

CASE MANAGEMENT WORK GROUP FIRST REPORT

MICHIGAN SUPREME COURT AND MICHIGAN COURT OF APPEALS

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FIRST REPORT OF THE CASE MANAGEMENT WORK GROUP

I. Introduction

On November 4, 2003, the Supreme Court issued Administrative Order 2003-6. This Order directed the Court of Appeals to “develop a plan for the management of civil cases that includes ‘just in time’ briefing” and encouraged the Court to work with the bar to accomplish that task. Thereafter, the Supreme Court and Court of Appeals appointed members of both courts (including a Justice and two Judges), plus members of the bar, to a special work group called the Case Management Work Group. The basic task of the Work Group was to devise such a plan. A November 19, 2003, letter from Chief Justice Corrigan and Chief Judge Whitbeck directed the Work Group to consider steps to further reduce delay in processing cases through the Court of Appeals, particularly focusing on the “intake” process and reviewing the differentiated case management techniques that other courts have used to reduce processing time.

To that end, the Court of Appeals staff gathered certain materials pertaining to other courts and analyzed various aspects of its own case management process. In particular, Court staff examined the case processing system of the U.S. Circuit Court of Appeals for the District of Columbia, which utilizes a case differentiated management system that includes “just-in-time” briefing for a segment of its cases.

II. “Just-In-Time” Briefing

A. The D.C. Circuit Court Of Appeals Prototype

In 1997, the Michigan Court of Appeals submitted a proposal to the Supreme Court to adopt a differentiated case management system incorporating a “just-in-time” briefing system modeled after that of the D.C. Circuit Court of Appeals. The D.C. Circuit used thirty-two different case tracks that staff attorneys broadly screened into three main categories: summary, regular merit, and complex. The D.C. Circuit used the civil regular merit cases in its “just-in-time” briefing system. **Attachment 1** contains a detailed explanation of the system.

Under the 1997 version of the D.C. Circuit’s “just-in-time” briefing, once a case was appealed and docketed, an order was issued requiring the parties to file initial submissions within thirty days.¹ The order also set a thirty-day deadline for the filing of procedural motions and a forty-five-day deadline for the filing of dispositive motions. After it resolved any pending motions, the D.C. Circuit issued an order setting the date for oral argument, disclosing the identity of the panel, and setting the briefing schedule back from the oral argument date.

Hannah Watson of the Michigan Court of Appeals spoke recently with Mark Langier, Clerk of the D.C. Circuit, about the current operation of the “just-in-time” briefing system. Mr. Langier stated that the D.C. Circuit now employs a hybrid system because it found that a pure “just-in-time” briefing system was impossible due to a significant number of cases falling off the calendar after entry of the scheduling order but before the date of case call. Although the D.C. Circuit had previously kept a voluntary “fill-in” pool of cases, it now essentially over-books

¹ To determine the track, a staff attorney screens the “initial submissions,” which include a docketing statement, copy of the underlying decision, document setting out the parties and participants, and statement of the issues to be raised.

its case calls by issuing briefing orders in more cases than are needed for call. In addition, the D.C. Circuit has scheduled its briefing times for earlier in the process. Previously, the final brief was generally due at least fifty days before oral argument; now, it is generally due seventy days before argument.

Originally, the D.C. Circuit contracted out the computer programming for the system at a cost of \$10,000. Recently, however, the D.C. Circuit has completely rewritten the programming that supports the system. The D.C. Circuit's Systems Manager and a staff programmer spent several hours a day over several months to accomplish this task.

B. Advantages Of "Just-In-Time" Briefing

In the cover letter to the Supreme Court accompanying this Court's 1997 proposal to adopt "just-in-time" briefing, then-Chief Judge Corrigan outlined the two primary advantages of such a system:

1. Briefs would be filed closer to the time of oral argument, thus facilitating docket management and eliminating stale briefs.
2. Parties would receive an actual oral argument date during the initial stage of the appeal, providing an element of certainty to the attorneys and parties.

C. Disadvantages Of "Just-In-Time" Briefing

Members of the State Bar, the Appellate Practice Section, and staff of the Court of Appeals have identified several disadvantages of a "just-in-time" briefing system, including:

1. Adding the "just-in-time" briefing component to case management would require additional costs involving the Clerk's Office, Research Division, and Information Systems Department. **Attachment 2** outlines the estimated costs. Such a system would require sweeping modifications by the Information Systems Department to the Court of Appeals' current case management system. In essence, the Court would have to create an entirely new software program that would work independently from, but integrate with, the existing system.
2. The concern about stale briefs is directly connected to the time a case spends in the "Warehouse." The Court of Appeals is addressing the Warehouse problem through several delay reduction measures. As a result, time in the Warehouse has been steadily decreasing. In 2001, the time in the Warehouse for opinion cases was 271 days on average while in 2003 it was 225 days on average. For the fourth quarter of 2003, the average was even lower, 198 days in the Warehouse. As the Court makes further reductions in the wait in the Warehouse, the problem of stale briefs will become increasingly moot. Equally as important, these delay reduction measures will decrease the overall average time it takes the Court to issue its opinions. "Just-in-time" briefing itself does not reduce the overall disposition time; rather, it simply moves the Warehouse time to the pre-briefing stage.
3. Permitting the parties to file supplemental authorities regarding any new law issued or enacted after they filed their last brief also directly addresses the problem of stale briefs. MCR 7.212(F) [adopted 1/26/96]. Parties who wish to file full supplemental briefs may request permission by motion under MCR 7.211.

4. There is no mechanism within “just-in-time” briefing that would reduce delay. As noted above, adopting a “just-in-time” briefing system would have no effect on the number of cases in the Warehouse, nor would there be any effect on transcript and record production. Further, requiring motions to be filed and decided during a specified period early in the case might increase delay, since currently the filing of motions does not affect the due date of briefs. MCR 7.212(A)(5).

5. Certainty as to the oral argument date comes with a concomitant lack of flexibility. If the Court of Appeals makes both case call and judicial assignments months in advance of case call, the inability to make adjustments will adversely impact:

- (a) the Court’s ability to assure full case calls so that the maximum number of cases are heard each month;
- (b) the parity of case load between Judges;
- (c) the Judges’ ability to adjust their schedules when required;
- (d) the ability to cure defective briefs before review by the Research Division and the Judges;
- (e) the Research Division’s ability to obtain missing portions of the record not discovered earlier;
- (f) the practitioners’ ability to adjust their schedules when required.

