Accordingly, where the Michigan Supreme Court reversed the decisions of the lower courts in favor of the defendant and remanded to the Court of Claims for entry of an order granting summary disposition in favor of the plaintiff, the Court of Claims lacked authority, on remand, to grant judgment in favor of the defendant on the basis of an intervening change in the law. *Id.* at 349-353 (noting that “[t]he Court of Claims was simply to perform the nondiscretionary, ministerial task of entering judgment in favor of [the plaintiff],” and concluding that it “erred by taking an action

²⁹See [Section 1.3\(D\)](#) for more information on the law of the case doctrine.

that contradicted the mandate, effectively exceeding the remand’s jurisdictional scope”).

See [Section 1.2\(C\)](#) for information on expanding the record on remand.

1.6 Standard of Review

A. Generally

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

Committee Tips:

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

Generally, the standard of review on appeal will be:

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

B. De Novo

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

C. Clear Error

A lower court’s findings of fact are reviewed for clear error. [MCR 2.613\(C\)](#). See also *Walters v Snyder*, 239 Mich App 453, 456 (2000). “In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” [MCR 2.613\(C\)](#). “A finding is

clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Lanzo Constr Co*, 272 Mich App 470, 473 (2006).

D. Abuse of Discretion

“Abuse-of-discretion review is generally appropriate when a decision requires familiarity with the facts of the case and experience in maintaining a trial court docket.” *Webster v Osguthorpe*, ___ Mich ___, ___ (2025) (cleaned up). “Relatedly, abuse-of-discretion review is appropriate when a question is not primarily legal but instead grows out of, and is bounded by, case-specific detailed factual circumstances.” *Id.* at ___ (quotation marks and citation omitted). “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *Id.* at ___ (quotation marks and citation omitted). “A trial court necessarily abuses its discretion when it makes an error of law.” *Id.* at ___ (quotation marks and citation omitted).

Committee Tips:

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

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

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

E. Harmless Error

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

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

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

“A constitutional error does not automatically require reversal. . . . [M]ost constitutional errors can be harmless.” *People v Solomon*, 220 Mich App 527, 535 (1996). “Violations of the constitution that are subject to a harmless-error analysis are errors that ‘occurred during the presentation of the case to the jury, and that may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.’” *Id.* at 536, quoting *Arizona v Fulminante*, 499 US 279, 307-308 (1991). See [Section 1.6\(F\)](#) for more information on constitutional errors.

F. Which Standard of Review Should Be Employed?

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

Civil cases. “In civil cases, Michigan follows the ‘raise or waive’ rule of appellate review.” *In re DARL Guardianship*, ___ Mich App ___, ___ (2025), quoting *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg LLC*, 347 Mich App 280, 294 (2023). “If a litigant does not raise

an issue in the trial court, [the appellate court] has no obligation to consider the issue.” *DARL*, ___ Mich App at ___ (quotation marks and citation omitted). In general, “the plain-error rule of *Carines* does not apply to civil cases.” *Tolas*, 347 Mich App at 294. However, “because of the potential criminal consequences for a respondent’s violation of a PPO [personal protection order], and the liberty interests at stake, . . . plain-error review also applies to unpreserved issues in PPO proceedings,” even though PPO proceedings are civil in nature. *HMM v JS*, ___ Mich App ___, ___ (2024).

Issue preservation. “Generally, to preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal.” *People v Butsinas*, ___ Mich App ___, ___ (2025) (cleaned up). “For an objection to be timely it must be contemporaneous with the error to provide the trial court an opportunity to correct the error, which could thereby obviate the necessity of further legal proceedings and would be by far the best time to address a defendant’s constitutional and nonconstitutional rights.” *Id.* at ___ (quotation marks and citation omitted). “This requirement encourages the litigants to seek a fair and accurate trial the first time around[.]” *Id.* at ___ (cleaned up). “[P]ermitting a party to raise an evidentiary issue for the first time in a postjudgment motion for new trial . . . controverts the purpose of the preservation requirement because the opportunity for the trial court to correct the error and its prejudice has passed.” *Id.* at ___ (“making such a posttrial motion does not preserve the issue sought to be raised in the same manner a timely motion or objection during trial would have”). In *Butsinas*, “defendant did not make a contemporaneous objection to any of the evidence alleged to bolster [the witness’s] credibility at trial.” *Id.* at ___. “Instead, he waited until after a verdict was rendered against him to raise this issue, preventing either party from contemporaneously addressing the alleged error before the trial court.” *Id.* at ___. “This also prevented the trial court the opportunity to correct the alleged error or alleviate any prejudice before the jury rendered its verdict.” *Id.* at ___. “Accordingly, defendant did not preserve his argument that the trial court erred by admitting the evidence alleged to vouch for [the witness’s] veracity.” *Id.* at ___ (reviewing unpreserved issue for plain error affecting substantial rights).

“Michigan generally follows the ‘raise or waive’ rule of appellate review.” *Wells v State Farm Fire & Cas Co*, 509 Mich 855, 856 (2022) (quotation marks and citation omitted). “Therefore, a litigant preserves an issue for appellate review by raising it in the trial court . . . despite the trial court’s failure to rule on it.” *Id.* at 856 (quotation marks, citation, and alteration omitted). “[I]ssue preservation requirements only impose a general prohibition

against raising an issue for the first time on appeal.” *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227 (2020). “[A] party also need not preserve an objection to ‘a finding or decision’ made by the trial court, [MCR 2.517\(A\)\(7\)](#), or, at least under some circumstances, other acts or omissions undertaken sua sponte by a court.” *Glasker-Davis*, 333 Mich App at 227-228; but see *In re SB*, ___ Mich App ___, ___ (2024) (holding that any objection regarding the trial court’s sua sponte order extending the personal protection order (PPO) was forfeited and unpreserved where, even though respondent objected to the court’s authority to sua sponte extend the effective date of the PPO, respondent had the opportunity to object to the actual extension of the PPO’s restrictions and failed to do so). “[S]o long as the issue itself is not novel, a party is generally free to make a more sophisticated or fully-developed argument on appeal than was made in the trial court.” *Glasker-Davis*, 333 Mich App at 228.

Waiver. “Waiver is the intentional relinquishment or abandonment of a known right.” *Butsinas*, ___ Mich App at ___ (quotation marks and citation omitted). “Waiver is distinct from forfeiture where a party merely fails to make a timely assertion of a right.” *Id.* at ___ . “One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error.” *Id.* at ___ (quotation marks and citation omitted) Because defendant affirmatively conceded admission of these categories of evidence in the trial court, his allegation of error on appeal that this evidence is inadmissible under [MRE 404\(b\)](#) is waived, extinguishing any error. *Butsinas*, ___ Mich App at ___. “A defendant who waives a right may not then seek appellate review of the claimed deprivation of that right because his waiver has extinguished any error.” *Id.* at ___ (“By affirmatively arguing for admission of all the statements [the victim] made . . . , he has waived the right to challenge their admissibility on appeal.”).

“What suffices for waiver depends on the nature of the right at issue.” *People v Vaughn*, 491 Mich 642, 655 (2012), quoting *New York v Hill*, 528 US 110, 114 (2000). Certain constitutional rights, such as the right to counsel and the right to plead not guilty, “fall[] within [an] exceedingly narrow class of rights that are placed outside the general preservation requirements and require a personal and informed waiver.” *Vaughn*, 491 Mich at 654-658 (holding that, “[a]lthough the violation of the right to a public trial is among the limited class of constitutional violations that are structural in nature,” it “does not necessarily affect qualitatively the guilt-determining process or the defendant’s ability to participate in the process,” and therefore remains subject to the *Carines*³⁰ forfeiture analysis) (citation omitted). See *People v Davis*, 331 Mich App 699, 712 (2020) (although “[c]ounsel strategically and intentionally

relinquished or abandoned the right to a public trial in order to vastly reduce the number of supporters for the victim in the courtroom in an effort to mask the fact that no one was there for defendant,” counsel “did not *affirmatively* indicate an approval of the court’s decision” to close the courtroom; accordingly, the Court reviewed the matter under the plain-error test).

1. Preserved Constitutional Error

“If the error is not a structural defect that defies harmless error analysis, the reviewing court must determine whether the beneficiary of the error has established that it is harmless beyond a reasonable doubt.” *People v Carines*, 460 Mich 750, 774 (1999).³¹ “A constitutional error is harmless if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *People v Shepherd*, 472 Mich 343, 347 (2005) (quotation marks, alteration, and citations omitted). If the error is structural, automatic reversal is required. *People v Anderson (After Remand)*, 446 Mich 392, 404-405 (1994).³² Structural errors include “the total deprivation of the right to trial counsel, an impartial judge, excluding grand jury members who are the same race as defendant, denial of the right to self-representation, denial of the right to a public trial, and a constitutionally improper reasonable doubt instruction.” *Id.* at 405.

2. Preserved Nonconstitutional Error

“The defendant has the burden of establishing a miscarriage of justice under a ‘more probable than not’ standard.” *People v Carines*, 460 Mich 750, 774 (1999), quoting *People v Lukity*, 460 Mich 484 (1999).

³⁰ *People v Carines*, 460 Mich 750 (1999). See [Section 1.6\(F\)\(1\)](#), [Section 1.6\(F\)\(2\)](#), and [Section 1.6\(F\)\(3\)](#) for further discussion of the *Carines* case.

³¹ See [Section 1.6\(E\)](#) for more information on harmless error.

³² See, however, *Weaver v Massachusetts*, 582 US 286, 296, 300-301 (2017) (holding that although “a violation of the right to a public trial is a structural error,” “when a defendant [first] raises [an unpreserved] public-trial violation via an ineffective-assistance-of-counsel claim, *Strickland v Washington*, 466 US 668 (1984),] prejudice is not shown automatically; [i]nstead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or . . . to show that the particular public-trial violation was so serious as to render his or her trial fundamentally unfair”). See the Michigan Judicial Institute’s [Criminal Proceedings Benchbook, Vol. 3](#), Chapter 1, for a discussion of ineffective assistance of counsel.

3. Unpreserved Constitutional or Nonconstitutional Error

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

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

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

“A constitutional challenge to legislation that is not raised and addressed in the record below is not preserved for appellate review. . . . However, [an appellate court] may address unpreserved constitutional questions where no question of fact exists and the interest of justice and judicial economy so

dictate.” *STC, Inc v Dep’t of Treasury*, 257 Mich App 528, 538 (2003).

“[A] defendant’s inability to satisfy the [*Carines*] plain-error standard in connection with a specific trial court error does not necessarily mean that he or she cannot meet the ineffective-assistance standard regarding counsel’s alleged deficient performance relating to that same error.”³³ *People v Randolph*, 502 Mich 1, 22 (2018). “Courts must independently analyze each claim, even if the subject of a defendant’s claim relates to the same error.” *Id.*

G. Right Result—Wrong Reason

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

1.7 Statutory Construction and Interpretation

A. Generally

When interpreting a statute, courts “use the ‘fair reading’ standard, where the text, context, and statutory history are consulted to construe a statute as a reasonable reader would do.” *Eagan v Detroit*, ___ Mich App ___, ___ (2025). “Ordinances are treated as statutes for the purposes of interpretation and review.” *Id.* at ___ (quotation marks and citation omitted). “The rules of statutory construction apply to both statutes and administrative rules.” *Airgas Specialty Prod v Mich Occupational Safety and Health Admin*, 338 Mich App 482, 495 (2021) (quotation marks and citation omitted). The rules of statutory construction also apply to “provisions of a home rule city charter[.]” *Save Our Downtown v City of Traverse City*, 343 Mich App 523, 534 (2022).

“In the construction of the statutes of this state, the rules stated in sections [MCL 8.3a to MCL 8.3w] shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.” MCL 8.3. “All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall

³³ See the Michigan Judicial Institute’s *Criminal Proceedings Benchbook, Vol. 3*, Chapter 1, for more information on postjudgment motions and ineffective assistance of counsel.

be construed and understood according to such peculiar and appropriate meaning.” [MCL 8.3a](#). [MCL 8.5](#) provides for severability of a portion of an act found to be invalid by a court.

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

Legislative intent. “The goal of statutory interpretation is to give effect to the Legislature’s intent.” *Demott v VHS Harper-Hutzel Hosp, Inc*, ___ Mich App ___, ___ (2025). “In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute, . . . [and] consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.” *Shinholster v Annapolis Hosp*, 471 Mich 540, 549 (2004) (quotation marks and citations omitted).

“A necessary corollary . . . is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 72 (2017) (quotation marks and citation omitted). “If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted.” *Daher v Prime Healthcare Services-Garden City, LLC*, ___ Mich ___, ___ (2024). A court “may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature.” *Slis v Michigan*, 332 Mich App 312, 336 (2020).

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

original meaning the word ‘loss’ had when the statute was enacted in 1912”); *Daher*, ___ Mich at ___ (“When interpreting a statute, [the Court’s] purpose is to ascertain and effectuate the legislative intent at the time it passed the act.”).

Context and statutory history. “The most reliable evidence of the Legislature’s intent is the words of the statute.” *Demott*, ___ Mich App at ___ (quotation marks and citation omitted). “But a statute’s text should not be read in isolation; rather, it should be read in accordance with the statute’s context because context is a primary determinant of meaning.” *Id.* at ___ (cleaned up). “A statute’s context includes the statute’s history—the narrative of the statutes repealed or amended by the statute under consideration, which is not to be confused with a statute’s legislative history.” *Id.* at ___ (quotation marks and citation omitted).³⁴

“Because context is a primary determinant of meaning, [the Court] must always read the text as a whole, in view of its structure and of the physical and logical relation of its many parts.” *Daher*, ___ Mich at ___ (cleaned up). “This critical word *context* embraces not just textual purpose but also (1) a word’s historical associations acquired from recurrent patterns of past usage, and (2) a word’s immediate syntactic setting[.]” *Id.* at ___ n 7 (quotation marks and citation omitted). “A statute’s history—the narrative of the statutes repealed or amended by the statute under consideration—properly forms part of its context[.]” *Id.* at ___ (cleaned up). “Indeed, courts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute.” *Id.* at ___ (quotation marks and citation omitted). “[T]his type of statutory history is . . . categorically different from ‘legislative acquiescence,’ in which the Legislature takes *no action* in response to a decision from [the Supreme Court].” *Id.* at ___ n 8. “Interpreting a statute through inaction is a highly disfavored doctrine of statutory construction; sound principles of statutory construction require that Michigan courts determine the Legislature’s intent from its *words*, not from its silence.” *Id.* (quotation marks and citation omitted).

Avoiding absurd results. Under the absurd-results doctrine, “statutes should be construed so as to prevent absurd results, injustice, or prejudice to the public interest.” *Farmers Ins Exch v Hudson Ins Co*, ___ Mich App ___, ___ (2025) (cleaned up). However, “the doctrine may only be invoked when it is quite impossible that the Legislature could have intended the result.” *Id.* at ___ (quotation marks and citation omitted).

³⁴See [Section 1.7\(B\)](#) for information on legislative history.

Avoiding surplusage or nugatory interpretations. Courts must “avoid an interpretation that would render any part of the statute surplusage or nugatory.” *State Farm Fire and Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002).

Overlapping, repetitive, or redundant subsections. While a statute “must be read as a whole,” “there is no reason its subsections cannot overlap.” *Miller v Dep’t of Corrections*, ___ Mich ___, ___ (2024). “Indeed, it is clear that they sometimes do.” *Id.* at ___. “Sometimes drafters do repeat themselves and do include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.” *Id.* at ___ (cleaned up). “Or perhaps repetition might occur when drafters adopt language solely to comply with a federal mandate.” *Id.* at ___. “In such circumstances, any redundancies are properly viewed more in the nature of a belt-and-suspenders approach than as an indication that the Legislature intended to implicitly narrow the scope of the pre-existing provisions of the [statute].” *Id.* at ___.

Defined and undefined statutory terms. “When a statute specifically defines a given term, that definition alone controls.” *People v Butka*, 514 Mich 366, 376 (2024) (quotation marks and citation omitted). “On the other hand, when terms are not expressly defined anywhere in the statute, they must be interpreted on the basis of their ordinary meaning and the context in which they are used.” *Id.* at 376 (quotation marks and citation omitted). “Additionally, when a term is not defined in a statute, the dictionary definition of the term may be consulted or examined because this assists the goal of construing undefined terms in accordance with their ordinary and generally accepted meanings.” *Id.* at 376. But see *Gholston v Sherrill*, ___ Mich App ___, ___ (2025), where the Court stated that “[f]urther consultation of a lay dictionary would not be fruitful” and turned to other statutes regulating the same or similar substances to “gain some guidance on what our Legislature meant with the phrase ‘environmental hazard[.]’” *Id.* at ___ (“The determination of what constitutes a hazardous chemical or radioactive material is a medical and scientific matter, and use of a lay dictionary would not be appropriate in this circumstance.”). “A legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning.” *Butka*, 514 Mich at 376. When considering “a legal term of art, courts should ordinarily use a dictionary that is contemporaneous with the statute’s enactment.” *Id.* at 377 (cleaned up).

“[U]ndefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art.” *People v Thompson*, 477 Mich 146, 151-152 (2007); see also [MCL](#)

8.3a. A lay dictionary may be consulted “when defining common words or phrases that lack a unique legal meaning.” *Thompson*, 477 Mich at 151-152. “This is because the common and approved usage of a nonlegal term is most likely to be found in a standard dictionary, not in a legal dictionary.” *Id.* at 152. “[I]t is best to consult a dictionary from the era in which the legislation was enacted.” *In re Certified Question*, 499 Mich 477, 484-485 (2016).

Additionally, in interpreting a word “as used in [a statute] ‘according to the common and approved usage of the language,’” as required under [MCL 8.3a](#), courts may consult the [Corpus of Contemporary American English](#), which is “a tool that can aid in the discovery of ‘how particular words or phrases are actually used in written or spoken English.’” *People v Harris*, 499 Mich 332, 347 (2016) (citation omitted).

Voter initiative. When construing a statute that “was the result of a voter initiative, [the] goal is to ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself.” *People v Kolanek*, 491 Mich 382, 397 (2012). “Initiative provisions are liberally construed to effectuate their purposes and facilitate rather than hamper the exercise of reserved rights by the people.” *Save Our Downtown*, 343 Mich App at 534. “The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters.” *Id.* at 534 (quotation marks and citation omitted). A court must presume “the voters intended the meaning plainly expressed in the initiative.” *Id.* at 534.

Deference to administrative agency’s interpretation. While “[courts] give deference to an administrative agency’s interpretation of a statute,” the judiciary remains “the final arbiter of a statute’s meaning.” *In re Buchanan*, ___ Mich App ___, ___ (2026) (quotation marks and citation omitted). Consequently, an “agency’s interpretation cannot conflict with the plain meaning of the statute.” *Id.* at ___ (quotation marks and citation omitted).

B. Conflict, Ambiguity, and Rules of Statutory Construction

1. Conflict

Conflict between statute and rule. “Generally, if a court rule conflicts with a statute, the court rule governs when the matter pertains to practice and procedure.” *People v Watkins*, 277 Mich App 358, 363 (2007). “However, to the extent that the statute, as applied, addresses an issue of substantive law, the statute prevails.” *Id.* See *Rose v May*, ___ Mich App ___, ___ (2025) (concluding that [MCL 722.714\(12\)](#) takes precedence over [MCR](#)

3.204(A)(2) “because MCL 722.714 addresses the public policy of providing support for children born out of wedlock, and more specifically requires that a paternity action is to be filed in the county where the mother or child resides[; therefore,] the mandatory venue provision of the statute is most appropriately categorized as a substantive rule dictating the proper venue for a paternity complaint”).

“[W]hen a statute and an administrative rule conflict, the statute necessarily controls.” *Grass Lake Improvement Bd v Dep’t of Environmental Quality*, 316 Mich App 356, 366 (2016). However, “it is equally well settled . . . that agencies are bound to follow their own duly promulgated rules.” *Id.* at 366-367 (finding that the administrative law judge did not abuse his discretion in following the administrative agency’s own rules where there was undeniable tension between the court rule and the agency rule, and the agency’s “legal position was sufficiently grounded in law as to have at least some arguable merit”).

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

2. Ambiguity

“A statutory provision is ambiguous only if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning.” *Eagan v Detroit*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). “It is not uncommon for an attributive adjective

phrase to create an ambiguity in an isolated sentence, so [courts] look elsewhere . . . to see if context [provides] a better understanding of [which interpretation] is the better reading.” *Id.* at ___ (stating the standard for interpreting a statute is not “free from any conceivable doubt”). Specifically, courts “use the ‘fair reading’ standard, where the text, context, and statutory history are consulted to construe a statute as a reasonable reader would do.” *Id.* at ___ (holding that “considering the text and context as a whole . . . ,each reading of [the phrase was] not as plausible as the other, i.e., they [were] not ‘equally susceptible to more than a single meaning’”).

