

MICHIGAN COURT OF APPEALS

Office of the Clerk



GUIDE TO PURSUING A CRIMINAL APPEAL

FOR PEOPLE WHO ARE NOT ATTORNEYS

Court of Appeals Guide to Pursuing a Criminal Appeal

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Contact Information

This manual and other helpful information is available on the Court of Appeals website at: <http://courts.michigan.gov/courts/court-of-appeals>

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Our offices are open from 8:30 a.m. until 4:30 p.m., Monday through Friday, except on Court holidays. You may contact and file documents at the location most convenient for you, but Clerk's Office staff may direct you to contact the office managing your appeal.

Electronic Filing

Anyone with an email address and internet access can sign up to file electronically, and filers are encouraged to do so. Documents may be electronically filed using MiFILE at any time, even after business hours. For more information, see the e-filing instructions on the Court's website [here](#).

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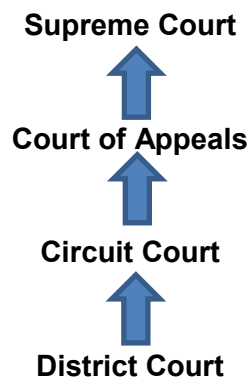
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Introduction

This guide describes the process of challenging an order in a criminal matter by filing an appeal in the Michigan Court of Appeals. The guide includes information about working with appointed counsel on the first appeal after a conviction, as well as filing an appeal after the trial court rules on a postjudgment motion.

An **appeal** is a way to ask a court to correct an error that was made by a lower court. The Michigan Court of Appeals is an appellate court between the circuit court and the Michigan Supreme Court.



As the diagram shows, an appeal is usually taken to the next higher court. Orders from the district court generally must be appealed to the circuit court. Orders of the circuit court are generally appealed to the Court of Appeals. Decisions of the Court of Appeals may be appealed to the Michigan Supreme Court.

An appeal is not a new trial. There are no witnesses. The person filing the appeal (“the appellant”) files documents to persuade the Court of Appeals that a legal error happened and the result should be changed. The goal is usually a new trial or a resentencing.

If you cannot afford an attorney, you might be entitled to have an attorney appointed for you at no cost to you. Making a request for counsel is discussed in Part I.

The appeal process is complicated. The appellant must follow many rules and file many documents. This guide provides basic information, including some forms, instructions, and examples for some of the documents that may be required. It is only a **procedural** guide.

- It does not give legal advice.
- It is not the law and does not replace the court rules or statutes.
- It will not help you know whether you will win.

An attorney has training to interpret and apply the law to your situation. This manual does not substitute for that, and this manual is not meant to encourage you to represent yourself if you can get legal assistance.

The legal requirements for pursuing an appeal are subject to change. The procedural requirements described in this manual are primarily based on the Michigan Court Rules (MCR). Those rules are adopted by the Michigan Supreme Court and govern all state courts in Michigan. Because the Supreme Court may change the rules, the information in this manual may become outdated.

Always check the current version of the court rules. The current version of the court rules may be found on the Court's website [here](#).

Legal Help:

The Court of Appeals will not give legal advice. One organization that provides legal assistance for criminal appeals is Michigan Appellate Assigned Counsel System (MAACS), 200 N. Washington Square, Suite 250 Lansing, MI 48933.

The court rules numbered MCR 7.201 to 7.219 are the rules specifically written for the Court of Appeals, although other rules also apply. References to the Michigan Court Rules are indicated as "MCR." For example, "MCR 7.208(H)" means section (H) of court rule 7.208.

Part I – Appointment of Counsel

You may ask the trial court to appoint an attorney to assist in an appeal. The Court of Appeals does not appoint counsel.

A person who is accused of a felony has a constitutional right to the assistance of counsel in many stages of the criminal proceedings, including after a conviction. Some statutes and court rules also provide a right to counsel. If a person has the right to counsel, cannot afford to pay for an attorney, and asks for one in the required time, the trial court is required to appoint counsel. The trial court may grant a request for appointment of counsel in other situations too. Some common situations where the trial court will appoint counsel for an appeal are:

For an appeal after sentencing. Counsel may be appointed to assist you for the first time that a conviction is appealed to the Court of Appeals.

For an appeal after resentencing. Resentencing may happen because a trial court grants a motion for resentencing or because the Court of Appeals or the Supreme Court ordered resentencing. Sometimes at resentencing, a trial court may decide to give the same sentence, a lower sentence, or a higher one. If the trial court resentenced you and you want to appeal, you have the right to appointed counsel for an appeal.

For an appeal of an order denying a motion for relief from judgment if the court appointed counsel during the proceeding. If the trial court appointed counsel for you during the proceedings on a motion for relief from judgment, the appointment will allow the attorney to continue to represent you for an application for leave to appeal. MCR 6.509(B).

For a prosecutor appeal. This guide is mainly for a person who wants to file an appeal (an appellant). But the prosecutor may also file an appeal. If the prosecutor has filed an appeal of a trial court decision in your case, the trial court may appoint counsel to represent you as the **appellee**, that is, the person opposing the appellant.

To request counsel after sentencing or resentencing, you complete a form. A copy of the form (CC 265) is in Part IX. The trial court is required to give you this form and a chance to complete it and turn it in at sentencing or resentencing. MCR 6.425(F). You may instead choose to mail it to the trial court or mail it to the Michigan Assigned Appellate Counsel System (MAACS). Getting the form to the trial court or MAACS within **42 days** of sentencing is important. A late

request for appointment of counsel may affect the trial court's decision to appoint counsel and the type of appeal that may be filed. MCR 6.425(G).

If you do not have a form to request counsel, you may write a letter to the trial court. Include your lower court case number and state the date and type of order you want to appeal. You may send a copy to MAACS.

Do not send a request for appointment of counsel to the Court of Appeals. The court rules state the trial court has authority to appoint counsel and also to remove or replace counsel. MCR 7.208(H).

If the trial court decides that counsel should be appointed, an attorney will be selected to take your case. Next, the trial court will enter an order that formally appoints the attorney. Then, the appointed attorney will contact you. The attorney may not meet with you right away. The attorney will usually want to read the transcripts first, and court reporters may take months to prepare them. If you asked for an attorney, have not been contacted by one, and you want to know if an appeal has been filed for you, you may send a letter to the Court of Appeals or MAACS.

If the trial court denies the request for counsel, the court will sign an order showing that decision, and the order will be mailed to you. You may challenge the order by filing an application for leave to appeal (Part IV). You will not have appointed counsel to help with that challenge. You may also write to MAACS for assistance if you believe the trial court improperly denied your request.

Part II – Is an Appeal Possible?

Court of Appeals jurisdiction

Before filing an appeal with the Court of Appeals, you should determine whether the Court of Appeals is the right court for the appeal and what type of appeal to file. Court of Appeals staff are not permitted to provide legal advice to help you make this determination.

The Court of Appeals has the legal authority to act only in certain types of cases. This authority is called “jurisdiction.” The jurisdiction of the Court of Appeals comes from the Michigan Constitution, statutes, and the Michigan Court Rules adopted by the Michigan Supreme Court.

Generally, the Court of Appeals has jurisdiction to review decisions of the circuit court, but there are limits to that authority. For example:

- If you do not file your appeal within the time set by court rule or statute, the Court cannot hear your appeal.
- If you file a claim of appeal when you do not have an appeal of right, the Court does not have jurisdiction to hear your appeal.
- If you file an appeal in the Court of Appeals from an order that should be appealed to the circuit court, the Court cannot hear your appeal.

The claim of appeal is often filed by the trial court. If you were convicted following a trial, you requested counsel within 42 days of the judgment of sentence, and the trial court determined you were indigent, the trial court will appoint counsel, file your claim of appeal, and order the transcripts. MCR 6.425(G)(1).

If the Court does not have jurisdiction to decide your appeal, the Court will end the appeal with an order of dismissal. Dismissal could occur at any time during the appeal, but dismissal usually happens shortly after the appeal is filed.

The appellant is responsible for determining if the appeal is within the Court’s jurisdiction. This manual provides some guidelines, but other limitations may apply.

Two types of appeals

The Court of Appeals has jurisdiction to hear two different types of appeals: a claim of appeal and an application for leave to appeal. As the appellant, you have

to choose which type of appeal is correct for your situation. Here is a summary of the two types:

1. **Claim of Appeal:** A claim of appeal may be filed when the law gives you the right to appeal the order that you want to challenge. When you have an appeal as of right, the Court of Appeals has to accept your appeal as long as you comply with the rules. The paperwork to begin an appeal as of right with a claim consists of forms and documents from the trial court. **For criminal cases after trial, an appeal of right is usually filed by the trial court when the court grants a timely request for the appointment of counsel.** If the necessary steps are followed, the Court will eventually decide the claim of appeal with a written decision called an “opinion.” Filing a claim of appeal is discussed in detail in Part III.
2. **Application for Leave to Appeal:** An application for leave to appeal can be filed when you do not have the right to appeal but you want to ask the Court of Appeals to allow you to appeal. Applications offer a way to challenge some types of decisions that cannot be appealed with a claim of appeal. Applications also offer a way to make challenges when the time for filing a claim of appeal or requesting counsel has passed. Unlike with a claim of appeal, an application requires a person to prepare and file a brief at the beginning. Usually, the Court will decide an application with an order of a sentence or two saying the application is denied or granted. If the Court grants your application, then your appeal will go through the same process as in a claim of appeal, and the appeal will be resolved in an opinion. In rare cases, the Court will enter an order that grants some relief immediately. An application for leave to appeal is discussed in detail in Part IV.

A **brief** is a document to communicate the facts and legal arguments to the judges. A brief must meet certain requirements that are in the court rules. See Part VI.

