STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM C. WHITBECK
CHIEF JUDGE

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October 7, 2003

Justices of the Michigan Supreme Court
Michigan Hall of Justice, Sixth Floor
925 W. Ottawa Street
P.O. Box 39022
Lansing, MI 48909-7522

RE: Delay Reduction Court Rules

Dear Justices:

I am writing to respond, briefly, to two sets of comments on the Court of Appeals' proposed delay reduction changes to the Michigan Court Rules filed with your Court after its public hearing of September 25, 2003. The first set of comments dated September 27, 2003, is from Timothy Baughman, Chief of Research, Training, and Appeals of the Office of the Wayne Country Prosecuting Attorney. The second set is an undated resolution of the Appellate Defender Commission.

Rather obviously, I do not agree with all of the points that Mr. Baughman makes in his letter. However, I again wish to commend him for the responsive, and responsible, approach that he has taken throughout the more than 18 months that our proposals have been discussed and debated. He, alone, has taken the time and the effort to come forward with reasoned alternatives to the court rule changes that our Court has proposed. In his recent letter, he makes several proposals that I personally find acceptable: first, to amend the rules to take into account serving by mail by the moving party and, second, to eliminate MCR 7.208(B) to do away with the rule permitting post-conviction motions in the trial courts after a claim of appeal is filed.

I do not agree with Mr. Baughman that the Court of Appeals should, without statutory authorization, revert to the practice of charging motion fees to prosecutors nor do I agree that we should cease requiring a "motion for leave to file" in conjunction with any later answer to a motion or application. But I can at least say that I recognize the reasons for his position on both these items. With respect to the proposed reductions in the Wayne Country Prosecutor's budget for the next fiscal year, while I sympathize with his situation, I simply do not feel that the Michigan Supreme Court should hold the Court of Appeals' rule change proposals in abeyance because of a situation that Mr. Baughman accurately describes as involving "politics and not public safety."

I view the resolution of the Appellate Defender Commission with considerably less charity. The centerpiece of this resolution is its contention that, "The proposed rule will impose rigid and unrealistically short timelines at the expense of quality as well as causing human resource problems, all so that parties can 'hurry up and wait' while briefs sit in the Court of Appeals' 'warehouse' for six months." I have made two points, repeatedly, in response to this well-worn "hurry up and wait" argument:

- First the Court of Appeals, essentially by funneling cases directly to the Judicial Chambers, has made considerable progress in reducing the time cases gather dust in the Warehouse. In 2001, an opinion case spent 271 days in the Warehouse; in the first six months of 2003, we had reduced this time to 232 days, a 42-day reduction. Our most recent data show that in the third quarter we further reduced the time, to 221 days. We achieved these reductions without a single penny of additional resources.

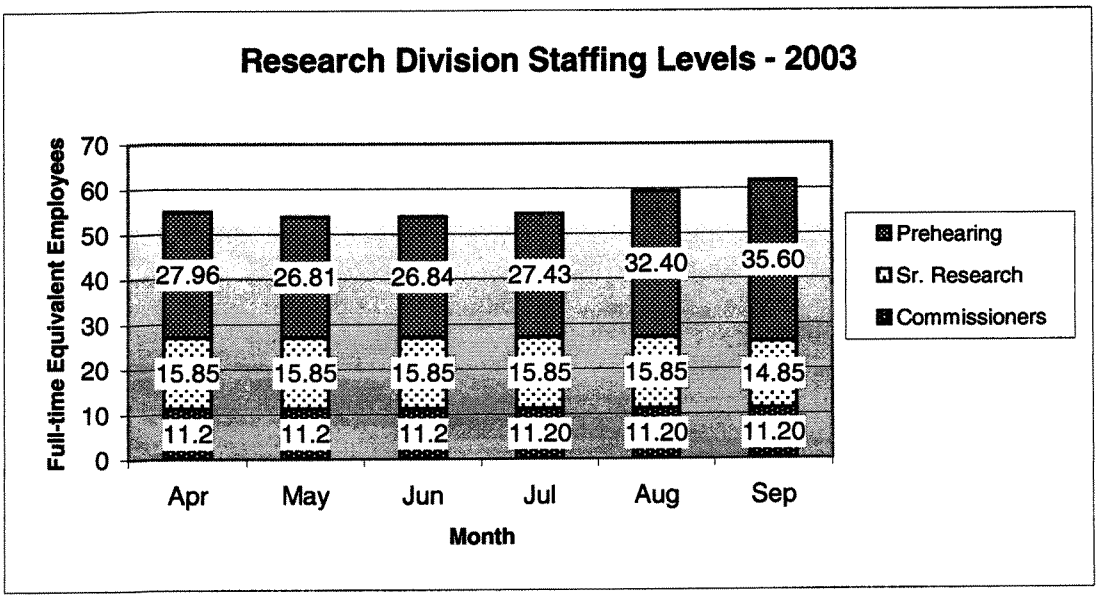
- Second, as part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, we will receive approximately $525,000 more in revenues in FY 2004 from entry and motion fees than we received in FY 2003. *These funds will allow us to increase our Research Division staff and eliminate or drastically reduce the Warehouse.* I have attached a graph that shows the additional attorneys in our Research Division who will be doing the work to achieve this reduction. The premise of the "hurry up and wait" argument is that the Warehouse will continue to exist. It will not.

Let end by making one other point. I first began discussing our proposals for changes to the court rules with representatives of the Appellate Practice Section and State Bar in the spring of 2002. We made our formal proposals for these changes to the Michigan Supreme Court over a year ago, with a proposed effective date of September 1, 2003. In the summer of this year, I asked the Michigan Supreme Court to delay its consideration of our proposed rule changes, and utilize an effective date of January 1, 2004, so that we could attempt to work out a joint proposal that would be acceptable to the representatives of the State Bar and compatible with our delay reduction objectives. We have met repeatedly with these representatives and have provided them with extensive data concerning our operations. To date, and with the honorable exception of Mr. Baughman, we have not received a *single* specific proposal of any kind from these representatives. Rather, we have been met with suggestions for further delay and with generalized opposition bottomed on the proposition that, while other changes not affecting the lawyers are to be applauded, any change that reduces the lawyers' briefing time *by even as much as one day* is neither appropriate nor justified.

If, as Robert P. Hudson, the first president of the State Bar said, "No organization of lawyers can long survive which has not for its primary object the protection of the public," I can only wonder at such a proposition and at such tactics. I again urge the Michigan Supreme Court to adopt our proposed changes to the court rules with an effective date of January 1, 2004.

Sincerely,

William C. Whitbeck,
Chief Judge, Michigan Court of Appeals

Court of Appeals Judges
Mr. Corbin Davis/Ms. Linda Mohney Rhodus
Mr. Timothy Baughman
Appellate Defender Commission

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Commissioners	11.2	11.2	11.2	11.20	11.20	11.20			
Sr. Research	15.85	15.85	15.85	15.85	15.85	14.85			
Prehearing	27.96	26.81	26.84	27.43	32.40	35.60