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AO 2020-4: The Michigan Supreme Court Suspends Filing Deadlines in the Court of Appeals and the Supreme Court, But Not Circuit Court Appeals

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Today, March 26, 2020, the Michigan Supreme Court released its latest COVID-19 related Administrative Order. There are four big takeaways:

- All filing deadlines in MSC and MCOA are suspended through April 16th;
- Appellate filings in circuit court are **not** suspended;
- As to whether the automatic stay is extended to April 16, 2020 for nonfinal orders, additional guidance on this issue is pending and expected soon.
- This order does **not** suspend post-judgment filing deadlines in circuit court **criminal** cases, including those under MCR 6.310 (C), 6.429(B)(3), 6.431(3), 7.105(A), 7.105(G), and 7.208(B), or deadlines for requesting counsel under MCR 6.425(F).

1. Filing Deadlines in MSC and MCOA are Suspended

AO 2020-4 suspends all appellate filing deadlines in the Michigan Supreme Court and Court of Appeals retroactive to March 24th through April 13th, which is when Governor Whitmer's EO 2020-21 expires. If the Governor extends the expiration date of her EO, the appellate filing deadlines are automatically suspended through that extended date.

If the Governor does not extend the April 13th date, any appellate filing deadline that falls between March 24, 2020 and April 13, 2020, is now extended until Thursday, April 16, 2020.

From an appellate perspective, AO202-4 is extraordinary in that it extends both *jurisdictional* filings—such as claims of appeal in the Michigan Court of Appeals and applications for leave to appeal before the Supreme Court—and non-jurisdictional filings, such as motions and briefs. In the Court of Appeals, most civil

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cases provide an appellant with 21 days to vest jurisdiction in the Court by filing a claim of appeal as of right. Cases involving the termination of parental rights are shortened to 14 days. The time periods are basically doubled for civil filings in the Michigan Supreme Court, an appellant has 42 days to file an application for leave to appeal in civil cases, and 28 days for termination of parental rights cases.

As for non-jurisdictional filings, the AO, by using the phrase “all filings,” also tolls and otherwise suspends the time to file other necessary papers, such as docketing statements, briefs on appeal, including response and reply briefs, as well as transcripts and motions. See e.g., *Skotak v Vic Tanny Intern, Inc*, 203 Mich App 616, 619; 513 NW2d 428 (1994) (“... there is no broader classification than the word “all;” the word leaves no room for any exceptions.”)

This AO is intended to hit the proverbial “pause” button on all appellate filings between March 24, 2020, and April 16, 2020.

2. Circuit Court Appeals are Unaffected by AO 2020-4

By its terms, the AO applies only to filings in the Michigan Supreme Court and Court of Appeals. As such, it does not apply to appellate filing deadlines in the Circuit Court, which handles appeals from agency decisions and from district courts. We do not believe that AO 2020-3, which tolls deadlines for initial pleadings in civil actions and probate proceedings (see our client alert AO 2020-3), applies to circuit court appeals. AO 2020-3 speaks directly to proceedings under Chapter 2 and Chapter 5 of the court rules. Circuit court appeals are governed under Chapter 7.

3. What About Automatic Stays?

The AO does not specifically address the 21-day automatic stay rule under MCR 2.614.

In cases involving final orders, as defined under MCR 7.202(6), we believe the order effectively extends the automatic stay through your new date to file an appeal of right. Under MCR 7.209(E)(1), “[u]nless otherwise provided by rule, statute, or court order, an execution may not issue and proceedings may not be taken to enforce an order or judgment **until expiration of the time for taking an appeal of right.**”

In cases involving nonfinal orders (whether they be interlocutory or post-judgment), the court rules do not provide for a similar safety valve. We asked Larry Royster, the Chief Clerk of the Michigan Supreme Court, for clarification on this point. He believes that the Court intended the AO to extend the automatic stay for all cases, and noted that further clarification on this issue will be forthcoming. Stay tuned.

In the meantime, and until and unless the Supreme Court definitively clarifies this issue, a party hit with a final order or judgment where the 21-day automatic-stay provision expires between March 24, 2020, and April 16, 2020, should consult with appellate counsel for further guidance to guard against premature enforcement by an opposing party. Contact the Butzel Long Appellate Practice Specialty Team to address any and all appellate questions and concerns you may have during COVID-19

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interruptions.

4. Special Note on Criminal Cases

The AO does not apply to postjudgment filing deadlines in the circuit court, including deadlines under MCR 6.310(C), MCR 6.429(B)(3), 6.431(3), MCR 7.104(A), MCR 7.105(A), MCR 7.105(G), or MCR 7.208(B). Nor does it apply to the deadline for requesting appellate counsel under MCR 6.425(F). Until a future order specifically addresses such matters, continue to meet existing filing deadlines to preserve issues for appeal.

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