Doctrine of *in pari materia*. Statutory language, unambiguous on its face, “can be rendered ambiguous through its interaction with and its relation to other statutes.” *People v Valentin*, 457 Mich 1, 6 (1998) (quotation marks and citation omitted). Under the doctrine of *in pari materia*, “statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law.” *People v Mazur*, 497 Mich 302, 313 (2015) (holding that “[a]n act that incidentally refers to the same subject is not *in pari materia* if its scope and aim are distinct and unconnected.”)

When “it is impossible ‘to give each [statute] full force and effect,’ and neither statute expressly references the other, one statute must be construed as a de facto amendment of, or limitation upon, the other.” *Milne v Robinson*, 513 Mich 1, 11 (2024) (citation omitted; alteration in original). If “statutes conflict, the more specific provision governs over the more general one.” *Id.* at 12. “[C]ourts generally presume that the Legislature gave more deliberate consideration to the specific issue when enacting the more specific statute and therefore treat this provision as an exception to the general act or provision that would otherwise govern to avoid rendering the more specific provision nugatory.” *Id.* at 15 (quotation marks and citation omitted). “However, like any canon of statutory interpretation, this framework should not be used mechanically, and it does not apply in every situation.” *Id.* at 12.

“When two statutes seemingly conflict, the controlling question is how the Legislature intended for those statutes to interact.” *Id.* at 12. “General rules of statutory construction—including the canon that a specific statute applies over a general one—are tools that may assist in this endeavor, but they are not straitjackets.” *Id.* at 12. Indeed, “the general/specific analysis is most likely to be probative of legislative intent when (1) two statutes relate to the same subject or share

a common purpose such that they should be read together *in pari materia*, and/or (2) one statute addresses a broader topic while the other statute addresses a subset of situations within that broader topic.” *Id.* at 13-14 (cleaned up). The fact that two statutes “may incidentally both apply in a limited set of circumstances does not mean that they relate to the same subject matter or share a common purpose such that they should be read together *in pari materia*.” *Id.* at 16. In *Milne*, the Michigan Supreme Court held that the doctrine of *in pari materia* was not helpful because the statutes at issue (a) did not address a subset of situations more broadly covered by the other, (b) can—and generally did—apply independently of each other, and (c) were narrow and broad in their own ways such that determining which provision was more specific entirely turned on how the subject matter was defined. *Id.* at 14, 16, 17 (“discern[ing] no principled basis for determining which provision [was] more specific than the other” or “how [that] inquiry illuminate[d] how the Legislature intended for these statutes to interact”).

“The application of *in pari materia* is not necessarily conditioned on a finding of ambiguity.” *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 73 n 26 (2017) (holding that the Court of Appeals “erred in its narrow utilization of the *in pari materia* canon of construction,” and noting that in *Int’l Business Machines Corp v Dep’t of Treasury*, 496 Mich 642, 651-653 (2014) (plurality opinion), “the [Michigan Supreme] Court suggested the application of *in pari materia* to resolve a patent conflict between two unambiguous statutes”). But see *In re Buchanan*, ___ Mich App ___, ___ (2026) (cleaned up) (“The *in pari materia* doctrine is a rule of statutory construction that is not implicated, however, if the statutory language is unambiguous.”).

The general/specific canon “applies when two statutes conflict, and to resolve the conflict, the more specific provision prevails over the more general one.” *Miller v Dep’t of Corrections*, ___ Mich ___, ___ (2024). “If the application of different subsections in a given case dictated different results—that is, if one subsection indicated certain conduct was prohibited while a different subsection said the same conduct was not prohibited—then there would be a conflict between the subsections.” *Id.* at ___. However, where “the subsections overlap and lead to the same result—the defendant engaged in prohibited conduct—there is no conflict to resolve.” *Id.* at ___ (holding that “multiple subsections may apply to the same conduct, and a single retaliatory act may violate the [Elliott-

Larsen Civil Rights Act (ELCRA), [MCL 37.2101](#) *et seq.*] in multiple ways”).

3. Rules of Statutory Construction

“[T]he ultimate goal in questions of statutory interpretation is to ascertain and give effect to the Legislature’s intent.” *Miller v Dep’t of Corrections*, ___ Mich ___, ___ (2024) (quotation marks and citation omitted). Courts “should endeavor to read potentially conflicting provisions of a statute harmoniously if possible.” *Id.* at ___. “One part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together.” *Id.* at ___ (cleaned up). “In doing so, [courts] sometimes use canons of statutory interpretation, being mindful that they are tools that may assist in this endeavor, but they are not straitjackets.” *Id.* at ___ (quotation marks and citation omitted).

Canon of *ejusdem generis*. “*Ejusdem generis* provides that in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be and construed as restricted by the particular designation and as including only those things of the same kind, class, character or nature as those specifically enumerated.” *People v Burkman*, ___ Mich ___, ___ (2024) (quotation marks and citation omitted).

Associated-words canon (*noscitur a sociis*). “Under the associated-words canon, a statutory term must be viewed in light of the words surrounding it and its context or setting.” *People v Eichler*, ___ Mich App ___, ___ (2025) (cleaned up). “Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: ‘it is known from its associates.’ This doctrine stands for the principle that a word or phrase is given meaning by its context or setting.” *Burkman*, ___ Mich at ___ (cleaned up). “Under *noscitur a sociis*, when several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.” *Id.* at ___ (cleaned up). See *In re LaFrance*, 306 Mich App 713, 725 (2014) (holding that a subparagraph of a statute “must be interpreted in the context of its sister subparagraphs”).

***Expressio unius est exclusio alterius* canon.** “[T]he canon *expressio unius est exclusio alterius*, which states that the express mention of one thing implies the exclusion of other similar things, . . . [should not be applied] to overcome the plain

meaning of the words [of a statute].” *People v Garrison*, 495 Mich 362, 372 (2014).

Last antecedent rule. “[T]he last antecedent rule[is] a rule of statutory construction that provides that ‘a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation.’” *Hardaway v Wayne Co*, 494 Mich 423, 427 (2013), quoting *Stanton v Battle Creek*, 466 Mich 611, 616 (2002). “[T]he last antecedent rule should not be applied blindly”; for example, it should not be applied if it would render a portion of the statute redundant. *Hardaway*, 494 Mich at 428-429. “Moreover, the last antecedent rule does not mandate a construction based on the shortest antecedent that is grammatically feasible; when applying the last antecedent rule, a court should first consider what are the logical metes and bounds of the ‘last’ antecedent.” *Id.* at 425, 427-429, 429 n 10 (noting that “[t]he last antecedent is the last *word, phrase, or clause* that can be made an antecedent *without impairing the meaning of the sentence,*” and holding that “the Court of Appeals . . . improperly applied the last antecedent rule” in construing the unambiguous text of the defendant’s resolution where application of the rule “[took] what [was] grammatically an essential clause . . . and effectively render[ed] it a nonessential clause”) (citations omitted). “[A] modifying clause will be construed to modify only the last antecedent, unless something in the subject matter or dominant purpose requires a different interpretation.” *People v Williams*, ___ Mich App ___, ___ (2026) (quotation marks and citation omitted). **Legislative silence.** In general, “courts presume a different intent when a legislature omits words used in a *prior* statute on a similar subject.” *People v English*, 317 Mich App 607, 616 (2016) (citation omitted). This rule of construction “is only applicable when the ‘related statute’ is a prior enactment.” *Id.*; see also *People v Watkins*, 491 Mich 450, 482 (2012) (noting that “[i]t is one thing to infer legislative intent through silence in a simultaneous or subsequent enactment, but quite another to infer legislative intent through silence in an earlier enactment, which is only ‘silent’ by virtue of the subsequent enactment”); *People v Mullins*, 322 Mich App 151, 165-166 (2017) (noting that “[t]here are likely many reasons—policy and nonpolicy alike—why the Legislature would choose to amend one section of law without at the same time amending a related section, including interest, resources, politics, attention, etc.”).

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

Implied repeal. “It is axiomatic that repeals by implication are disfavored.” *Miller v Dep’t of Corrections*, ___ Mich ___, ___ (2024) (quotation marks and citation omitted). “Findings of implied repeal are rare, but implied repeal may be accomplished (1) by the enactment of a subsequent act inconsistent with a former act or (2) by the occupancy of the entire field by a subsequent enactment.” *Id.* at ___ (quotation marks and citation omitted). “Courts must determine if there is *any other reasonable construction* that would harmonize the two statutes and avoid a repeal by implication.” *Id.* at ___ (quotation marks and citation omitted).

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

Rule of lenity. “The ‘rule of lenity’ provides that courts should mitigate punishment when the punishment in a criminal statute is unclear.” *People v Denio*, 454 Mich 691, 699 (1997). “The rule of lenity applies only if the statute is ambiguous or “in absence of any firm indication of legislative intent.”” *People v Johnson*, 302 Mich App 450, 462 (2013), quoting *Denio*, 454 Mich at 700 n 12 (holding that “the rule of lenity does not apply when construing the Public Health Code[, [MCL 333.1101 et seq.](#),] because the Legislature mandated in [MCL 333.1111\(2\)](#)

that the code’s provisions are to be ‘liberally construed for the protection of the health, safety, and welfare of the people of this state’”) (additional citations omitted). See also *Hall*, 499 Mich at 458, 464 (noting that the rule of lenity is a “tie-breaking canon[] of statutory interpretation” that “[does] not apply unless . . . seemingly conflicting statutes are in fact ambiguous”).

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

Scrivener’s error. “Under the interpretive doctrine of scrivener’s error, the totality of context may be given precedence over a single word when on the very face of the statute it is clear to the reader that a mistake of expression (rather than of legislative wisdom) has been made.” *Love v Rudolph*, ___ Mich App ___, ___ n 3 (2025) (quotation marks and citation omitted).

4. Preemption, Abrogation, and Inconsistent Laws

Preemption. “Federal preemption of state law is grounded in the Supremacy Clause of the United States Constitution, US Const, art VI, cl 2, which ‘invalidates state laws that ‘interfere with, or are contrary to,’ federal law.’” *Stephens v Dep’t of Corr*, ___ Mich App ___, ___ (2025), quoting *Ter Beek v City of Wyoming*, 495 Mich 1, 10 (2014), quoting *Hillsborough Co v Automated Med Labs, Inc*, 471 US 707, 712 (1985). “When a state law is preempted by federal law, the state law is without effect.” *Stephens*, ___ Mich App at ___, quoting *Ter Beek*, 495 Mich at 10, quoting *Maryland v Louisiana*, 451 US 725, 746 (1981).

“The purpose of Congress is the ultimate touchstone in every pre-emption case.” *Stephens*, ___ Mich App at ___ (quotation marks and citation omitted). “Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law.” *Id.* at ___ (quotation marks and citation omitted); see also *id.* at ___ (Courts “start with the assumption that the historic police powers of the States were not to be superseded by the Federal

Act unless that was the clear and manifest purpose of Congress”) (quotation marks and citation omitted). “The areas of public health and safety are among those traditionally left to the states.” *Id.* at ___ (quotation marks and citation omitted). “If the relevant federal statute contains an express preemption provision, the reviewing court begins with the plain wording of the clause, which necessarily contains the best evidence of Congress’ preemptive intent.” *Id.* at ___ (quotation marks and citation omitted). “Where such a clause is ambiguous, and the federal statute at issue pertains to an area of traditional state regulation, [courts] have a duty to accept the reading of the clause that disfavors pre-emption.” *Id.* at ___ (quotation marks and citation omitted). “Tie, in that case, goes to the state.” *Id.* at ___ (quotation marks and citation omitted). “Whether federal law preempts state action, as well as the interpretation of a statute, are questions of law reviewed de novo.” *Id.* at ___.

“In the legal context, preemption generally refers to the principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation.” *Davis v BetMGM, LLC*, ___ Mich ___, ___ (2025) (cleaned up). “In some instances, a federal statute’s preemptive force may be so extraordinary and all-encompassing that it converts an ordinary state-common-law complaint into one stating a federal claim for purposes of the well-pleaded-complaint rule.” *Id.* at ___ (quotation marks and citation omitted) (describing the complete-preemption doctrine). “Some of these principles have translated to state courts’ jurisprudence deciding their own laws’ preemptive force.” *Id.* at ___. “Perhaps the most common application of preemption in that context is obstacle preemption, also termed conflict preemption, which refers to the principle that a federal or state statute can supersede or supplant state or local law that stands as an obstacle to accomplishing the full purposes and objectives of the overriding federal or state law.” *Id.* at ___ (cleaned up) (emphasis omitted).

“Michigan’s statutes or its common law may be preempted by operation of federal law under the Supremacy Clause of the United States Constitution, US Const, art VI, cl 2.” *Davis*, ___ Mich at ___ (observing that the Michigan Supreme Court “has clearly embraced the principle of conflict preemption in its own right, by holding, in several cases, that a state statute can supersede local law or regulation”). See *Mich Gun Owners, Inc v Ann Arbor Sch*, 502 Mich 695 (2018) (analyzing the effect of state law regulating firearms use, [MCL 123.1101 et seq.](#), on school districts’ bans on guns on school property); *DeRuiter v Byron Twp*, 505 Mich 130 (2020) (holding that the Michigan Medical

Marihuana Act, [MCL 333.26421](#) *et seq.*, did not preempt the defendant township’s local zoning law that limited where medical marijuana could be cultivated); *People v Llewellyn*, 401 Mich 314 (1977) (holding that the local municipality’s ordinance regulating obscene materials was unconstitutional because the subject was preempted by Michigan’s criminal antiobscenity statutes, [MCL 750.343a](#) *et seq.*).

However, “a state statute does not ‘preempt’ the common law.” *Davis*, ___ Mich at ___. “The correct principle to apply in this context is *abrogation*.” *Id.* at ___. (“Though we have used the terms ‘preemption’ and ‘abrogation’ interchangeably in the past, this was an aberration, but one that is harmless in hindsight and does not affect the substance of our rulings.”). The “Legislature may only preempt local laws.” *Id.* at ___. “When it enacts statutes that preclude common-law claims that may be inconsistent with the enacted state law, the question is not whether the Legislature has preempted those claims.” *Id.* at ___. “Instead, the question is whether the common law was abrogated by the statute.” *Id.* at ___.

Abrogation of common law. “The common law is provided for in the Michigan Constitution.” *Davis v BetMGM, LLC*, ___ Mich ___, __ (2025).³⁵ “Article 3, § 7 of Michigan’s 1963 Constitution specifies that the common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.” *Davis*, ___ Mich at ___ (cleaned up) “The common law prevails except as abrogated by the Constitution, the Legislature, or this Court.” *Davis*, ___ Mich at ___ (quotation marks and citation omitted). The Michigan Supreme Court has “developed rules to determine whether a statute abrogates the common law:

The Legislature may alter or abrogate the common law through its legislative authority. Yet the mere existence of a statute does not necessarily mean that the Legislature has exercised this authority. We presume that the Legislature knows of the existence of the common law when it acts.

³⁵“The common law does not consist of definite rules which are absolute, fixed, and immutable like the statute law, but it is a flexible body of principles which are designed to meet, and are susceptible of adaption to, among other things, new institutions, public policies, conditions, usages and practices, and changes in mores, trade, commerce, inventions, and increasing knowledge, as the progress of society may require.” *Davis*, ___ Mich at ___ n 43 (quotation marks and citation omitted). Indeed, “the common law is always a work in progress and typically develops incrementally, i.e., gradually evolving as individual disputes are decided and existing common-law rules are considered and sometimes adapted to current needs in light of changing times and circumstances.” *Id.* at ___ (cleaned up).

Therefore, we have stated that we will not lightly presume that the Legislature has abrogated the common law and that the Legislature should speak in no uncertain terms when it exercises its authority to modify the common law. As with other issues of statutory interpretation, the overriding question is whether the Legislature intended to abrogate the common law." [*Davis*, ___ Mich at ___ (cleaned up).]

In *Davis*, an online casino patron brought "a cause of action in circuit court alleging common-law claims for breach of contract, conversion, and fraud regarding a dispute over alleged winnings that defendant refused to remit because the game had allegedly malfunctioned 'on various plays' and erroneously credited winnings to her account." *Id.* at ___. Defendant, the host of the online casino, argued "that the Lawful Internet Gaming Act (LIGA), [MCL 432.301](#) *et seq.*, is a comprehensive statutory scheme that is exclusively regulated and enforced by the Michigan Gaming Control Board (MGCB), thus abrogating . . . plaintiff's common-law claims." *Davis*, ___ Mich at ___. "There is no question that the Legislature intended to abrogate some aspects of Michigan's common law when enacting the LIGA, which allows individuals to lawfully engage in online gambling." *Id.* at ___. "Previously, legal actions premised on gambling transactions were not enforceable under Michigan's common law, and the Legislature later enacted statutes consistent with our common law and public policy to criminalize gambling and void contracts related to gambling." *Id.* at ___. "The Legislature clearly knew of the existence of this common-law rule when enacting the LIGA." *Id.* at ___ (stating that "by permitting online gambling, the Legislature intended to abrogate any common-law rules premised on the assumption that gambling is unlawful"). "That does not mean that the LIGA abrogated *all* aspects of the common law." *Id.* at ___. "The Legislature is also presumed to know of existing common-law claims that would apply with equal force just as in any other dispute over a lawful transaction." *Id.* at ___. "The LIGA does not speak to these common-law claims at all, nor does it speak in certain terms to abrogate these claims." *Id.* at ___. ("The LIGA does not even mention the common law."). Accordingly, there was "no basis to conclude that the Legislature intended to abrogate plaintiff's common-law claims for fraud, conversion, and breach of contract." *Id.* at ___.

Comprehensive statutory scheme and inconsistent laws.
"[T]he comprehensiveness of the statutory scheme by itself is

[not] dispositive of the question of ‘inconsistency.’” *Davis v BetMGM, LLC*, ___ Mich ___, ___ (2025). “A more distinct inquiry is required.” *Id.* at ___. In *Davis*, the Michigan Supreme Court “consider[ed] whether plaintiff’s claims in fact conflict[ed] with specific statutory and regulatory authority granted to the MGCB [Michigan Gaming Control Board] under the LIGA [Lawful Internet Gaming Act].” *Id.* at ___ (“The proper focus is whether the MGCB’s exercise of authority, as permitted by the LIGA, results in a licensee obtaining immunities and rights derived from the MGCB’s actions.”). “Under this scheme, a disgruntled patron may not bring an action against a licensee if the MGCB has exercised its statutory authority to render a decision that is incompatible with those claims.” *Id.* at ___. “The MGCB did not exercise its power to determine that plaintiff was not entitled to relief.” *Id.* at ___. “More importantly, the LIGA [did] not obligate the MGCB to take such action.” *Id.* at ___. Mich Admin Code, R 432.641(7) “merely provides that, upon the filing of a complaint against an internet gaming operator, the MGCB may direct the operator to take any corrective action the MGCB deems appropriate.” *Davis*, ___ Mich at ___. “Simply because the MGCB *may* take corrective measures on some matters under the LIGA does not mean that the MGCB is *required* to take corrective measures on all matters to resolve a dispute between a patron and licensee.” *Davis*, ___ Mich at ___. “Plaintiff’s pursuit of her common-law claims in circuit court [was] not ‘inconsistent’ with a statutory scheme that confers on the MGCB discretion to take corrective action, particularly when the MGCB has expressly disclaimed any role in resolving the merits of disputes between patrons and gaming providers.” *Id.* at ___. Accordingly, plaintiff’s claims were “not inconsistent with the LIGA so as to be prohibited by [MCL 432.304\(3\)](#).” *Davis*, ___ Mich at ___. “Further, that the MGCB *may* act does not indicate that a complaint filed with the MGCB constitutes the exclusive remedy for an aggrieved consumer of online gambling activity.” *Id.* at ___ (concluding “the MGCB cannot make a decision that is incompatible with plaintiff’s common-law claims, and defendant has not shown that the MGCB is obligated to take action that could render plaintiff’s claims incompatible with the LIGA”).

Applying the *Davis* framework to the Michigan Gaming Control and Revenue Act (MGCRA), [MCL 432.201](#) *et seq.*, the Court of Appeals concluded on remand that “plaintiff’s pursuit of her common-law claims in the district court was not ‘inconsistent’ with the comprehensive statutory scheme of the MGCRA.” *Jewell v MGM Grand Detroit, LLC (On Remand)*, ___ Mich App ___, ___ (2026) (noting that “merely because the

MGCRA is comprehensive legislation does not necessarily lead to the conclusion that common-law claims are inconsistent with, and therefore supplanted by, the MGCRA”). The *Jewell* Court reasoned that “as in *Davis*, the [MGCB] ‘expressly disclaimed any role in resolving the merits of disputes’ between patrons and casinos.” *Id.* at ___, quoting *Davis*, ___ Mich at ___. “As with the Supreme Court’s review of the LIGA in *Davis*, [the Court of Appeals’] review of the MGCRA [in *Jewell* did] not reveal a grant to the [MGCB] of either the authority or the obligation to resolve individual patron disputes such as the one plaintiff presented in this case.” *Jewell*, ___ Mich App at ___. Accordingly, “the Legislature did not intend to abrogate the common-law claims of plaintiff in [*Jewell*], which [were] not inconsistent with the MGCRA.” *Id.* at ___. Therefore, the *Jewell* Court “concluded that the [MGCB] lacked the authority to resolve plaintiff’s common-law claims and that plaintiff’s common-law claims . . . were not abrogated by nor inconsistent with the MGCRA, [and] reject[ed] defendant’s argument that plaintiff . . . was obligated to exhaust administrative remedies before pursuing her common-law claims in the district court.” *Id.* at ___.

