

## **22. Appeals**

Contract Attachment: Appeal Process (CMH)

State Policy: Appeal Process (LPH)

Template for Statement of Acceptance (LPH)

Notice of Right to Appeal following initial investigation

Notice of Completion of Action - different action

Notice of Completion of Action – same action

Acknowledgement of Rights Appeal Request after initial review

Notice of Appeal Committee Decision - Uphold

Notice of Appeal Decision - Reinvestigate

Notice of Appeal Decision – External Investigation

Notice of Appeal Decision – Remedial Action

Notice Following Reinvestigation – remains unsubstantiated

Notice Following Reinvestigation – changed to substantiated

Technicalities of Step 2 Appeal

Notice Following Reinvestigation (from Step 2 return)



## **TECHNICAL REQUIREMENT RECIPIENT RIGHTS APPEAL PROCESS**

### **I. Background**

Chapter 7A of the Michigan Mental Health Code, PA 258 of 1974 as amended, establishes the right of public mental health service recipients, or someone on their behalf, to file complaints alleging a violation of rights guaranteed by Chapter 7 of the Code. Chapter 7A also assures that an appeal can be made regarding the findings, remedial action, or timeliness of the complaint investigation. The purpose of this technical requirement is to establish a process for handling these appeals to assure all recipients, and those acting on their behalf, receive procedural due process, including its essential elements of notice and opportunity to be heard by a fair and impartial decision-making entity.

### **II. Definitions**

- A. Appeals Committee:  
A committee appointed by the Michigan Department of Health and Human Services (MDHHS) Director, by the board of a Community Mental Health Services program (CMHSP), or by the governing board of a licensed private psychiatric hospital/unit (LPH/U).
- B. Appellant: The complainant, the recipient (if someone filed on the recipient's behalf), or the legal guardian of the recipient (if any), who seeks review by an appeals committee or the MDHHS pursuant to sections 330.1784 and 330.1786 of the Code.
- C. Complainant: The individual who files a recipient rights complaint.
- D. Grounds for appeal:
  - i. The investigative findings of the office are not consistent with the facts or with law, rules, policies or guidelines
  - ii. The action taken, or plan of action proposed, by the respondent does not provide an adequate remedy
  - iii. An investigation was not initiated or completed on a timely basis
- E. Intervention: To act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the remedy, if applicable, is clear, easily obtainable within 30 days, and does not involve statutorily required disciplinary action. Interventions, at a minimum, must contain the following elements: the specific action taken by ORR, on behalf of the complainant, to resolve the complaint, identification of the code protected right, a statement indicating whether the allegation of a rights violation is substantiated or not substantiated. Additionally, if the allegation is substantiated, the specific remedial action taken is identified.

- F. Investigation: A detailed inquiry into and systematic examination of an allegation raised in a rights complaint, as outlined in 330.1778 of PA 258 of 1974
- G. Legal Guardian: A judicially appointed guardian or parent who has legal custody of a minor recipient.
- H. Office: Any of the following:
  - i. With respect to a rights complaint involving services provided directly by the MDHHS, the MDHHS Office of Recipient Rights created under section 330.1754 of the Code.
  - ii. With respect to a rights complaint involving services provided directly or under contract to a community mental health services program, the Office of Recipient Rights created by the community mental health services program under section 330.1755 of the Code.
  - iii. With respect to a rights complaint involving services provided directly or under contract to a licensed private psychiatric hospital/unit, the Office of Recipient Rights created by the licensed hospital under section 330.1755 of the Code.
- I. Respondent: The service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.
- J. Responsible Mental Health Agency (RMHA): The hospital, center, or community mental health services program that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

### **III. Procedure – Local Appeals Committee**

#### **A. Jurisdiction**

An appeal shall be reviewed by the committee designated by the governing body. The appeals committee of a CMHSP shall have jurisdiction over their recipients placed for treatment in an LPH/U. For non-CMHSP recipients, the LPH/U, may appoint its own Appeals Committee in compliance with section 330.1774(4)(a) of the Code or, by agreement with MDHHS, designate the MDHHS Appeals Committee to hear appeals against the LPH/U under section 330.1774(4)(b) of the Code.

#### **B. Training**

The Office of Recipient Rights with the MDHHS, a CMHSP, or an LPH/U shall assure that training is provided to the Appeals Committee, as required by Section 330.1755(2)(a) of the Code. Topics shall include the following:

- Categories of rights violations
- The complaint investigation process
- Types and weighing of evidence
- Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred
- Statutory definition of “appropriate remedial action”
- Agency disciplinary guidelines
- Agency policy/procedures on the appeal process and functions of the Appeals Committee

C. Notice of Right to Appeal

Every complainant, recipient (if different than the complainant) and the recipient’s legal guardian (if one has been appointed) shall be informed in the Summary Report issued by the executive director of a CMHSP of the right to appeal to the designated Appeals Committee. Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 330.1784(2) of the Mental Health Code, the time frame for submission of the appeal, information on advocacy organizations that may assist with filing the written appeal, and, in the absence of assistance from an advocacy organization, an offer of assistance by the Office of Recipient Rights.

D. Notification when the Summary Report Contains a Plan of Action

A Summary Report which contains a plan of action shall indicate a date the action is to be completed. The MDHHS facility director, CMHSP executive director or director of the LPH/U shall assure that the complainant, recipient (if different than the complainant), the recipient’s legal guardian, (if any), and the office are provided written notice that the action described in the plan has been completed. If the action taken differs from the original plan, a description of that action shall be provided.

E. Time Frame

Not later than 45 calendar days after receipt of the Summary Report, or 45 days from the mailing of a notice regarding the action that was taken when the Summary Report provided only a plan of action, the appellant may file a written appeal with the Appeals Committee having jurisdiction to act upon it. The only ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.