No claim of appeal if you pleaded guilty or nolo contendere

If your conviction was based on your plea of guilty or nolo contendere and your offense was committed after December 27, 1994, you should not file a claim of appeal. By court rule, the Court of Appeals does not have jurisdiction when a claim of appeal is filed in a criminal case where the conviction was based on a plea. MCR 7.203(A)(1)(b). The Court of Appeals will dismiss a claim filed in those circumstances. An appeal must be filed as an application.

“Final order” needed for a claim of appeal

A claim of appeal is used to start an appeal of right. The law allows an appeal of right only from certain types of orders. For the most part, an order that can be appealed by right is one that the court rules call a “final order” from the circuit court. MCR 7.202(6)(b) defines “final order” in a criminal case for an appeal to the Court of Appeals. Check the current version of MCR 7.202(6)(b) to decide if the order you want to appeal is a final order. If it is, then an appeal as of right using a claim of appeal may be possible.

An appeal requires a written order that was entered before the appeal was filed. Do not file an appeal **before** the judge has signed the order that you want to challenge. If an appeal is filed before a written order is signed, the appeal is considered too early, and it will be dismissed.

At the time this manual was prepared, MCR 7.202(6)(b) included the following final order types:

- **The original sentence following conviction.** MCR 7.202(6)(b)(ii). An appeal from this order will usually be handled by appointed counsel. The brief filed by the attorney may challenge the sentence and also the proceedings leading to the conviction.
- **A sentence after the court granted a motion for resentencing.** MCR 7.202(6)(b)(iii).
- **A sentence or an order entered by the trial court after the Court of Appeals or Supreme Court remanded an earlier appeal of right.** MCR 7.202(6)(b)(iv).
- **A sentence imposed by the trial court after probation is revoked.** MCR 7.202(6)(b)(v).
- **An order dismissing the case.** MCR 7.202(6)(b)(i). The prosecutor may file a claim of appeal when the trial court dismisses a criminal case.

If you do not have a “final order,” you may be able to appeal, but you would file an application for leave to appeal, not a claim of appeal. Most appeals filed without the help of an attorney concern orders denying a motion for relief from judgment. Because this type of order is not a “final order,” a claim of appeal is not the right choice. An appeal would have to be filed as an application for leave to appeal.

Time limits

The court rules set time limits for filing an appeal. If you do not file the appeal within the time limit, the Court of Appeals will not have authority to review the appeal, and the appeal will be dismissed.

Most claims of appeal in criminal cases are filed by the trial court after a defendant is sentenced and requests appointed counsel within 42 days. The time limit of filing the claim in that situation will be met by the trial court.

If you choose to hire an attorney or decide to represent yourself for a claim, you should be aware that the time limit for filing a claim of appeal is set out in MCR 7.204(A)(2). A **claim of appeal** may be filed within **42 days** of:

If the order you want to appeal was not served on you within 7 days of its signing, you may file your claim of appeal within 14 days of when it was served. See MCR 7.204(A)(3). To rely on this rule, you must file an affidavit with your claim of appeal that states the facts of the service delay. Your opponent will have 14 days to object. MCR 7.204(A)(3).

- the order appealed
- an order denying a timely request for appointed counsel after sentencing.
- an order denying a motion for new trial, for directed verdict, or to correct an invalid sentence, if the particular motion was timely filed. You would need to look at MCR 6.419(C), MCR 6.429(B), and MCR 6.431(A), to determine the time.
- an order denying a motion for reconsideration of an order in the previous paragraph, but only if the motion for reconsideration was filed within 21 days of the order being challenged and also within 42 days of the final order.

An **application for leave to appeal** in a criminal case may be filed within **6 months** from the order being challenged. MCR 7.205(A)(2). That court rule provides some other specific situations that could extend the 6-month period. If you think you will be unable to meet the 6-month deadline, you should read MCR 7.205(A)(2)(b).

Because an appeal that is not filed by the deadline will be dismissed, you need to be aware of when documents are considered to be filed with the Court of Appeals.

Filing in the Court of Appeals

For the most part, documents are only considered filed when they are received by the Court of Appeals. MCR 7.202(2) and (4). A document that is e-filed is considered received at the time shown on the e-filing, unless that is a weekend or Court holiday. Documents received by e-filing on a Saturday, Sunday or court holiday will be docketed as filed on the next business day. For paper filings, the Court places a timestamp on the document when it is received. That timestamp shows the date that the Court considers the document to have been filed.

Since September 1, 2021, a filing by an incarcerated person who is not represented by an attorney will be considered timely filed if deposited in the institution's outgoing mail on or before the deadline. MCR 1.112. (Before September 1, 2021, a similar rule applied, but only to a claim of appeal or application and not later filings.)

Part III – Claim of Appeal

This section describes the process for an appeal of right, which begins with a claim of appeal. In criminal matters, the situations where a claim of appeal is the right choice are almost always those where a person has appointed or retained counsel to manage the claim of appeal process. A person who has an attorney must rely on the attorney for filing documents, except as allowed by Standard 4, which is discussed below. Usually, a person who does not have an attorney will be filing an application. See Part IV.

Filing a Claim of Appeal

MCR 7.204 explains what needs to be filed for a claim of appeal. The required items are listed below. (Forms and examples of these items are included in the Part IX.) **In criminal cases, the filing of the claim of appeal and all the required forms is usually handled by the trial court (if counsel was appointed) or by an attorney hired by the person who was convicted.**

- **Completed jurisdictional checklist.** This form is available on the Court’s website Forms page [here](#). It is a checklist of all the items needed for the claim of appeal and a statement of why you think that the order you are appealing is appealable by claim of appeal.
- **Claim of appeal.** A claim of appeal form is available on the Court’s website Forms page [here](#), but you may create your own claim of appeal by handwriting or typing one.
- **Filing fee.** The filing fee for a claim of appeal is \$375. You may pay by cash or by a check made out to “State of Michigan.” If you are e-filing, you will use a credit card. If you cannot afford to pay the entry fee, then you may file a motion to waive fees and present your Prisoner Account Statement. See Part V.
- **Copy of the order you are appealing.** You must include a copy of the order that is the “final order” or other order that can be appealed as of right as discussed in Part II. This is usually the judgment of sentence. It may be helpful to also provide a copy of any other orders deciding a postjudgment motion, like a motion for reconsideration.
- **Register of actions.** This is the trial court’s docket listing showing the actions that occurred in the case you are appealing. Some courts have the

docket entries available online for printing. Otherwise, contact the lower court or tribunal to get a copy.

- **Transcript order.** A transcript shows what was said in court. If you have ordered a transcript, provide some evidence of the order, such as a copy of the letter to the reporter. If there was a hearing and you have not ordered the transcript, you should contact the court reporter.
- **Proof of service.** This is your statement to confirm that you have given a copy of the claim of appeal and all the other documents to the other parties in the case. Providing a copy is called “serving” the document. In a criminal case, the other party is the prosecution. The court rules require that you serve the documents on the other parties so that they have notice that an appeal has been filed. The proof of service must say how you served copies on them (by mail, hand delivery, or e-service through MiFILE), at what address you served each of them, and on what date. The Court of Appeals does not serve documents for parties.

Can't Get All These Documents in Time to File Your Claim of Appeal?

At a minimum, you must file the claim of appeal form within the time limit. If some of the other items are missing, the clerk's office will send you a letter explaining what is missing, and you will have 21 days to correct it. MCR 7.201(B)(3).

When your documents are ready, you will choose how to file them with the Court. Most incarcerated people will send documents in the mail. Some correctional facilities have a method for e-filing documents through the library. Documents may also be filed in person at one of the four Court of Appeals offices.

Assignment of the docket number. After the claim of appeal and other documents are filed, your appeal will be assigned a Court of Appeals docket number. The Court will notify you within a few days of the 6-digit docket number that was assigned. You will use this number for any other filings for the rest of the case. If you have an attorney, he or she will be notified.

Initial review by the Court. Court staff will review the claim of appeal within a few days after it is filed. If any items are missing, the Court will send a letter

about what is missing. If the missing item is not filed within 21 days, the appeal may be dismissed. MCR 7.201(B)(3).

In the initial review, the Court staff also looks at whether the Court has jurisdiction over your claim of appeal. See Part II of this manual for information on this. If the Court finds that it does not have jurisdiction, the Court will issue an order that dismisses the appeal for lack of jurisdiction. If you believe that the Court is wrong in that determination, you can file a motion for reconsideration to have the Court take another look at it. No motion fee is required for the motion. See MCR 7.203(F)(2).

Once all the items for a claim of appeal are filed and if the Court's initial review indicates that the Court has jurisdiction, the case will proceed to transcript production.

Transcript production

The next phase for a claim of appeal focuses on getting the transcripts prepared and filed with the trial court clerk.

In criminal cases, the transcripts for claims of appeal are usually ordered by the trial court (if counsel is appointed) or by an attorney hired by the defendant. Once the reporter receives the order, the court reporter is required to file a form called "Stenographer's Certificate" with the Court of Appeals.

The court rules give the reporter a certain amount of time to complete the transcript. MCR 7.210(B)(3) provides the time limits. For most criminal cases, the time limit is 91 days from the date the reporter received the order. When the court reporter has completed the transcript, the reporter will file it with the trial court and file a form called "Notice of Filing Transcript" with the Court of Appeals.

During the time the transcript is being prepared, you (or your attorney if you have one) may be able to begin legal research and working on some parts of the brief.

Briefing

In this stage, the appellant and the appellee present their arguments to the judges in written documents called "briefs." The brief is the most important part of the appeal. The decision of the Court of Appeals will be based on the arguments set forth in the brief.

The time limit for filing the brief depends on whether you made a timely request for the transcripts and the type of appeal you have. The time limits for the appellant's brief are found in MCR 7.212(A). For most criminal cases where the transcript was ordered shortly after the claim of appeal was filed, the time limit will be 56 days from when the transcript was filed in the trial court. If you have counsel, your attorney will file your appellant's brief.

