

# APPELLATE PRACTICE

Section Newsletter

FREEDOM • TRUTH • EQUALITY • JUSTICE

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## Court of Appeals "Fast Track" for Summary Disposition Appeals Starts January 1, 2005

Much of this issue is devoted to the new procedures for appeals from summary-disposition judgments. Under Administrative Order 2004-5 and amended MCR 7.203, the court of appeals will implement a "fast track" for these appeals, adapting the 90/90 plan recommended by the Case Management Work Group in early 2004. These procedures will continue for two years, while the court and the bar study their effectiveness and any problems that might arise.

Because of the importance of this new procedure to the Appellate Practice Section, we are covering this new procedure in several stories. The Administrative Order, including staff comments, and the new court rule (new subsection (G) only) are reproduced beginning on page 11. Section Chair Mark Cooney addresses page limits in briefs under the new rules (see *From the Chair*, p. 2). John Bursch offers some tips for the practitioner in using the new procedures (see *Tips and Tricks for Surviving the Michigan Court of Appeals' new "Rocket Docket,"* p. 7). We have reprinted a brochure prepared by the

Court of Appeals to explain the procedures and highlight the practice changes (p. 19) and the forms for motions to remove a case from the fast track and to extend the time to file a brief (p. 22-23). The brochure and both motions are available on the court's web site, <http://courtofappeals.mijud.net>. The court summarizes the changes there and links to this brochure and the motions. The motions are in PDF format, can be filled out online, and then printed and filed with the clerk of the court (the court does not yet accept electronic filings).

On page 21, you'll find an announcement about a seminar co-sponsored by the Michigan Trial Lawyers Association and the Michigan Defense Trial Counsel, about the new rules. And on page 18, you'll find a notice about a form in process for practitioner feedback on the new procedures.

While there may be some overlap in these articles, this major change in Michigan appellate practice in Michigan deserves this attention.

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### APS NEWSLETTER

Eileen Kavanagh, Editor

### A little about the building

The Michigan Hall of Justice was dedicated on October 8, 2002. It houses the Michigan Court of Appeals and the Michigan Supreme Court as well as other related agencies. The words "truth," "equality," "freedom," and "justice" are engraved on the front of the building, reminding visitors of the judicial branch's mission. At the dedication ceremony, Justice Cavanagh remarked that the shape of the building is reminiscent of native justice — the sentencing circle, where young and old had a voice; and Chief Justice Corrigan remarked that the arms seem to be outstretched, both shielding and embracing.

## From the Chair

By Mark Cooney

On October 5, 2004, the Michigan Supreme Court issued an administrative order establishing a "fast track" for civil appeals from orders granting or denying summary disposition. This administrative order was a slightly modified version of the delay-reduction plan that the Court's Case Management Work Group proposed in early 2004. When the Work Group's plan was first made available to the public, many lawyers who butter their bread with civil appeals feared that the plan would make their work product a mere afterthought in summary-disposition appeals. The plan placed unprecedented emphasis on the documents filed in the trial court, requiring the parties to file their trial-level motions, briefs, and exhibits in the Court of Appeals. And the parties' actual appeal briefs were limited to 20-page briefs "clarifying the facts or law as needed."

So how would appellate specialists convince clients, trial attorneys, or even their own law partners that they were an essential piece of the appellate puzzle when their work product would be relegated to truncated briefs riding piggy-back on the trial attorneys' briefs? And how much could even the most talented appellate specialists flex their analytical muscles in short briefs that were destined to do little more than clarify some of the rough spots in the trial briefs? Long live the appellate specialist, indeed.

But there was a pleasant surprise in the administrative order implementing the fast-track plan: The Supreme Court dropped the proposed 20-page limit and replaced it with a 35-page limit—almost doubling the permissible length of fast-track appeal briefs. This was no small gesture. This change will go far in preserving the craft of appellate brief-writing in civil appeals, not to mention the job satisfaction of a segment of the bar that takes unique pride in producing scholarly briefs that help shape the law of this state.

Now I'm not suggesting that the length of an appeal brief is the primary factor in assessing its quality. Far from it. Like you, I've read my share of incoherent, 50-page monstrosities filled with needless

repetition and hyperbolic nonsense. And 20 pages are more than enough for many appeals. But many summary-disposition appeals (that won't necessarily be removed from the fast track) involve multiple issues or complex issues, and the extra 15 pages will offer appellate specialists the *flexibility* to craft more comprehensive briefs that analyze authority not mentioned in the trial briefs. A good appellate attorney can and should give an appellate court more than a truncated brief that defers to the trial brief for its main points. And a good appellate attorney can and should give an appellate court a brief that does more than just clarify or supplement the trial brief.

Oh sure, there are legions of attorneys who believe that an appeal brief is nothing more than a summary-disposition brief with a new caption. Just take your trial brief and write "In the Court of Appeals" on top, then throw in some questions presented and a few lines about appellate jurisdiction and standard of review, and PRESTO! — you've got your appeal brief. But this is the thinking of lawyers who are either short-sighted, too busy to do it right, or both.

The California Court of Appeals recently issued an opinion that convincingly debunked the notion that an appellate attorney's work product is nothing more than a glorified rehash of the trial attorney's work product. In *In re Marriage of Shaban*, 105 Cal. Rptr. 2d 863 (2001), the loser on appeal argued that the winner was seeking excessive appellate attorney fees. The loser argued that the amount was excessive because all of the hard work had already been done at the trial level. This was an argument, the court quipped, that "the members of this panel, or any appellate or reviewing court, are particularly situated to reject out of hand." *Id.* at 870.

The court explained that "[a]ppellate work is most assuredly not the recycling of trial level points and authorities." *Id.* The court supported that conclusion with a detailed discussion of why extra care and diligence are necessary when preparing appeal briefs:

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For better or worse, appellate briefs receive greater judicial scrutiny than trial level points and authorities, because three judges (or maybe seven) will read them, not just one judge. The judges will also work under comparatively less time pressure, and will therefore be able to study the attorney's "work product" more closely. They will also have more staff (there are fewer research attorneys per judge at the trial level) to help them identify errors in counsel's reasoning, misstatements of law and miscitations of authority, and to do original research to uncover ideas and authorities that counsel may have missed, or decided not to bring to the court's attention. . . . Along the same lines, appellate counsel must necessarily be more acutely aware of how a given case fits within the overall framework of a given area of law, so as to be able to anticipate whether any resulting opinion will be published, and what effect counsel's position will have on the common law as it is continuously developed.

*Id.* at 870-71.

Then the court turned to page limits. While acknowledging that longer isn't

necessarily better, the court observed that the freedom to exceed 15 or 20 pages enables appellate practitioners to explore the parties' legal arguments in greater detail and to discuss legal authority uncovered during more in-depth research:

Then there is the simple matter of page limitations. Appellate courts are more liberal than trial courts as to the number of pages counsel are allowed. . . . Granted, the extra length of the "briefs" in appellate and reviewing courts is not always a good thing[,] . . . but the difference does mean that appellate counsel will have much more freedom to explore the contours and implications of the respective legal positions of the parties. Part of that exploration may mean additional research that trial counsel simply will not have had the time to do.

*Id.* at 871.

Both trial and appellate lawyers write briefs with the aim of winning the case at hand. But "because the orientation in appellate courts is on whether the trial court committed a prejudicial error of law, the appellate practitioner is on occasion likely to stumble into areas implicating some of the great ideas of jurisprudence, with the concomitant need for additional

research and analysis that takes a broader view of the relevant legal authorities." *Id.*

In short, the conscientious appellate specialist produces original work, not a mere rehash or clarification of the trial-level brief:

[A]ppellate practice entails rigorous original work in its own right. The appellate practitioner who takes trial level points and authorities and, without reconsideration or additional research, merely shovels them in to an appellate brief, is producing a substandard product. Rather than being a rehash of trial level points and authorities, the appellate brief offers counsel probably their best opportunity to craft work of original, professional, and, on occasion, literary value.