C. Statutory Constitutional Challenges

1. Generally

“A statute comes clothed in a presumption of constitutionality and that the Legislature does not intentionally pass an unconstitutional act.” *People v Cao*, ___ Mich App ___, ___ (2025) (cleaned up). Accordingly, “the party challenging a statute has the burden of showing the contrary.” *People v Burkman*, ___ Mich ___, ___ (2024). “However, under the constitutional-doubt canon, when the validity of an act is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that [courts] will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *People v Kvasnicka (On Remand)*, ___ Mich App ___, ___ (2025) (cleaned up). “Under this canon, courts reasonably presume that the Legislature did not intend to enact a statute that raises serious constitutional doubts.” *Id.* at ___ (quotation marks and citation omitted). “To avoid such an outcome [courts] must adopt any other construction of the statute *that is fairly possible*.” *Id.* at ___ (quotation marks and citation omitted).

“When a dispute arises regarding whether a properly enacted statute violates the Constitution, that dispute must be resolved by the courts, not by a single individual within the executive

branch.” *League of Women Voters of Mich v Secretary of State*, 331 Mich App 1, 12 n 5 (2020) (noting the Legislature and the Governor do have a role “to play in resolving such a dispute if they choose to do so by repealing or amending the statute at issue”). “[J]ust as a legislative body cannot legitimately enact a statute that is repugnant to the Constitution, nor can an executive-branch official effectively declare a properly enacted law to be void by simply conceding the point in litigation.” *Id.* at 11.

Facial and as-applied challenges. “A facial challenge alleges that a statute is unconstitutional on its face, meaning that, in general, the challenger must establish that no set of circumstances exists under which the statute would be valid.” *Burkman*, ___ Mich at ___ (noting that “in the First Amendment context, a facial challenge may be sufficient if it establishes that the statute prohibits constitutionally protected speech or conduct and is thus overbroad”) (cleaned up). “An as-applied challenge, on the other hand, alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action.” *Id.* at ___ (quotation marks and citation omitted).

2. Freedom of Association

“While the First Amendment protects certain forms of orderly group activity, . . . the protection is for *orderly* activity.” *People v Cao*, ___ Mich App ___, ___ (2025). See *NAACP v Button*, 371 US 415, 430 (1963). “It does not extend to conduct that deliberately or recklessly endangers the physical health or safety of current or prospective members.” *Cao*, ___ Mich App at ___. “No court has recognized a constitutional right in members of an organization to recklessly endanger the mental or physical health or safety of members or potential members of that organization.” *Id.* at ___ (cleaned up) (“address[ing] Garret’s Law, [MCL 750.411t](#), which criminalizes hazing in Michigan”). “Garret’s Law does not criminalize lawful expressive conduct by student groups.” *Cao*, ___ Mich App at ___. “Rather, it narrowly defines ‘hazing’ to include an ‘intentional, knowing, or reckless act . . . that the person knew or should have known endangers the physical health or safety of the individual.’” *Id.* at ___, quoting [MCL 750.411t\(7\)\(b\)](#). “The state’s interest in preventing such harm is well-established: A state has ‘an unqualified interest in the preservation of human life.’” *Cao*, ___ Mich App at ___, quoting *Cruzan v Director, Mo Dep’t of Health*, 497 US 261, 282 (1990).

3. Equal Protection

“It is true that the Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike.” *People v Cao*, ___ Mich App ___, ___ (2025) (cleaned up) (“address[ing] Garret’s Law, [MCL 750.411t](#), which criminalizes hazing in Michigan”). See US Const, Am XIV, § 1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”). “But unless the discrimination involves a suspect class or impinges on the exercise of a fundamental right, the applicable equal protection test is whether the classification is rationally related to a legitimate governmental purpose.” *Cao*, ___ Mich App at ___ (cleaned up). Under rational basis review, if “the legislative judgment is supported by any state of facts either known or which could reasonably be assumed the legislative judgment must be accepted.” *Id.* at ___ (cleaned up).

4. Vagueness and Overbreadth

“Generally, a criminal defendant may not defend on the basis that the charging statute is unconstitutionally vague or overbroad where the defendant’s conduct is fairly within the constitutional scope of the statute.” *People v Rogers*, 249 Mich App 77, 95 (2001). “In determining whether a statute is unconstitutionally vague or overbroad, a reviewing court should consider the entire text of the statute and any judicial constructions of the statute.” *Id.* at 94. See *People v Cao*, ___ Mich App ___, ___ (2025) (noting the due process “principle that statutes must provide fair notice of the proscribed conduct and adequate guidance to the trier of fact to determine whether the law has been violated”) (quotation marks and citation omitted).

a. Vagueness

“First, a statute need not define an offense with mathematical certainty.” *People v Cao*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted) (“address[ing] Garret’s Law, [MCL 750.411t](#), which criminalizes hazing in Michigan”). “Because statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language, courts do not allow parties to manufacture uncertainty to invalidate a law.” *Id.* at ___ (quotation marks and citation omitted). “It is, of course, virtually impossible for the legislature to employ the English language with sufficient precision to

satisfy a mind intent on conjuring up hypothetical circumstances in which commonly understood words seem momentarily ambiguous.” *Id.* at ___ (quotation marks and citation omitted). “The constitution, however, does not demand that the Legislature use words that lie beyond the possibility of manipulation.” *Id.* at ___ (cleaned up). “Instead, the constitutional due process demand is met if the words used bear a meaning commonly understood by persons of ordinary intelligence.” *Id.* at ___ (quotation marks and citation omitted). “Terms like ‘reckless’ or ‘endanger’ are not impermissibly vague simply because they require fact-specific judgments.” *Id.* at ___. “A statute is not vague simply because it criminally prohibits conduct to which a victim consents.” *Id.* at ___ (holding “that a person of ordinary intelligence could understand what [Michigan’s anti-hazing law] prohibits”).

“The void for vagueness doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property without due process of law.” *Exclusive Capital Partners, LLC v Royal Oak*, ___ Mich App ___, ___ (2024) (quotation marks and citation omitted). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Id.* at ___ (quotation marks and citations omitted). “Vague laws implicate three related, core concerns:

First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. *Second*, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. *Third*, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms.

Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.” *Id.* at ___ (quotation marks and citation omitted).

Accordingly, “a statute or ordinance may be void for vagueness if (1) it is overbroad and impinges on First Amendment freedoms, (2) it does not provide fair notice of the conduct it regulates, or (3) it gives the trier of fact unstructured and unlimited discretion in determining whether the statute has been violated.” *Id.* at ___ (cleaned up). “At its core, the void-for-vagueness doctrine is concerned that laws provide fair notice and prevent arbitrary enforcement rather than with the deprivation of a claimant’s property or liberty interests; the doctrine applies regardless of whether a property or liberty interest is clearly established.” *Id.* at ___ (rejecting “the [c]ity’s argument that the void-for-vagueness doctrine [was] inapplicable because [plaintiff] lack[ed] a valid property interest as a first-time license applicant”).

“The vagueness doctrine incorporates notions of fair notice or warning and requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” *People v Burkman*, ___ Mich ___ (2024) (quotation marks and citation omitted). “Accordingly, a statute may be considered unconstitutionally vague if it fails to provide fair notice of the conduct proscribed or encourages arbitrary and discriminatory enforcement.” *Id.* at ___ (cleaned up).

“To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application. For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.” *People v Sands*, 261 Mich App 158, 161 (2004) (citations omitted). See also *Burkman*, ___ Mich at ___ (“A statute provides fair notice when it gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and such knowledge may be acquired by referring to judicial interpretations, common law, dictionaries, treatises, or the common meaning of

words.”) (cleaned up). “A statute is not vague if the meaning of the words in controversy can be fairly ascertained by referring to their generally accepted meaning.” *People v Harris*, 495 Mich 120, 138 (2014).

“When a defendant’s vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in [the] case.” *People v Newton*, 257 Mich App 61, 66 (2003).

“A statute is unconstitutionally vague where people of common intelligence must guess at the statute’s meaning and differ with regard to how it applies.” *Exclusive Capital Partners*, ___ Mich App at ___ (quotation marks and citation omitted). “When determining whether a statute inappropriately delegates unstructured and unlimited discretion to a decision maker, the court examines whether the statute provides standards for enforcing and administering the laws in order to ensure that enforcement is not arbitrary or discriminatory” *Id.* at ___ (quotation marks and citation omitted).

In *Exclusive Capital Partners*, the plaintiff asserted that a recreational marijuana licensing ordinance was unconstitutionally vague because it gave unfettered discretion to the city manager and failed to give license applicants notice of how the ordinance would be applied. *Id.* at ___. The licensing ordinance indicated that “certain competitive criteria” applied to the process of selecting license recipients, “including the likelihood of success in harmony with surrounding properties along with [other] criteria that implicate[d] an applicant’s tax history, criminal history, financial history, operational history, and sustainability [plans].” *Id.* at ___. “Ultimately, the city manager reviewed all the applications, considered each in relation to the competitive criteria of the marijuana ordinance, compared the applicants to one another, and independently ranked the applicants into three categories consisting of the two successful applicants, applicants put on standby, and applicants who were rejected.” *Id.* at ___. “The ordinance undoubtedly allow[ed] the city manager some leeway and discretion in administering the licensing process. But it [did] not do so to the extent that it render[ed] the ordinance constitutionally infirm.” *Id.* at

____. “Due process does not preclude a city from giving vague or ambiguous directions to officials who are authorized to make recommendations.” *Id.* at ____ (cleaned up). “The relevant inquiry is whether the ordinance is so lacking in standards as to give those charged with implementing it carte blanche to follow their personal predilections.” *Id.* at _____. “Even assuming that the city manager was confused with respect to implementation of the ordinance’s competitive process, this alleged fact, if established, would not necessarily indicate that the city manager acted with unbridled discretion.” *Id.* at _____.

b. Overbreadth

“Facial overbreadth challenges to statutes have been entertained where a statute (1) attempts to regulate by its terms only spoken words, (2) attempts to regulate the time, place, and manner of expressive conduct, or (3) requires official approval by local functionaries with standardless, discretionary power.” *People v Rogers*, 249 Mich App 77, 95-96 (2001).

“The overbreadth doctrine exists to prevent the chilling of speech, but this doctrine may not be casually employed and has been considered, manifestly, strong medicine.” *People v Burkman*, ____ Mich ____, ____ (2024) (cleaned up). “The mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge; instead, a challenger must prove a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court.” *Id.* at ____ (cleaned up). “Stated differently, where conduct and not merely speech is involved, a court must first determine whether the law reaches a substantial amount of constitutionally protected conduct.” *Id.* at ____ (cleaned up). “The statute’s overbreadth must be *substantial*, not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep.” *Id.* at ____ (holding that [MCL 168.932\(a\)](#) “regulates substantially more political speech than its plainly legitimate sweep allows”) (cleaned up).

“However, a statute may be saved from being found to be facially invalid on overbreadth grounds where it has been or could be afforded a narrow and limiting construction by state courts[.]” *Burkman*, ____ Mich at ____ (quotation marks and citation omitted). “Facial overbreadth has not been invoked when a limiting construction has been or

could be placed on the challenged statute.” *Id.* at ___ (quotation marks and citations omitted). Courts “are duty bound under the Michigan Constitution to preserve the laws of this state and to that end to construe them if [a court] can so that they conform to federal and state constitutional requirements.” *Id.* at ___ (cleaned up). The *Burkman* Court held that “when the charged conduct is *solely* speech and does not fall under any exceptions to constitutional free-speech protections, [MCL 168.932\(a\)](#)’s catchall phrase operates to proscribe that speech only if it is intentionally false speech that is related to voting requirements or procedures and is made in an attempt to deter or influence an elector’s vote.” *Burkman*, ___ Mich at ___. “This limiting construction cures the serious and realistic danger that [MCL 168.932\(a\)](#)’s catchall provision infringes constitutional free-speech protections by limiting the statute’s reach to areas where government regulation is constitutionally provided or has been historically upheld.” *Burkman*, ___ Mich at ___ (concluding that [MCL 168.932\(a\)](#) was overbroad and “offer[ing] a limiting construction of the statute’s catchall phrase”). See *People v Burkman (On Remand)*, ___ Mich App ___ (2024), where the Court of Appeals analyzed the Supreme Court’s limiting construction of [MCL 168.932\(a\)](#) in light of the specific facts at issue in the matter.

D. Retroactivity of Statutes³⁶

“Statutes are intended to apply prospectively absent clear legislative intent to the contrary.” *McLain v Roman Catholic Diocese of Lansing*, 514 Mich 1, 23 (2024). “In determining whether a statute should be applied retroactively or prospectively only, the primary and overriding rule is that legislative intent governs.” *Id.* at 23 (cleaned up). “All other rules of construction and operation are subservient to this principle.” *Buhl v Oak Park*, 507 Mich 236, 244 (2021) (quotation marks and citation omitted). “Whether a statute applies retroactively presents a question of statutory construction[.]” *People v Conyer*, 281 Mich App 526, 528 (2008). “A statute is presumed to operate prospectively ‘unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect.’” *Id.* at 529, quoting *People v Russo*, 439 Mich 584, 594 (1992).

“Amendments of statutes are generally presumed to operate prospectively unless the Legislature clearly manifests a contrary intent.” *Conyer*, 281 Mich App at 529 (cleaned up). “However, an

³⁶See [Section 1.4\(I\)](#) for information on retroactivity of judicial decisions.

exception to this general rule is recognized if a statute is remedial or procedural in nature." *Id.* "A statute is remedial if it is designed to correct an existing oversight in the law or redress an existing grievance, or if it operates in furtherance of an existing remedy and neither creates nor destroys existing rights." *Id.* "A statute that affects or creates substantive rights is not remedial, and is not given retroactive effect, absent clear indication of legislative intent otherwise." *Id.* "[A] statute or amendment may not be applied retroactively if doing so would take away or impair vested rights acquired under existing laws, or create a new obligation and impose a new duty, or attach a new disability with respect to transactions or considerations already past. *Buhl*, 507 Mich at 246 (cleaned up). "Conversely, then, a newly enacted statute or amendment should not be retroactively applied if doing so would relieve a party of a substantive duty." *Id.* at 247.

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

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

"Retroactive application of legislation presents problems of unfairness because it can deprive citizens of legitimate expectations and upset settled transactions." *McLain*, 514 Mich at 24 (cleaned up). Courts "have therefore required that the Legislature make its intentions clear when it seeks to pass a law with retroactive effect." *Id.* at 24 (quotation marks and citation omitted). In *McLain*, the Michigan Supreme Court held that "[MCL 600.5851b\(1\)\(b\)](#) creates a discovery rule for measuring the accrual date for the limitations period for claims of criminal sexual conduct occurring after its passage." *McLain*, 514 Mich at 30 (noting that plaintiff's claims were barred by the statute of limitations unless the statute applied retroactively).

With respect to the first *LaFontaine* principle, the *McLain* Court held that "[t]he plain language of the statute does not clearly indicate

that the discovery rule accrual method described in [MCL 600.5851b(1)(b)] should apply retroactively to resuscitate stale claims." *McLain*, 514 Mich at 30. Indeed, MCL 600.5851b(1)(b) "does not include the past tense 'was,' which could support a backward-looking application of the statute." *McLain*, 514 Mich at 24-25 (stating that the statute's "use of the present-tense term 'is' suggests prospective-only application.") "Importantly, the statute does not state whether it applies to a cause of action that already accrued before its effective date." *McLain*, 514 Mich at 25 (observing that "the statute was given immediate effect without further elaboration"). "In stark contrast, neighboring [MCL 600.5851b(3)] sets forth retroactive intent in pellucid terms." *McLain*, 514 Mich at 30. The Court stated that "the Legislature clearly knows how to signal its intent that a statute apply retroactively, and it did so in [MCL 600.5851b(3)], but not in [MCL 600.5851b(1)(b)]." *McLain*, 514 Mich at 25-26. Courts "presume prospective intent unless rebutted by clear intent for retroactive application, not the other way around." *Id.* at 26. Accordingly, the Court held that the statute evidenced "the Legislature's intent to create a discovery rule for accrual of claims," but did not "indicate an intent for the statute to retroactively revive already-expired claims or undermine our earlier analysis concluding that the plain language of the statute does not support retroactive application." *Id.* at 27.

The *McLain* Court determined that the second *LaFontaine* principle did not apply because MCL 600.5851b(1)(b) did not "relate to measuring the amount of entitlement provided by a subsequent statute in part by services rendered pursuant to a prior statute." *McLain*, 514 Mich at 28 (cleaned up). The third *LaFontaine* principle required the Court to "consider whether defendants have a vested right in not being sued for criminal sexual conduct committed in the past for which the statute of limitations has already expired." *Id.* at 29 ("declin[ing] to resolve . . . contradictory caselaw because [the] principle [was] not dispositive when the statute [did] not clearly demonstrate retroactive intent under the first *LaFontaine* inquiry"). Next, the Court addressed the final *LaFontaine* principle, which "states that a remedial or procedural act not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute." *Id.* at 29 (quotation marks and citation omitted). The *McLain* Court determined that this consideration did not apply, stating that "regardless of whether this case involves a vested right, a statute of limitations that has lapsed does not fall into the remedial-procedural exception to prospective application because substantive rights are affected when causes of action can be lost as a result of becoming time-barred." *McLain*, 514 Mich at 29-30 (holding that plaintiff's claim was untimely because MCL 600.5851b(1)(b) did "not apply retroactively to revive

limitations periods that have already expired”) (quotation marks and citation omitted).

E. Standard of Review

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

1.8 Constitutional Construction and Interpretation

Constitutional construction. When courts interpret the Michigan Constitution, the “primary objective is to realize the intent of the people by whom and for whom the constitution was ratified.” *Ruggiero v Unnamed Genesee Co Pub Body*, ___ Mich App ___, ___ n 4 (2025) (cleaned up). “Accordingly, [courts] seek to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.” *Id.* at ___ (quotation marks and citation omitted). “To do so, [courts] must consider the circumstances leading to the adoption of the provision and the purpose sought to be accomplished.” *Id.* at ___ (quotation marks and citation omitted). “To help discover the common understanding, . . . constitutional convention debates and the address to the people, though not controlling, are relevant.” *Id.* at ___ (quotation marks and citation omitted). “Furthermore, a constitution is made for the people and by the people.” *Id.* at ___ (cleaned up). “The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.” *Id.* at ___ (quotation marks and citation omitted).

Authority to fill county clerk vacancy. In *Ruggiero*, the Court of Appeals held that “because the office of county clerk was vacant, Const 1963, art 6, § 14,³⁷ applied and empowered the judges of the Genesee Circuit Court, i.e., the Unnamed Body, to fill the vacancy.” *Ruggiero*, ___ Mich App at ___. “Whether the words ‘must,’ ‘shall,’ or ‘may’ were used, Const 1963, art 6, § 14, explicitly gives the circuit court judges of the county the authority to fill vacancies in the offices of county clerk and prosecuting attorney, which the judges exercised[.]” *Ruggiero*, ___ Mich App at ___ (“[Plaintiff’s] argument rests largely on the presence of the permissive word ‘may’ within Const 1963, art 6, § 14, but this argument relies on principles of statutory, rather than constitutional, interpretation.”). “The fact the word ‘may’ was used does not mean the Legislature can infringe on constitutionally granted authority, even if that authority is permissive.” *Ruggiero*, ___ Mich App at ___. “The Legislature is

³⁷ “The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county. *The judges of the circuit court may fill a vacancy in an elective office of county clerk or prosecuting attorney within their respective jurisdictions.*” Const 1963, art 6, § 14.

empowered to establish the process to fill vacancies in certain offices, but this power applies only to offices ‘where no provision is made in this constitution.’” *Id.* at ___, quoting Const 1963, art 4, § 38. Because “Const 1963, art 6, § 14, does address the filling of vacancies in the office of county clerk[. . .] the trial court correctly determined that the Unnamed Body was the proper body to fill the clerk-register vacancy.” *Ruggiero*, ___ Mich App at ___ (“That the drafters of our Constitution assigned this authority to the judge(s) of the circuit court is understandable in light of the fact that the county clerk is the clerk of the circuit court and the custodian of the court’s records.”).