6. Certainty as to the oral argument date is not universally desired by the parties. [See August 6, 1998, letter from Joseph H. Firestone, and the November 6, 2003, appellate practice listserv letter from practicing appellate attorney John Jacobs, and many others.]

7. A comparison of caseload and staffing levels between the D.C. Circuit and the Court of Appeals shows significant differences between the two courts. This suggests that success of the “just-in-time” briefing in the former court does not necessarily guarantee success in the latter. For example:

- (a) Filings
 - (1) The D.C. Circuit has 1000 to 1100 filings per year; 850 to 935 are civil filings. The Court decides approximately half of these filings on the merits. Therefore, approximately 425 to 470 cases per year are subject to “just-in-time” briefing.
 - (2) The Court of Appeals has approximately 7000 filings per year, approximately 4000 of which are civil filings. The Court decides approximately 55% of its cases by order and 45% of its cases by opinion. Therefore, approximately 2000 cases per year would be subject to “just-in-time” briefing.
 - (3) For the Court of Appeals, shepherding two separate tracks of a much larger number of cases presents a complicated task.

(b) Mixture of Cases

- (1) In the D.C. Circuit, less than 15% of the cases are criminal while the caseload at the Court of Appeals varies between 50% civil and 50% criminal to 60% civil and 40% criminal.
- (2) For the Court of Appeals, the complexity of merging the previously scheduled “just-in-time” briefing cases into the “normal” criminal and priority cases for case call will therefore be significantly increased.

(c) Staffing

- (1) Clerk’s Office In the D.C. Circuit there are thirty-eight employees in the clerk’s office, fourteen of whom are attorneys, including the legal division.² Therefore, there is one clerk’s office employee for every twenty-seven cases per year. In the Court of Appeals, there are fifty employees in the Clerk’s Office, eight of whom are attorneys. Therefore, there is one Clerk’s Office employee for every 140 cases per year.
- (2) Research Division In the D.C. Circuit there is no central Research Division. At the Court of Appeals, there is a central Research Division with approximately fifty attorneys and four support staff. Because the D.C. Circuit cases go directly from the Clerk’s Office to the Judicial Chambers, but the bulk of Court of Appeals cases go through the Research Division before they move to the Judicial Chambers, extra time would be required to process the cases in the Court of Appeals. This would mean that “just-in-time” briefing programming would be twice as complicated. That programming would have to perform two assessments of availability: the first to determine when in the future a research attorney of sufficient expertise would be available to report on the case and the second to determine when a panel of Judges would be available to decide it.
- (3) Judges The D.C. Circuit is authorized for twelve Judges and has nine with two senior Judges. Each regular Judge can have either three law clerks and two secretaries or four law clerks and one secretary. Therefore, there is one regular Judge with three to four law clerks for every 120 cases filed and every fifty-six cases decided on the merits. The Court of Appeals has twenty-eight Judges, each with one law clerk and one secretary. Therefore, there is one Judge and one law clerk plus 1.8 Research Division attorneys for every 250 cases filed and every 115 cases decided by opinion.

² The legal division of twelve attorneys [plus two support staff] makes recommendations and prepares dispositions in contested motions and emergency matters, screens and classifies new appeals, screens cases for the mediation program, makes recommendations as to summary cases, and assists with the management of complex cases.

(d) Record production

The D.C. Circuit rarely requests the record, instead relying on the parties' appendices.³ For the Court of Appeals, generally the entire record is required, MCR 7.210(B)(1)(a) and (G), and is very helpful. For the Court of Appeals, record production is a major issue that the Record Production Work Group, also jointly appointed by the Court of Appeals and the Supreme Court, is presently analyzing.

(e) Case call

In the D.C. Circuit, all the Judges are in one location, with fewer cases scheduled per day but with panels sitting for entire weeks once a month during the September – May term. The Court of Appeals is a multi-district court and its Judges sit in several locations throughout the state, resulting in a large number of cases scheduled for two or three days once a month, eleven months a year. Further, the Court of Appeals presently schedules case call rotations in four-month blocks and is able to evaluate the age and availability of cases from each district in determining how many panels to schedule for each hearing location, thus enabling the Court to maximize the placement of older cases on case call. Under a “just-in-time” briefing system, because the panel rotations and sitting locations would have to be scheduled much further in advance, the Court would lose its flexibility to make short-term adjustments to sitting locations to account for aberrations in the age of cases among the districts.

8. With “just-in-time” briefing, flexibility in motion practice would be decreased in general, with shorter specified time frames in which motions could be brought. Further, the Court's ability to hold cases in abeyance where appropriate would be compromised. Motions to affirm would have to be filed in the initial stages in the case, prior to the appellant's brief being filed. See MCR 7.211(C)(3). It is difficult for the litigants to file, and for the Judges to grant, such a motion without notice of the issues that will be raised by the appellant.

D. Conclusion

The Work Group does not recommend that “just-in-time” briefing be implemented at the Court of Appeals at this time. With the Court's current budget for FY 2004, and with the prediction of continued budget shortfalls in FY 2005, the Court simply does not and will not have the staff necessary to implement “just-in-time” briefing on a comprehensive and orderly basis. Further, implementation of “just-in-time” briefing will not achieve significant delay reduction. Conversely, however, delay reduction will significantly affect the age of briefs filed with the Court; if the Warehouse and the Intake phases of the Court's processing can be shortened, the briefs that the Research Division and the Judges at the Court review prior to decision in an opinion case will be considerably fresher than they are currently.

³ 35% of the D.C. Circuit's cases, and 50% of its argument cases, are appeals from administrative agencies.

III. Case Differentiation

A. Overview

The Court of Appeals has already implemented several case differentiation techniques, including summary panels, complex panels, and priority case handling. **Attachment 3** describes the techniques that the Court has used throughout 2003. The quarterly delay reduction reports and statistics bear out the success of these case management methods. But there are additional areas where exploration of case differentiation is useful:

1. Implementing a track for summary disposition cases to be handled more expeditiously than the regular track. Summary disposition cases make up nearly 50% of the Court's non-priority civil cases, so "fast-tracking" these cases would likely have a substantial effect on delay reduction.

2. Shortening the briefing time for cases in which the Court of Appeals has granted leave to appeal. Because the parties would already have produced the application for leave to appeal in the proper brief format and because issues on appeal are generally limited to those raised in the application, presumably only minor editing/supplementing would be needed and a full fifty-six or thirty-five days would not be necessary to prepare the briefs. MCR 7.212(A)(1)(iii) and (2)(ii).

