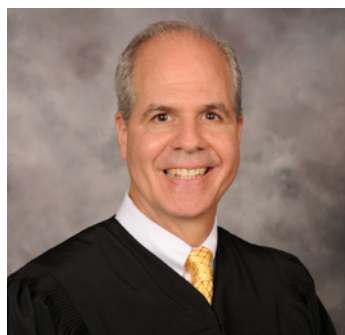


# MICHIGAN DEFENSE QUARTERLY

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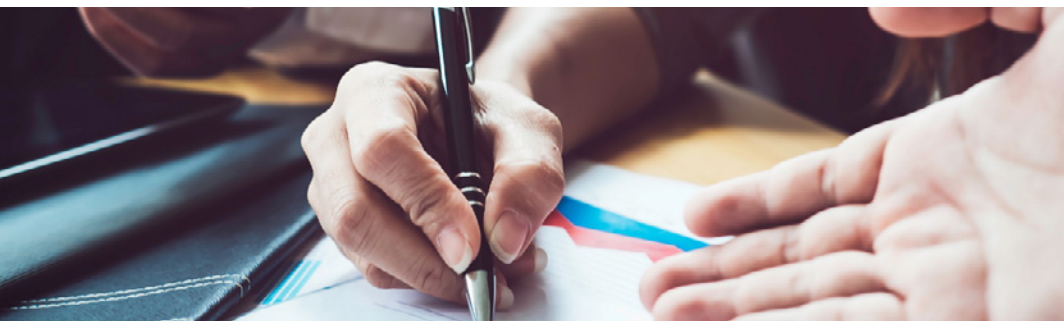
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## Appellate Practice Report

By: **Phillip J. DeRosier**, *Dickinson Wright*  
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### Expediting Civil Appeals in the Michigan Court of Appeals

Pursuing or defending an appeal in the Michigan Court of Appeals can be a lengthy process. Briefing does not begin until after all transcripts have been ordered, and that process alone can take up to 91 days in civil cases. MCR 7.210(B)(3)(b)(iv). The appellant's brief is typically due 56 days from the date all transcripts are received by the Court of Appeals, and the appellee's brief is due 35 days later. MCR 7.212. Both deadlines, however, are subject to extensions of up to 56 days. Once briefing is completed, the parties must wait for oral argument to be scheduled. As a result, parties can typically expect the appeal process to take 12-18 months (in 2023, it was approximately 14 months on average for all appeals).<sup>1</sup>

With this timeline, it may be necessary in some cases to attempt to expedite the appellate process. The court rules provide three basic procedures for expediting appeals in the Michigan Court of Appeals.

First, an appellee may file a motion to affirm. See MCR 7.211. See also IOP 7.211(C)(3). This motion, which can be filed only after the appellant's brief has been filed, requests that the Court affirm an order or judgment below because "(a) it is manifest that the questions sought to be reviewed are so unsubstantial as to need no argument or formal submission; or (b) the questions sought to be reviewed were not timely or properly raised." See MCR 7.211(C)(3). These motions can be granted only with a unanimous order.

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In short, a party wishing to expedite consideration of an appeal has various options for doing so.

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Second, an appellant may file a motion for peremptory reversal. MCR 7.211(C)(4). This motion argues that error "is so manifest that an immediate reversal of the judgment or order appealed from should be granted without formal argument or submission." *Id.* Like a motion to affirm, a motion for peremptory reversal may be granted only by a unanimous order.

Third, a party may file either a motion for immediate consideration (in the case of applications for leave to appeal) or a motion to expedite (in the case of appeals as of right). MCR 7.211(C)(6); IOP 7.211(C)(6). Although the court rules suggest that motions for immediate consideration can be filed only to expedite consideration of another "motion" (such as a motion to affirm or a motion for peremptory reversal), the Court's Internal Operating Procedures (IOPs) explain that a party may file a



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Phil DeRosier has more than 20 years' experience representing industry-leading corporations, banks, insurance companies, and individuals in the Michigan Supreme Court, Michigan Court of Appeals, and U.S. Courts of Appeals. Phil has briefed and argued a wide variety of appeals, ranging from commercial contracts to insurance to business torts. He also devotes a significant part of his practice to briefing dispositive motions and working with trial counsel on pre- and post-trial motions, jury instructions, and preserving issues for appeal.

Phil is a past Chair of the Governing Council of the State Bar of Michigan's Appellate Practice Section, and is consistently recognized in *Best Lawyers* and *Michigan Super Lawyers* in the area of appellate practice. Phil is co-chair of the Michigan Appellate Bench Bar Conference and a contributing author to the Institute for Continuing Legal Education's *Michigan Appellate Handbook*. Before joining the firm, Phil served as a law clerk for former Michigan Supreme Court Chief Justice Robert P. Young, Jr., and was a staff attorney at the Michigan Court of Appeals.



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motion for immediate consideration of an application for leave to appeal as well. See IOP 7.211(C)(6)-1 (“A motion for immediate consideration . . . is designed to expedite consideration of another accompanying or pending motion, application for leave, or original proceeding.”). Finally, while the court rules do not explicitly mention motions to expedite an appeal as of right, the Court’s IOPs clearly provide for such relief and explain the process for doing so. See IOP 7.211(C)(6)-2. A successful motion to expedite can result in a considerable shortening of the overall appeal timeframe (in 2023, the average expedited appeal lasted 9 months).<sup>2</sup>

In short, a party wishing to expedite consideration of an appeal has various options for doing so.

#### Endnotes

- 1 See *Michigan Court of Appeals*, Annual Report (2023), p 5, available at: <https://www.courts.michigan.gov/4963ef/siteassets/reports/coa/annualreports/annualreport2023.pdf>
- 2 *Id.* at 6.

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