

## Foreword

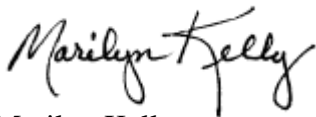
Thomas Jefferson once observed, “Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.” As Jefferson understood, the media, as conveyer of information and as watchdog, guards against abuses of power by the state. Too, democracy depends for its survival on an informed public. Staying informed about our system of ordered liberty must be an ongoing responsibility for all citizens.

In particular, the public needs more and better information about our justice system. But covering the courts is no easy task for the journalist. Unfamiliar court procedures and legal terminology complicate the reporter’s job. Time pressures add to the difficulty of understanding and communicating the legal process.

*A Journalist’s Guide to Covering Michigan State Courts* was created with those challenges in mind. Drafted by judges, attorneys, and journalists, this guide covers the state justice system, from its structure to basic procedures to terminology. Here you will also find practical advice for covering the courts, rules governing public access to court proceedings and files, an overview of attorney and judicial discipline procedures, and more.

*A Journalist’s Guide* will be updated periodically to keep pace with changes in the justice system, and to better meet journalists’ needs. We welcome your comments and suggestions at [MSC-Info@courts.mi.gov](mailto:MSC-Info@courts.mi.gov).

We, the courts and the media, share the important goal of keeping the public well informed about their justice system. It is my hope that journalists and citizens alike will find this guide useful in that endeavor.



Marilyn Kelly  
Chief Justice, Michigan Supreme Court

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Copies of this handbook will be provided free of charge to Michigan journalists as a service of the Michigan Supreme Court Office of Public Information. For more copies, contact:

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Also available online at <http://courts.mi.gov/supremecourt/press/JournalistsGuide/>.

**Please note:**

This handbook is aimed at helping reporters who cover Michigan state courts. (For those who cover federal courts, the Administrative Office of the U.S. Courts has an excellent resource in *A Journalist's Guide to the Federal Courts*, available online at [www.uscourts.gov](http://www.uscourts.gov).)

Points of view in the *A Journalist's Guide to Covering Michigan State Courts* are those of the authors and may not necessarily represent official positions of the Michigan Supreme Court or State Court Administrative Office. Apart from applicable Michigan Court Rules, ethics rules, and Michigan Supreme Court administrative orders, statements in this handbook are not binding on individual courts.

## An introduction to Michigan state courts



The state court system can be confusing, since Michigan has several varieties of trial court, each with its own area of authority, or jurisdiction. (For a reference guide to state trial courts, see <http://courts.mi.gov/plc/AccessMichCourts.pdf>; the Supreme Court’s web site also includes a [trial court directory](#).) In addition, Michigan has two appellate courts: the [Michigan Court of Appeals](#), which is an intermediate appellate court hearing appeals from the trial courts, and the [Michigan Supreme Court](#).

The current court system was created by Article VI of the [1963 Michigan Constitution](#). Article VI, Sec. 1 provides that “The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.” (The only “limited jurisdiction” court created under that provision is the district court.)

In general, Michigan trial courts first hear the facts in a case and issue judgments based on the application of those facts to applicable law. The disputing parties present their testimony and other evidence and a “fact finder” — usually a jury, but sometimes a judge — decides which party prevails. Many times a case is resolved, without a full trial, on the basis of a judge’s ruling on a motion — a party’s request for the judge to make a legal ruling which may dispose of the case or significant questions in that case.

The Court of Appeals may be presented with a challenge to a trial court judgment to see if the lower court made a mistake. The Supreme Court may be asked to review the Court of Appeals decision. Appellate courts generally cannot hear any new evidence and must rule based on the lower court “record” — the testimony and other evidence presented in the trial court.

***What is jurisdiction?*** In covering courts, you will hear references to a court’s “jurisdiction” over a case. While we could devote many pages to this topic, suffice it to say that jurisdiction refers to whether or not a court can preside over a certain type of case. A court can have “subject matter jurisdiction” — for example, a circuit court has jurisdiction to hear criminal felonies, whereas a probate court or district court does not. A court can also have jurisdiction in the geographic sense, meaning that it can hear cases that arise from the county or other geographical area where the court is located. Jurisdiction should not be confused with venue, defined as the particular county, city or geographical area in which a court *with jurisdiction* may hear and determine a case. A “change of venue” — the transfer of a case to another county or court — may take place because the case should have been filed there originally, for the convenience of witnesses or parties, or because a fair trial cannot be had in the original location.

**Rules, rules, rules:** Throughout this guide, you will see references to [MCL \(Michigan Compiled Laws\)](#), [MCR \(Michigan Court Rules\)](#) and [AO \(Michigan Supreme Court administrative orders\)](#). MCL designates a Michigan state statute.

In general, Michigan Court Rules determine the procedures courts must follow in dealing with cases (although Chapter 8 of the MCRs deals with court administration). Administrative orders, which are promulgated by the Michigan Supreme Court, generally offer specific directions on a court administration issue, or can be directed at a specific court project (for example, a recent Supreme Court AO extended an Oakland County pilot project for [electronic filing of legal documents](#)). The Michigan Court Rules are available online at <http://courtofappeals.mijud.net/rules/>. For Supreme Court administrative orders, see <http://courtofappeals.mijud.net/rules/documents/3AdministrativeOrders.pdf> ).

**Note:** Keep in mind that MCLs (statutes) are passed and promulgated by the Legislature, while MCRs and AOs are established by the Supreme Court.

Local courts may have additional rules about court procedure, including what days the court holds hearings on motions (formal requests a litigant makes to the court for some relief or a legal ruling). Check with the court you cover to get copies of any local rules; they are also online with the MCRs at <http://courtofappeals.mijud.net/rules/>.

In covering the courts, you may also encounter references to [MRE \(Michigan Rules of Evidence\)](#) and SJI (Standard Jury Instructions).

Here is a brief overview of each Michigan court. But first ...

**A word about court organization.** The state is organized into 57 judicial circuits along county lines, with some circuits including two or three counties. (For example, the 3<sup>rd</sup> Circuit is the judicial circuit for Wayne County, while the 46<sup>th</sup> Circuit includes Crawford, Kalkaska, and Otsego counties.) The number of trial-level judges within a circuit is established by the Legislature to accommodate that circuit's workload. In multi-county circuits, judges travel from one county to another to hold court sessions.



## **District Court**

The district court is often referred to as “The People’s Court,” because the public has more contact with the district court than with any other court in the state, and because many people go to district court without an attorney.

The district court has exclusive jurisdiction over all civil claims for damages up to \$25,000, including small claims, landlord-tenant disputes, land contract disputes, and civil infractions. The court may also conduct marriages in a civil ceremony.

## Small claims

The district court's small claims division handles cases in which the amount in controversy is \$3,000 or less. Small claims litigants represent themselves; they waive their right to be represented by an attorney, as well as the right to a jury trial. They also waive evidence rules and any right to appeal the district judge's decision. If either party objects, the case is heard in the court's general civil division, where the parties retain these rights. If a district court attorney magistrate enters the judgment, the decision may be appealed to the district judge.

## Civil infractions

A civil infraction is an offense formerly considered criminal, but decriminalized by statute or local ordinance, with no jail penalty associated with the offense. The most common civil infractions are minor traffic matters, such as speeding, failure to stop or yield, careless driving, and equipment and parking violations. Some other violations in state law or local ordinance may be decriminalized, such as land-use rules enforced by the Department of Natural Resources and blight or junk violations.



There is no jury trial for a civil infraction. In contrast to criminal cases, where the burden of proof is “beyond a reasonable doubt,” the burden of proof for a civil infraction is “by a preponderance of the evidence.” Most civil infractions are handled in an informal hearing before a district court magistrate, although a judge may hear the case by request or on appeal.

## Criminal matters

District courts handle a wide range of criminal proceedings, including most misdemeanors, offenses for which the maximum possible penalty does not exceed one year in jail. In misdemeanor cases, the district court judge arraigns the defendant, sets and accepts bail, presides at the trial, and sentences the defendant. Typical district court misdemeanor offenses include driving under the influence of intoxicants, driving on a suspended license, simple assault, shoplifting, and possession of small amounts of marijuana. The district courts also conduct preliminary examinations in felony cases, after which, if the prosecutor provides sufficient proofs, the felony case is transferred to the circuit court for arraignment and trial.

**Note:** A limited number of misdemeanors, known as high court or circuit court misdemeanors, carry a penalty of two years in prison. These are handled by the circuit court, in the same manner as felonies.

The district courts also handle extraditions to another state for a pending criminal charge, coroner inquests, and issuance of search warrants. The court may appoint an attorney for persons who cannot afford a lawyer and may go to jail if convicted.

## Miscellaneous

District court clerks may, with a judge's approval, accept admissions of responsibility to civil infractions, guilty pleas to certain misdemeanor violations, and payments to satisfy judgments. In fact, people who come to district court are more likely to interact with court staff than with a judge, particularly on traffic civil infractions where the offender does not request a formal hearing. Clerks provide a variety of district court forms for the public at little to no cost, but may not give legal advice.

By law, district courts provide information to various state agencies, such as the

Secretary of State (motor vehicle violations) and the Michigan State Police (criminal convictions). District courts can order probation for offenders; most district courts have a probation department to monitor offenders' compliance with probation. A judge can order a defendant to fulfill various conditions, including fines, classes, and treatment or counseling. With some exceptions, probation cannot exceed two years.

District judges are elected to six-year terms on a nonpartisan ballot; a candidate must be a qualified elector, a resident of the district where the judge holds office, a lawyer admitted to practice for five years, and under 70 years of age at the time of election. The Legislature sets district judges' salaries, currently at \$138,272.

As of August 2009, there are 107 district courts in Michigan.



## District court magistrates

District judges have statutory authority to appoint district court magistrates. Magistrates may issue search warrants and arrest warrants when authorized by the county prosecutor or municipal attorney. They may also conduct arraignments and set bail, accept guilty pleas to some offenses, and sentence most traffic, motor carrier, and snowmobile violations, as well as animal, game, and marine violations. If the district court magistrate is an attorney licensed in Michigan, the magistrate may also hear small claims cases. At the chief judge's direction, the magistrate may perform other duties as provided by state law.

## Circuit Court

The circuit court is the trial court of general jurisdiction in Michigan; it has jurisdiction over all actions except those given by state law to another court. The circuit court's original jurisdiction over criminal cases includes felonies and certain serious misdemeanors known as circuit court or high court misdemeanors. The court's civil jurisdiction includes cases where the amount in controversy is \$25,000 or more; the court also handles cases where a party seeks an equitable remedy. Family division cases (see below), and appeals from district courts and

administrative agencies, are also within the circuit court’s civil jurisdiction. In addition, the circuit court has superintending control over courts within the judicial circuit, subject to final superintending control of the Supreme Court.

Circuit judges are elected to six-year terms in nonpartisan elections. A candidate must be a qualified elector, a resident of the judicial circuit, a lawyer admitted to practice for five years, and under 70 years of age at the time of election. The Legislature sets circuit judges’ salaries, currently at \$139,919.

There are 57 judicial circuits in Michigan.

## **Family Court**

Family Court is a division of Circuit Court, created in 1996 when [PA 388 of 1996](#) (MCL 600.1001) was signed into law.

Family court judges — who may be either circuit judges or probate judges serving on the circuit court by assignment — handle divorces, child custody disputes, adoptions, juvenile delinquency matters, abuse and neglect cases, personal protection orders, minor conservatorships and guardianships.

Some matters are handled by referees. Like magistrates in district court, referees are court employees, not elected officials. A referee can handle all matters in juvenile and neglect cases except jury trials, proceedings for contempt of court, and personal protection orders.

## **Court of Claims**

The 30<sup>th</sup> Circuit Court (Ingham County) is the Court of Claims in Michigan. The court hears only claims over \$1,000 against the state of Michigan or one of its departments. Claims are heard by a judge, not a jury.

## **Friend of the Court**

The [Friend of the Court](#) is a division of the circuit court; there are 65 FOC offices throughout the state, with some FOC offices serving two or more counties that are in the same judicial circuit. FOC offices enforce court orders regarding child custody, parenting time, and support, including health care coverage for children and both spousal and child support. Note that MCR 3.218 limits access to many Friend of the Court records, although “any person” who is denied access may file a motion for an order of access.

## **Specialty courts (drug/sobriety)**

Michigan has long been a leader in the [specialty court](#) (also known as therapeutic justice or problem-solving courts) movement, dating back to at least 1992, when

the first women’s drug court in the nation was established in Kalamazoo. Recognizing that substance abuse plays a large role in crime, drug courts focus on the offender’s underlying addiction, and use a combination of court-ordered treatment, drug/alcohol testing, and sanctions as an alternative to traditional punishment.

In Michigan, drug treatment courts are defined as “. . . a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol.” MCL 600.1060(c). As of May 2009, Michigan has over 80 specialty court programs, including programs in circuit courts, district courts, and Michigan tribal courts. Such programs are limited to non-violent offenders who agree to the program’s terms. Those who violate the program requirements are subject to incarceration and removal from the program.

Both in Michigan and nationally, the specialty court movement is seen as having the potential to return offenders to productive lives. Drug and sobriety courts report reducing recidivism and substance abuse among nonviolent substance-abusing offenders.

This approach is being extended to family dependency courts (treating substance abuse in parents in child abuse and neglect cases) and mental health courts (treating nonviolent offenders for mental illness).



## **Probate Court**

The probate court has jurisdiction over admission of wills, administration of estates and trusts, guardianships, conservatorships, and the treatment of mentally ill and developmentally disabled persons.

Each county has its own probate court, with the exception of 10 northern counties that have consolidated to form five probate court districts. Each of those probate court districts has one judge. Other probate courts have one or more judges, depending on that court’s caseload. There are 78 probate courts in Michigan.

Probate judges are elected to six-year terms on a nonpartisan ballot; a candidate must be a qualified elector, a resident of the judicial circuit, a lawyer admitted to practice for five years, and under 70 years of age at the time of election. The Legislature sets probate judges’ salaries, currently at \$139,919.



## **Michigan Court of Appeals**

The Court of Appeals is the intermediate appellate court between the trial courts and the Michigan Supreme Court. While the Court of Appeals was created by the 1963 Michigan Constitution, its jurisdiction is established by statute. MCL 600.308; MCL 600.308a; MCL 600.309; MCL 600.310. The Court of Appeals’

practices and procedures are governed by the Michigan Court Rules, which are established by the Supreme Court. MCL 600.305. Court of Appeals judges' salaries — currently set at \$151,441 — are set by the Legislature at 92 percent of Supreme Court Justices' salaries. MCL 600.304.



The Supreme Court chooses a chief judge for the Court of Appeals every two years. MCR 7.201(A)(1). Court of Appeals judges are elected for six-year terms in nonpartisan elections. A candidate for the Court of Appeals must be a lawyer admitted to practice for at least five years, under 70 years of age at the time of election, a qualified elector, and a resident of the district in which the candidate is running.

Judges are elected from [four districts](#), which are drawn by the Legislature along county lines. MCL 600.302. The districts are, as nearly as possible, of equal population. The Legislature may change state law to alter the number of judges and the districts in which they are elected.

Court of Appeals judges sit in panels of three to review and decide cases, with the majority deciding the outcome. MCL 600.311; MCR 7.201(D). Panels hear cases in Lansing, Detroit, Grand Rapids, and Marquette. MCR 7.201(F). The judges are rotated so that each judge sits with every other judge with equal frequency. MCR 7.201(D). Consequently, all of the judges hear cases in each of the Court of Appeals' locations; the judges do not hear cases only in the district from which they were elected. A decision by a panel of Court of Appeals judges is applicable statewide.

Although motions are filed in cases pending at the Court of Appeals, motion practice in that court varies from the trial courts in that appellate motions are not argued before judges but instead are submitted to the panel on paper only, unless argument is ordered by the court. MCR 7.211(D). Motions are decided by orders issued by the clerk's office. In cases of high public interest, the clerk's office will often supply the Public Information Office with scanned copies of such orders for forwarding to the PIO's media group.

The Court of Appeals hears both civil and criminal cases. Some appeals may be filed by right, which means that the appellant has a right to appeal that cannot be denied by the appellate court. Other appeals are by leave, which means that the appellant must file an application for leave to appeal and the Court of Appeals will review the application and grant or deny the application. If an application is granted, the appellant has the opportunity to brief the merits of the issues for the judges' substantive review and disposition. If an application is denied, the appeal is concluded without a review of the merits.

With few exceptions, nearly all appeals seek review of a trial decision of the circuit court or on appeal of a circuit court's decision on a district court judgment.

Most Court of Appeals decisions are “unpublished.” While these opinions are binding on the parties to the specific case, they are not binding precedent on lower courts and future Court of Appeals panels. MCR 7.215(C). A “published” decision of the Court of Appeals does set legal precedent, however, both as to the trial courts and as to subsequent Court of Appeals panels. MCR 7.215(C).

If a subsequent Court of Appeals panel concludes that it would reach a contrary result “but for” a prior published opinion of the Court of Appeals that was issued on or after November 1, 1990, the second panel will announce its decision in a manner that explains its contrary reasoning and denominates the case as a “conflict” case. Under MCR 7.215(J), all of the judges of the Court of Appeals must then be polled to determine whether to convene a special panel of seven judges to hear argument in the second case and decide the conflict between the two decisions. The decision by the seven-judge panel is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court.

Court of Appeals opinions are generally released on Tuesday and Thursday of each week. The court maintains a complimentary listserv to which it distributes a list of all opinions released the previous business day, together with links to the opinions. Sign up for the listserv at <http://courtofappeals.mijud.net/resources/subscribe.htm>.

Copies of Court of Appeals orders can be retrieved through the individual case docket on the court’s web site at <http://courtofappeals.mijud.net/resources/public.htm>. Use the docket number or a party name to identify the case and go to the end of the docket to find the link embedded in the corresponding docket entry.



## Michigan Supreme Court

The Michigan Supreme Court, Michigan’s court of last resort, consists of seven justices who are elected for eight-year terms. Candidates are nominated by political parties and are elected on a nonpartisan ballot. Two justices are elected every two years (one in the eighth year) in the November election. Michigan Constitution of 1963, Art. VI., sec. 2. Supreme Court candidates must be qualified electors, licensed to practice law in Michigan for at least five years, and under 70 years of age at the time of election. The justices’ salaries (currently at \$164,610) are fixed by the State Officers Compensation Commission and paid by the state of Michigan. Supreme Court vacancies, like vacancies on all Michigan state courts, are filled by appointment of the Governor until the next general election. Art. VI, sec. 23. Every two years, the justices elect a member of the Court as chief justice. Art. VI, sec. 3.

Each year, the Michigan Supreme Court receives over 2,000 new case filings. Most are applications for leave to appeal from Michigan Court of Appeals decisions, but the Court also hears cases involving charges of professional

misconduct by attorneys and judges and a small number of matters as to which it has original jurisdiction. All cases are reviewed and considered by the entire Court. The justices are assisted by the Supreme Court commissioners, the Court's permanent research staff, and by law clerks. The Court issues a decision by order or opinion in all cases filed. The Court may deny leave to appeal, enter a final order based upon the application, or hear oral argument before issuing an opinion or order. By court rule, all leave granted cases orally argued in a term (which begins August 1 and runs through July 31 of the following year) must be decided by the end of the term. If the Court does not issue a written ruling by the end of term, the parties may ask the Court to again hear oral argument in the following term.

The Court's oral arguments are broadcast by [Michigan Government Television](#) (MGTV), often live. But if you plan to cover an oral argument, be aware that MGTV generally broadcasts between 10 a.m. and 2 p.m. EST, while the Court generally begins its sessions at 9:30 a.m. and may continue past 2 p.m. Also, to cover breaking news at the capitol, MGTV may broadcast oral arguments at a later date. The [State Bar of Michigan](#) offers archived video of Supreme Court proceedings, including oral arguments, but the video is posted about 24 to 48 hours after the proceedings.