F. Preliminary Review

Within 5 business days of receipt of the request for appeal, members of the appeals committee shall review the request for appeal to determine if the appellant has standing to appeal and if the appeal request meets the timeframe and grounds. This review may be conducted by the full Committee, or by a subcommittee consisting of at least two committee members designated by the full Committee to fulfill this responsibility. The Committee shall maintain a log of all appeals received and the disposition of each.

G. Notice of Preliminary Review Decision

Within 7 business days of receipt of the request for appeal, written notice that the appeal has been accepted, or rejected, shall be provided to the appellant and a copy of the appeal shall be provided to the respondent, the RMHA, and the Rights Office. A notice of rejection shall describe the reason for not accepting the request for appeal.

H. Committee Appeal Review

No later than 30 calendar days after receipt of a written appeal the Appeals Committee shall meet in closed session to review the facts as stated in all complaint investigation documents in light of the reason for appeal. The Committee shall not consider allegations that were not part of the original complaint, but shall inform appellant of his/her right to file a complaint with the office. Upon completion of their review, the Appeals Committee shall do one of the following:

- i. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent; OR
- ii. If the appeal concerns the investigative findings of the office, either:
  - a. Return the investigation to the office and direct that it be reopened or reinvestigated, or
  - b. Recommend that the board (CMHSP) or governing body (LPH/U) request an external investigation by the state Office of Recipient Rights.
- iii. If the appeal concerns the action taken, directs that the respondent take additional, or different, action to remedy the violation. The Appeals Committee shall base its determination upon any or all of the following as required by Sec 1780 of the MHC.
  - a. Action taken or proposed did not correct or remedy the rights violation.
  - b. Action taken or proposed was/will not be taken in a timely manner.
  - c. Action taken or proposed did not/will not prevent a future recurrence of the violation.

Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the RMHA, if different than the respondent and the office.

- iv. If the appeal concerns the timeliness of the investigation and the Committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the MDHHS-ORR director, executive director of the CMHSP or director of the LPH/U address the root cause of the lack of timeliness with their Rights Advisor.

I. Recusal

Any member of an Appeals Committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal.

J. Decision

The Appeals Committee shall document its decision in writing within 10 working days following the decision and shall provide copies of such to the respondent, appellant, recipient (if different than appellant), the recipient's legal guardian (if any), the RMHA and the office. Documentation shall include justification for the decision made by the Committee.

**IV. Subsequent Action**

- A. If the Appeals Committee directs that the office reopen or reinvestigate the complaint, the office shall submit another investigative report in compliance with section 330.1778(5) within 45 calendar days of receipt of the written decision of the Committee to the CMHSP executive director. The 45 calendar day time frame may be extended at the discretion of the Appeals Committee upon a showing of good cause by the office. At no time shall the time frame exceed 90 days.
- B. Within 10 business days of receipt of the reinvestigate report, the executive director of the CMHSP shall issue new Summary Report in compliance with section 330.1782. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the Appeals Committee. If the Summary Report indicates the decision in the case remains unsubstantiated, the Summary Report shall contain information regarding the appellant's right to further appeal, the time frame for the appeal and the ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or, in the absence of an advocacy organization, offer the assistance of the office.
- C. THE COMMITTEE SHOULD ONLY RECEIVE THE SUMMARY REPORT AS INDICATED ABOVE TO ASSURE THE CMH OR LPH FOLLOWED THE REQUIREMENTS OF THE AGEED-TO POLICY. FILE THE SUMMARY IN THE APPEAL FILE: OMIT THIS FOLLOWING: If, upon review, the Committee feels that the reinvestigated results in the Report of Investigative Findings is still inadequate, the Committee shall inform the appellant of the ability to further appeal to Level 2.
- D. If the reinvestigation results in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, the appellant may file an appeal on such grounds with the local Appeals Committee. The Summary Report shall inform the appellant of this right as well as provide further information as stated in II C above
- E. If the Appeals Committee directs that the respondent take additional or different action, that direction shall be based on the fact that the action taken was not in compliance with section 330.1780 of the Code.

- F. Within 30 calendar days of receipt of the determination from the Appeals Committee, respondent shall provide written notice to the Appeals Committee that the action has been taken or justification as to why it was not taken. The written notice shall also be sent to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the RMHA if different than the respondent, and the office.
- G. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to be inadequate to remedy the violation, the appellant shall be informed by the Appeals Committee of his/her right to file a recipient rights complaint against the RMHA, i.e., MDHHS facility director, executive director of a CMHSP or the director of an LPH/U for violation of section 330.1754(3)(c) or 330.1755(3)(b) of the Code.
- H. If the Appeals Committee recommends that the board or governing body of the CMHSP, request an external investigation by MDHHS-Office of Recipient Rights, the Board of Directors may make the request to MDHHS-ORR, in writing, within 5 business days of receipt of the request from the Appeals Committee.
  - i. Within 10 business days of receipt of the investigative report from MDHHS-ORR, the executive director of the CMHSP, or the director of the LPH/U, shall issue a Summary Report in compliance with section 330.1782. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the Appeals Committee.
  - ii. The complainant, recipient if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the Summary Report issued by the executive director of a CMHSP or the director of an LPH/U of the right to appeal to the MDHHS Appeals Committee. Notice shall include information on the grounds for appeal as stated in section 330.1784(2), the time frame for submission of the appeal, advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the Office of Recipient Rights in the absence of assistance from an advocacy organization.
  - iii. Not later than 45 calendar days after receipt of the Summary Report, the appellant may file a written appeal with the MDHHS Appeals Committee.

## V. Level 2 Appeals

### A. Grounds and Timeframe

An appeal to Level 2 Appeals may be made only if the original appeal was based on the question of whether the investigative findings of the office were inconsistent with the facts or with law, rules, policies or guidelines; and 1) only after a decision to uphold the findings



has been made on the original appeal by the local Appeals Committee or, 2) when upon reinvestigation by ORR at the request of the local appeals committee, the findings of the office remain unsubstantiated. Within 45 calendar days after receiving written notice of the decision of the Appeals Committee or the Summary Report from MDHHS-ORR the appellant may file a written appeal with Level 2 Appeals. The appeal shall be mailed to:

Level 2 ORR Appeal  
MDHHS-Appeals  
PO Box 30807  
Lansing, MI 48909  
FAX: (517) 241-7973

**B. Written Notice**

Upon receipt of the appeal, Level 2 Appeals shall give written notice of the receipt to the respondent, local Office of Recipient Rights holding the record of the complaint and the CMHSP Director.