After the appellant's brief is filed, the appellee (the prosecutor) may choose to file a brief. An appellee is not required to file a brief. You do not win just because the appellee does not file a brief. If an appellee brief is filed, a reply brief, 10 pages or less, may be filed within 21 days.

Standard 4 Brief. For the most part, if you are represented in this Court by counsel, your attorney is responsible for all filings. The Supreme Court has provided an exception for those represented by appointed counsel, but not those represented by retained counsel.

Under Supreme Court Administrative Order 2004-6, Standard 4, if you are represented by appointed counsel, you may file a supplemental "Standard 4" brief, and a motion with the brief. You must file the brief within 84 days of the date your appointed counsel filed the appellant's brief. To ask the Court to extend the deadline, your appointed attorney may file a motion. The Court cannot accept a motion to extend the deadline from you.

Oral argument and decision

After the briefing is done, several months will pass before the case is scheduled for oral argument. Oral argument is usually not available to people who are incarcerated. If you have an attorney who is entitled to oral argument, the attorney will be notified by mail or e-mail of the date, time, and location. The attorney will have the chance to speak to a panel of three judges for about 15 minutes. The prosecution may have the same opportunity. If no one is entitled to oral argument, the case will still be set for submission on a particular date.

The Court's judgment will be in the form of a written opinion. Most opinions are issued within a few weeks after oral argument or submission. The opinion will be mailed or e-mailed to you or your attorney.

If you think the Court made a mistake, a motion for reconsideration of the opinion may be filed by your attorney or by you, if you do not have an attorney. See Part V for information about motions. A motion for reconsideration must be filed within 21 days of the date on the opinion; late motions will be returned without a decision. MCR 7.215(I). The motion will be decided by the judges

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who issued the opinion. Once the opinion has been issued and any motion for reconsideration decided, the appeal in the Court of Appeals is over, and the Court will close its case file.

The court rules for the Supreme Court begin at MCR 7.300. This manual does not cover proceedings in the Supreme Court.

Part IV – Application for Leave to Appeal

If you have determined the type of order and the timing will allow you to file an application for leave to appeal, see Part II, this section will guide you through the steps. **Most criminal appeals without an attorney are applications for leave to appeal.**

Filing an Application for Leave to Appeal

MCR 7.205 explains what needs to be filed for an application for leave to appeal. The required items are listed below. (Forms and examples of some of these items are found in the Part IX.)

- **An application for leave to appeal in the form of a brief.** Briefs are discussed in Part VI. This is the most important part of your filing.
- **Filing fee.** If you are appealing one order, the filing fee for an application for leave to appeal is \$375. You may pay by cash or by a check made out to “State of Michigan.” If you are e-filing, you will use a credit card. If you cannot afford to pay the entry fee, then you may file a motion to waive fees, with your Prisoner Account Statement. See Part V.
- **Copy of the order you are appealing.** You must include a copy of the order or judgment that you are appealing, along with any opinion or findings of fact the lower court issued.
- **Register of actions.** This is the trial court’s docket listing showing the actions that occurred in the case you are appealing. Some courts have the docket entries available online that can be printed. Otherwise, contact the lower court to get a copy.
- **Transcript.** You must provide the Court with a copy of a transcript of any hearings that concerned the issues that you are raising in your application. This is necessary so the Court can review the lower court’s decision. If the transcript you have ordered is not ready, you should file a statement to show that you have ordered the transcript from the court reporter. If there were no hearings, you can file a statement with the application saying that there are no transcripts to be filed.

- **Proof of service.** This is a statement from you to confirm that you have given a copy of the application and all the other documents to all the other parties in the case. Providing a copy is called “serving” the document. In a criminal case, the other party is the prosecution. The court rules require that you serve the documents on the other parties so that they have notice that an appeal has been filed. The proof of service must say how you served copies on them (electronically, by mail, or by hand delivery), at what address you served each of them, and on what date.

Can’t Get All These Documents in Time to File Your Application?

At a minimum, you must file the application within the filing deadline. The Court cannot extend the deadlines. If some of the items are missing from the application, the clerk’s office will send you a letter explaining what is missing and you will have 21 days to correct it. MCR 7.201(B)(3).

Assignment of the docket number. After you file your application for leave to appeal, your appeal will be assigned a Court of Appeals docket number. The Court will send you a notice within a few days that will tell you the 6-digit docket number that was assigned. You will use this number for any other filings for the rest of the case.

Initial review by the Court. Court staff will review the application within a few days after it is filed. If the review finds that the Court does not have jurisdiction over the appeal, an order dismissing your application will be issued. If any items are missing from the application, the Court will send you a letter telling you what is missing. If you do not file the missing items within 21 days, an order may be issued dismissing your application.

Next steps

After you file the application, the prosecution (“appellee”) may file an answer. The court rules give appellees 21 days to answer, but the Court will accept an answer to an application at any time before the Court decides the case. Even if the appellee chooses not to file an answer, the Court may still rule against you. If an answer is filed, you may file a reply brief. MCR 7.205(D).

If you have ordered a transcript, the Court may wait to review your case until you file the transcript. Sometimes, the Court will decide the case without a transcript.

In general, the Court considers applications for leave to appeal in the order in which they are ready for a decision. Some types of cases (prosecutor appeals, for example) are considered sooner.

When the application is ready to be decided, it will be submitted to three judges for decision. You will not have any oral argument or hearing in front of the judges. The judges will review the materials that have been submitted by the parties to make the decision.

The decision of the panel of judges will be in a written order. In most cases, the Court simply denies the application in an order with one sentence. Sometimes, the Court grants the application. In rare instances, the Court orders some form of relief instead of granting the application.

If the application is denied, the order deciding the application ends your appeal. You may file a motion for reconsideration of the order within 21 days. MCR 7.215(I). But if you do not, or if your motion for reconsideration is denied, your appeal is concluded, and the Court will close the case file.

The court rules for the Supreme Court begin at MCR 7.300. This manual does not cover proceedings in the Supreme Court.

If your application is granted

If the Court issues an order granting your application for leave to appeal, then the appeal will be handled in the same way the Court handles a claim of appeal described in Part III of this manual. You may have to order additional transcripts. You will need to file an appellant's brief, which you can base on your application brief. The Court's decision to grant your application does not mean the Court will rule in your favor when it decides the appeal in an opinion.

Part V – Motions

A motion is a written request to the Court to take some action or to treat a matter differently than the Court would do otherwise. For example, the court rules require an appellant to pay a fee to start the appeal. Instead of paying the fee, the appellant may file a motion to ask the Court to waive fees. Another common use for motions is to ask the Court for more time. For example, the court rules provide a time period for filing a brief. If a party wants more time, the party may file a motion to ask the Court for an extension of time to file the brief.

A motion may be filed at the same time as a claim of appeal or an application for leave to appeal. A motion may also be filed in an existing appeal. But in nearly every situation, a motion may not be filed when there is no pending case in the Court. The two exceptions are a motion to review bond prior to a criminal trial, MCR 6.106(H), and a motion to review a release decision regarding a child support bench warrant, MCR 3.221(I)(1). Any other motion submitted without a pending case will be rejected or returned by the Clerk's Office without a decision by the Court. A motion cannot be used to extend the time to file a claim of appeal or an application for leave to appeal.

The fee for filing most motions is \$100. There is no cost to file a motion to waive fees. The fee for a motion for immediate consideration is \$200.

The requirements for filing most motions are in MCR 7.211. That rule has specific requirements that apply to some motions.

Forms for some motions are on the Court's website [here](#). If a form is not available, you must create your own motion. Use your Court of Appeals caption to identify the appeal and state the type of motion that you are filing (for example, Motion for Reconsideration). Then explain why you are making the request. If the explanation is longer than a few sentences, you may want to write the motion in numbered paragraphs. Be specific about the action that you want the Court to take. If you need an extension of time, for example, state the extension date you are requesting.

A person who has appointed counsel must rely on that attorney to file motions. The only exception is a motion filed with the Standard 4 brief. Other motions will be rejected and returned without a decision.

When a motion is filed, the other parties to the appeal are given a chance to respond in writing by filing an answer to the motion.

In general, a motion should request only one type of relief. For example, if you want an extension of time to file a brief and you want to file a brief that is longer than allowed by the court rules, you should file two separate motions.

Some types of motions are decided by one judge. Other types of motions are decided by a panel of three judges. See MCR 7.211(E)(2) for more information. There is no hearing on motions at the Court of Appeals. The judge or judges will decide to grant or deny the motion by reviewing the motion and any answer filed. The Court's decision will be shown in a written order that is sent to the parties.

The following paragraphs describe some motions that may be important to your appeal.

Motion to Waive Fees

If you cannot afford the filing fee, you may file a motion to waive fees. MCR 7.202(3). The motion must be filed with either an affidavit concerning financial status form or, if you are incarcerated, a prisoner account statement for the past 12 months. Filing a motion to waive fees is free. If the Court denies the motion, you will have to pay the filing fee of \$375 and fees for any motions you filed other than the motion to waive fees. The fees must be paid within 21 days or the appeal will be dismissed. The affidavit concerning financial status and an example of the motion are in Part IX.

Motion to Remand

“Remand” means “send back.” In the Court of Appeals, an appellant may file a motion to remand to ask the Court to send the case back to the trial court before the Court decides the case. Why ask for the case to go back to the trial court? The appellant may want to raise an issue on appeal that must first be decided by the trial court, such as a sentencing issue. Or the appellant may want to raise an issue that depends on development of facts, such as a new witness who is willing to testify. The importance of the new evidence must first be considered by the trial court. According to the court rules, a motion to remand must be accompanied by something to show what facts would be presented at a hearing if the Court remanded the case. You can make the showing with an affidavit or a witness statement, for example. If you have appointed counsel and you want

to file your own motion to remand, you must file it with your Standard 4 supplemental brief.