*Id.* (footnote omitted).

Fortunately, the Michigan Supreme Court has acknowledged the same thing, albeit implicitly. To some, the Supreme Court's decision to allow 15 extra pages may not seem particularly earth-shattering or reassuring, but the message I hear resonates clearly: The Court believes that our work – our original, professional, and, on occasion, literary work – has a special value in the appeal process. Let us endeavor to prove the Court right

## MCR 7.203(G)

(G) Appeals from Orders Granting or Denying Motions for Summary Disposition. Appeals arising solely from orders granting or denying motions for summary disposition under MCR 2.116 are to be processed in accordance with Administrative Order 2004-5.

Check out the  
section website at  
[www.michbar.org/  
appellate/](http://www.michbar.org/appellate/)

# A Tribute to Chief Justice Dorothy Comstock Riley (1924-2004)

By Ed Wyszynski

I had the privilege and joy of being a friend of Dorothy Comstock Riley. My life was enriched by her being a part of it. Like countless others, I will greatly miss her.

Dorothy Comstock Riley was unique. She went to law school at a time when women did not become lawyers—her 1949 law school class at Wayne State University included just three women. Yet she never learned to drive because, as she once explained to me, her father thought it inappropriate for a woman to drive. Always elegant in dress and gracious and proper in manner, she had a delightfully wry sense of humor. She always thought of others before herself: concerned about how her campaign team would feel if she lost her 1984 campaign, she wrote all of us thank-you letters the weekend before the election and then secluded herself on election night because she didn't want to disappoint us. She was a true role model both in and out of the courtroom.

When Dorothy started looking for a position as a lawyer, law firms were interested only in how fast she could type. After a stint as an attorney for the Wayne County Friend of the Court, she founded a law firm with her husband, Wallace D. Riley, and a friend, George T. Roumell. In 1972, she became a Wayne County Circuit Judge, and in 1976, Governor William G. Milliken appointed her to the Michigan Court of Appeals, the first woman to serve on that court.

In 1982, she was nominated by the Michigan Republican Party to run for a seat on the Michigan Supreme Court. Although she lost that election, less than a month later, Governor Milliken appointed her to the Court upon the death of Justice Blair Moody, Jr., who had just been reelected to the Court. Her

appointment soon became the subject of much partisan wrangling when newly elected Democratic Governor James J. Blanchard argued he should have had the appointment. The Court eventually ousted her on a 4-2 vote.

Rather than allowing the incident to embitter her, Dorothy Riley handled it with her trademark grace and dignity. She ran for the Court again in 1984, defeating Justice Thomas Giles Kavanagh, one of the four justices who voted to oust her two years earlier, by 500,000 votes. The first person of Hispanic heritage to serve on any state supreme court, she was elected Chief Justice by her colleagues in 1987 and again in 1989. She was reelected to the Court in 1992.

Her contributions to the Court went beyond her legal scholarship. While Chief Justice, she founded the Michigan Supreme Court Historical Society to preserve documents, records, and memorabilia relating to the Michigan Supreme Court. She believed in the integrity and dignity of the Supreme Court and wanted to preserve its history for generations to come.

I learned much from Dorothy Riley in the 20 years I knew her: send handwritten thank you notes always; make yourself invaluable to the person for whom you work; do the very best work you can; always be civil and conduct yourself with dignity; be on time.

When you became her friend, Dorothy took an intense interest in how you were and what you were doing. Chief Justice Maura Corrigan, in her eulogy at Dorothy's funeral mass, described how Dorothy would take an interest in her friends and make

them her special projects.

I served as the accountant for



Dorothy's 1984 Supreme Court campaign and spoke with her almost daily. When I was thinking about going to law school at the age of 35, she encouraged me and called from time to time to see how I was doing. Throughout my legal career, Dorothy was there to encourage me, mentor me, and recommend me to others with extraordinarily kind letters of recommendation.

In 1997, Dorothy was diagnosed with Parkinson's Disease. She made the difficult decision to retire from the Supreme Court before the end of her term, worried that she was letting the people of Michigan down by doing so. Like everything else she did, she dealt with Parkinson's in her quiet, gracious, dignified manner. Though the disease debilitated Dorothy—eventually depriving her of her elegant, flowing handwriting—she retained her acute, incisive, and analytical mind to the end.

Every so often, we have the good fortune of having a unique person enter our lives. Dorothy Comstock Riley was that person for me. I know I am a better husband, father, and lawyer because 20 years ago, Dorothy Riley took a liking to me. We are deeply indebted to her husband Wally and son Peter for so unselfishly sharing Dorothy with us.

We all—the bar and Michigan citizens—have been enriched because Dorothy Comstock Riley once walked among us.

“Throughout my legal career, Dorothy was there to encourage me, mentor me, and recommend me to others with extraordinarily kind letters of recommendation.”



# Recommended Reading

By Mary Massaron Ross

This issue's book reviews include an account of the creation of Walt Disney World in Orlando, Florida, and the controversial legal steps used; a book of essays on the history and impact of *Brown v Board of Education*; and a memoir by former solicitor general, Charles Fried.

## Married to the Mouse: Walt Disney World and Orlando

Richard E. Foglesong (Yale University Press 2001)

Some years ago, when the American Bar Association Section of State and Local Government Law held one of its meetings in Orlando, I first heard of the Reedy Creek Improvement District. A land-use lawyer at the meeting told me that Disney somehow managed to obtain its "own private government, a sort of Vatican with mouse ears, with powers and immunities that exceed nearby Orlando's." Curious, I looked into it when I began teaching a course in local government law at Wayne State University Law School. It's true. And the captivating and provocative story of how it came to be is told in this book.

Foglesong is not neutral in his rendition of events; he tells a chilling tale of corporate power that is quite hidden from those visiting Disney World. At the same time, Foglesong treats Disney's story as "emblematic of the contested politics of urban development in general – how agreement on growth breaks down over issues of financing and managing growth, and how new institutions are forged to cope with this conflict, institutions that reflect political choices while appearing to remove the politics from the governing." The Reedy Creek Improvement District was created initially when the circuit court approved it (as required to do under a state law). Once created, the district was able to "move dirt and water" but had no structure for decision making. Disney studied how to retain legal control. Its lawyers proposed various strategies to limit democratic

control while retaining governmental powers for the company. The state supreme court approved the autonomous political district despite a challenge on the basis that the benefits of the development "will inure to numerous inhabitants of the District in addition to persons in the Disney complex." The district was permitted to issue \$12 million dollars in tax-free bonds for reclamation, drainage, and roadwork on the property. Eventually, Disney's charter legislation created a local government (largely controlled by Disney since there are virtually no residents in the area except for those working for Disney and living on property largely owned by Disney) with power to provide law enforcement, fire protection, building inspections, road building, energy production, and other public services. Disney never created a public police force but has used security guards hired under a contract with the Reedy Creek government.

The proposals originally discussed when the Florida legislature created these unique government structures suggested that the property would be turned over to private residents who would eventually control the government. But Disney "felt free to redefine Epcot [the place originally called a model city for residents to live] – without renouncing the powers and exemptions that derived from the original concept." Thus, it operates with its own government structure and powers although it is a private, profit-making business.

Foglesong describes Disney's genius for planning an attractive environment, its bold design that turned empty and unwanted wetlands into the tourist destination that it is today, and its efforts to ensure that everything connected with its theme park lived up to its exacting standards. The controlled, safe, and highly attractive environment of Disney World has been facilitated by the governmental control that Disney acquired when these unique governmental structures were created. But the off-site impacts of Disney

World have increased over time. And these changes have gradually altered the balance of the original agreement.

