STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

P.O. Box 30736
Lansing, Michigan 48909-8236

BILL SCHUETTE
ATTORNEY GENERAL

February 17, 2012

Clerk of the Court
Michigan Court of Appeals
Hall of Justice
Lansing, Michigan 48933

Re: *In the Matter of: University of Michigan, et al*
Michigan Court of Appeals No. NEW FILING
Ingham County Circuit Court No. 12-135-AA
MERC No. R11 D-034

Dear Clerk:

Enclosed please find:

Michigan Attorney General's Application for Leave to Appeal (five copies);
Emergency Motion to Stay Administrative Proceedings and Motion for Immediate Consideration of Stay Motion and Emergency Application for Leave to Appeal Under MCR 7.211(C)(6) (five copies);
Order being appealed (five copies);
Statement Regarding Transcript (five copies);
Register of Actions (five copies); and
Proof of Service.

Also enclosed please find proof of electronic funds transfer in the amount of $675.00 ($375.00 application fee), $100 (standard motion fee) and $200 (immediate consideration motion fee).

Thank you.

Sincerely,

Dan V. Artaev
Assistant Attorney General
313.456.0080

DVA/lsa
Enclosures

cc: Ingham County Circuit Court (w/$25.00 appeal fee)
Ms Christine M Gerdes
Ms Suellyn Scarnecchia
Mr Patrick J Wright
Mr Mark H Cousens
Mr David H Fink
Mr Darryl Bressack

Department of Attorney General
Request for Electronic Payment to the Court of Appeals

Cover Sheet

Request #:	1830	Request Date:	02/17/2012	Amount:	$675.00

Payable For: application fee ($375); standard motion fee ($100); immediate consideration fee ($200)

AG Case #: | Secretary: Lisa S. Albro

Case Name: In the Matter of University of Michigan

Bar #: P74495 | Attorney: Dan V. Artaev

Division: Labor Division - Labor Unit

Submitted to Fiscal Management on 02/17/2012

PLEASE MAINTAIN WITH THE CASE FILE

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN THE MATTER OF:	Court of Appeals No. NEW FILING
UNIVERSITY OF MICHIGAN Appellee Public Employer,	Ingham County Circuit Court No. 12-135-AA
and	Michigan Employment Relations Commission No. R11 D-034
GRADUATE EMPLOYEES ORGANIZATION/AFT, Appellee Petitioner – Labor Organization,	**PURSUANT TO MCR 7.205(E)(1), AN EXPEDITED DECISION REQUESTED AS SOON AS POSSIBLE BECAUSE THE ADMINISTRATIVE PROCEEDING FOR WHICH THE ATTORNEY GENERAL SEEKS INTERVENTION IS ALREADY IN PROGRESS.**
and	
STUDENTS AGAINST GSRA UNIONIZATION, Proposed Intervenor,	
and	
MICHIGAN ATTORNEY GENERAL, APPELLANT Proposed Intervenor.	

EMERGENCY MOTION TO STAY ADMINISTRATIVE PROCEEDINGS, AND MOTION FOR IMMEDIATE CONSIDERATION OF STAY MOTION AND EMERGENCY APPLICATION FOR LEAVE TO APPEAL UNDER MCR 7.211(C)(6)

Appellant Proposed Intervenor, Michigan Attorney General Bill Schuette, moves for immediate consideration of this motion and the accompanying Application for Leave to Appeal and an order staying further administrative proceedings before Michigan Administrative Hearing System Administrative Law Judge Julia C. Stern in the captioned case for the following reasons:

1. The Michigan Employment Relations Act mandates the Commission to assure that the best interests of the public be served and *"that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected..."* MCL 423.1.

2. In 1981 and more recently on September 14, 2011, the Commission found that Graduate Student Research Assistants (GSRAs) at the Appellee Public Employer University of Michigan (University) were not the University's employees and thus, the Commission lacked jurisdiction to certify a representation election for Appellee-Petitioner Graduate Employees Organization/AFT (Organization). The Organization, with the University's concurrence, sought reconsideration of the September Commission decision. The Attorney General sought intervention to the proceedings under MCL 14.101 and MCL 14.28 because no adversity of interest existed between the University and the Organization. On December 16, 2011, a majority of the Commission decided that the Attorney General could not intervene, granted the motion to reconsider, and ordered an administrative proceeding to determine whether significant changes had occurred between 1981 and today to warrant the GSRAs being considered employees and subject to the Commission's jurisdiction. (December 16, 2011 Commission Decision attached as Ex 1 to Application for Leave.)

3. Pursuant to the Commission's order, the Michigan Administrative Hearing System assigned Administrative Law Judge Julia C. Stern (ALJ) to hear the administrative hearing. The ALJ has limited the Attorney General's role in the

hearing to that of an observer, not permitting the Attorney General to conduct direct examinations of his own witnesses or cross-examine those of the parties. Although the ALJ has decided to call several of the witnesses the Attorney General has suggested in his offer of proof, the Attorney General will still not be permitted to ask those witnesses questions, while the parties will be permitted to cross-examine those witnesses.

4. The Commission's decision and the ALJ's implementation of that decision are improper for the following reasons:

- The Attorney General has determined, in his judgment, that intervention in this matter is necessary to protect significant state interests, and would act in the fact-finding proceeding to ensure that a complete and unbiased record is created.

- The Commission ignored the clear constitutional duty of Attorney General as the chief law enforcement officer for the State of Michigan with the duty to ensure that the laws of the state are followed. *See* Const 1963, art 5, §§ 3, 21.

- The question that the ALJ is set to soon decide could have extreme negative consequences for the University of Michigan.

- The Commission has decided that this important question is to be decided without both sides of the facts and argument being presented in the usual adversarial fashion.

- In denying intervention, the Commission failed to afford the deference to the Attorney General's decision required both by statute and case law. MCL 14.28; *see also* MCL 14.101; *Kelley v Thayer*, 65 Mich App 88, 92-93; 237 NW2d 196 (1976).

- If the proceedings are allowed to proceed without Attorney General intervention, the interests of the State, the unrepresented faculty leadership, and a large group of GRSAs will not be presented. *Syrkowski v Appleyard*, 122 Mich App 506, 513; 333 NW2d 90 (1983), *rev'd on other grounds* 420 Mich 367; 362 NW2d 211 (1985).

- If the proceedings are allowed to proceed without the Attorney General intervention, the fact-finding process will be, at best, one-sided and incomplete; at worst, the lack of an adversarial process will result in a biased and foreordained outcome and inadequate for the Commission's or court review. The Administrative Procedures Act (APA) authorizes the "parties in a contested case" by a stipulation in writing to agree "upon any fact involved in the controversy" and mandates that the stipulated fact is "binding upon all parties". MCL 24.278. Thus, where the University and the Organization stipulate to facts, those facts are binding, not only on the parties but the ALJ. MCL 24.285.