**C. Review**

The respondent, local office holding the record of the complaint, and the CMHSP shall ensure that Level 2 Appeals has access to all necessary documentation and other evidence cited in the complaint and local appeal. Level 2 Appeals shall review the record generated by the local appeal. Level 2 Appeal shall not consider additional evidence or information that was not available during the local appeal.

**D. Level 2 Action**

- i. Within 30 calendar days after receiving the appeal, Level 2 Appeals shall review the appeal and do one of the following:
  - a. Uphold the findings of the office.
  - b. Affirm the decision of the Appeals Committee.
  - c. Return the matter to the director of the department's Office of Recipient Rights, the executive director of the CMHSP or the director of the LPH/U with instruction for additional investigation or consideration.
- ii. Level 2 Appeals shall provide copies of its action to the respondent, the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the board of a CMHSP, the governing body of the LPH/U and the local Office of Recipient Rights holding the record. If the appeal involves the findings of a MDHHS-ORR rights advisor, the MDHHS-ORR director shall also be provided copies of the action.
- iii. If Level 2 APPEALS upholds the findings of the office, notice shall be provided to the appellant of his/her legal right to seek redress through the circuit court.
- iv. If Level 2 APPEALS instructs that additional investigation be conducted, the director of MDHHS-ORR, the executive director of the CMHSP or the director

of the LPH/U shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of his/her receipt of the written notice from MDHHS-APPEALS. The 45 calendar day time frame may be extended at the department's discretion upon a showing of good cause by the MDHHS-ORR director, CMHSP executive director or LPH/U director. At no time shall the time frame exceed 90 calendar days. In cases of re-investigation by MDHHS-ORR, the director of that office shall be responsible for the submission of the investigative report to the appropriate MDHHS facility director.

E. Subsequent Action

- i. Within 10 business days of the receipt of the investigative report, the facility director, executive director of the CMHSP, or the director of the LPH/U shall issue a Summary Report in compliance with section 330.1782 of the Code to the department, appellant, recipient if different than appellant and the recipient's legal representative, if any.
- ii. If the findings of the additional investigation remain the same as those appealed, the department shall inform appellant, recipient (if different than appellant) and the recipient's legal guardian, if any, in writing of the right to seek redress through the circuit court. Copies of this notice will be provided to the:
  - a. MDHHS Bureau of State Hospital and Behavioral Administrative Services (if the investigation was conducted by staff of the MDHHS-ORR)
  - b. MDHHS Bureau of Community Based Services (if the investigation was conducted by a CMHSP)
  - c. Michigan Department of Licensing & Regulatory Affairs, Bureau of Community and Health Systems (if the investigation was conducted by an LPH/U).

If the additional investigation results in the substantiation of previously unsubstantiated violation, but the appellant disagrees with the adequacy of the action taken, or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the local Appeals Committee.

## PURPOSE

This policy establishes a process for the Michigan Department of Health and Human Services (MDHHS) when handling and reviewing appeals regarding the findings, remedial action, or timeliness of the complaint investigation at state operated facilities, or licensed private hospitals (LPH) which have requested, under MHC 330.1774(b)(4), to use the MDHHS appeals committee.

## DEFINITIONS

### **Appeals committee**

Committee appointed by the MDHHS director to hear appeals brought by or on behalf of recipients in MDHHS hospitals/centers or, by agreement with the department, appeals brought by or on behalf of recipients in licensed hospitals.

### **Appellant**

Complainant or, if different than the complainant, the recipient or his/her legal guardian, if any, who seeks review by the appeals committee or the MDHHS pursuant to sections 784 and 786 of the Mental Health Code.

### **Code**

Mental Health Code (PA 258 of 1974).

### **Complainant**

The individual who files a recipient rights complaint.

### **Grounds for appeal:**

- The investigative findings of the office are not consistent with the facts or with law, rules, policies or guidelines.
- The action taken, or plan of action proposed by the respondent does not provide an adequate remedy.
- An investigation was not initiated or completed on a timely basis.

### **Level Two Appeal**

The second level of appeal conducted by a member of the appeals section of the MDHHS operation and assistance legal division.

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**Facility**

A department operated psychiatric hospital or center and the Center for Forensic Psychiatry, or a licensed private hospital (LPH) as defined in 330.1700 (b) (1).

**Office**

Any of the following:

- With respect to a rights complaint involving services provided directly by the MDHHS, the MDHHS Office of Recipient Rights created under section 330.1754 of the code.
- With respect to a rights complaint involving services provided directly or under contract to a licensed private psychiatric hospital, the Office of Recipient Rights created by the licensed hospital under section 330.1755 of the Code.

**Respondent**

The service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

**Responsible Mental Health Agency (RMHA)**

The hospital, center, or licensed private hospital that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

**POLICY**

MDHHS assures all recipients, and those acting on their behalf, due process including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity, through the establishment of the recipient rights appeals committee and implementation of an appeals process in compliance with Chapter 7A of the Michigan Mental Health Code.

**STANDARDS**

1. The director of the department shall appoint an appeals committee to hear appeals. The committee shall consist of seven individuals, none of whom shall be employed by the department or a community mental health service program. The committee shall include at least three members of the

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state recipient rights advisory committee and two primary consumers.

