

# THE APPELLATE PROCESS

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## ***THE APPELLATE PROCESS***

The following is a brief outline of how a case progresses through an appeal from Circuit Court. (*Italicized words are defined at the end of the brochure.*)

After the Circuit Court's written order is entered, the *Appellant* files a claim of appeal (for appeals of right) or an application for leave to appeal (for appeals by leave) in the Court of Appeals, pays a filing fee and orders transcripts of the lower court's hearings, prepared by the Circuit Court's reporter.

The appellant's attorney files a *brief* (a written argument of facts, legal issues and authorities), in the Court of Appeals. The *Appellee* usually files a responsive brief later.

After receiving both briefs, the Court of Appeals clerk schedules the case for oral argument before a panel of three Court of Appeals judges. During oral arguments, the appeals judges may ask probing questions of the attorneys. Sometimes both parties *wave* oral arguments, and the Court decides the case based on the arguments and law in the parties' briefs.

The appeals court panel will announce its decision in a written opinion. At least two of the three judges must agree.

An appellate court has the power to affirm, reverse or modify the lower court's decisions. Some cases may be remanded (sent back to the lower court) for further proceedings.

Within 21 days after the Court of Appeals' decision, a party may file an application for leave to appeal with the Michigan Supreme Court asking it to

review the Court of Appeals' decision. If the request is granted, the parties file briefs, oral arguments may be held, and the Court will issue a written decision. If the request is denied, the case may be over.

Appeals usually take a long time, including months of waiting for oral arguments to be scheduled, and months waiting for a decision. Cases involving complicated legal issues usually take longer to decide. We will keep you informed of significant developments in your case. You may contact our office if you have specific questions.

## ***TYPES OF APPEALS***

**APPEAL OF RIGHT:** This type of appeal occurs after entry of a final order by the trial court (either a sentencing order, or an order dismissing the charge). The aggrieved party files a "claim of appeal" in the Court of Appeals to begin the appeal. In criminal cases, most appeals by right involve claims of trial or sentencing errors.

**APPEAL BY LEAVE:** If an appeal of right is not available by law (e.g., the claim of appeal was not filed in time), the appellate court has the discretion to "grant leave" (accept the appeal for review) or "deny leave" (reject the requested appeal without further review).

**INTERLOCUTORY APPEAL:** A party tries to appeal a judge's decision before a final order has been filed – such as before the case has come to trial, or before a trial is finished.

## ***TYPES OF COURTS***

**SUPREME COURT:** The Michigan Supreme Court is the highest court in the state, hearing cases appealed to it from other Michigan Courts. Lower court decisions are appealed to the Supreme Court by filing an application for “Leave to Appeal.” The Supreme Court “grants leave” in only a small percentage of cases, usually involving important constitutional issues or questions of public policy.

**COURT OF APPEALS:** An “intermediate” appellate court between the Supreme Court and the Michigan trial courts. Final decisions from Circuit or Probate Court are appealed to the Court of Appeals. At least two of the three judges must agree on the ruling.

**CIRCUIT COURT:** The Circuit Court tries felony cases, Family Court division cases (including parental abuse/neglect and juvenile delinquency), and appeals of orders from the District Court. Appeals from Circuit Court are heard in the Court of Appeals.

**PROBATE COURT:** The Probate Court handles civil cases, like wills, trusts, guardianships, etc. Probate Court appeals are heard in the Court of Appeals.

**DISTRICT COURT:** All criminal cases begin in District Court. This court tries all misdemeanor cases, and handles the initial steps in felony cases. No appeals are heard in District Court. District Court appeals are heard in the Circuit Court.

## ***YOUR APPELLATE RIGHTS***

*(UPON WRITTEN REQUEST)*

If your case is appealed, you have the following rights under the Crime Victims Rights Act:

- Notice of defendant’s appeal.
- Notice of defendant’s release while the appeal is pending.
- Notice of the time and the place of any appellate court proceedings and any changes in the time or place of those proceedings.
- Notice of the result of the appeal.
- An explanation of the appeal process.
- Notice of the same rights previously requested during the proceedings leading to the appeal, in the event of a reversal of the conviction.

Feel free to contact our office for any additional information.

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To receive notice of the defendant’s release or parole hearing, contact the victim unit for the Michigan Department of Corrections at:

*Crime Victim Notification Unit*  
Michigan Department of Corrections  
Grandview Plaza Building  
P.O. Box 30003  
Lansing, MI 48909  
(517) 373-4467 (Local)  
(887) 886-5401 (Toll Free)  
[www.michigan.gov/mdoc/](http://www.michigan.gov/mdoc/)

## ***APPELLATE TERMS***

**AFFIRM:** To approve or continue the lower court’s decision or ruling.

**APPEAL:** The process of having a higher court review a lower court’s decision and/or ruling.

**APPELLANT:** The party filing an appeal.

**APPELLEE:** The party responding to an appeal.

**BRIEF:** A written argument of legal issues and authorities.

**MOTION:** A request for a certain ruling or decision on issues related to a case.

**REMAND:** To send a case back to a lower court for further action (e.g., a new trial).

**REVERSE:** To overturn a lower court’s decision or ruling.

**WAIVE:** To give up the right to a hearing.