Order

Entered: October 5, 2004

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

ADM File Nos. 2002-34
2002-44

Administrative Order No. 2004-5

Expedited Summary Disposition
Docket in the Court of Appeals

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) T he 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

motion should identify the cases and the courts in which filing deadlines are converging and specify the least amount of time that would be required to file the brief. Once briefing has been 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