3. Reviewing case types other than summary disposition that may warrant differentiated treatments, such as probate cases and administrative agency appeals.

4. Pursuing methods for increasing efficiencies in criminal cases, such as enforcing the time limits for remands and post-judgment motions at the trial courts, streamlining appointment of counsel procedures, and reviewing Standard 11 procedures.

5. Proposing rule changes to require defect corrections in less than twenty-one days, as the court rules now allow. MCR 7.201(B)(3) and MCR 7.217(A).

6. Shortening the time period in which the lower court must transmit the record to the Court of Appeals. MCR 7.210(G).

In the opinion of the Work Group, the summary disposition track has the most potential for immediate low-cost implementation resulting in high-benefit delay reduction.

B. The Proposed Summary Disposition Track

The summary disposition track that the Work Group proposes will facilitate disposition of eligible appeals within about 180 days of filing with the Court of Appeals. The procedure would apply only to appeals arising solely from trial court orders on motions for summary disposition. Orders that refer to other issues between the parties would not be eligible for this track.

The proposal for a summary disposition track arises from and focuses on characteristics of summary disposition cases that distinguish them from cases that the Court processes on a standard appeals track. For an appeals court, one such characteristic is the standard of review. On appeal, the Court reviews a trial court's decision on a motion for summary disposition de

novο. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003) [no genuine issue as to material facts]; *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997) [failure to state a claim]. The Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776, reh den 459 Mich 1204; 615 NW2d 731 (1998); *Michigan Educational Employees Mutual Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000), lv den 465 Mich 863; 634 NW2d 352 (2001). The Court's review is limited to the evidence, which had been presented to the trial court at the time the motion was decided. *Peña v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

The Work Group's proposal requires that each party submit its trial court motion, brief, and appendices with its brief on appeal. In addition, because it is contemplated that this expedited track will include appeals that are relatively less complex, the Work Group proposes shorter briefs and shorter deadlines for their preparation. The twenty-page brief on appeal is shorter because the factual record in these appeals is contemplated to be smaller and less complex than in other appeals. In addition, the legal issues that will be handled through this expedited process are anticipated to be relatively less complex or cutting edge. Given the smaller record and less complicated legal arguments, the preparation time for briefs on appeal can be significantly shortened. The time may also be shorter because the parties will either have waived the need for the transcript on appeal or that transcript will be prepared more quickly since it is substantially shorter than a trial transcript.

Transcripts in summary disposition cases are fewer and shorter than transcripts in trial cases. In some cases, it may be unnecessary to prepare the complete transcript or any transcript at all. The Court can resolve many of these appeals without the transcript, especially given the standard of review on appeal. Thus, the Work Group's proposal allows the parties to waive the transcript. If a party orders a hearing transcript because that party believes that it contains useful information, the transcript will still be relatively short and the court reporter can transcribe it more quickly than regular trial transcripts. Thus, if a party orders the transcript, that party must ensure that it is filed in twenty-eight days rather than ninety-one days.

- The Work Group's proposal contains truncated procedures for the Court of Appeals as well. When the parties file summary disposition appeals, Court staff will flag them for the summary disposition track and will assign a shorter case management timeline. An appellant must file a motion to remove the case from the expedited track with the claim of appeal or within seven days after an order granting leave and, if filed, the Court must decide that motion within fourteen days. An appellee may file a similar motion with the filing of the appellee's appearance. Once the Court has confirmed jurisdiction and the parties have resolved any material filing defects, the Court must order the trial court record so that this record will be available before briefing is concluded. When briefing is concluded, the cases must move to the Research Division within seven days, be reported on within thirty-five days, be submitted to a panel of Judges within another twenty-eight days, with an opinion released within thirty-five days. The following chart illustrates the timeline.

C. The Proposed Timeline For The Summary Disposition Track

Timeline – Summary Disposition Track

Incremental Time	Cumulative Time	Event
		<ul style="list-style-type: none"> ▪ Filing of claim of appeal (w/evidence of ordering transcript or a statement that there is no transcript/waiver of transcript) and motion to remove the case from summary disposition track (if applicable), <i>or</i> Entry of order granting application with motion to remove from summary disposition track filed within 7 days. NOTE: Motions to remove must be in a form provided by COA (Attachment 4). ▪ Answer to motion to remove from summary disposition track may be filed within seven days of service of motion. The answer should state whether appellee plans to file a cross-appeal. ▪ COA to administratively decide the motion to remove from summary disposition track within 14 days of filing. Date of entry of order denying removal will be used to calculate the due date of the appellant’s brief if transcript has already been filed or no transcript will be filed. NOTE: Cases that proceed on the summary disposition track will not require a docketing statement. If the case is removed from the summary disposition track, a docketing statement is due 14 days after certification of the removal order. ▪ COA has discretion to sua sponte remove the case from the summary disposition track at any time if staff or the case call panel believes the case is not appropriate for accelerated handling. ▪ COA to order the lower court file as soon as jurisdiction is confirmed and deficiencies (if any) are corrected.
(14 days)		<ul style="list-style-type: none"> ▪ Filing of claim of cross-appeal and cross-appellant’s motion to remove the case from the summary disposition track (if applicable). Motions and answers to be filed and handled as above. ▪ COA to administratively decide the motion to remove from summary disposition track within 14 days. NOTE: Cases that proceed on the summary disposition track will not require a docketing statement. If the case is removed from the summary disposition track, docketing statements (appeal and cross-appeal) are due 14 days after certification of the removal order.