### **The Supreme Court's oversight role**

In addition to deciding cases, the Michigan Supreme Court is responsible for oversight of all state trial courts. The Court's administrative agency, the [State Court Administrative Office](#), carries out the Court's administrative policies and supports trial courts in various ways, such as consulting with trial courts about how to improve their operations (see discussion of SCAO below).

**Rulemaking.** As part of its administrative duties, the Supreme Court issues directives aimed at improving operations of state courts, known as administrative orders. The Court also has a public process for making changes to court rules. At least three times a year, the Court holds public hearings "on rules or administrative orders significantly affecting the delivery of justice proposed for adoption or amendment." ([See Supreme Court Administrative Order 1997-11.](#)) In general, absent a need to act quickly, the Court publishes each proposed court rule or administrative order for a period of public consideration and comment before placing it on a public hearing agenda. The Court also holds public administrative conferences, usually once a month, to discuss pending administrative matters. Both public hearings and public administrative conferences can be viewed online at <http://michbar.org/courts/virtualcourt.cfm>, but bear in mind that video is posted 24 to 48 hours after the hearing or conference.

Proposed rules and AOs, and those that the Court recently adopted, are online at <http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#administrative>. Public hearing agendas are posted at

<http://courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm>, while agendas for public administrative conferences may be viewed online at <http://courts.michigan.gov/supremecourt/Resources/Administrative/AdminConf.htm>.

**Oversight of lawyers and judges.** The Court also oversees admission to the bar and discipline of lawyers (see “Attorney discipline system” below). Members of the [Board of Law Examiners](#), which drafts, administers and grades the bar examination for prospective lawyers, are nominated by the Supreme Court and appointed by the Governor.

The Court also appoints the board members and executive directors of the [Attorney Grievance Commission](#), which investigates and prosecutes attorney misconduct, and the [Attorney Discipline Board](#), which hears complaints brought by the AGC against attorneys and recommends sanctions. The ADB’s decisions may be appealed to the Court.

The Supreme Court also appoints the executive director of the [Judicial Tenure Commission](#), which oversees ethics complaints against judges. (The Court does not, however, appoint the members of the JTC’s [nine-person panel](#). The Governor appoints two members and the State Bar of Michigan elects three; the remaining four members — a Court of Appeals judge, a circuit judge, a probate judge, and a judge of limited jurisdiction — are elected by the judges of the courts in which they serve.) While the JTC’s nine-member panel hears complaints against judges and recommends sanctions, the Supreme Court must decide whether to impose the recommended sanction. The Court is not bound by the JTC’s recommendation (See “Judicial Tenure Commission” below).

***Trial courts and the chief judge rule.*** Every two years, the Michigan Supreme Court chooses the chief judges of all state trial courts (MCR 8.110); in general, a chief judge serves for two years and may be reappointed by the Supreme Court to additional terms.

A chief judge acts as his or her court’s CEO, directing the court’s administration and supervising other judges and court staff. In addition, the court rule calls for a chief judge to “represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media ....” Bear this in mind when seeking comment from a court about an administrative issue that affects the court as an institution (as opposed to seeking public comment about a particular pending case, which judges are prohibited from doing under ethics rules).

## **Tribal Courts**

Indian tribes have their own, [independent courts](#), and as such are not part of either the state or federal court systems. However, tribal court judgments can be enforced through Michigan state courts, as provided by [MCR 2.615](#). Basically,

the rule states that a tribal court judgment is recognized as long as the tribe or tribal court has enacted a reciprocal ordinance, court rule, or other binding measure that obligates the tribal court to enforce state court judgments, and that ordinance, court rule, or other measure has been transmitted to the State Court Administrative Office.

## **Court Process: Civil**

A civil case involves a legal dispute between two or more parties. A plaintiff may seek money to compensate for an injury or may ask the court to order the defendant to stop conduct that is causing harm (this type of remedy is known as *injunctive relief*). The court may also order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation (this kind of lawsuit is known as a *declaratory action*).



**Please note:** The court process for civil cases is different from than in criminal cases. It may be helpful to refer to Chapter 2 of the MCRs, which governs general civil procedure, and Chapter 6, which applies to criminal cases.

### **Complaint**

To begin a civil lawsuit, the plaintiff files a complaint with the court, and serves a copy of the complaint, along with a summons, on the defendant. The complaint contains allegations describing the plaintiff’s injury and how the defendant caused the injury; the complaint also asks the court for relief. The complaint generally includes all of the plaintiff’s theories of recovery — some of which may be inconsistent with each other — as well as the amount of money or other relief sought. Once filed, the complaint is assigned a case number and a presiding judge. A complaint can be amended later to reflect changes in the allegations, claims, or relief sought.

### **Removal**

Civil cases are sometimes “removed” to federal court from a state court by a defendant. If a civil case is started in state court and involves a question of federal law (for example, a federal statute or the U.S. Constitution), the defendant may remove the case to be adjudicated in federal court. Also, if the parties are from different states and the case involves at least \$75,000, an out-of-state defendant can request that the case be removed to federal court under the federal court’s “diversity” jurisdiction. But if any of these issues that create federal jurisdiction are removed from the case — for example, by a court ruling, if the plaintiff gives up a claim that involved federal law, or, in diversity cases, the amount of damages sought drops below \$75,000 — the federal court can send the case back to state court.

## **Answer**

Once the complaint is filed, the court issues a civil summons to be served on the defendant. The defendant has a limited time to respond to the complaint's allegations in an answer. The answer addresses each allegation in the complaint and raises affirmative defense — for example, that the plaintiff failed to file the complaint before the statute of limitations ran out.

## **Discovery**

Discovery is part of the process of preparing a case for settlement or trial. The parties must provide information to each other about the case, such as the identity of witnesses and copies of any documents related to the case. Typically, discovery involves taking depositions — questioning potential witnesses under oath in the presence of a court reporter, who transcribes the response verbatim. Depositions are generally not considered public hearings and reporters are usually not allowed to attend them.

Discovery also frequently involves interrogatories, a series of written questions that one party submits to the other. The party who answers the interrogatories is required to do so under oath.

Each side may also file requests, or motions, with the court seeking rulings about discovery or the procedures to be followed at trial. For example, one party may ask the court to limit the kinds of questions the other party may ask at trial.

## **Settlement**

Parties often decide to resolve a civil lawsuit by settlement. Cases may be settled informally, or by mediation or arbitration in lieu of trial.

In Michigan, a court may order “case evaluation,” a type of alternative dispute resolution, in any case where the relief sought is primarily money damages or division of property. In tort cases — those involving a civil wrong or breach of a legal duty to another person — case evaluation is generally mandatory. A three-attorney panel hears from both parties and makes an evaluation within 14 days after the hearing. The parties may accept or reject the case evaluation. If all parties accept, the case settles and the court enters a judgment reflecting the case evaluation; if a party rejects all or part of the case evaluation, the case proceeds to trial as it normally would. A party who rejects the case evaluation risks having to pay the opposing party's costs of going to trial, unless the rejecting party obtains a verdict that is more favorable to that party than the case evaluation.

If a case is settled, the plaintiff usually signs a release and dismisses the claim against the defendant. Many releases and settlement agreements contain

confidentiality clauses that prohibit the parties from discussing the case publicly or sharing details of the settlement with others.

## **Trial**

If a case is not settled, the court will schedule a trial. In most civil cases, either side is entitled to a jury trial upon request. (If the parties waive their right to a jury, the judge will hear and decide the case; this is known as a bench trial.)

The trial generally begins with an opening statement from each party. Witnesses testify under the judge’s supervision. Witnesses are kept out of the courtroom, or sequestered, until it is time for them to testify. A court reporter makes a record of the proceedings. A judicial clerk also keeps a record of each person who testifies and marks for the record any documents, photographs, or other items introduced into evidence.

At the conclusion of the evidence, each side gives a closing argument to demonstrate that the evidence supports that party’s case. In a jury trial, the judge will give jury instructions that explain the law that applies to the case and the decisions the jury needs to make. In addition to the instructions that the judge gives the jury verbally, the jury will also be given written instructions that explain what they need to do. (There are standard jury instructions for a variety of civil cases, available online at <http://courts.mi.gov/mcji/MCJI.htm> .)

In general, the jury is asked to determine whether the defendant is responsible for harming the plaintiff in some way, and then to determine the amount of damages that the defendant will be required to pay. In a civil case, the plaintiff must convince the jury by a “preponderance of the evidence” (more likely than not) that the defendant is responsible for the harm that the plaintiff has suffered. This “burden of proof” is less stringent than the “beyond a reasonable doubt” standard for criminal cases.

Unlike juries in criminal cases, a jury in a civil case does not need to reach a unanimous verdict. In civil cases, a jury usually consists of six jurors, and a verdict is reached when five jurors agree. The parties may agree to a lesser number of jurors, with a stipulation that the “verdict or finding of a stated majority of the jurors will be taken as the verdict or finding of the jury ....” MCR 2.512(A)

## **Court Process: Criminal**



Criminal cases in Michigan are filed by individual counties (county prosecutor) or the State of Michigan (represented by the [Attorney General](#)) against individuals or organizations suspected of committing crimes.

Most reported crimes are investigated by the local police, the county sheriff or the state police. A few types of crime (e.g., criminal failure to pay child support, public health related crimes, etc.) may be investigated by other agencies.

### **Felonies vs misdemeanors**

In general, a misdemeanor is a crime carrying a penalty of one year in jail or less — with the exception of certain crimes, known as high court or circuit court misdemeanors, which carry a penalty of up to two years' incarceration and which are handled in the same manner as felonies. A felony is a crime punishable by incarceration of more than one year. While circuit courts have jurisdiction over felonies, district courts preside in misdemeanor cases.

### **Grand jury**

A grand jury reviews evidence presented by a prosecutor and decides whether there is sufficient evidence to require a defendant to stand trial; if so, the grand jury indicts the defendant. Grand jury proceedings are closed to the public ([MCL 767.19f](#)). Although other states, such as New York, use grand jury proceedings on a fairly regular basis, the grand jury is not used very frequently in Michigan.



### **Progress of a criminal case**

*The arrest warrant.* Most cases begin with a warrant request. The investigating officer files a complaint against the suspect in district court. The magistrate or judge then signs a warrant – an order to bring the defendant before the court.

- **Note:** While law enforcement makes the initial complaint — the preliminary charge or accusation made by police against a suspect to the appropriate court or official — charges are brought by the prosecutor after considering the information available and determining whether the facts support prosecution. Formal charges brought by the prosecutor are also referred to as the complaint.

*Search warrants.* Like arrest warrants, search warrants are issued by a district court judge or magistrate. The investigating officer makes an affidavit — a statement made under oath to the court — to establish grounds for the search. If the judge or magistrate is satisfied that there is probable cause for the search, he or she issues the warrant; this may be done in person “or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.” MCL 780.651(3).

- **Note:** Search warrants are public records, but they typically provide little information other than the fact that a search warrant is being issued for a specific location. Search warrant affidavits are filed with the court, but are

*not* public information until 56 days after the search warrant was issued. In addition, a police officer or prosecutor can obtain a suppression order from the court “upon a showing under oath that suppression of the affidavit is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness.” The initial suppression order expires 56 days after the court issues the order; the officer or prosecutor can obtain additional suppression orders, each lasting 56 days. These provisions — which govern whether a search warrant affidavit is available from the *court* file — “do not affect a person’s right to obtain a copy of a search warrant affidavit from the prosecuting attorney or law enforcement agency” under FOIA. See MCL 780.651(7),(8).

- In contrast to search warrants, an investigative subpoena is not public record. Under MCL 767A.2, a prosecutor may petition the district or circuit court “in writing for authorization to issue 1 or more subpoenas to investigate the commission of a felony ....” An investigative subpoena includes a brief description of each felony being investigated, the name of each person who will be questioned or required to produce evidence, a general description of the materials the prosecutor seeks, and a brief statement of facts to support the prosecutor’s belief that the testimony or materials sought are relevant to the felony investigation. The statute also provides that an investigative subpoena is confidential and not subject to FOIA.

*Arraignment in district court.* This is the first court appearance for a defendant charged with any crime. At arraignment, the defendant is told what the charges are and the maximum penalty if he or she is convicted. The judge or magistrate also tells the defendant that he or she has constitutional rights to a jury or bench trial, appointed attorney (if the defendant cannot afford one), presumption of innocence, etc. The court determines the conditions and amount of the defendant’s bond, if appropriate. (For example, in most first-degree murder cases, bond is not available.) The judge may impose conditions on the bond, based on the nature of the charge — for example, no contact with the victim.

If the offense is a misdemeanor, the defendant is given the opportunity to enter a plea — guilty, not guilty, no contest, or stand mute (*i.e.*, remain silent, which is treated by the court as if the defendant pled not guilty) — to the charge. If the defendant pleads guilty or no contest, the judge may sentence the defendant on the spot. The judge may also reschedule the case for a sentencing date, which will give the probation department time to prepare a pre-sentence report including background information about the defendant and the crime, make a sentencing recommendation, etc. If the defendant stands mute or pleads not guilty, the case will be scheduled for a pre-trial conference.

If the defendant has been charged with a felony, the defendant does not plead guilty or not guilty at the arraignment in district court. Instead, the court advises the defendant of the right to a preliminary examination within 14 days of the

arraignment. The court also reviews requests for court-appointed attorneys at the arraignment.

*Preliminary examination in district court:* If the defendant has been charged with a felony, he or she is entitled to a preliminary examination in district court (but not if charged by a grand jury), also sometimes referred to as a “probable cause hearing.” The prosecutor presents witnesses to convince the judge that there is probable cause to believe that a crime was committed and that the defendant committed the crime. Because the burden of proof at a preliminary examination is much less than at a trial, the prosecutor usually does not call all potential witnesses; generally, the victim and some eye witnesses plus some of the police witnesses testify. The defendant usually has an attorney, is entitled to cross-examine the witnesses, and can present his or her own evidence and witnesses. If the court finds probable cause, the defendant is “bound over” (sent) to circuit court for trial. If probable cause is not proven, the felony charge can be dismissed or reduced to a misdemeanor for trial in district court. A defendant can waive a preliminary examination. Many felonies arrive in circuit court after such a waiver.

*Circuit court arraignment in felony cases:* After the case is sent to circuit court, the defendant is arraigned a second time. The circuit court gives the defendant formal notice of the charges; the charging document is called an information. The defendant is again advised of his or her constitutional rights, and enters a plea to the charge (guilty, not guilty, no contest, or stand mute).

*Pre-trial conference:* This is a meeting including the prosecutor assigned to the case, the defendant’s attorney, and the judge to determine whether the case will go to trial or be resolved with a plea.

*Pretrial proceedings:* As with district court misdemeanors, the circuit court may be asked to resolve pre-trial issues, some of which determine whether the case will continue to a trial, be resolved with a plea, or be dismissed. These may include hearings on constitutional issues (confessions, searches, identification, etc.). The issues are presented to the court through written motions (for example, a motion to suppress evidence). The judge must determine whether evidence will be admitted or suppressed at the defendant’s trial, whether there is some legal reason why the defendant should not be tried, or decide other ground rules for trial.

*Plea bargain:* A plea bargain is the equivalent of the settlement of a civil case. Most criminal cases result in a plea bargain, in which the defendant pleads guilty to lesser charges or pleads guilty as originally charged with an agreement for a shorter sentence. Plea bargains are often put in writing and filed in the court record.

*Trial:* At trial, the burden of proof is on the prosecution to prove the defendant’s guilt beyond a reasonable doubt. The defendant is not required to prove his or her

innocence or to present any evidence, but may challenge the accuracy of the prosecutor's evidence. Both the defendant and the prosecutor have the right to a trial by a jury. Sometimes, both sides agree to let a judge listen to the evidence and decide the case without a jury; this is called a "bench trial." In a jury trial, the jury is the "trier of fact"; in a bench trial, the judge is. After the evidence is presented, the judge or a jury will determine whether the evidence proved that the defendant committed the crime.

Sometimes, after the prosecution has presented its evidence, the defense may move for a directed verdict. A motion for directed verdict asserts that the prosecution has not presented evidence to prove its case and asks the judge to dismiss the case against the defendant without letting the case go to the jury.

In a criminal trial, all jurors must agree to reach a verdict. (The same is not true of civil cases, where a majority of jurors must agree. In civil cases, a jury usually consists of six jurors, and a verdict is reached when five jurors agree. The parties may agree to a lesser number of jurors, with a stipulation that the "verdict or finding of a stated majority of the jurors will be taken as the verdict or finding of the jury ...." MCR 2.512(A) In mental health proceedings involving a person's possible commitment to a hospital or other institution, or to a correctional or training facility under the juvenile code, the jury's verdict must be unanimous. MCR 5.740(C). See "[Tips for journalists.](#)")

If a defendant is found not guilty by a jury, the defendant is released and the government may not appeal. The defendant also may not be charged again with the same crime in another court because the Constitution prohibits "double jeopardy," or being tried twice for the same offense.

If a defendant is found guilty, his or her attorney may ask the judge for judgment notwithstanding the verdict (usually abbreviated JNOV, from the Latin *non obstante veredicto*). In essence, a motion for JNOV asks the judge to dismiss the case on the basis that the jury's verdict was not supported by the evidence.

*Sentencing:* Sentencing in Michigan varies with the crime and can be the most confusing part of the criminal process.

The probation office prepares a report for the court that includes the defendant's past criminal history and an analysis of various other factors, including any applicable sentencing guidelines and Offense Variables (OV), which assign points based on features of the crime. The trial judge will have to consider OVs and PRVs (prior offense variables) in determining the length of the sentence.

The judge considers the information in the pre-sentence report before determining the sentence. The parties may correct factual errors in the pre-sentence report and offer additional evidence relevant to the judge's sentencing decision. In addition,

the Michigan Victims' Rights Act gives crime victims the right to make a victim impact statement, either in writing or in person, to the court.

For crimes — e.g., first-degree murder or felony-firearm — the judge must impose a sentence set by statute. And for a number of serious crimes, prison time is the only sentencing option the judge has. In other cases, the judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or prison, or a combination. The judge must also order the defendant to make restitution to any victims who have suffered financial harm.

*Note:* Some mistakenly use the terms “jail” and “prison” interchangeably. Jail is a county-run/funded facility that generally houses convicted defendants serving a year or less; a prison, by contrast, is run by the state and houses convicts serving more than one year.



## The Appellate Process

If you've covered a trial court proceeding, there's a chance the case will go to the Court of Appeals and Supreme Court on appeal. The appellate process provides another opportunity for reportage – but from a different perspective.

- The **appellant** is the party who seeks to challenge the outcome in the trial court, usually on the entire case but sometimes on just one issue. The appellant wants the trial court's adverse ruling overturned or changed by the appellate court, usually based on claims that the trial judge made a mistake that incorrectly led to the adverse ruling or judgment.
- The **appellee** is usually the winner before the trial court. The appellee will usually argue that the trial judge did not make a mistake at trial or, if the judge did err, that the mistake did not contribute to the final ruling or judgment.
- Appeals proceed on written briefs filed by the parties arguing their positions. Sometimes the lawyers will give oral arguments to the appellate court. Thereafter the appellate court issues an opinion (this generally does not happen at the time of the oral argument, unlike a trial court, where a judge can make a ruling from the bench).
- Court record: When an appeal is filed, the trial court record is collected and transmitted to the appellate court. This record includes all documents filed in the case, the videotape or written transcript of all proceedings, a videotape log (if video was used), and sometimes the trial exhibits.
  - If the case is before the Michigan Court of Appeals, the appeal file will be stored in one of the court's four locations: Detroit, Grand Rapids, Lansing, or Troy. Generally, that office will have the lower court record as well.

- If the case is before the Michigan Supreme Court, the lower court record will be transmitted to the Court at the [Michigan Hall of Justice](#) in Lansing.