Separations of powers clause. The Michigan Separation of Powers Clause, Const 1963, art 3, § 2,³⁸ “does not require so strict a separation as to provide no overlap of responsibilities and powers among the branches.” *Ruggiero*, ___ Mich App at ___. “Rather, branches may constitutionally share power so long as the authority exercised by one branch of government is limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other.” *Id.* at ___ (cleaned up). “The judicial powers derived from the Constitution include rulemaking, supervisory and other administrative powers as well as traditional adjudicative ones.” *Id.* at ___ (quotation marks and citation omitted) (observing “that the management of the employees of the judicial branch falls within the constitutional authority and responsibility of the judicial branch is well established, and this includes trial courts”) (cleaned up). “They have been exclusively entrusted to the judiciary by the Constitution and may not be diminished, exercised by, nor interfered with by the other branches of government without constitutional authorization.” *Id.* at ___ (quotation marks and citation omitted). “The naming of a new county clerk is an administrative power derived from the Constitution that has been exclusively entrusted to the judiciary.” *Id.* at ___ (quotation marks and citation omitted). “It may not, therefore, be diminished, exercised by, nor interfered with by the other branches of government without constitutional authorization.” *Id.* at ___ (quotation marks omitted). “Subjecting this process to the [Open Meetings Act (OMA), [MCL 15.261 et seq.](#)] would necessarily involve encroachment of one branch at the expense of another.” *Ruggiero*, ___ Mich App at ___ (cleaned up) (holding that applying the OMA to the Unnamed Body violated the Separation of Powers Clause because the judges were performing a judicial function).

Takings clause. Michigan’s Takings Clause, Const 1963, art 10, § 2 “provides that private property shall not be taken for public use without just compensation.” *Yono v Ingham Co*, ___ Mich ___, ___ (2025) (cleaned up). “Because Michigan’s Takings Clause has been interpreted to afford

³⁸ “The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const 1963, art 3, § 2.

greater protection than its federal counterpart,” Michigan courts may be guided by federal decisions to determine whether there is a violation of Michigan’s Takings Clause. *Id.* at ___ n 4. See generally *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 454-462 (2020); but see *People v Goldston*, 470 Mich 523, 534 (2004) (“In interpreting [Michigan’s] Constitution, we are not bound by the United States Supreme Court’s interpretation of the United States Constitution, even where the language is identical.”).

“[T]here is [no compensable] taking under Michigan’s Takings Clause, Const 1963, art 10, § 2, when the government forecloses on real property to recover delinquent property taxes and that property fails to sell at a public auction.” *Yono*, ___ Mich at ___. “The result of a public foreclosure sale demonstrates as a matter of law the amount of any surplus for purposes of a takings claim; the failure to sell the real property at the auction establishes that the government did not take more property than it was owed.” *Id.* at ___. In *Yono*, “the foreclosure sale . . . demonstrated that the value of the property interest the government retained [was] less than what plaintiff owe[d] in property taxes because the property did not sell for the minimum bid.” *Id.* at ___. “Because there were no proceeds from the sale, plaintiff [was] not entitled to any compensation.” *Id.* at ___.

1.9 Municipal and County Charters and Ordinances: Construction and Interpretation

“Michigan is a home rule state, in which local governments are vested with general constitutional authority to act on all matters of local concern not forbidden by state law.” *Hackel v Macomb Co Bd of Comm’rs*, ___ Mich ___, ___ (2025) (quotation marks and citation omitted). “Municipal charters should be construed in a rational manner, keeping in mind that they are not always as judiciously framed as they might be.” *Hackel*, ___ Mich at ___ (quotation marks and citations omitted). “However, well-known guiding principles of statutory construction apply to county or municipal ordinances, as well as county charters.” *Id.* at ___. “The primary goal of interpreting an ordinance or charter is to discover and give effect to the intent of the enacting body.” *Id.* at ___. Courts “are required to construe a charter’s language by its commonly accepted meaning as long as it does not produce absurdity, hardship, injustice, or prejudice to the drafters and ratifiers.” *Id.* at ___ (cleaned up) (observing that “the plain and ordinary meaning of relevant terms must be understood in light of the context in which the words are used”) (quotation marks and citation omitted). Courts “strive[] to harmonize and give effect to every word, phrase, and clause, and to avoid an interpretation that renders nugatory or surplusage any part of a statute, ordinance, or charter.” *Id.* at ___ (noting that the interpretation of a municipal charter presents a question of law that courts review de novo).

“Although more limited in scope and applicability than a state statute, an ordinance enacted by a county or municipal legislative body represents an analogous form of positive law with binding legal effect within the relevant jurisdiction.” *Id.* at ___. “If properly enacted and adopted without a veto, a county ordinance becomes the law within the jurisdiction.” *Id.* at ___. “And it is well established in Michigan that ordinances are presumed valid, and the burden is on the person challenging the ordinance to rebut the presumption.” *Id.* at ___ n 6 (cleaned up). “An ordinance is valid and enforceable if it is consistent with the powers conferred by the state in its Constitution and statutes and if it falls within the scope of authority delegated by the electorate as set forth in the relevant charter.” *Id.* at ___ (“One form of inconsistency that would render an ordinance invalid would be preemption by a superior law, such as a state statute or constitution.”). “Thus, a validly enacted ordinance is as much entitled to respectful obedience, and is as much the law of the land for that locality, as a law enacted by the Legislature.” *Id.* at ___ (cleaned up).

In *Hackel*, the Michigan Supreme Court held that “Macomb County’s legislative branch ha[d] authority to require the county’s executive branch to provide it with digital real-time, read-only access to financial information that the legislative branch deems necessary to perform its budgeting obligations.” *Id.* at ___ (concluding that by law, which includes a validly enacted local ordinance, Macomb County’s Charter gave the County Commission legal authority to require the County Executive to provide such access to the necessary financial information). “Macomb County voters . . . chose a power-sharing arrangement under which the primary powers of governance are divided between the County Executive and the Commission.” *Id.* at ___. “In Macomb County, the Commission is vested with legislative power and the County Executive is vested with executive power.” *Id.* at ___ (“The Commission’s general legislative authority to act through ordinances as it relates to local matters is firmly established.”). “Although counties lack the state’s police power to regulate for the general welfare, a county board of commissioners may ‘pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county’” *Id.* at ___, quoting [MCL 46.11\(j\)](#); see also [MCL 45.514\(1\)\(i\)](#) (providing that a county charter must include “[t]he power and authority to adopt, amend, and repeal any ordinance authorized by law or necessary to carry out any power, function, or service authorized by [the Michigan charter counties act, [MCL 45.501 et seq.](#)] and by the charter”). “The Commission’s power to act by ordinance is also enshrined in the Michigan Constitution, which provides that, ‘[s]ubject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.’” *Hackel*, ___ Mich at ___, quoting Const 1963, art 7, § 2.

“The ordinance [did] not directly conflict with other provisions of the Charter or state law and therefore [was] presumptively valid.” *Hackel*, ___ Mich at ___ (observing that the Charter stated “that the management and supervisory authority held by the County Executive can be limited ‘as otherwise provided by this Charter or law’”) (emphasis added). Because “a validly enacted ordinance constitutes a ‘law’ for purposes of Charter, § 3.5(a), [the legislative branch has] authority to impose at least some conditions on the County Executive’s management and supervisory powers through an ordinance.” *Hackel*, ___ Mich at ___. “Whether considered in a common or technical sense, the plain and ordinary meaning of ‘law’ is exceptionally broad.” *Id.* at ___. “Although the use of ‘law’ in a specific context or in conjunction with a specific modifier can narrow the scope of the term, the starting point must be a broad and inclusive meaning.” *Id.* at ___.

The *Hackel* Court “[saw] no reason to interpret the phrase ‘by . . . law’ in Charter, § 3.5(a) as excluding validly enacted county ordinances given the surrounding context.” *Hackel*, ___ Mich at ___. “Unlike in other sections of the Charter, the term ‘law’ as used in Charter, § 3.5(a) is not expressly confined to laws passed by the Michigan Legislature.” *Hackel*, ___ Mich at ___. “The drafters of the Charter could have included limiting modifiers or alternative phrases such as ‘applicable laws,’ ‘state law,’ ‘state statute,’ or ‘laws of this state,’ but they chose not to do so.” *Id.* at ___. “This choice appears intentional, considering that numerous other provisions of the Charter include limiting language that, when read in context, confines the term ‘law’ to state laws.” *Id.* at ___.

The Court noted “numerous examples in the Charter of provisions that refer to ‘law’ as being narrower than all forms of laws or contrast the term with local ordinances.” *Id.* at ___ n 9. The *Hackel* Court “conclude[d] that the most rational way to harmonize the use of ‘law’ within Charter, § 3.5, and within Article III as a whole, [was] to read the term as including validly enacted county ordinances unless surrounding context or a textual modifier clearly provides for a narrower meaning.” *Hackel*, ___ Mich at ___. The Court further noted that the “Charter uses the unmodified form of ‘law’ inconsistently.” *Id.* at ___. “Accordingly, each usage of ‘law’ should be read in context with the goal of achieving rational internal harmony within the relevant section and article of the Charter that is under consideration.” *Id.* at ___.

Title-object rule. A charter may include a provision that “no ordinance shall contain more than one subject, and the ordinance title must clearly express that subject.” *Comm for Marshall-Not the Megasite v City of Marshall (On Remand)*, ___ Mich App ___, ___ (2026) (quotation marks and citation omitted). “This limitation is substantially similar to the title-object clause in Michigan’s constitution.” *Id.* at ___ (quotation marks and citation omitted); see Const 1963, art 4, § 24 (“No law shall embrace more than one object, which shall be expressed in its title.”). “The purpose of such

clauses is to prevent the Legislature from passing laws not fully understood, to ensure that both the legislators and the public have proper notice of legislative content, and to prevent deceit and subterfuge.” *Comm for Marshall*, ___ Mich App at ___ (quotation marks and citation omitted).

“The object of a law is its general purpose or aim.” *Id.* at ___ (quotation marks and citation omitted). “A title-body challenge is an assertion that the body of an act exceeds the scope of its title.” *Id.* at ___ (quotation marks and citation omitted). “However, the title of an act is not required to serve as an index to all of the provisions of the act.” *Id.* at ___ (quotation marks and citation omitted). “The goal of the clause is notice, not restriction of legislation.” *Id.* at ___ (quotation marks and citation omitted). “Legislation does not contain multiple objects solely because it contains more than one means of attaining its primary purpose.” *Id.* at ___ (quotation marks and citation omitted). “A title will only fail to give fair notice if the subject in the body is so diverse from the subject in the title that they have no necessary connection.” *Id.* at ___ (quotation marks and citation omitted). “Even if not directly mentioned in the title of the act, if the title comprehensively declares a general object or purpose, a provision in the body is not beyond the scope of the act as long as it is germane, auxiliary, or incidental to that general purpose.” *Id.* at ___ (cleaned up).

1.10 Application of Newly Adopted or Previous Version of Court Rule to Pending Actions

A. Generally

“There is no bright-line rule for determining when an amended or previous version of a rule applies; rather, the court must look more closely to the particular circumstances of the case at issue and at the purpose of the amendment.” *Webster v Osguthorpe*, ___ Mich ___, ___ (2025) (quotation marks and citation omitted). However, “the question of whether a newly amended or adopted court rule applies is governed by [MCR 1.102](#) because it provides its own specific rules for the application of new and amended court rules that should take precedence over the generalized rules of retrospectivity and prospectivity.” *Webster*, ___ Mich at ___ (quotation marks and citation omitted). [MCR 1.102](#) states:

“These rules take effect on March 1, 1985. They govern all proceedings in actions brought on or after that date, and all further proceedings in actions then pending. A court may permit a pending action to proceed under the former rules if it finds that the application of these rules

to that action would not be feasible or *would work injustice.*" *Webster*, ___ Mich at ___.

"Although the rule explicitly addresses the initial adoption of the modern court rules in 1985, those principles from [MCR 1.102](#) have been applied not only to the initial adoption of the rules, but also to later adopted or amended rules." *Webster*, ___ Mich at ___ (cleaned up). "That is, a newly adopted court rule will not be applied to pending actions if a party acts, or fails to act, in reliance on the prior rules and the party's action or inaction has consequences under the new rules that were not present under the old rules." *Id.* at ___ (cleaned up) (noting that "the norm is to apply the newly adopted court rules to pending actions unless there is reason to continue applying the old rules") (quotation marks and citation omitted).

"[MCR 1.102](#) provides the pertinent analysis because it specifically permits trial courts to apply former court rules if doing so would prevent injustice." *Webster*, ___ Mich at ___. "The injustice exception to applying the current rule in [MCR 1.102](#) must be applied narrowly and with restraint, such that the exception does not subsume the rule itself[.]" *Webster*, ___ Mich at ___ (quotation marks and citation omitted). "An injustice is not present merely because a different result would be reached under the new rules." *Id.* at ___ (cleaned up) ("adopt[ing] the framework announced in *Reitmeyer[v Schultz Equip & Parts Co, Inc, 237 Mich App 332 (1999),]* as the appropriate guide for trial courts to follow when determining whether to apply a newly adopted court rule to pending actions"). Accordingly, "an individualized determination guided by the nonexhaustive factors from *Reitmeyer*—including timing, purpose of the newly adopted rule, possible gamesmanship, and reliance—is appropriate given that these factors bear on whether injustice would occur." *Webster*, ___ Mich at ___.

B. Caselaw: Determining When An Amended or Previous Version of a Rule Applies

"[D]uring the pendency of the litigation" in *Webster v Osguthorpe*, ___ Mich ___ (2025), "[the] Court amended [MCR 2.403](#) and, while [MCR 2.403\(O\)](#) had previously permitted an award of costs and attorney fees as sanctions against a losing party who rejects a case-evaluation award (unless the verdict is more favorable to them than the award), the amendment . . . eliminated the availability of case-evaluation sanctions altogether." *Webster*, ___ Mich at ___. "The trial court appropriately cited the test from *Reitmeyer[v Schultz Equip & Parts Co, Inc, 237 Mich App 332 (1999),]* explaining that because of the court-rule change during the pendency of the case, the current version of the rule 'applies unless the result thereunder would work an injustice.'" *Webster*, ___ Mich at ___. "The court found significant

that case evaluation occurred more than a year before the rule change.” *Id.* at _____. “Also significant was that before the change became effective, the parties attended multiple settlement conferences, participated in a facilitation session, and had three different trial dates.” *Id.* at _____. Accordingly, the trial court “found that plaintiff’s decisions to proceed to trial were made in reliance on the availability of sanctions under the former rule such that justice favored its application.” *Id.* at _____.

“*Reitmeyer* instructs that one factor guiding the determination is whether applying the amended rule furthers its purpose given the timing of events in the case.” *Webster*, ___ Mich at _____. “One purpose of eliminating case-evaluation sanctions was to level the playing field, particularly given that the process often benefitted defendants who could absorb costs across multiple cases.” *Id.* at _____. “Another reason was that stakeholders felt that case evaluation would often force settlements divorced from the merits of the claims.” *Id.* at _____. However, in *Webster*, “all the actions that could affect whether to award case-evaluation sanctions occurred before the amendment became effective.” *Id.* at _____. “Accordingly, because of the timing of events in the case, the goals of the amendment would not have been furthered.” *Id.* at _____. “Relatedly, the trial court should look to the parties’ reliance or lack of reliance on the rules that existed when they made pertinent strategic decisions.” *Id.* at _____. “[O]ne could find that plaintiff had every reason to believe that if the case went to trial, the trial would be over and any sanctions would be awarded under the old court rules.” *Id.* at _____ (quotation marks and citation omitted) (rejecting defendants’ argument “that, because the trial had not yet occurred by the date the amendment was effective, former [MCR 2.403\(O\)](#) was not applicable” considering that “the parties prepared for trial numerous times leading up to the rule change”).

“Applying the considerations from *Reitmeyer*, . . . the trial court did not abuse its discretion by awarding case-evaluation sanctions to plaintiff under former [MCR 2.403\(O\)](#).” *Webster*, ___ Mich at _____ (“[B]ecause defendants rejected the case-evaluation award and the verdict was not more favorable to defendants than the award, plaintiff [was] entitled to sanctions under the conditions of [MCR 2.403\(O\)](#) as it was applied.”).

C. Standard of Review

A trial court’s decision regarding the application of a newly adopted court rule to a pending action is reviewed for abuse of discretion. *Webster v Osguthorpe*, ___ Mich ___, ___ (2025). “Abuse-of-discretion review is generally appropriate when a decision requires familiarity with the facts of the case and experience in maintaining a trial court

docket.” *Id.* at ___ (cleaned up). “Relatedly, abuse-of-discretion review is appropriate when a question is not primarily legal but instead grows out of, and is bounded by, case-specific detailed factual circumstances.” *Id.* at ___ (quotation marks and citation omitted). “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *Id.* at ___ (quotation marks and citation omitted). “A trial court necessarily abuses its discretion when it makes an error of law.” *Id.* at ___ (quotation marks and citation omitted) (“We cannot say that there was an abuse of discretion when the trial court correctly applied [MCR 1.102](#) and *Reitmeyer*[*v Schultz Equip & Parts Co, Inc*, 237 Mich App 332 (1999)].”). “The factual findings undergirding these [nonexhaustive *Reitmeyer*] factors are reviewed for clear error.” *Webster*, ___ Mich at ___ n 8 (“We find no clear error in the trial court’s findings of fact.”).

Chapter 2: Circuit Court Appeals

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Part A: General Procedural Rules & Information

2.1 Appeals to Circuit Court

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

“An appeal under [subchapter 7.100 of the Michigan Court Rules] must be heard by a judge other than the judge that conducted the trial.” [MCR 7.103\(C\)](#). See also *People v Ward*, 501 Mich 949, 949 (2018) (holding that a circuit court judge may not “review[] on appeal, as a circuit judge, decisions that he rendered while acting as a district court judge”).

A. Standing

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

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

B. Exhaustion of Administrative Remedies

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

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

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

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

“The failure to object to a proposal for decision waives any objections not raised.” *Meier v Pub Sch Employees’ Retirement Sys*, 343 Mich App 571, 579 (2022) (quotation marks and citation omitted). “The waiver extinguishes any error and precludes appellate review.” *Id.* at 579. “It is not sufficient to generally raise issues concerning an [administrative law judge’s] decision. A plaintiff must specifically identify alleged errors so that the agency has an opportunity to correct them.” *Id.* at 579.

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

C. Jurisdiction

Circuit court. Jurisdiction vests in the circuit court after a claim of **appeal** is filed or leave to appeal is granted. [MCR 7.107](#); see also [MCL 600.8342\(2\)](#). However, a “circuit court lacks jurisdiction over an untimely claim of appeal” because the “time limit for filing an appeal in circuit court is jurisdictional[.]” *Zelasko v Bloomfield Twp*, 347 Mich App 141, 157 (2023) (citing [MCR 7.104\(A\)](#) and *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393-394 (2019)).

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

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

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

Committee Tip:

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

D. Venue

“Appeals from the district court shall be to the circuit court in the county in which the judgment is rendered.” [MCL 600.8342\(1\)](#).

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

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

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

Criminal cases. “An appeal from an interlocutory judgment or order in a felony, misdemeanor, or ordinance violation may be taken, in the manner provided by court rules, by application for

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

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

leave to appeal to the same court of which a final judgment in that case would be appealable as a matter of right[.]” [MCL 770.3\(2\)](#).

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

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

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

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

E. Stay of Proceedings and Bond

A motion for bond or stay pending **appeal** must be decided by the **trial court** before it may be filed in the circuit court. [MCR 7.108\(A\)\(1\)](#). “The motion must include a copy of the trial court’s opinion and order and a copy of the transcript of the hearing, unless

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

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

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

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

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

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

1. Civil Proceedings¹¹

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

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

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

The bond must:

- “(a) recite the names and designations of the parties and the judge in the trial court; identify the parties for whom and against whom judgment was entered; and state the amount of the judgment, including any costs, interest, attorney fees, and sanctions assessed;
- (b) contain the promises and conditions that the appellant will:
 - (i) diligently file and prosecute the appeal to decision taken from the judgment or order stayed, and will perform and satisfy the judgment or order stayed if it is not set aside or reversed;

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

- (ii) perform or satisfy the judgment or order stayed if the appeal is dismissed;
 - (iii) pay and satisfy any judgment or order entered and any costs assessed against the principal on the bond in the circuit court, Court of Appeals, or Supreme Court; and
 - (iv) do any other act which is expressly required in the statute authorizing appeal or ordered by the court;
- (c) be executed by the appellant along with one or more sufficient sureties as required by [MCR 3.604](#); and
- (d) include the conditions provided in [MCR 4.201\(O\)\(4\)](#) if the appeal is from a judgment for the possession of land.” [MCR 7.108\(B\)\(3\)](#).

A copy of the bond must be served on all parties as prescribed in [MCR 2.107](#)¹², and objections must be filed and served within seven days after service of the notice of bond. [MCR 7.108\(B\)\(4\)\(a\)-\(b\)](#). “Objections to the amount of the bond are governed by [MCR 2.602\(B\)\(3\)](#),” and “[o]bjections to the surety are governed by [MCR 3.604\(E\)](#).” [MCR 7.108\(B\)\(4\)\(b\)](#). Hearings under [MCR 7.108](#) may be held by telephone conference as provided in [MCR 2.402](#).¹³ [MCR 7.108\(B\)\(4\)\(e\)](#).