- There is no need for any quick action by the ALJ or the Commission on the question presented as the GSRAs have not been considered public employees for more than thirty years. Granting the motion to stay will merely preserve the status quo until the important issues raised can be decided.

5. The Circuit Court dismissed the Attorney General's Application for Leave and Emergency Petition for review of the Commission's decision under MCL 600.631, which directs the Circuit Court to review any administrative order or decision for which review has not otherwise been provided by law. The Circuit Court erroneously determined that it did not have jurisdiction, MCL 600.631 did not apply, and the Attorney General could appeal under MCL 423.216(e). The Circuit Court erred because:

- MCL 423.216(e) applies to appeals from unfair labor practice decisions and permits only parties to appeal from the final order of the Commission.

- The matter the Attorney General seeks to intervene in is a representation proceeding, the Attorney General is not a party, and the Commission's decision to deny intervention is interlocutory.

- No other mechanism for judicial review of the Commission's decision is provided by law.

- Thus, MCL 600.631 applies and the Circuit Court erred when it determined that it was without jurisdiction.

6. The Attorney General seeks a stay of the administrative hearing pending this Court's consideration of the Attorney General's Application for Leave and, should this Court determine that the Circuit Court should consider the merits of the issue presented, pending the Circuit Court's decision

7. The Attorney General has, simultaneous with this motion to stay, filed an Application For Leave To Appeal that contains the facts necessary to grant immediate consideration and a stay of the administrative proceedings.

CONCLUSION AND RELIEF SOUGHT

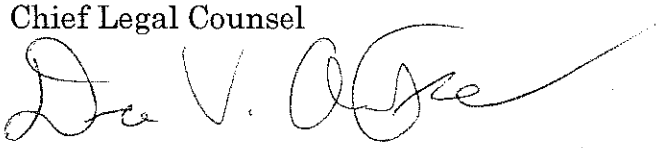
Appellant Proposed Intervenor Attorney General Bill Schuette requests this Honorable Court to immediately consider and grant the Motion to Stay Administrative Proceedings, and the Application for Leave to Appeal for the reasons outlined above and more fully in the Application.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel



Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General
Michigan Dep't of Attorney General
3030 West Grand Boulevard
Detroit, MI 48202
(313) 456-0080

Dated: February 17, 2012

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN THE MATTER OF:

UNIVERSITY OF MICHIGAN
Appellee Public employer,

and

GRADUATE EMPLOYEES ORGANIZATION/AFT,
Appellee Petitioner – Labor Organization,

and

STUDENTS AGAINST GSRA UNIONIZATION,
Proposed Intervenor,

and

MICHIGAN ATTORNEY GENERAL,
Appellant Proposed Intervenor.
_____/

Court of Appeals No.

Ingham County Circuit Court No. 12-135-AA

Michigan Employment Relations Commission No. R11 D-034

PURSUANT TO MCR 7.205 (E)(1), AN EXPEDITED DECISION REQUESTED AS SOON AS POSSIBLE BECAUSE THE ADMINISTRATIVE PROCEEDING FOR WHICH THE ATTORNEY GENERAL SEEKS INTERVENTION IS ALREADY IN PROGRESS

THE MICHIGAN ATTORNEY GENERAL'S APPLICATION FOR LEAVE TO APPEAL

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel

Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General
3030 W. Grand Blvd.
Detroit, MI 48202
313.456.0080

Dated: February 17, 2012

TABLE OF CONTENTS

INDEX OF AUTHORITIES

STATEMENT OF QUESTION PRESENTED

1. MCL 600.631 provides that an agency decision may be appealed to the circuit court where "judicial review has not otherwise been provided for by law." The Circuit Court concluded that MCL 423.216(e) allows the Attorney General to appeal the Commission's decision to the Court of Appeals, despite that statute allowing an appeal only where *a party* is aggrieved by a *final order* in an *unfair labor practice* dispute. The Attorney General is *not a party* and is appealing an *interlocutory order* in a *representation proceeding*. Did the Circuit Court err in concluding that 423.216(e) applied and thus it did not have jurisdiction under MCL 600.631?

   Public Employer's answer: No

   Petitioner – Labor Organization's answer: No

   Proposed Intervenor Students Against Unionization: Yes

   The Michigan Attorney General's answer: Yes

   Commission's answer: No

STATEMENT OF ORDER APPEALED FROM, ALLEGATIONS OF ERROR, AND RELIEF SOUGHT

As this application is being filed, the University of Michigan campus is embroiled in a controversy, which could have severe implications on its status as an internationally renowned research institution. Specifically, the question that gives rise to the controversy is whether graduate student research assistant (GSRAs) are properly to be considered "public employees" under Michigan's public employment statutes and, therefore, subject to unionization. That question is being decided in proceedings before the Michigan Employment Relations Commission (the Commission or MERC). Remarkably, the MERC has decided that the question should be decided with only those who favor a determination that the GSRAs are public employees having a formal role in the proceedings. Thus, the MERC, in a divided vote, denied the motion by Michigan Attorney General Bill Schuette to intervene. Ever since that unfortunate MERC decision, the Attorney General has been rebuffed in his attempts to obtain judicial review. This application is being filed because, once again, the lower court has determined that the important question presented should not be reviewed.

The question presented here is simple: should the Circuit Court have exercised jurisdiction under MCL 600.631 and reviewed the Commission's decision denying the Attorney General intervention, where no other statute provides for judicial review of this decision? The Circuit Court thinks not; the Attorney General emphatically disagrees.

A few months ago, the Commission decided again, as it had previously already in 1981, that GSRAs are not public employees subject to unionization. The Commission Order contested here was entered on December 16, 2011. There, two members of the Commission (with one dissenting) reconsidered that decision and appointed an administrative law judge (ALJ) to conduct fact-finding on the question. The Order also denied the Attorney General's request to intervene in this case, to assure that both sides of the question, and all relevant facts, are presented to the Administrative Law Judge (ALJ) for consideration.

The Attorney General has been trying diligently to obtain judicial review of this decision, because the Commission was not authorized by law to deny the Attorney General intervention, and committed a substantial and material error of law in doing so. It found that the Attorney General's intervention would unduly disrupt the proceedings, which is simply without foundation. And it concluded that having more than one viewpoint presented is somehow inimical to the public interest. The Commission's decision was based on nothing more than conjecture regarding the Attorney General's motives and was contrary to the well-established case law that mandates liberal construction of and deference to the Attorney General's decision to intervene.