There are three kinds of appeals:

- *Interlocutory appeal*: occurs when a party tries to appeal a judge’s ruling before the case has come to trial or before a trial is finished.
- *Appeal of right*: occurs after a final order has been entered by the trial court (see MCR 7.202).
  - In criminal cases, a final order is generally either a judgment of conviction and sentence, or an order dismissing the charge. (Please note: A recent amendment to the Michigan Constitution has eliminated most appeals of right when a defendant pleads guilty. As a result, most appeals by leave in criminal cases now focus on the sentence imposed.)
  - In civil cases, a final order is one of the following: 1) the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order; 2) an order entered before adjudication but designated as final by the court; 3) in a domestic relations case, a post-judgment order affecting custody of a minor; 4) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625, or other law or court rule; 5) an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee.
- *Appeal by leave of the court*: occurs when an appeal of right is not available (e.g., because an available appeal of right was not filed on time or because the order cannot be appealed by right). The appellate court has the discretion to reject the appeal or can “grant leave.”

Oral arguments before the Michigan Supreme Court and Court of Appeals are open to the public. The Michigan Supreme Court generally holds oral arguments at the Hall of Justice in Lansing, but also holds oral arguments in various communities as part of the Court’s public education program. The Court of Appeals hears oral arguments in Detroit, Grand Rapids, and Lansing; if you’re covering a Court of Appeals argument, check in advance to see where it will take place (usually the same location where the appeal was filed). The Court of Appeals also periodically hears oral arguments in the Upper Peninsula and northern Lower Peninsula.

[Michigan Government Television](#) broadcasts the Supreme Court’s oral arguments, usually live, but often taped. If you are following a case before the Supreme Court and want to watch the argument, do not assume that you can catch

it on MGTV instead of making the trip to Lansing. Check with MGTV or the [Court's Public Information Office](#) first to see if the broadcast will be live, understanding that last-minute events can lead to the oral arguments being bumped from the schedule, to air at a later time. Archived video of the Court's oral arguments and public administrative proceedings is available on the [State Bar of Michigan](#) web site at <http://www.michbar.org/courts/virtualcourt.cfm>. Typically, video is posted within 24 to 48 hours of an oral argument or other public proceeding.



## **A Journalist's Access to Court Proceedings**

Both Michigan statute and court rules provide that court proceedings are presumed to be open to the public, except in certain limited circumstances. As the Michigan Supreme Court stated in *Detroit Free Press v Recorder's Court Judge*, 408 Mich 364 (1980):

“...The public-trial concept developed primarily for the benefit of the public. It is basic to a free and open society that public access to trials be maintained.”

Court records are also generally open to the public; see MCR 8.119(F) below. While we haven't reproduced the entire court rule here to save space, it's worth reading in full at <http://courtofappeals.mjud.net/rules/> to understand your rights and remedies if a file is sealed.

There may be some practical barriers to getting access to a court file, as work on cases occurs at different times and places. Depending on what's going on with the case, the file and the documents it contains may be in the courtroom, the judge's office, the judge's secretary's office, the clerk's office, or in the main filing area. Be patient, particularly if a new filing is involved, as it may take some time for the clerk to process the new document and add it to the file. (See “Pleadings, Orders, and Opinions,” below.)

Keep in mind that while a court's proceedings and rulings are open, a judge's deliberations are not. It's largely to protect the integrity of courts' decision-making that the judicial branch is not subject to FOIA (MCL 15.231 *et seq.*) Michigan Supreme Court Administrative Order 1997-10 does make some information about court administration available — but it specifically “does not apply to the adjudicative function of the judicial branch.” (See discussion of AO 1997-10 below).

**Michigan Compiled Laws (MCL) 600.1420.** Courts, sittings to be public, exceptions

**Sec. 1420.** The sittings of every court within this state shall be public except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or

immorality, exclude all minors from the courtroom unless the minor is a party or witness. This section shall not apply to cases involving national security.

#### **Michigan Court Rule (MCR) 8.116(D)**, Access to Court Proceedings

(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* [on the court's own initiative] has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. [MCR 2.119](#) governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

#### **MCR 8.119(F)**, Sealed Records

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

### **What civil proceedings are open to the public?**

**Note:** Civil proceedings differ from criminal proceedings. Civil proceedings are usually personal legal actions relating to and affecting rights of the parties.

- Civil court proceedings are presumed to be open to the public (see MCL 600.1420 and MCR 8.116(D)).
- Journalists have the same right of access as any other member of the public.

### **When can a civil court proceeding be closed to the public?**

- Although civil court proceedings and records are presumed to be open to the public, courts have limited authority to close proceedings and records. To close civil proceedings or seal records, a court must weigh the interests of the party seeking closure against the public's right of access to the proceedings; the party seeking closure must file a written request — a motion — for the court to do so. A court can also close a proceeding on the court's own motion.
- A court may not close a proceeding unless:
  - there is a specific interest to be protected;
  - that interest outweighs the public's right of access;
  - the denial of access is narrowly tailored to protect the specific interest;
  - there is no less restrictive means to adequately and effectively protect the interest; and
  - the court states on the record the specific reasons for closing the proceeding. MCR 8.119(D)(1).

### **Sealing court documents**

Although the Freedom of Information Act does not apply to the judicial branch, information that courts receive is publicly available unless sealed by statute, rule, or order of the court. (And much information about court administration is also public record; see discussion of AO 1997-10 below).

Statutes provide for sealing documents in specific proceedings, such as juvenile and grand jury proceedings. Courts sometimes have sealed documents that contain sensitive material, such as classified information affecting national security or a business' trade secrets.

An entire case may be sealed at the opening of a case, or certain docket entries may be sealed during the course of the proceedings. These cases or documents generally are listed on the docket but with the notation that the information is sealed.

- A court may not seal a record unless:
  - there is a specific interest to be protected;

- the court has made a finding of good cause for sealing the record; and
- there is no less restrictive means to adequately and effectively protect the interest. MCR 8.119(F)(1).
- In determining “good cause,” the court must consider both the interests of the parties and of the public. Where there is a claim of domestic violence, the court must consider the safety of the alleged or potential victim. MCR 8.119(F)(2).
- Court orders and opinions *cannot* be sealed. “A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.” MCR 8.119(F)(5).

### **What can you do to challenge closure of a civil court proceeding or record?**

- Voice your objection to the judge when the motion is made to close; ask for a hearing and time to call your attorney. But if the judge overrules your objection, you must leave the courtroom if the proceeding is closed.
- The court rules (see MCR 8.116(D)(2) and MCR 8.119(F)(6)) allow “any person” to file a motion to set aside a court order closing a proceeding or record. Consult your editor and/or an attorney.
- If the court denies your motion, you may file an application for leave to appeal, just as if you were a party in the case.

### **Access to criminal proceedings**

While MCR 8.116 and MCR 8.119 apply to criminal as well as civil cases, there are different considerations in criminal cases when it comes to sealing a proceeding or record. Courts must be concerned with the defendant’s right to a fair trial, the safety of witnesses, and other factors.

- Criminal court proceedings are presumed to be open to the public, but may be closed in limited circumstances (see discussion of MCR 8.116 above).
- The presumption of openness applies to any pretrial proceedings, such as pretrial suppression hearings (when a party seeks to refuse to allow evidence to be produced for use in litigation)
- Journalists have the same right of access to criminal court proceedings as any other member of the public.

### **Access to other court proceedings**

***Family court:*** May be open to the public, but courts can close the proceedings on a showing that there is a specific interest to be protected (such as preventing trauma to young children) and that the specific interest outweighs the right of

access. Note that some family court proceedings, such as adoptions, are generally closed to the public.

**Juvenile court:** Juvenile proceedings on the formal calendar and preliminary hearings are open to the public, but the court may, on the motion of a party or victim, close the proceedings to the public during the testimony of a child or during the testimony of a victim to protect the rights of either. Records of juvenile cases, other than confidential files, must be open to the general public. The public file is the legal file, meaning the petition, court orders and other legal documents. The confidential file includes case plans, reports (medical, psychological, treatment, school, investigative, police), diversion records, or other materials or records the court determines are confidential. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files ([MCR 3.925](#)).

**Drug/Sobriety court:** Proceedings are generally open to the public, including “graduation ceremonies” where defendants who have fulfilled the requirements of their probation, including treatment, are recognized.

**Grand jury:** Grand jury proceedings, when a prosecutor presents evidence to a group of jurors who will determine whether there is a sufficient basis to bring criminal charges against a person, are not open to the public, nor can testimony or exhibits from the proceedings be made public ([MCL 767.19f](#)).



### Access to jurors

What are the limitations on access to jurors?

- Voir dire — the court proceeding in which potential jurors are questioned during jury selection — is presumed to be open to the public. The Michigan Court of Appeals has held that a trial court erred by excluding media from voir dire because of space limitations, where the court did not tailor its order narrowly to accommodate the media’s legitimate concerns; see *In re Closure of Jury Voir Dire*, 204 Mich App 592 (1994).
- Once jurors are selected, they are sworn not to discuss the matter with anyone and to inform the judge if anyone asks them about the case. This restriction applies to a reporter asking them questions. Questioning a juror might result in the trial being cancelled, or in other sanctions.
- Jury deliberations are *not* open to the public.
- During the trial, the court has the power to restrict access to jurors.
- Once the trial is over, the state court no longer has the power to limit others’ access to jurors. Jurors may speak to anyone they wish, including reporters, about the case.

- Regarding postverdict access to jurors’ names and addresses: the Michigan Court of Appeals has held that a newspaper had a qualified First Amendment right of access to that information, and that the trial court could not deny access without first making a determination that concerns for jurors’ safety were legitimate and reasonable. See *In re Disclosure of Juror Names and Addresses*, 233 Mich App 604 (1999).
- Grand jury proceedings are not open to the public.

### **Cameras in the courtroom**

Unlike federal courts, Michigan courts have long permitted cameras and recorders in the courtroom as part of media coverage.

[Administrative Order 1989-1](#) provides that “Film or electronic media coverage shall be allowed upon request in all court proceedings,” subject to certain limitations:

- Media must submit the request in writing to the clerk of the particular court “not less than three business days before the proceeding is scheduled to begin.” (*Note: The court has discretion to waive the three-day requirement, but it’s still a good idea to make your request as early as possible.*)
- Unless the judge orders otherwise, only two video cameras and two still cameras are allowed in the courtroom.
- Not more than one audio system for radio and/or television recording shall be permitted.
- The court shall provide for notifying the parties of the media request.
- No distractions, such as a flash for still cameras or noise from equipment.
- Shooting video or still photos must take place from a fixed location and be unobtrusive.
- Microphones are not permitted to pick up audio of attorney-client conversations, conversation among co-counsel, or conferences at the judge’s bench.
- No film or electronic coverage of the jurors or jury selection process.
- Media must “dress and deport themselves in ways that will not detract from the proceedings.”

In addition, the judge has the authority to limit or even exclude cameras and recorders to keep order in the courtroom and to ensure the fair administration of justice.

To obtain permission to film or tape courtroom proceedings, you must complete and submit a SCAO form: “[Request and Notice for Film and Electronic Media Coverage of Court Proceedings.](#)”

**Be aware:** Some state courts do restrict the use of cell phones, pagers, etc. Under a recent amendment to [MCR 8.115](#), a court’s chief judge “may set a policy regarding the use of cell phones or other portable electronic devices within the court ....” Call ahead to find out what the court’s policy is.

### **Access to other court information**

While the judicial branch is exempt from FOIA, [AO 1997-10](#) does make some information about court administration available. In general, the AO makes the following available for public inspection and copying:

- Administrative records, which are defined as writings “other than a financial record or an employee record, prepared in the performance of an administrative function of the judicial branch.”
- Some records for employees of the Michigan Supreme Court, State Court Administrative Office, Michigan Judicial Institute, and Board of Law Examiners (e.g., salary, date of hire, current and previous titles, etc. -- but not home address or phone, Social Security numbers, telephone bill detail, etc. The AO also excludes from disclosure “Information that would endanger the safety or well-being of an individual.”)
- A court’s financial records, including proposed budget, enacted budget, annual expenditures and revenues, and judges’ salaries.

Some of the AO is similar to FOIA — for example, in not requiring the judiciary to create a new record in response to an information request. Also, the AO makes it clear that it “neither broadens nor restricts the availability of information relating to a court’s adjudicative records.”

There are also a number of exemptions, including some investigative records, the identity of judges assigned to hear or write a particular decision, and the work product of any attorney or law clerk employed by or representing the judicial branch. The complete rule is online at <http://courtofappeals.mijud.net/rules/documents/3AdministrativeOrders.pdf> .

### **Judges as sources?**



When a question about a case arises, your first reaction may be to call the judge handling the matter. After all, who could provide a more accurate, authoritative answer? But this is usually not a good idea, particularly if your questions are specific to that case and not about general court procedure.

Michigan state court judges are bound by the [Michigan Code of Judicial Conduct](#), which requires that they “abstain from public comment about a pending or impending proceeding in any court, and should require a similar abstention on the part of court personnel subject to the judge’s direction and control.” (Canon 3(A)(6))

Note that this ethics rule applies to statements about current proceedings “in *any* court.” So, in addition to being bound not to comment publicly about a case then before her, a judge may not comment about a case that’s before another judge. Judges take this and other ethics rules very seriously, so many judges will simply not speak with the media at all on any topic, whether specific to a current proceeding or not.

But the rule also goes on to state, “This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court or the judge’s holdings or actions.” Because of this provision, some judges will respond, or have a court employee respond, to a journalist’s questions about procedural aspects of a case.

Too, note that the rule says that judges must abstain from *public* comment. Some judges interpret this to mean that they may talk to a journalist about a pending case — as long as it’s on background only. Most judges are very uncomfortable speaking on background, however, and they take the safe route of never discussing a current case, period.

When the case is no longer pending, the ethics rule permits the judge to comment, but many judges will still decline to do so in case the matter comes before them again — for example, when an appellate court, after reviewing the matter, remands the case to the trial court for a new trial or other proceedings.

That is not to say you can never speak with a judge. Many judges speak at or attend bar association programs and other public events, at which it is perfectly appropriate to introduce yourself. Some also will talk informally to journalists about non case-related matters. If you are new to covering a court, consider calling the judge’s chambers to ask if you can drop by simply to say hello.

### **The written decision, and why it speaks for itself**

Say that the trial judge — or the Court of Appeals, or the Supreme Court — has made a decision in the case. You’ve just received a copy of the written decision, known as the opinion. You may think that the case — now completed — is no longer pending, and that it’s now safe to call the judge and ask for an explanation of the court’s decision.

But — even if the case is no longer pending — a judge will likely look askance at a reporter who asks, “And what are the reasons for your decision?” when the

judge has just issued a detailed written opinion that not only announces the ruling, but also explains it, citing relevant facts and law. On the appellate level, where a decision can set precedent for future cases, judges are particularly reluctant to comment on their opinions, saying that the “opinion speaks for itself.” Not only does the opinion itself explain the decision, but appellate jurists are also concerned that any comments they make to media about a decision may be interpreted in such a way as to distort the opinion’s meaning.

Bear in mind, too, that even after a case is decided, it may still be “pending” in a technical sense — for example, if there is the possibility of an appeal or if the losing party may file a motion for the court to reconsider its ruling.

### **So who’s your go-to source?**

If judges generally can’t be sources, then to whom do you turn? Particularly if the courthouse is your full-time beat, you’ll need someone when all other sources of information fail.

In Michigan, only the Supreme Court has a full-time [Public Information Office](#) to assist news media. Absent a PIO, the court administrator or clerk of court may be able to help. They often designate a member of the clerk’s staff, or some other court employee, as a contact person for the news media. For routine information about a case — the date of the next hearing, for instance — the docket clerks who staff the clerk’s office front counter may be your best sources.

But keep in mind that even these sources have their limits. It’s not their job to talk about the substance of a case, such as the meaning of a ruling or how the charges in an indictment can be defended against. They provide access to court documents, schedules, pretrial hearings, and trials. They do not interpret those documents and proceedings. Your best bet, if you need a legal interpretation, is to cultivate a relationship with a lawyer who is willing to help on short notice, or to contact the attorneys involved in the case. Judges who are not involved in the case can also be helpful on background, but will not go on the record because of ethical constraints.

### **The court’s docket**

To keep current with noteworthy cases, familiarize yourself with the docket of the court you cover. Many, but not all, state courts have web sites, and some include a schedule of trials, motion hearings, pleas, and arraignments. Otherwise, you will need to visit the clerk’s office on a daily basis to see the schedule. Each court also keeps a list of all criminal and civil cases filed by date.

Unfortunately, there is currently no statewide system in Michigan that corresponds to the federal courts’ [PACER](#).

If you're only following a single high-profile case, your task is much easier. Early in the case, the judge will issue a scheduling order, setting out the dates when motion papers must be filed, pretrial hearings will be held, and the trial will start. It pays to check the scheduling order at the court periodically in case a hearing, trial date or filing deadline has been rescheduled.

### **Getting access to pleadings, orders, and opinions**

Most state trial courts have computerized dockets. The docket lists the date and a brief description of all filings by the parties and all actions by the court in a particular case. In some courts, you can access the dockets free of charge at terminals in the clerk's office.

In some courts, those dockets also allow you to view the full texts of the pleadings, orders, and opinions. More courts will have this capability soon.

If there is no electronic access to the full text of pleadings and opinions in your court, your only other option is the paper case file itself. It normally is in the clerk's office, but a few days before the trial begins, it may be sent to the judge's chambers for the duration of the case. You will be out of luck unless you can persuade a court employee to track it down and let you borrow it for a few minutes. Sometimes, attorneys involved in the case will provide you with copies of relevant case documents.

Reporters working on daily deadlines should know the difference between filing and docketing a document.

- Filing occurs when the document is handed over by the lawyer to the clerk's office to be time/date stamped as being received.
- Docketing occurs when notice of its filing is added to the case docket by a clerk's office staff. In most clerk's offices, a document is considered public information once it has been docketed. (A lag — of a few minutes to more than a day — can take place between filing and docketing.) If time is of the essence, you may want to get documents directly from the lawyers as soon as they are filed, rather than waiting for them to be docketed by staff in the clerk's office. Be aware, however, that in most instances a document will not be considered part of the court's official record until it appears on the docket.

## **Professional Conduct: Lawyers and Judges**

In Michigan, attorneys are governed by the [Michigan Rules of Professional Conduct](#) and judges, as noted earlier, are bound by the [Michigan Code of Judicial Conduct](#). It is helpful to understand these rules as they affect lawyers' and judges'



(see “Judges as sources” above) communications with media, and to be familiar with the process for disciplining lawyers and judges who violate ethics rules.

### **Attorney ethics rules and discipline**

The Michigan Rules of Professional Conduct set standards of conduct for lawyers; they are based on the [American Bar Association’s Model Rules of Professional Conduct](#). An attorney who violates the rules may be subject to professional discipline, including disbarment.

The MRPC describe lawyers’ various roles, as representative of their clients, officers of the court, and citizens with special responsibilities. The rules cover a broad range of subjects — fees, advertising, conflicts of interest, pro bono service, and many more — but the rules that most affect media relate to trial publicity, client confidentiality, candor to the tribunal, and fairness to third persons.

### **Trial publicity**

Because of lawyers’ key role in the justice system, they are subject to some limits on what they can say publicly about a pending case. This is so because, in addition to being a client’s advocate, an attorney is also responsible for preserving the right to a fair trial.

MRPC 3.6 prohibits a lawyer from making “extrajudicial” statements — public statements that are not part of court proceedings or documents — that are likely to be disseminated to the public, if the attorney “knows or reasonably should know that [the statement] will have substantial likelihood of materially prejudicing” a legal proceeding. Of particular concern are statements about cases where juries are involved, or proceedings that might result in the defendant getting jail or prison time.

### **Client confidentiality**

Confidentiality is one of the basic principles of the attorney-client relationship, for obvious reasons: a client has to be able to confide completely in his or her lawyer, and develop legal strategies with the attorney, without fear that such information will be revealed.

