



# Behind the Scenes at the Michigan Court of Appeals

By Joanne Geha Swanson

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Did you ever wonder what goes on behind the scenes at the Michigan Court of Appeals after your case is filed? Outwardly, the case may appear to languish during a wait clients perceive as interminable. But the Court of Appeals is *not* a black hole. Systems are in place within the Court to guide each case through the appellate process in a timely and efficient manner.

## Inside the Clerk's Office with Chief Clerk Jerry Zimmer

For most practitioners, the Clerk's Office is the public face of the Court, acting as a conduit between the public and the judiciary. Its mission is twofold: to timely and accurately docket the papers coming into the Court and to efficiently guide the case to resolution through designated internal procedures. The Court's current goal is to dispose of 95 percent of all cases within 18 months of inception. It is very close to achieving that goal this year, disposing of roughly 93 percent of cases within that

time in 2015. Ultimately, the Court seeks to shorten the 95 percent disposition rate to 15 months. Presently, about 75 percent of all cases are completed at that rate.<sup>1</sup>

## Organization of the Clerk's Office

The chief clerk of the Court of Appeals, with the assistance of the deputy clerk, oversees the operation of the Court's four district offices in Detroit, Troy, Lansing, and Grand Rapids. Each district is operated by a district clerk—typically an attorney with at least 10 years' experience working in various capacities for the Court. Two assistant clerks support the work of the district clerks. They are experienced attorneys who handle legal issues such as motions to remand and motions to dismiss. The assistant clerks also review claims of appeal to determine whether jurisdiction is proper and to assess conformity with procedural requirements.

The district offices are staffed with docket clerks whose primary task is identifying all filings in the cases they have been assigned. Before a filing is entered on

the Court's register of actions, the docket clerk reviews it for conformity with the court rules. If a material defect is found in the filing, the docket clerk will send the filing party a letter advising of the need to correct the defect. By handling all filings on their assigned cases, the docket clerks acquire familiarity with the files, allowing them to be responsive to inquiries from practitioners and the Court.

Each district also employs a records clerk, who is charged with obtaining the lower court records, and an information clerk to handle the walk-in counter and phones. Despite the availability of electronic filing, the Court continues to receive roughly half of its filings in hard copy. All paper filings are scanned and attached to the docket entry on the register of actions, allowing the Court to maintain a virtual file available to all internal users.<sup>2</sup>

#### MAPPIS and the progress of cases

The Michigan Appellate Information System (MAPPIS) is instrumental to the progress of cases within the Court. MAPPIS is a case-management system created by the Court's information technology department in 2000 and upgraded in the years since. Despite its age, the case-monitoring feature embedded in MAPPIS remains a

model among court systems throughout the country.

MAPPIS relies on an internal tickler system that anticipates filing dates and generates management lists of cases that are at various stages of progress or have missed milestone deadlines. For example, if a stenographer's

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The progress of each case is monitored by the Court's case management system, which notifies staff when a procedural deadline is missed so reminders, deficiency notices, and warning letters can be issued.

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certificate is not timely filed, MAPPIS places the case on List 9 (No Transcript Request). This alerts Court staff to send a reminder letter to the appellant, who is responsible for obtaining the transcript, advising that the deficiency must be corrected within 21 days or risk involuntary dismissal. If the notice of filing transcript is not received by the deadline, MAPPIS puts the case on List 11 (Transcript Late) and generates a reminder postcard to be sent to the court reporter. If the notice of filing is not received within 14 days after the transcript deadline, MAPPIS moves the case to List 14 (Transcript Warning), which directs staff to send a reminder letter to the appellant.

This monitoring process continues through the filing of briefs, transfer of the lower court record, and "ready for research" status, enabling the Clerk's Office to ensure that all deadlines in the case are progressing in a timely manner. MAPPIS continues to track all cases through the uploading of research reports, case call assignments, issuance of opinions, and ultimate closure.

#### Ready for research and case call

When the transcripts, briefs, and lower court record have been received, the case is placed on List 57 (Ready for Research). This alerts the Research Division that the case is ready for review. Every month, a screener selects List 57 cases from each district, assigns a value to each, and moves them to List 58 (At Research) where they become available to the Court's research attorneys for analysis, review, and preparation of reports (more about this later).