2. In accordance with 330.1774 (3), licensed private hospitals may request that the MDHHS appeals committee hear appeals from recipients not covered by a community mental health authority by completing the document, Designation of the State Appeals Committee to Act in Lieu of the Hospital Appeals Committee; see Exhibit A.
3. The MDHHS Office of Recipient Rights shall assure that training is provided to the MDHHS-ORR appeals committee. Topics shall include the following:
  - Categories of rights violations.
  - The complaint investigation process.
  - Types and weighing of evidence.
  - Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred.
  - Statutory definition of appropriate remedial action.
  - MDHHS disciplinary guidelines.
  - MDHHS policy/procedures on the appeal process and functions of the appeals committee.
4. Every complainant, recipient if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the summary report issued by the facility director or by the LPH director of a facility that has agreed to use the committee, of the right to appeal. Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 330.1784(2) of the code, the time-frame for submission of the appeal, information on advocacy organizations that may assist with filing the appeal, or in the absence of an advocacy organization an offer of assistance by the office of recipient rights in filing an appeal. Send all appeals to the following address:

Appeals Coordinator  
MDHHS-ORR  
Garden Level

Elliott Larson Building  
Lansing, Michigan 48913

5. A summary report which contains a plan of action shall indicate a date the action is to be completed. The MDHHS facility director, or director of the LPH shall assure that the complainant, recipient (if different than the complainant), the recipient's legal guardian, (if any), and the office are provided written notice that the action described in the plan has been completed. If the action taken differs from the original plan, a description of that action shall be provided.
6. Not later than 45 calendar days after the mailing of the notice regarding the action taken when the summary report provided only a plan of action, the appellant may file a written appeal with the appeals committee having jurisdiction to act upon it. The only ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.
7. Any member of an appeals committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal.

## PROCEDURES

### Local Appeals Committee

#### 1. Preliminary Review

Within 5 business days of receipt of the request to appeal, members of the appeals committee shall review the request to appeal to determine if the appellant has standing to appeal and if the appeal meets the timeframe and grounds found in the definition. This review may be conducted by the full committee, or by a subcommittee consisting of at least two committee members designated by the full committee to fulfill this responsibility. The committee shall maintain a log of all appeals received and the disposition of each.

#### 2. Notice of Preliminary Review Decision

Within 7 business days of receipt of the appeal, written notice that the request for appeal has been accepted, or rejected, shall be provided to the appellant and a copy of the appeal request shall be provided to the respondent, the RMHA, and the rights office. A

notice of rejection shall describe the reason for not accepting the request for appeal.

### **3. Committee Appeal Review**

No later than 30 calendar days after receipt of a written appeal the appeals committee shall meet in closed session to review the facts as stated in all complaint investigation documents considering the reason for appeal. The committee shall not consider allegations that were not part of the original complaint but shall inform appellant of his/her right to file a complaint with the office. Upon completion of their review, the appeals committee shall do one of the following:

1. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent.
2. Return the investigation to the office and direct that it be reopened or reinvestigated.
3. Recommend that the or governing body (LPH) request an external investigation by the state Office of Recipient Rights.
4. If the appeal concerns the action taken, in addition to the above, the committee may direct that the respondent take additional, or different, action to remedy the violation. The appeals committee shall base its determination upon any or all of the following as required by Sec 1780 of the MHC:
  - Action taken or proposed did not correct or remedy the rights violation.
  - Action taken or proposed was/will not be taken in a timely manner.
  - Action taken or proposed did not/will not prevent a future recurrence of the violation.

Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the RMHA, if different than the respondent and the office.

If the appeal concerns the timeliness of the investigation and the committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the MDHHS-ORR director, or director of the LPH address the root cause of the lack of timeliness with their rights advisor.

#### **4. Decision**

The appeals committee shall document its decision in writing within 10 working days following the decision and shall provide copies of such to the respondent, appellant, recipient (if different than appellant), the recipient's legal guardian (if any), the RMHA and the office. Documentation shall include justification for the decision made by the committee.

#### **5. Subsequent Action**

If the appeals committee directs that the office reopens or reinvestigate the complaint, the office shall submit another investigative report in compliance with section 330.1778(5) within 45-calendar days of receipt of the written decision of the committee to the MDHHS facility directors or the director of the LPH. Extend the 45-calendar day time-frame at the discretion of the appeals committee upon a showing of good cause by the office. At no time shall the time-frame exceed 90 days.

Within 10-business days of receipt of the reinvestigate report, the MDHHS facility director or the director of the LPH shall issue new summary report in compliance with section 330.1782. The summary report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the appeals committee. If the summary report indicates that the decision in the case remains unsubstantiated, the summary report shall contain information regarding the appellant's right to further appeal, the time-frame for the appeal and the ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the office in filing the appeal in the absence of an advocacy organization.

If the reinvestigation results in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, the appellant may file an appeal on such grounds with the local appeals committee. The summary report shall inform the appellant of this right as well as provide further information found in this item.



If the appeals committee directs that the respondent takes additional or different action, that direction shall be based on the fact that the action taken was not in compliance with section 330.1780 of the code.

Within 30-calendar days of receipt of the determination from the appeals committee, respondent shall provide written notice to the appeals committee that the action has been taken or justification as to why it was not taken. Send the written notice to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the RMHA if different than the respondent, and the office.

If the action taken by the respondent is determined by the appeals committee and/or the appellant still to be inadequate to remedy the violation, the appellant shall be informed by the appeals committee of his/her right to file a recipient rights complaint against the RMHA, for example, MDHHS facility director, or the director of an LPH for violation of section 330.1754(3)(c) or 330.1755(3)(b) of the Code.

If the appeals committee recommends that the board or governing body of the LPH request an external investigation by MDHHS-Office of Recipient Rights, the board of directors may make the request to MDHHS-ORR, in writing, within 5-business days of receipt of the request from the appeals committee:

1. Within 10 business days of receipt of the investigative report from MDHHS-ORR the director of the LPH, shall issue a summary report in compliance with section 330.1782. Submit the summary report to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the appeals committee.
2. Inform the complainant, recipient if different than the complainant, and the recipient's legal guardian, (if any) in the summary report issued by or the director of an LPH of the right to appeal to the MDHHS appeals committee. Notice shall include information on the grounds for appeal as stated in section 330.1784(2), the time-frame for submission of the appeal, advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the Office of Recipient Rights in the absence of assistance from an advocacy organization.
3. Not later than 45-calendar days after receipt of the summary report, the appellant may file a written appeal with the MDHHS appeals committee.