Motion for Reconsideration

If the Court released an opinion or an order and you believe that the Court made an error or was misled, you may file a motion for reconsideration. The requirements are in MCR 7.215(I). The motion must be filed within 21 days after the date that is stamped on the order or opinion. The Court cannot accept a late motion for reconsideration. MCR 7.215(I)(4).

Part VI – Appeal Briefs

A brief is a written document that provides the important facts of the case, sets out the applicable law, and explains why the law and facts mean that the court should decide the case in your favor. Your appellant's brief, Standard 4 supplemental brief, or your brief in support of an application is your chance to explain your views to the judges. A sample brief is included in the Part IX.

As you write the brief, keep in mind the limited role of the Court of Appeals as a reviewing court. In other words, the Court looks at your arguments to review the ruling of a lower court or tribunal for errors. To determine whether the trial court made a mistake, the Court considers the information that was presented to the court or tribunal at the time of the ruling. For that reason, the brief should focus on the facts and evidence presented to the court and the issues that the court decided.

In many cases, three briefs will be filed. First, the appellant will file a brief. Next, an appellee may file a brief to respond to the arguments that the appellant made. An appellee is not required to file a brief. Lastly, if an appellee has filed a brief, the appellant may file a reply brief of no more than 10 pages to discuss the arguments made by the appellee.

If there is no response from the appellee, the Court will review the arguments in your brief, the record, and the challenged ruling. The appellee's failure to file a response does not mean that the Court will rule for you.

Deadline for filing the brief

For an **application for leave to appeal**, the brief is due at the time that the application is filed. If you file an application without a brief, the Court will send a letter informing you that your application is defective. You will have to cure the defect by filing the brief within 21 days. If the defect is not cured, the Court will dismiss the application. No refunds are given.

For a **claim of appeal**, the deadline for filing a brief is addressed in MCR 7.212(A). Basically, you need to know how many days you are allowed and when the time starts. For a criminal appeal on the usual schedule, the time for the brief is 56 days. The time starts from the event that occurred latest:

- the claim of appeal was filed
- transcripts that you ordered are filed by the reporter in the lower court

- the Court of Appeals entered an order granting your application for leave to appeal

If you have appointed counsel, the time for filing a Standard 4 supplemental brief is 84 days from when your attorney filed the brief. The Clerk's Office does not have authority to give more time than allowed by the court rules. If you need more time, your attorney may file a motion for you. If you send your own motion for an extension, the Clerk's Office will return it to you because the motion must be filed by your attorney.

Formatting and length of an appeal brief

The court rules have specific requirements for the format of briefs. They are listed at MCR 7.212(B).

- At least 1-inch margins on the top, bottom, and both sides
- Typed in at least 12-point type or printed legibly
- Double-spaced. Footnotes and quotations can be single-spaced.
- No more than 50 pages, beginning with the Statement of Facts and not counting indexes and appendices

Required sections of an appeal brief

The court rules also require that an appellant's brief and a brief in support of an application have certain sections. They are discussed below in the order that they will appear in your finished brief.

Title page. This first page identifies that the document is for your case and that it is your brief. Use the caption from other documents, which will show the Court of Appeals docket number. An appellant's brief in a claim of appeal will indicate if oral argument before the judges is requested. Write "ORAL ARGUMENT REQUESTED" or "ORAL ARGUMENT NOT REQUESTED." A brief for an application does not need to include this because oral argument is not held for applications.

Table of Contents. This list shows each of the required sections of the brief and the page where it begins. You will need to finish the brief before you prepare the Table of Contents.

Index of Authorities. This shows the legal sources that are mentioned in the brief and the page numbers where each citation is mentioned. MCR 7.212(C)(3). Case law, statutes, court rules, and legal treatises are examples of legal sources. You will need to finish the brief before you prepare the Index. Once the rest of the brief is finished, list all cases cited in the brief or application in alphabetical order. Indicate all the pages of the brief where each case is mentioned. A case citation might look like the following:

People v Peterson, 789 Mich App 456, 458 (2002)

Gerginson v GMC, 123 Mich 654, 666 (2001)

Next, list all Michigan statutes that you cite in the brief. If you cite statutes from another state, list them after the Michigan statutes. Indicate all the pages on which each statute is mentioned. A statute citation might look like the following:

MCL 600.2963

Finally, list any other legal authority you cite in the brief. Indicate all the pages on which each authority is mentioned. A court rule citation might look like the following:

MCR 7.212(C)(3)

References to the Michigan Compiled Laws are indicated as “**MCL.**” So, “MCL 600.308” means section 308 of chapter 600 of the laws of the State of Michigan. The Michigan Compiled Laws may be found online [here](#).

Statement of Jurisdiction. This is a short explanation why the Court of Appeals has jurisdiction (in other words, the legal authority) to review your appeal. MCR 7.212(C)(4). Here are examples:

For this criminal claim of appeal, the Court has jurisdiction because the claim was filed within 42 days of a final order entered on July 1, 2021. MCR 7.203(A); MCR 7.204(A)(2)(c).

For this application for leave to appeal, the Court has jurisdiction because the application was filed under MCR 7.205(A)(2)(a). It was filed within 6 months of the July 1, 2021 order being appealed.

Statement of Questions. Here you will list the legal questions or issues that you want the Court of Appeals to consider. MCR 7.212(C)(5). This list is very important because it will be the basis for the argument section of the brief.

To prepare the Statement of Questions, you must determine the issues you want the Court to decide. Think about the issues that were presented to the trial court. Which issues do you think the court should have decided differently? For example, if the trial court denied a motion to allow certain evidence to be presented, you could look at the arguments made in the motion and any response to the motion. What arguments did the trial court agree with? Can you find legal authority to show that the court was wrong?

The issues for your case will depend on the specific circumstances of your case. Looking at the following examples may help you write your issues.

- ✓ Did the trial court err by treating my motion for relief from judgment as a successive motion?
- ✓ Did the trial court abuse its discretion by admitting certain evidence at trial?
- ✓ Was the trial court's scoring of Offense Variable 5 error because it was not supported by the facts?
- ✓ Did the trial court fail to follow the process required by this statute?

On the other hand, here are some examples that are NOT legal issues for an appeal:

- ✗ Is the decision unfair?
- ✗ Why didn't the trial judge believe me?
- ✗ Will the Court of Appeals help me?
- ✗ Did I do everything I could to win?

For each question, list the trial court's answer and your answer.

Statement of Facts. This section is where you set out the facts relevant to your appeal. MCR 7.212(C)(6). Many people will begin working on the brief by writing the Statement of Facts.

In the Statement of Facts section, you will tell the judges the important facts about your case. Tell the story, but do not include opinions or arguments in this section. As you write the Statement of Facts, focus on the information that is

important to the order that you are challenging and the issues that you want to raise.

The Statement of Facts must include citations to the record. When you state something as a fact, the judges need to know where to find evidence to support the statement. The citations will usually be to a transcript or an exhibit to a motion. The judges will check to make sure the evidence you are citing was presented to the trial court.

You may find it helpful to consider these tips when you write your Statement of Facts:

- Begin with a few sentences to describe what the case is basically about. For example:

This appeal involves a motion for relief from judgment based on new evidence. My cellphone records were located and analyzed, and they can prove my alibi.

- Identify the main people or parties in the case and how they relate to each other.
- Explain the main events in the order they happened. Provide important dates.
- Discuss what legal action was taken and what rulings were made before the appeal or application was filed.

Argument. This section is where you present your legal analysis for each of the questions/issues you listed in the “Statement of Questions.” MCR 7.212(C)(7). The arguments match up with the “Statement of Questions” you presented earlier. In other words, Issue I is discussed in Argument I, Issue II is discussed in Argument II, etc. Each argument has a subsection for Standard of Review.

To begin, copy your first question from the Statement of Questions. Use CAPITAL LETTERS or **boldfaced** type.

Then, include a **Standard of Review** subsection. Determining the standard of review requires some understanding of the law and this Court’s role as an appellate court.

The Court of Appeals reviews the decisions of another court or tribunal for error. An appeal is not a do-over or a retrial, and the Court does not necessarily change

every decision that the judges disagree with. The law recognizes that for some decisions, the trial court is in a better position to assess the situation than the Court of Appeals would be. For this reason, there are different levels of review for different types of decisions. The term, “Standard of Review,” describes the different levels of that review for error.

To understand the idea of standard of review, some non-lawyers find it helpful to compare it to the instant replay review that is used in sports. In the National Football League, certain rulings on the football field may be the subject of a challenge. The officials review the recording of the play. The ruling that was made on the field will be overturned only if a designated official determines that “clear and obvious visual evidence warrants a change.” The phrase, “clear and obvious visual evidence” is the standard of review for determining whether the ruling on the field will be overturned.

There are three standards of review the Court of Appeals applies most often. The standard that is used depends on the type of ruling the Court is reviewing.

Clear error. When the challenged ruling includes findings of fact, the Court will review those findings for clear error. The Court will find clear error when the Court has a definite and firm conviction that a mistake was made. *Miller-Davis Co v Ahrens Construction Inc*, 495 Mich 161, 172 (2014). This standard recognizes that factual findings often require the trial court to determine which witnesses are credible, and because the trial court observes those witnesses, that court is in a better position to determine the credibility than this Court is.

Abuse of discretion. For some decisions, the trial court will have choices about how a matter should be handled. When a court rule or statute states a court “may” take some action, the word “may” often indicates the court will choose between some options. In other words, the court has discretion. When a court has discretion about a ruling, the Court of Appeals will review the trial court’s decision for an abuse of discretion. An abuse of discretion occurs when the trial court chooses an outcome that is “outside the range of principled outcomes.” *Maldonado v Ford Motor Co*, 476 Mich 372, 388 (2006).