The Court of Appeals initially declined jurisdiction over the Attorney General's direct appeal of the Commission's decision under the Administrative Procedures Act (APA), MCL 24.101 *et seq*, stating that the APA permitted interlocutory review of the Commission's decisions only in *contested cases* and the

representation proceeding was not a contested case. The Supreme Court affirmed, but Chief Justice Young, in concurring, suggested that the Circuit Court has jurisdiction to review the Commission's decision.

Rejecting the Chief Justice's reasoning, the Circuit Court declined the Attorney General's appeal, finding that it had no jurisdiction. It stated that MCL 600.631, which provides for judicial review of any administrative decision where no statute already provides for review, does not apply because MCL 423.216(e) is a mechanism for the Attorney General to appeal to the Court of Appeals. However, the plain language of MCL 423.216(e) makes it unequivocally clear that it does not apply to the Attorney General in this matter for at least three reasons. That statute applies only to parties – and the Attorney General is a non-party seeking party status. Further, the statute allows for appeals of final orders – and the order denying intervention is not final. Finally, the statute is an appellate procedure for unfair labor practice decisions – and the matter at issue is a representation proceeding. Notably, when this Court previously denied the Attorney General's application for direct review of the Commission decision, it did not suggest that MCL 423.216(e) somehow made that possible.

Because the Court of Appeals previously found that the APA does not create a right to appeal in non-contested cases, such as the one at issue here, and because the Circuit Court's conclusion that MCL 423.216(e) applies is clearly erroneous, the law does not otherwise provide for review of the Commission's decision. Where the

law does not otherwise provide for review of an administrative decision, MCL 600.631 requires the Circuit Court to review the Commission's decision.

The Circuit Court's failure to exercise jurisdiction despite the clear application of MCL 600.631 materially compromises important rights of the Attorney General, the People, and the State of Michigan. The underlying question to be decided by the Commission is of such import that it should be subjected to the usual rigors of a two-sided adversarial process. If the Attorney General must wait until the Commission issues a final decision to secure judicial review, no Court will be able to provide an adequate remedy – the one-sided process will have already reached its biased conclusion.

Because the Circuit Court improperly declined judicial review of the Commission's decision regarding the Attorney General's intervention, he asks this Court to grant leave to appeal, remand to the Circuit Court with instructions to review the Commission's decision on its merits. Additionally, the Court should stay further proceedings before the Commission until the question of the Attorney General's right to intervene has been decided on appeal.

REASONS FOR GRANTING THE APPLICATION

The Commission's decision is contrary to law, arbitrary and capricious. The Circuit Court should have accepted its jurisdiction and reviewed this decision under the clear statutory mandate of MCL 600.631. There are substantial reasons why this Court should grant the Attorney General's application for leave under MCR 7.203(B)(1) and MCR 7.205.

- The Circuit Court erroneously concluded that MCL 600.631 does not give it jurisdiction in this matter. MCL 600.631 states that
    - An appeal shall lie from *any* order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules *from which an appeal or other judicial review has not otherwise been provided for by law*, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county....[emphasis added].
- The Circuit Court agreed with this Court's prior decision that Section 101 of the APA, MCL 24.301, allows appeals only in contested cases and the representation provision is not a contested case.
- The Circuit Court erroneously concluded that MCL 423.216(e) provided an approach whereby the Attorney General could have appealed the Commission's decision directly to the Court of appeals. MCL 423.216(e) states that
    - Any *party* aggrieved by a *final order* of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside....[emphasis added].
- Furthermore, Section 16, MCL 423.216 states "[v]iolations of the provisions of section 10 shall be deemed to be *unfair labor practices remediable by the commission in the following manner*:." Subsection (e), quoted above, is therefore an appeal provision applicable to Commission orders regarding unfair labor practices.

- MCL 423.216 does not apply to either the Attorney General or this matter. This matter is a representation proceeding and not an unfair labor practice dispute and therefore MCL 423.216 does not apply as a whole.

- Furthermore, the Attorney General seeks to be a party – and is not currently a party as required by the plain language of MCL 423.216(e). Nor is the Commission's order denying intervention deemed final – it is interlocutory and outside the scope of MCL 423.216(e).

- The law does not otherwise provide for judicial review of the Commission's decision denying the Attorney General intervention. MCL 600.631 therefore applies and confers jurisdiction on the Circuit Court.

- If no judicial review is available, the Commission's decision misinterpreting the scope of MCL 14.101 and MCL 14.28, and contravening the well-established right of the Attorney General to intervene in any proceeding he determines to involve the interests of the People and the State of Michigan, will be final. This not only goes against the mandate of MCL 600.631, but also against the constitutional principle that administrative decisions be subject to judicial review. 1963 Const, art 6, § 28.

- The underlying decision of the Commission is contrary to well-established precedent liberally construing the Attorney General's statutory right to intervene in any proceeding, and it is therefore of jurisprudential significance that the Commission's decision be subject to judicial review.

For these reasons, and those discussed below, the Attorney General respectfully requests this Court to grant this application for leave to appeal, remand to the Circuit Court with instructions to review the Commission's decision on its merits and enter a stay of proceedings below pending appeal. A motion to stay and for immediate consideration accompanies this Application.

STATEMENT OF JURISDICTION

The Circuit Court's order dismissing the Attorney General's application for leave because of a lack of jurisdiction is appealable to this Court by leave under MCR 7.203(B)(1). The Attorney General appealed the decision of the Michigan Employment Relations Commission denying the Attorney General intervention to the Circuit Court, and the Circuit Court's dismissal for lack of jurisdiction is not appealable as of right under MCR 7.203(A)(1)(a). Therefore, it is appealable by leave under MCR 7.203(B)(1).

This application for leave challenging the Circuit Court's February 9, 2012 order declining jurisdiction is properly filed with this Court within "21 days after entry of the judgment or order to be appealed from." MCR 7.205(A).

STATEMENT OF PROCEEDINGS AND FACTS

A. Introduction

On December 16, 2011, the Michigan Employment Relations Commission (Commission) denied the Attorney General's motion to intervene in this matter. Bill Schuette, in his official capacity as Attorney General of Michigan, had sought to intervene in this case because, in his judgment, it involves matters of important public interest. (December 16, 2011 Commission Decision, attached as Ex 1.) Specifically, this case has the potential to significantly damage the University of Michigan's reputation as a nationally recognized research institution, to the detriment of all Michigan citizens who support and value the University as one of our country's elite institutions of higher education. The unionization of the University's GSRAs would compromise the established excellence of the graduate students by allowing a third party – the union – to interpose itself between the relationship of the faculty and the graduate students. There is ample support for the Attorney General's concern in this regard, especially as evidenced by a letter signed by academic deans, as well as the hundreds of GSRAs and faculty who have gone on record as being against unionization. (See Open Letter to the Board of Regents of the University of Michigan, attached as Ex 2.) Characterizing GSRAs as employees subject to unionization is also not supported in law, and the process before the Commission to resolve this question should be an adversarial one, rather than one in which only a single legal position is presented. The issue whether the GSRAs are public employees under the Public Employment Relations Act is a

significant legal issue, one in which the Attorney General and the State have a specific interest.