“If no timely objections to the bond, surety, or stay order are filed, the trial court shall promptly enter [an] order staying enforcement of the judgment or order pending all appeals.” [MCR 7.108\(B\)\(4\)\(c\)](#). Unless otherwise ordered, the stay continues until jurisdiction is returned to the trial court, or until further order of an appellate court. *Id.* The stay order must be served on all parties as prescribed in [MCR 2.107](#)¹⁴, and

¹²Notwithstanding any other provision of [[MCR 2.107](#)], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of [[MCR 2.107\(C\)\(4\)](#)].” [MCR 2.107\(G\)](#).

¹³See the Michigan Judicial Institute’s *Civil Proceedings Benchbook*, Chapter 1, for information on communication equipment.

¹⁴Notwithstanding any other provision of [[MCR 2.107](#)], until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of [[MCR 2.107\(C\)\(4\)](#)].” [MCR 2.107\(G\)](#).

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

“[A] bond is required to secure a stay of proceedings to enforce the judgment during the appeal, it is not a condition of the right to appeal”; therefore, an appellant’s “failure to timely file a bond does not negate his right to appeal” where the circuit court accepts the appellant’s late-posted bond. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 232, 236 n 1 (2013) (applying former [MCR 7.101\(C\)\(2\)\(b\)](#)¹⁵ and quoting *Wright v Fields*, 412 Mich 227, 228 (1981)).

2. Criminal Proceedings

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

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

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

¹⁵ The Court noted that although “the preamendment court rules govern[ed the] case[, t]he fundamental legal principles governing appellate standing remain[ed] unaffected by changes in the language of the applicable Court Rules [under ADM 2010-19, effective May 1, 2012].” *Matthew R Abel, PC*, 302 Mich App at 238.

(g) to comply with any other conditions imposed by law or the court.” [MCR 7.108\(C\)\(2\)](#).

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

F. Appeal of Right¹⁶

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

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

1. Jurisdiction/Timing

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

- (1) a **final judgment or final order** of a district or municipal court, except a judgment based on a plea of guilty or nolo contendere;
- (2) a final order or decision of an **agency** governed by the Administrative Procedures Act, [MCL 24.201 et seq.](#); and
- (3) a final order or decision of an agency from which an appeal of right to the circuit court is provided by law.” [MCR 7.103\(A\)](#).¹⁷ See also [MCL 770.3\(1\)](#) (specifying appeals of right in criminal cases).

Aggrieved party. “To be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future

¹⁶See the Michigan Judicial Institute’s [General Appeals of Right Table](#).

¹⁷ See [Part B](#) for discussion of specific types of circuit court appeals.

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

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

A circuit court “acting in its appellate capacity” has “authority under [MCR 7.114\(D\)](#) and [MCR 2.119\(F\)](#)” to reconsider and reverse “its own order of acquittal” because it is “not final” and “subject to appellate review or reconsideration.” *People v Simmons*, 509 Mich 918 (2022). Accordingly, the Michigan Supreme Court held that “any double jeopardy concerns related to [the circuit court’s] prior determination of the defendant’s innocence” were “eliminat[ed].” *Id.* at 918.

“The time limit for an appeal of right is jurisdictional.” [MCR 7.104\(A\)](#).¹⁸ An appeal of right must be taken within:

“(1) 21 days or the time allowed by statute after **entry** of the judgment, order, or decision appealed, or

(2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision, if the motion was filed within:

(a) the initial 21-day period, or

(b) further time the **trial court** or **agency** may have allowed during that 21-day period.” [MCR 7.104\(A\)](#).

¹⁸Timing for appeals from **agency** decisions may be controlled by a more specific court rule or statute. See, e.g., [MCR 7.116\(B\)](#) (appeal of right from decision of the Michigan Compensation Appellate Commission must be taken within 30 days after mailing), [MCL 257.323\(1\)](#) (appeal from Secretary of State’s decision regarding operator’s or chauffeur’s license must be made within 63 days after the determination).

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

- (a) appointing or denying the appointment of an attorney, or
- (b) denying a timely filed motion described in [\[MCR 7.104\(A\)\]\(2\)](#).¹⁹ [MCR 7.104\(A\)\(3\)](#).

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

2. Manner of Filing

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

- the claim, which must be signed by the appellant or the appellant’s attorney;¹⁹ and
- the **appeal fee**, unless the appellant is indigent.²⁰ [MCR 7.104\(B\)-\(C\)](#).

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

- a copy of the judgment, order, or decision appealed;
- an indication that the transcript has been ordered or that there is nothing to be transcribed;

¹⁹ See [MCR 7.104\(C\)\(1\)-\(2\)](#) for additional requirements regarding the form and content of the claim of **appeal**.

²⁰ [MCL 600.2529\(5\)](#) requires the court to order the appeal fee waived or suspended, in whole or in part, if the appellant shows by affidavit indigency or inability to pay.

- in an **agency** appeal, a copy of a request or order for a certified copy of the record to be sent to the circuit court;
- a true copy of the bond, if a bond has been filed;
- proof that money, property, or documents have been delivered or deposited as required by law;
- a copy of the register of actions, if any;
- proof that the appeal fee of the **trial court** or agency has been tendered;
- anything else required by law to be filed; and
- proof that all parties, the trial court or agency, and any other person entitled to notice of the appeal have been served. [MCR 7.104\(D\)](#).

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

- a copy of the claim of appeal;
- any fee required by law;
- any bond required by law²¹; and
- a copy of a written request that a certified copy of the record be sent to circuit court in an agency appeal, or an indication that the transcript has been ordered and payment made or secured, unless there is nothing to be transcribed in an appeal from a trial court.

Jurisdiction vests in the circuit court under [MCR 7.104\(A\)\(1\)](#) and [MCR 7.104\(B\)](#) when a defendant timely files an appeal and fees are paid or waived. See *People v Simmons (On Reconsideration)*, 388 Mich App 70, 77 (2021), rev'd in part on other grounds 509 Mich 918 (2022).²² “This is true regardless of whether defendant properly serve[s] the prosecution with [the] claim of appeal because the service-of-process provisions contained in the court rules ‘are intended to satisfy the due process requirement that a defendant be informed of an action

²¹ However, an appellant’s “failure to timely file a bond does not negate his right to appeal[]” where the circuit court accepts the appellant’s late-posted bond. *Matthew R Abel, PC v Grossman Investments Co*, 302 Mich App 238, 236 n 1 (2013). See [Section 2.1\(E\)](#) for additional discussion of bond requirements.

²²For more information on the precedential value of an opinion with negative subsequent history, see our [note](#).

by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant.’ [MCR 2.105\(J\)\(1\)](#). Thus, even if [a] defendant [does] not properly serve [the] claim of appeal on the prosecution, it [does] not divest the circuit court of jurisdiction to enter [a] judgment of acquittal.” *Simmons*, 388 Mich App at 77-78.

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

G. Appeal By Leave²³

1. Jurisdiction/Timing

“The circuit court may grant leave to appeal from:

- (1) a judgment or order of a trial court when
 - (a) no appeal of right exists, or
 - (b) an appeal of right could have been taken but was not timely filed;
- (2) a final order or decision of an agency from which an appeal by leave to the circuit court is provided by law;
- (3) an interlocutory order or decision of an agency if an appeal of right would have been available for a final order or decision and if waiting to appeal of right would not be an adequate remedy;
- (4) a final order or decision of an agency if an appeal of right was not timely filed and a statute authorizes a late appeal; and
- (5) a decision of the Michigan Parole Board to grant parole.”²⁴ [MCR 7.103\(B\)](#).

“All appeals from final orders and judgments based upon pleas of guilty or nolo contendere shall be by application.” [MCL 600.8342\(4\)](#). See also [MCL 770.3\(1\)\(d\)](#). Additionally, a party may apply for leave to appeal to the circuit court from an

²³See the Michigan Judicial Institute’s [General Appeals by Leave Table](#).

²⁴See [Section 2.5](#) for discussion of appealing a Michigan Parole Board decision.

interlocutory judgment or order in a felony, misdemeanor, or ordinance violation case. [MCL 770.3\(2\)](#).²⁵

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

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

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

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

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

See [Section 2.1\(I\)](#) for information on late appeals.

2. Manner of Filing

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

- a signed application for leave to appeal;²⁶

²⁵ Either a criminal defendant or the prosecution may raise an issue related to an interlocutory decision in an appeal of right from a final decision. *People v Torres*, 452 Mich 43, 59 (1996).

²⁶ See [MCR 7.105\(B\)\(1\)\(a\)-\(d\)](#) for additional requirements regarding the content of the application.

- a copy of the judgment, order, or decision appealed and the opinion or findings of the **trial court** or **agency**;
- in a trial court appeal, a copy of the register of actions;
- in an agency appeal, a copy of a request or order for a certified copy of the record to be sent to the circuit court;
- unless waived by stipulation of the parties or by trial court order, a copy of the relevant transcript or portion of transcript,²⁷ or an indication that a transcript has been ordered or that there is nothing to be transcribed;
- proof that all parties, the trial court or agency, and any other person entitled to notice of the claim have been served²⁸; and
- the **appeal fee**, unless the appellant is indigent.²⁹

3. Answer

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

4. Reply

“Within 7 days after service of the answer, the appellant may file a reply brief that conforms to [MCR 7.212\(G\)](#).” [MCR 7.105\(D\)](#).

5. Decision on Application

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

²⁷ See [MCR 7.105\(B\)\(5\)](#), identifying specific transcripts required, depending on the nature of the appeal.

²⁸ “If service cannot be reasonably accomplished, the appellant may ask the circuit court to prescribe service under [MCR 2.107\(E\)\[.\]](#)” [MCR 7.105\(B\)\(6\)](#).

²⁹ [MCL 600.2529\(5\)](#) requires the court to order the appeal fee waived or suspended, in whole or in part, if the appellant shows by affidavit of indigency or inability to pay.

The court may grant or deny leave to appeal or grant other relief,³⁰ and it must promptly serve a copy of the order on the parties and the trial court or agency. MCR 7.105(E)(3).

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

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

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

Indeed, while MCR 7.105 “governs applications for leave to appeal,” “once the circuit court grants the application, the rules under MCR 7.104—concerning appeals as of right—govern the subsequent proceedings[.]” *People v Segura*, 348 Mich App 123, 134, 135 (2023). The “documents required under MCR 7.104(D), including ‘proof that the appeal fee of the trial court or agency has been tendered,’ must be submitted within seven days after the circuit court grants an application for leave to appeal.” *Segura*, 348 Mich App at 136 (citing MCR 7.105(E)(4)(b)). In *Segura*, defendant asserted that MCR 7.105 does not require proof of a filing fee. *Segura*, 348 Mich App at 132. However, the Court determined the defendant failed to provide any “‘proof that the appeal fee of the trial court or agency [had] been tendered’” as required by MCR 7.104(D)(7). *Segura*, 348 Mich App at 136. “The circuit court was aware of this and gave notice of the deficiency through its clerk. The circuit court properly dismissed the appeal after defendant failed to remedy the deficiency despite having 14 days to do so.” *Id.* at 137. Accordingly, “defendant failed to show mistake, inadvertence, or neglect to justify reinstatement of the appeal, and the circuit court abused its discretion when it granted defendant’s motion for reconsideration.” *Id.* at 137 (noting the “proper medium was a motion for reinstatement, and the

³⁰The circuit court may grant miscellaneous relief as set forth in MCR 7.216. MCR 7.112. If the circuit court grants leave to appeal, miscellaneous relief may include a final decision on the merits of the appeal if preparation of the record is not necessary to resolution of the issues. MCR 7.216(A)(7).

standard for granting such a motion was to show ‘mistake, inadvertence, or excusable neglect’” under [MCR 7.113\(A\)\(2\)](#) because “defendant was moving for reinstatement of a *dismissal*” rather than “reconsideration of the decision on a *motion*”).

6. Immediate Consideration

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

H. Cross Appeal

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

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

1. Timing

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

2. Manner of Filing

“To file a cross **appeal**, the cross appellant must file:

- (1) a claim of cross appeal in the form required by [MCR 7.104\(C\)](#);
- (2) any required **fee**;
- (3) a copy of the judgment, order, or decision from which the cross appeal is taken; and
- (4) proof that a copy of the claim of cross appeal was served on all parties.” [MCR 7.106\(C\)](#).

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

3. Initial Appeal Dismissed

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

I. Late Appeals

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

Notwithstanding [MCR 7.105\(G\)](#), "[t]he circuit court may grant leave to appeal from . . . a final order or decision of an agency if an appeal of right was not timely filed *and* a statute authorizes a late appeal[.]" [MCR 7.103\(B\)\(4\)](#) (emphasis added). The circuit court erred "to the extent that [it] concluded that it had the ability to consider [an] untimely [zoning board] appeal as a late application for leave to appeal" because [MCL 125.3606\(3\)](#), which governs zoning board appeals, "does not authorize an appeal by leave granted or a late appeal." *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 395 (2020).

J. Record on Appeal

"Appeals from the district court shall be on a written transcript of the record made in the district court or on a record settled and

agreed to by the parties and approved by the court.” [MCL 600.8341](#). See also [MCR 7.109\(A\)](#) (“[a]ppeals to the circuit court are heard on the original record”). “In reviewing whether an agency’s decision was supported by competent, material, and substantial evidence on the whole record, a court must review the entire record.” *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 432 (2017) (quotation marks and citation omitted).

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

The appellant must serve a copy of the entire record on appeal on each appellee within 14 days after the transcript (or transcript substitute) is filed with the trial court or agency. [MCR 7.109\(F\)](#).³¹ The trial court or agency must promptly send the record to the circuit court, along with a certificate identifying the name of the case, listing the papers included, and indicating that the required fees have been paid and any required bond has been filed. [MCR 7.109\(G\)\(1\)](#).³² Weapons, drugs, or money are not to be sent unless requested by the circuit court, and the trial court may order the removal of any exhibits from the record. *Id.* The circuit court must send written notice to the parties when it receives the filed record. [MCR 7.109\(G\)\(3\)](#). If a motion is filed before the complete record on appeal is sent to the circuit court, the trial court or agency must, on request, send the circuit court the documents needed to decide the motion. [MCR 7.109\(E\)](#).

“On the appellant’s motion, with notice to the appellee, the trial court or agency may order that no transcript or some portion less than the full transcript be included in the record on appeal. The motion must be filed within the time required for filing an appeal, and, if the motion is granted, the appellee may file any portions of the transcript omitted by the appellant.” [MCR 7.109\(B\)\(1\)\(b\)](#).³³

³¹ See [MCR 7.109\(B\)-\(D\)](#) for detailed rules regarding the filing of the transcript, the duties of the court reporter or recorder, exhibits, and the reproduction of records.

³² See [MCR 7.109\(G\)\(1\)\(a\)-\(f\)](#) and [MCR 7.109\(G\)\(2\)](#) for additional rules regarding the contents of the transmitted record and transcripts. See [MCR 7.109\(H\)](#) for rules regarding the return of the record.

³³ See [Section 2.9\(E\)](#) for information regarding the record in an appeal of a zoning board decision.

Committee Tip:

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

K. Motions**1. Generally**

“Motion practice in a circuit court appeal is governed by [MCR 2.119](#). Motions may include special motions identified in [MCR 7.211\(C\)](#).^[34] Absent good cause, the court shall decide motions within 28 days after the hearing date.” [MCR 7.110](#).

2. Motions for Rehearing or Reconsideration

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

[MCR 2.119\(F\)\(3\)](#) provides:

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

³⁴ “Special motions” under [MCR 7.211\(C\)](#) include: motions to remand, to dismiss, and to affirm; confessions of error by the prosecutor; and requests for damages or other disciplinary action for bringing vexatious proceedings.

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

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

L. Briefs

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

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

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

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

not establish that the violation “affected the outcome of the proceedings”).

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

M. Dismissal

1. Involuntary

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

Committee Tip:

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

2. Voluntary

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

3. Notice

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

N. Oral Argument

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

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

O. Decision and Judgment

The circuit court must decide the **appeal** by either an oral or a written opinion, and issue an order.³⁵ [MCR 7.114\(B\)](#). “The court’s order is its judgment.” *Id.*

A judgment is effective:

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

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

P. Miscellaneous Relief

“In addition to its general appellate powers, the circuit court may grant relief as provided in [MCR 7.216](#).”³⁶ [MCR 7.112](#).

³⁵See [Chapter 3](#) for information on issuing opinions.

Q. Assessment of Costs in Civil Appeals

[MCR 7.115\(A\)](#) provides that “the prevailing party in a civil case” is generally entitled to costs. The clerk of the court receives the certified or verified bill of costs, verifies the bill, addresses any objections, and taxes the available costs. See [MCR 7.115\(B\)-\(D\)](#). “The clerk must stay the enforcement of an award taxing costs until expiration of the time for filing an appeal in the appropriate appellate court, or if an appeal is filed, while a claim of appeal or application for leave to appeal in the Court of Appeals is pending.” [MCR 7.115\(E\)](#). The clerk’s action “will be reviewed by the circuit court on motion of either party filed within 7 days from the date of taxation, but on review only those affidavits or objections that were previously filed with the clerk may be considered by the court.” [MCR 7.115\(F\)](#). “Except as otherwise provided by law or court rule, a prevailing party may tax only costs awarded in the court below as permitted by [MCL 600.2445\(4\)](#) and the reasonable costs and fees incurred in the appeal, including” those listed in [MCR 7.115\(G\)\(1\)-\(8\)](#). [MCR 7.115\(G\)](#).

Part B: Types of Appeals

2.2 Administrative Appeals in General³⁷

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

A. Standard of Review

Circuit court standard of review. “The interpretation of agency regulations is . . . a question of law that [is] review[ed] de novo.” *Brown Estate*, ___ Mich App at ___, quoting *American Civil Liberties Union of Mich v Calhoun Co Sheriff’s Office*, 509 Mich 1, 8 (2022). In reviewing an agency’s decision, “a court must review the entire record.” *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App

³⁶[MCR 7.216](#) authorizes the Court of Appeals to grant various forms of relief, including permitting amendments or additions to the transcript or record, remanding to the trial court, drawing inferences of fact, granting a new trial, or dismissing an appeal or the original proceeding.

³⁷See [Section 2.6](#) for information on appeals governed by the Administrative Procedures Act. See [Section 2.10](#) for information on appeals from agencies not governed by another rule.

422, 432 (2017) (quotation marks and citation omitted). Appellate review of “final decisions, findings, rulings and orders of any administrative officer or agency . . . shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.” [Const 1963, art 6, § 28](#). “Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence.” *Brown Estate*, ___ Mich App at ___ (quotation marks and citation omitted). “If there is sufficient evidence, the circuit court may not substitute its judgment for that of the agency, even if the court might have reached a different result.” *Id.* at ___ (quotation marks and citation omitted). “An agency decision is not authorized by law if it violates constitutional or statutory provisions, lies beyond the agency’s jurisdiction, follows from unlawful procedures resulting in material prejudice, or is arbitrary and capricious.” *Brown Estate v Dep’t of Health and Human Servs*, ___ Mich App ___, ___ (2026) (quotation marks and citation omitted).

In an agency appeal, “the record includes all documents, files, pleadings, testimony, and opinions and orders of the tribunal, agency, or officer (or a certified copy), except those summarized or omitted in whole or in part by stipulation of the parties. . . .” [MCR 7.210\(A\)\(2\)](#); see also [MCR 7.109\(A\)\(2\)](#).

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

Court of Appeals standard of review. The Court of Appeals “reviews a lower court’s review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency’s factual findings.” *Braska v Challenge Mfg Co*, 307 Mich App 340, 351-352 (2014) (quotation marks and

citation omitted). This is essentially a clearly erroneous standard of review. *Id.* at 352. Questions regarding the proper application of statutes and court rules are reviewed de novo. *Lawrence*, 320 Mich App at 433.

1. Non-Contested Cases

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

2. Contested Cases

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

B. Application of Court Rules

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

- arising under the Michigan Employment Security Act, [MCR 7.116](#),³⁸
- of the Michigan Civil Service Commission, [MCR 7.117](#),³⁹
- of the Michigan Parole Board, [MCR 7.118](#),⁴⁰
- of agencies governed by the Administrative Procedures Act (APA), [MCR 7.119](#),⁴¹
- arising under the Michigan Vehicle Code, [MCR 7.120](#),⁴²
- involving concealed pistol licenses, [MCR 7.121](#),⁴³
- of zoning ordinance determinations, [MCR 7.122](#),⁴⁴ and
- of agencies not governed by another rule, [MCR 7.123](#).⁴⁵

2.3 Michigan Employment Security Act⁴⁶

The Michigan Employment Security Act (MESA) addresses venue and sets forth its own scope of judicial review of decisions by an administrative law judge (ALJ) and the Michigan Compensation Appellate Commission (MCAC). [MCL 421.38\(1\)](#). “The [Unemployment Insurance Appeals Commission (UIAC)] was created by the Governor’s Executive Order 2019-13, which among other things transferred the authority of the MCAC with respect to unemployment appeals to the UIAC.” *Schulmeyer v Labor and Economic Opportunity Dep’t of Unemployment Ins Agency*, ___ Mich App ___, ___ (2025) (“Because the applicable statutes continue to refer to the MCAC and have not been updated to reflect the creation of the UIAC, we will use both names interchangeably.”).