De novo. “De novo” means “from the beginning,” or “anew.” When this standard applies, the Court of Appeals considers the case or issue independently—as if the trial court had not ruled and the issue was being decided for the first time by the Court of Appeals. This standard applies to legal issues, such as how a statute should be interpreted.

After you determine and write the standard of review that you think applies to the issue, you should explain how the law supports a decision in your favor. This is where you provide legal analysis.

The court rules do not require the analysis to follow a certain format. You may find it helpful to be familiar with a format that is taught in many law schools.

- Summarize the issue you are addressing in a sentence or two.
- State the law that applies to the issue. You may have found a statute or a court rule that applies to your case. The law may also be from published decisions of the Court of Appeals or the Supreme Court. Decisions that have similar facts are especially helpful.
- Explain how the law applies to the facts of your case.
- State the conclusion that you think that the Court should reach.

After you complete the analysis for your first issue, start a new section for the next question. Copy your second question from the Statement of Questions and follow the steps outlined above.

After you have analyzed each of the questions that you listed in your Statement of Questions, continue to the Relief Requested section.

Relief Requested. In this section, state what relief you want the Court of Appeals to provide. MCR 7.212(C)(8). For example, you may want the Court to reverse the order appealed and remand for entry of an order in your favor. Or for an application, you may ask the Court to reverse the order appealed or grant the application for leave to appeal to review the decision further.

Signature. You must sign the brief at the end. MCR 7.212(C)(9).

Appendix. The court rules list certain documents that you collect and provide as an appendix. See MCR 7.212(J) for the required documents.

Part VII – Glossary

Appeal: A request made to a higher court for review of the lower court’s or administrative tribunal’s decision to determine if it was correct.

Appellant: A person or entity who files an appeal.

Appellee: A person or entity against whom an appeal has been filed.

Application for leave to appeal: A request to a court to grant an appeal when the requesting party does not have an automatic right to an appeal.

Brief: A written document submitted by a party to an appeal that states the important facts of the case, sets out the applicable law, and explains how the law and facts mean the court should decide an issue in a certain way.

Caption: Heading on court documents to identify the case that the documents should be filed in. The caption shows the docket number, the parties’ names, and their relationship to the case (such as “plaintiff-appellant”).

Clerk of the Court: An officer of the court in charge of managing the flow of cases through the court, maintaining court records and providing other administrative support to the court and judges. Each district office has a district clerk or assistant clerk who reports to the chief clerk.

Claim of appeal: An appeal that a party has a right to file and have the judges review and decide. The right is given by statute or court rule. The document used to start the appeal is also called the claim of appeal.

Clerk’s Office: The Clerk’s Office is the division of the Court of Appeals that accepts filings and records them on the Court’s docket.

Court rules: The procedural rules that govern the courts. Chapter 7.200 of the Michigan Court Rules contains most of the court rules for the Court of Appeals. See MCR 7.201 through MCR 7.219.

District court: District courts are at the lowest level of the state courts. Decisions of the district court are appealed to the circuit court.

Docket entries: See “**Register of actions.**”

Final order: This legal term has several definitions. MCR 7.202. The term is important for determining whether the order may be appealed by a claim of appeal or by an application.

Interlocutory order: An order that does not end the case. Most interlocutory orders must be appealed by an application for leave to appeal instead of a claim of appeal.

IOP: An acronym for Internal Operating Procedures. These are explanations of the practices of the Clerk's Office in regard to applying the Michigan Court Rules. The numbering relates to the court rules. The IOPs are available on the Court's website [here](#).

Jurisdiction: The legal authority of a court to hear and decide a case.

MAACS: This acronym is for Michigan Appellate Assigned Counsel System. The organization oversees and coordinates the appointment of appellate counsel in criminal matters.

MiFILE: The electronic filing system used by Michigan courts for filing and serving documents online.

Motion: A request by a party to the court for a decision on an issue relating to the appeal. Some examples are a motion to waive fees and a motion to extend time to file a brief.

Notice of Filing Transcript: A document completed by a court reporter that shows when the court reporter filed a transcript with the lower court.

Opinion: A court's written explanation of its decision.

Order: A short written decision by a court.

Oral argument: A hearing in front of the panel of judges assigned to a case where the parties or their attorneys summarize their arguments from the briefs and answer the judges' questions regarding the case.

Panel: A group of judges assigned to decide the case. In the Court of Appeals, judges generally decide cases in panels of three.

Party: A litigant in a case. In an appeal, a party is usually referred to as "appellant" or "appellee."

Pleadings: Documents filed in a court that outline a party's position. Claims of appeal, applications for leave to appeal, and complaints are all pleadings.

Prisoner Account Statement: This document is prepared by the accounting office of the correctional facility where an incarcerated person is living. The document shows the funds available to an incarcerated person and transactions in the past 12 months. The Court uses the document to decide whether to grant a motion to waive the Court's filing fees for an appeal.

Pro per: An abbreviated version of the Latin phrase, "in propria persona," meaning "on one's own behalf." Pro per refers to a party who presents his/her own case without an attorney.

Pro se: See Pro per.

Proof of service: A document that states how a party gave copies of a court filing to the other parties. Documents may be served by first-class mail, hand delivery, or electronically if the party has signed up for e-filing through MiFILE. When you file a document with the Court of Appeals, you must send a copy to the other parties and provide the Court of Appeals with a proof of service.

Record: A written account of the lower court proceedings in a case, including pleadings, transcripts of testimony, and exhibits.

Remand: To send back. When a court has jurisdiction of a case and some action needs to be taken by a lower court, the higher court may remand to that lower court. The Court of Appeals may remand to the circuit court. The Supreme Court may remand to the Court of Appeals or to the circuit court.

Register of actions: A chronological list created by a court that details all of the actions that occurred in a case. This is also known as "Docket Entries."

Reverse: When the Court reverses an order or judgment, the Court has determined that the ruling was in error and it must be set aside. Usually, the Court will further indicate that a different ruling must be made.

Standard 4: Supreme Court Administrative Order 2004-6, Standard 4, allows a person represented by appointed counsel to file a supplemental "Standard

4” brief within 84 days after counsel has filed the appellant’s brief. The supplemental brief may be accompanied by a motion. Standard 4 does not apply to applications for leave to appeal.

Standard of review: A legal term that describes the different levels of the Court’s review for error. “Clear error,” “abuse of discretion,” and “de novo” are the most common standards of review.

Stenographer’s Certificate: A form prepared and signed by a court reporter that shows that a transcript has been ordered.

Transcript: A written, word-for-word record of what was said in a proceeding. It is prepared by a court reporter.

Tribunal: See Administrative tribunal.

Vacate: To set aside or cancel an order or judgment, usually without replacing it with a contrary judgment. See Reverse.

Part VIII – FAQ

How does the Court count days when calculating a deadline?

The website for the Court of Appeals has a calculator to measure time [here](#). You may also use a calendar to determine the due date. To determine the due date for a filing, count the day after the triggering act or event as “Day 1” and continue counting each day after, including weekends and holidays, until you reach the number of days allowed by the deadline. For example, if the triggering event was an order entered on a Tuesday and the filing deadline is 21 days, you would count Wednesday as Day 1, Thursday as Day 2, Friday as Day 3, and so on until you reach Day 21. Your filing is due on Day 21. Because most deadlines in the court rules are stated in 7-day increments, the deadline day will usually be the same day of the week as the triggering event. If the end of the deadline falls on a weekend or court holiday, your deadline is extended until the next day that the court is open. So, in the example above, if the court was closed on Day 21, the deadline would be extended until the next day the court was open.

When is a document considered “filed” with the Court of Appeals?

Usually in the Court of Appeals, documents are **not** filed when placed in a mailbox or on the postmarked date of the mailing. They are only considered filed when they are received by the Court of Appeals. MCR 7.202(2) and (4). A document that is e-filed is considered received at the time shown on the e-filing, unless that is a weekend or Court holiday. For paper filings, the Court places a timestamp on the document when it is received. That timestamp shows the date that the Court considers the document to have been filed.

As of September 1, 2021, a filing by an incarcerated person **who is not represented by an attorney** is considered timely filed if deposited in the institution’s outgoing mail on or before the deadline. MCR 1.112. If you are represented by an attorney, the usual rule for filings will apply.

How do I file documents with the Court of Appeals?

Documents may be filed in three ways. A person may mail documents to the Court of Appeals at one of the four offices listed on page ii. Documents may be delivered to one of the four offices. Finally, a person may electronically file documents with the Court of Appeals. Some prisons provide an opportunity for electronic filing.

How do I appeal a decision of the district court?

A district court order may be appealed to the circuit court if certain requirements are met. The court rules for appeals to circuit court are in the chapter that begins at MCR 7.101. The Court of Appeals does not have jurisdiction to review a district court order; if you file an appeal in this Court directly from a district court order, the appeal will be dismissed. If the district court's order has been appealed to circuit court, and the circuit court has entered an order that you want to appeal, you may be able to appeal by filing an application if certain requirements are met. The Court does not have jurisdiction over a claim of appeal from a circuit court order on appeal from another court, such as a district court. MCR 7.203(A).

Who do I have to send copies of my claim of appeal or application to?

When you file a claim of appeal or an application for leave to appeal with the Court of Appeals, you are required to send (“serve”) copies to all the parties to the action at the lower court level, even those parties that are not affected by the order. MCR 7.204(C)(3) and 7.205(B)(6). For a criminal appeal, you will serve the office of the prosecuting attorney or its appellate division.

How can I contact the judges?