When the research report is final, the case is placed on List 62 (Ready for Case Call). From List 62, and at the instigation of the deputy clerk, MAPPIS randomly assigns the case to a panel consisting of three randomly assigned judges who will hear the case in the district from which the case originated. MAPPIS also designates one of the panel members to write the opinion. The deputy clerk reviews the assignments to ensure the cases have been equitably distributed and generates case call notices to mail to the parties. The judges generally have no inkling of the cases to which they are assigned until the case call list is released.<sup>3</sup>

After oral argument, the progress of the case toward decision rests with the judicial panel. However, even the judges are prompted by MAPPIS, which maintains a list of cases still awaiting decision. The status of outstanding opinions is also monitored by the chief judge, who follows up as appropriate. At least 60 percent of opinions are released within 14 days of oral argument, and 80 percent within 28 days.

When an opinion is complete, the panel forwards it to the opinion clerk for release. By Court policy, opinions are released (mailed) to the parties on Tuesdays and Thursdays each week and released for public view on



subsequent Wednesdays and Fridays.<sup>4</sup> If a reconsideration motion is filed, the case is submitted back to the panel that initially decided it. Absent further motion, the Clerk's Office will process requests for costs and, if further appeal to the Michigan Supreme Court has not been requested, the case file will be closed.

### Inside the Research Division with Research Director Julie Isola Ruecke

The Research Division is the legal hub of the Court of Appeals, employing approximately 49 research attorneys, eight commissioners, and additional contract attorneys. The research director, with the assistance of the assistant research director, oversees the operation of the Court's research offices in Detroit, Lansing, and Grand Rapids and the commissioner's office in each of the four districts.

Most of the research attorneys are limited tenure lawyers who remain at the Court for one to three years. The Court employs a supervisor in each research office to oversee their work. The research attorneys handle the more routine cases. Complex cases are assigned to the Court's 19 senior research attorneys. The assistant research director supervises most of the senior research attorneys. Two senior research attorneys currently supervise the contract attorneys.

Each district office has two commissioners. The principal job of the commissioners is to analyze, research, and make recommendations regarding applications for leave to appeal. The commissioners also review substantive motions such as motions for peremptory reversal, motions to affirm, and emergency motions.

#### The research process

Each month, a screener in the Research Division reviews List 57 (also known as the "warehouse") and pulls 40 nonpriority cases from each of the Court's district offices. Each case is assigned a day value, signifying the number of days it should take the research attorney to draft a case report. The day-value criteria include such things as the complexity of the issues, volume of transcripts, and size of the record. Following this review, the records clerk sends the screened cases to a research office, at which point the cases will appear on List 58 (At Research). Except for cases on an expedited track, such as child custody or parental termination cases, the oldest cases are the first assigned for workup from List 58. A case typically remains in research for two to three months.

The extensive case workup entails a thorough review of the briefs and the lower court record. The research report includes a neutral statement of facts (with record citations), a description of the lower court proceedings, and a summary of how the case came to be in the Court

of Appeals. Following the order of issues identified in the statement of questions presented, the research report addresses preservation, the applicable standard of review, an analysis of the parties' arguments and authorities, the results of independent research, and a conclusion. The report will also recommend whether the opinion should be published. If an unpublished opinion is recommended, a draft opinion is prepared.

Each completed research report is reviewed by a supervisor, typically a former judicial clerk able to lend the added perspective of the judicial offices. The supervisor reads the report, reviews the analysis, evaluates quality, and proposes changes as appropriate. When suggested edits have been made and the report is ready, the supervisor makes a "proof entry," which places the case on List 62 (Ready for Case Call). A research assistant gives the report another look to edit, cite check, and ensure that cited authority is still good law. Once that step is complete, the report is uploaded to MAPPIS and becomes accessible to the judges assigned to the case call panel.

#### Applications for leave

Commissioners handle applications for leave to appeal. The lower court record is not available to the commissioners at this stage, so they must rely on the attachments provided by the parties. In evaluating whether to recommend the grant of leave, commissioners look for such things as obvious error; an issue of first impression; substantial harm; whether the issue involves legal, as opposed to factual, error; and whether peremptory reversal would be dispositive. When the review is complete, the commissioner prepares a report and a proposed order.