Foglesong also discusses the Celebration housing development, a residential area touted as a model for the new urbanism. Like the original Disney development, Celebration has been lauded as a marvelous new approach to land use. Disney again employed unique governmental structures to accomplish its goal. Anyone interested in land use planning and development will find the story valuable as an illustration of a bold new approach and a cautionary tale as to some of the problems that may arise.

Foglesong's book is lively, provocative, and important, whether you agree with his conclusions or not. It is the perfect volume to take with you on your trip to Disney World this winter. I highly recommend it.

## Black, White, and Brown: The Landmark School Desegregation Case in Retrospect

Editors, Clare Cushman and Melvin I. Urofsky (Supreme Court Historical Society CQ Press 2004)

This book of essays was issued by the Supreme Court Historical Society on the fifty-year anniversary of the landmark decision in *Brown v Board of Education*. It is rare that a decision so alters the legal, political, and cultural landscape. The editors of this volume are highly respected legal historians and scholars. The essays recount *Brown's* impact on race relations and the rights of African-Americans, the changing public and scholarly views about the decision, and the lessons to be drawn from it. It also provides fascinating personal accounts of the plaintiffs, the advocates, and the justices, and their involvement.

Urofsky wrote the lead essay, "Among the Most Humane Moments In All Our History." He places the decision in context,

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Recommended Reading  
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describes the predecessor decisions that set the stage for *Brown*, and portrays the moment of decision. Urofsky notes that “[c]onsidering its epochal significance, the *Brown* decision was deceptively simple, running only eleven pages.” According to Urofsky, “Warren intended it to be short enough so that the nation’s newspapers could run it in its entirety.”

Urofsky describes the reaction, in newspapers around the country, and from the political leaders of the South. Urofsky quotes the initially temperate remarks of the governors of Virginia, Alabama, and Arkansas. But Urofsky then recounts the change from the initial reaction to the more “[o]minous signs” that soon appeared. Urofsky provides an overview of the opposition to the remedies proposed and the struggle to effectuate the Court’s judgment.

Another historical essay, “Justice Robert H. Jackson and Segregation: A Study of the Limitations and Proper Basis of Judicial Action,” was authored by Jeffrey D. Hockett. Hockett recounts the criticism and negative commentary about *Brown* because of its “apparent lack of a legal basis for the ruling, and Warren’s reference to sociological studies purporting to demonstrate the harmful effects of segregation on black children.” According to Hockett, “[w]hile the form of Warren’s opinion was not the primary reason for the protracted noncompliance that followed the ruling, the misgivings engendered by the decision were undoubtedly exacerbated by the vulnerability of the Court’s argument.”

In Hockett’s view, these difficulties could have been avoided by incorporating Justice Jackson’s views into the decision. Hockett analyzes the arguments contained in Justice Jackson’s papers for their assessment of the southern situation, the difficulties with enforcement, and legal questions concerning the basis for the decision. Hockett reviews a series of internal memorandums that shed light on the decision, including those from E. Barrett Prettyman, who then served as Justice Jackson’s law clerk. Jackson thought that the decision could not be effectuated without congressional power, a view that was proven to be correct over time.

Prettyman told Justice Jackson that his initial approach was “unlikely to generate public or political support because of its ‘negative attitude’ and preoccupation with ‘doubts and fears.’” He urged Justice Jackson to “not write as if you were ashamed to reach [the decision to overrule *Plessy v. Ferguson*].”

Although much of Justice Jackson’s approach was subject to criticism as overly negative, Hockett points out that his “justification for invalidating segregation in public schools was less susceptible to the charge of judicial legislation than the rationale employed in the Court’s opinion.” Jackson thought that the justices should invalidate the “separate but equal” doctrine by “employing the standard used in previous equal protection cases, namely, classifications between groups or individuals are allowable only if they reasonably relate to legislative purpose and are based on real distinctions.” Hockett argues that this approach would have been “useful not only for the purpose of preserving the Court’s institutional integrity” but also would have “placed the right of the petitioners to equal protection of the laws on a secure foundation – a foundation more secure than that provided by the claim that segregation creates a feeling of inferiority in black children.”

The book contains other equally instructive essays on the history, legacy, and importance of *Brown*. Although scholarly, the essays are written gracefully and with narrative force. So the book is an easy read. I highly recommend it for anyone interested in the legal, social, or cultural issues surrounding *Brown*, its background, its effect, and its future.

**Order & Law: Arguing the Reagan Revolution – A Firsthand Account**  
Charles Fried (Simon & Schuster 1991)

The job of solicitor general is, in my view, the best appellate job in the country. Charles Fried was privileged to serve in that position for three years during the Reagan presidency, when Ed Meese, Brad Reynolds, and others sought to reshape the law after the tumultuous times of the Warren Court. Fried describes these years in this memoir, which is out of print but

readily available in used bookstores or over the Internet.

According to Fried, “At the heart of the Reagan Revolution, was the conviction that it was possible and therefore necessary to do justice without twisting legal principles, without committing fresh injustices, and without distorting the system of opportunity and reward for merit on which the morale of a free enterprise system depends.”

Fried describes the balance he sought in dealing with the staff of the office. The staff told him not to “intervene in cases where all I had to add was a philosophical statement about how the law should come out.” They urged him to “represent the interest of ‘government’ in general – that is, the ability of government to go about its work, whatever it may be, as freely as possible.” According to Fried, the staff “failed to see ... the extent to which the traditions and precedents of the office had become clogged with commitments and assumptions that were in fact political.” At the same time, Fried candidly recounts the efforts of Ed Meese and others to purge the office of those who were not sympathetic to the Reagan administration’s views. In response to both pressures, Fried hired a “legal traditionalist” but “not a programmatic conservative” as his chief deputy. He did so in an effort to establish his independence.

Fried’s memoir details his involvement in some of the leading decisions of that era. His account provides not only a cogent and lucid analysis of the legal issues presented to the Supreme Court, but a thorough and fascinating story of the political and institutional battles that led up to the decisions by the solicitor general regarding the legal position to take. Many of the issues of particular concern to Fried continue to be hotly debated and litigated today. Thus, Fried’s account of the “headless fourth branch” and whether Congress can create independent agencies is fascinating and instructive today. Likewise, his rendition of the leading affirmative action decisions of the time is illuminating both historically and as

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# Tips and Tricks for Surviving the Michigan Court of Appeals' New "Rocket Docket"

By John J. Bursch

On October 5, 2004, the Michigan Supreme Court entered an historic order that will change dramatically the practice for appealing trial court orders granting or denying summary disposition. Under this new "rocket docket," such appeals will be briefed, argued, and decided within **six months** of filing. Because the new rules for these expedited summary disposition appeals will go into effect on January 1, 2005, it is imperative that all Michigan attorneys familiarize themselves with the changes. This article analyzes the new rules and closes with some practical tips for dealing with—and maximizing advantage from—the rocket docket.

## The Claim of Appeal

The time for filing an appeal by right or by leave from a trial court order granting or denying summary disposition will continue to be governed by MCR 7.204 and MCR 7.205, i.e., within 21 days after entry of the order or denial of a motion for reconsideration. Unlike the current rules, however, claims of cross-appeal must be filed within 14 days after the claim of appeal is filed or served, whichever is later, or within 14 days after the clerk certifies an order granting leave to appeal.<sup>1</sup> As long as the case proceeds on the expedited summary disposition track, it will be unnecessary to file a docketing statement.

