The Effects of COVID-19 on Appealing a Summary Judgment Ruling

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Summary judgment or summary disposition is a mechanism that permits parties in a lawsuit to obtain a court ruling before trial regarding certain elements of that case. It is designed for situations in which the court determines that no issue of material fact needs to go to trial. A principal result of a summary judgment ruling is the avoidance of time and expense. Ordinarily, tight deadlines, the perception that success is unlikely, and associated expenses have tended to deter interlocutory appeals.

Under some circumstances, an appeal from an adverse summary judgment ruling may be a wise strategic move. Against the backdrop of the COVID-19 pandemic, however, the legal landscape for litigators has temporarily changed. For instance, the Judicial Conference, the administrative policy-making body for the federal courts, found on March 29, pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), that "emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally ...". Under the CARES Act, this finding allows chief district judges, under certain circumstances and with the consent of the defendant, to temporarily authorize the use of video or telephone conferencing for certain criminal proceedings during the COVID-19 national emergency."

Many courts have closed, or are operating remotely and at a slower pace. Jury trials, motion hearings, and other proceedings have been adjourned. Courts are much more likely to issue summary judgment rulings without oral argument. This can give attorneys or a litigant the feeling that they were not afforded a fair opportunity to present arguments to a judge. With most attorneys working from home with more time than they ordinarily have, many are seeking creative ways to use this time to the advantage of their clients.

One oft-cited reason for disfavoring interlocutory appeals is the perception that they are costly. This perception is not entirely accurate. Interlocutory appeals frequently involve issues that have already been fully researched, briefed, and orally argued. Because of this, they can involve the re-use of work that, for the most part, has already been completed. Additionally, the perception of a lack of progress in the litigation process may change the cost/benefit analysis. Attorneys and clients faced with the uncertainty of extended adjournments and lengthy timetables to return to normalcy may be more likely to reallocate resources and pursue interlocutory appeals. Put another way, even a small chance of a significant win can be much more attractive when a litigant is facing extended delays in the ultimate resolution of her case.

Legal professionals, like everyone else, are experiencing an exceedingly disruptive time. We have no choice but to work remotely. At least for the short run, the days of manual filing are in our rearview mirror. Tight deadlines may not be an issue, at least temporarily. The global pandemic has caused some courts to extend deadlines for the filing of appeals. For example, Michigan Supreme Court Administrative Order No. 2020-4 provides for tolling for the deadlines of "all filings, jurisdictional and non-jurisdictional, in the Michigan Supreme Court and Court of Appeals." Pursuant to the Administrative Order, the deadlines are tolled, giving litigants the amount left on any deadline after the expiration of the AO. This temporarily provides all litigants an indefinite deadline to evaluate and prepare an appeal for filing. Even though Michigan has permitted tolling, it has not prohibited the effling of appeals. Thus, the relaxing of deadlines may be another factor in altering the cost/benefit analysis.

Whatever legal strategies are followed, attorneys are urged to work collaboratively to address unanticipated challenges presented by COVID-19. Civility and decorum have never been so important.

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