Communication with the judges of this Court must be by formal pleadings filed in accordance with the Court rules. The judges are not allowed to respond to correspondence directly. Pursuant to Court policy and Canon 3(A)(4) of the Code of Judicial Conduct, a response by one of the judges would constitute an improper “ex parte” communication. Requests for information, pleadings, correspondence, or other documents related to an appeal should be directed to the attention of the Court Clerk.

Does the Court of Appeals send out a scheduling order?

No. The times for the steps in the appeal are determined by the court rules. Many actions in the course of the appeal are calculated from the timing of earlier events. The Court is not able to predict when they will occur. Parties are notified shortly before a claim of appeal case is scheduled to be heard.

What are some free online resources for legal research?

[Google Scholar](#) provides one way to research the law. This search tool allows you to enter words that are important to your case, select “Case Law,” and then narrow the results to find cases that are similar to yours. In addition, the published decisions of the Michigan Court of Appeals and the Michigan Supreme Court for approximately 12 years are available online [here](#). The Court’s website here offers a tool to search the Court’s opinions and orders by keywords.

How long will it take for my case to be decided?

Many factors affect how long it will take for an appeal to be decided, including the time for transcript preparation, briefing, and processing within the Court. On average, the time from the filing of a claim of appeal to a decision by opinion for criminal appeals is about 18 months. An order deciding an application for leave to appeal will usually be entered in less than 3 months.

How can I get a different attorney appointed to represent me in my appeal?

The Court of Appeals does not resolve disputes between appointed attorneys and their clients. During an appeal, the trial court keeps its authority to appoint, discharge, and replace an attorney. MCR 7.208(H). In many situations, complaints about appointed attorneys can be resolved by the Michigan Appellate Assigned Counsel System (MAACS):

200 N. Washington Square, Suite 250
Lansing, MI 48933

I have appointed counsel. What am I allowed to file on my own?

For the most part, if you are represented in this Court by counsel, your attorney is responsible for all filings. In an appeal of right where you have appointed counsel, you may file one supplemental brief within 84 days after counsel filed the appellant’s brief. This brief, called a “Standard 4 brief,” may be accompanied by a motion. A request for more time to file a brief and any other motions must be filed by the attorney. For an application where you have appointed counsel, if you want to file your own supplement, your attorney will need to file a motion to ask the Court to accept it. More information about Standard 4 is in Part III.

Part IX – Forms and Examples

Request for Appointment of Counsel

Approved, SCAO		Original - Trial court 1st copy - Prosecutor	2nd copy - Defendant/Juvenile for return 3rd copy - Defendant/Juvenile										
STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	NOTICE OF RIGHT TO APPELLATE REVIEW AND REQUEST FOR APPOINTMENT OF ATTORNEY	CASE NO.											
		Judge: _____											
Court address _____		Court telephone no. _____											
<div style="border: 1px solid black; padding: 10px; min-height: 50px;"> THE PEOPLE OF THE STATE OF MICHIGAN </div>	v	<div style="border: 1px solid black; padding: 10px; min-height: 50px;"> Defendant's/Juvenile's name, address, and telephone no. </div>											
<p>Note to court: This form must be given to the defendant/juvenile at sentencing. A separate form must be provided for each case.</p> <div style="display: flex;"> <div style="flex: 1;"> <ol style="list-style-type: none"> 1. You are entitled to appellate review of your conviction and sentence. This is done by filing a claim of appeal by right, or when you are not entitled to file a claim of appeal by right, an application for leave to appeal. If you pled guilty or nolo contendere, an appeal must be done by filing an application for leave to appeal. 2. If you cannot afford to hire an attorney to represent you on appeal and you request an attorney, the court will appoint an attorney for you. 3. You may request an attorney by completing the request for appointment of attorney section below and returning this form to the trial court within 42 days after sentencing. </div> <div style="flex: 0.5; border-left: 1px solid black; padding-left: 10px;"> <p style="text-align: center;">Receipt of Notice</p> <p>Date _____</p> <p>Defendant's/Juvenile's initials _____</p> </div> </div>													
REQUEST FOR APPOINTMENT OF ATTORNEY													
<p>Instructions to defendant/juvenile: To request an attorney to represent you on appeal, the completed and signed form should be received by the trial court within 42 days after sentencing. Keep a copy for yourself. If you experience problems in a felony case, write to the Michigan Appellate Assigned Counsel System, 200 N. Washington Square, Suite 250, Lansing, MI 48933.</p> <p>I request appointment of an attorney to represent me on appeal. I provide the following financial information for the court to determine whether I am indigent.</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <p>► Date</p> </div> <div style="width: 50%;"> <p>Signature of defendant/juvenile _____ ◀</p> </div> </div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Residence</p> <p><input type="checkbox"/> Rent <input type="checkbox"/> Own <input type="checkbox"/> Room/Board</p> <p><input type="checkbox"/> Live with parents <input type="checkbox"/> Prison _____ Number</p> </td> <td style="width: 50%; vertical-align: top;"> <p>Marital Status</p> <p><input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated</p> <p><input type="checkbox"/> Dependents: _____ Number</p> </td> </tr> <tr> <td style="vertical-align: top;"> <p>Employer name and address</p> <p><input type="checkbox"/> NONE</p> </td> <td style="vertical-align: top;"> <p>Length of employment</p> <p>Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks</p> <p>Gross: \$ _____ Net: \$ _____</p> </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> <p>Other income State monthly amount and source. E.g., MDHHS, VA, rent, pensions, spouse, unemployment.</p> <p><input type="checkbox"/> NONE</p> </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> <p>Assets State value of car, home, bank accounts, inmate accounts (attach a certified account statement), etc.</p> <p><input type="checkbox"/> NONE</p> </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> <p>Obligations/Debts Itemize monthly rent, installment payments, mortgage payments, child support, etc.</p> <p><input type="checkbox"/> NONE</p> </td> </tr> </table>				<p>Residence</p> <p><input type="checkbox"/> Rent <input type="checkbox"/> Own <input type="checkbox"/> Room/Board</p> <p><input type="checkbox"/> Live with parents <input type="checkbox"/> Prison _____ Number</p>	<p>Marital Status</p> <p><input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated</p> <p><input type="checkbox"/> Dependents: _____ Number</p>	<p>Employer name and address</p> <p><input type="checkbox"/> NONE</p>	<p>Length of employment</p> <p>Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks</p> <p>Gross: \$ _____ Net: \$ _____</p>	<p>Other income State monthly amount and source. E.g., MDHHS, VA, rent, pensions, spouse, unemployment.</p> <p><input type="checkbox"/> NONE</p>		<p>Assets State value of car, home, bank accounts, inmate accounts (attach a certified account statement), etc.</p> <p><input type="checkbox"/> NONE</p>		<p>Obligations/Debts Itemize monthly rent, installment payments, mortgage payments, child support, etc.</p> <p><input type="checkbox"/> NONE</p>	
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<p>Obligations/Debts Itemize monthly rent, installment payments, mortgage payments, child support, etc.</p> <p><input type="checkbox"/> NONE</p>													
MCR 6.425(F)													
CC 265 (8/17) NOTICE OF RIGHT TO APPELLATE REVIEW AND REQUEST FOR APPOINTMENT OF ATTORNEY													

Court of Appeals Guide to Pursuing a Criminal Appeal

Claim of Appeal

This form is used for circuit court appeals, as well as appeals in the Court of Appeals. It is available online [here](#).

Approved, SCAO		Original - Court of Appeals/Circuit court 1st copy - Trial court		JIS CODE: COA 2nd copy - Appellee 3rd copy - Appellant	
STATE OF MICHIGAN JUDICIAL <input type="checkbox"/> CIRCUIT <input type="checkbox"/> DISTRICT COUNTY <input type="checkbox"/> IN THE COURT OF APPEALS		CLAIM OF APPEAL		CASE NO. CIRCUIT DISTRICT PROBATE	
Court address				Court telephone no.	
Plaintiff's/Petitioner's name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee		v		Defendant's/Respondent's name(s) and address(es) <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee	
Plaintiff's attorney, bar no., address, and telephone no.				Defendant's attorney, bar no., address, and telephone no.	
<input type="checkbox"/> Probate In the matter of _____ Other interested party(ies) of probate matter _____					
1. _____ claims an appeal from a final judgment or order entered on Name _____ Date _____ in the _____ Court of the State of Michigan, Court name and number or county by <input type="checkbox"/> district judge <input type="checkbox"/> circuit judge <input type="checkbox"/> probate judge <input type="checkbox"/> district court magistrate Name of judge or district court magistrate _____ Bar no. _____					
2. Bond on appeal is <input type="checkbox"/> filed. <input type="checkbox"/> attached. <input type="checkbox"/> waived. <input type="checkbox"/> not required.					
3. <input type="checkbox"/> a. The transcript has been ordered. <input type="checkbox"/> b. The transcript has been filed. <input type="checkbox"/> c. No record was made.					
<input type="checkbox"/> 4. THIS CASE INVOLVES <input type="checkbox"/> a. A CONTEST AS TO THE CUSTODY OF A MINOR CHILD. <input type="checkbox"/> b. AN ADULT OR MINOR GUARDIANSHIP UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE OR UNDER THE MENTAL HEALTH CODE. <input type="checkbox"/> c. AN INVOLUNTARY MENTAL HEALTH TREATMENT CASE UNDER THE MENTAL HEALTH CODE. <input type="checkbox"/> d. A RULING THAT A PROVISION OF THE MICHIGAN CONSTITUTION, A MICHIGAN STATUTE, A RULE OR REGULATION INCLUDED IN THE MICHIGAN ADMINISTRATIVE CODE, OR ANY OTHER ACTION OF THE LEGISLATIVE OR EXECUTIVE BRANCH OF STATE GOVERNMENT IS INVALID.					
Date _____		/s/ _____ Appellant/Attorney signature			
PROOF OF SERVICE					
I certify that copies of this claim of appeal and bond (if required) were served on Name _____ on _____ by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail. Name _____ on _____ by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail. Name _____ on _____ by <input type="checkbox"/> personal service. <input type="checkbox"/> first-class mail. Date _____ Signature _____					
MC 55 (9/17) CLAIM OF APPEAL MCR 4.401(D), MCR 7.104(C), MCR 7.108(C)(3), MCR 7.204(D)					

Jurisdictional checklist

The form is available online [here](#).

