

Appellate Practice Section 2004-2005 Annual Report

The Appellate Practice Section's purpose is to promote the skillful, efficient, and effective practice of appellate law. Our Section works to advance the administration of justice in the appellate courts so that the Bench and Bar may better serve the public interest. Section Bylaws, §1.2. The Appellate Practice Section currently has over 680 members.

Throughout the past year, consistent with our purpose, the Section Council has

1. recommended policies and procedures to advance the administration and operation of the appellate courts;
2. conducted a program (and in the next month will be conducting a seminar) to improve the advocacy skills of appellate lawyers;
3. financially supported worthwhile causes such as the Michigan Supreme Court Historical Society and the Michigan High School Mock Trial Tournament (administered by the Michigan Center for Civic Education).

Advancing administration and operation of the appellate courts

Since its inception in 1995, a central mission of the Section Council has been to propose court rule changes and comment on proposed court rule amendments. Much of the Council's time during the past year centered on this mission.

During 2004-2005, the Council devoted considerable time and attention to Supreme Court Administrative Order 2004-5, which implemented the so-called "fast track" procedures for appeals from orders granting or denying motions for summary disposition. This Administrative Order will remain in effect for two years, while the Court and the Bar study its effectiveness.

Since the Administrative Order was entered, the Section Council has taken steps to collect data from Section members on fast-track appeals. The Section's Michigan Court Practice Committee created a standardized form that is posted on the Section's website and the Court of Appeals' website, which allows practitioners to provide quick feedback on their experiences with the new fast-track procedures. The Council will use this data to provide feedback to the Supreme Court's Case Management Work Group. The Section will continue to be on the forefront of this issue, which is of vital interest to appellate practitioners.

The Council also spent a significant amount of time and effort responding to Court of Appeals Chief Judge Whitbeck's invitation to submit proposals for improving Court of Appeals operations. The Council discussed numerous ideas during its spring meetings, and the Michigan Court Practice Committee evaluated ideas and formulated

proposals to present to the Council. The Council ultimately decided to submit three proposals to Chief Judge Whitbeck, which concerned transcript-production issues and equitable filing procedures in the Court of Appeals.

During the past year, the Section has also commented on other proposed court rule changes that affect Michigan appellate practice. The Section Council and Council members also met or spoke to representatives of the Supreme Court, Court of Appeals, and the State Bar. Through these meetings, Council members discussed issues and ideas on how to advance the administration and operation of our appellate courts.

Improving Advocacy Skills

In September 2004, at its annual meeting, the Section presented a program on "Amicus Curiae Practice in Michigan's Appellate Courts." A panel of distinguished appellate judges and practitioners discussed the value of amicus curiae briefs, tips for writing effective amicus briefs, and related issues.

On June 17, 2005, the Section will present a seminar on the "Economics of Appellate Practice." This seminar will boast a panel of prominent appellate practitioners from all walks of practice. The seminar will give practitioners information and feedback on the practical economic issues that affect appellate practitioners working in different firm sizes and practice areas.

Financial support for worthwhile causes

During 2004-2005, the Appellate Practice Section donated funds to support the Michigan Supreme Court Historical Society. The Section also donated funds to the Michigan Center for Civic Education, to support the Michigan High School Mock Trial Tournament.

The Section Council

The Section's Council consists of 17 Council members. The three immediate past chairs serve as ex-officio members. Four officers -- the Chair, Chair-Elect, Secretary, and Treasurer -- complete the roster. The Council meets monthly, except for July and August.

Standing Committees

The Section maintains four standing committees and five ad-hoc committees. Through its newsletter and listserv, the Section Council encourages Section members to join committees and become more active in Section activities.

Court Liaison/Rules Comment Committee -- Ronald S. Lederman, Chairperson

The Rules Committee continued throughout the past year to provide the Council and Section with research and comment on proposed court rule amendments involving appellate practice and procedure. This included research and comment

on a proposed amendment of MCR 7.205 to shorten the deadline for delayed applications for leave to appeal in the Court of Appeals, amendments to various court rules concerning record-production issues, a possible Court of Appeals Internal Operating Procedure clarifying the effect of a timely trial-court motion for reconsideration on the deadline for applications for leave to appeal, and other similar issues. Section members interested in joining this committee can contact Mr. Lederman at rllederman@swbta.com.