The claim of appeal must be accompanied by (1) evidence that the transcript of the hearing on the motion for summary disposition has been ordered; (2) a statement that there is no record to transcribe; or (3) a statement that the transcript has been waived. Importantly, the failure to file any one of these three documents will *not* toll filing deadlines for transcripts or briefs, and a sustained failure may result in dismissal under MCR 7.201(B)(3). The form of applications for leave and claims of cross-appeal shall conform to existing MCR 7.205 and 7.207, respectively.

## Removal from the "Rocket Docket"

**Warning.** An appellant that desires to move a summary disposition appeal to

the traditional appellate track must file a motion to "remove" the case from the summary disposition track **concurrently with the filing of the claim of appeal.** Appellee motions to remove must be filed no later than the time for filing of the appellee's brief. There is no provision for removal if these deadlines are missed, although the court itself may decide *sua sponte* to take the case off the fast track at any time. The court has a standard form for filing motions to remove.

A party opposing a motion to remove must file an answer within 7 days. The court shall then issue an order disposing of the motion within 14 days after the motion's filing. If the court grants the motion, a docketing statement must be filed within 14 days after the date of certification of the order, and timing for appellate briefs is governed by MCR 7.212, beginning on the date the order removes the case from the summary disposition docket.

## Transcript

The rules require the court reporter or recorder to file the transcript within 28 days after either the appellant or appellee orders it. (The reporter or recorder shall be entitled to the increased fee of \$3.00 per original page and 50 cents per page for each copy of transcripts ordered and timely filed in appeals processed under the expedited docket.) If the appellant has ordered the transcript and the court reporter does not timely file it, the appellant must file within 7 days after the transcript's due date either a motion for an order for the court reporter or recorder to show cause, or a motion to extend the time for filing the transcript. The appellant's time for filing its initial brief will be tolled by the timely filing of one of these two motions. If the appellant fails to file a motion, the time for filing appellant's brief will begin on the date the transcript was due. Similar rules apply if it is the appellee that desires to order the transcript.

## Briefs

Briefs must generally conform to the

requirements of MCR 7.212, but there are some notable exceptions. The appellant's brief must be filed within 28 days (rather than 56 days) after the claim of appeal is filed or the transcript is filed with the trial court, whichever is later; appellee's brief must be filed 21 days (rather than 35 days) later. The time for filing either of these briefs may be extended for 14 days on motion for good cause shown. Although the parties may not stipulate to such an extension, the motion may include a statement that opposing counsel does not oppose it. The court has a standard form for filing such motions that suggests some possible bases for showing "good cause."

In appeals by leave, the appellant may rely on the application for leave to appeal, rather than filing a separate brief, by filing 5 copies of the application with an explanatory cover letter. In all other instances, the briefs are limited to 35 (rather than 50) pages. Each of the filing parties must provide the court with that party's trial court summary disposition motion or response, brief, and appendices. Reply briefs must be filed within 14 (rather than 21) days of the filing of appellee's brief and are limited to 5 (rather than 10) pages.

## Oral Argument and Decision

The court shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track within 7 days after the filing of the appellee's brief. The panel's opinion or order shall issue no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition. Again, it is expected that the court will issue its final opinion or order within six months following the appellant's filing of the claim of appeal.

## Practice Tips

- It may be to the appellee's tactical advantage to never file a removal motion, and to always oppose any removal motion the appellant files, as a fast track and a shorter page limit seem likely to increase the likelihood

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## Annual Meeting Program: Panel Discusses Amicus Practice

The Appellate Practice Section's annual meeting program featured a panel discussion about Amicus briefs and practice, with a distinguished panel of



l-r: Mark Cooney, Chief Judge Whitbeck, Justice Marilyn Kelly, Mark Granzotto, and Jim Gross

speakers: Michigan Supreme Court Justice Marilyn Kelly; Michigan Court of Appeals Chief Judge William Whitbeck; Mark Granzotto, Mark Granzotto, P.C.; and James G. Gross, Gross, Nemeth & Silverman, PLC. Chair-elect Mark Cooney moderated the discussion.

The panelists agreed that amicus briefs help the courts in deciding more difficult cases. Judge Whitbeck recalled an extraordinarily difficult case with complex issues, and said that the amicus briefs helped the court sort through those questions. While noting that amicus briefs would not be useful in the ordinary case, particularly those not set for oral argument, he said that the more complex the case, the more useful an amicus brief would be.

Justice Kelly agreed with Judge Whitbeck, noting that the court is less likely to consider redundant arguments, so

more isn't necessarily better. She suggested that organizations with similar interests should join in a brief, to increase the impact. Both jurists said that amicus briefs are underused, and that if used properly, these briefs could improve the quality of the decisions, even if they might occasionally slow the process.

All the panelists suggested that brief writers make their major point in the first few pages, to grab the court's attention and to help the court walk through the analysis. Both practitioners have represented interest

groups, and noted that the parties to a case might not represent the broader interests of the group. Justice Kelly said that amicus briefs are most useful on policy questions,



Mark Cooney, Chief Judge Whitbeck, Justice Marilyn Kelly, Mark Granzotto and Jim Gross

especially where the individual advocates are not as conscious of the broader impact on the state's jurisprudence.

Granzotto and Gross agreed that practitioners are not likely to make a living



Outgoing Chair Vic Valenti handing gavel to new chair Mark Cooney

on amicus briefs, although the practice can help build an attorney's reputation. They also emphasized that if the court solicits amicus briefs, submit them.

More than 50 attendees listened to the discussion, and many submitted questions to the panel. In response to one question, the practitioners suggested that a party's attorney who wants amicus help, from either an organization or an appellate practitioner, should request it at some critical stage in the process, no later than after the Supreme Court grants leave to appeal. Judge Whitbeck added that lists of trade associations can provide leads for amicus sources.

A video tape of the proceedings is available from Chair Mark Cooney, [cooneym@cooley.edu](mailto:cooneym@cooley.edu).

Following the program, the officers and council members were elected, and the members present voted to accept the proposed change to the Section's bylaws announced in previous newsletters. For the latest version of the bylaws, see the section's website: [www.michbar.org/appellate](http://www.michbar.org/appellate).

# MICHIGAN SUPREME COURT



## *Office of Public Information*

contact: Marcia McBrien | (313) 972-3219 or (517) 373-0129

FOR IMMEDIATE RELEASE

### **CLIFFORD W. TAYLOR IS NEW CHIEF JUSTICE OF MICHIGAN SUPREME COURT**

LANSING, MI, January 6, 2005 – Clifford W. Taylor is the new Chief Justice of the Michigan Supreme Court, the Court has announced. He was chosen by his fellow Justices at a conference earlier today. The seven Justices voted 6-1 to elect Taylor, with Justice Elizabeth A. Weaver dissenting.

Every two years, the Justices elect one of their colleagues to serve as Chief Justice for a term of two years. According to the Court's custom, a Chief Justice generally serves no more than two consecutive two-year terms.

Taylor thanked his colleagues, saying he was “both humbled and profoundly honored by their choice of me as Chief Justice. I will strive every day to merit their confidence and carry on the best traditions of the Chief Justices who preceded me.”

Taylor also praised outgoing Chief Justice Maura D. Corrigan, who served four years as Chief Justice, beginning in January 2001.

“She is an exemplary steward of the public trust, and she has had a lasting impact for good, particularly in the arena of child welfare,” he said. “She has saved Michigan taxpayers millions of dollars by leading a successful conversion to a statewide child support enforcement computer system, as just one example.”

Taylor, a native of Flint, received his undergraduate degree from the University of Michigan and his law degree from George Washington University. After three years in the U.S. Navy as a line officer, he returned to Michigan and served as an assistant prosecuting attorney in Ingham County. In 1972, he joined the Lansing law firm of Denfield, Timmer and Seelye, which later became Denfield, Timmer & Taylor when Taylor became a partner in the firm. He remained in private practice for 20 years until his 1992 appointment to the Michigan Court of Appeals by Governor John Engler.