MRPC 1.6, “Confidentiality of Information,” states that a lawyer shall not knowingly “reveal a confidence or secret of a client” or use such information to the client’s disadvantage. An attorney may also not use a client’s confidential information to the lawyer’s or another’s advantage, except with the client’s consent after full disclosure.

There are exceptions: an attorney may reveal client confidences or secrets if the client consents after full disclosure by the attorney. A lawyer can also reveal a

client's confidential information to prevent the client from committing a crime, or as required by law, court order, or ethics rules. In addition, a lawyer may reveal a client's confidential information as necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct, such as malpractice or ethics violations (see Attorney Grievance Commission below). Another exception applies where the lawyer's services were used to help the client violate the law; the lawyer can reveal confidential information "to the extent reasonably necessary to rectify the consequences or a client's illegal or fraudulent act ...."

### **Candor to the tribunal**

Despite the importance of confidentiality in the attorney-client relationship, there are circumstances where the lawyer's duty as an officer of the court can override the obligation to protect client confidences or secrets. MRPC 3.3 states that a lawyer "shall not knowingly" make false statements of material fact or law to the court (or any other tribunal, such as the Attorney Discipline Board or Judicial Tenure Commission (see below). Lawyers also may not knowingly mislead the court, offer false evidence, or fail to disclose controlling legal authority that is contrary to the client's position but not raised by the opposing party. If false evidence is offered (as where a client or witness has committed perjury), and the lawyer learns that the evidence was false before the proceeding concludes, the lawyer must "take reasonable remedial measures." In some situations, if the witness or the client refuses to correct the false evidence, the lawyer may be obligated to inform the court, even if doing so means that the lawyers has to reveal otherwise confidential client information.

- *Note:* In addition to the ethical rules that protect client information, the attorney-client privilege generally prevents an attorney from testifying about communications between the attorney and a client.

### **Duty to third parties**

Although an attorney's primary obligation is to the client, attorneys also have ethical duties to others. For example, an attorney shall not counsel or assist a client in criminal or fraudulent conduct (MRPC 1.2). MRPC 3.4 requires attorneys to treat others fairly in the legal process (for instance, attorneys are prohibited from destroying evidence or making frivolous discovery requests of opposing parties). It is professional misconduct for an attorney to engage in "dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer ...." (MRPC 8.4)

## The Attorney Discipline System

The Michigan Supreme Court is charged by the state constitution with oversight and discipline of Michigan attorneys (see “Michigan Supreme Court” above), which it does through two agencies, the Attorney Grievance Commission and the Attorney Discipline board. The attorney discipline system is governed by its own set of court rules (see Subchapter 9.100 of “Professional Disciplinary Proceedings,” in the Michigan Court Rules), although other court rules and the Michigan Rules of Evidence can also apply. Dues that attorneys pay to the [State Bar of Michigan](#) go in part to fund the attorney discipline system.

The [Attorney Grievance Commission](#) is a nine-member body composed of six attorneys and three nonattorneys; the commissioners are appointed by the Supreme Court. The AGC also has a staff, headed by a Grievance Administrator, who is an attorney.

From a journalist’s standpoint, proceedings before the AGC fall into two phases: the investigation, which is not open to the public, and formal proceedings (including hearings), which are public.

**The investigation.** An attorney misconduct proceeding begins with a “request for investigation,” which brings the alleged misconduct to the Grievance Administrator’s attention. Any person can submit a request for investigation either by sending a letter or using a [form](#) provided by the AGC; the Grievance Administrator can also open an investigation on his or her own initiative. After evaluating the complainant’s allegations, AGC staff determine whether an investigation is warranted. If so, the file is then assigned to an attorney on the Grievance Administrator’s investigative staff. The attorney who is the subject of the request for investigation is asked to respond in writing to the misconduct allegations; failure to respond is itself misconduct (see MCR 9.104(A)(7), MCR 9.113(B)(2)). Once the AGC receives the response, it provides a copy to the person who made the request for investigation. If the investigation requires additional information from the complainant, the AGC staff will contact the complainant by phone or in writing. Investigations, on average, take six months to conclude. The nine Commissioners then review the matter. They may opt to close the matter, issue a consensual private admonishment to the respondent, place the respondent on consensual contractual probation, or authorize the filing of formal charges with the Attorney Discipline Board. The attorney and complainant are advised in writing of the Commissioners’ decision.

- **Note:** Unless the commission authorizes the Grievance Administrator to bring formal charges, the file is not public record (MCR 9.126). And seeking documents from the file from other sources, such as the complainant, may not work. MCR 9.125 provides that a person who makes statements to the AGC in an investigation is immune from being sued — *if* such communications are “transmitted solely to the

administrator, the commission, or the commission staff, or given in an investigation or proceeding on alleged misconduct or reinstatement.” A complainant who shares a request for investigation or other documents with media places that protection at risk.

**Formal proceedings.** If the AGC does authorize the filing of a formal complaint, that complaint and other formal pleadings, plus reports, hearing transcripts, orders, recommendations, and any discipline imposed, are public record (MCR 9.126).

The AGC files the formal complaint with the [Attorney Discipline Board](#), the agency that adjudicates attorney ethics matters. Like the AGC, the ADB is composed of nine commissioners — six lawyers and three nonlawyers — appointed by the Michigan Supreme Court, and the ADB also has a staff, including attorneys who review the complaint.

From the filing of the formal complaint, the matter proceeds very much as if it were before a court, with the proceedings governed by the Michigan Court Rules and Michigan Rules of Evidence. The ADB assigns the matter to a hearing panel composed of three volunteer attorneys. The panel holds a public hearing, usually in the county in which the respondent attorney practices or resides. If the panel finds that the charges of misconduct have not been established by a preponderance of the evidence, the panel must dismiss the complaint. If the misconduct is established, the panel must conduct a second phase of the hearing to determine the appropriate discipline. A hearing panel can order a public reprimand, suspend the attorney’s license to practice law in Michigan, or revoke the attorney’s license; the order of discipline is public record and can be seen on the [ADB’s web site](#). In fact, the ADB’ web site provides a master list of attorneys who have been publicly disciplined. Any of the parties — the AGC, the respondent attorney, or the complainant — may appeal an unfavorable decision by the hearing panel to the nine-member Attorney Discipline Board; the board’s decision may be appealed to the Supreme Court.

**The Judicial Discipline System.** As mentioned earlier, judges are governed by the [Michigan Code of Judicial Conduct](#). The code contains eight canons, followed by rules and commentary. The rules focus primarily on judicial independence, impartiality, conflicts of interest, judicial elections, and political activities. Because public confidence is critical to a strong judiciary, the rules govern extrajudicial activities as well as judicial activities.

As noted above, the Code of Judicial Conduct prohibits a judge from making public comments about a pending case. This rule does not, however, bar a judge from making public statements to help the public understand court procedures.

The [Judicial Tenure Commission](#) is a nine-member body composed of judges, lawyers, and nonlawyer citizens; the JTC also has a staff, headed by an executive

director, who is an attorney. The JTC investigates and reviews complaints against judges (as well as magistrates and referees) and, where warranted, brings formal charges. Its operations are governed by Subchapter 9.200 of the Michigan Court Rules.

A proceeding before the JTC is similar to an attorney misconduct proceeding. As is the case with attorney ethics complaints, anyone can [file a complaint](#) against a judge with the JTC. The JTC can also open an investigation on its own. If the JTC determines that the judge's alleged actions amount to serious misconduct, the JTC brings a formal complaint against the judge.

From that point on the matter is handled much like a court proceeding, and is governed by the Michigan Court Rules and Michigan Rules of Evidence. The judge is notified of the charges, has an opportunity to respond, and may retain his or her own attorney. A JTC staff examiner or attorney pursues the allegations in the formal complaint. If the allegations are proven, JTC staff recommend sanctions to the nine-member commission, which in turn decides whether to recommend that level of discipline to the Michigan Supreme Court. The commission can hold hearings or ask the Supreme Court to appoint a special master (usually a retired judge) to take evidence and report to the JTC. Hearings are open to the public.

After hearing the testimony, or after reviewing the master's findings, the nine-member commission may dismiss the matter if it determines that there has been insufficient evidence of misconduct. However, if the commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court impose discipline against the judge. The commission itself has no authority to discipline a judge. The commission may recommend that the Court publicly censure a judge, impose a term of suspension, or retire or remove the judge from office.

The Supreme Court reviews the commission's decision and recommendation. In addition, the judge and the JTC have an opportunity to present oral arguments to the Court, which reviews the record on a *de novo* basis. After reviewing the record, the Court issues an opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action, or rejecting or modifying the commission's decision and recommendation.

- **Note:** Once the proceedings reach the formal complaint stage, the matter is public record. The formal complaint, the judge's answer, and all subsequent pleadings are public documents, available for inspection at the JTC's office. (See MCR 9.221)
- If no formal complaint is filed, the JTC can still express concern or disapproval of judicial conduct that the JTC deems troubling or inappropriate, although not serious misconduct. These [non-public actions](#) are summarized on the JTC's web site, but do not identify the judge.

## State Court Administrative Office



The [State Court Administrative Office](#) (SCAO) is the administrative agency of the Michigan Supreme Court. Article VI, Section 3 of the Michigan Constitution states that the Michigan Supreme Court “shall appoint an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state.” The Supreme Court has administrative oversight of Michigan’s courts and exercises that oversight through SCAO.

Although frequently overlooked as an information source, SCAO can be a good source of story ideas for journalists who are familiar with the agency and its divisions, which include:

- [Child Welfare Services](#) (issues affecting children in foster care and adoption)
- [Judicial Information Systems](#) (information technology as it affects the courts, such as systems that track cases)
- [Michigan Judicial Institute](#) (continuing education for trial court judges and employees; also oversees [Michigan Supreme Court Learning Center](#))
- [Office of Dispute Resolution](#) (alternative dispute resolution programs)
- [Trial Court Services](#) (a wide variety of functions, including oversight of [Friend of the Court offices](#), drug and sobriety court programs, collections, certification of court interpreters and court reporters, statistical research, etc.)

SCAO divisions frequently collaborate on projects; for example, the Office of Dispute Resolution teamed with the Trial Court Services division on a program that encourages non-adversarial resolutions of divorces with children, with a focus on the parties’ future relationship and ability to cooperate in raising their children.

The Michigan Supreme Court’s [annual report](#) details many of SCAO’s activities, in addition to providing statistics about case filings and dispositions.

In addition, SCAO has [four offices](#) that oversee trial courts according to geographic region:

- Region I (Genesee, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne)
- Region II (Allegan, Barry, Berrien, Branch, Cass, Calhoun, Eaton, Ingham, Hillsdale, Jackson, Kalamazoo, Kent, Lenawee, Livingston, Muskegon, Ottawa, Van Buren, St. Joseph)

- Region III (Alcona, Arenac, Bay, Clare, Clinton, Gladwin, Gratiot, Ionia, Iosco, Isabella, Lake, Mason, Mecosta, Midland, Montcalm, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Roscommon, Saginaw, Shiawassee)
- Region IV (Alpena, Antrim, Benzie, Charlevoix, Cheboygan, Crawford, Emmet, Grand Traverse, Kalkaska, Leelanau, Manistee, Missaukee, Montmorency, Otsego, Presque Isle, Wexford, and the Upper Peninsula)

The [Michigan Supreme Court Office of Public Information](#) (517-373-0129) serves as the liaison between the media and SCAO.

## Tips for Journalists



- When covering a trial or hearing, work in the courthouse as much as possible. Time spent in the courthouse will help you cultivate sources who can send important information and tips your way. A helpful staffer can be your best ally in covering the courts.
- Before heading to court, call the clerk's office first to find out the court's policy regarding the use of cell phones or other portable electronic communications devices. Under a recently-adopted revision to [MCR 8.115](#), each court's chief judge may establish a cell phone use policy for the court, so courts can vary on what they allow. Also check in advance if you plan to bring a laptop. Again, courts vary, with some banning laptops from the courtroom because of security and decorum concerns, while others allow them.
- Record case captions (the title of the case, including the names of the parties) and case numbers. Often, as with Supreme Court and Court of Appeals cases, you will be able to track the progress of a case online by using the case number or title (see <http://courtofappeals.mijud.net/resources/public.htm>). Especially in reporting on appellate decisions, include the case title for the convenience of those who will want to look up the court opinion.
- While you should be able to review most of a case file by going to the clerk's office, bear in mind that the judge's office might have all or part of the file as the judge prepares for or conducts a hearing or trial. For example, a judge may have the briefs on a motion pending before the court in order to study them before the motion hearing. Reporters may have to seek copies directly from the judge's office or get them from the attorneys in the case.
- In addition to covering trials, do not overlook motions in the trial courts. Many critical decisions, such as whether to exclude or allow evidence, are made in motion hearings before trial. On the trial court level, arguments on motions are conducted in open court. (Recall that on the appellate level, most motions are considered and ruled on without oral arguments.)
- Before interviewing an attorney, try to learn as much as possible about him or her. Newspaper archives are helpful; also check online resources such as the Martindale-Hubbell directory (online at [www.martindale.com](http://www.martindale.com)) or the State Bar of Michigan's member directory at [www.michbar.org](http://www.michbar.org).
- If your newsroom does not subscribe to a database service, you may want to consider it to help cover high-profile cases. Addresses and past addresses, neighbors and former neighbors, and unlisted phone numbers for the people you are researching can be found in seconds using the service — especially useful when on deadline.

- If you are uncertain about the meaning of a legal procedure or point of law, ask sources — lawyers in the case, law professors, other lawyers, judges speaking on background — to explain. Never assume or guess.
- When interviewing attorneys in a case, remember that they are advocates for their clients and are obligated by ethics rules to put their client’s case in its best light. Accordingly, be cautious in adopting either side’s version of events in your own reporting; you may need to double-check some information before publication. Get the perspective of other sources.
- Many lawyers still believe that “no comment” is the best response to media. Lawyers who shy away from media inquiries should be reminded that their “no comment” response could result in one-sided coverage that would not serve their clients well.
- Lawyers may not include some details that are important to journalists; written briefs may not include ages or hometowns, specific locations of accidents, or information about what has happened since the incident at issue. Remember to ask.
- Especially in high-profile cases, be prepared for the possibility that one or more of the litigants — or the court on its own motion — may want to close the proceedings to the media. Familiarize yourself with MCR 8.116(D), and object if a party or judge moves to close the courtroom. Ask for time to inform your editor and seek legal counsel.
- Get copies of everything in the case record and read it before the trial begins.
- Also before trial, introduce yourself to the judge and attorneys on both sides. Doing so will make it easier for you to approach them later on if you have questions.
- Voir dire — the jury selection process — is open to the public. Attend if time permits; the questions attorneys ask during voir dire can provide insight into their trial strategies.
- Criminal cases that have received extensive news coverage may be moved to another county (a change of venue) to help ensure the defendant’s right to a fair and impartial jury.
- In criminal cases, all jurors (usually 12, although the parties may agree to have the case heard by fewer than 12 jurors) must agree to reach a verdict. MCR 6.410.
- In civil cases, a jury usually consists of six jurors, and a verdict is reached when five jurors agree. The parties may agree to a lesser number of jurors, with a stipulation that the “verdict or finding of a stated majority of the jurors will be taken as the verdict or finding of the jury ....” MCR 2.512(A).

- In mental health proceedings involving a person’s possible commitment to a hospital or other institution, or to a correctional or training facility under the juvenile code, the jury’s verdict must be unanimous. MCR 5.740(C).
- Avoid legal jargon when writing stories about court issues. Use plain language, remembering that most of your audience is not familiar with the legal system. Ask an attorney if you are at all unsure whether your account is legally accurate. Don’t guess at or assume the meaning of legal terms and procedures.
- When a defendant pleads “not guilty” or is found “not guilty” by a jury, many news outlets have used the term “innocent” to avoid the easily made mistake of dropping the word “not” before “guilty.” The Associated Press Stylebook changes this recommendation in its 2004 edition to say, “When possible, say a defendant was acquitted of criminal charges. Otherwise, not guilty is preferable to innocent, because it is more precise legally. (However, special care must be taken to prevent omission of the word not.)” Consult with your editor to determine your organization’s preference.
- When writing a crime story, with an arrest, you need to know the following: What happened (details of the crime)? Was someone arrested? Who was arrested (name, age, hometown)? Does apprehended or “taken into custody” mean arrested? When will charges be filed, where, and by which prosecutor’s office? Has an initial appearance taken place before a judge? Where and on what charges? Be clear on whether someone has been charged. If a person has been arrested on the basis of a warrant that charges the person with a crime, say so in your story.
- If you are writing a crime story where a formal charge has been issued, the same basics apply: Who was arrested? What is the person accused of? What is the formal charge? In which court was the charge filed? What are the possible penalties if the person is convicted? When is the next court appearance and where? What happens then? Where is the defendant being held — or has he or she been released on bail (if so, how much?) or personal recognizance? Has the defendant entered a plea? Who is your source? Be sure to quote someone who is in a position to know — and by name and title.
- If police say someone confessed to a crime, ask them to elaborate. Be careful about reporting an alleged confession, realizing that a defense attorney may later seek to have the confession thrown out.
- When writing a crime story, make it interesting by quoting the police, prosecutors and defense counsel, neighbors, and crime scene witnesses. Use police reports, court documents and affidavits (voluntary written statements made under oath) to provide important details and color.

- Remember that a person who is arrested and charged with a crime is presumed innocent until proven guilty. Make the distinction between one who is accused and one who is guilty clear in your reporting.
- Make every effort to contact parties for comment, even in criminal cases in which the defendant may be incarcerated. If you are not successful, note in the story what efforts were made. Also make every effort to contact attorneys for all parties.
- Identify the law enforcement agencies investigating the crime; don't just say "police."
- Identify the judge by name; don't just say "the judge." Also identify the court, including the court's accepted title (e.g., Wayne County Circuit Court) and the city/town where it's located. .
- In criminal cases, it is better to refer to the defendant by a neutral term — e.g., "arrested man" or "defendant" rather than "accused killer" or "alleged killer." Avoid potentially charged terms such as "suspect" or "person of interest."
- Similarly, when writing about the crime a defendant is charged with committing, it is better to say that the defendant is "accused" of committing a crime, rather than stating that he or she "allegedly" committed it. Example: "The former professional wrestler, accused of strangling his wife and three neighbors, was charged Thursday with four counts of murder" is better than "The former professional wrestler, who allegedly strangled his wife and three neighbors, was charged Thursday with four counts of murder."

## Resources

Michigan Supreme Court Office of Public Information:

<http://courts.michigan.gov/supremecourt/Press/PublicInformationIndex.htm>

Michigan Supreme Court: <http://courts.michigan.gov/supremecourt>

Schedule of oral arguments at the Michigan Supreme Court (includes case summaries, links to briefs and opinions): [http://courts.michigan.gov/supremecourt/Clerk/MSC\\_orals.htm](http://courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm)

“Virtual Court” with archived video of Michigan Supreme Court oral arguments and public administrative proceedings: <http://www.michbar.org/courts/virtualcourt.cfm>

State Court Administrative Office: <http://courts.michigan.gov/scao>

Michigan Court of Appeals (includes online dockets for both Supreme Court and Court of Appeals cases): <http://courtofappeals.mijud.net>

Annual report of the Michigan Supreme Court (includes statistics and other information about all state courts):

<http://courts.michigan.gov/scao/resources/publications/reports/summaries.htm#annual>

Directory of Michigan trial courts (also includes maps and links to trial courts web sites):

<http://courts.michigan.gov/scao/trial.htm>

Michigan Compiled Laws:

[http://www.legislature.mi.gov/\(S\(0mhqtkyk1vc121qfcc0v1fu4\)\)/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(0mhqtkyk1vc121qfcc0v1fu4))/mileg.aspx?page=home)

Michigan Court Rules: <http://coa.courts.mi.gov/rules>

Attorney Discipline Commission: <http://www.adbmich.org>

Attorney Grievance Commission: <http://www.agcmi.com>

Judicial Tenure Commission: <http://jtc.courts.mi.gov>

State Law Library: [http://www.michigan.gov/hal/0,1607,7-160-17449\\_18639---,00.html](http://www.michigan.gov/hal/0,1607,7-160-17449_18639---,00.html)

National Center for State Courts: <http://www.ncsconline.org>

National Center for Courts and Media: <http://www.courtsandmedia.org>

State Bar of Michigan (includes online directory of all lawyers admitted to practice in Michigan, including state court judges): [www.michbar.org](http://www.michbar.org)

## Glossary of Legal Terms

*Editor's note: This glossary was compiled in an effort to include terms that journalists may encounter in covering the courts. It is not intended to serve as a complete dictionary of legal terms and concepts, nor as a definitive statement of the law. The definitions herein do not represent official positions or rulings of the Michigan Supreme Court.*

### A

**Abstract of conviction** A form sent by courts to the Michigan Department of State reporting a person's conviction or adjudication for a traffic violation or other "reportable offense" (e.g., a drug crime).

