

**DEFENSE ATTORNEYS WENDY BARNWELL & KATHY MURPHY**

**INTERLOCUTORY APPEALS CAP WAYNE PRESENTATION FEBRUARY 24, 2017**

**RULE 7.205 APPLICATION FOR LEAVE TO APPEAL**

(A) Time Requirements: An application for leave to appeal must be filed within

(1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or

(2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period or within further time the trial court has allowed for good cause during that 21-day period.

For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(3) If an application for leave to appeal in a criminal case is received by the court after the expiration of the periods set forth above or the period set forth in MCR 7.205(G), and if the appellant is an inmate in the custody of the Michigan Department of Corrections and has submitted the application as a pro se party, the application shall be deemed presented for filing on the date of deposit of the application in the outgoing mail at the correctional institution in which the inmate is housed. Timely filing may be shown by a sworn statement, which must set forth the date of deposit and state that first-class postage has been prepaid. The exception applies to applications for leave to appeal from decisions or orders rendered on or after March 1, 2010. This exception also applies to an inmate housed in a penal institution in another state or in a federal penal institution who seeks to appeal in a Michigan court.

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

(1) 5 copies of an application for leave to appeal (one signed), stating **the date and nature of the judgment or order appealed from; concisely reciting the appellant’s allegations of error and the relief sought**; setting forth a concise argument, conforming to MCR 7.212(C), in support of the appellant’s position on each issue; and, **if the order appealed from is**

**interlocutory, setting forth facts showing how the appellant would suffer substantial harm by awaiting final judgment before taking an appeal;**

(2) 5 copies of the judgment or **order appealed from**, of the **register of actions of the lower court**, tribunal, or agency, of the **opinion or findings of the lower court, tribunal**, or agency, and of any opinion or findings reviewed by the lower court, tribunal, or agency.

(3) if the appeal is from an administrative tribunal or agency, or from a circuit court on review of an administrative tribunal or agency, evidence that the tribunal or agency has been requested to send its record to the Court of Appeals;

(4) 1 copy of **certain transcripts**, as follows:

(a) in an appeal relating to the evidence presented at an evidentiary hearing in a civil or criminal case, the transcript of the evidentiary hearing, including the opinion or findings of the court which conducted the hearing;

(b) in an appeal from the circuit court after an appeal from another court, the transcript of proceedings in the court reviewed by the circuit court;

(c) in an appeal challenging jury instructions, the transcript of the entire charge to the jury;

(d) in an appeal from a judgment in a criminal case entered pursuant to a plea of guilty or nolo contendere, the transcripts of the plea and sentence;

(e) in an appeal from an order granting or denying a new trial, such portion of the transcript of the trial as, in relation to the issues raised, permits the court to determine whether the trial court's decision on the motion was for a legally recognized reason and based on arguable support in the record;

(f) in an appeal raising a sentencing issue, the transcript of the sentencing proceeding and the transcript of any hearing on a motion relating to sentencing;

**(g) in an appeal raising any other issue, such portion of the transcript as substantiates the existence of the issue, objections or lack thereof, arguments of counsel, and any comment or ruling of the trial judge.**