In August 1997, Engler appointed Taylor to the Michigan Supreme Court to fill the seat vacated by retired Justice Dorothy Comstock Riley. In 1998, Taylor ran and was elected to fill the balance of Riley's term. Taylor was re-elected to a full eight-year term in 2000.

Continued from page 9

Taylor's professional activities include serving on the Michigan State Board of Law Examiners, of which he was president from 1995-1996. He has served on the Michigan State Bar's Standing Committee on Character and Fitness and the Commission on the Courts in the 21<sup>st</sup> Century. A fellow of the Michigan State Bar Foundation, he is also a member of the Catholic Lawyers Guild and the Federalist Society's Michigan Chapter. His community activities include having served as a leader in the Boy Scouts; he is also a board member of the Michigan Dyslexia Institute.

Taylor resides in Laingsburg with his wife, Lucille.

-- MSC --



# Order

Entered: October 5, 2004

ADM File Nos. 2002-34  
2002-44

Administrative Order No. 2004-5

Expedited Summary Disposition  
Docket in the Court of Appeals

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Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

On order of the Court, notice of the proposed expedited docket and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following proposal is adopted for a two-year period, effective January 1, 2005.

1. **Applicability.** This administrative order applies to appeals filed on or after January 1, 2005, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. These appeals are to be placed on an expedited appeal track under which they shall generally be briefed, argued, and disposed of within six months of filing. A motion to remove is required to divert such appeals to the standard appeal track.
2. **Time Requirements.** Appeals by right or by leave in cases covered by this order must be taken within the time stated in MCR 7.204 or MCR 7.205. Claims of cross-appeal must be filed within 14 days after the claim of appeal is filed with the Court of Appeals or served on the cross-appellant, whichever is later, or within 14 days after the clerk certifies the order granting leave to appeal.
3. **Trial Court Orders on Motions for Summary Disposition.** If the trial court concludes that summary disposition is warranted under MCR 2.116(C), the court shall render judgment without delay in an order that specifies the subsection of MCR 2.116(C) under which the judgment is entered.
4. **Claim of Appeal - Form of Filing.** With the following exceptions, a claim of appeal filed under this order shall conform in all respects with the requirements of MCR 7.204.
  - (A) A docketing statement will not be required as long as the case proceeds on the summary disposition track.

(B) When the claim of appeal is filed, it shall be accompanied by:

- (1) evidence that the transcript of the hearing(s) on the motion for summary disposition has been ordered, or
- (2) a statement that there is no record to transcribe, or
- (3) a statement that the transcript has been waived.

Failure to file one of the above three documents with the claim of appeal will *not* toll subsequent filing deadlines for transcripts or briefs. Sustained failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court of Appeals provides a minimum 7-day warning.

5. Application for Leave – Form of Filing. An application for leave to appeal filed under this administrative order shall conform in all pertinent respects with the requirements of MCR 7.205.
6. Claim of Cross-Appeal. A claim of cross-appeal filed under this administrative order shall conform in all pertinent respects with the requirements of MCR 7.207.
7. Removal from Summary Disposition Track. A party may file a motion to remove the case from the summary disposition track to the standard track.
  - (A) Time to File. Motions to remove by the appellant or the cross-appellant must be filed with the claim of appeal or claim of cross-appeal, respectively, or within 7 days after the date of certification of an order granting application for leave to appeal. Motions to remove by the appellee or cross-appellee must be filed no later than the time for filing of the appellee’s brief.
  - (B) Form. Motions to remove shall concisely state the basis for removal, and must be in the form prescribed by the Court of Appeals. This form shall include a statement advising whether the appellee is expected to oppose the motion.
  - (C) Answer. An answer to a motion to remove must be filed within 7 days after service of the motion. The answer should state whether the appellee is expected to file a claim of cross-appeal.
  - (D) Disposition. Within 14 days after the filing of the motion to remove, the Court of Appeals shall issue an order disposing of the motion and setting the time for further filings in the case. The time for further filings in the case will commence on the date of certification of the order on the motion.

- (E) Docketing Statement. If the case is removed from the summary disposition track, a docketing statement must be filed within 14 days after the date of certification of the order on the motion.
- (F) The Court of Appeals may remove a case from the summary disposition track at any time, on its own motion, if it appears to the Court that the case is not an appropriate candidate for processing under this administrative order.
- (G) Effect of Removal. If the Court of Appeals removes a case from the summary disposition track, the parties are entitled to file briefs in accordance with the time and page limitations set forth in MCR 7.212. The time for filing the briefs commences from the date of certification of the order removing the case from the summary disposition docket.

8. Transcript – Production for Purposes of Appeal.

(A) Appellant.

- (1) The appellant may waive the transcript. See section 4(B)(3) above.
- (2) If the appellant desires the transcript for the appeal, the appellant must order the transcript before or contemporaneously with the filing of the claim of appeal.
- (3) If the transcript is not timely filed, the appellant must file one of the following motions with the Court of Appeals within 7 days after the transcript is due:
  - (a) a motion for an order for the court reporter or recorder to show cause, or
  - (b) a motion to extend time to file the transcript.
- (4) The time for filing the appellant’s brief will be tolled by the timely filing of one of the above motions. The order disposing of such motion shall state the time for filing the appellant’s brief.
- (5) If the ordered transcript is not timely filed, and if the appellant fails to file either of the above motions within the time prescribed, the time for filing the brief will commence on the date the transcript was due. In such event, the appellant’s brief shall be filed within 56 days after the claim of appeal was filed or 28 days after certification of the order granting leave to appeal.

(B) Appellee.

- (1) The appellee may order the transcript within 14 days after service of the claim of appeal and notice that the appellant has waived the transcript.

- (2) The appellee's transcript order will not affect the time for filing the appellant's brief.
  - (3) If the transcript is not timely filed, the appellee must file one of the following motions with the Court of Appeals within 7 days after the transcript is due:
    - (a) a motion for an order for the court reporter or recorder to show cause, or
    - (b) a motion to extend the time to file the transcript.
  - (4) The time for filing the appellee's brief will be tolled by the timely filing of one of the above motions. The order disposing of such motion shall state the time for filing the appellee's brief.
  - (5) If the ordered transcript is not timely filed, and if the appellee fails to file either of the above motions within the time prescribed, the time for filing the brief will commence on the date the transcript was due.
- (C) Court Reporter. The court reporter or recorder shall file the transcript with the trial court or tribunal within 28 days after it is ordered by either the appellant or the appellee. The court reporter or recorder shall conform in all other respects with the requirements of MCR 7.210.
- (D) Transcript Fee. The court reporter or recorder shall be entitled to the sum of \$3.00 per original page and 50 cents per page for each copy for transcripts ordered and timely filed in appeals processed under the expedited docket. If the court reporter or recorder does not timely file the transcript, the rate will remain \$1.75 per original page and 30 cents per page for each transcript, as set by MCL 600.2543.
9. Briefs on Appeal.
- (A) With the following exceptions, the parties' briefs shall conform to the requirements of MCR 7.212.
  - (B) Time For Filing.
    - (1) The appellant's brief shall be filed within 28 days after the claim of appeal is filed, the order granting leave is certified, or the timely ordered transcript is timely filed with the trial court, whichever is later, or as ordered by the Court. In appeals by leave, the appellant may rely on the application for leave to appeal rather than filing a separate brief by filing 5 copies of the application for leave to appeal with a cover letter indicating that the appellant is relying on the application in lieu of filing a brief on appeal.
    - (2) The appellee's brief shall be filed within 21 days after the appellant's brief is served on the appellee, or as ordered by the Court.