## LEVEL 2 APPEALS

### A. Grounds and Timeframe

An appeal to level 2 appeals may be made only if the original appeal was based on the question of whether the investigative findings of the office were inconsistent with the facts or with law, rules, policies or guidelines when either:

4. A decision to uphold the findings has been made on the original appeal by the local appeals committee.
5. When upon reinvestigation by ORR at the request of the local appeals committee, the findings of the office remain unsubstantiated. Within 45-calendar days after receiving written notice of the decision of the appeals committee or the summary report from MDHHS-ORR the appellant may file a written appeal with level 2 appeals.

Mail the appeal to:

Level 2 Appeal  
Michigan Department of Health and Human Services  
PO Box 30807  
Lansing, MI 48909  
FAX: 517-241-7973

### B. Written Notice

Upon receipt of the appeal, level 2 appeals shall give written notice of the receipt to the respondent, local office of recipient rights holding the record of the complaint and the RMHA. If the appeal involves the findings of a rights advisor with the MDHHS Office of Recipient Rights, the MDHHS-ORR director shall also receive written notice of receipt of the appeal.

### C. Review

Level 2 appeals shall review the record generated by the local appeal. The respondent, local office holding the record of the complaint, MDHHS-ORR director, and the RMHA shall ensure that level 2 appeals has access to all necessary documentation and other evidence cited in the complaint and local appeal. It shall not consider additional evidence or information that was not available during the local appeal.

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**D. Action**

1. Within 30 calendar days after receiving the appeal, level 2 appeals shall review the appeal and do one of the following:
  - Uphold the findings of the office.
  - Affirm the decision of the appeals committee.
  - Return the matter to the director of the department's Office of Recipient Rights, or the director of the LPH with instruction for additional investigation or consideration.
2. Level 2 appeals shall provide copies of its action to the respondent, the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the governing body of the LPH and the local Office of Recipient Rights holding the record. If the appeal involves the findings of a MDHHS-ORR rights advisor, provide the MDHHS-ORR director with copies of the action.
3. If level 2 appeals uphold the findings of the office, provide notice to the appellant of his/her legal right to seek redress through the circuit court.
4. If level 2 appeals instruct that additional investigation be conducted, the director of MDHHS-ORR or the director of the LPH shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of his/her receipt of the written notice from MDHHS-APPEALS. Extend the 45-calendar day time-frame at the department's discretion upon a showing of good cause by the MDHHS-ORR director or LPH director. At no time shall the time-frame exceed 90 calendar days. In cases of re-investigation by MDHHS-ORR, the director of that office shall be responsible for the submission of the investigative report to the appropriate MDHHS facility director.

**E. Subsequent Action**

1. Within 10 business days of the receipt of the investigative report, the facility director, or the director of the LPH shall issue a summary report in compliance with section 330.1782 of the code to the department, appellant, recipient if different than appellant and the recipient's legal representative, if any.
2. If the findings of the additional investigation remain the same as those appealed, the department shall inform appellant, recipient (if different than appellant) and the recipient's legal

guardian, if any, in writing of the right to seek redress through the circuit court. Provide copies of this notice to the:

- MDHHS Bureau of State Hospital and Behavioral Administrative Services (if the investigation was conducted by staff of the MDHHS-ORR).
- Michigan Department of Licensing & Regulatory Affairs, Bureau of Community and Health Systems (if the investigation was conducted by an LPH).

If the additional investigation results in the substantiation of previously unsubstantiated violation, but the appellant disagrees with the adequacy of the action taken, or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the local appeals committee.

## REFERENCES

- Michigan Mental Health Code, MCL 330.1752.
- Michigan Mental Health Code, MCL 330.1772 – MCL 330.1788.

## CONTACT

For additional information concerning this policy, contact the director of the Office of Recipient Rights at 517-241-2319.



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

DESIGNATION OF STATE APPEALS COMMITTEE TO  
ACT IN LIEU OF HOSPITAL APPEALS COMMITTEE

I, \_\_\_\_\_, request that the Michigan Department of Health and Human Services Appeals Committee act as the Appeals Committee for \_\_\_\_\_, as stated in §330.1774(4) (b) of the Michigan Mental Health Code.

\_\_\_\_\_ agrees to accept the complete jurisdiction of the Department of Health and Human Services Appeals Committee, to abide by its decisions and directives, and to follow the procedural guidelines set forth in the Office of Recipient Rights Appeal Process Policy (APF 133).

The term of this agreement is 5 years from the date of signing. \_\_\_\_\_ reserves the right to withdraw this designation at any time, by providing written or electronic notice to the Department of Health and Human Services, Office of Recipient Rights. Termination of this agreement shall not apply to any appeals that have been submitted to the MDHHS Appeals Committee prior to the date of notice of termination.

\_\_\_\_\_  
Hospital Director

\_\_\_\_\_  
Date

Please send this document to:

Appeals Coordinator  
Office of Recipient Rights  
Elliott Larson Building, Garden Level  
Lansing, MI 48933

FAX 517-335-0135

Email: satterleek@michigan.gov



## NOTICE OF YOUR RIGHT TO APPEAL

Insert Date

RE: Recipient Rights Complaint # (Insert complaint #)

Insert name &  
address  
address

Dear Ms/Mr \_\_\_\_\_,

This letter is to inform you that the ORR has completed the investigation, following your rights complaint (the complaint filed on your behalf) with the \_\_\_\_\_ (Agency) office of recipient rights and submitted the investigative report to me. A preponderance of evidence was found (not found) to substantiate a violation of recipient rights. Please find attached a Summary Report of the Investigation.

