

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 re-allocate 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 e-filing 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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