Under the law applicable here, the Commission should have granted the motion to intervene. Instead, it ignored decades of judicial precedents that require liberal construction of and deference to the Attorney General's statutory right to intervene in a broad spectrum of proceedings. And despite MCL 600.631 mandating judicial review of this decision in the Circuit Court, the Circuit Court erroneously refused jurisdiction.

B. The University of Michigan's vital role in Michigan.

The University of Michigan plays a vital part in Michigan economy. The University of Michigan undoubtedly is a major research institution, ranking second in the nation in terms of total research expenditures. (University's October 17, 2011 Response to Petitioner's Motion for Reconsideration, p 4, attached as Ex 3.) External funding supports a large majority of GSRA studies – with total research funding exceeding $1.14 billion in fiscal year 2010. (Office of the Vice President for Research, Quick Facts, *http://research.umich.edu/quick-facts.*) The University of Michigan thus is an essential component of the University Research Corridor – a coalition between the University of Michigan, Michigan State University, and Wayne State University that has generated an "economic impact" of $14.8 billion in 2009 for the State of Michigan. (2010 Empowering Michigan Report, *available at http://urcmich.org/economic/2010/2010econimpact-report.pdf.*) Even as state funding support dropped, Michigan's research universities remained the largest

cluster in the U.S. in terms of enrollment, and they ranked third in terms of high-tech degrees. (*Id.*) The research corridor has continued to provide a significant fiscal impact on Michigan – for example, over 550,000 research alumni live in Michigan, collectively earning about $26 billion annually; generating over $400 million in state tax revenue for 2009 alone. (*Id.*) Obviously, given these numbers, any proceeding that may affect the University's ability to continue to attract research funding and play an integral role as a member of the University Research Corridor implicates a number of state interests.

The excellence of the University will be seriously jeopardized if its status as a research institution, with the funding that status brings, is undermined. All of Michigan's taxpayers, and certainly the University's thousands of alumni, are rightfully proud of this outstanding public university. Each will lose something if an incorrect determination of the facts underlying this dispute is rendered, without the benefit of the usual adversarial process. The Attorney General has correctly judged that the public interest is implicated in having a fair and complete fact-finding process before the ALJ, especially where the Act creating the Commission requires that "the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected." MCL 423.1. Accordingly, this Court should grant the Attorney General leave to appeal the Commission's decision.

C. Procedural History

On April 27, 2011, the Graduate Employees Organization/AFT (the Organization) filed a petition with the Commission, seeking an election to be certified as the exclusive representative of GSRAs of the University of Michigan. (September 14, 2011 Commission Decision, p 1, attached as Ex 4.) A majority of the University's Board of Regents later passed a resolution recognizing the GSRAs as employees under the Public Employment Relations Act (Act), and thus endorsing the Organization's petition. (Ex 4 at 2.) The Regents' position was opposed by 19 current and former deans who wrote a letter to the University provost on June 24, 2011:

> [T]o express our *deep and collective concern about the potential negative impacts that would result from unionization* of the University's graduate student research assistants (GSRAs). We believe that such *a union would put at risk the excellence of our university and the success of our graduate student assistants.*
>
> Research assistantships provide graduate students with opportunities to develop their research skills while working in a lab or on a project under faculty supervision. As students assist with various aspects of scholarly work, they gain in their capacity for independent research. This is an important part of their academic training. *A union would be a third party intervening in the educational program, in the middle between faculty mentors and their students. This would compromise the essential nature of doctoral preparation.*
>
> We note those graduate student research assistants are not unionized at the peer institutions against whom the University competes for faculty and graduate students. The Board of Regents in their public statements at the June 16, 2011 meeting included a list of other public institutions at which research assistants are unionized; although they are fine institutions, none of them competes in research at the same level as Michigan. *It would be a great loss to the state and the nation if our research efforts were to decline to the quality seen at lesser universities. We worry that a GSRA union would make Michigan an outlier when the best and brightest graduate students compare research*

> *opportunities, and when we work to recruit excellent research faculty. A vast majority of the faculty members with whom we have spoken do not support GSRA unionization because of the potential negative impact on their one-on-one relationships with students and the University's competitive position among its peers.* [Deans' Letter to the University's Provost, attached as Ex 5 (emphasis added).]

The Commission rejected the Organization's petition, correctly reasoning that GSRAs are not public employees and thus are outside the Commission's jurisdiction. The Commission had made the same finding in 1981 with the same parties as present today and, in the absence of materially different circumstances, the Commission was bound by the prior decision. (Ex 4 at 4.)

The Organization moved for reconsideration. The Organization's motion relied on a single affidavit, and it argued in essence (and illogically) that because research has grown in volume and importance to the University, and because GSRAs are an integral part of this research, they are employees of the University. Furthermore, the motion tried to reargue the law established in 1981. And, finally, it contended that the Regents' majority decision is a binding stipulation of fact. (Organization's Motion for Reconsideration, attached as Ex 6.) None of these grounds presented a compelling case for reconsideration.

Constrained from directly opposing reconsideration by the majority Regents' vote, the University merely set forth facts seeming to show that nothing has materially changed since the Commission last considered the question in 1981. (Ex 3.) The University has since clarified its position that, consistent with the Regents' resolution, it supports the GSRAs rights to vote on unionization. (University's November 4, 2011 Supplemental Response, attached as Ex 7.)

The Commission's record also shows that a significant percentage of GSRAs have expressed opposition to employment status and possible unionization. (See Students Against GSRA Unionization November 1, 2011 Brief in Support of Motion to Intervene and in Opposition to Motion for Reconsideration, attached as Ex 8.) Stephen Raiman, a member of a group called Students Against GSRA Unionization, stated "[w]e believe our research and our lives as students are between ourselves and our departments and our advisors. We don't believe that a third party should be interfering in that." Goldsmith, Rayza & Williams, Kaitlin, *MERC to Reconsider GSRAs' Positions as Employees*, The Michigan Daily, Nov 8, 2011. Similarly, as noted above, a broad contingent of the University's faculty leadership registered their opposition to and concern regarding unionization. Most recently, at least 785 GSRAs and faculty at the University signed an Open Letter to the Board of Regents of the University of Michigan expressing opposition to GSRAs being recognized as employees. (Ex 2.)