28 days	28 days	<ul style="list-style-type: none"> ▪ Transcript produced (if applicable). If notice of filing transcript is not timely filed, appellant’s brief is due w/in 56 days after filing of claim of appeal or entry of order granting the leave application unless a motion to show cause the court reporter or to extend time for filing transcript is filed within 7 days of transcript due date (i.e. within 35 days of claim of appeal). Failure to timely file the transcript may result in sanctions for the court reporter under MCR 7.210(B)(3)(f). ▪ If there is no transcript or it has been waived, the incremental time for transcript production is eliminated, and appellant’s brief is due 28 days after filing of claim of appeal or entry of order granting leave application.
28 days	56 days	<ul style="list-style-type: none"> ▪ Appellant to file 5 copies of 20-page brief clarifying the facts or law as needed without expanding the record.* Appellant must attach/provide the summary disposition motion that is the subject of the appeal, the appellant’s trial brief supporting or opposing summary disposition, and any appendices appellant submitted to the trial court. ▪ 14-day extension for filing brief is available by motion for good cause shown in the form shown in Attachment 5. Motion will be processed on the administrative motion docket without waiting for an answer. If motion is filed within the original 28-day brief filing period, it will toll the time running on any sanctions (see below) until order is issued. ▪ If brief is not filed within 7 days after the due date, COA will issue an order assessing costs and warning of dismissal if brief is not filed within next 7 days. If brief is not filed within 14 days of due date, COA will issue an additional order affirming costs and dismissing the appeal. ▪ Appellant may wish to include a copy of the transcript if it was completed after the lower court file was transmitted to the COA. ▪ Cross-appellant to file 5 copies of 20-page brief as above. [If transcript was filed early, this brief is due 28 days from the filing of cross-appeal.] ▪ NOTE: No provision for reply briefs.
21 days	77 days	<ul style="list-style-type: none"> ▪ Appellee to file 5 copies of 20-page brief clarifying the facts or law as needed without expanding the record. Appellee must attach/provide its trial brief supporting or opposing summary disposition, and any appendices Appellee submitted to the trial court. ▪ 14-day extension for filing brief is available by motion for good cause in the form shown in Attachment 5. Motion will be processed on the administrative motion docket without waiting for an answer.

		<ul style="list-style-type: none"> ▪ Cross-appellee to file 5 copies of 20-page brief as above. ▪ Record will have been filed.
7 days	84 days	<ul style="list-style-type: none"> ▪ Clerk’s Office to refer appeal to Research Division for preparation for case call.
35 days	119 days	<ul style="list-style-type: none"> ▪ Assignment of case to staff attorney. Preparation of abbreviated report and draft opinion.
28 days	147 days	<ul style="list-style-type: none"> ▪ Notice of submission sent to parties. Submitted on case call without oral argument. ▪ Panel may set oral argument on its own motion or by motion of parties.
28 days	175 days	<ul style="list-style-type: none"> ▪ Three-judge panel to finalize opinion.
7 days	182 days	<ul style="list-style-type: none"> ▪ Clerk’s Office to release opinion.
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D. Adjustments To The Summary Disposition Track Proposal

The staff of the Court of Appeals originally formulated the proposal for a summary disposition track. The Work Group circulated this proposal widely, including circulation to members of the Appellate Practice Section on that Section’s listserve, and received a number of comments. These comments resulted in adoption of the following adjustments to the original proposal:

1. A motion would be required to remove a case from the summary disposition track to a regular track. The motion would be in the form of **Attachment 4** that incorporates a “case complexity checklist.”
2. Briefs would be limited in length to twenty pages.
3. Extensions of time to file briefs would be limited to no more than fourteen days based upon a showing of good cause.
4. A brief would be considered filed when received by the Court of Appeals, and served when mailed, consistent with the current court rules.
5. The Research Division would provide the Judges with an abbreviated report and draft opinion in each case.
6. There are penalties for the late filing of the appellant’s brief.

E. Advantages Of The Summary Disposition Track Proposal

1. Delay Reduction. As of December 16, 2003, there are approximately 540 civil cases in the Warehouse awaiting research reports and placement on case call. Of those, it is estimated that 250 are summary disposition cases that would be appropriate to place on the summary disposition track and submit on case call without oral argument. Additionally, 45-50

new summary disposition cases will become available every month for placement on this summary disposition track. Consequently, in the first year of operating the fast track of summary disposition appeals, the Court of Appeals will dispose of 750 cases on an expedited basis. Assuming the average disposition time of these appeals is 182 days, the delay reduction savings will be approximately 70 days. In the second year of operation when the Warehouse of existing summary disposition appeals is eliminated, the Court will dispose of approximately 500 such cases per year with an effect of reducing delay by another 40 days. The delay reduction effect in later years is more difficult to estimate and will depend on how successful the Court is in meeting its delay reduction goals with the other case types.

2. Cost. **Attachment 6** outlines the estimated costs of a summary disposition track.

3. Implementation. Implementation of the summary disposition track would not require a major overhaul of the current case management system, but would segue easily from the current procedures. This would cause less upheaval for the Clerk's Office and Research Division staff, require less management oversight, and allow more Information Systems resources to be focused on the overall case management system.

4. Flexibility. Flexibility could be maintained for scheduling case call, allowing parity in the case load between Judges, allowing the necessary time to cure defective briefs and obtain missing portions of the record, processing motions, and accommodating practitioners' vacations.

F. Disadvantages Of The Summary Disposition Track Proposal

1. Modifications. Some minor modifications would be required in the current case management system.

2. Quick Action. Practitioners would be required to act quickly in summary disposition cases. However, the amount of work required would be greatly reduced since they need only supplement the briefs submitted to the trial court.

G. Future Modifications

There are modifications to the summary disposition track proposal relating to record and transcript production that the Work Group will study further over the next several months. One possible modification would require that the lower court's order granting or denying summary disposition must contain either a waiver of the transcript or a statement that the transcript is attached to the order, i.e., the summary disposition order could not be entered until the transcript was either waived or produced. In either case, the trial court's order would specify the basis for its ruling and identify the sub-rule under which summary disposition was granted or requested but denied.

A second approach would modify MCR 7.204 to allow a claim of appeal to be filed twenty-one days after either (1) entry of the final order or (2) the timely filing of the transcript that was ordered within 21 days of the final order, whichever is later. The sub-rule allowing for motions for reconsideration would be similarly modified. Thus, if the transcript is timely ordered, the time for filing a claim of appeal would not start until the transcript had been produced, even if that occurred after entry of the summary disposition order.

H. Conclusion

The Work Group recommends that the Supreme Court allow the Court of Appeals to implement the summary disposition track proposal on a test basis for one year. A proposed administrative order is contained in **Attachment 7**.