- (3) Time for filing any party's brief may be extended for 14 days on motion for good cause shown. If the motion is filed by the appellant within the original 28-day brief filing period, the motion will toll the time for any sanctions for untimely briefs. A motion may include a statement from opposing counsel that counsel does not oppose the 14-day extension. A motion to extend the time for filing a brief will be submitted for disposition forthwith; opposing counsel need not file an answer.
  - (4) If the appellant's brief is not filed within 7 days after the date due, the Court of Appeals shall issue an order assessing costs and warning the appellant that the case will be dismissed if the brief is not filed within 14 days after the deadline. If the brief is not filed within that 14-day period, the Court of Appeals shall issue an order that dismisses the appeal and that may assess additional costs.
- (C) Length and Form. Briefs filed under this administrative order are limited to 35 pages, double-spaced, exclusive of tables, indexes, and appendices.
- (1) At the time each brief is filed, the filing party must provide the Court of Appeals with that party's trial court summary disposition motion or response, brief, and appendices. Failure to file these documents at the time of filing the appellant's brief will not extend the time to file the appellee's brief, however.
  - (2) The appellant may wish to include a copy of the transcript (if any) if it was completed after the lower court file was transmitted to the Court of Appeals.
- (D) Reply briefs may be filed within 14 days of the filing of appellee's brief and are limited to 5 pages, double-spaced, exclusive of tables, indexes, and appendices.
10. Record on Appeal. The Court of Appeals shall request the record on appeal from the trial court or tribunal clerk as soon as jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court or tribunal clerk shall transmit the record as directed in MCR 7.210(G).
  11. Notice of Cases. Within 7 days after the filing of the appellee's brief, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track.
  12. Decision of the Court. The opinion or order of the panel shall be issued no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition.

This order will remain in effect for two years from the date of its implementation, during which time the Court of Appeals Delay Reduction Work Group will monitor the expedited docket

program. If, at any time during that monitoring process, it becomes apparent to the work group that procedural aspects of the program need to be modified, the group is encouraged to seek authorization from this Court to implement modifications. The work group will provide this Court with written updates on the pilot program before the one-year and eighteen-month anniversaries of the program's implementation. At the end of the two-year pilot period, this Court will evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

Staff Comment: This is a new procedure requested by the Court of Appeals for the processing of appeals from orders granting or denying summary disposition. The new procedure applies to appeals filed after January 1, 2005. The procedure will be in effect for a two-year pilot period with ongoing monitoring by the delay reduction work group. That group will provide updates to the Court before the one-year and eighteen-month anniversaries of the pilot period. The group is authorized, during the two-year pilot period, to seek from the Court modification of the expedited docket procedures.

The transcript rate is authorized by statute. 2004 PA 328.

The Court of Appeals offered the following explanation of the expedited docket procedure:

The Court of Appeals estimates that summary disposition appeals make up about 50% of the Court's nonpriority civil cases. The procedure proposed by the Court's Case Management Work Group and announced in this administrative order is structured to facilitate disposition of eligible appeals within about 180 days after filing with the Court of Appeals. The work group's report can be accessed on the Court of Appeals website at <http://courtofappeals.mijud.net/resources/specialproj.htm>.

The procedure announced here is intended to apply to appeals arising solely from orders on motions for summary disposition. Orders that reference other issues between the parties will not be eligible for this track. If an eligible appeal is deemed to be inappropriate for the expedited docket, the Court can remove it, either on its own motion or on motion of one or both of the parties. Such motions must be in the form prescribed by the Court of Appeals. See <http://courtofappeals.mijud.net/resources/forms.htm>

The procedure encourages parties to evaluate whether a transcript of hearing(s) on the motion would be helpful on appeal. If little was stated on the record, or there is nothing to be gained from the transcript, it can be waived. In such cases, the appellant's brief (accompanied by the appellant's trial court motion, brief, and appendices) will be due within 28 days after filing the claim of appeal or entry of an order granting leave to appeal. If the transcript is ordered, it will be due within 28 days, with the appellant's brief due 28 days later. The appellee's brief (accompanied by its trial court motion, brief, and appendices) will be due 21 days from service of the appellant's brief. Motions to extend the time for filing briefs will be granted only on good cause shown and, generally, only for a maximum of 14 days. As a general matter, good cause will be limited to unexpected events that directly affect the ability to timely file the brief. When the motion is premised on work load considerations, at a minimum the

completed, the case will be referred to the Court’s research attorneys for an expedited review and it will then be submitted to a panel of judges for disposition.

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

*October 5*, 2004

*Corbin R. Davis*

Clerk

Recommended Reading  
Continued from page 6

to the law today. Fried spends some time also discussing *Morrison v Olson*, the case in which the Supreme Court upheld the statute creating an independent prosecutor against a challenge on separation of powers grounds. Anyone who has studied these structural constitutional questions will find the discussion worth reading. Equally fascinating is Fried’s depiction of the decision-making process and how the various institutional players sought to advance their views. This rare behind-the-scenes view satisfies our curiosity about the politics and our intellectual interest in the legal issues.

Fried’s tone is low-key, thoughtful, and civil. He explains why he wrote the book: “The public’s business should be understandable, transparent, and if those who have been engaged in it are never to give a sense of its texture, of its human feel, we will be left, from administration to administration, from regime to regime, with a mystery and a sham about what it is like to exercise power and to deal with others who have power.” Fried’s book achieves this goal and is well worth reading.

## New OfficeMax Card Enhances Options for SBM Members

Show your new OfficeMax Retail Connect Card and save! State Bar of Michigan members now have the option of purchasing office products and furniture at OfficeMax retail locations at significant cost savings by using a new card. The new Retail Connect Card is available to all State Bar members and associates.

Previously, discounts were available only for factory direct purchases and not at OfficeMax retail stores. An office products program designed specifically for law firms by OfficeMax and LexisNexis now offers significant in-store savings with over 12,000 discounted items. These include

office supplies, furniture, technology products, office papers, and art. Customers can also order by phone, fax, or Internet.

To learn more about this program or to receive a Retail Connect Card, call OfficeMax at (866) 850-2408. Please indicate that you are a member of the State Bar of Michigan. The State Bar also offers many other member benefits such as discounts on health and automobile insurance, credit card membership and services, legal research, express mail, car rental, and travel. For a full listing of member benefits, visit [www.michbar.org/](http://www.michbar.org/).

Tips and Tricks  
Continued from page 7

of affirmance.

- As appellant, be sure to order the transcript immediately following a loss in the trial court. If the expedited track is inappropriate, be sure to **file the removal motion concurrently with your claim of appeal.**
- As a trial-court summary disposition advocate, be aware that whatever you submit to the trial court must also be submitted to the Court of Appeals. This may increase the appellate “look and feel” of trial-court summary disposition briefs.
- The time for filing appeal briefs is reduced, and the flexibility of stipulated extensions has been eliminated. Preparation of appeal briefs must, therefore, start from the day a summary disposition motion is granted or denied.
- Remember to advise your clients of the new fast track before an appeal begins. This expedited procedure is going to be a shock for many clients who expect a two-year process for an appellate opinion following a trial court summary disposition order.

## Conclusion

The new “rocket docket” will be in place for a two-year pilot period, at which time the Michigan Supreme Court will evaluate whether the procedure should be continued or changed. In the meantime, careful study of and adherence to the new rules will ensure a smooth ride for you and your clients on the rocket.