None of these voices was to be heard by the Commission, even though the Act establishing the Commission requires that "the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected." MCL 423.1 Once the University elected to acquiesce to the Organization's petition, there is no longer any voice to support the position articulated by the current and former deans and a significant number of GSRAs. There is also no party to represent the legal position that the GSRAs are not public employees under the Public Employment Relations Act. So,

the Attorney General sought to intervene before the Commission when it considered the motion for reconsideration. Further, assuming the Commission was to order fact-finding, the Attorney General requested intervention to fully participate in hearings before the ALJ.

The Attorney General has determined, in his judgment, that intervention in this matter is necessary to protect significant state interests, and would act in the fact-finding proceeding to ensure that a complete and unbiased record is created. Where the University administration is constrained to agree with the Organization on the critical issue, it seems inevitable that the evidentiary hearing will not fully disclose the facts and arguments crucial to determining whether the GSRAs' relationship with the University has substantially changed since the 1981 decision. The Attorney General relied on his broad authority to intervene in any matter under MCL 14.101 and MCL 14.28, as well as precedents mandating liberal construction of this authority and deference to the Attorney General's judgment to intervene at any stage of any administrative proceeding. The law on Attorney General intervention is unambiguous – his authority to intervene is limited only where there is a clear showing that the intervention is inimical to the public interest.

D. The Commission's December 16, 2011 Decision

A majority of the Commission granted the Organization's motion for reconsideration, reinstated the Organization's petition for a representation election, ordered an ALJ to conduct a factual inquiry into whether GSRAs at the University

of Michigan are "employees" of the University, and denied the Attorney General's motion to intervene both at the December 16th hearing, and in the subsequent fact-finding before the ALJ. (Ex 1.) The majority reasoned that the Attorney General had moved to intervene only in "opposition to the exercise of a statutory right," that of the students to consider unionization. (*Id.* at 4.) The majority further maligned the Attorney General's motives, stating that "the Attorney General seeks intervention for the purpose of opposing a policy decision made by the Board of Regents of the University of Michigan." (*Id.* at 5.) The Commission found it "inappropriate to allow the Attorney General to intervene for the purpose of opposing a policy decision made by the Regents when that policy decision does not determine the results of our investigation in this matter." (*Id.*) Finally, the Commission baldly concluded – without any support – that intervention "would be unduly disruptive to the proceedings and inimical to the public interest." (*Id.*)

The dissenting Commissioner (Dr. Edward Callahan) opposed granting the motion for reconsideration, but opined that, in the event the Commission did so, it should grant the Attorney General's motion to intervene. Such intervention is necessary to assure the presentation all of the facts in the hearing given the lack of adversity between the University and the Organization. (*Id.* at 10.) Commissioner Callahan also reiterated the Commission's prior concern "over whether the University would present evidence at a hearing that might show facts exist contrary to the Regents' resolution." (*Id.*) Astutely, Commissioner Callahan noted that the Organization "has offered no arguments that might persuade me that an

evidentiary hearing in this matter would fully disclose the facts necessary to accurately discern whether the [GSRAs'] relationship with the University has substantially changed since the decision in [the 1981 case]." (*Id.*) He expressed valid concerns over the legitimacy of any fact-finding process where there is no adversity of interests between the parties; it "would appear... to be a sham if we were to permit only one side of this crucial debate to be proffered at hearing." (*Id.*) Significantly, he concluded that "interests of fairness and due process" compel granting the Attorney General's motion to intervene. (*Id.*)

E. The Administrative Proceedings.

Immediately following issuance of the Commission's December 16, 2011 decision, the Michigan Administrative Hearing System assigned Administrative Law Judge Julia C. Stern (ALJ) to hear the administrative hearing. The ALJ has already been conducting hearings without the Attorney General being able to challenge any of the evidence the parties have presented or to cross-examine any witnesses. When the Attorney General requested to participate in the January 4, 2012 telephone conference, the ALJ advised the Attorney General that his only participation will be as "an observer of a public hearing." (December 27, 2011 ALJ Stern Letter to Attorney General, attached as Ex 9.) The Attorney General's role has been thus far limited to that of an observer, but the ALJ will call several witnesses that the Attorney General suggested in his offer of proof on February 9, 2012. However, the Attorney General will not be given the chance to directly examine or defend his witnesses in light of the parties' cross-examination. The ALJ

will be conducting the direct examination, and the parties will also be able to offer rebuttal witnesses, whom the Attorney General will not be allowed to cross-examine. (February 15, 2012 ALJ Stern Letter to Attorney General and the Parties, attached as Ex 10.)

F. The Court of Appeals' Order On January 25, 2012

The Attorney General first applied for leave to appeal the impropriety of the Commission's decision that the Attorney General could not intervene in the administrative hearing with the Court of Appeals. The Attorney General relied on MCR 7.203(B)(4), which permits an application for leave where the decision is appealable to the Court of Appeals by law. The law that the Attorney General relied on was Section 101 of the APA, MCL 24.301, which permits a court to consider an interlocutory decision of the Commission where review of the final decision would not be adequate. Because the Commission's decisions are appealed directly to the Court of Appeals, both in practice and under MCL 423.23, the Attorney General initially filed his application for leave with the Court of Appeals, and not the Circuit Court. See MCL 423.23(1), 2(e).

The Court of Appeals dismissed the Attorney General's motion to stay the administrative proceedings and application for leave. The Court reasoned that it did not have jurisdiction to grant an interlocutory appeal from an order of the Commission and the reliance on the APA for such jurisdiction was improper, as MCL 24.301 applies only to contested cases. The representation proceeding was deemed not to be a contested case under the APA. The Court of Appeals was silent

on whether the circuit court had jurisdiction over this application for leave – the sole reason for denying the application was that the representation proceeding is not a contested case. (Court of Appeals Order, Jan 25, 2012, attached as Ex 11.)

G. The Michigan Supreme Court's order of February 3, 2012.

The Attorney General applied for leave to appeal the Court of Appeals' determination that it did not have jurisdiction to consider the appeal from the Commission's erroneous decision precluding his intervention. The Attorney General argued that the Court's decision that it lacks subject matter jurisdiction erroneously cites factually distinguishable case law and relies on an overly narrow reading of Section 101 of the APA, MCL 24.301. The cases cited by the Court of Appeals distinguishing between contested and uncontested cases under the APA are relevant for the standard of judicial review – and not to the question of whether the decision was subject to judicial review in the first place. See, e.g., *McBride v Pontiac School Dist*, 218 Mich App 113, 122; 553 NW2d 646 (1996) (allowing for judicial review even in the absence of a contested case, but limiting the inquiry to whether the Agency's decision was authorized by law). Furthermore, the Michigan Constitution, 1963 Const, art 6, § 28, provides an independent basis for review of administrative agency decisions, evidencing the mandate of the People that judicial review not be confined solely to the cases that are considered "contested" under the APA. This notion is codified under MCL 600.631, which provides an independent statutory basis to appeal administrative decisions where "judicial review has not otherwise been provided for by law."