**Abstract of record** A complete history of the case in a concise, abbreviated form.

**Accessory** A person who knowingly and intentionally contributes to or aids in committing a crime before or after, but not necessarily during, the crime. (See also Aiding/Abetting)

**Accomplice** A person who participates in the commission of a crime, other than the person who commits the principal criminal act. An accomplice may be charged with the principal crime under an "aider or abettor" theory — that the accomplice aided or encouraged the principal defendant(s). (See also Accessory and Aiding/Abetting)

**Acquittal** A trial verdict that indicates that the defendant in a criminal case has not been found guilty of the crime charged beyond a reasonable doubt.

**Action** A legal dispute brought to court for trial and settlement. (See also Case, Lawsuit)

**Adjournment** Postponing or rescheduling a case or court session until another date or time.

**Adjudication** Giving or pronouncing a judgment or decree; also the judgment given.

**Admissible** Evidence that can be legally introduced in court.

**Adult** A person who is no longer deemed to be a minor. In Michigan, a person becomes an adult for criminal cases at age 17 (MCL 712.2(a)). In most other proceedings, an adult is age 18 or older.

**Adversarial Proceeding** Actions contested by opposing parties.

**Affiant** A person who gives an affidavit. (See also Affidavit)

**Affidavit** A written statement of fact given voluntarily and under oath. For example, in criminal cases, affidavits are often used by police officers seeking to convince courts to grant a warrant to make an arrest or a search. In civil cases, affidavits of witnesses are often used to support motions for summary judgment.

**Affirmative defense** Without denying the charge, the defendant raises extenuating or mitigating circumstances such as insanity, self-defense, or entrapment to avoid civil or criminal responsibility. The defendant must prove any affirmative defense he or she raises. Court rules may require a defendant to notify the defendant's opponent before trial that an affirmative defense will be raised.

**Affirmed** In appellate courts, a term meaning that a lower court's order is valid and will stand as rendered in the lower court.

**Agent** One authorized to act for another person, known as the principal. Violation of a principal-agent relationship is the core of an embezzlement. (See also Embezzlement)

**Agging out/aged out** Term used to denote youth in foster care who, upon reaching a certain age, are no longer eligible for foster care.

**Aiding/Abetting** Intentionally assisting another person in the commission of a crime – e.g., as driver of a get-away car, look-out, etc. An aider/abettor can be charged, prosecuted, convicted and punished as if he/she had committed the principal crime. A person cannot be convicted both as an aider/abettor and as an accessory after the fact to the same felony crime. (See also Accessory, Accomplice)

**Alibi** A defense by a defendant in a criminal case that he or she was elsewhere when the crime was committed. Ultimately, a prosecutor must prove beyond a reasonable doubt that the defendant was present.

**Allegation** The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he or she expects to prove.

**Allocution** In a criminal case, a defendant's opportunity to make a statement to the judge at sentencing. A defendant may make a person statement, but is not required to do so. A defendant's attorney may also make a statement.

**Alimony** A court-ordered payment for the support of one's estranged spouse in the case of divorce or separation.

**Alternative dispute resolution (ADR)** Means of settling a dispute without a formal trial. (See also Arbitration, Mediation)

**Amicus brief** A document filed by an amicus curiae in support of a party in a lawsuit. (See also Amicus Curiae)

**Amicus curiae** Friend of the court. A party who volunteers information on some aspect of a case or law to assist the court in its deliberation. The court may have to give the amicus permission to file a brief, and may limit the issues.

**Answer** A pleading by which a defendant resists or otherwise responds to the plaintiff's allegation of facts; also, a party's written response to a motion or brief.

**APA** Abbreviation for Assistant Prosecuting Attorney. (See also Assistant Prosecuting Attorney)

**Appeal** A request by the losing party in a lawsuit for higher court review of a lower court decision. One who appeals is the appellant; the opposing party is the appellee. (See also Appellant, Appellee)

**Appeal by application for leave** An appeal where the appellate court must give the appellant permission to bring it. In general, a party must seek leave to appeal when a final order has not been entered in a case, when the appeal is late, or in criminal cases where the defendant has pled guilty. An application for leave explains the legal issues which the appellant wants the appellate court to review. The appellate court has final discretion to accept or reject an application for leave.

**Appeal by right** An appeal to a higher court where the appellant does not have to first obtain the appellate court's permission. The appeal must be filed within a specified time after the lower court enters its final order.

**Appeal record** The record of what happened at the trial level, sent by the trial court to the appellate court. The record includes a copy of the docket, the case file (court documents), and transcripts of court hearings.

**Appearance** The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court.

**Appearance ticket** A written notice to appear in court in connection with a violation of a state law or local ordinance (truancy, curfew, minor in possession, disorderly conduct, etc.).

**Appellant** The party appealing a decision or judgment to a higher court.

**Appellate court** A court that reviews lower court decisions. In the Michigan state court system, the Michigan Court of Appeals is the appellate court for circuit and probate court decisions; the Michigan Supreme Court is the appellate court for Court of Appeals decisions.

**Appellee** The party against whom an appeal is filed.

**Arbitration** Dispute settlement conducted outside the courts by a neutral third party. May or may not be binding.

**Arraignment** The proceeding in criminal cases where an accused individual is brought before a judge to hear the charges filed against him or her, and to file a plea of guilty, not guilty, or no contest. The judge may also determine an appropriate bail and decide on a request for court-appointed counsel. Also called a preliminary hearing, or an initial appearance.

**Arrest** To take into custody by legal authority.

**Arrest warrant** An order issued by a judge or magistrate to a peace officer requiring the arrest of a named person. (Also see Warrantless arrest)

**Assault** An unlawful act that places another person in reasonable apprehension of receiving an immediate battery; also, an attempt to commit a battery. The defendant must intend to injure the victim or make the victim reasonably fear being struck. An assault is intentional, not an accident. There are many types and levels of assaults in Michigan, ranging from misdemeanor assault to the felony of assault with intent to murder (see MCL 750.81 et seq.).

**Assistant Prosecuting Attorney** Attorney hired by the elected Prosecuting Attorney of a county to prosecute criminal cases that arise in that county.

**Attorney-at-law** A lawyer licensed to provide legal advice and to prepare, manage and try cases.

**Automatic waiver** See “Waiver of Jurisdiction.”

## **B**

**Bail** Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his or her appearance on the day and time appointed (also called bail bond). (See also Bond/Bail bond)

**Bailiff** A court employee who assists the judge in maintaining order in the courtroom, and who is responsible for the custody of a jury.

**Bankruptcy** Refers to federal statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt.

**Battery** A crime that involves the intentional, unwanted and forceful/violent touching of another person, or something closely connected with that person.

**Bench trial** A trial heard by a judge without a jury. The judge determines the facts. (See also Finder of fact)

**Bench warrant** Order issued by a judge for the arrest of an individual.

**Binding instruction** An instruction in which a jury is told that if it finds certain conditions to be true, it must decide in favor of the plaintiff, or defendant, as the case might be.

**Bindover** In a criminal felony case, a finding at a preliminary examination that there is sufficient evidence to require a trial at the circuit court level on the charges made against the defendant.

**Bond/Bail bond** A promise or contract to do or perform a specified act, or pay a penalty for failure to perform. This promise or contract is usually guaranteed by a surety, who promises to pay if the principal defaults, or by paying a cash bond. In criminal cases, “bond” means the same thing as “bail.” (See also Bail).

**Breach of contract** A legally inexcusable failure to perform a contractual obligation.

**Breaking** As in the crime of “breaking and entering,” the act of using some force to enter a building (opening a door, raising or breaking a window, etc.). There need not be damage for a breaking to take place.

**Brief** A written statement prepared by each side in a lawsuit to explain to the court its view of the facts in a case and the applicable law.

**Burden of proof** The standard by which a case is decided; a party’s duty to establish through evidence a requisite degree of belief concerning a fact in the mind of a tier of fact. There are different burdens of proof in the law, including:

- **Prima facie** Evidence which is sufficient “on its face” to establish a given fact when not rebutted or contradicted.
- **Probable cause** Facts and circumstances sufficient to convince a person of reasonable caution that a criminal offense has been committed.
- **Preponderance of the evidence** The burden of proof in civil cases; evidence which, as a whole, shows that the fact sought to be proved is more probable than not.
- **Clear and convincing** The burden of proof in some proceedings, such as termination of parental rights; a measure of proof which produces a firm belief or high

probability as to the allegations; more than “preponderance” and less than “beyond a reasonable doubt.”

- **Beyond a reasonable doubt** The burden of proof in criminal cases; the degree of belief that a criminal juror (or the judge in a bench trial) must have regarding all the factual elements of a charged crime.

## C

**Calendar** The clerk of the court’s list of cases with dates and times set for hearings, trials or arguments.

**Calling the docket** The public calling of the docket or list of cases, for the purpose of setting a time for trial or entering orders.

**Capital offense** Crime punishable by death. (Michigan does not have a death penalty.)

**Caption** The heading or introductory clause on documents filed that shows the names of the parties, name of the court, number of the case, etc.

**Case** A legal dispute.

**Case caption** The “title” of a case, identifying the parties, e.g. “Jane Jones v ABC Corporation” or “People v John Smith.”

**Case law** Law based on published judicial decisions.

**Case load** The number of cases a judge handles in a specific time period.

**Cause of action** Facts giving rise to a lawsuit.

**Certiorari** In U.S. Supreme Court practice, an order to a lower court to deliver the record of a case to the Court.

**Challenges** (jury selection) Method for removing prospective jurors from the jury. There are two kinds of challenges: *for cause* (the objection to the inclusion of a person on a jury for a stated reason) and *peremptory* (no reason has to be given, but a purely race-based challenge is not permitted). Attorneys can make challenges as necessary during voir dire. Appropriate challenges for cause include a juror’s bias for or against a party, relationship with a trial participant, etc.; there is no limit on the number of for-cause challenges. Peremptory challenges are limited in number as specified in the court rules (for example, in civil cases, each party gets three peremptory challenges; see MCR 2.511(E)).

**Chambers** A judge’s office.

**Change of venue** Moving a trial to a new location, sometimes because pre-trial publicity has made it difficult to select an impartial jury in the original location.

**Charge to the jury** A judge's instructions to a jury, including the law that applies to the case, definitions of legal terms, and explanations of procedures relevant to the jury's duties.

**Charitable trust** A trust set up to benefit a charity.

**Chief judge** In Michigan, the presiding officer of a trial court or Court of Appeals and the judge who directs the court's administration, in addition to representing the court with other courts, government agencies, funding units, and the public, including the media. In Michigan, the Supreme Court appoints chief judges (see MCR 8.110).

**Child abuse** Criminal mistreatment of a minor by an adult legally responsible for the minor; there are four degrees of child abuse, ranging from a misdemeanor punishable by up to one year in jail to a felony punishable by up to 15 years in prison (see MCL 750.136b).

**Child neglect** The failure of a parent, guardian, or custodian of a minor to provide the minor with proper or necessary support, education, medical care, physical care, or home environment.

**Child protective proceedings** Proceedings in the family division of the circuit court regarding children under age 18 who are abused or neglected.

**Children's Protective Services (CPS)** A division in the Office of Children's Services in the Michigan Department of Human Services; CPS workers investigate reports of suspected child abuse or neglect. They can also provide services to families to in an effort to prevent abuse or neglect. (Also see DHS)

**Child sexually abusive material** Developed or undeveloped photograph, film, slide, electronic visual image, computer diskette, or sound recording of a child engaged in a listed sexual act; also other visual or print medium containing same, or reproductions, copy, or print of same (see MCL 750.145c).

**Circuit Court** Court of general jurisdiction in Michigan. The circuit court hears criminal cases (all felony crimes), civil law suits (where amount in controversy is over \$25,000, or where a party seeks an injunction or other equitable relief), and family matters (e.g., divorce, child custody, spousal and child support, domestic violence, PPOs, juvenile delinquency, and child protection proceedings; also emancipation of minors, name changes, and waiver of parental consent to abortions). Michigan has 57 judicial circuits, with some circuits including two or more counties. Circuit judges are elected on a non-partisan ballot to six-year terms. The Friend of the Court is a division of the Circuit Court (see also Friend of the Court).

**Circuit Court misdemeanor** An offense designated by the legislature as a misdemeanor, but punishable by more than one year in jail; it is processed in circuit court like a felony.

**Circumstantial evidence** Indirect evidence that implies something occurred but does not directly prove it; evidence that suggests something by implication. (See also Direct evidence)

**Citation** A reference to a source of legal authority. Also, a direction to appear in court, as when a defendant is cited into court, rather than arrested.

**Civil action/case** A noncriminal case in which one private individual or business sues another to protect, enforce, or redress private or civil rights.

**Civil infraction** A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.

**Claim** An assertion of a right to money or property made by the injured party that is suing.

**Clear and convincing evidence** A level of proof requiring the truth of the facts asserted to be highly probable. (See also Burden of proof)

**Cobbs plea** In a criminal case, a defendant's conditional guilty plea which can be withdrawn if the judge's sentence falls outside sentencing terms the judge specified before the defendant offered the plea; see *People v Cobbs*, 443 Mich 276 (1994).

**Code** A grouping of statutes, relating to a particular subject matter and arranged in classified order (e.g., the Juvenile Code, Mental Health Code, Estates and Protected Individuals Code).

**Common law** Law arising from tradition and judicial decisions rather than statutes passed by the legislature. In Michigan, common law is in effect except where it has been modified or repealed by statute.

**Common law action** A case in which the issues are determined by common law legal principles established by courts and tradition, as opposed to statutes.

**Comparative negligence** A legal doctrine where the actions of both parties to a civil suit are compared to determine the liability of each to the other.

**Competency (to stand trial)** A defendant in a criminal case is incompetent to stand trial only if incapable of 1) understanding the nature and object of the proceedings, and 2) assisting the defense in a rational manner because of the mental condition (see MCL 330.2020).

**Complainant** The individual who initiates a lawsuit; synonymous with "plaintiff."

**Complaint (civil)** Initial document filed by the plaintiff in a civil case stating the claims against the defendant.

**Complaint (criminal)** A formal accusation charging that a person has committed a criminal offense.

**Concurrent sentence (criminal)** Upon a defendant's conviction of multiple crimes, a criminal sentence served at the same time as another sentence, rather than one after the other. (See also Consecutive sentence)

**Concurring opinion** An opinion written by an appellate judge who agrees with the decision reached in the case, but would base the decision on different reasons than those expressed in the majority opinion. Also known as concurrence. (See also Majority opinion)

**Consecutive sentence** Upon a defendant's conviction of multiple crimes, sentences that are served one after the other, rather than at the same time. A judge may impose consecutive sentences only if there is specific statutory authority to do so. (See also Concurrent sentence)

**Consent, age of** In Michigan, a minor has the legal capacity to consent to sexual activity at age 16.

**Consent calendar** An informal probation in some juvenile delinquency cases, usually for first-time misdemeanor offenders. If the defendant completes all the terms of probation, the court dismisses the case; if not, the court can transfer the case to the formal calendar for a pre-trial conference, formal plea, trial, etc. In victims' rights cases, the court must notify the prosecutor that the case may be placed on the consent calendar, so that the victim can be consulted. A consent calendar can, however, be granted over a prosecutor's and/or victim's objection.

**Conservator** A person appointed by the probate court to administer the financial affairs of another who cannot do so, such as a child or mentally handicapped person.

**Consideration** Something of value given in return for another's performance or promise of performance; generally required to make a promise binding and to make agreement of parties enforceable as a contract. Consideration may be either executed or executory, express or implied.

**Conspiracy** An agreement (express or implied) between two or more people to do an illegal act, or to commit a legal act in an illegal manner. A person can be convicted of both the crime of conspiracy to commit a specific crime, and of the crime itself without violating double jeopardy (see MCL 750.157a).

**Contempt of court** Any act calculated to embarrass, hinder, or obstruct a court. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term mostly used with reference to the failure or refusal to obey a court order. Any party found in contempt of court normally receives sanctions.

**Continuance** The postponement of a proceeding to a later date.

**Contraband** Goods barred by law (e.g., specific weapons, illegal drugs, etc.).

**Contract** A legally enforceable agreement between two or more competent parties made either orally or in writing.

**Contributory negligence** Legal doctrine that says that a plaintiff cannot recover damages in a civil action for negligence if the plaintiff was also negligent.

**Conviction** A trial verdict or judgment that a criminal defendant is guilty of a crime.

**Corpus delicti** Body of the crime. The objective proof that a crime has been committed.

**Corroborating evidence** Supplementary evidence that supports or confirms the initial evidence. A victim's or witness' version of events does not have to be supported by corroborating evidence.

**Counsel** Legal advice; also a term used to refer to lawyers in a case.

**Counterclaim** A claim by a defendant in a civil case that the plaintiff has injured him or her.

**Court** Government entity authorized to resolve legal disputes. Judges are sometimes referred to as the "court," as in a judge saying of himself or herself, "The court has read the briefs."

**Court-appointed attorney** Legal counsel assigned by the court to represent an indigent criminal defendant. A court-appointed attorney is not necessarily a "free" attorney; the court can order the defendant to reimburse some or all of the attorney's bill. If jail time will not be imposed on a misdemeanor, the judge need not appoint an attorney. (See also Guardian ad litem)

**Court of Appeals** In Michigan, the intermediate appellate court between the Supreme Court and trial courts. Final decisions from a circuit or probate court proceeding may be appealed to the Court of Appeals. Court of Appeals Judges are elected to six-year terms on a non-partisan ballot. Judges sit in panels of three; the panel's decision is final, except for those cases which the Supreme Court reviews.

**Court of Claims** Court that handles only claims over \$1,000 filed against the state of Michigan or one of its departments. The Court of Claims is part of the 30<sup>th</sup> Circuit Court in Ingham County; Court of Claims trials are heard by a judge, not a jury. (See also Bench trial)

**Court costs** The expenses in addition to legal fees of prosecuting or defending a lawsuit.

**Courts of record** Courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt.

**Court reporter** A person who records, transcribes, or stenographically takes down testimony, motions, orders, etc., during trials, hearings, and other court proceedings.

**Criminal case** Case brought by the government against an individual accused of committing a crime.

**Criminal sexual conduct** There are four degrees of criminal sexual conduct, or CSC, in Michigan, depending on the act, the force used, the victim's age or relationship to the defendant, etc. See MCL 750.520. A person can be charged and convicted of committing CSC against a spouse.

**Cross-examination** Questioning of a witness by an attorney for the side against which the witness testified.

**CSC** See Criminal sexual conduct.

**Custody order** Court order which placed a juvenile in court custody for a specific length of time, with authority to place the juvenile in detention as needed. Also, court order that gives a person, usually the parent, the legal or physical control of a child in a domestic relations proceeding.