IV. Time In Intake

A. Overview

The November 19, 2003 letter that created the Work Group also asked the Work Group to compile certain data with respect to time spent in the Intake phase of the Court of Appeals' consideration of an opinion case. The first data request related to overall time in Intake, specifically: how much time on average did the Intake phase consume in 2001, 2002, and 2003? These data are arrayed below:

AVERAGE OVERALL TIME IN INTAKE FOR OPINION CASES

<u>2001</u>	<u>2002</u>	<u>2003</u>
259 days	239 days	235 days

B. Specific Elements Of Time In Intake

The November 19, 2003 letter also asked the Work Group to compile certain data with respect to discrete elements of the average overall time in Intake. The raw data are contained in **Attachment 8**. With respect to each specific element of the average overall time in Intake, these data are arrayed below:^{4 5}

1. Stipulated Extensions Of Time For The Filing Of Briefs

AVERAGE TIME FOR APPELLANTS' STIPULATIONS⁶

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
22.41 days	23.85 days	24.41 days	23.59 days

AVERAGE TIME FOR APPELLEES' STIPULATIONS⁷

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
27.75 days	27.61 days	28.0 days	27.79 days

⁴ As data are now available for the entire twelve months of 2003, these summaries use full calendar years.

⁵ As **Attachment 7** shows, the data are arrayed under the categories of "All Case," "All Civil Cases," and "All Criminal Cases." The summary set out above is for "All Cases."

⁶ The data relating to the average time for appellants' stipulations show the average time for all opinion cases in which an appellant filed a stipulation to extend time. The chart states the average number of days per stipulation per case in which such a stipulation was filed.

⁷ The data relating to the average time for appellee's stipulations show the average time for all opinion cases in which an appellee filed a stipulation to extend time. The chart states the average number of days per stipulation per case in which such a stipulation was filed.

OVERALL AVERAGE TIME FOR STIPULATIONS⁸

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
25.44 days	25.99 days	26.46 days	25.98 days

IMPACT ON DELAY ON APPEAL – STIPULATIONS⁹

<u>2001</u>	<u>2002</u>	<u>2003</u>
19.15 days	19.46 days	19.01 days

2. Motions For Extensions Of Time To File Briefs

AVERAGE TIME FOR APPELLANTS' MOTIONS¹⁰

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
52.71 days	55.81 days	55.71 days	54.90 days

AVERAGE TIME FOR APPELLEES' MOTIONS¹¹

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
43.61 days	42.17 days	40.26 days	42.01 days

OVERALL AVERAGE TIME FOR MOTIONS¹²

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
47.71 days	48.85 days	48.31 days	48.31 days

IMPACT ON DELAY ON APPEAL -- MOTIONS¹³

<u>2001</u>	<u>2002</u>	<u>2003</u>
22.32 days	22.65 days	22.96 days

⁸ The data relating to the overall average time for stipulations show the average time for each stipulation filed in opinion cases. The chart shows the average number of days per stipulation per case in which such stipulations were filed.

⁹ The chart shows the average number of days lost in all opinion cases because of extensions of time by stipulations.

¹⁰ The data relating to the average time for appellants' motions to extend time show the average time for all opinion cases in which an appellant filed a motion to extend time and the Court granted that motion. The chart shows the average number of days per order per case in which such a motion was filed.

¹¹ The data relating to the average time for appellees' motions to extend time show the average time for all opinion cases in which the appellee filed a motion to extend time and the Court granted that motion. The chart shows the average number of days per order per case in which such a motion was filed.

¹² The data relating to the overall average time for motions that the Court granted show the average time granted on each motion filed in opinion cases. The chart shows the average number of days per motion per case in which such motions were granted.

¹³ The chart shows the average number of days lost in all opinion cases because of extensions of time by motions that the Court granted.

3. Briefs¹⁴

AVERAGE TIME FOR APPELLANTS' BRIEFS IN ALL OPINION CASES

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
89 days	81 days	73 days	81 days

AVERAGE TIME FOR APPELLEES' BRIEFS IN ALL OPINION CASES

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
55 days	46 days	46 days	49 days

OVERALL AVERAGE TIME FOR BRIEFS IN ALL OPINION CASES

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Three-Year Average</u>
144 days	127 days	119 days	129 days

4. Steps In The Intake Phase

The data include any extensions of time by stipulation and/or by motion that may have been secured in the underlying opinion cases.

Overall	2001	2002	2003
# of cases	3080	3537	3490
I. Intake Incremental			
a. Transcript	86	85	90
b. AT brief	89	81	73
c. AE brief	55	46	46
d. Record	29	27	26
I. Intake Total	259	239	235
II. Warehouse	268	257	225
III. Research	65	67	64
V. Judicial	61	40	30
Total All Stages	653	603	554

¹⁴ The data include any extensions of time by stipulation and/or by motion that may have been secured in the underlying opinion cases.

Attachment 1

Prototype – US Court of Appeals for the District of Columbia Circuit - 1997

The flow of cases through the D.C. Circuit is generally as follows:

1. A "notice of appeal" is filed in the lower court. [FAQs II-A-1, p 12.] The transcripts must be ordered within 10 days. [FAQs IV-A-1, p 20.]
2. The lower court transfers the notice of appeal and a certified copy of the docket entries to the circuit court, usually within 7-10 days of filing. [FAQs II-A-4, p 13; IOP IV-A-1 & 2, pp 20-21.] The full record is transmitted only if requested by the circuit court. [IOPs IV-A-2, p 21.] Instead, the parties provide those parts of the record necessary to the appeal in appendices [Notes from July 31, 1997, telephone discussion with D.C. Circuit.]
3. The appeals court assigns the case a docket number and issues an order requiring the parties to file "initial submissions" within 30 days. The order will also set a 30-day deadline for the filing of procedural motions and a 45-day deadline for the filing of dispositive motions. [FAQs II-A-4 ¶ 2, p 13 and III ¶¶ 1-2, IV-A-2, p 21; VII-A ¶¶ 2 & 5.]
4. A staff attorney screens the initial submissions and determines the nature of the case and places it on the appropriate track, generally in three broad categories:
 - a. Summary cases [Rule 349j]): These are cases which will be decided without oral argument. Factors considered in placing a case on this track are:
 - i. whether the appeal is frivolous,
 - ii. whether the dispositive issue has previously been authoritatively decided, and
 - iii. whether the facts and legal arguments are adequately presented in the briefs and record so that oral argument would not significantly aid the decisional process.[See FAQs V-A-1-a, pp 36-37 & IOPs XI-C-2, pp 49-50.]
 - b. Regular merits cases. These are cases deemed appropriate for placement on the argument calendar, and the civil cases are governed by a "just in time" briefing schedule. They make up the majority of cases in the court. [IOPs X-D, p 47.] The scheduling works as follows:
 - i. Once any pending motions are resolved, the court issues an order setting the date for oral argument. Generally the panel is disclosed to counsel within this order. The briefing is then set from the oral argument date, with appellant's brief due no less than 40 days after the scheduling order [MDC Intern's notes] and the final brief generally being due at least 50 days before oral argument. Appellee's brief is generally due 30 days after appellant's

brief and any reply brief is due 14 days later. [IOPs II-B-8-a, p 9; C-2 ¶ 5; IV-A-2, p 21; XI-A-1, p 36; X-D, p 47; FAQs V-A-1-b, p 38.] [Note that the DC Circuit has recently converted to a system under which the final brief is due 70 days before oral argument.]