Federal Court Practice Committee – Paul Bernard, Chairperson

The Federal Practice Committee continues to monitor issues affecting appellate practice in the federal court system. It has offered comments to the Sixth Circuit regarding proposed amendments of the local rules, and it has begun planning a conference, tentatively scheduled for spring 2006. New members are welcome, and anyone interested in working on the Committee should contact Paul Bernard at PBernard@dickinson-wright.com.

Michigan Court Practice Committee – Megan Cavanagh, Chairperson

In 2004-2005, the Michigan Court Practice Committee implemented a program to collect information from appellate practitioners concerning their experiences with the Court of Appeals' expedited summary-disposition track (the so-called "fast track") under Administrative Order 2004-5. The Committee prepared a standardized form for practitioners to use to provide this information, which is on the Section's website as well as the Court of Appeals' website.

In addition, the Committee analyzed ideas and prepared proposals in response to Chief Judge Whitbeck's request for proposals to improve the operation of the Court and to improve the service the Court provides to lawyers and litigants.

Section members interested in assisting The Michigan Court Practice Committee may contact Ms. Cavanagh at mcavanagh@garanlucow.com.

Publications Committee -- Marcia Howe, Chairperson

This committee continues to prepare and publish the Appellate Practice Section Newsletter under Section member Eileen Kavanagh's editorship. Anyone interested in assisting this committee may contact Ms. Howe at mhowe@jrlaf.com.

Ad Hoc Committees

Circuit Court Appellate Rules Revision Committee -- Don Fulkerson & Hon. Stephen C. Cooper, Co-Chairs

Created at the request of then-Chief Justice Maura Corrigan, this is a joint ad hoc committee of the Appellate Practice Section and the Michigan Judges' Association. This committee has included practitioners, judges, a law-school president and dean, a former Court of Appeals commissioner, and a SCAO representative. It is performing the much-needed task of updating and streamlining the court rules governing appeals to the circuit court. The committee's work is almost complete, and when it is, the committee will send the Supreme Court a proposed revision of subchapter 7.100. New SCAO forms will likely follow. For more information, contact Mr. Fulkerson at dfulkerson@wowway.com.

Economics of Appellate Practice Committee -- Michael L. Updike, Chairperson

The Economics of Appellate Practice Committee spent much of 2004-2005 planning the upcoming "Economics of Appellate Practice" seminar. The program will be on Friday, June 17, 2005, at the Doubletree Hotel in Novi. The panel of speakers will include prominent practitioners from a variety of firm sizes and practice areas.

Anyone interested in working on the committee may contact Mike Updike at mupdike@secrestwardle.com.

Good Deeds Committee – Linda M. Garbarino, Chairperson

In 2004-2005, the Appellate Practice Section was fortunate to be able to make charitable contributions to two worthy causes and organizations. A contribution of \$1,500 was made to the Michigan Supreme Court Historical Society in memory of the late Honorable Dorothy Comstock-Riley. Further, a contribution of \$2,000 was made to the Michigan Center for Civic Education, for its Michigan High School Mock Trial Tournament.

Legislative Liaison – Noel Massie, Chairperson

The Legislative Liaison Committee has reviewed pending bills that might affect appellate practice and made recommendations to the Council regarding whether to comment. In the past year, the Committee offered recommendations to the Council concerning Senate Bill 33 and House Bill 4472. The Section has provided a policy position to the State Bar supporting SB 33, which would increase the page rate for court reporters. Members interested in assisting this committee may contact Mr. Massie at nmassie@kohp.com.

Technology Committee – Joseph Firestone and Barbara Goldman, Co-Chairs

During the past year, the committee continued its work on electronic filing and related areas. Members interested in assisting this committee (or signing up for

the Section's listserv) may contact either Mr. Firestone at jfire@firestonelaw.net or Ms. Goldman at bgoldman@sheldonmiller.com.

Respectfully submitted,

J. Mark Cooney,
Section Chair