## **D**

**Damages** Monetary compensation that may be recovered in the courts by any person who has suffered loss, detriment, or injury to his or her person, property or rights, through the unlawful act or negligence of another.

**Decision** The judgment reached or given by a court of law.

**Declaratory judgment** A judgment that declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

**Decree** A decision or order of the court. A final decree is one that finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree that is not final.

**Defamation** That which tends to injure a person's reputation. Libel is published defamation, whereas slander is spoken.

**Default** Occurs when a defendant does not file the proper response within the time allowed or fails to appear at the trial.

**Defendant** In a civil case, the defendant is the person against whom the lawsuit is brought. In a criminal case, the defendant is the person accused of committing the crime.

**Deliberations** The process by which a jury reaches a verdict at the close of a trial; the jury's discussions after all evidence has been presented.

**Delinquency proceedings** See Juvenile delinquency proceedings.

**De novo** Latin for anew or afresh. A "trial de novo" is the retrial of a case. A "de novo" standard of review permits an appellate court to substitute its judgment for that of a trial judge.

**Department of Human Services (DHS)** The state agency responsible for administering a broad range of social services programs, including Children's Protective Services, as well as services related to foster care, adoption, juvenile justice, and aid to families and elderly people. Formerly known as the Family Independence Agency.

**Deposition** An oral statement made before an officer authorized by law to administer oaths. Before trial, such statements are often taken to examine potential witnesses and to obtain information.

**Designated proceedings** Criminal proceedings in which a juvenile under age 17 is tried in the family division of circuit court; a juvenile is tried as an adult and may receive an adult sentence if convicted.

**D.H.S.** See Department of Human Services.

**Direct evidence** Evidence that stands on its own to prove an alleged fact. (See also Circumstantial evidence)

**Direct examination** The first interrogation of a witness by the party on whose behalf he or she is called.

**Directed verdict** An instruction by the judge to the jury to return a specific verdict because one of the parties failed to meet its burden of proof.

**Discovery** The pre-trial process by which each party ascertains evidence the other party will rely upon at trial.

**Dismissal** A court order terminating a case. May be voluntary (at the request of the parties) or involuntary.

**Disorderly conduct** A misdemeanor defined by MCL 750.167; includes window peeping, indecent or obscene conduct in public, vagrancy, and others.

**Disposition** A juvenile court hearing that is the equivalent of a sentencing in an adult criminal proceeding.

**Dissenting opinion/dissent** A term commonly used to denote the disagreement of one or more judges of a court with the majority's decision. (See also Concurring opinion, Majority opinion)

**District courts** District courts in Michigan are trial courts of limited jurisdiction. (In the federal court system, U.S. district courts are the trial courts.) There are 98 district courts in Michigan, but some have two or more locations. District court judges are elected on a non-partisan ballot to six-year terms.

**Diversion** The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages. Diversion may take place before the trial or its equivalent, as when a juvenile accused of a crime may consent to probation without an admission of guilt. If the juvenile completes probation successfully (takes a course or makes amends for the crime), then the entire matter may be expunged (erased) from the record.

**Docket/case docket** A log containing brief entries of court proceedings and filings of legal documents in a case.

**Docket number/case number** The number assigned to identify each case by the court's clerk.

**Domicile** The place where a person has his or her true and permanent home. A person may have several residences, but only one domicile.

**Double jeopardy** The common-law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission. If a judge declares a mistrial, a criminal case may be re-tried without violating double jeopardy.

**Drunk driving** See OUIL.

**Due process** The constitutional guarantee of due process requires that everyone receive such constitutional protections as a fair trial, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

**Duress** Refers to conduct that has the effect of compelling another person to do what he or she would not otherwise do. It is a recognized defense to any act, such as a crime, contractual breach or tort, all of which must be voluntary to create liability or responsibility.

## **E**

**Emancipation** Termination of parents' rights to the custody, control, services and earnings of a minor. A minor can be emancipated by operation of law, as when the minor turns 18, or by

order of the court where the minor petitions the court, is 16 or 17 years old, and can prove that he or she can manage his/her financial and social affairs (see MCL 722.1 et seq.).

**Embezzlement** An agent's dishonest disposition of property entrusted to the agent by a principal, as when a bank employee takes funds from bank accounts for the employee's own use. There are four levels of embezzlement (two misdemeanor, two felony) in Michigan law (see MCL 750.174).

**En banc** All the judges of an appellate court sitting together to hear oral arguments in a case of unusual significance and to decide the case.

**Enjoin** To require a person, through the issuance of an injunction, to perform or to abstain from some specific act.

**Equal protection of the law** Guarantee of the Fourteenth Amendment of the U.S. Constitution that all persons receive equal treatment under law.

**Equitable action** An action that may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action. An action seeking an injunction is an equitable action.

**Escheat** The process by which a deceased person's property goes to the state if no heir can be found.

**Escrow** Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

**Estate** Applies to all that a person owns. An estate consists of personal property (car, household items, and other tangible items), real property, and intangible property, such as stock certificates and bank accounts, owned in the individual name of a person.

**Et al.** From the Latin "et alia," meaning "and others." Often used in case captions where there are multiple plaintiffs and/or defendants, e.g., "Jane Jones et al. v ABC Corporation." (Also see Case caption)

**Et seq.** From the Latin, "et sequens/sequentes," meaning, "and the following." It is often used to refer to remaining provisions in a statute following the one designated, as in "MCL 722.1 et seq."

**Ethic intimidation** In Michigan, a felony punishable by up to two years in prison and/or fines up to \$5,000. The offense involves malicious and intentional intimidation or harassment of another person because of that person's race, color, religion, gender, or national origin. Elements of the offense are physical contact with another person, damage or destruction of property, or a

threat to do either if there is reasonable cause to believe that the threat will be carried out. See MCL 750.147b.

**Evidence** Any form of proof presented by a party for the purpose of supporting its factual allegations or arguments before the court.

**Exclusionary rule** A court-made rule that prevents unconstitutionally obtained evidence from being used in court to build a case against a criminal defendant. The rule is directed only at official police misconduct or evidence that was the indirect product of unlawful police conduct.

**Execute** To complete the legal requirements (such as signing before witnesses) that make a will valid. Also, to execute a judgment or decree means to put the final judgment of the court into effect.

**Executor** A personal representative, named in a will, who administers an estate.

**Exemplary damages** An order to pay money as a form of punishment or deterrence from future error that has caused legal injury; also known as punitive damages.

**Exhibit** A paper, document or other article produced and exhibited to a judge or jury during a trial or hearing.

**Ex parte** Latin for “by or for one party”; done for, on behalf of, or on the application of, one party only. Can refer to situations in which only one party – without the opposing party – meets with or appears before a judge. Such ex parte contacts are often improper, but may be authorized in limited circumstances, as when a person seeks a PPO. (See also Ex parte order, PPO)

**Ex parte order** Order entered without giving the affected party an opportunity to be heard in court before the court issues the order; an emergency order used when one party could be irreparably harmed by waiting for a hearing date. Such orders are generally for the short term, and hearings are scheduled to give the other party a chance to be heard.

**Ex post facto** Latin for “after the fact.” The Constitution prohibits the enactment of ex post facto laws that make punishable as a crime an act done before the law was passed.

**Expungement** The official and formal elimination of part of a record, as when a criminal conviction may be set aside. In Michigan, a person’s first conviction may be set aside, but only if the person has not other criminal convictions at the time the expungement request is made. Expungement cannot be sought until at least five years have passed since the date of sentencing or completion of a term of imprisonment, whichever is later. Expungement is not allowed for felonies punishable by life imprisonment, CSC 2<sup>nd</sup> or 3<sup>rd</sup> degree, assault with intent to commit CSC, or traffic code violations. See MCL 780.621 et seq. for adults; MCL 712A.18e for juveniles.

**Extradition** The process by which one jurisdiction (state or nation) surrenders to another jurisdiction a person accused or convicted of a crime in the other state.

## F

**Family court** The division of circuit court which handles family matters, such as divorce, child custody, child and spousal support, parenting time, etc. Judges from both circuit and probate courts may preside in the family division. (See also Circuit court, Probate court).

**Felony** A serious criminal offense generally punishable by imprisonment of one year or more.

**Felony firearm** This charge is established if the defendant committed or attempted to commit a felony while carrying or having a firearm (see MCL 750.227b).

**Fiduciary** A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the other's benefit, for example, a guardian, trustee, or executor.

**Finder of fact** The person or persons charged with declaring a verdict on issues of fact. In bench trials, the judge is the finder of fact; where the case is tried before a jury, the jury is the finder of fact. (Also see Bench trial, Jury)

**Finding** A formal conclusion by a trial judge or jury regarding the facts of a case.

**Forfeiture** Real or personal property to which a person loses the right of possession due to the commission of a crime or by way of an assessed penalty.

**Foster home** A licensed home for the temporary board and care of abused and neglected or delinquent children.

**Fraud** Intentional deception designed to deprive another person of property or to injure him or her in some other way.

## G

**Garnishment** A legal proceeding in which a debtor's money, in the possession of another (called the garnishee), is applied to the debts of the debtor, such as when a creditor garnishes a debtor's wages.

**Ginther hearing** An evidentiary hearing on a defendant's motion for a new trial claiming ineffective assistance of counsel; based on *People v Ginther*, 390 Mich 436 (1973).

**Good time** A reduction in sentenced time in prison as a reward for good behavior.

**Grand jury** A group of citizens assembled in secret to hear or investigate allegations of criminal behavior. A grand jury has authority to conduct criminal investigations and to charge a crime through an indictment.

**Guardian** A person appointed to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative. A guardian may be appointed by a court or designated in a will.

**Guardian ad Litem** A person appointed by the court to protect the legal interests of a child or an incompetent adult, or of a missing person who is involved in a court case. The court will also appoint a guardian ad litem in child abuse or neglect cases. A commonly used acronym is LGAL (Lawyer Guardian ad Litem) where an attorney is appointed.

**Guardianship** Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable or providing these necessities for himself or herself. Can also include financial affairs, and thus perform additionally as a conservator. (Also see Conservator)

## H

**Habeas corpus petition** From the Latin, meaning “You shall have the body.” In federal court, a means by which a state prisoner may challenge the constitutionality of his or her conviction and imprisonment. A writ (order) of habeas corpus directs a warden or jailer to bring a person in custody before the court, so that the court may determine whether the person is being lawfully confined. A writ of habeas corpus may also be used to bring a person in custody before the court to give testimony or to be prosecuted.

**Harmless error** In appellate practice, an error committed by a trial court during a trial, but not harmful to the rights of the party and for which the appellate court will not reverse the judgment.

**Hearing** Any form of judicial, quasi-judicial or legislative proceeding at which issues are heard, or testimony taken.

**Hearsay** Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court, but rules of evidence provide for many exceptions, based on whether the out-of-court statements carry a likelihood of trustworthiness (e.g., deathbed statements, self-incriminating statements, excited utterances, statements made to doctors, etc.). See MRE 802-806.

**Holding** The legal conclusion or principle that provides the basis for a court’s judgment.

**Holmes Youthful Trainee Act** Discretionary sentence whereby a person who pleads guilty to a crime committed between his/her 17<sup>th</sup> and 21<sup>st</sup> birthdays may, with the defendant’s

consent and without a judgment of conviction, be assigned the status of a youthful trainee, subject to successful completion of the terms set by the judge, such as probation without further offenses. YTA status is not a conviction for a crime, but if the defendant fails to complete the terms of probation, the judge may terminate YTA status, enter an adjudication of guilt and sentence the defendant. YTA is not available where the offense is punishable by a term of life imprisonment, or for major controlled substance offenses or traffic violations. (Also see Youthful Trainee Act)

**Hostile witness** A witness who is subject to cross-examination by the party who called him or her to testify, because of his or her evident antagonism toward that party as exhibited in his or her direct examination.

**Hung jury** A jury that is unable to reach a unanimous verdict, where unanimity is required by the nature of the case.

## I

**Immunity** A court-approved agreement by a prosecutor not to prosecute a person in return for the person's agreement to provide criminal evidence against another person or party.

**Impaired driving** A misdemeanor and lesser included offense to OUIL (Operating [a vehicle] Under the Influence of Liquor); driving a vehicle while visibly affected by alcohol. A driver is considered "impaired" with a blood alcohol level of 0.08-0.09 percent. See MCL 257.625. (Also see OUIL)

**Impeachment of witness** An attack on the credibility of a witness by the testimony of other witnesses or other evidence, such as prior inconsistent statements.

**Implied contract** Not explicitly written or stated; determined by deduction from known facts or from the circumstances or conduct of the parties.

**Inadmissible** Evidence that cannot under the rules of evidence be admitted in court. See generally the Michigan Rules of Evidence.

**In camera** In chambers or in private. A hearing or inspection of documents that takes place outside the presence of the jury and public, usually in the judge's chambers.

**Indeterminate sentence** A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

**Indictment** The formal charge issued by a grand jury or the county prosecuting attorney stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

**Indigent** Meeting certain standards of poverty, thereby qualifying a criminal defendant for representation by a public defender.

**Inferior court** Courts of limited jurisdiction.

**In forma pauperis** In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

**Information** A formal accusation by a prosecutor that the defendant committed a crime. An information is an alternative to an indictment as a means of charging a criminal.

**Injunction** An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

**Instructions** Judge's directions to the jury before it begins to deliberate the questions it must answer. Jury instructions include information about law governing the case.

**Interlocutory** Refers to orders and decrees of a court pronounced during the course of a case; not a final ruling.

**Interrogatories** Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

**Intervention** A proceeding in a lawsuit in which a third person is permitted by the court to make him or herself a party.

**Issue** A disputed point in a disagreement between parties in a lawsuit.

## **J**

**Jail** A place of incarceration, administered by the county where it is located, where defendants convicted of crimes and sentenced to one year or less are held. In cases involving serious criminal charges where the court denies bail, a defendant may also be held in jail pending trial. Not to be confused with prison. (See Prison)

**Joint tenancy** A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property.

**Judge** A public official who presides in a court of law and decides legal questions. In bench trials, a judge may also make findings of fact. (See also Bench trial) In Michigan, judges preside in the trial courts and Michigan Court of Appeals, but a judge of the Michigan Supreme Court is referred to as "Justice." (See Justice)

**Judgment** The final disposition of a lawsuit.

**Judgment notwithstanding the verdict** A judge's decision to rule in a case contrary to the jury's verdict.

**Judicial review** The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

**Jurisdiction** The court's power, right or authority to apply the law in a given case. A court's authority to hear cases, which depends on the type of case and/or whether the parties or the actions in question are connected to the county where the court is located.

**Jury** A certain number of persons, usually selected from lists of registered voters or licensed drivers, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them during a trial.

**Jury panel** A list of prospective jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those the clerk selects by lot.

**Justiciable claim** A claim that is capable of being resolved in the courts.

**Justice** (title) The title used to refer to the judicial officials who serve on the Michigan Supreme Court. Also used for members of many, but not all, supreme courts of other states and the United States Supreme Court.

**Juvenile code** The set of laws governing juvenile delinquency proceedings, designated proceedings, and child protective proceedings. See MCL 712A.1 et seq.

**Juvenile court** Court specifically established to hear cases concerning minors. Since Jan. 1, 1998, these cases are heard in the family division of circuit court.

**Juvenile delinquency proceedings** Proceedings in the family division of circuit court regarding a minor under age 17 who has 1) committed an offense that would be a crime if committed by an adult; 2) deserted his or her home, 3) been absent from school, 4) repeatedly violated school rules, or 5) disobeyed the reasonable and lawful commands of his/her parents.

## **K**

**Kidnapping** The felony of knowingly restraining another person with the intent to do one of more of the following: a) hold the person for ransom or reward; b) use the person as a shield or hostage; c) engage in criminal sexual penetration or contact with the person; d) take the person outside the state, or e) hold the person in involuntary servitude. Kidnapping is punishable by

imprisonment for life or any terms of years or a fine of not more than \$50,000, or both. See MCL 750.349. (Also see Unlawful imprisonment)

**Killebrew plea** A plea which allows a defendant in a criminal case to enter a conditional guilty plea. The plea can be withdrawn if the judge's sentence falls outside sentencing terms negotiated by the prosecutor and defense. See *People v Killebrew*, 416 Mich 189 (1992). (Also see Cobbs Plea)

## L

**Larceny** Stealing; the unlawful taking and carrying away of property belonging to another, with the intent to keep it from the owner.

**Lawsuit** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

**Leading question** A question that instructs a witness how to answer or suggests which answer is desired. These questions are usually prohibited on direct examination.

**LEIN** Acronym for Law Enforcement Information Network. LEIN, a computerized network used by law enforcement agencies, contains information on active arrest warrants, active PPOs, pre-trial release conditions, driving records, automobile registrations, felony and high misdemeanor convictions, etc.

**Liable** Legally responsible.

**Libel** Published words or pictures that falsely and maliciously defame a person, that is, injure his or her reputation. Libel is published defamation; slander is spoken.

**Lien** A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lienholder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

**Limitation (statute of)** A certain time allowed by statute in which litigation must be brought.

**Liquidated damages** A form of money payment in an amount specified in advance by a contract or agreement as the sum to be paid if terms were violated.

**Litigant** Individual bringing a lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

**Litigation** A case, controversy, or lawsuit.

**Living trust** A trust set up and in effect during the lifetime of the grantor. Also called inter vivos trust.

**Lock-up** A municipal holding facility where defendants arrested for crimes may be held temporarily. (See Jail, Prison)

**Long-arm statute** State laws that give a court jurisdiction to try civil cases in which persons from other states have been sued. Long-arm statutes are commonly employed to allow a local court to exercise jurisdiction over out-of-state motorists who cause automobile accidents within the state.

## M

**Magistrate** Judicial officers who assist judges. Magistrates are not elected; they are appointed by the chief judge of the court where they serve. (Also see Referee)

**Majority opinion** A written decision by a majority of the appellate judges considering the case, in which the judges announce the court's ruling and the legal basis for the decision. (Also see Concurring opinion, dissenting opinion/dissent)

**Malice** The intent to commit a wrongful act without just cause or excuse; evil intent, motive, or purpose.

**Mandate** A judicial command directing the proper officer to enforce a judgment, sentence, or decree.

**Manslaughter** The unlawful killing of another without premeditation, either voluntary — upon a sudden impulse, for example, a quarrel erupts into a fistfight in which one of the participants is killed; or involuntary — during the commission of an unlawful act not ordinarily expected to result in great bodily harm, or during the commission of a lawful act without proper caution, for example, driving an automobile at excessive speed resulting in a fatal collision. A felony punishable by up to 15 years in prison and/or \$7,500 fine.

**Mediation** A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

**Memoranda of law** Formal written arguments in support of a motion filed in a case.

**Mens rea** In a criminal case, the state of mind that the prosecution must prove the defendant had in committing the crime; criminal intent. Some crimes require proof of “specific intent,” for example, in a larceny case, the prosecutor must prove the defendant's intent to steal. Other “general intent” crimes do not require such proof.

**Merits** Issues of legal substance at stake in a case, as opposed to procedural considerations.

**Michigan Compiled Laws (MCL)** Volumes containing the official version of Michigan statute enacted by the state Legislature. MCLs are published by the Legislative Service Bureau. The acronym “MCL” is used with Michigan statutory cites, e.g., MCL 750.349.

**Michigan Compiled Laws Annotated (MCLA)** Volumes containing the text of Michigan statutes, plus brief references to applicable case law and legal commentary. MCLs are published by the West Publishing Company.

**Michigan Court Rules (MCR)** Rules adopted by the Michigan Supreme Court to govern procedures in all state courts.

**Michigan Rules of Evidence (MRE)** The rules adopted by the Michigan Supreme Court to govern admission of evidence in state courts.

**Michigan Rules of Professional Conduct (MRPC)** The rules adopted by the Michigan Supreme Court to govern attorney ethics.