The Attorney General also argued that the general rule that one may only appeal final agency orders is not applicable here because the Attorney General has exhausted his administrative remedies on the limited question of intervention. The Commission will not revisit that issue, and even if the Commission were to revisit that issue after the hearing, it could not grant an adequate remedy because the created record would be tainted by the one-sided nature of the fact-finding process. The only distinction between contested and uncontested cases for the purposes of judicial review is the standard of review that applies. The fact that waiting to appeal the Commission's final order would not afford the Attorney General adequate remedy remains the same, whether the Commission is required to conduct an evidentiary hearing on a representation proceeding or not.

The Supreme Court granted immediate consideration of the Attorney General's application for leave, but denied both the application and the motion to stay administrative proceedings. In his concurrence, Justice Young stated that although MCL 24.301 may permit interlocutory appeals in matters that are not contested cases, proper jurisdiction for an appeal of the Commission lies with the circuit court under the express language of the APA. (Order of the Michigan Supreme Court denying the Attorney General's Application for Leave, p 1-2, Feb 3, 2012, attached as Ex 12) (Young, J., concurring).

Justice Markman concurred in finding that the Court of Appeals lacked jurisdiction, but expressed his concerns with the "manifest unfairness of the fact-finding hearing now underway before the administrative law judge as a result of

[the Commission's] denial of the two motions to intervene, one from the Attorney General and the other from an organization called 'students against GSRA unionization,' which is composed of graduate student research assistants (GSRAs) opposed to possible unionization." (Ex 12, p 2) (Markman, J., concurring). Justice Markman further observed:

> It is utterly inapt to characterize an effort by the Attorney General to intervene in a case of this significance – not only for the University of Michigan, but also for every other public college and university in this state – as 'interference' in light of the straightforward grant of legal authority to the Attorney General to do precisely what he did in this case in an effort to intervene. Furthermore, MERC's [the Commission's] statement in justification of its decision to deny the Attorney General's motion – that he is 'opposed to the very rights provided to public employees by PERA' – even if accurate, should have been of no consequence to MERC in rendering its decision. The Attorney General's supposed motives, or policy perspectives, concerning PERA have nothing to do with the propriety of his exercise of statutory authority to intervene in cases before MERC. [Ex 12, p 3] (Markman, J., concurring).

Justice Markman articulated the very reasons why the Commission's decision is not authorized by law and must be reversed. And Justice Young stated an appeal to the circuit court under the plain language of the APA is the proper avenue for judicial review in light of the Court of Appeals declining jurisdiction.

H. The Circuit Court's Order of February 9, 2012

On February 7, 2012, the Attorney General filed an Application for Leave and Emergency Petition for Review with the Ingham County Circuit Court. The Attorney General argued that the APA may give the Circuit Court jurisdiction, but if not, no other statute provided for judicial review, and MCL 600.631 conferred

jurisdiction on the Circuit Court. (Attorney General's Application for Leave and Emergency Petition for Review to the Circuit Court, pp iii-iv, attached as Ex 13.) The Circuit Court disagreed, dismissing the Attorney General's Application and Emergency Petition for Review for lack of subject matter jurisdiction. (Order of the Ingham County Circuit Court dismissing the Attorney General's Application for Leave and Emergency Petition for Review, Feb 9, 2012, p 1, attached as Ex 14.) The Circuit Court concluded that MCL 423.216(e) provided for judicial review by the Court of Appeals, and therefore the "catch-all" statute, MCL 600.631, did not apply. (*Id.* at 2.)

Based on the plain language of MCL 423.216(e), the Attorney General cannot rely on that statute for an appeal to the Court of Appeals. Because "judicial review has not otherwise been provided by law," jurisdiction is proper with the Circuit Court under MCL 600.631. The Attorney General respectfully requests this Court to grant his application for leave to appeal, remand this matter back to the Circuit Court for judicial review of the Commission's decision to deny the Attorney General intervention, and stay the proceedings before the ALJ while it considers this issue.

ARGUMENT

I. The Circuit Court erroneously determined that MCL 423.216(e) permitted the Attorney General to appeal the Commission's decision to the Court of Appeals. That statute makes the appeal only available to parties, from final orders, and in unfair labor practice disputes. Because no other statute allows an appeal of the Commission's decision in this instance, the Circuit Court has jurisdiction under MCL 600.631.

A. Issue Preservation

The Attorney General argued in his Application for Leave and Emergency Petition for Review that the Circuit Court had jurisdiction under Section 101 of the APA, MCL 24.301. In the alternative, if the APA did not apply, "judicial review was not otherwise provided by law," and thus the circuit court had jurisdiction under MCL 600.631. (Ex 13, at iii-iv.)

B. Standard of Review

Whether the trial court has subject matter jurisdiction is a question of law that this Court reviews de novo. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

C. Analysis

1. MCL 600.631 confers appellate jurisdiction on the circuit court where no judicial review of an agency decision is otherwise provided by law

The Legislature enacted Section 631 of the Revised Judicature Act, MCL 600.631, to create an opportunity for review of administrative agency decisions where no other statute provides for such review. The Section states:

> An appeal shall lie from *any* order, decision, or opinion of *any* state board, commission, or agency, authorized under the laws of this state to promulgate *rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court* of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court. [MCL 600.631] [emphasis added].

Notably, the administrative decision or order does not have to be final to be subject to judicial review – *any* order, decision, or opinion, including one that is interlocutory, is reviewable. Neither does this statute confine review to contested cases. Because the Circuit Court erred in concluding that MCL 423.216(e) allows the Attorney General to appeal to the Court of Appeals, the Attorney General's reliance on MCL 600.631 for circuit court jurisdiction is proper.

2. MCL 423.216(e) does not apply to this case and the Attorney General cannot rely on it to obtain judicial review in the Court of Appeals.