- ii. Three-judge panels are scheduled by computer for eight four-week sitting periods from September through May. Generally only one panel sits at a time and the judges sit together for an entire week (Wednesdays = recess). Judges are generally assigned to no more than one regular merits panel during a sitting period. The judges are scheduled for the entire term during the preceding winter. The clerk's office schedules at least three cases for each day of a panel's sitting period, with a mixture of case types (criminal, civil, administrative, etc.). [IOPs X-A, B, C, & D, pp 46-47.]
 - iii. The court disfavors motions to extend time for briefs and motions to postpone oral argument, and will grant only upon a showing of extraordinary cause. If oral argument is postponed, the case will be rescheduled for the first available date on the calendar – perhaps months later – unless the original panel agrees to hearing the case outside of the normal sitting times. [IOP IX-A-1, ¶ 3; XI-B, p 48.]
 - iv. A stand-by-pool of cases whose counsel have stipulated that they i) do not object to inclusion in the pool, ii) will not file any dispositive motions, and iii) agree to an expedited briefing schedule is maintained as replacements for cases removed from the calendar too close to the argument date to be replaced in the normal course. [IOPs X-E-4, p 48.] [Note that the DC Circuit has modified this element and now essentially over-books each panel by issuing briefing orders in a substantial number of additional cases that can be used to fill future vacancies in the schedule.]
- c. Complex cases. Six or more appeals each year are designated "complex," based on factors such as large number of parties, many issues, and enormous record size. The briefing schedule is set by a case manager with input from the parties. [FAQs V-A-1-c, pp 38-39; IOPs II-B-5, p 8 and V-B, pp 23-24.]

Attachment 2

ESTIMATED COSTS OF IMPLEMENTING JUST-IN-TIME BRIEFING

	Start Up (1 year)	Ongoing (Each year)
Information Systems		
Salaries/Benefits [See Expl 1 attached.]		
Programmer II	(2) - \$ 176,880	(1) - 88,440
Existing Systems Manager	(35%) - \$ 28,969	(10%) - 8,277
Existing Data Base Manager	(10%) - \$ 7,268	
Existing Programmer II (Mgmt Lists)	(30%) - \$ 19,105	(5%) - 3,185
Total Salaries	\$ 232,222	99,902
Equipment/Software		
Additional Web Server - HP DL380*	\$ 11,874	
Additional Database Server - HP DL580*	\$ 14,967	
Additional Oracle Licenses - \$40,000/processor	\$ 80,000	
Additional Desktop PCs (2)	\$ 3,000	
Total Equipment/Software	\$ 109,841	
* Includes Windows 2000 Server licensing.		
Total IS Costs	<u>\$ 342,063</u>	<u>\$ 99,902</u>
Clerk's Office & Research Division Costs [See Expl 2 attached.]		
Planning, creating, & managing new procedures for new processes/unique JIT situations		
Chief Clerk & Research Director	(20%) - \$ 51,200	(5%) - \$ 12,800
District Clerks (4)	(20%) - \$ 80,000	(10%) - \$ 40,000
1/2 Screening Attorney (15/day x 15 minutes/case = 3.75 hours/day) [Based on avg. of 3000 civil non-priority appeals/yr]		\$ 53,477
Case call preparation (Deputy Clerk)	(20%) - \$ 12,600	(10%) - \$ 6,300
Training/Ongoing Docketing -- Clerk's Office Staff (16 docketers)	(5%) - \$ 32,000	(10%) - \$ 64,000
Total Clerk's Office & Research Division Costs	\$ 175,800	\$ 176,577
Total Cost of JIT Implementation	<u>\$ 517,863</u>	<u>\$ 276,479</u>

Expl 1:

The salaries of the two additional Programmers are determined by using a base salary of \$63,000 + 28% of base salary for retirement + \$7800/year for benefits.

The salaries of existing staff are figured using the base salaries only.

Additional staff of two experienced programmers is needed to accomplish the following:

- Create parallel portion of MAPPIS to separately track JIT cases, including but not limited to:
 - Creation of new software for calculation of case call dates
 - Creation of new software for producing "initial submissions" order
 - Creation of new software for producing new scheduling orders
 - Creation of new software to specially track motions for JIT cases
 - Creation of at least 10 new management lists for tracking of briefs, records, motions, and case call.
 - Creation of software to integrate the previously scheduled JIT cases into the non-JIT criminal, priority, and other cases on case call.

A share of existing staff time is needed to:

- Provide management and oversight of new programmers
- Train/guide new programmers through current MAPPIS system. The new software must integrate and work seamlessly with the existing MAPPIS software so as not to work at cross-purposes.
- Redefining Oracle data base for new fields/tracking methods/etc.

Expl 2:

The salaries of existing staff are figured using the base salaries only.

Attachment 3

Court of Appeals Case Call Policies 2003-2004

Traditional COA Plan.

Electronic case flags are used to mark cases that require priority treatment under the court rules, statutes, or because of an order granting a motion to expedite. The flags are incorporated into Mappis programming to move the cases through the case management lists according to the shorter timelines that may apply under the rules, statutes, or Court order.

Case screening is done on all cases after the briefs and record are received and before the cases are assigned to research attorneys. Priority cases are sent to research as soon as they are “ready” and they are screened in research to determine the number of days that an average attorney should take to complete a report in each case. Non-priority cases are held in the clerk’s office until the research offices request more work. Then they are pulled and screened for the “day evaluation.” To promote uniformity in screening, one person screens all the cases that are assigned in research.

Difficulty points are assigned to each case on which a report has been completed. The research supervisors assign these points, which are used to equalize the load assigned to each judge on a case call panel. The points are a means of recognizing that a multi-day case for a research attorney might be a relatively easy opinion depending on the facts and issues involved.