**Minor** A child or youth under the legal age of majority.

**Miranda warning** The warning police must give suspects regarding their constitutional right to remain silent and their right to an attorney. See *Miranda v Arizona*, [384 U.S. 436](#) (1966).

**Misdemeanor** Less serious criminal offense usually punishable by a sentence of one year or less. Exception: a “high court” misdemeanor (e.g., resisting/obstructing a police officer) can carry up to two years in prison. While handled procedurally like a felony, a high court misdemeanor is not a felony.

**Mistrial** An erroneous or invalid trial; a trial that cannot stand in law because of lack of jurisdiction, incorrect procedure with respect to jury selection, or disregard of some other fundamental requisite; an invalid trial because of the jury’s inability to reach a verdict.

**Motion to dismiss** A formal request for the court to dismiss a complaint because of insufficiency of evidence or because the law does not recognize the injury or harm claimed.

**Motive** In a criminal case, the defendant’s reason(s) for committing the offense.

**Municipal courts** A court whose territorial authority is confined to a city or community.

**Murder** In Michigan, all murder is either in the first or second degree.

- **First degree murder** Felony. Either premeditated (the defendant intended to kill and had time to considered the pros and cons in advance) or felony murder (murder committed in the course of another felony). Mandatory life in prison; no parole. MCL 750.316.
- **Second degree murder** Felony. Causing death while intending to kill or do great bodily harm, or causing death while knowingly creating a very high risk of death or great bodily harm. Life in prison or any term of years. MCL 750.317.
- **Open murder** Michigan law does not require a prosecutor to choose between first or second degree murder when issuing a complaint or at trial. A prosecutor may charged a defendant with “open murder,” and the jury may determine the appropriate degree based on the evidence.

## N

**Negligence** Failure to exercise ordinary care. “Gross negligence,” a more serious degree of negligence, is the failure to exercise care in a way that shows reckless disregard or willful regard for the safety of others.

**No contest plea** A plea in which the facts supporting the elements of the crime come from a source other than the defendant’s own words in court (e.g., from police reports, witness statements, photographs, recordings, etc.). Has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

**Nolle prosequi** Latin, meaning, “Unwilling to prosecute.” Form filed by a prosecutor to dismiss the prosecution of a particular defendant.

**Nolo contendere** Latin, meaning, “I will not contest it.” A no contest plea. (Also see No contest plea)

## O

**Objection** The act of taking exception to some statement or procedure in trial. Used to call the court’s attention to improper evidence or procedure.

**Objection overruled** A judge’s rejection of an objection as invalid.

**Objection sustained** Support or agree with an objection. Used by the judge to indicate agreement with an objection.

**Of counsel** A phrase commonly applied to counsel employed to assist in the preparation or management of the case, but who is not the principal attorney of record.

**Offense** A crime or ordinance violation. For minors, any act that violates provisions of the Juvenile Code (MCL 712A.1 et seq.) and places the minor in the juvenile court's jurisdiction.

**Offer** An act of willingness to enter into a purchase agreement that justifies to another person an understanding that his assent to that purchase agreement is invited and will establish a contract.

**180-day rule** A rule that allows people detained in county jails for 180 days while awaiting trial on felony charges to be released on their own recognizance, if the delay has not been caused by the accused or the accused's attorney. Also, a rule that requires all pending charges against a state prison inmate to be brought to trial in 180 days, or be dismissed with prejudice.

**Opinion** A written explanation of a decision of a trial court or of the decision of a majority of judges of an appellate court. At the appellate level, a dissenting opinion disagrees with the majority opinion because of the reasoning and/or principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. (Also see Concurring opinion, Dissenting opinion/dissent, Majority)

**Option** A contract that gives the holder a right or option to buy or sell specified property, such as stock or real estate, at a fixed price for a limited period of time.

**Oral argument** An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

**Order** A command from the court directing or forbidding an action.

**Ordinance** A local law or regulation enacted by the governing body of a municipality or county.

**Original jurisdiction** A court's authority to hear a case in the first instance.

**OUIL** Acronym for Operating Under the Influence of Intoxicating Liquor. The offense of operating a motor vehicle on a public road, parking lot or other place open to the general public while being significantly or substantially affected by intoxicating liquor, controlled substances, or both; see MCL 257.625.

- **1<sup>st</sup> offense** Misdemeanor; punishable by up to 90 days, \$500 fines, community service, six points assessed on driver's record, mandatory six-month license suspension.
- **2<sup>nd</sup> offense** Misdemeanor; punishable by up to one year, \$1,000 fines, community service six points assessed on driver's record, mandatory one-year license revocation.
- **3<sup>rd</sup> offense** Felony; punishable by one to five years in prison; fines; six points; license revocation.

**Overrule** A judge’s decision to not allow an objection to prevail. Also, a high court’s decision that a lower court’s decision was in error. (See also Sustain)

## **P**

**Parenting time** Formerly known as “visitation.” The time a child spends with a non-custodial parent.

**Parole** The supervised, conditional release of a prisoner.

**Parties** The persons who are actively involved with the prosecution or defense of a legal proceeding. Plaintiffs and defendants are parties to lawsuits, appellants and appellees are parties in appeals. (They may also be known as petitioners and respondents.)

**Patent** A government grant giving an inventor the exclusive right to make or sell his or her invention for a term of years.

**Paternity** Establishing legal fatherhood. In Michigan, paternity may be established in several ways, including a legal action or a signed acknowledgment by both parents.

**Peremptory challenge** A motion to reject a juror for an unspecified race-neutral reason. May only be used a limited number of times. (Also see Challenges)

**Perjury** The criminal offense of making a false statement under oath.

**Personal property** Tangible physical property (such as cars, clothing, furniture, and jewelry) and intangible personal property, but not real property--that is, not land or rights in land.

**Personal protection order** Commonly referred to as PPO; a court’s order to prevent recurrences of acts or threats of assault and/or harassment, e.g., to keep a stalker from contacting or approaching a victim. See MCL 600.2950 – MCL 600.2950a.

**Personal recognizance** When a person is released from custody before trial on his or her promise to return for further proceedings.

**Petit jury** The twelve (or fewer) jurors selected to sit in the trial of a civil or criminal case.

**Petitioner** Person filing an action or appealing from a lower court’s judgment.

**Plaintiff** A person who brings an action; the party who complains or sues in a personal action and is so named on the record. The person who files the complaint in a civil lawsuit.

**Plea** The defendant's declaration of guilty or not guilty, in response to the criminal charges contained in the information or indictment.

**Plea bargain** The process by which an accused person agrees to plead guilty to some of the charges in return for the government's promise to drop some of the charges. Plea bargains must be approved by a judge.

**Pleadings** Written statements of fact and law filed by the parties to a lawsuit, e.g., complaints, answers, replies, motions, briefs, application on appeal, etc.

**Polling the jury** A practice whereby the jurors are asked individually whether they agreed, and still agree, to the verdict.

**Pour-over will** A will that leaves some or all estate assets to a trust established before the will-maker's death.

**Precedent** Previously decided case that guides future decisions. (Also see Stare decisis)

**Prejudicial error** Synonymous with "reversible error"; a trial court error that warrants the appellate court reversing the lower court's judgment. Contrasted with "harmless error," in which the trial court's error is deemed not to warrant reversal.

**Preliminary examination** Criminal hearing at which a judge determines whether sufficient evidence exists to warrant trying an individual charged with a crime; in Michigan, an evidentiary hearing in felony cases. The hearing takes place in district court. If the prosecutor meets the burden of proof, the case is "bound over" to circuit court.

**Preponderance of evidence** the burden of proof in civil cases; evidence which, as a whole, shows that the fact sought to be proved is more probable than not. (Also see Burden of proof)

**Pre-sentence investigation** An inquiry conducted at the request of the court after a person has been found guilty of a criminal offense. Provides the court with extensive background information to determine an appropriate sentence.

**Presumption** A rule of law that courts and judges will draw a particular inference from a particular fact, or from particular evidence.

**Pre-trial conference** A meeting in which attorneys for both sides meet the judge in advance of the trial to seek to clarify or narrow the issues.

**Prima facie case** The minimum amount of evidence a plaintiff must produce to overcome a motion to dismiss; evidence which is sufficient “on its face” to establish a given fact when not rebutted or contradicted. (Also see Burden of proof)

**Pro hac vice** Latin meaning “for this one particular occasion.” The phrase usually refers to an out-of-state lawyer who has been granted special permission by a court to participate in a particular case, even though the lawyer is not licensed to practice in the state where the case is being tried. (Also see State Bar of Michigan)

**Probable cause** Reasonable belief that an individual has committed a crime. (Also see Burden of proof)

**Probate court** The court with primary authority over cases involving wills, guardians and conservators, and mentally ill or developmentally disabled persons. Probate judges may also be assigned to hear cases in the family division of circuit court. There are 79 probate courts in Michigan; probate judges serve six-year terms.

**Probate estate** Estate property that may be disposed of by a will.

**Probation** A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed. If the defendant violates any term of probation, the assigned probation officer, or the prosecutor, can ask the sentencing judge to impose additional penalties after a probation violation hearing.

**Pro per/pro se** Latin (*in propria persona*), meaning “on one’s own behalf”; in courts, it refers to persons who present their own cases without lawyers.

**Prosecutor** Government lawyer who tries criminal cases. In Michigan, prosecutors are known as “prosecuting attorneys.”

**Public defender** Lawyer employed by the government to represent individuals accused of crimes who cannot afford to hire their own attorney privately.

## **Q**

**Quash** To overthrow; vacate; to annul or void a summons or indictment.

## **R**

**Real property** Land, buildings, and other improvements affixed to land.

**Reasonable doubt** Uncertainty that might exist in the mind of a reasonable person applying reason to the evidence introduced. (Also see Burden of proof; beyond a reasonable doubt)

**Rebuttal** The introduction of contrary evidence; the showing that statements of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced.

**Record** A written account of all the acts, proceedings and testimony in a lawsuit.

**Redirect examination** Follows cross-examination and is exercised by the party who called first and questioned the witness.

**Referee** A person who takes testimony, prepares reports, and makes recommendations to family court judges in domestic relations, juvenile delinquency, designated proceedings involving juveniles, and child protective proceedings.

**Relevance** Evidence has relevance if it tends to make the existence of a fact more or less probable than it would be without that evidence. See MRE 401.

**Reliance** Confidence or dependence upon what is deemed sufficient authority, such as a warranty that provides a written guarantee of a product's integrity.

**Remand** When an appellate court sends a case back to a lower court for further proceedings.

**Removal, order of** An order by a court directing the transfer of a case to another court.

**Reply** A pleading in response to an answer. (Also see Answer, Complaint)

**Repossession** To take back -- as in a seizure or foreclosure -- to satisfy the obligation to the seller, bank or finance company after the debtor defaults on his or her payments.

**Rest** A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

**Restitution** Payments ordered by a judge to repay crime victims for economic losses (property loss or injuries) incurred as a result of the crime. Does not include compensation for pain and suffering or other non-economic damages that may be pursued through a civil law suit.

**Reverse** When an appellate court sets aside the decision of a lower court because of an error. A reversal is often accompanied by a remand. (See Prejudicial error, Remand)

**Revoke** To cancel or nullify a legal document.

## S

**Search warrant** A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.

**Self-defense** Legally-justified use of force to protect one's self, another person, or property against some injury attempted by another. Must be based on an honest and reasonable belief that one has to use force for protection. In addition, a person claiming self-defense must use only the type and degree of force that seems necessary at the time, and cannot have acted wrongfully to bring on the initial attack.

**Self-proving will** A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.

**Sentence** The punishment ordered by a court for a defendant convicted of a crime.

**Sentencing Guidelines** Criteria adopted by the Legislature to set an appropriate range that a judge may impose for the minimum sentence on felonies and high court misdemeanors. "Prior Record Variables" (PRV) and "Offense Variables" (OV) are calculated and applied to a Sentencing Range Grid. A judge may depart from the range, either on the high or low side, only when there are "substantial and compelling" reasons to do so, which the judge must explain on the record.

**Sentence** The punishment ordered by a court for a defendant convicted of a crime.

**Sequester** To separate. Sometimes juries or witnesses are sequestered from outside influences, for example, as when witnesses are prevented from watching court proceedings or talking to other witnesses before they testify.

**Serve** To deliver a legal document, such as a complaint, summons or subpoena. Service constitutes formal legal notice.

**Settlement** Agreement between parties to resolve a lawsuit without going to or completing trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

**Sex offender** A person convicted as an adult or adjudicated as a juvenile of Criminal Sexual Conduct (CSC), Indecent Exposure, Gross Indecency, or similar enumerated crimes. Sex offenders are required to register with the Michigan State Police, and verify their home address quarterly, for a minimum of 25 years. The State Police maintain a searchable database of adult sex offenders.

**Show cause** A court order obtained on motion by either party to demonstrate why the particular relief sought should not be granted. Generally used in connection with proceedings for contempt of court.

**Sidebar conference** Confidential discussion between judge and attorneys to resolve legal matters, which could be prejudicial if aired before the jury.

**Slander** False and defamatory spoken words tending to harm another's reputation, business, or means of livelihood. Slander is spoken defamation; libel is published. (Also see Defamation)

**Small claims court** A division of District Court that handles civil claims up to \$3,000. People represent themselves rather than hire an attorney.

**Special appearance** Notice of the party that has been sued that he or she is aware of the lawsuit, but contests the court's authority over himself or herself. This prevents a defendant from losing a case by default.

**Special damages** A form of compensatory damages ordered paid when the injury resulted from the other side's wrong but was not a natural or necessary consequence.

**Specific performance** Where damages would be inadequate compensation for the breach of a contract, the party who breached the contract will be compelled to perform specifically what he or she originally agreed to do.

**Standing** The legal right to sue or enter a lawsuit on a particular matter.

**Stare decisis** The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same. (Also see Precedent)

**State Bar of Michigan** The association for attorneys licensed to practice law in Michigan. Attorneys must be members of the state bar in order to practice law in Michigan, with the exception of out-of-state attorneys who are admitted pro hac vice for a specific case. (Also see Pro hac vice)

**Statute** Law enacted by legislatures or executive officers, such as codes.

**Statute of limitations** A law that sets the time within which parties must take action to enforce their rights.

**Stay** A suspending of a judicial proceeding by order of the court.

**Stipulation** An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless agreed to by the parties.

**Strike** To remove improperly offered evidence from the court record.

**Subpoena** A document issued by the court to compel a witness to appear and give testimony or to procure documentary evidence in a proceeding.

**Subpoena duces tecum** A process by which the court commands a witness to produce certain documents or records in a trial.

**Substantive law** Law dealing with rights, duties and liabilities, as distinguished from law that regulates procedure.

**Suit in equity** A civil case in which a court forbids or allows another person to take an action.

**Summary disposition/judgment** A court order that decides a case in favor of one side on the basis of affidavits or other evidence, before the trial commences. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law. (Michigan court practice refers to “summary disposition,” while federal courts use the term “summary judgment.”)

**Summons** Legal notice informing an individual of a lawsuit and the date and location of the court where the case will be heard.

**Superintending control, writ of** An original action designed to order a lower court or tribunal to perform a legal duty.

**Suppress** Legal bar to admitting evidence at a trial or other court proceeding.

**Supreme Court** Generally, the highest appellate court in a jurisdiction; in Michigan, the Michigan Supreme Court. (Note that some states use a different title for their highest appellate courts.)

The Michigan Supreme Court consists of seven justices; they are elected to eight-year terms.

Appellants file applications for “leave to appeal” which the Court can grant or deny. If the Court grants the application, it will hear the case; if the application is denied, the lower court decision stands. Denial of leave is not an expression of the merits of the case.

The Supreme Court grants leave in cases involving significant legal and/or public interest issues. See MCR 7.302(B).

**Surety bond** A bond purchased at the expense of the estate to insure the executor's proper performance. Often called a fidelity bond.

**Sustain** A judge's decision to allow an objection or motion to prevail. (Also see Overrule)

## T

**Temporary restraining order (TRO)** Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

**Termination of parental rights hearing** A hearing held in the family division of circuit court to determine if the parent(s)' rights to a child are to be taken away; if so, the child becomes a ward of the court.

**Testamentary trust** A trust set up by a will.

**Testimony** Evidence given by a competent witness, under oath, as distinguished from evidence derived from writings and other sources.

**Third-party claim** An action by the defendant that brings a third party into a lawsuit.

**Title** Legal ownership of property, usually real property or automobiles.

**Tort** A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

**Turner hearing** A hearing to determine whether a defendant was entrapped by law enforcement officials into committing an offense; based on *People v Turner*, 390 Mich 7 (1973).

**Transcript** The official record of proceedings in a trial or hearing.

**Trust** A legal device used to manage property – real or personal – established by one person (the donor, grantor or settlor) for the benefit of another (the beneficiary). A third person or the grantor manages the trust. This person is known as the trustee. (Also see Trustee)

**Trust agreement or declaration** - The legal document that sets up a living trust. Testamentary trusts are set up in a will.

**Trustee** The person or institution that manages the property put in trust.

## U

**UBAL** Acronym for operating with an Unlawful Blood Alcohol Level; the offense of operating a vehicle with 0.10 percent or more blood alcohol. In contrast to OUIL, it is irrelevant whether the driver is affected by the alcohol. See MCL 257.625. (Also see OUIL)

**UDAA** Acronym for the offense of Unlawfully Driving Away an Automobile; a felony punishable by up to five years in prison; car theft. See MCL 750.413.

**Unlawful imprisonment** A felony punishable by up to 15 years in prison and/or a \$20,000 fine; the offense of knowingly restraining a person under any of the following circumstances: 1) using a weapon or dangerous instrument to restrain the person; 2) secretly confining the person; 3) restraining the person to facilitate the commission of another felony or to facilitate flight after the commission of another felony. See MCL 750.349b. (Also see Kidnapping)

**Uttering and publishing** A felony punishable by up to 14 years in prison; the offense of knowingly presenting a false, altered, forged, counterfeited or fictitious instrument, such as a check or money order, with an intent to defraud or injure another. See MCL 750.249.

## V

**Vacate** To set aside, as when a court vacates an earlier court order.

**Venue** The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case. A “change of venue” — the transfer of a case to another county or court — may take place because the case should have been filed there originally, for the convenience of witnesses or parties, or because a fair trial cannot be had in the original location.

**Verdict** Formal decision made by a jury, read before a court, and accepted by the judge.

**Voir dire** Literally, “to speak the truth.” A preliminary examination of prospective jurors or witnesses under oath to determine their competence or suitability. The process generally involves the judge and attorneys asking potential jurors about their experiences and beliefs to determine whether they can perform their duties in an impartial manner.

## W

**Wade hearing** In criminal cases, a pre-trial hearing to test the fairness of a line-up. The issue is whether to admit or suppress an identification of an accused that resulted from the line-up. The hearing takes its name from a U.S. Supreme Court case, *United States v Wade*, 388 U.S. 218 (1967).

**Waive** To voluntarily give up a right or a claim, e.g., as when a defendant waives the right to remain silent during a police interview.

**Waiver of jurisdiction** A process by which a juvenile may be processed or convicted as an adult.

**Walker hearing** An evidentiary hearing on a defendant's motion to suppress the defendant's incriminating statement to police. The hearing focuses on the totality of the circumstances surrounding the statement, including whether it was voluntarily and intelligently made, whether police advised the defendant of his/her Miranda rights and the defendant waived those rights, etc. Based on *People v Walker*, 374 Mich 331 (1965).

**Warrant** Court order authorizing an arrest or search.

**Warrantless arrest** In some situations, a police officer may arrest a person without a warrant, as when the officer witnesses a crime, has probable cause to believe that domestic violence or a PPO violation has occurred, etc. See MCL 764.15.

**Warranty** A written or oral statement by one party to a contract that a fact is or will be as it is expressly declared or promised to be.