In dismissing the Attorney General's Application for Leave and Emergency Petition for Review, the Circuit Court first concluded that contrary to Justice Young's suggestion in his concurrence, the Court did not have jurisdiction over the Attorney General's appeal under the APA. (Ex 14, at 1.) The Court then dismissed the Attorney General's argument that the Circuit Court had alternative grounds for jurisdiction under MCL 600.631, concluding that MCL 423.216(e) "provides a mechanism for review for Michigan Employment Relations Commission decisions." (*Id.* at 2.) MCL 423.216 generally states that "[v]iolations of the provisions of section 10 shall be deemed to be *unfair labor practices* remediable by the commission in the following manner." More specifically, MCL 423.216(e) sets for

the appellate procedure for the Commission's determinations regarding unfair labor practices, and states in pertinent part

> *Any party* aggrieved by a *final order* of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside, with copy of the petition filed on the commission, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the commission. [MCL 423.216(e)] [emphasis added]

The plain language of this statute is not applicable to the Attorney General's position in this matter. First, the matter is not an unfair labor practice – it is a representation proceeding that arises under a different statute, so none of the subsections of MCL 423.216 apply. Neither is the Attorney General a party. He seeks to become a party – and thus is the proposed intervenor. Lastly, the Commission's order denying the Attorney General intervention is interlocutory as opposed to final. The Circuit Court thus erred when it concluded that judicial review was available to the Attorney General under MCL 423.216.

3. Because no other statute grants the Attorney General the right to appeal the Commission's decision denying him intervention, MCL 600.631 applies and the circuit court has jurisdiction.

The Court of Appeals previously declined jurisdiction over the Attorney General's direct appeal under the APA because it concluded that the representation proceeding was not a contested case. (Ex 11.) The Supreme Court affirmed, and the Circuit Court rejected any attempt by the Attorney General to rely on the APA for jurisdiction. But the Circuit Court erred when it concluded that MCL 423.216(e) allowed the Attorney General to appeal the Commission's decision to the Court of Appeals. Therefore, no statute provides for review of the Commission's decision to deny Attorney General intervention in a representation proceeding. Where no judicial review is otherwise provided by law, MCL 600.631 permits the circuit court to review *any* decision or order of an administrative agency, including the Commission. MCL 600.631 applies expressly to the circumstances in this case. This Court should therefore remand this appeal to the Circuit Court so that it can determine whether the Commission's decision denying the Attorney General intervention was authorized by law.

CONCLUSION AND RELIEF REQUESTED

In declining jurisdiction, the Circuit Court ignored the clear statutory mandate of MCL 600.631 that requires the Circuit Court to review any administrative decision the review of which has not already been provided by law. . No other mechanism for judicial review of the Commission's decision is provided by law. Thus, MCL 600.631 applies and the Circuit Court erred when it determined that it was without jurisdiction.

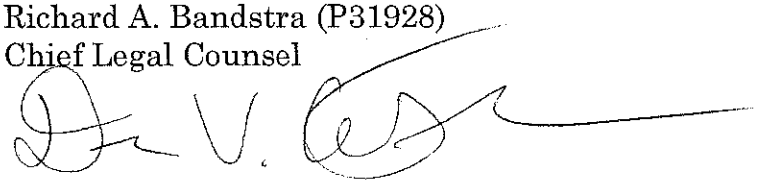
Because the Circuit Court misapplied the law in declining jurisdiction to review the Commission's decision denying the Attorney General intervention, the Attorney General asks this Court to immediately consider this application, grant the Attorney General leave to appeal, remand this matter back to the Circuit Court for judicial review of the Commission's decision to deny the Attorney General intervention, and stay further administrative proceedings pending appeal.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel



Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General
Michigan Department of Attorney General
3030 W. Grand Blvd.
Detroit, MI 48202
(313) 456-0080

Dated: February 17, 2012

STATE OF MICHIGAN

IN THE INGHAM COUNTY 30th CIRCUIT COURT

GENERAL TRIAL DIVISION

IN THE MATTER OF:	**ORDER DENYING APPELLANT'S EMERGENCY MOTION TO STAY ADMINISTRATIVE PROCEEDINGS AND MOTION FOR IMMEDIATE CONSIDERATION**
UNIVERSITY OF MICHIGAN,	
and	
GRADUATE EMPLOYEES ORGAINIZATION/AFT,	Circuit Court File No.: 12-135-AA
	MERC No. R11 D-034
and	Hon. Paula J.M. Manderfield
STUDENTS AGAINST GSRA UNIONIZATION	
and	
MICHIGAN ATTORNEY GENERAL.	

/

At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 9th day of February 2012, the Honorable Paula J.M. Manderfield presiding.

Pursuant to MCL 24.30, *et seq.*, this Court does not have jurisdiction to hear appeals from the Michigan Employment Relations Commission. This statute does not confer jurisdiction on this Court because the current proceeding before the Michigan Employment Relations Commission is not a contested case. MCL 24.301; *University of Michigan v Graduate Employees Organization/AFT*, Order of the Court of Appeals, docket number 307959, issued January 25, 2012.

The Attorney General cites to MCL 600.631 as a basis for invoking this court's jurisdiction. That statute provides for judicial review of any order, decision, or opinion to the circuit court where "judicial review has not otherwise been provided for by law." However, MCL 423.216(e) of the Public Employment Relations Act provides a mechanism for review of Michigan Employment Relations Commission decisions. That statute provides that a party aggrieved by a final order of the Commission may within twenty days of such order as a matter of right obtain review of the order in the **Court of Appeals** by filing a petition.

Therefore, for the reasons stated above, this Court does not have jurisdiction to hear this appeal. Accordingly, Appellant's Motion for Immediate Consideration and Motion to Stay are **DENIED**.

This decision resolves the last pending claim and closes the case.

Hon. Paula J.M. Manderfield (P-34319)
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the Order Denying Appellant's Emergency Motion to Stay Administrative Proceedings and Motion for Immediate Consideration upon Christine M. Gerdes, Suellyn Scarnecchia, Patrick J. Wright, Mark H. Cousens, David H. Fink, Darryl Bressack, Kevin J. Cox, and Dan V. Artaev by placing said order in an envelope and placing same for mailing with the United States Mail at Lansing, Michigan, on February 9, 2012.

Jean M. Smydra

Jean M. Smydra
Judicial Assistant

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN THE MATTER OF:

UNIVERSITY OF MICHIGAN
Appellee Public Employer,

and

GRADUATE EMPLOYEES ORGANIZATION/AFT,
Appellee Petitioner – Labor Organization,

and

STUDENTS AGAINST GSRA UNIONIZATION,
Proposed Intervenor,

and

MICHIGAN ATTORNEY GENERAL,
APPELLANT Proposed Intervenor.