Michigan Court of Appeals Jurisdictional Checklist		Lower Court/Tribunal: <input style="width: 90%;" type="text"/>
Case Name: <input style="width: 95%;" type="text"/>		Lower Court Case No.: <input style="width: 90%;" type="text"/>
<p>INSTRUCTIONS: For a <u>civil</u> claim of appeal, please complete the following statements.</p>		
Jurisdiction	<p>[SELECT ONE] An appeal of right may be filed because the order is: MCR 7.203(A)</p>	
	<p><input type="checkbox"/> A final order of the circuit court under MCR 7.202(6). Specify subsection: <input style="width: 80%;" type="text"/></p>	
	<p><input type="checkbox"/> A probate court order that falls within MCR 5.801(A). Specify subsection: <input style="width: 80%;" type="text"/></p>	
	<p><input type="checkbox"/> Appealable as of right by law or court rule. Specify law or rule: <input style="width: 80%;" type="text"/></p>	
	<p>[SELECT ONE] This claim of appeal is timely because it is being filed: MCR 7.204(A)</p>	
<p><input type="checkbox"/> Within 21 days from entry of the order appealed from (<i>as identified above</i>).</p>		
<p><input type="checkbox"/> Within 21 days of an order deciding a motion for new trial, rehearing, reconsideration, or other relief from the order appealed, <i>and the postjudgment motion was filed within 21 days of the order appealed from.</i></p>		
<p><input type="checkbox"/> Other: <input style="width: 80%;" type="text"/></p>		
<p>INSTRUCTIONS: Please complete the checklist and file with your claim of appeal. <i>Failure to file all required documents and requisite fees may result in rejection of your claim of appeal.</i></p>		
Filing Requirements	<p><input type="checkbox"/> A signed claim of appeal. The caption must list all of the parties in each lower court case appealed. MCR 7.201(B)(2)</p>	
	<p><input type="checkbox"/> A signed claim of appeal. The caption must list all of the parties in each lower court case appealed. MCR 7.204(B)(1) & (D)</p>	
	<p><input type="checkbox"/> A copy of the order you are appealing (<i>as identified in Jurisdiction section</i>). MCR 7.204(C)(1)</p>	
	<p><input type="checkbox"/> An official current register of actions from the lower court or tribunal showing entry of the order appealed. MCR 7.204(C)(5)</p>	
	<p><input type="checkbox"/> The filing fee or exception (<i>example: motion to waive fees</i>). MCR 7.202(3), MCR 7.204(B)(2)</p>	
	<p><input type="checkbox"/> Evidence of the transcript (Select one): MCR 7.204(C)(2)</p>	
	<p><input type="checkbox"/> The complete transcript has been ordered. MCR 7.210(B)(1)(a)</p>	
	<p><input type="checkbox"/> No transcript will be filed. MCR 7.204(C)(2)</p>	
<p><input type="checkbox"/> The transcript has already been filed. MCR 7.210(B)(1)(a)</p>		
<p><input type="checkbox"/> Other: <input style="width: 80%;" type="text"/> MCR 7.210(B)(1)(b)-(e)</p>		
<p><input type="checkbox"/> All parties to the case (<i>including non-appellees</i>) are being e-served through MiFILE. Service by mail is only acceptable if (1) appellant is a self-represented party, or (2) the receiving party is not registered with MiFILE. MCR 7.204(C)(3), MCR 1.109(G)(6)(a)(ii), IOP 7.204(C)(3)</p>		
<p>Preparer's Signature: <input style="width: 90%;" type="text"/></p>		<p>Date: <input style="width: 90%;" type="text"/></p>

Motion to Waive Fees example

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSH KRAYGE,

Defendant-Appellant.

No. [REDACTED]
Maple Circuit Court
LC No. 19-111111-FC

MOTION TO WAIVE FEES

I, Josh Krayge, request that the Court of Appeals waive the filing fees for this case because I cannot afford to pay them. My prisoner account statement for 12 months is with this motion.

Date: 7/31/2021

/s/ Josh Krayge|

Affidavit Concerning Financial Status

This form is available online [here](#).

Circuit Court Information Name: _____ Case No.: _____	STATE OF MICHIGAN COURT OF APPEALS Affidavit Concerning Financial Status	Court of Appeals Information Case No.: _____
Case Name: _____		
Name: _____		Address & Telephone No.: _____
The following is information concerning my present financial status.		
1. PUBLIC ASSISTANCE I am currently receiving public assistance because of indigency: <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the type of assistance and identify the government agency that provides it. _____		
2. RESIDENCE \$ _____ per month <input type="checkbox"/> Rent <input type="checkbox"/> Mortgage <input type="checkbox"/> Room/Board <input type="checkbox"/> Live with Relatives		
3. MARITAL STATUS <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Separated <input type="checkbox"/> Dependents: _____ <div style="text-align: right; font-size: small;">Number</div>		
4. INCOME a. Employer name, address & telephone no. _____		b. Length of Employment _____
		c. Average pay <input type="checkbox"/> weekly <input type="checkbox"/> monthly <input type="checkbox"/> every two weeks Gross: \$ _____ Net: \$ _____
d. Other income (State monthly amount and source, such as DHS, VA, rent, pension, spouse, unemployment, etc. If no income, state NONE.) _____		
5. ASSETS (State value of car, home, bank deposits, bonds, stocks, etc. If no assets, state NONE.) _____		
6. OBLIGATIONS (Itemize monthly rent, installment payments, mortgage payments, child support, etc.) _____		
Signature _____		Date _____
Subscribed and sworn to before me on _____, _____ County, Michigan <div style="text-align: center; font-size: small;">Date</div> My commission expires: _____ Signature: _____ <div style="text-align: center; font-size: small;">Date Notary public</div> Notary public, State of Michigan, County of _____		
COURT OF APPEALS AFFIDAVIT CONCERNING FINANCIAL STATUS		
Aug 2009		

Example of Prisoner Account Statement (first page)

STATE OF MICHIGAN - CIVIL ACTION								
CERTIFICATE OF PRISONER ACCOUNT ACTIVITY AND AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS								
<small>Prisoner-Plaintiff/Petitioner/Appellant name and number</small> <div style="background-color: black; width: 100px; height: 15px; margin: 5px auto;"></div>	V	<small>Defendant's/Respondent's/Appellee's name</small> <div style="background-color: black; width: 100px; height: 15px; margin: 5px auto;"></div>						
CERTIFICATE OF PRISONER ACCOUNT ACTIVITY								
<p>I am employed by the Michigan Department of Corrections at the facility identified below, at which the prisoner identified as the Plaintiff/Petitioner/Appellant is currently incarcerated.</p> <p>Attached is a computer printout which accurately reflects the current spendable balance and all activity within this prisoner's account during the preceding twelve months or, if the prisoner has been incarcerated for less than twelve months, for the period of incarceration. Code "C" on the printout represents a withdrawal from the account and code "D" represents a deposit to the account. The attached printout reflects, for the reported period, an average monthly account deposit (i.e., total deposits divided by number of months) of <u>\$11.55</u>, an average monthly account balance (i.e., total deposits minus total withdrawals divided by number of months) of <u>\$0.12</u>. There is a current spendable account balance of <u>\$6.04</u>.</p> <p>Date: <u>06/16/99</u> <u>Don Truitt</u> <u>Assistant Business Manager</u> Signature/Title</p> <p style="text-align: center;"><u>Ionis Maximum Correctional Facility</u> Correctional Facility</p> <div style="text-align: right; border: 1px solid black; padding: 2px; transform: rotate(-45deg); font-size: small;">RECEIVED JUN 18 1999 CLERK OF COURT STATE OF MICHIGAN</div> <p>Note: Bottom section to be completed by prisoner and sent by prisoner to a Michigan court along with State civil pleading/claim of appeal.</p> <tr><td colspan="3" style="text-align: center;">AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS</td></tr> <tr><td colspan="3"><p>1. I am the Plaintiff/Respondent/Appellant in the attached pleading/petition/claim of appeal.</p><p>2. I am asking the court for suspension of filing fees and costs because I am indigent as reflected in the Certificate of Prisoner Account Activity and attached computer printout.</p><p style="text-align: center;"><u>C. [Signature]</u> Prisoner's Signature</p><p>Subscribed and sworn to before me, a Notary Public, this <u>23rd</u> day of <u>June</u>, <u>1999</u>.</p><p style="text-align: center;"><u>Gerald G.</u></p><div style="text-align: right; font-size: x-small;">CSJ-276 6/97 4836-3276</div><p>My Commission Expires: GERALD G., Notary Public Ingham County, Michigan "Acting in Ingham County" My Commission Expires January 20, 2001</p></td></tr>			AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS			<p>1. I am the Plaintiff/Respondent/Appellant in the attached pleading/petition/claim of appeal.</p> <p>2. I am asking the court for suspension of filing fees and costs because I am indigent as reflected in the Certificate of Prisoner Account Activity and attached computer printout.</p> <p style="text-align: center;"><u>C. [Signature]</u> Prisoner's Signature</p> <p>Subscribed and sworn to before me, a Notary Public, this <u>23rd</u> day of <u>June</u>, <u>1999</u>.</p> <p style="text-align: center;"><u>Gerald G.</u></p> <div style="text-align: right; font-size: x-small;">CSJ-276 6/97 4836-3276</div> <p>My Commission Expires: GERALD G., Notary Public Ingham County, Michigan "Acting in Ingham County" My Commission Expires January 20, 2001</p>		
AFFIDAVIT REGARDING SUSPENSION OF PRISONER FEES/COSTS								
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Proof of service example

STATE OF MICHIGAN	
IN THE COURT OF APPEALS	
PEOPLE OF MICHIGAN, Plaintiff-Appellee, v JOSH KRAYGE, Defendant-Appellant.	Court of Appeals Case No. Maple Circuit Court Case No. 19-111111-CK

PROOF OF SERVICE

I certify that a copy of the documents listed below:

Application for Leave to Appeal, Register of Actions, Motion to Waive Fees, Prisoner Account Statement, Order Appealed

and this proof of service were served by first-class mail to:

Maple County Prosecutor
1776 Jefferson St.
Madison, MI 20000

Date of Service: 7/16/21

Signature: /s/ Josh Krayge

Brief example – Application for Leave to Appeal

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff-Appellee,

v

Court of Appeals
No. _____

Maple Circuit Court
No. 19-111111-FC

JOSH KRAYGE,

Defendant-Appellant.