Case call assignments are supported by Mappis programming that recognizes and balances factors such as case age, case priority, difficulty points for reported cases, day evaluations for unreported cases, judicial disqualifications, attorney locations, etc.

Case call options traditionally include three types of panels:

Regular panels hear an average of 30 cases with staff reports per month, but the number will vary depending on the difficulty points assigned to each case. In addition, each panel is assigned 3 smaller criminal and 3 summary disposition cases without reports. There are usually 7 regular panels each month. If oral argument was preserved, it is heard.

Complex panels hear an average of 6 cases per month, again with the number varying depending on the size of the cases that are available for assignment. Complex cases are among the largest filed with the Court. In past years, they have been among the oldest being heard in any month. They are submitted without staff reports. If oral argument was preserved, it is heard. There is usually only 1 complex panel each month.

Summary panels hear an average of 60 cases per month. Priority TPR cases are assigned to summary panels, with the remainder of the load comprised of other small cases. Regardless whether oral argument was preserved, it is not held in these cases during the summary panel

month. If the panel determines that oral argument is necessary, the case is heard in the following month, when the same three judges sit as a complex panel.

First-In, First-Out

Before January 2002, MCR 7.213(C) required that cases be scheduled on case call in the order in which they were “noticed.” Noticing occurred when the briefs had been filed. If production of the transcripts or filing of the briefs had been delayed for any reason, the case would be noticed later than other cases that were filed at the same time and it would not be proper under the court rules to “move them up” and submit them in the order in which they were filed.

In January 2002, the court rule was changed at COA request so that cases are now to be scheduled on case call in accordance with the initial filing dates. This system works to ensure that younger cases are not submitted ahead of older cases that are also available for call.

AO 2002-5 – Differentiated Case Scheduling at the COA.

As the COA worked through the question of delay on appeal, and reviewed various national and state references on appellate delay, it became apparent that case processing in some courts is structured to move similarly aged cases at different rates, depending on other factors such as case size or subject matter. The administrative order that is now in effect permits the COA to give “precedence on the session calendar (case call) to any appeals that the Court of Appeals determines are appropriate for differentiated case management.”

Calendar Year 2003.

During this calendar year, the COA has focused on preparing and assigning cases to case call in a manner that carefully balances age and speed. We have used Mappis programming to closely monitor the caseload to ensure that cases continue to move smoothly through all stages, and that they are scheduled for case call as quickly as possible after they are available. The AO has provided the flexibility to modify the traditional plan as needed, but as the following paragraphs demonstrate, the focus has not been solely on advancing the shorter, younger cases. Case age has been a consistent concern.

January – CJ Whitbeck solicited judges to serve on volunteer panels during 2003. This initiative resulted in nine volunteer panels that disposed of 108 cases without staff reports. The judges sat on these panels in the same months that they were assigned to other panels under the traditional plan outlined above. The twelve cases assigned to each volunteer panel were routed around research, which allowed research to continue working on reports for other cases for call.

February –Six regular panels were scheduled instead of seven so that two summary panels could be assigned instead of just one. A volunteer panel also was assigned. More cases were submitted, with both summary panels taking the customary sixty smaller cases per panel.

March – The traditional plan was followed: seven regular panels, one complex panel, one summary panel. Due to the declining age of the smaller cases traditionally assigned to each regular panel

without reports (see traditional plan, above), and in light of the availability of an inventory of older criminal box cases, the regular panel judges were each asked to take one criminal box case instead of the usual combination of one smaller criminal case and one summary disposition case without staff reports.

April – To continue working on the inventory of older box cases, the Court scheduled six complex panels, two regular panels, one summary panel, and one volunteer panel. Fewer cases were submitted in April, but the average age of the pending inventory was reduced.

May -- At the May Judges' Meeting, the bench voted to make the "volunteer" panels mandatory, at the rate of one per judge per year. Further, as the pending case inventory might require, the Court would schedule one month per year that would be made up almost entirely of complex panels. Additionally, the judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced. For the month of May, the traditional case call plan was followed, with the addition of a volunteer panel: seven regular panels, one complex panel, one summary panel, one volunteer panel.

June -- The traditional plan was followed: seven regular panels, one complex panel, one summary panel. The judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced.

July – To accommodate the reduced rotation in July and August, the July schedule included only four regular panels. The judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced. The usual summary panel was scheduled, while two complex panels were assigned. As before, the additional complex panel was included to allow the assignment of older box cases that could be submitted without staff reports. There was no "volunteer" panel.

August – Reduced rotation: three regular panels, one complex panel, one summary panel, one "volunteer" panel. The judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced.

September – Expansion of traditional plan: seven regular panels, one complex panel, one summary panel, five "volunteer" panels (twelve smaller cases per panel, all without reports). The judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced.

October – The traditional plan was followed: seven regular panels, one complex panel, one summary panel. The judges on the regular panels continued to take, without staff reports, one criminal box case instead of two smaller cases each month, so that the supply of older criminal box cases could be reduced.

November – As in February, six regular panels were scheduled instead of seven, with two summary panels instead of just one. More cases were submitted, with both summary panels taking the customary sixty smaller cases per panel. Because the supply of criminal box cases has been reduced, the regular panels also resumed taking three smaller criminal cases and three summary disposition cases, without reports.

December – The traditional plan is being followed: seven regular panels, one complex panel, one summary panel. Because the supply of criminal box cases has been reduced, the regular panels will also take three smaller criminal cases and three summary disposition cases, without reports.

2004 – Beginning in January 2004, summary panels will receive their cases on a new “rolling submission” plan under which priority cases are forwarded to the panels each week, rather than once for the month. No more than sixty cases with reports will be assigned, but the rolling nature of the submissions will allow the “just-in-time” assignment of priority appeals as they become available. The “volunteer” panels will be disbanded, with the twelve cases without reports that were formerly assigned to those panels going to the summary panels instead. Each month’s summary panel will receive sixty reported cases and twelve unreported cases.

As approved at the May Judges’ Meeting, and as noted above, Court administrators will closely monitor the inventory of complex cases and a month comprised almost entirely of complex panels will be scheduled in spring 2004 as needed to reduce the age and number of those cases.

Attachment 4

**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 he or she does not oppose the motion.

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

Signature: _____

Address: _____

Telephone No.: _____

Attachment 5

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

Case Name: _____

COA No.: _____ L Ct. 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.