The Michigan Health Code states that you may appeal the information presented in this Summary Report if you disagree with them for one of the following reasons:

1. You feel that the findings or conclusion of the rights office are not consistent with the facts, or with law, rules, policies or guidelines.
2. You feel that the action taken, or the action that is proposed, does not provide an adequate solution.
3. The investigation did not begin, or was not completed, on a timely basis. (The Rights Office has 90 days to complete an investigation)

Your appeal must be in writing and received no later than 45 days from the day you receive this report. Your written request for appeal should be sent to: (YOUR Appeals committee info here)  
**or**

MDHHS - ORR Appeals Committee  
c/o Appeal Coordinator  
320 South Walnut  
Elliott Larson Building, Garden Level  
Lansing, MI 48933

If the summary report mandates action that has not yet been taken, you will receive notification when that action is completed. If the action taken is different than the action in the summary report, the 45 day appeal period will begin at the time you receive the action notice; at that time you may appeal only if you believe that the action taken does not provide an adequate solution.

**ASSISTANCE**

*If you need assistance in writing your appeal request, there are several advocacy organizations to assist you:*

- *Alliance on Mental Illness (AMI) Telephone: (800) 331-4264 (State of Michigan)*
- *ARC of Michigan Telephone (800) 292-7851*
- *Association for Children’s Mental Health (ACMH) Telephone: (800) 782-0883*
- *Disability Rights of MI (formerly MPAS) Telephone: (800) 288-5923*
- *Michigan Disability Rights Coalition Telephone: (800) 760-4600*

*\*\*For hearing impaired access through the Michigan Relay Center call (800) 649-3777*

*You may also request assistance with your appeal from the local rights office at \_\_\_\_\_*

Sincerely,

\_\_\_\_\_, Executive Director or Hospital Director  
Agency...

Attachment: Investigative Summary Report  
CC: complainant/office of recipient rights



Completion of action (when different)

**NOTICE OF COMPLETION OF ACTION**

Date: \_\_\_\_\_

To: \_\_\_\_\_, Complainant  
\_\_\_\_\_, Recipient  
\_\_\_\_\_, Guardian

Re: Addendum to Summary Report – Complaint # \_\_\_\_\_

This is an addendum to the summary report dated \_\_\_\_\_ that was provided to you on \_\_\_\_\_ in accordance with section 782 of the Michigan Mental Health Code.

As indicated in that report, the Recipient Rights Officer substantiated the following rights violation:

- Michigan Mental Health Code, Section 330. \_\_\_\_\_ (Name of right), against \_\_\_\_\_, staff at \_\_\_\_\_.

As indicated in that report, \_\_\_\_\_ submitted a response to recommendations made by the Office of Recipient Rights, which included corrective action that had not yet occurred at the time of the issuance of the summary report. Specifically, \_\_\_\_\_ (*indicated [from Summary]*)

The purpose of this addendum is to notify that on \_\_\_\_\_ following actions were taken:

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Because these actions differ from those planned, this notice includes information about your appeal rights:

You now have 45 days from the receipt of this letter to submit a written appeal if you believe the action taken does not provide adequate remedy to the substantiated rights violation.

Please send your request for appeal to: (CMH Appeals Committee) or

MDHHS - ORR Appeals Committee  
c/o Appeal Coordinator  
320 South Walnut  
Elliott Larson Building, Garden Level  
Lansing, MI 48933

**There are several advocacy organizations to assist you in filing your appeal:**

- *Alliance on Mental Illness (AMI)* Telephone: (800) 331-4264 (State of Michigan)
- *ARC of Michigan* Telephone (800) 292-7851
- *Association for Children's Mental Health (ACMH)* Telephone: (800) 782-0883
- *Disability Rights of MI (formerly MPAS)* Telephone: (800) 288-5923
- *Michigan Disability Rights Coalition* Telephone: (800) 760-4600

**\*\*For hearing impaired access through the Michigan Relay Center call (800) 649-3777**

Please feel free to contact my office or the Office of Recipient Rights at \_\_\_\_\_ if you have any questions about this addendum or need assistance with contacting an advocacy organization or with filing an appeal.

Sincerely,

\_\_\_\_\_  
Director

cc: RR File

## NOTICE OF COMPLETION OF ACTION

Date:

To:                   , Complainant  
                          , Recipient  
                          , Guardian

Re:   Addendum to Summary Report – Complaint #

This is an addendum to the summary report dated                   that was provided to you on  
in accordance with section 782 of the Michigan Mental Health Code.

As indicated in that report, the Recipient Rights Officer substantiated the following rights  
violation:

- Michigan Mental Health Code, Section                   –                   (Name of right), against  
                          , staff at                   .

As indicated in that report,                   submitted a response to recommendations made by  
the Office of Recipient Rights, which included corrective action that had not yet occurred  
at the time of the issuance of the summary report. Specifically,                   (*indicated [from  
Summary]*)

The purpose of this addendum is to notify that the action indicated above was  
completed on                   .

Please feel free to contact my office or the Office of Recipient Rights at                   if you  
have any questions about this addendum.

Sincerely,

Director

cc:   RR File

ACKNOWLEDGEMENT OF RIGHTS APPEAL REQUEST

TO: Name  
Address  
Address - 2

FROM: Appeals Coordinator

SUBJECT: Appeal Request

This notice is to inform you that the \_\_\_\_\_ Appeals Committee has received your request to appeal \_\_\_\_\_. After reviewing your request the committee has decided to:

- 1  Hear your request for appeal. The committee will meet no later than \_\_\_\_\_ to address the concerns you identified and make a decision on your request. Within 10 working days after the committee reaches its decision, it will provide you its decision in writing.
- or 2  Deny your request for an appeal. Your request is being denied because you failed to identify one of the following grounds for an appeal:
1. Investigative findings of the office are not consistent with the facts or with law, rules, policies, or guidelines.
  2. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
  3. An investigation was not initiated or completed on a timely basis.
- or 3  Deny your request for an appeal. Your request is being denied because you failed to request the appeal within the required timeframe. (45 days from receipt of the Summary Report).
- or 4  Deny your request for an appeal. Your request is being denied because you do not have standing to appeal. Only the recipient, complainant, parent of a minor or guardian may file an appeal.