*John J. Bursch is a partner at Warner Norcross & Judd LLP, where he chairs the firm's Appellate Practice Group. A former federal appellate judicial clerk, he is currently an elected member of the Michigan Appellate Practice Section Council and an editor for the American Bar Association's Appellate Practice Journal. Mr. Bursch routinely assists other practitioners in preparing motions and appeals in the Michigan Court of Appeals and Michigan Supreme Court. He can be contacted by telephone at 616.752.2474, by e-mail at [jbursch@wnj.com](mailto:jbursch@wnj.com), or through the firm's website at [www.wnj.com](http://www.wnj.com).*


## Endnotes

<sup>1</sup> For an overview of when and how to use a cross appeal, see John J. Bursch, [The Cross Appeal Revisited](#) 17 (Appellate Practice Section Newsletter, Fall/Winter 2003-2004).

On October 18, 2004, the Michigan Court of Appeals launched its new Case Information System as a Resource on the Court's website at <http://courtofappeals.mijud.net>. The Case Information System represents the latest step in the Court's continuing efforts to use available technology to provide expanded service.

Through the Case Information System, the public can access detailed, daily-updated docket information about pending and closed cases filed in the Court from the mid-1980's to the present. Formerly, this information was accessible only by requesting printed copies of case dockets from the Clerk of the Court. Using the Case Information System, cases can be searched by docket number, party name, or the name of any primary attorney representing a party in a case.

The deployment of the Case Information System represents the first



## Michigan Court of Appeals' Case Information Accessible Online

phase of a broad range of case information that will ultimately be available on the Court's website. While parties may now retrieve opinions through the website's Court Opinions search page, upcoming enhancements to the Case Information System will allow visitors to view and print electronic copies of orders and opinions directly from the case information screens.

For additional information, contact Sandra Mengel at (517) 373-2252.

## The COA's Southfield District Office Has Moved to Troy

The Court of Appeals' Second District Clerk's Office, formerly located in Southfield, has moved to the Columbia Center in Troy. The address for the new office is 201 West Big Beaver, Suite 800,

Troy, MI 48084. The phone number is (248) 524-8700. For driving directions to the new office, see the Court of Appeals' website at <http://courtofappeals.mijud.net>.

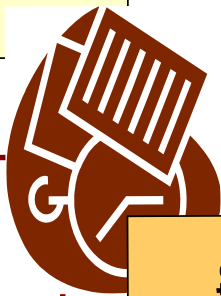
## Practitioners' Feedback on "Fast Track" Practice

The Appellate Practice Section's Michigan Practice Committee is working on a form for practitioners to use for comments on the new “fast track” rules. It will be made available on the Section's website, along with instructions on emailing your

comments to Committee members who will compile the data for presentation to the court. The Committee hopes to have the form available by late January/early February. The Section's website is at [www.michbar.org/appellate](http://www.michbar.org/appellate).

# ANNOUNCING

## Administrative Order 2004-5



### Expedited Track for Summary Disposition Appeals to Michigan Court of Appeals

- **GOAL:** Disposition within about six months of filing.
- Applies to all appeals from orders granting or denying summary disposition.
- Applies to appeals filed on or after January 1, 2005.
- Essentially unchanged deadlines to file claims & applications.
- Expedited deadlines for briefing & transcript production.
- Priority review by COA research division.
- Priority placement on summary panels for disposition within 35 days of submission.
- Roughly 90 days for briefing & record production.

#### Applicability

- The procedure applies to appeals filed on and after 1/1/05 arising solely from orders granting or denying motions for summary disposition under MCR 2.116. The trial court shall rule on such motions without delay and shall specify the subsection of MCR 2.116(C) under which judgment is entered.

#### Initiating Appeals

- Claim of appeal, leave application, and cross-appeal forms are unchanged. No docketing statement is required unless the case is removed from the expedited track to the regular track - these cases will not go through Settlement.

#### Briefing Format

- Briefs must conform to existing court rules except that they are limited to 35 pages and must be accompanied by the party's trial court summary disposition motion or response, trial court brief, and trial court appendices.
- Five-page reply briefs are permitted within 14 days of appellee's brief.
- In discretionary appeals, appellant may rely on the application for leave rather than filing a separate brief. New copies of the application are required, with a cover letter indicating the application is being refiled in lieu of a brief.

#### Briefing Timeline

- The briefing timeline is truncated. Appellant's brief is due within 28 days after the trigger events. Appellee's brief is due within 21 days after the trigger events. Reply briefs are due within 14 days of the trigger event.
- Parties may request 14-day extensions on motion for good cause shown. The prescribed motion form focuses on critical factors and facilitates expedited processing by the Court.
- Appellant's failure to timely file the brief will trigger issuance of an order assessing costs and warning of dismissal if the brief is not filed within 14 days after the deadline.

#### Transcripts

- A new appeal must be accompanied by (1) evidence that the transcript was ordered, (2) a statement that there is no record to transcribe, or (3) a statement that the transcript is waived. If appellant waives the transcript, appellee may order it within 14 days of appellant's waiver.
- If a transcript is to be produced, it is due 28 days after it is ordered. If it is timely filed, the court reporter will receive a newly enacted increased page rate of \$3/original page and \$.50/copy page. MCL 600.2543. If it is not timely filed, the ordering party must file an appropriate motion within 7 days or that party's brief will be due as if the transcript had been timely filed.

**Notice That Case Is On Expedited Track**

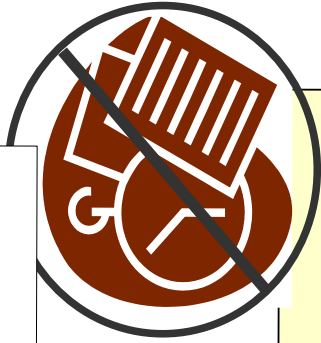
- New appeals will be acknowledged with a postcard noting that the case is being routed onto the expedited track. Administrative Order 2004-5 will be cited for users' convenience.

Date: 01/03/2005  
 SMITH V JONES  
 CO##: 224587  
 LC#: 98-123456 CZ

The above **docket number has been assigned** to your filing that was received by this Court on 1/02/2005. Please use this number on all future filings in this case.

Case assigned to expedited Summary Disposition Track, Administrative Order 2004-5.

TO:  
 JOHNSON MORGAN A  
 100 MAIN STREET  
 SUITE 200  
 ANYTOWN, MI 48123-3456



**Removal From Track**

- A case may be removed from the expedited track via a motion from either party or on the Court's own motion.
- The prescribed form motion to remove focuses the issues and facilitates expedited processing by the Court.
- A successful motion to remove will establish that the case is a matter of first impression, or involves the first construction of a statute or rule, or involves complex facts or law. Opposing counsel's agreement to removal may be indicated but it will not be dispositive of removal.

**MOTION FORMS at**

<http://courtofappeals.mjud.net>

**Extend Time For Brief**

Summary Disposition Track  
 Motion to Extend Time to  
 File \_\_\_\_\_'s Brief

Case Name: \_\_\_\_\_ LCA No: \_\_\_\_\_  
 CDA No: \_\_\_\_\_  
 (Check all that apply and provide a specific explanation where appropriate)  
 I request an extension of \_\_\_\_\_ days (not to exceed 14 days) to file this \_\_\_\_\_'s brief because \_\_\_\_\_

The following personal emergency has occurred \_\_\_\_\_

I have the following deadlines that conflict with the due date of this brief: \_\_\_\_\_

Case Name & Docket Number	Court	Deadline (date & subject)

Other \_\_\_\_\_

Opposing counsel does not object to the requested extension.