The completed applications are placed on the regular motion docket and delivered with the commissioner's report to a three-judge motion panel. In the majority of cases, a decision will be rendered within a week, making the start-to-finish tenure of an application somewhere between four and six months.

### Inside the judiciary with Chief Judge Michael J. Talbot

From the judicial perspective, the Court's goal is to be in a position to take on a case very close in time to the point where it appears to be ready to the parties. Internally, this is the point at which the briefing is complete, the lower court record has been obtained, and the case is placed on List 57. With an average List 57 wait time of just under four months, the Court is approaching that goal while exploring new ways to remove unnecessary delay from the schedule, such as e-filing transcripts and electronic transmission of the lower court record. The

Court encourages practitioners to offer suggestions for improvement and endeavors to be responsive to complaints as well.

As an error-correcting court, the judges strive to “get it right” in a timely and efficient manner. Legislation passed in 2012 will eventually reduce the Court’s bench from 28 to 24 judges. The Court currently has 27 judges, with seven judges in districts I (Detroit), III (Grand Rapids), and IV (Lansing) and six judges in district II (Troy). However, the judges are randomly assigned to case call panels without regard to their district designation.

#### Preparation for case call

Each judge has a law clerk and a judicial assistant. The law clerk is typically assigned at least one case each month that bypasses the Research Division and advances directly to chambers. Law clerks also review cases from the case call list, although the timing of the clerk’s review varies among the judges. Each case on the call list is reviewed in chambers before argument occurs, but some judges prefer to undertake that effort themselves. Other judges will allocate that task to the clerk, or the cases might be divided between the clerk and the judge, sometimes by level of difficulty.

Each judge has writing responsibility for one of every three cases on the call list, which increases the level of preparation required in those cases. In addition to acquiring an extensive familiarity with the issues, the facts, the record, and the law, the assigned judge must decide whether a published opinion is warranted. If the conclusion is to publish, a proposed opinion is often circulated before argument. If the judge agrees with a Research Division recommendation not to publish, the draft opinion must be evaluated and modified as appropriate.

#### Oral argument and conference

The judges view oral argument as a tool to assist them in deciding the case rather than a vehicle for explaining what the case is about. At this point, the judges are very familiar with the issues and expect advocates to be thoroughly prepared, truthful, and ready to answer questions in a clear, succinct manner. Sharpening legal arguments, clarifying facts, or addressing new cases are appropriate goals for oral argument. Immediately after the call, the panel discusses each case. The judges voice their opinions as to outcome, give direction to designated opinion writers, and approve (or reject) draft opinions. Some cases can be resolved with a single conference. Resolution of more challenging cases occurs through the process of circulating proposed opinions, which may generate consensus, concurrence, or dissent. When motions for reconsideration are filed, the panel defers to the

opinion’s author for an initial response before expressing their own views.

#### Motion panels

Independent of monthly case call responsibilities, judges are assigned to motion panels six months of the year. In that capacity, they begin their review of motions and applications on Tuesday mornings. Each judge records his or her votes on a tally sheet for transmittal to the presiding judge. If consensus exists, an appropriate order is issued. A second look is given to cases which generate disagreement. If consensus still cannot be reached, the dissent is reflected in the order.

#### Conclusion

From the outside, it may appear at times that your appeal is not progressing, but the Court of Appeals is actively monitoring all cases to ensure they are proceeding as expeditiously as possible. If a practitioner is concerned about the progress of his or her case, current information is available on the Court’s website. The Clerk’s Office can also provide additional, detailed information by phone. ■



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#### ENDNOTES

1. The Court’s calculation of time on appeal includes the six to nine months it takes to prepare transcripts and briefs—aspects outside of the Court’s control. Time on appeal for a given case also includes time when an appeal is on remand, abeyance, administrative closure, or on appeal to the Michigan Supreme Court.
2. The register of actions showing all public docket entries, with links to orders and opinions, is accessible online through the case search function on the Court’s website at <<http://courts.mi.gov/courts/coa/pages/casesearch.aspx>> (accessed December 2, 2015).
3. Cases submitted to a panel without a research report are sent to the panel before that month’s case call list is released.
4. Individuals may subscribe to receive opinion releases by e-mail. Subscription information is on the Court’s website at <<http://courts.mi.gov/courts/coa>> (accessed December 2, 2015).