CC: Respondent  
RMHA

*Date*  
*Name*  
*Address*

NOTICE of APPEAL COMMITTEE DECISION

The Recipient Rights Appeals Committee for \_\_\_\_\_ met on XX XX, 20XX. At that time, the committee reviewed your appeal of ORR Investigation # (insert case number).

The appeals committee has upheld the findings of the office and the action taken by the respondent in this case/investigation. No further action will be required regarding this investigation.

If you disagree with this decision, you can appeal to the MDHHS-APPEALS, Level 2 Appeal. Your appeal must be received within 45 days of your receiving this Appeal decision. You may only appeal to this level if you feel the investigative findings of the local office of recipient rights were not consistent with the facts, or with law, rules, policies or guidelines.

You may send your appeal to:

Level 2 Appeal  
DHHS-Appeals  
PO Box 30807  
Lansing, MI 48909

FAX: (517) 241-7973

If you should need assistance with filing the appeal or with contacting an advocacy organization you can contact the local rights office.

Sincerely,

\_\_\_\_\_  
Name  
Chair, Recipient Rights Appeals Committee

CC: Recipient if different than appellant  
Recipient's legal guardian, if any,  
RMHA  
ORR

Date  
Name  
Address

NOTICE of APPEAL COMMITTEE DECISION

The Recipient Rights Appeals Committee for \_\_\_\_\_ met on XX XX, 20XX. At that time, the committee reviewed your appeal of ORR Investigation # (insert case number).

The Recipient Rights Appeals Committee for XXXX met on XX/XX/20XX. Upon a full and thorough review of all the complaint investigation documents, the Appeals Committee has decided to:

Return the investigation to \_\_\_\_\_, Rights Officer at (Agency name), with request for reinvestigation so that the following issues may be addressed:

*Indicate the issues that were unclear, the missing witness's statements, or questions that might assist in clarifying the case. (I.E. How long was (recipient name) in restraint; were the nurse's notes reviewed; and was video surveillance available and reviewed?*

The Rights Advisor has 45 calendar days from the receipt of this decision to conduct a reinvestigation and submit a report to \_\_\_\_\_, Agency Director, who then has 10 days to provide you a Summary Report which will indicate the results of the reinvestigation. This report will also be sent to the recipient if different than the appellant, the recipient's guardian or parent of a minor recipient and the \_\_\_\_\_ Appeals Committee. Rights regarding appeal of the reinvestigation will be included in the new summary report.

Sincerely,

\_\_\_\_\_  
Name  
Chair, Recipient Rights Appeals Committee

CC: Recipient if different than appellant  
Recipient's legal guardian, if any,  
RMHA  
ORR

Date  
Name  
Address

NOTICE of APPEAL COMMITTEE DECISION

The Recipient Rights Appeals Committee for \_\_\_\_\_ met on XX XX, 20XX. At that time, the committee reviewed your appeal of ORR Investigation # (insert case number).

Upon a full and thorough review of all the complaint investigation documents, the Appeals Committee has decided to recommend that {LPH/CMH} Board request an external investigation by MDHHS Office of Recipient Rights for the following:

*If possible indicate the rationale for requesting an external investigation.*

Once the Board makes the request, MDHHS Office of Recipient Rights will conduct an investigation of the alleged violation and within 90 days send a “Report of Investigative Findings” to the Director of the Agency, who will in turn issue a “Summary Report” which will be sent to you. This Summary Report will include the same appeal rights that were included in the previous Summary Report.

Sincerely,

-----, Chair  
Recipient Rights Appeals Committee

CC: Recipient (if different than appellant)  
Recipient’s legal representative (if applicable)  
RMHA/Respondent  
Office of Recipient Rights

Date:

Appeal #:

Directors/Respondent Name:

Address

NOTICE of APPEAL COMMITTEE DECISION

The Recipient Rights Appeals Committee for \_\_\_\_\_ met on XX XX, 20XX. At that time, the committee reviewed your appeal of ORR Investigation # (insert case number).

Upon a full and thorough review of all the complaint investigation documents, the Appeals Committee has decided to Uphold the Investigative Findings of the office. However, the action insufficient to remediate the violation and prevent a recurrence. The committee recommends that the respondent take additional or different action to remedy the violation.

**{Name of Respondent}**, you are required to reconsider the action taken on this case with the persons named in the investigation state additional or different action to remedy the violation in keeping with MHC 330.1780.

Within 30 calendar days of the receipt of this decision, you must provide written notice to the Appeals Committee of the action that has been taken or justification as to why action was not taken. Copies of your letter shall be sent to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, and the rights office.

Sincerely,

\_\_\_\_\_  
Name  
Chair, Recipient Rights Appeals Committee

CC: Recipient if different than appellant  
Recipient's legal guardian, if any,  
RMHA  
ORR



**REINVESTIGATION  
NOTICE TO APPELLANT**

Insert Date

RE: Recipient Rights Complaint # (Insert complaint #)

Insert name &  
address  
address

Dear Ms/Mr \_\_\_\_\_,

Please find enclosed the summary report for recipient rights case returned by the appeals committee. The case was reinvestigated. The outcome is unchanged; it is not substantiated.

If you are not satisfied with the results of the investigation and continue to assert that the investigative findings of the local office of recipient rights are not consistent with the facts, or with law, rules, policies or guidelines, you may appeal to the Step 2 Appeal at the Department of Health and Human Services at the address below. Your appeal must be received within 45 days of your receiving this Summary Report.