The Labor and Economic Opportunity Department of/Unemployment Insurance Agency (UIA) “is not statutorily required to attend hearings before an ALJ.” *Schulmeyer*, ___ Mich App at ___. “Instead, [MCL 421.33](#) provides that an ALJ must ‘afford all interested parties a reasonable

³⁸See [Section 2.3](#) for information about appeals arising under the Michigan Employment Security Act.

³⁹See [Section 2.4](#) for information about appeals from the Michigan Civil Service Commission.

⁴⁰See [Section 2.5](#) for information about appeals of Michigan Parole Board decisions.

⁴¹See [Section 2.6](#) for information regarding appeals of agencies governed by the APA.

⁴²See [Section 2.7](#) for information on appeals regarding licensing under the Michigan Vehicle Code.

⁴³See [Section 2.8](#) for information regarding appeals involving concealed pistol licenses.

⁴⁴See [Section 2.9](#) for information regarding appeals of zoning ordinance determinations.

⁴⁵See [Section 2.10](#) for information regarding appeals of agencies not governed by another rule.

⁴⁶See the Michigan Judicial Institute’s [Michigan Employment Security Act Appeals Table](#).

opportunity for a fair hearing.” *Schulmeyer*, ___ Mich App at ___. “It further provides that if the appellant fails to appear or prosecute the appeal [to the UIAC], then the proceedings may be dismissed.” *Schulmeyer*, ___ Mich App at ___. “There is no language indicating that if the appellee fails to appear or defend its position that a default will be entered against the appellee that will preclude the appellee from challenging the factual findings or legal conclusions of the ALJ.” *Id.* at ___. “Moreover, under the doctrine of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) the fact that the Legislature expressly authorizes dismissal based upon the *appellant’s* failure to appear, but is silent as to the effect of the appellee’s failure to appear, indicates that the appellee’s failure to appear does not subject the matter to dismissal.” *Id.* at ___. “Indeed, [MCL 421.33\(2\)](#) provides that an interested party ‘may file an appeal’ to the UIAC.” *Schulmeyer*, ___ Mich App at ___. “There is no language limiting the right to appeal to interested parties that attended the hearing before the ALJ.” *Id.* at ___ (holding that “the mere failure to attend a hearing before the ALJ will [not] result in the UIA being precluded from challenging the factual findings and legal conclusions of the ALJ”). See [Section 2.1\(D\)](#) for information on venue and [Section 2.1\(B\)](#) regarding judicial review.

A. Record on Appeal

“Within 42 days after the claim of **appeal** is served on the Michigan Compensation Appellate Commission [MCAC], or within further time as the circuit court allows, the [MCAC] must transmit to the **clerk** of the circuit court a certified copy of the record of proceedings before the administrative law judge and the [MCAC],” and “notify the parties that the record was transmitted.” [MCR 7.116\(F\)](#).

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

Procedures specific to appeals to the circuit court under the MESA are set forth in [MCR 7.116](#). Unless provided otherwise in [MCR](#)

7.116, the rules set out in [MCR 7.101—MCR 7.115](#) apply. [MCR 7.116\(A\)](#).⁴⁷ A party must file “[a]n appeal of right from an order or decision of the [MCAC] . . . within 30 days after the mailing of the commission’s decision.” [MCR 7.116\(B\)](#); see also [MCL 421.38\(1\)](#). “[T]he claim of appeal shall conform with [MCR 7.104](#) and must include statements of jurisdiction and venue,”⁴⁸ and “proof that the claim of appeal was served on the [MCAC] and all interested parties must be filed in the circuit court.” [MCR 7.116\(C\)](#). “The unemployment agency is a party to any appeal under [MCL 421.38\(3\)](#), but the [MCAC] is not[.]” [MCR 7.116\(C\)](#). The appellee must file an appearance within 14 days of being served with the claim of appeal. [MCR 7.116\(E\)](#).

“A circuit court conducting a direct review of an administrative decision must decide whether the action was authorized by law and whether the decision was supported by competent, material, and substantial evidence on the record.” *Schulmeyer v Labor and Economic Opportunity Dep’t of/Unemployment Ins Agency*, ___ Mich App ___, ___ (2025). See Const 1963, art 6, § 28, [MCL 421.38\(1\)](#), and [MCR 7.116\(G\)](#). “It is axiomatic, therefore, that review should be limited to the record that was before the administrative tribunal.” *In re Buchanan*, ___ Mich App ___, ___ (2026).

“Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence.” *Trumble’s Rent-L-Center, Inc v Employment Security Comm*, 197 Mich App 229, 233 (1992) (internal citation omitted). “A reviewing court is not at liberty to substitute its own judgment for a decision of the MCAC that is supported with substantial evidence.” *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193-194 (2015).

“When reviewing a lower court’s review of agency action [the] Court [of Appeals] must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency’s factual findings.” *Schulmeyer*, ___ Mich App at ___ (cleaned up). “A decision is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework.” *Id.* at ___ (quotation marks and citation omitted). “Although [the] Court [of Appeals] respectfully considers an agency’s interpretation of a statute that it administers, such an interpretation is not binding on the courts, and it cannot conflict with the Legislature’s intent as expressed in the language of the

⁴⁷ See [Part A](#) for discussion of [MCR 7.101—MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

⁴⁸ See [Section 2.1\(E\)\(1\)](#) for information about jurisdiction.

statute at issue.” *Schulmeyer*, ___ Mich App at ___ (noting that “the language of a statute—not an agency’s interpretation of it—must ultimately control”).

The UIA has “a right to seek judicial review of UIAC decisions.” *Schulmeyer*, ___ Mich App at ___. “MCL 421.34(7) expressly provides that interested parties must seek judicial review within 30 days or the decision of the UIAC will become final.” *Schulmeyer*, ___ Mich App at ___ (“[T]he UIA is statutorily defined as an interested party in matters before ‘a court . . .’”). “The only limitation upon the ability of an interested party to seek judicial review is that it must be conducted as provided in MCL 421.38.” *Schulmeyer*, ___ Mich App at ___. “MCL 421.38 provides that the circuit court in the county in which the claimant resides or the circuit court in the county in which the claimant’s place of employment is or was located, or, if a claimant is not a party to the case, the circuit court in the county in which the employer’s principal place of business in this state is located, may review questions of fact and law on the record made before the administrative law judge and the UIAC involved in a final order or decision of the UIAC.” *Schulmeyer*, ___ Mich App at ___ (cleaned up). “MCL 421.38 contains no language expressly prohibiting the UIA from appealing a UIAC decision.” *Schulmeyer*, ___ Mich App at ___. “If the Legislature intended that the UIA not be permitted judicial review, then it could have included language in MCL 421.34(7) stating that any interested party, except the UIA, could appeal the decision to the circuit court within the 30-day limitations period.” *Schulmeyer*, ___ Mich App at ___ (refusing to “read such a limitation into the statute”).

2.4 Appeals from Michigan Civil Service Commission Decisions

MCR 7.117 governs circuit court **appeals** to the circuit court from the Michigan Civil Service Commission; they must comply with the requirements set forth in MCR 7.119.⁴⁹ MCR 7.117(A)-(B). Unless provided otherwise in MCR 7.117, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.117(A).⁵⁰ The appeal “must name the commission as a party,” and the appellant “must serve the commission at the Office of the State Personnel Director in Lansing[.]” MCR 7.117(C).

⁴⁹See Section 2.6 for more information on procedures set forth in MCR 7.119. See also the Michigan Judicial Institute’s *Administrative Procedures Act and Michigan Civil Service Commission Appeals Table*.

⁵⁰ See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

2.5 Appeals From and Objections to Parole Board Decisions⁵¹

“The Parole Board does not just determine whether to grant parole[;] it must also determine whether to deny parole.” *Braddock v Parole Bd*, ___ Mich App ___, ___ (2024). Under [MCL 791.246](#) and [MCL 791.234\(8\)\(c\)](#), “both the decision to grant parole and to deny parole must be by majority vote.” *Braddock*, ___ Mich App at ___. A tie vote is not permitted; “once the process has commenced, it must terminate with a majority vote of the Board, be it favorable or unfavorable.” *Id.* at ___. In other words, “the Parole Board must re-vote until it reaches a majority decision.” *Id.* at ___.

A. Decision to Deny Parole

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

B. Grounds for Grant of Parole

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

Michigan law gives “its parole board the type of discretion that eliminates any liberty interest in parole.” *McClendon El v Washington*, ___ F4th ___, ___ (CA 6, 2025). See [MCL 791.234\(11\)](#) (providing that “a prisoner’s release on parole is discretionary with the parole board”); see also [MCL 791.235\(1\)](#) (“There is no entitlement to parole.”). “A prisoner has no constitutionally protected or inherent right to parole, only a hope or expectation of it.” *People v Mack*, 265 Mich App 122, 129 (2005), quoting *Morales v Parole Bd*, 260 Mich App 29, 48 (2003).

In *McClendon*, “Michigan prison officials . . . recommended that [a prisoner] participate in a prison program designed for sex offenders to deter their sexual abuse.” *McClendon*, ___ F4th at ___. However, because the prisoner refused to participate, “Michigan’s parole

⁵¹See the Michigan Judicial Institute’s [Michigan Parole Board Appeals Table](#).

⁵²The parole board’s decision to depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole must state in writing substantial and compelling objective reasons for the departure. [MCL 791.233e\(6\)](#). Substantial and compelling objective reasons for departure from the parole guidelines are limited to the circumstances set forth in [MCL 791.233e\(7\)](#).

board . . . repeatedly denied him parole.” *Id.* at _____. The Sixth Circuit Court of Appeals held that neither “the recommendation to complete the sex-offender program [nor] the resulting denials of parole deprived [the prisoner] of ‘liberty’ ‘without due process of law’ under the Fourteenth Amendment.” *Id.* at _____. The *McClendon* Court held that the prisoner did not “have a liberty interest in obtaining parole under Michigan’s discretionary system.” *Id.* at _____. “And at least because [the prisoner] committed a sex offense in the past, he also [did] not have a liberty interest in avoiding the requirement to complete a sex offender program as a condition of parole.” *Id.* at _____ (declining to address whether “prisoners who have *not* been convicted of a sex offense lack a liberty interest in avoiding a sex-offender program as a condition of parole under a discretionary parole regime”).

“The Legislature has entrusted the decision whether to grant . . . parole to the Parole Board.” *In re Parole of Johnson*, 219 Mich App 595, 596 (1996). See also [MCL 791.234\(7\)](#). The board must have “reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner’s mental and social attitude, that the prisoner will not become a menace to society or to the public safety.” [MCL 791.233\(1\)\(a\)](#). The Department of Corrections (DOC) “shall promulgate rules under the administrative procedures act of 1969, . . . [MCL 24.201](#) to [[MCL](#)] [24.328](#), that prescribe the parole guidelines.” [MCL 791.233e\(5\)](#). However, the parole board may depart from the guidelines⁵³; in doing so, it must provide, in writing, substantial and compelling objective reasons for the departure. [MCL 791.233e\(6\)](#).⁵⁴ In addition, “[t]he Board should consider a prisoner’s sentencing offense when determining whether to grant parole to a prisoner, but ‘the Board must also look to the prisoner’s rehabilitation and evolution throughout his or her incarceration.’” *In re Parole of Spears*, 325 Mich App 54, 60 (2018), quoting *In re Elias*, 294 Mich App 507, 544 (2011). However, the parole guidelines set forth in statute “‘form the backbone of the parole-decision process.’” *Spears*, 325 Mich App at 60 quoting *Elias*, 294 Mich App at 512.

⁵³A departure may be in the form of denying parole to a prisoner who has a high probability of parole under the guidelines or granting parole to a prisoner who has a low probability of parole under the guidelines. See [MCL 791.233e\(6\)](#).

⁵⁴Effective December 12, 2018, 2018 PA 339 amended [MCL 791.233e\(6\)](#) to require that the reason for a departure be objective, in addition to substantial and compelling. However, the amendment applies “only to prisoners whose controlling offense was committed on or after [December 12, 2018.]” [MCL 791.233e\(13\)](#). See [MCL 791.233e\(7\)](#) for list of substantial and compelling objective reasons when denying parole to a prisoner who has a high probability of parole under the guidelines (not applicable to prisoners serving a life sentence). [MCL 791.233e](#) does not provide a similar list for departures involving low probability prisoners.

To facilitate the decision-making process surrounding the granting of parole (in addition to other purposes), the DOC prepares and considers several reports, including the transition accountability plan (TAP), a phased plan that attempts to integrate a prisoner's transition from prison to the community. *Spears*, 325 Mich App at 61. The Michigan Court of Appeals “has [not] set forth standards relative to a defendant’s TAP,” except to require that it, among other relevant documents, be considered by the Board when determining whether to grant parole. *Id.* at 66, citing *In re Parole of Haeger*, 294 Mich App 549 (2011). In *Haeger*, the Parole Board’s grant of parole was properly reversed in part because no TAP appeared in the record. *Id.* at 551-552. In *Spears*, the circuit court incorrectly determined that *Haeger* requires a TAP be “current or robust.” *Spears*, 325 Mich App at 64. “[R]ather, review [of the Board’s decision] should begin by determining whether the Board reviewed a TAP that was prepared for [the] defendant,” and if that has occurred, there is no basis for a circuit court to conclude “that the Board . . . failed to consider defendant’s readiness for release based on defendant’s suitable and realistic parole plan.” *Id.* at 64-65 (quotation marks and citation omitted). “Therefore, the [*Spears*] circuit court, by injecting its own criteria into defendant’s TAP, effectively substituted its judgment for that of the Board’s when it reversed the Board’s grant of parole[.]” *Id.* at 67-68.

“Once the Board enters an order granting parole, it has discretion to rescind that order for cause before the prisoner is released and after the Board conducts an interview with the prisoner.” *In re Parole of Hill*, 298 Mich App 404, 411 (2012). See also [MCL 791.236\(2\)](#). “After a prisoner is released on parole, the prisoner remains in the legal custody and control of the Department of Corrections and the Board retains discretion to revoke parole for cause and in accord with statutorily proscribed [sic] procedural guidelines.” *Hill*, 298 Mich App at 411. See also [MCL 791.238](#); [MCL 791.240a](#).⁵⁵

C. Appeal from Grant of Parole

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

⁵⁵See [Section 2.5\(F\)](#) for information on appeals following the revocation of parole.

[MCR 7.118](#) governs appeals to the circuit court from the parole board. [MCR 7.118\(A\)](#). Unless provided otherwise in [MCR 7.118](#), the rules set out in [MCR 7.101](#)—[MCR 7.115](#) apply. [MCR 7.118\(A\)](#).⁵⁶

1. Application for Leave to Appeal

a. Time Requirements

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

“A late application for leave to appeal may be filed under [MCR 7.105\(G\)](#).” [MCR 7.118\(E\)](#).

b. Manner of Filing

“An application for leave must comply with [MCR 7.105](#), must include statements of jurisdiction and venue,^[57] and must be served on the parole board and the prisoner. If the victim seeks leave, the prosecutor must be served. If the prosecutor seeks leave, the victim must be served if the victim requested notification under [MCL 780.771](#).” [MCR 7.118\(D\)\(3\)](#).⁵⁸

c. Access to Reports or Guidelines

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

d. Response

The prisoner must be notified, in a form approved by SCAO,⁵⁹ that he or she may respond to the application for leave to **appeal** through counsel or in propria persona,

⁵⁶ See [Part A](#) for discussion of [MCR 7.101](#)—[MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

⁵⁷ See [Section 2.1\(C\)](#) and [Section 2.1\(F\)\(1\)](#) for information on jurisdiction and [Section 2.1\(D\)](#) for information on venue.

⁵⁸ See [MCR 7.118\(D\)\(3\)\(a\)-\(c\)](#) for detailed rules regarding service on the parole board, the victim, the prosecutor, and the prisoner.

⁵⁹ See [SCAO Form CC 404](#).

and that, if indigent, he or she is entitled to appointment of counsel. [MCR 7.118\(D\)\(3\)\(b\)\(i\)](#).

2. Stay of Order of Parole

An order of parole issued under [MCL 791.236](#) must not be executed until 28 days after the notice of action has been mailed. [MCR 7.118\(F\)\(1\)](#). The prisoner must be notified, in a form approved by SCAO,⁶⁰ that “if an order [of parole] is issued under [MCL 791.236](#) before completion of appellate proceedings, a stay may be granted in the manner provided by [MCR 7.108](#), except that no bond is required.” [MCR 7.118\(D\)\(3\)\(b\)\(ii\)](#).

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

3. Decision to Grant Leave to Appeal

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

4. Procedure After Granting Leave to Appeal

“If leave to appeal is granted, [MCR 7.105\(E\)\(4\)](#) [(generally governing the circuit court’s decision on an application for leave to appeal)] applies,” together with additional rules specifically governing the record and briefs in parole board appeals. [MCR 7.118\(H\)](#).⁶¹

a. Burden of Proof

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

(a) in violation of the Michigan Constitution,
a statute, an administrative rule, or a written

⁶⁰ See [SCAO Form CC 404](#).

⁶¹ See [MCR 7.118\(H\)\(1\)](#) for rules governing the record on appeal from a parole board decision. See [MCR 7.118\(H\)\(2\)](#) for rules that, in addition to the general rules set out in [MCR 7.111](#), govern briefs on appeal from a parole board decision.

agency regulation that is exempted from promulgation pursuant to [MCL 24.207](#), or

(b) a clear abuse of discretion.” [MCR 7.118\(H\)\(3\)](#).

b. Remand to the Parole Board

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

5. Review of Parole Board’s Decision

Where a “prisoner’s parole-guidelines score [gives] him a high probability of parole, the Parole Board [is] required to grant parole absent substantial and compelling reasons for a departure.” *In re Wilkins Parole*, 506 Mich 937, 937 (2020).⁶² A circuit court errs “by ignoring this restriction on the Parole Board’s exercise of its discretion” when reversing the Parole Board’s decision if the record otherwise demonstrates that “the Parole Board’s decision to grant parole fell within the range of principled outcomes[.]” *Id.* (finding the circuit court “also impermissibly substituted its judgment for that of the Parole Board”).

“[E]ven if there are substantial and compelling reasons to deny parole, a grant of parole is not an automatic abuse of discretion.” *In re Parole of McBrayer*, 511 Mich 403, 413 (2023). In *McBrayer*, the Michigan Supreme Court held that “the lower courts failed to respect the Legislature’s grant of discretion to the board, improperly submitting their judgment for that of the board.” *Id.* at 412. “Although the Court of Appeals majority acknowledged that the Parole Board’s decisions are reviewed for an abuse of discretion, its analysis effectively reweighed the evidence without affording proper deference to the board. This contravened the scheme established by the Legislature.” *Id.* at 412-413.

⁶²See [Section 2.5\(B\)](#) for discussion of grounds for grant of parole.

Under [MCL 791.233e\(6\)](#), “the Parole Board may depart from the guidelines and deny parole to a prisoner with a ‘high probability’ parole score when there are ‘substantial and compelling reasons’ to do so.” *McBrayer*, 511 Mich at 414. “[W]hen such reasons exist, the board *may* depart from the parole guidelines” but “is not required to do so because . . . discretion [vests] in the Parole Board.” *Id.* at 415 (cleaned up). “The mere existence of substantial and compelling reasons for departure is not sufficient for a reviewing court to conclude that the Parole Board abused its discretion by choosing not to depart from the guidelines.” *Id.* at 415 (noting the Court of Appeals analysis was incomplete because the majority only considered “whether there were substantial and compelling reasons for departure from the guidelines and ended its analysis there”).

First, “a reviewing court must consider whether there are substantial and compelling reasons to deny parole to a prisoner with a high-probability guidelines score.” *McBrayer*, 511 Mich at 415. “[I]f substantial and compelling reasons exist and the Parole Board nonetheless granted parole, the second question is whether the choice not to depart constituted a clear abuse of discretion.” *Id.* at 415-416. “[T]he Parole Board abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.” *Id.* at 416. “This standard entitles the Parole Board to great deference” and “reviewing courts must not substitute their own judgment for that of the board.” *Id.* at 416.

The *McBrayer* Court opined that “the majority simply concluded that, because there were substantial and compelling reasons for departure from the parole guidelines, the Parole Board had abused its discretion.” *McBrayer*, 511 Mich at 417 (although the “Court of Appeals identified legitimate factors weighing against parole,” “the Parole Board supported its decision with a significant amount of relevant evidence”). “Given the considerations favoring parole in this case, even when compared with those weighing against,” the Court concluded that “it was within the range of reasonable and principled outcomes for the board not to depart from the parole-guidelines recommendation[.]” *Id.* at 418-419.