Court of Appeals No. NEW FILING

Ingham County Circuit Court No. 12-135-AA

Michigan Employment Relations Commission No. R11 D-034

PURSUANT TO MCR 7.205(E)(1), AN EXPEDITED DECISION REQUESTED AS SOON AS POSSIBLE BECAUSE THE ADMINISTRATIVE PROCEEDING FOR WHICH THE ATTORNEY GENERAL SEEKS INTERVENTION IS ALREADY IN PROGRESS.

STATEMENT REGARDING TRANSCRIPT

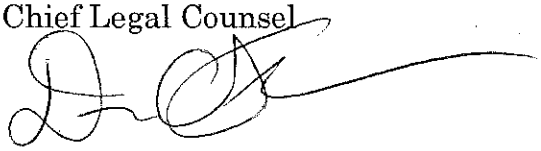
Dan Artaev, attorney for Appellant Proposed Intervenor Michigan Attorney General, states no transcript exists at the trial court level, no hearings were held.

Respectfully submitted,

Bill Schuette
Attorney General

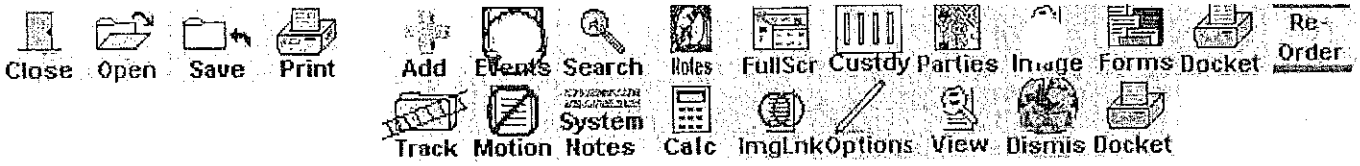
John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel



Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General
Michigan Dep't of Attorney General
3030 West Grand Boulevard
Detroit, MI 48202
(313) 456-0080

Dated: February 17, 2012



12-000135-AA-C30 ATTY GEN MI VS GRADUATE EMPLOYEES ORGANIZATION AFT et al PJM

Search Criteria
Docket Entry
Images All Dockets
Participant
Display OptionExclude Non Display Dockets
Begin Date
End Date
SortAscending

Search Results

Docket Date	Reference	Description	Amt Owed/ Amt Dism/Credit	Amount Due
2/7/2012		COMPLAINT FILED Receipt: 288852 Date: 02/07/2012	150.00	0.00
2/7/2012		EMERGENCY MOTION TO STAY ADMINISTRATIVE PROCEEDINGS, AND MOTION FOR IMMEDIATE CONSIDERATION OF STAY MOTION AND EMERGENCY APPLICATION FOR LEAVE TO APPEAL (ORAL ARGUMENT REQUESTED)	0.00	0.00
2/7/2012		ATTY GENERAL'S AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO APEAL AS REQUIRED	0.00	0.00
2/8/2012		PROOF OF SERVICE ON 020812 A COPY OF MICHIGAN ATTY GENERAL PROPOSED ORDER GRANTING EMERGENCY MOTION TO STAY; MOTION FOR IMMEDIATE CONSIDERATION; APPLICATION FOR LEAVE TO APPEAL AND EMERGENCY PETITION FOR REVIEW BY MAIL UPON PARTIES OF RECORD	0.00	0.00
2/10/2012		ORDER DENYING APPELLANT'S EMERGENCY MOTION TO STAY ADMINISTRATIVE PROCEEDINGS AND MOTION FOR IMMEDIATE CONSIDERATION - THIS DECISION RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE (SIGNED BY JUDGE MANDERFIELD ON 2/9/12)	0.00	0.00
2/10/2012		CASE CLOSED C30	0.00	0.00
2/10/2012		APPEARANCE OF COUNSEL, GEO, AFT, AFL-CIO - Attorney: COUSENS, MARK H. (12273) W/CRT OF SRV	0.00	0.00
2/10/2012		BRIEF OPPOSING APPLICATION FOR LEAVE TO APPEAL	0.00	0.00
2/13/2012		PROOF OF SERVICE ON 020812 A COPY OF MI ATTY GENERAL EMERGENCY MOTION TO STAY BY MAIL UPON PARTIES OF RECORD	0.00	0.00
2/14/2012		CLERKS NOTICE (CIVIL) CLERKS' NOTICE Sent on: 02/14/2012 08:26:45	0.00	0.00

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN THE MATTER OF:

UNIVERSITY OF MICHIGAN
Appellee Public Employer,

and

GRADUATE EMPLOYEES ORGANIZATION/AFT,
Appellee Petitioner – Labor Organization,

and

STUDENTS AGAINST GSRA UNIONIZATION,
Proposed Intervenor,

and

MICHIGAN ATTORNEY GENERAL,
APPELLANT Proposed Intervenor.

Court of Appeals No. NEW FILING

Ingham County Circuit Court No. 12-135-AA

Michigan Employment Relations Commission No. R11 D-034

PURSUANT TO MCR 7.205(E)(1), AN EXPEDITED DECISION REQUESTED AS SOON AS POSSIBLE BECAUSE THE ADMINISTRATIVE PROCEEDING FOR WHICH THE ATTORNEY GENERAL SEEKS INTERVENTION IS ALREADY IN PROGRESS.

PROOF OF SERVICE

Dan Artaev certifies that on the 17th day of February, 2012, he served a copy of Michigan Attorney General's Application for Leave to Appeal, Emergency Motion to Stay Administrative Proceedings and Motion for Immediate Consideration of Stay Motion and Emergency Application for Leave to Appeal under MCR 7.211(C)(6), order being appealed, Statement Regarding Transcript and register of actions in this matter on all counsel of record and parties *in pro per*:

Ingham County Circuit Court Clerk (w/$25.00 appeal fee check)
313 W Kalamazoo Street
Lansing, Michigan 48933
Via Personal Delivery

Ms Christine M Gerdes
Ms Suellyn Scarnecchia
University of Michigan
503 Thompson St
Ann Arbor, MI 48109
cmgerdes@umich.edu
suellyns@umich.edu

Mr Patrick J Wright
Mackinac Center Legal Foundation
P.O. Box 568
Midland, MI 48640
wright@mackinac.org

Mr Mark H Cousens
2621 Evergreen Rd, Ste 110
Southfield, MI 48076
cousens@cousenslaw.com

Mr David H Fink
Mr Darryl Bressack
100 W Long Lake Rd, Ste 111
Bloomfield Hills MI 48304
dfink@finkandassociateslaw.com
dbressack@finkandassociateslaw.

via electronic mail. Attorney for Appellant Proposed Intervenor Michigan Attorney General is contacting the parties to obtain consent for electronic service. In the event consent is not given, the parties will be served via personal service on Tuesday, February 21, 2012 and another Proof of Service will be filed.

Dan Artaev