Level 2 ORR Appeal  
DHHS-Appeals  
P.O. Box 30807  
Lansing, MI 48909

FAX: (517) 241-7973

There are several advocacy organizations to assist you:

- *Alliance on Mental Illness (AMI)* Telephone: (800) 331-4264 (State of Michigan)
- *ARC of Michigan* Telephone (800) 292-7851
- *Association for Children's Mental Health (ACMH)* Telephone: (800) 782-0883
- *Disability Rights of MI (formerly MPAS)* Telephone: (800) 288-5923
- *Michigan Disability Rights Coalition* Telephone: (800) 760-4600

\*\*For hearing impaired access through the Michigan Relay Center call (800) 649-3777

If you should need assistance with filing the appeal or with contacting an advocacy organization you can contact the local rights office.

cc: all appellants  
(originating appeals committee)

**REINVESTIGATION  
NOTICE TO APPELLANT**

Insert Date

RE: Recipient Rights Complaint # (Insert complaint #)

Insert name &  
address  
address

Dear Ms/Mr \_\_\_\_\_,

Please find enclosed the summary report for recipient rights case returned by the appeals committee. The reinvestigation of the allegation in this case resulted in its substantiation and action was taken to address the violation. This action is provided in the attached Summary Report. If you disagree with the adequacy of this action (or plan of action proposed), you may file an appeal on those grounds with the Appeals Committee at the address below. Your appeal must be received within 45 days of your receiving this Summary Report.

MDHHS - ORR Appeals Committee  
c/o Appeal Coordinator  
320 South Walnut  
Elliott Larson Building, Garden Level  
Lansing, MI 48933

There are several advocacy organizations to assist you:

- *Alliance on Mental Illness (AMI)* Telephone: (800) 331-4264 (State of Michigan)
- *ARC of Michigan* Telephone (800) 292-7851
- *Association for Children's Mental Health (ACMH)* Telephone: (800) 782-0883
- *Disability Rights of MI (formerly MPAS)* Telephone: (800) 288-5923
- *Michigan Disability Rights Coalition* Telephone: (800) 760-4600

\*\*For hearing impaired access through the Michigan Relay Center call (800) 649-3777

If you should need assistance with filing the appeal or with contacting an advocacy organization you can contact the local rights office.

cc: all appellants  
(originating appeals committee)

# Michigan Department of Community Health APPEAL Technicalities of the Step 2 Appeal

## **WHO CAN APPEAL?**

The appellant from Step 1 (or the local appeals committee)

## **WHAT ARE THE REASONS FOR AN APPEAL?**

The Findings of the Office are inconsistent with the facts, or with the law, rules, policies, or guidelines (and only after a decision on an appeal has been made by the appropriate Appeals Committee)

## **TIMEFRAME?**

Within 45 days after receiving written notice of the decision of the Appeals Committee to uphold the findings and the action of the local rights office, or the Summary Report in a case returned for reopening/reinvestigation or MDCH external investigation in which the allegation remained unsubstantiated, the appellant may file a written appeal with MDCH APPEALS - Step 2 Appeal

## **WHAT INFORMATION IS NECESSARY TO DECIDE AN APPEAL?**

The record generated by the local appeal. This should include:

- Letter of Appeal
- Original Complaint
- O.R.R. Report
- Summary Report
- Decision of the Office
- Additional Summary Report

## **WHAT ACTION CAN MDCH APPEALS (Step 2 Appeal) TAKE?**

- Affirm the Decision of the Appeals Committee
- Uphold Findings of the Office
- Return the matter to the director of the department's Office of Recipient Rights, the executive director of the CMHSP or the director of the LPH/U with instruction for additional investigation or consideration

## **WILL THE LOCAL COMMITTEE HAVE ANY FURTHER RESPONSIBILITY?**

If the additional investigation results in the substantiation of previously unsubstantiated violation but the appellant, recipient if different than the appellant and/or the recipient's legal guardian, if any, disagrees with the adequacy of the action taken or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the local Appeals Committee.

**REINVESTIGATION  
MDHHS APPEALS - Step 2 Appeal  
NOTICE TO APPELLANT**

①

Please find enclosed the summary report for recipient rights case (insert case number) returned for reinvestigation by the Step 2 Appeals Committee.

The reinvestigation of the allegation in this case resulted in the substantiation of the previously unsubstantiated allegation and, therefore, action was taken to address the violation. This action is provided in the attached Summary Report. If you disagree with the adequacy of this action (or plan of action proposed), you may file an appeal on those grounds with the Appeals Committee at the address below. Your appeal must be received within 45 days of your receiving this Summary Report.

(address of ORIGINAL LEVEL I APPEALS COMMITTEE)

IE: MDHHS - ORR Appeals Committee  
c/o Appeal Coordinator  
320 South Walnut  
Lewis Cass Building, Garden Level  
Lansing, MI 48933

There are several advocacy organizations to assist you:

- *Alliance on Mental Illness (AMI)* Telephone: (800) 331-4264 (State of Michigan)
- *ARC of Michigan* Telephone (800) 292-7851
- *Association for Children's Mental Health (ACMH)* Telephone: (800) 782-0883
- *Disability Rights of MI (formerly MPAS)* Telephone: (800) 288-5923
- *Michigan Disability Rights Coalition* Telephone: (800) 760-4600

\*\*For hearing impaired access through the Michigan Relay Center call (800) 649-3777

If you should need assistance with contacting an advocacy organization you can contact the local rights office.

\*\*\*\*\*OR\*\*\*\*\*

②

Please find enclosed the summary report for recipient rights case (insert case number) returned for reinvestigation by the Step 2 Appeals Committee. The allegation remains unsubstantiated.

You have exhausted your appeal rights under the Michigan Mental Health Code. If you wish, you have the right to seek action through the Circuit Court. For assistance, please consult with an attorney. If you need help locating an attorney, you may contact the State Bar of Michigan's Lawyer Referral and Information Service at (800) 968-0738.

cc: Appeals Committee  
ORR File