Signature: _____

Address: _____

Telephone No.: _____

Attachment 6

Estimated Costs of Implementing Summary Disposition Track

	Start Up (1 year)	Ongoing (Each year)
Information Systems		
Salaries/Benefits		
Existing Systems Manager	(5%) - \$ 4,138	(0%) - \$ -
Existing Programmer II (Mgmt Lists)	(5%) - \$ 3,184	(0%) - \$ -
Total Salaries	\$ 7,322	\$ -
Equipment/Software - No additional needed.	\$ -	\$ -
Total IS Costs	<u>\$ 7,322</u>	<u>\$ -</u>
Clerk's Office & Research Division Costs		
Planning, creating, & managing new procedures		
Chief Clerk & Research Director	(1%) - \$ 2,560	(0%) - \$ -
District Clerks (4)	(5%) - \$ 20,000	(1%) - \$ 4,000
Case call preparation (Deputy Clerk)	(2%) - \$ 1,260	(0%) - \$ -
Training/Ongoing Docketing -- Clerk's Office Staff (16 docketers)	(1%) - \$ 6,400	(0%) - \$ -
Total Clerk's Office & Research Division Costs	\$ 30,220	\$ 4,000
Total Cost of Summary Dispositon Track Implementation	<u>\$ 37,542</u>	<u>\$ 4,000</u>

Attachment 7

Order

Entered:

ADM File No. 2002-34

Administrative Order 2004-__

Summary Disposition Appeals
At the Court of Appeals

Michigan 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, this administrative order is adopted, effective _____.

In response to this Court's directive in Administrative Order 2003-6, the Michigan Court of Appeals has submitted a plan for the expedited processing of civil appeals from orders on motions for summary disposition. The Supreme Court has reviewed the plan and adopts it in full.

Accordingly, on order of the Court,

1. **Applicability.** This administrative order applies to appeals filed on or after June 1, 2004, 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 and 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 so 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), so long as the Court 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 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 will file a claim of cross-appeal.

(D) Disposition. Within 14 days after 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 run from 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.

8. Transcript – Production for Purposes of Appeal.

(A) Appellant.

- (1) The appellant may waive the transcript. See section 3(B)(3) above.
- (2) If the appellant desires the transcript for the appeal, the appellant must order the transcript prior to 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 to show cause the court reporter or recorder, 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 appellant fails to file either of the above motions within the time prescribed, the time for filing the brief will run from 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 to show cause the court reporter or recorder, or
 - (b) a motion to extend 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 appellee fails to file either of the above motions within the time prescribed, the time for filing the brief will run from 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.

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 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.
 - (2) The appellee's brief shall be filed 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 due date, 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 20 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) There is no provision for reply briefs except on motion granted.

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 briefs of both parties have been filed, 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 with due speed but in no event 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 until _____ [insert date one year from the effective date of the Administrative Order], at which time this Court will evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

Staff Comment. The Court of Appeals estimates that summary disposition appeals make up about 50% of the Court's non-priority civil cases. The procedure proposed by 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.mjud.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 20-page brief (accompanied by the appellant's trial court motion, brief and appendices) will be due within 28 days after filing of 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 in 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 impact the ability to timely file the brief. When the motion is premised on workload 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.

Attachment 8

As of 1/16/2004

Cases closed by opinion

Note: Average motion days per case averages only those cases with a motion. Similarly for Stips.

Note: Corrected for anomalous data suggesting stips longer than 28 days and motions longer than 56 days.

CASECALLTYPE	(All)
DISTRICT	(All)
EXPEDITED	(All)
CUSTODYORTPR	(All)
CUSTODY	(All)
TPR	(All)
CIVIL	(All)

CLOSEYEAR	Data	Total	
2001	Total Cases	3080	
	Cases with AT Stips	1001	32.50%
	Cases with AE stips	1317	42.76%
	Cases with AT Motions	650	21.10%
	Cases with AE Motions	791	25.68%
	Cases with both AT and AE stips	703	22.82%
	Cases with AE and AT Stip and Motion	155	5.03%
	Avg Num Stips per case	1.02	
	Avg Days AT Stips per case	22.41	
	Avg Num AT Motions per case	1.09	
	Avg Days AT Motions per case	52.71	
	Avg Num AE Stips per case	1.02	
	Avg Days AE Stips per case	27.75	
	Avg Num AE Motions per case	1.18	
	Avg Days AE Motions per case	43.61	
2002	Total Cases	3536	
	Cases with AT Stips	1139	32.21%
	Cases with AE stips	1509	42.68%
	Cases with AT Motions	803	22.71%
	Cases with AE Motions	837	23.67%
	Cases with both AT and AE stips	813	22.99%
	Cases with AE and AT Stip and Motion	144	4.07%
	Avg Num Stips per case	1.02	
	Avg Days AT Stips per case	23.85	
	Avg Num AT Motions per case	1.12	
	Avg Days AT Motions per case	55.81	
	Avg Num AE Stips per case	1.03	
	Avg Days AE Stips per case	27.61	
	Avg Num AE Motions per case	1.23	
	Avg Days AE Motions per case	42.17	

2003	Total Cases	3490	
	Cases with AT Stips	1075	30.80%
	Cases with AE stips	1433	41.06%
	Cases with AT Motions	865	24.79%
	Cases with AE Motions	794	22.75%
	Cases with both AT and AE stips	758	21.72%
	Cases with AE and AT Stip and Motion	105	3.01%
	Avg Num Stips per case	1.02	
	Avg Days AT Stips per case	24.41	
	Avg Num AT Motions per case	1.13	
	Avg Days AT Motions per case	55.71	
	Avg Num AE Stips per case	1.04	
	Avg Days AE Stips per case	28.00	
	Avg Num AE Motions per case	1.18	
	Avg Days AE Motions per case	40.26	
Total Total Cases		10106	
Total Cases with AT Stips		3215	31.81%
Total Cases with AE stips		4259	42.14%
Total Cases with AT Motions		2318	22.94%
Total Cases with AE Motions		2422	23.97%
Total Cases with both AT and AE stips		2274	22.50%
Total Cases with AE and AT Stip and Motion		404	4.00%
Total Avg Num Stips per case		1.02	
Total Avg Days AT Stips per case		23.59	
Total Avg Num AT Motions per case		1.12	
Total Avg Days AT Motions per case		54.90	
Total Avg Num AE Stips per case		1.03	
Total Avg Days AE Stips per case		27.79	
Total Avg Num AE Motions per case		1.20	
Total Avg Days AE Motions per case		42.01	