**Weight of evidence** The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

**Wharton's Rule** Provides that an agreement by two persons to commit a crime cannot be prosecuted as a conspiracy when the underlying crime requires the participation of the same two persons (e.g., dueling, bigamy, incest). If the offense could logically be committed by a single person, or the number of alleged conspirators exceeds the minimum number logically necessary to complete the substantive offense, Wharton's Rule does not apply.

**Will** A legal declaration that disposes of a person's property when that person dies.

**With prejudice** As applied to a judgment of dismissal, the term refers to the adjudication of a case on its merits, barring the right to bring or maintain another action on the same claim.

**Without prejudice** A dismissal "without prejudice" allows a new suit to be brought on the same cause of action. In criminal matters, a dismissal without prejudice allows a prosecutor to re-file the same charge arising from the same incident.

**Witness** One who testifies under oath as to what she or he has seen, heard or otherwise observed.

**Work release** In criminal cases, a probation program where the defendant is permitted to work while residing in jail. The defendant leaves jail on work days only for work hours, plus limited travel time.

**Writ** An order issued from a court requiring the performance of a specified act, or giving authority and commission to have it done.

## **Y**

**YTA** Acronym for Holmes Youthful Trainee Act. (See Holmes Youthful Trainee Act)

## **MCR 8.116 (D), Access to Court Proceedings.**

(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

(3) Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.

## **MCR 8.119 Court Records and Reports; Duties of Clerks**

**(E) Access to Records.** The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.

(1) Unless access to a file, a document, or information contained in a file or document is restricted by statute, court rule, or an order entered pursuant to subrule (F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (E)(2) and (E)(3).

(2) If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the reasonable cost of reproduction. If the clerk prefers, the requesting person may be permitted to make copies at personal expense under the direct supervision of the clerk. Except for copies of transcripts or as otherwise directed by statute or court rule, a standard fee may be established for providing copies of papers on file.

(3) A court is not required to create a new record, except to the extent required by furnishing copies of a file, paper, or record. A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (F).

(4) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to

(a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

(b) specify the reasonable cost of reproduction of records provided under subrule (E)(2); and

(c) specify the process for determining costs under subrule (E)(3).

### **(F) Sealed Records.**

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(2) In determining whether good cause has been shown, the court must consider,

(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

(b) the interest of the public.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) For purposes of this rule, “court records” includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court’s authority to issue protective orders pursuant to MCR 2.302(C).

(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

# **ADMINISTRATIVE ORDER NO.1989-1**

## **Film or Electronic Media Coverage of Court Proceedings**

The following guidelines shall apply to film or electronic media coverage of proceedings in Michigan courts:

### 1. Definitions.

(a) “Film or electronic media coverage” means any recording or broadcasting of court proceedings by the media using television, radio, photographic, or recording equipment.

(b) “Media” or “media agency” means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agency.

(c) “Judge” means the judge presiding over a proceeding in the trial court, the presiding judge of a panel in the Court of Appeals, or the Chief Justice of the Supreme Court.

### 2. Limitations.

(a) Film or electronic media coverage shall be allowed upon request in all court proceedings. Requests by representatives of media agencies for such coverage must be made in writing to the clerk of the particular court not less than three business days before the proceeding is scheduled to begin. A judge has the discretion to honor a request that does not comply with the requirements of this subsection. The court shall provide that the parties be notified of a request for film or electronic media coverage.

(b) A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding, made and articulated on the record in the exercise of discretion, that the fair administration of justice requires such action, or that rules established under this order or additional rules imposed by the judge have been violated. The judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses.

(c) Film or electronic media coverage of the jurors or the jury selection process shall not be permitted.

(d) A trial judge’s decision to terminate, suspend, limit, or exclude film or electronic media coverage is not appealable, by right or by leave.

### 3. Judicial Authority.

Nothing in these guidelines shall be construed as altering the authority of the Chief Justice, the Chief Judge of the Court of Appeals, trial court chief judges, or trial judges to control

proceedings in their courtrooms, and to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause.

#### 4. Equipment and Personnel.

Unless the judge orders otherwise, the following rules apply:

(a) Not more than two videotape or television cameras, operated by not more than one person each, shall be permitted in any courtroom.

(b) Not more than two still photographers, utilizing not more than two still cameras each with not more than two lenses for each camera, and related necessary equipment, shall be permitted in any courtroom.

(c) Not more than one audio system for radio and/or television recording purposes shall be permitted in any courtroom. If such an audio system is permanently in place in the courtroom, pickup shall be made from that system; if it is not, microphones and wires shall be placed as unobtrusively as possible.

(d) Media agency representatives shall make their own pooling arrangements without calling upon the court to mediate any dispute relating to those arrangements. In the absence of media agency agreement on procedures, personnel, and equipment, the judge shall not permit the use of film or electronic media coverage.

#### 5. Sound and Light Criteria.

(a) Only television, photographic, and audio equipment which does not produce distracting sound or light shall be utilized to cover judicial proceedings. Courtroom lighting shall be supplemented only if the judge grants permission.

(b) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed with a still camera.

(c) Media agency personnel must demonstrate in advance, to the satisfaction of the judge, that the equipment proposed for utilization will not detract from the proceedings.

#### 6. Location of Equipment and Personnel.

(a) Television camera equipment and attendant personnel shall be positioned in such locations in the courtroom as shall be designated by the judge. Audio and video tape recording and amplification equipment which is not a component of a camera or microphone shall be located in a designated area remote from the courtroom.

(b) Still camera photographers shall be positioned in such locations in the courtroom as shall be designated by the judge. Still camera photographers shall assume fixed positions within the designated areas and shall not move about in any way that would detract from the proceedings.

(c) Photographic or audio equipment may be placed in, moved about in, or removed from, the courtroom only during a recess. Camera film and lenses may be changed in the courtroom only during a recess.

(d) Representatives of the media agencies are invited to submit suggested equipment positions to the judge for consideration.

7. Conferences. There shall be no audio pickup, broadcast or video closeup of conferences between an attorney and client, between co-counsel, between counsel and the judge held at the bench at trial, or between judges in an appellate proceeding.

8. Conduct of Media Agency Personnel. Persons assigned by media agencies to operate within the courtroom shall dress and deport themselves in ways that will not detract from the proceedings.

9. Nonexclusivity. These guidelines shall not preclude coverage of any judicial proceeding by news reporters or other persons who are employing more traditional means, such as taking notes or drawing pictures.



## **ADMINISTRATIVE ORDER NO.1997-10**

### **Access to Judicial Branch Administrative Information**

On order of the Court, the following order is effective February 1, 1998. The Court invites public comment on ways in which the objectives of the policy expressed in this order -- an informed public and an accountable judicial branch -- might be achieved most effectively and efficiently, consistent with the exercise of the constitutional responsibilities of the judicial branch.

#### **(A) Scope, Coverage, and Definitions**

(1) This order does not apply to the adjudicative function of the judicial branch. It neither broadens nor restricts the availability of information relating to a court's adjudicative records.

(2) Solely as used in this order:

(a) "Adjudicative record" means any writing of any nature, and information in any form, that is filed with a court in connection with a matter to be adjudicated, and any writing prepared in the performance of an adjudicative function of the judicial branch.

(b) "Administrative function" means the nonfinancial, managerial work that a court does, outside the context of any particular case.

(c) "Administrative record" means a writing, other than a financial record or an employee record, prepared in the performance of an administrative function of the judicial branch.

(d) "Employee record" means information concerning an employee of the Supreme Court, State Court Administrative Office, Michigan Judicial Institute, and Board of Law Examiners.

(e) "Financial record" means the proposed budget, enacted budget, judicial salary information, and annual revenues and expenditures of a court.

(f) "Judge" means a justice of the Supreme Court or a judge of the Court of Appeals, circuit court, probate court, district court, or municipal court.

(g) "Person" means any individual or entity, except an individual incarcerated in a local, state, or federal correctional facility of any kind.

(h) "Supreme Court administrative agency" means the State Court Administrative Office, the Office of the Clerk, the Office of the Chief Justice, the Supreme Court Finance Department, and the Public Information Office.

**(B) Access to Information Regarding Supreme Court Administrative, Financial, and Employee Records.**

(1) Upon a written request that describes an administrative record, an employee record, or a financial record sufficiently to enable the Supreme Court administrative agency to find the record, a person has a right to examine, copy, or receive copies of the record, except as provided in this order.

(2) Requests for an administrative or employee record of a Supreme Court administrative agency must be directed to the administrative agency or to the Public Information Office. Requests for a financial record must be directed to the Supreme Court Finance Department. An administrative record, employee record, or financial record must be available for examination during regular business hours.

(3) A Supreme Court administrative agency may make reasonable rules to protect its records and to prevent unreasonable interference with its functions.

(4) This order does not require the creation of a new administrative record, employee record, or financial record.

(5) A reasonable fee may be charged for providing a copy of an administrative record, employee record, or financial record. The fee must be limited to the actual marginal cost of providing the copy, including materials and the time required to find the record and delete any exempt material. A person requesting voluminous records may be required to submit a deposit representing no more than half the estimated fee.

(6) A copyrighted administrative record is a public record that may not be re-published without proper authorization.

(7) The following are exempt from disclosure:

(a) Personal information if public disclosure would be an unwarranted invasion of an individual's privacy. Such information includes, but is not limited to:

(i) The home address, home telephone number, social security account number, financial institution record, electronic transfer fund number, deferred compensation, savings bonds, W-2 and W-4 forms, and any court-enforced judgment of a judge or employee.

(ii) The benefit selection of a judge or employee.

(iii) Detail in a telephone bill, including the telephone number and name of the person or entity called.

(iv) Telephone logs and messages.

(v) Unemployment compensation records and worker's disability compensation records.

- (b) Information that would endanger the safety or well-being of an individual.
- (c) Information that, if disclosed, would undermine the discharge of a constitutional or statutory responsibility.
- (d) Records or information exempted from disclosure by a statutory or common law privilege.
- (e) An administrative record or financial record that is to a substantial degree advisory in nature and preliminary to a final administrative decision, rather than to a substantial degree factual in nature.
- (f) Investigative records compiled by the State Court Administrative Office pursuant to MCR 8.113.
- (g) An administrative record or financial record relating to recommendations for appointments to court positions, court-sponsored committees, or evaluation of persons for appointment to court positions or court-sponsored committees.
- (h) Trade secrets, bids, or other commercial information if public disclosure would give or deny a commercial benefit to an individual or commercial entity.
- (i) Examination materials that would affect the integrity of a testing process.
- (j) Material exempt from disclosure under MCL 15.243; MSA 4.1801(13).
- (k) The identity of judges assigned to or participating in the preparation of a written decision or opinion.
- (l) Correspondence between individuals and judges. Such correspondence may be made accessible to the public by the sender or the recipient, unless the subject matter of the correspondence is otherwise protected from disclosure.
- (m) Reports filed pursuant to MCR 8.110(C)(5), and information compiled by the Supreme Court exclusively for purposes of evaluating judicial and court performance, pursuant to MCL 600.238; MSA 27A.238. Such information shall be made accessible to the public as directed by separate administrative order.
- (n) An administrative record, employee record, or financial record in draft form.
- (o) The work product of an attorney or law clerk employed by or representing the judicial branch in the regular course of business or representation of the judicial branch.
- (p) Correspondence with the Judicial Tenure Commission regarding any judge or judicial officer, or materials received from the Judicial Tenure Commission regarding any judge or judicial officer.

(q) Correspondence with the Attorney Grievance Commission or Attorney Discipline Board regarding any attorney, judge, or judicial officer, or materials received from the Attorney Grievance Commission or Attorney Discipline Board regarding any attorney, judge, or judicial officer.

(8) A request for a record may be denied if the custodian of the record determines that

(a) compliance with the request would create an undue financial burden on court operations because of the amount of equipment, materials, staff time, or other resources required to satisfy the request.

(b) compliance with the request would substantially interfere with the constitutionally or statutorily mandated functions of the court.

(c) the request is made for the purpose of harassing or substantially interfering with the routine operations of the court.

(d) the request is submitted within one month following the date of the denial of a substantially identical request by the same requester, denied under substantially identical rules and circumstances.

(9) A person's request to examine, copy, or receive copies of an administrative record, employee record, or financial record must be granted, granted in part and denied in part, or denied, as promptly as practicable. A request must include sufficient information to reasonably identify what is being sought. The person requesting the information shall not be required to have detailed information about the court's filing system or procedures to submit a request. A Supreme Court administrative agency may require that a request be made in writing if the request is complex or involves a large number of records. Upon request, a partial or complete denial must be accompanied by a written explanation. A partial or complete denial is not subject to an appeal.

(10) Employee records are not open to public access, except for the following information:

(a) The full name of the employee.

(b) The date of employment.

(c) The current and previous job titles and descriptions within the judicial branch, and effective dates of employment for previous employment within the judicial branch.

(d) The name, location, and telephone number of the court or agency of the employee.

(e) The name of the employee's current supervisor.

(f) Any information authorized by the employee to be released to the public or to a named individual, unless otherwise prohibited by law.

(g)The current salary of the employee. A request for salary information pursuant to this order must be in writing. The individual who provides the information must immediately notify the employee that a request for salary information has been made, and that the information has been provided.

(11)The design and operation of all future automated record management systems must incorporate processing features and procedures that maximize the availability of administrative records or financial records maintained electronically. Automated systems development policies must require the identification and segregation of confidential data elements from database sections that are accessible to the public. Whenever feasible, any major enhancements or upgrades to existing systems are to include modifications that segregate confidential information from publicly accessed databases.

# **ADMINISTRATIVE ORDER NO.1997-11**

## **Access to Judicial Branch Administrative Decision Making**

On order of the Court, the following order is effective February 1, 1998. The Court invites public comment on ways in which the objectives of the policy expressed in this order|an informed public and an accountable judicial branch|might be achieved most effectively and efficiently, consistent with the exercise of the constitutional responsibilities of the judicial branch.

### **(A) Scope, Coverage, and Definitions.**

This order neither broadens nor restricts the extent to which court proceedings are conducted in public.

### **(B) Supreme Court Administrative Public Hearings.**

(1)At least three times annually the Supreme Court will conduct an administrative public hearing on rules or administrative orders significantly affecting the delivery of justice proposed for adoption or amendment. An agenda of an administrative public hearing will be published not less than 28 days before the hearing in the manner most likely to come to the attention of interested persons. Public notice of any amendments to the agenda after publication will be made in the most effective manner practicable under the circumstances. Persons who notify the clerk of the Supreme Court in writing not less than 7 days before the hearing of their desire to address the Court at the hearing will be afforded the opportunity to do so.

(2)Unless immediate action is required, the adoption or amendment of rules or administrative orders that will significantly affect the administration of justice will be preceded by an administrative public hearing under subsection (1). If no public hearing has been held before a rule is adopted or amended, the matter will be placed on the agenda of the next public hearing, at which time the Supreme Court will hear public comment regarding whether the rule should be retained or amended.

(3)The adoption or amendment of a court rule or administrative order by the Supreme Court shall be by a recorded vote, and shall be available upon request from the Supreme Court Clerk.

### **(C)State Court Administrative Office; Administrative Public Hearings.**

(1)Task forces, commissions, and working groups created at the direction of the Supreme Court and convened to advise the State Court Administrative Office and the Michigan Supreme Court on matters significantly affecting the delivery of justice must provide an opportunity for public attendance at one or more meetings.

(2)Notice of a meeting that is open to the public pursuant to this order must be provided in a manner reasonably likely to come to the attention of interested persons.

(3)A meeting held pursuant to this section must be held at a reasonably convenient time and in a handicap accessible setting.

(4)Persons interested in making a public comment at a meeting held pursuant to this section must be afforded the opportunity for public comment to the extent practicable. If the business of the meeting precludes the opportunity for public comment by any person wishing to comment, the person must be allowed to speak at a subsequent meeting or, if no future meeting will be held, be given the opportunity to have a written public comment recorded in the minutes and distributed to members of the task force, commission, or working group.

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiffs,

vs.

HON. TIMOTHY M. KENNY  
Case No.

Name,

Defendant,

\_\_\_\_\_ /

**ORDER**

At a session of this Court  
Held on  
In the Frank Murphy Hall of Justice  
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny  
The Third Judicial Circuit Court of Michigan

It is ORDERED, The following TV/Radio rotation will take place:  
Prior to Week #1 (mm/dd/yyyy) WDIV-TV pool set-up,

- **Week #1** (mm/dd/yyyy) WDIV-TV pool rotation, WXYZ-TV pool set-up (after court's conclusion at the end of the week),
- **Week #2** (mm/dd/yyyy) WXYZ-TV pool rotation, WJBK-TV pool set-up (after court's conclusion at the end of the week),
- **Week #3** (mm/dd/yyyy) WJBK-TV pool rotation, WDIV-TV pool set-up (after court's conclusion at the end of the week).

Should the trial continue beyond week #3, the rotation will hence continue as described in this order, returning to WDIV, then WXYZ, then WJBK.

During deliberations the pool will remain in effect. Once a verdict has been read, the TV/radio pool will dissolve.

The TV/radio pool agrees to provide the following video/audio pool feed free, and clear to any and all broadcast outlets, on a first come, first serve basis for up to (16) media outlets.

- (1) The pool will provide (1) one TV camera (with audio), positioned facing the Judge's bench to right of the jury pool. At no time during the trial or jury deliberations will any members of the jury be videotaped, questioned, or have audio contact with the pool camera. This camera will be mounted on a tripod and manned by a member of the pool.
- (2) The pool will provide (3) wired microphones to an audio mixer, which will capture audio from the Judge, the defendant/prosecution table, and the witness stand.
- (3) From the inside courtroom pool camera and audio mixer, a cable will run around the courtroom out into the hallway and over to courtroom 610, which will serve as the TV/radio pool gallery. From this point, all TV/radio outlets will be able to plug into the separate pool feeds. Pool Feed #1 will contain video/audio from the pool camera.
- (4) No cell phones/blackberries, 2-way pager devices will be allowed inside the courtroom.
- (5) Computer laptops (quieted) will be allowed.
- (6) The court agrees to provide power for the pool TV camera and audio mixer. This power will come in the form of (1) independent 20 amp circuit, not to be shared.
- (7) Courtroom 610 will be reserved for members of the media, and any press conferences, statement will be made in this room. No hallway videotaping/audio recording will be permitted during the length of the trial.
- (8) Members of the media, by request will be permitted in the actual courtroom (courtroom 602) during the trial. The intent of the request is to provide the court clerk with an understanding of the court's seating limitations.
- (9) Members of the media will not be permitted in the building past the building's official close of business day, 4:30 PM ET. However, those remaining members of the TV pool will be allowed to remain in the court room #610 until 6:15 PM for the purposes of filing news coverage related to the trial.
- (10) Each participating pool member agrees to provide a camera, tripod, and cameraperson set-up and ready in the courtroom by 8:30 AM each morning of their pool participation. The assigned cameraperson will be knowledgeable and have an understanding of the pool set-up.

Based upon discussions internally among pool members, the following pool members will provide equipment for the duration of the trial.

- WDIV-TV will provide a 16 channel video/audio multi-box
- WXYZ-TV will provide a 4-channel audio mixer and wired microphones
- WJBK-TV will provide cabling (2-video & 2-audio)

Each pool member outlet will provide its own camera, cameraperson, and tripod.

- (11) Leaving/returning during a witness' testimony: If you must leave, you will be allowed to return during a break. If you arrive after court has begun, you will be allowed in during a break.
- (12) Still photography will be allowed with the use of a camera with a silent shutter.
- (13) If your news station is not represented during any part of the trial, a summary of the day's events will not be provided by the court's staff. You will need to contact either the defense attorney or the prosecuting attorney.
- (14) Request and Notice for Film and Electronic Media Coverage of Court Proceeding forms should be faxed by \_\_\_\_\_ PM, one day prior to your coverage, to fax #\_\_\_\_\_. *(copy attached)*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. Timothy M. Kenny  
The Third Judicial Circuit Court of Michigan