6. Parole Board Responsibility After Reversal or Remand

“If a decision of the parole board is reversed or remanded, the board shall review the matter and take action consistent with the circuit court’s decision within 28 days.” [MCR 7.118\(J\)\(1\)](#).

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

7. Costs

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

8. Appeal from Circuit Court to Court of Appeals

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

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

D. Objection to Parole Recommendation in Certain Cases

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

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

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

“(a) The prosecutor and the parole board may present evidence in support of or in opposition to the determination that a prisoner is **medically frail**, including the results of any independent medical examination.

(b) The sentencing judge or the judge’s successor shall determine whether the prisoner is eligible for parole as a result of being medically frail.” [MCL 791.234\(20\)](#).

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

E. Request for Early Parole

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

F. Appeal From Parole Revocation

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

Chapter 6 of the Administrative Procedures Act (APA), [MCL 24.301](#) to [MCL 24.306](#), applies to judicial review of parole revocation hearings. *Penn v Dep’t of Corrections*, 100 Mich App 532, 540 (1980). A petition for review of a parole revocation decision must be filed in the circuit court within 60 days of the parole revocation. [MCL 24.303](#)—[MCL 24.304](#). However, the APA is not the only avenue of

judicial review available to an accused parolee. *Triplett v Deputy Warden*, 142 Mich App 774, 779 (1985). If an accused parolee fails to seek relief in the circuit court within the 60-day APA time limit, he or she may still file an action for habeas corpus. *Id.* See [MCR 3.303](#) for information on filing for habeas corpus to inquire into the cause of detention.

2.6 Appeals from Agencies Governed by the Administrative Procedures Act⁶³

[MCR 7.119](#) governs appeals from an agency decision to which the Administrative Procedures Act (APA), [MCL 24.201](#) *et seq.*, applies. [MCR 7.119\(A\)](#). Unless provided otherwise in [MCR 7.119](#), the rules set out in [MCR 7.101—MCR 7.115](#) apply. [MCR 7.119\(A\)](#).⁶⁴ The APA applies to “a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action. Subject to [[MCL 24.315\(5\)](#)], agency includes the municipal employees retirement system and the retirement board created by the municipal employees retirement act of 1984, . . . [MCL 38.1501](#) to [[MCL 38.1555](#)].” [MCL 24.203\(2\)](#). For purposes of the APA, “[a]gency does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, the state civil service commission⁶⁵, or an association of insurers created under the insurance code of 1956, . . . [MCL 500.100](#) to [[MCL](#)] [500.8302](#), or other association or facility formed under [the insurance code of 1956] as a nonprofit organization of insurer members.” [MCL 24.203\(2\)](#).⁶⁶

A. Timing Requirements in Appeals of Right

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

⁶³See the Michigan Judicial Institute’s *Administrative Procedures Act and Michigan Civil Service Commission Appeals Table*.

⁶⁴ See [Part A](#) for discussion of [MCR 7.101—MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that [Part A](#) does not include discussion of the rules that apply only to appeals from agencies.

⁶⁵See [Section 2.4](#) for information on appeals from Michigan Civil Service Commission decisions.

⁶⁶See [Section 2.10](#) for information on appeals from agencies not governed by the APA.

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

Appeals of right. A claim of **appeal** must comply with the requirements of [MCR 7.104\(C\)\(1\)](#), “except that:

(i) the party aggrieved by the **agency** decision is the appellant and is listed first in the caption; and

(ii) the party seeking to sustain the agency’s decision is the appellee; or

(iii) if there is no appellee, then the caption may read ‘In re [*name of appellant or other identification of the subject of the appeal*],’ followed by the designation of the appellant. Except where otherwise provided by law, the agency or other party to the case may become an appellee by filing an appearance within 21 days after service of the claim of appeal.” [MCR 7.119\(B\)\(2\)\(a\)](#).

“The claim of appeal must:

(i) state ‘[*Name of appellant*] claims an appeal from the decision entered on [*date*] by [*name of the agency*],’ and

(ii) include concise statements of the following:

[A] the statute, rule, or other authority enabling the agency to conduct the proceedings;

[B] the statute or constitutional provision authorizing appellate review of the agency’s decision or order in the circuit court; and

[C] the facts on which venue is based under [MCL 24.303\(1\)](#).⁶⁷ [MCR 7.119\(B\)\(2\)\(b\)](#).

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

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

⁶⁷See [Section 2.1\(D\)](#) for information on venue.

C. Stay

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

- “(a) the moving party will suffer irreparable injury if a stay is not granted;
- (b) the moving party made a strong showing that it is likely to prevail on the merits;
- (c) the public interest will not be harmed if a stay is granted; and
- (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted.” [MCR 7.119\(E\)\(3\)](#).

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

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

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

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

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

D. Stipulations

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

E. Additional Evidence

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

F. Attorney Fees

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

G. Standard of Review⁶⁸

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

⁶⁸See Section 2.2(A) for the general standard of review applicable to administrative appeals.

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

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

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

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

legal merit; . . . and hence it was not frivolous under [MCL 24.323\(1\)\(c\)](#)) (quotation marks and citations omitted).

2.7 Motor Vehicle Code - Secretary of State⁶⁹

“A person aggrieved by a final determination of the secretary of state denying the person an operator’s or chauffeur’s license, a vehicle group designation, or an indorsement on a license or revoking, suspending, or restricting an operator’s or chauffeur’s license, vehicle group designation, or an indorsement may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed under [[MCL 257.625f](#)] or under the order of a trial court under [[MCL 257.328](#)] or, in all other cases, in the circuit court in the person’s county of residence.” [MCL 257.323\(1\)](#).

“[[MCR 7.120](#)] governs **appeals** to the circuit court under the Michigan Vehicle Code . . . from a final determination by the Secretary of State pertaining to an operator’s license, a chauffeur’s license, a vehicle group designation, or an endorsement.” [MCR 7.120\(A\)](#). Unless provided otherwise in [MCR 7.120](#), the rules set out in [MCR 7.101](#)—[MCR 7.115](#) apply. [MCR 7.120\(A\)](#).⁷⁰

In an appeal of right or late appeal, a person must file a petition for review within 63 days of a final determination by the Secretary of State (SOS). [MCL 257.323\(1\)](#). However, for good cause shown, the court may allow the person to file the petition within 182 days of the final determination. *Id.* See also [MCR 7.120\(B\)\(1\)](#); [MCR 7.120\(C\)\(1\)](#).⁷¹ See [MCR 7.120\(C\)](#) for additional information on applications for late appeal.

A. Manner of Filing an Appeal of Right

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

“The claim of appeal must:

- (i) state the appellant’s full name, current address, birth date, and driver’s license number;

⁶⁹See the Michigan Judicial Institute’s [Licensing \(Michigan Vehicle Code\) Appeals Table](#).

⁷⁰ See [Part A](#) for discussion of [MCR 7.101](#)—[MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

⁷¹With the prosecutor’s consent, a peace officer may file a petition for review within the same time frames. [MCL 257.323\(1\)](#). See also [MCL 257.625f\(8\)](#).

(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.”⁷²
[MCR 7.120\(B\)\(2\)\(b\)](#).

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

B. Stay

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

C. Stipulations

“The parties may stipulate regarding any issue on **appeal** or any part of the record on appeal if the stipulation is embodied in an order entered by the court.” [MCR 7.120\(E\)](#).

D. Hardship Review Hearing—§ 257.323(3)

“The court may require briefs and may enter an order setting a briefing schedule.” [MCR 7.120\(F\)\(1\)](#). The court must schedule a hearing under [MCL 257.323\(2\)](#), [MCR 7.120\(F\)\(2\)](#). “Except as otherwise provided in [[MCL 257.323](#)], in reviewing a determination resulting in a denial, suspension, restriction, or revocation under

⁷²See [Section 2.1\(D\)](#) for information on venue.

this act, the court shall confine its consideration to a review of the record prepared under [MCL 257.322] or [MCL 257.625f] or the driving record created under [MCL 257.204a] for a statutory legal issue[.] . . .” MCL 257.323(4).

Subject to the restrictions in MCL 257.323(3), “[t]he court may affirm, modify, or set aside”⁷³ the SOS’s decision after hearing testimony and examining all the facts and circumstances related to the decision if the decision was made under:

- physical or mental disability, MCL 257.303(1)(d);
- unsafe driving, MCL 257.320;
- driving with a suspended license, MCL 257.904(10)-(11);
- driving in violation of a probationary condition, MCL 257.310d; or
- a first violation of MCL 257.625f (refusal to submit to a chemical test under the implied consent statute). MCL 257.323(3).

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

MCL 257.323a(1) provides in relevant part:

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

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

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

In reviewing a determination of the SOS resulting in a denial, suspension, restriction, or revocation of driving privileges, the court

⁷³ See MCL 257.323(4) for criteria that must be met in order to set aside the SOS’s decision.

“may determine that the petitioner is eligible for full driving privileges or, if the petitioner is subject to a revocation under [MCL 257.303], may determine that the petitioner is eligible for restricted driving privileges.” MCL 257.323(4).

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

Before setting aside the SOS’s determination, the court must either make a determination that the petitioner is eligible for full driving privileges according to the criteria set out in MCL 257.323(4)(a)⁷⁴, or make a determination that the petitioner is eligible for review of a revocation or denial under MCL 257.303 or eligible for restricted driving privileges according to the criteria set out in MCL 257.323(4)(b). “Except as otherwise provided in [MCL 257.323], in reviewing [the SOS’s] determination, . . . the court shall confine its consideration to a review of the record prepared under [MCL 257.322 or MCL 257.625f] or the driving record created under [MCL 257.204a] for a statutory legal issue[.]” MCL 257.323(4); see also MCR 7.120(G)(3). “Judicial review of an administrative licensing sanction under [MCL 257.303] must be governed by the law in effect at the time the offense was committed or attempted.” MCL 257.320e(6).

“MCL 257.323(4)(a)(iv) and [MCL 257.323(4)(a)(v)] clearly give a circuit court the power to set aside an administrative agency’s decision if it concludes that the hearing officer’s decision was not supported by competent, material, and substantial evidence on the whole record, or whether it was arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.” *Delmotte v Secretary of State*, ___ Mich App ___, ___ (2025) (cleaned up). In *Delmotte*, “plaintiff’s driver’s license was revoked after two convictions of operating a vehicle while intoxicated[.]” *Id.* at ___. Seven years later, following a hearing before an SOS officer of the Driver’s License Appeal Division (DLAD), plaintiff “was granted a restricted license, which required him to operate a vehicle equipped with a [breath alcohol ignition interlock device (BAIID)].” *Id.* at ___. Plaintiff appealed the DLAD decision to the circuit court seeking full license restoration, but “[a]fter hearing oral arguments, the court expressed concern regarding appeal hearing powers pursuant to MCL 257.322.” *Delmotte*, ___ Mich App at ___. “The court’s main concern

⁷⁴See also MCR 7.120(G)(3).

was that, based on the language of the statute, it [was] difficult for the appellate court to indicate how the hearing officer's decision was inappropriate." *Id.* at ____. The circuit "court concluded that it could not grant full driver's restoration to plaintiff even though plaintiff [was] a good candidate to have his license fully restored." *Id.* at ____ ("The [circuit] court stated that, although the administrative hearing appeared to be contentious, the hearing officer had full authority to grant a restricted license.").

On appeal, the *Delmotte* Court determined that "the circuit court erred by failing to discharge its duty to review the hearing officer's decision." *Id.* at ____ "[T]he record made by the hearing officer offered strong support for a finding that plaintiff's alcohol abuse disorder remained under control and that the risk of him repeating alcoholic abusive behavior was low." *Id.* at ____ "Yet, the hearing officer generically ordered installation of BAIID to allow the monitoring of petitioner's continued recovery from substance abuse or dependence, and to provide him the opportunity to demonstrate the required ability and motivation to drive safely and within the law." *Id.* at ____ (cleaned up). "The circuit court . . . did not dispute the limited evidentiary support of the DLAD's ruling, and offered a contrary opinion that plaintiff is a good candidate to have his license fully restored." *Id.* at ____ (quotation marks omitted). "Although the scope of a circuit court's review of DLAD decisions is limited, the circuit court . . . failed to apply the proper standards of review under [MCL 257.323\(4\)\(a\)\(iv\)](#) and [[MCL 257.323\(4\)\(a\)\(v\)](#)]." *Delmotte*, ____ Mich App at ____.

If the court determines that the petitioner is eligible for restricted driving privileges under [MCL 257.323\(4\)\(b\)](#), the court must issue an order that contains certain information set out in [MCL 257.323\(5\)\(a\)-\(e\)](#), including "[a] requirement that each motor vehicle operated by the petitioner be equipped [(at the petitioner's expense)] with a properly installed and functioning ignition interlock device for a period of not less than 1 year before the petitioner will be eligible to return to the secretary of state for a hearing." [MCL 257.323\(5\)\(b\)](#). The court must also notify the secretary of state of its determination that a petitioner is eligible for restricted driving privileges through the issuance of an order under [MCL 257.323\(5\)](#). [MCL 257.323\(8\)](#). Additionally, if the petitioner intends to operate a vehicle owned by his or her employer, the court must notify the employer of the petitioner's obligation under [MCL 257.323\(5\)\(b\)](#) to operate a vehicle only if it is equipped with an ignition interlock device. [MCL 257.323\(6\)](#).⁷⁵ The court does not "retain jurisdiction over a license issued under [[MCL 257.323](#)]." [MCL 257.323\(8\)](#).

⁷⁵This requirement is not applicable to a vehicle operated by an individual who is self employed that uses the vehicle for both business and personal use. [MCL 257.323\(6\)](#).

2.8 Appeals of Decisions Regarding Concealed Pistol Licenses—§ 28.425d⁷⁶

Appeals to the circuit court under [MCL 28.425d](#) are governed by [MCR 7.121](#). [MCR 7.121\(A\)](#). Unless provided otherwise in [MCR 7.121](#), the rules set out in [MCR 7.101—MCR 7.115](#) apply. [MCR 7.121](#).⁷⁷ Timing of the appeal of right is governed by [MCR 7.104\(A\)](#). [MCR 7.121\(C\)\(1\)](#).

A. Manner of Filing an Appeal of Right

The claim of appeal must conform with [MCR 7.104\(C\)\(1\)](#), “except that:

- (i) the license applicant or licensee is the appellant, and
- (ii) the county clerk, department of state police, or entity taking the fingerprints may be the appellee.” [MCR 7.121\(C\)\(2\)\(a\)](#).

“The claim of appeal must state whether the appellant is appealing a statutory disqualification, failure to issue a receipt, or failure to issue a concealed pistol license, and the fact on which venue^[78] is based.” [MCR 7.121\(C\)\(2\)\(b\)](#). The claim must also be signed in compliance with [MCR 7.104\(C\)\(3\)](#). [MCR 7.121\(C\)\(2\)\(c\)](#). The appellant must serve the claim of appeal on all parties, and within the time for filing an appeal, send a written request to the county clerk to send a certified copy of the record to the circuit court. [MCR 7.121\(C\)\(2\)\(d\)-\(e\)](#).

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

⁷⁶See the Michigan Judicial Institute’s *Concealed Pistol Licensing Appeals Table*.

⁷⁷ See [Part A](#) for discussion of [MCR 7.101—MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

⁷⁸See [Section 2.1\(D\)](#) for information on venue.

B. Standard of Review

The appeal is “determined by a review of the record for error.” [MCL 28.425d](#). If the court determines that the notice of statutory disqualification, failure to provide a receipt, or failure to issue a license “was clearly erroneous or was arbitrary and capricious,” the court must order the county clerk to issue a license or receipt as required by the Firearms Act.⁷⁹ [MCL 28.425d\(2\)](#). The court may also order the entity to refund any filing fees incurred by the applicant in filing the appeal, to the degree of the entity’s responsibility. [MCL 28.425d\(2\)](#). Upon a finding that an entity’s decision was arbitrary and capricious, the court must order that the entity pay the applicant the actual costs and attorney fees associated with the appeal. [MCL 28.425d\(3\)](#). However, the court must order the applicant to pay the actual costs and actual attorney fees of the entity upon a finding that the applicant’s appeal was frivolous. [MCL 28.425d\(4\)](#).

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

2.9 Appeals of Zoning Ordinance Determinations⁸⁰

“[A]ppeals to the circuit court from a determination under a zoning ordinance by any officer, agency, board, commission, or zoning board of appeals, and by any legislative body of a city, village, township, or county authorized to enact zoning ordinances” are governed by [MCR 7.122](#). [MCR 7.122\(A\)\(1\)](#). Unless provided otherwise in [MCR 7.122](#), the rules set out in [MCR 7.101](#)—[MCR 7.115](#) apply. [MCR 7.122\(A\)](#).⁸¹ [MCR 7.122](#) does not preclude a party from filing a complaint for relief relating to a determination under a zoning ordinance. [MCR 7.122\(A\)\(2\)](#). An appeal under [MCR 7.122](#) is an appeal of right. [MCR 7.122\(A\)\(3\)](#).

A. Standing

“The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under [[MCL 125.3606](#)].” [MCL 125.3605](#). “[T]he ‘aggrieved party’ standard, which applies to appeals . . . under [MCL 125.3605](#), also applie[s] to appeals

⁷⁹[MCL 28.421](#) *et seq.*

⁸⁰See the Michigan Judicial Institute’s [Zoning Ordinance Determination Appeals Table](#).

⁸¹ See [Part A](#) for discussion of [MCR 7.101](#)—[MCR 7.115](#) as generally applicable to appeals to the circuit court. Note, however, that [Part A](#) does not include discussion of the rules that apply only to appeals from agencies.

of zoning decisions where there [is] no provision for review by a zoning board of appeals." *Ansell v Delta Co Planning Comm*, 332 Mich App 451, 456 (2020) (finding "appellants were obliged to show themselves to be parties aggrieved by the zoning decisions below in order to invoke judicial review in the circuit court").

"Neither the [Michigan Zoning Enabling Act⁸²] nor any of Michigan's previous zoning statutes explicitly require one to own real property in order to be 'aggrieved' by local land-use decisions or to prove 'aggrieved' status by comparison to other property owners who are similarly situated." *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 586 (2022). "[T]o be a 'party aggrieved' under [MCL 125.3605](#) and [MCL 125.3606](#), the appellant must meet three criteria." *Id.* at 595 (holding that "'aggrieved' must be given the same meaning in both [MCL 125.3604\(1\)](#) and [MCL 125.3605](#)"). "First, the appellant must have participated in the challenged proceedings by taking a position on the contested decision, such as through a letter or oral public comment." *Saugatuck*, 509 Mich at 595. "Second, the appellant must claim some legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the challenged decision." *Id.* at 595. "Third, the appellant must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community." *Id.* at 595. "Factors that can be relevant to this final element of special damages include but are not limited to: (1) the type and scope of the change or activity proposed, approved, or denied; (2) the nature and importance of the protected right or interest asserted; (3) the immediacy and degree of the alleged injury or burden and its connection to the challenged decision as compared to others in the local community; and (4) if the complaining party is a real-property owner or lessee, the proximity of the property to the site of the proposed development or approval and the nature and degree of the alleged effect on that real property." *Id.* at 596.

The *Saugatuck* Court reaffirmed that "mere ownership of real property that is adjacent to a proposed development or that is entitled to statutory notice, *without a showing of special damages*, is not enough to show that a party is aggrieved." *Saugatuck*, 509 Mich at 596. The Court also stated that "*generalized* concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision." *Id.* at 597. However, the Court cautioned that "a specific change or exception to local zoning

⁸²[MCL 125.3101](#) *et seq.*

restrictions might burden certain properties or individuals' rights more heavily than others." *Id.* at 597. "A party who can present some evidence of such disproportionate burdens likely will have standing to appeal under [MCL 125.3605](#) and [MCL 125.3606](#)." *Saugatuck*, 509 Mich at 597 (noting that "it is possible that an individual or entity could be a 'person' under [MCL 125.3604\(1\)](#)" pursuant to the definition contained in [MCL 125.3102\(q\)](#), but not a 'party' for purposes of [MCL 125.3605](#)" unless they also participated in lower proceedings concerning the development).