Signature \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone No: \_\_\_\_\_

**Remove from Expedited Track**

Motion to Remove Case from  
 Expedited Summary Disposition Track

Case Name: \_\_\_\_\_ LCA No: \_\_\_\_\_  
 CDA No: \_\_\_\_\_

(Check all that apply and provide a detailed description)

This appeal should be removed from the summary disposition track because it involves \_\_\_\_\_

A matter of first impression in Michigan, which is \_\_\_\_\_

\_\_\_\_\_

The first construction of the following Michigan statute or rule \_\_\_\_\_

\_\_\_\_\_

Complex facts or law, including approximately \_\_\_\_\_

\_\_\_\_\_ pages of deposition/hearing transcript that were considered by the trial court in

\_\_\_\_\_ granting or denying summary disposition

\_\_\_\_\_ pages of exhibits, pleadings, or other documents of record that were considered by

the trial court in granting or denying summary disposition

Other \_\_\_\_\_

\_\_\_\_\_

I have discussed this motion with opposing counsel who has stated he or she does not oppose

the motion.

I have tried to contact opposing counsel who has not responded.

Signature \_\_\_\_\_

Address \_\_\_\_\_

Telephone No: \_\_\_\_\_

**Project Monitoring**

- The project begins on January 1, 2005, and has a sunset date of December 31, 2006.
- The Case Management Work Group that conceived and sponsored the proposal on which Administrative Order 2004-5 is based will report to the Supreme Court in mid-2006 and again in December 2006.
- By the sunset date, the Supreme Court will determine whether to discontinue, change or continue the expedited track for summary disposition appeals.

**Administrative Order 2004-5 may be accessed on the Court of Appeals website at: <http://courtofappeals.mjud.net>**

Appellate practitioners should read the Administrative Order before filing an appeal from an order involving summary disposition.

*The material contained in this brochure is in summary form and is not intended as a substitute for a full understanding of the contents of the Administrative Order.*



## Supreme Court Hearings on Rule Changes and Administrative Orders Set for January 25

On January 25, 2005, the Supreme Court will hold public hearings on several rule changes and Administrative Orders of interest to appellate practitioners, in addition to the fast-track rules reported elsewhere in this newsletter.

The following are court rules adopted by the supreme court; the court will hear comments on whether to retain the rules:

**MCR 7.204** (Filing appeals of right; appearance). Adds language clarifying that the 14-day time limit for seeking an appeal from an order terminating parental rights (or entry of an order denying post judgment relief from an order terminating parental rights) is limited to orders entered "under the Juvenile Code." The Supreme Court will consider comments on whether to retain this amendment.

**MCR 7.217(D)(2)**. This new

subrule says that the clerk of the court will not accept for filing a late motion for reinstatement. This applies to appeals in which the appellant is represented by retained counsel; indigent defendants are protected in the event appointed counsel fails to file the brief on appeal.

The following are proposed rule amendments:

**MCR 6.425, 7.210, and 8.119**. Proposals recommended by the Court of Appeals Record Production work group, regarding preparation of the record on appeal, including discovering and ordering transcripts.

**MCR 6.445**. Regarding appeals form probation revocation orders, the rule would provide that if the

underlying conviction resulted from a plea rather than a trial, there would be no appeal of right form the probation violation order, even if it was the product of a contested hearings. Only an application for leave to appeal would be available.

This report was compiled from postings on the Appellate Practice listserv, by Mark Cooney, Brain Shannon, and Sandra Mengel. For the text of these proposals and staff comments, consult the Supreme Court's website at <http://courts.michigan.gov/supremecourt>. The text of these proposals was also reported in the November 2004 issue of the Michigan Bar Journal. If you wish to comment on any of these rules through the Section, contact Section Chair Mark Cooney, [cooneym@cooley.edu](mailto:cooneym@cooley.edu).

## Supreme Court Proposed IOPs

At the Section's November council meeting, the Michigan Supreme Court's Administrative Counsel, Debra Gutierrez-McGuire, discussed the Supreme Court's proposed Internal Operating Procedures (IOPs), published at the Bench-Bar Conference in April 2004. The Court has invited the Section to comment on the proposed procedures.

Some members at the meeting offered specific feedback, and the Council agreed to solicit further comment from Section members. The IOPs are too extensive to reprint here. If you do not have a copy from the Bench Bar conference, contact Eileen Kavanagh, the newsletter editor at [kavanage@cooley.edu](mailto:kavanage@cooley.edu). We have a copy in Microsoft Word format and can email it to you.

## Section Meeting Dates--2005

This is the schedule for the remaining section meetings for this year. The Farmington Hills meetings are at Mike Updike's office at Secrest, Wardle, Lynch, Hampton, Truex & Morley, P.C., 30903 Northwestern Highway. The Lansing meeting will be at the Cooley Center, 300 S. Capitol, 9th Floor conference room. The place for the Grand Rapids meeting will be announced in the section listserv. If you don't subscribe to the listserv and you want to attend the meeting, email the Chair, Mark Cooney, [cooneym@cooley.edu](mailto:cooneym@cooley.edu).

Thursday, Jan. 20, 2005, at 2:00 (Farmington Hills)  
 Thursday, Feb. 17, 2005, at 2:00 (Lansing)  
 Friday, March 18, 2005, at 2:00 (Farmington Hills)  
 Friday, April 22, 2005, at 2:00 (Farmington Hills)  
 Thursday, May 19, 2005, at 2:00 (Grand Rapids)  
 June meeting: to be announced

## Free Seminar on "Fast Track" Changes

On January 13, 2005 the Michigan Trial Lawyers' Association and the Michigan Defense Trial Counsel are sponsoring a free seminar on the new appellate rules for summary disposition cases. The speakers include Michigan Court of Appeals Chief Judge William Whitbeck and Judge Michael Talbot; Chief Clerk Sandra Mengel; and practitioners Mark Granzotto and John Jacobs.

This seminar is offered as a free service to the appellate and trial bars, and is open to all. It will be held in the Atrium of the University of Detroit-Mercy School of Law, 651 East Jefferson, Detroit, from 2:00 to 4:00 p.m. Space is limited, so please RSVP as soon as you can to:

Ms. Madelyne Lawry,  
 Executive Director,  
 Michigan Defense Trial Counsel  
 P.O. Box 66  
 Grand Ledge, MI 48837  
 (517) 627-3745  
 (517) 627-3950 (Fax)

**Summary Disposition Track**  
**Motion to Extend Time to**  
**File \_\_\_\_\_'s Brief**

**Case Name:** \_\_\_\_\_

**COA No.:** \_\_\_\_\_ **LCt. No.:** \_\_\_\_\_

**(Check all that apply and provide a specific explanation where appropriate)**

I request an extension of \_\_\_ days (not to exceed 14 days) to file the \_\_\_\_\_'s brief because:

The following personal emergency has occurred:

I have the following deadlines that conflict with the due date of this brief:

Case Name & Docket Number	Court	Deadline (date & subject)

Other:

Opposing counsel does not object to the requested extension.

Party: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

**Motion to Remove Case from  
Expedited Summary Disposition Track**

Case Name: \_\_\_\_\_

COA No.: \_\_\_\_\_ LCt. No.: \_\_\_\_\_

**(Check all that apply and provide a detailed description)**

This appeal should be removed from the summary disposition track because it involves:

A matter of first impression in Michigan, which is:

The first construction of the following Michigan statute or rule:

Complex facts or law, including approximately:

\_\_\_ pages of deposition/hearing transcript that were considered by the trial court in granting or denying summary disposition

\_\_\_ pages of exhibits, pleadings, or other documents of record that were considered by the trial court in granting or denying summary disposition

Other:

I have discussed this motion with opposing counsel who has stated that no answer will be filed.

Party: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

See Administrative Order 2004-5, Section 7(B).

# Newsletter Articles and Ideas Needed

Please submit for publication in the newsletter articles, commentaries, helpful hints, or anything else useful, interesting, or amusing to your fellow appellate practitioners. We prefer that you email submissions in Word, WordPerfect, or RTF format. If that's a problem, contact the editor, and we'll find another format that works for you. We also welcome ideas for topics that you would like to see covered in a future issue of the newsletter.

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