**DEFENDANT-APPELLANT JOSH KRAYGE
APPLICATION FOR LEAVE TO APPEAL**

Josh Krayge
In propria persona
Adam Correctional Facility
3456 W. Washington Blvd
Adam, MI 10000

Brief example – Application brief (cont.)

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The Appendix is being filed as a separate document.

Brief example – Application brief (cont.)

INDEX OF AUTHORITIES

Cases

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<i>People v Johnson</i> , 502 Mich 541; 918 NW2d 676 (2018)	3, 4
<i>People v Grissom</i> , 492 Mich 296; 821 NW2d 50 (2012)	3, 4
<i>People v Kay</i> , 121 Mich App 438; 328 NW2d 424 (1982)	5
<i>People v Krayge</i> , unpublished opinion per curiam of the Court of Appeals, issued August 17, 2020 (Docket No. 987654)	1
<i>People v Walker (On Remand)</i> , 328 Mich App 429; 938 NW2d 31 (2019)	3, 4

Statutes/Court Rules/Other Authorities

MCL 750.82	1
MCR 6.508	6
MCR 7.205	iii

Brief example – Application brief (cont.)

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction under MCR 7.205. The application for leave to appeal is being filed within six months of the order being appealed.]

Brief example – Appellant’s brief (cont.)

STATEMENT OF QUESTIONS

- I. DID THE TRIAL COURT ERR BY REFUSING TO CONSIDER EVIDENCE OF AGENT’S FACEBOOK POSTS THAT WERE NEWLY DISCOVERED IMPEACHMENT EVIDENCE?

Defendant-Appellant says: Yes.

Plaintiff-Appellee says: No.

The Circuit Court said: No.

- II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING THE MOTION FOR RELIEF FROM JUDGMENT WHERE APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO ARGUE THAT A CHIHUAHUA COULD NOT BE A “DANGEROUS WEAPON”?

Defendant-Appellant says: Yes.

Plaintiff-Appellee says: No.

The Circuit Court said: No.

Brief example – Application brief (cont.)

STATEMENT OF FACTS

I, Josh Krayge, was convicted of assault with a dangerous weapon, MCL 750.82, in a jury trial in 2019, and was sentenced to three years in prison. The Court of Appeals affirmed my conviction in an August 2020 decision. *People v Krayge*, unpublished opinion per curiam of the Court of Appeals, issued August 17, 2020 (Docket No. 987654). In June 2021, I filed a motion for relief from judgment. The trial court denied the motion, and I am applying for leave to appeal that order.

The testimony leading to my conviction was described by this Court in its August 2020 opinion. The jury believed I told my dog to attack a man during an argument he was having with my sister. Now, I have new evidence to show the man was lying.

I owned a Chihuahua named “Pudge” that I adopted from a rescue group in 2018. (Tr II, 15.) No one told me about any aggressive behavior. (Tr II, 16.) I had worked as a dog trainer assistant for the police academy when I was in college. (Tr III, 9.)

In June 2019, I went with my sister Rebecca Krayge to the office of an insurance agency. (Tr II, 30.) Pudge was with us because we had just finished visiting a dog park. (Tr II, p 35.) We did not want to leave Pudge in the car where he could overheat. (Tr II, 37.) We brought him inside on a leash. (Tr II, 37.)

The complaining witness, John Agent, testified Rebecca, Pudge, and I entered the agency on June 15, 2019, without an appointment. (Tr II, 45.) Agent knew Rebecca from an appointment the week before that ended in shouting and Rebecca storming out of the office. (Tr II, 63.) According to Agent, Rebecca’s return was unexpected. (Tr II, 45-50.) She said she wanted an apology for his past insults, he refused, and she raised her voice. (Tr II, 51.) Agent

Brief example – Application brief (cont.)

testified he remained calm. (Tr II, 51.) Then Agent supposedly heard me yell, “Get him!” (Tr II, 52.) Pudge ran to Agent and bit him repeatedly on the leg. (Tr II, 53.) Agent denied throwing anything at us. (Tr, 55.)

Rebecca agreed with some of Agent’s testimony. There had been a meeting a week earlier that ended in shouting. (Tr II, 60.) She had not told me about this before we went to the office on June 15, 2019. (Tr II, 61.) She went back to the office to ask Agent to apologize, but he raised his voice and demanded we leave. (Tr II, 62.) When we were headed to the door, Agent threw a stapler in our direction. (Tr II, 63.) She and I ducked. I dropped the leash when I put up my hands to dodge the stapler. Rebecca saw Pudge run past her and toward Agent and then heard me say, “Get him!” (Tr II, 64.) Pudge then repeatedly bit Agent. (Tr II, 69.)

The prosecutor argued I took Pudge to the insurance agency with a plan to tell him to attack Agent. My defense lawyer argued I accidentally dropped the leash because I was startled by the thrown stapler. When I yelled, “Get him!” I was telling Rebecca to grab the leash to stop Pudge.

The jury must have believed Agent. I was convicted and sentenced for assault with a dangerous weapon.

In May 2021, I discovered new evidence to show Agent was lying about the stapler. Madeline Julland, a former co-worker of Rebecca, also knew Agent. Julland and Rebecca occasionally communicated through Facebook. In 2021, Julland wrote a post about a recent dog-bite story. Agent commented on the story and wrote how he had been bitten. He shared a .gif of a person throwing a stapler and other people ducking. He wrote, “LOL Krayges.” Julland told Rebecca about Agent’s post. I provided affidavits from Rebecca and Julland with my motion for new trial. I also included screenshots. (Appx B, Motion for new trial with exhibits.)

Brief example – Application brief (cont.)

The trial court denied my motion for relief from judgment. (Opinion and order, Appendix A.)

ARGUMENT I

- I. DID THE TRIAL COURT ERR BY REFUSING TO CONSIDER EVIDENCE OF AGENT'S FACEBOOK POSTS THAT WERE NEWLY DISCOVERED IMPEACHMENT EVIDENCE?

STANDARD OF REVIEW

The Court of Appeals reviews a trial court's order denying a motion for relief from judgment for an abuse of discretion. *People v Walker (On Remand)*, 328 Mich App 429, 436; 938 NW2d 31 (2019).

ANALYSIS

The trial court denied my motion for relief from judgment because the court concluded the evidence was only impeachment evidence, which can never be grounds for a new trial. The trial court's ruling was wrong under *People v Grissom*, 492 Mich 296, 318; 821 NW2d 50 (2012).

Newly discovered impeachment evidence may be grounds for a new trial if the evidence meets the four-part standard in *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003). *People v Johnson*, 502 Mich 541, 566; 918 NW2d 676 (2018). The evidence must be newly discovered and not cumulative. The evidence must be something the defendant could not have discovered and produced at trial using reasonable diligence. *Id.* The new evidence must be considered with evidence from the original trial and evidence that would be presented at a new trial to decide if a different result is probable. *Johnson*, 502 Mich at 571-572. Some decisions before *Grissom* stated newly discovered impeachment evidence could

Brief example – Application brief (cont.)

never be the basis for granting a new trial. In *Grissom*, the Supreme Court overruled those cases. *Id.* at 320.

In my case, the trial court relied on the old cases to say impeachment evidence can never be the basis for granting a new trial. This was a legal error, just like in *Grissom*. A ruling based on a legal error is an abuse of discretion. This Court should at least remand to the trial court to consider the new evidence using the correct legal standard.

ARGUMENT II

- II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING THE MOTION FOR RELIEF FROM JUDGMENT WHERE APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO ARGUE THAT A CHIHUAHUA COULD NOT BE A “DANGEROUS WEAPON”?

STANDARD OF REVIEW

The Court of Appeals reviews a trial court’s order denying a motion for relief from judgment for an abuse of discretion. *Walker (On Remand)*, 328 Mich App at 436.

ANALYSIS

In my direct appeal, appellate counsel should have argued a small dog like mine cannot be a dangerous weapon. In some cases, courts have held large dogs can be a dangerous weapon, but even an overweight Chihuahua is not at all like a German Shepherd or Rottweiler. Because appellate counsel provided ineffective assistance of counsel, the trial court should have granted my motion for relief from judgment.

[THE REST OF THIS SECTION IS OMITTED FROM THE SAMPLE.]

Brief example – Application brief (cont.)

RELIEF REQUESTED

Defendant-Appellant Krayge respectfully requests that this Court grant the application for leave to appeal or reverse the trial court's decision and order a new trial.

Respectfully submitted:

/s Josh Krayge
7/31/2021