"The aggrieved party standard required by [MCL 125.3605](#) is limited to the context of who may appeal the administrative actions of zoning officials as discussed in that statutory section." *Sakorafos v Lyon Twp*, ___ Mich App ___, ___ (2023). "The requirement of showing aggrieved party status *does not* apply to a plaintiff bringing a claim of nuisance per se under [MCL 125.3407](#)." *Sakorafos*, ___ Mich App at ___ ("[s]tanding is thus measured by a different standard than that used to measure aggrieved party status"). Thus, "a plaintiff's injury need not be unique in the community to confer standing to abate a nuisance per se." *Id.* at ___. The "correct standard is whether plaintiffs can show damages of a special character distinct and different from the injury suffered by the public generally." *Id.* at ___ (quotation marks and citation omitted). The *Sakorafos* Court held that the trial court clearly erred when it "applied the aggrieved party test applicable to a party seeking to appeal a zoning decision under [MCL 125.3605](#)." *Sakorafos*, ___ Mich App at ___ (noting that "the trial court . . . conflated the test for standing with that of aggrieved party status" by concluding that the plaintiffs "lacked standing to initiate suit for nuisance" because they "had not demonstrated unique damages as described in the aggrieved party test"). Further, "although [MCL 125.3407](#) provides for the enforcement of a zoning ordinance, a municipality has discretion in doing so and courts generally will not interfere with the municipality's decisions." *Sakorafos*, ___ Mich App at ___. The Court of Appeals opined that "the Township has discretion in the enforcement of its ordinances, and plaintiffs' ability to seek abatement of the nuisance per se created by the alleged zoning violation provides an equitable remedy to achieve enforcement of the ordinance." *Id.* at ___ (holding that the trial court "did not err by determining that plaintiffs are not entitled to a writ of mandamus").

The Zoning Enabling Act, [MCL 125.3101 et seq.](#) "limits who may appeal the administrative actions of zoning officials; it does not limit private citizens from making direct challenges to an ordinance itself." *Comm for Marshall-Not the Megaside v City of Marshall (On Remand)*, ___ Mich App ___, ___ (2026) (cleaned up) (holding that the committee had standing to challenge the ordinance because

“organizations have the same standing as their members to assert claims”).

Although “the right to appeal a zoning decision does not restrict the right of a party to bring a separate complaint for relief relating to a zoning determination under certain circumstances” under [MCR 7.122\(A\)\(2\)](#), a “circuit court correctly concluded that the gravamen of plaintiffs’ original action . . . [was] to overturn the Township Board’s decision approving [plaintiff’s] site plan and special use of the property, i.e., a de facto appeal of the Township Board’s decision.” *Zelasko v Bloomfield Twp*, 347 Mich App 141, 159, 160 (2023) (noting that plaintiffs did not assert separate causes of action and “merely allege[d] defects in the [Township Board’s] decision and the decision-making process in approving [plaintiff’s] site plan and special use”).

B. Time Requirements and Subject Matter Jurisdiction

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

Subject matter jurisdiction. Because the “time limit for filing an appeal in circuit court is jurisdictional,” circuit courts lack “jurisdiction over an untimely claim of appeal.” *Zelasko v Bloomfield Twp*, 347 Mich App 141, 157 (2023) (citing [MCR 7.104\(A\)](#) and *Quality Market v Detroit Bd of Zoning Appeals*, 331 Mich App 388, 393-394 (2019)). In *Zelasko*, the Court of Appeals observed that the “plaintiffs could not invoke the circuit court’s subject matter jurisdiction to review the decision of the Township Board by filing an original action in the circuit court,” concluding that “[b]ecause plaintiffs’ original action in the circuit court was simply a challenge to the Township Board’s decision outside of the appellate process, plaintiffs’ complaint was an impermissible collateral attack of the Township Board’s decision.” *Zelasko*, 347 Mich App at 161, 163. Indeed, “plaintiffs only could invoke the circuit court’s subject-matter jurisdiction to review the [Township Board’s] decision by appeal of that decision to the circuit court.” *Id.* at 163-164. Thus, “[b]ecause plaintiffs did not challenge the Township Board’s decision by filing a timely appeal to the circuit court, the circuit court correctly concluded that it lacked subject-matter jurisdiction over the dispute.” *Id.* at 164.

C. Manner of Filing

“The claim of **appeal** shall conform to the requirements of [MCR 7.104\(C\)\(1\)](#), except that:

(a) the party aggrieved by the determination shall be designated the appellant; and

(b) the city, village, township, or county under whose ordinance the determination was made shall be designated the ‘appellee,’ except that when a city, village, township, county, or an officer or entity authorized to appeal on its behalf, appeals a determination as an aggrieved party, then the appellee(s) shall be designated as the board, commission, or other entity that made the determination and the party that prevailed before the board, commission, or other entity that made the determination.” [MCR 7.122\(C\)\(1\)](#).

“The claim of appeal must:

(a) state ‘[*Name of appellant*] claims an appeal from the decision on [*date*] by [*name of the officer or entity*]’; and

(b) include concise statements of the following:

(i) the nature of the determination by the officer or entity;

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

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

(iv) the facts on which venue^[83] is based;

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

(vi) the relief sought.” [MCR 7.122\(C\)\(2\)](#).

The appeal must be signed as set forth in [MCR 7.104\(C\)\(3\)](#). [MCR 7.122\(C\)\(3\)](#). The appellant must attach a copy of the order and/or minutes of the officer or entity from which the appeal is taken, or otherwise indicate there is no document to attach. [MCR 7.122\(C\)\(4\)](#).

⁸³See [Section 2.1\(D\)](#) for information on venue.

The parties must file briefs that comply with [MCR 7.111](#) unless the court orders otherwise. [MCR 7.122\(F\)](#).

D. Bond

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

E. Record on Appeal

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

F. Standard of Review

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

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

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

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

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

“[W]here a township zoning ordinance does not provide for review of a request for a special land-use permit by a zoning board of appeals, the township board’s decision is final and subject to appellate review by the circuit court pursuant to Const 1963, art 6, § 28.” *JS Beck Rd LLC v Northville Charter Twp*, ___ Mich App ___, ___ (2024) (citation omitted). “This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.” *Id.* at ___, quoting Const 1963, art 6, § 28. “A decision is authorized by law if it is allowed, permitted, or empowered by law.” *Beck*, ___ Mich App at ___ (quotation marks and citation omitted). “Substantial evidence is that which a reasonable mind would accept as adequate to support a decision.” *Id.* at ___ (quotation marks and citation omitted). “When there is substantial evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result.” *Id.* at ___ (“A court may not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record.”) (citation omitted).

In *Beck*, the circuit court properly vacated the Planning Commission’s denial of plaintiff’s special land use application because the township’s ordinances did not “provide specific procedures for obtaining appellate review of the Planning Commission’s decision to approve, deny, or postpone action on a special land use application.” *Id.* at ___. Under these circumstances, the circuit court was obligated to conduct the review required by Const 1963, art 6, § 28. *Beck*, ___ Mich App at ___. On appeal, the *Beck* Court noted that “the Planning Commission failed to adequately articulate the basis for its decision as required by [\[MCL 125.3502\(4\)\]](#).” *Beck*, ___ Mich App at ___. “[MCL 125.3502\(4\)](#) states that a planning commission’s decision on a special land use application *shall be* incorporated in a statement of findings or conclusions.” *Beck*, ___ Mich App at ___. “But the circuit court erred by directing the Planning Commission to consider additional evidence on remand because [plaintiff] failed to present the evidence before the Planning Commission before asking the circuit court to consider it.” *Beck*, ___ Mich App at ___ (holding that [MCL 125.3606\(2\)](#) (part of Michigan’s Zoning Enabling Act) did not apply

because it “addresses the standards applicable to appeals from decisions of a zoning board of appeals, and [plaintiff] did not appeal a decision of a zoning board of appeals”).

2.10 Appeals from Agencies Not Governed by Another Rule

Appeals from agencies not governed by any of the specific rules proceed as provided by MCR 7.123. Unless provided otherwise in MCR 7.123, the rules set out in MCR 7.101—MCR 7.115 apply. MCR 7.123(A).⁸⁴

A. Time Requirements

Timing is the same as for appeals in civil cases: appeals of right are governed by MCR 7.104(A) and applications for leave to appeal and interlocutory appeals must comply with MCR 7.105(A). MCR 7.123(B)-(C).⁸⁵ A late appeal may be filed if permitted by statute, and must comply with MCR 7.123(D).

B. Manner of Filing

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

“(i) state ‘[Name of appellant] claims an appeal from the decision on [date] by [name of the agency],’ and

(ii) include concise statements of the following:

[A] the nature of the proceedings before the agency;

[B] citation to the statute, rule, or other authority enabling the agency to conduct the proceedings;

[C] citation to the statute or constitutional provision authorizing appellate review of the agency’s decision or order in the circuit court; and

[D] the facts on which venue^[86] is based.” MCR 7.123(B)(2)(b).

⁸⁴ See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court. Note, however, that Part A does not include discussion of the rules that apply only to appeals from agencies.

⁸⁵ See the Michigan Judicial Institute’s *General Appeals of Right Table* and *General Appeals by Leave Table*.

⁸⁶ See Section 2.1(D) for information on venue.

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

C. Stay

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

- “(a) the moving party will suffer irreparable injury if a stay is not granted;
- (b) the moving party made a strong showing that it is likely to prevail on the merits;
- (c) the public interest will not be harmed if a stay is granted; and
- (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted.” [MCR 7.123\(E\)\(3\)](#).

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

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

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

A temporary stay may be extended until a hearing can be held. [MCR 7.123\(E\)\(5\)\(b\)](#). A motion to dissolve a temporary stay must be heard within 24 hours, or less if the court finds good cause. *Id.* Such

a motion takes precedence over all matters other than similar motions. *Id.*

D. Stipulations

“The parties may stipulate regarding any issue on **appeal** or any part of the record on appeal if the stipulation is embodied in an order entered by the court.” [MCR 7.123\(F\)](#).

E. Standard of Review

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

2.11 Appeals of Summary Proceedings

“Any party aggrieved by the determination or judgment of the court under [the Summary Proceedings Act⁸⁷] may appeal to the circuit court of the same county. The appeal shall be made in the same manner as an appeal in other civil actions from the same court, with bond and procedure as provided by court rules.” [MCL 600.5753](#).

“The circuit court has jurisdiction of an **appeal** of right filed by an aggrieved party from . . . a **final judgment or final order** of a district . . . court[.]” [MCR 7.103\(A\)\(1\)](#). The aggrieved party must file an appeal of right no later than ten days after entry of judgment.⁸⁸ [MCR 4.201\(O\)\(2\)](#); [MCR 4.202\(L\)](#).

⁸⁷[MCL 600.5701 et seq.](#)

⁸⁸Although [MCR 7.104\(A\)\(1\)-\(2\)](#) permits appeals within 21 days after entry of the judgment from which the appeal is taken, [MCR 4.201\(O\)\(2\)](#)’s ten-day deadline governs because it is the more specific rule. See *People v McEwan*, 214 Mich App 690, 694 (1995) (noting that the Court of Appeals “construes court rules according to the same basic principles that govern statutory interpretation”).

A. Appeals From Possessory Judgments⁸⁹

Unless otherwise provided by [MCR 4.201\(O\)](#), appeals from possessory judgments “must comply with [MCR 7.101](#) through [\[MCR\] 7.115.](#)”⁹⁰ [MCR 4.201\(O\)\(1\)](#).

1. Stay of Eviction Order

Unless the trial court orders a stay of the **order of eviction**, the order must be issued as provided in [MCR 4.201\(M\)](#).⁹¹ [MCR 4.201\(O\)\(3\)\(a\)](#).

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

2. Appeal Bond

The bond must “include the conditions provided in [MCR 4.201\(O\)\(4\)](#) if the **appeal** is from a judgment for the possession of land.” [MCR 7.108\(B\)\(3\)\(d\)](#).

a. Landlord Appeals

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

b. Tenant Appeals

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

“(i) the appeal costs,

(ii) the amount due stated in the judgment,
and

⁸⁹See the Michigan Judicial Institute’s [Landlord-Tenant or Land Contact Appeals Table](#).

⁹⁰ See [Part A](#) for discussion of [MCR 7.101](#)—[MCR 7.115](#) as generally applicable to appeals to the circuit court.

⁹¹See the Michigan Judicial Institute’s [Residential Landlord-Tenant Law Benchbook](#), Chapter 4, for information on orders of eviction.

(iii) damages from the time of forcible entry, the detainer, the notice to quit, or the demand for possession.” MCR 4.201(O)(4)(b).

“The court may waive the bond requirement of [MCR 4.201(O)(4)(b)(i) (payment of the appeal costs)] on the grounds stated in MCR 2.002(C) or [MCR 2.002(F)⁹²].” MCR 4.201(O)(4)(b). MCR 2.002(C) and MCR 2.002(F) require the trial court to waive the payment of fees based on a party’s receipt of public assistance or a party’s indigence, respectively; it no longer authorizes the waiver of costs. Note that MCR 2.002, as amended, also contemplates fee waiver for individuals represented by certain legal services programs. See MCR 2.002(D).⁹³ However, MCR 4.201 has not been amended to reflect these changes.

c. Escrow

The court must enter an escrow order under MCR 4.201(I)(2) for appeals in which the landlord was awarded possession.⁹⁴ MCR 4.201(O)(4)(c). The court must require the tenant to make escrow payments during the pendency of the appeal. *Id.*

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

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

⁹²Formerly MCR 2.002(D). See ADM File No. 2002-37 and ADM File No. 2018-20, effective January 23, 2019. MCR 4.201(N)(4)(b) has not been amended to reflect this change.

⁹³“Notwithstanding any other provision of [MCR 2.002], courts must enable a litigant who seeks a fee waiver to do so by an entirely electronic process.” MCR 2.002(L).

⁹⁴See the Michigan Judicial Institute’s *Residential Landlord-Tenant Law Benchbook*, Chapter 4, for information on escrow orders.

B. Appeals from Land Contract Forfeiture Judgments⁹⁵

“Except as otherwise provided by [MCR 4.202] or by law, the rules applicable to other appeals to circuit court (see MCR 7.101–[MCR] 7.115) apply to appeals from judgments in land contract forfeiture cases.”⁹⁶ MCR 4.202(L).

C. Appeals by Leave

“The circuit court may grant leave to appeal from . . . a judgment or order of a trial court when (a) no appeal of right exists, or (b) an appeal of right could have been taken but was not timely filed[.]” MCR 7.103(B)(1).⁹⁷

⁹⁵See the Michigan Judicial Institute’s *Landlord-Tenant or Land Contract Appeals Table*.

⁹⁶ See Part A for discussion of MCR 7.101—MCR 7.115 as generally applicable to appeals to the circuit court.

⁹⁷See Section 2.1(G) for information on appeals by leave in circuit court.

Chapter 3: Opinions

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3.1 Opinions in General

There is a distinction between a court's orders and its opinions; an order is the actual judgment¹, while an opinion consists of the factual and legal conclusions supporting the judgment. See generally *Black's Law Dictionary* (11th ed). "[C]ourts speak through their judgments and decrees, not their oral statements or written opinions." *Tiedman v Tiedman*, 400 Mich 571, 576 (1977). However, an opinion may be required in some circumstances.

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

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

Committee Tip:

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

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

²"Following the court's decision at the juvenile sentencing hearing, it must advise the juvenile" concerning the right to appeal and appointment of appellate counsel under [MCR 6.425\(F\)](#). [MCR 6.931\(E\)\(6\)](#). In automatic waiver proceedings where the court retains jurisdiction over the juvenile, places the juvenile on probation, and commits the juvenile to state wardship, the court must send a copy of the order and written opinion or transcript of the findings and conclusions of law to the Department of Health and Human Services. See [MCR 6.931\(F\)\(3\)](#).

In civil cases, when ruling on a motion for judgment notwithstanding the verdict or for a new trial, the court must concisely state the reasons for its ruling “either in a signed order or opinion filed in the action, or on the record.” See [MCR 2.610\(B\)\(3\)](#); [MCR 2.611\(F\)](#).

Committee Tip:

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

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

Sealing opinion. “A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.” [MCR 8.119\(I\)\(6\)](#).

3.2 Oral Opinions⁵

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

- The facts of the case as found by the judge. It is useful to state what facts are not in dispute.
- The issue(s) in the case.
- The appropriate standard of review used in reaching the decision.

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

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

⁵See also the Michigan Judicial Institute’s [Bench Trial Decision Checklist](#).

- Any “off-the-record” agreements between the judge and the parties affecting the decision.
- The final decision. Judges must avoid any ambiguity as to the final conclusion, or they risk confusing the appellate court, which will likely result in a remand.

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

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

Committee Tip:

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

3.3 Written Opinions⁶

A. Generally

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

- There was aggression in appellant Jones’s pursuit of appellee Smith.

⁶See also the Michigan Judicial Institute’s [Bench Trial Decision Checklist](#).

- Appellant Jones pursued appellee Smith aggressively.

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

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

B. Specifically

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

1. Research

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

2. Oral Argument

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

3. Planning the Opinion

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

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

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

4. Writing the Opinion

Committee Tip:

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

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

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

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

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

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

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

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

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

Committee Tip:

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

5. Notice of Opinion in Civil Action

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

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

Glossary

A

Activities of daily living

- For purposes of [MCL 791.235](#), *activities of daily living* “means basic personal care and everyday activities as described in [42 CFR 441.505](#), including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring from 1 physical position to another, including, but not limited to, moving from a reclining position to a sitting or standing position.” [MCL 791.235\(20\)\(a\)](#).

Agency

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

Appeal

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

Appeal fee

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

upon filing an **appeal** and any fee required to be paid to the ‘**trial court**’ or ‘**agency**’ in conjunction with the appeal[.]” [MCR 7.102\(3\)](#).

C

Clerk

- For purposes of subchapter 7.100 of the Michigan Court Rules, *clerk* “means clerk of the **court**[.]” [MCR 7.102\(4\)](#).
- For purposes of subchapter 7.200 of the Michigan Court Rules, *clerk* “means the Court of Appeals clerk, unless otherwise stated[.]” [MCR 7.202\(1\)](#).

Court

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

D

Date of filing

- For purposes of subchapter 7.100 of the Michigan Court Rules, *date of filing* “means the date of receipt of a document by the ‘**clerk**’[.]” [MCR 7.102\(6\)](#).

Department

- For purposes of the Department of Corrections Act, [MCL 791.201 et seq.](#), *department* means the Department of Corrections. See [MCL 791.201](#).

E

Entry

- For purposes of subchapter 7.100 of the Michigan Court Rules, *entry* “is as defined in [MCR 7.204\(A\)](#)[.]” [MCR 7.102\(7\)](#). [MCR 7.204\(A\)](#) defines that term to mean “the date a judgment or order is signed, or the date that data entry of the judgment or

order is accomplished in the issuing tribunal’s register of actions.”

F

Filing

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

Final judgment or final order

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

“(a) In a civil case,

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

(ii) an order designated as final under [MCR 2.604\(B\)](#);

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

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

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

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

(b) In a criminal case,

- (i) an order dismissing the case;
- (ii) the original sentence imposed following conviction;
- (iii) a sentence imposed following the grant of a motion for resentencing;
- (iv) a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right; or
- (v) a sentence imposed following revocation of probation." [MCR 7.202\(6\)](#).

M

Medically frail

- For purposes of [MCL 791.234](#), *medically frail* “means that term as defined in [[MCL 791.235](#)].” [MCL 791.234\(22\)\(a\)](#). [MCL 791.235\(20\)\(d\)](#) states that *medically frail* “describes an individual who is a minimal threat to society as a result of the individual’s medical condition, whose recent conduct in prison indicates the individual is unlikely to engage in assaultive conduct, and who has 1 or more of the following:
 - (i) A permanent physical disability or serious and complex medical condition resulting in the inability to walk, stand, or sit without personal assistance.
 - (ii) A terminal medical or neurological condition resulting in a life expectancy of under 18 months.
 - (iii) A permanent disabling mental disorder, including dementia, Alzheimer’s, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform 2 or more **activities of daily living**.”

O

Order of eviction (writ of restitution)

- [MCL 600.5744](#) addresses issuing a writ of restitution, and indicates it is “a writ commanding a court officer appointed by or a bailiff of the issuing court, the sheriff or a deputy sheriff of

the county in which the issuing court is located, or an officer of the law enforcement agency of the local unit of government in which the issuing court is located to restore the plaintiff to and put the plaintiff in full, peaceful possession of the premises by removing all occupants and all personal property from the premises and doing either of the following:

- (a) Leaving the property in an area open to the public or in the public right-of-way.
- (b) Delivering the property to the sheriff as authorized by the sheriff." [MCL 600.5744\(1\)](#).

R

Record

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

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

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

T

Technical probation violation

- For purposes of subchapters 6.000-6.800 of the Michigan Court Rules, *technical probation violation* “means any violation of the terms of a probation order, including missing or failing a drug test, excluding the following:
 - (a) A violation of an order of the court requiring that the probationer have no contact with a named individual.
 - (b) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether or not a new criminal offense is charged.
 - (c) The consumption of alcohol by a probationer who is on probation for a felony violation of [MCL 257.625](#).
 - (d) Absconding, defined as the intentional failure of a probationer to report to his or her supervising agent or to advise his or her supervising agent of his or her whereabouts for a continuous period of not less than 60 days.” [MCR 6.003\(7\)](#).

Trial court

- For purposes of subchapter 7.100 of the Michigan Court Rules, *trial court* “means the district court or municipal court from which the ‘[appeal](#)’ is taken.” [MCR 7.102\(9\)](#).

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