

Appellate Practice Section 2005-2006 Annual Report

The Appellate Practice Section, in its tenth year as a Section of the Michigan State Bar, has continued efforts to promote the skillful, efficient, and effective practice of appellate law among Michigan practitioners. The Section currently has 675 members.

Throughout this past year Section Council has:

1. Worked with appellate courts to review and recommend policies and procedures to advance the administration, funding and operation of the courts; and
2. Conducted programs to improve the skills of appellate attorneys;

Advancing administration in the appellate courts.

One of the central missions of the Section Council is to monitor, comment on and propose changes to court rules affecting appellate practice. For the past two years, Council - primarily through the efforts of its Michigan Court Practice Committee - has devoted considerable time and attention to the "fast track" procedures created by Administrative Order 2004-5. In late 2005, Council reviewed and commented on proposed amendments to the Administrative Order designed to streamline the process. The revisions, which took effect January 1, 2006, simplify the procedures for the court as well as for attorneys. Because the summary disposition track is a two year test project, the Section continues to solicit data and input from practitioners regarding their experience with this new docket. Feedback forms are posted on the websites of both the Court of Appeals and the Section, and the information supplied will be used to provide comment to the Supreme Court's Case Management Work Group.

Council is also currently considering and commenting on a recent proposal for fee increases by the Michigan Court of Appeals. The State Bar Board of Commissioners has asked the Section for its formal position. At issue is the philosophical commitment to a publicly funded judiciary, versus a system financed by user fees, particularly in the face of dire budget cutbacks triggered by the state's poor economic climate.

Improving Advocacy Skills

In May of 2006, the Federal Court Practice Committee presented a symposium on United States Supreme Court Practice. Michigan attorneys who have practiced before that court presented an informative and stimulating discussion of a wide range of issues associated with their cases, including identifying cases that are potential candidates for Supreme Court review, strategies for obtaining the attention of the Supreme Court, and the nuts and bolts of argument.

In September, 2005, at its annual meeting in East Lansing, the Section presented a program on the new summary disposition docket in the Court of Appeals. Attendees were treated to a panel discussion by Judge Michael Talbot, Chief Clerk Sandra Schultz Mengel, Michigan Court Practice Committee Chair Megan Cavanagh, and practitioners commenting on their experiences with the system.

In June of 2005, the Economics of Appellate Practice Committee presented a seminar on the marketing of appellate services.

Members of the Section and Council are also involved with the Michigan Appellate Council Bench Bar Program scheduled for May 2007.

The Section Council

The Section's Council consists of 17 Council members and the three immediate past chairs, who serve as ex-officio members. The Section is headed by four officers – the Chair, Chair-Elect, Treasurer and Secretary. The Council meets monthly, except for July and August.

Standing Committees

Most of the work of the Section is done through its committees – four standing and several ad-hoc, depending on the needs of the particular year. The involvement of Section members is solicited through the listserv, the newsletter and the seminars. Anyone wishing to become involved may contact any one of the members listed on the Section's website.

Court Liaison/Rules Comment Committee – V. Valenti and R. Lederman, Co-Chairs

The Rules Committee continues to provide the Council and the Section with research and comment on proposed court rule amendments involving appellate practice and procedure. Most of the effort this year has been devoted to the rules for summary disposition appeals, but currently pending before the committee is a proposed amendment to MCR 7.211, extending answer deadlines from 7 to 14 days for various motions. Section members who are interested in joining this committee should contact Vic Valenti at v.valenti@fiegerlaw.com, or Ron Lederman at rlederman@swappc.com.

Federal Court Practice Committee – P. Bernard and J Bursch, Co-Chairs

The Federal Practice Committee continues to monitor issues affecting appellate practice in the federal court system. During the past year, it has offered comments to the Sixth Circuit Court of Appeals regarding proposed amendments to the local rules. In May 2006, the Committee sponsored a symposium on United States Supreme Court Litigation, featuring a panel discussion by three Michigan attorneys who have recently practiced in the United States Supreme Court. This symposium coincided with the Sixth Circuit's annual judicial conference in Detroit, and it was well attended, both by Michigan attorneys and out-of-state attorneys who attended the judicial conference. Section members who are interested in joining this committee should contact Paul Bernard at pbernard@dickinsonwright.com or jbursch@wnj.com.

Michigan Court Practice Committee – M. Cavanagh, Chair

The Michigan Court Practice Committee has continued to collect information regarding appellate practitioners' experiences with the expedited summary disposition track under Administrative Order 2004-5 and the January 1, 2006 amendments to Administrative Order 2004-5. Section members who are interested in joining this committee should contact Megan Cavanagh at mcavanagh@garanlucow.com.

Publications Committee – M. Howe, Chair

The Publications Committee has reactivated the Section's newsletter, which will be published three to four times per year. Section members are encouraged to submit articles. The Publications Committee is also coordinating the appellate issue of the State Bar Journal scheduled for 2008. Section members who are interested in joining this committee should contact Marcia Howe at mhowe@jrlaf.com

Ad Hoc Committees

Circuit Court Appellate Rules Revision Committee – D. Fulkerson and Hon. Stephen C. Cooper, Co-Chairs

The Circuit Court Appellate Rules Revision Committee is a joint ad hoc committee of the Appellate Practice Section and the Michigan Judges' Association, created by Justice Maura Corrigan during her tenure as Chief Justice. It is continuing its efforts to redraft the court rules governing all circuit court appeals, a highly complicated task due to the number of rules and statutes that apply to the variety of cases that are appealed to the circuit court. The committee hopes to complete its work this year. For more information, contact Don Fulkerson at dfulkerson@wowway.com.

Economics of Appellate Practice – M. Updike, Chair

The Economics of Appellate Practice Committee conducted a seminar on June 17, 2005, in Novi, Michigan on the economics of appellate practice. Panelists included Mark Granzotto, Judith Curtis, Donald Fulkerson, Noreen Slank and Elizabeth Jacobs. Many appellate specialists attended and provided valuable insights and suggestions from the floor during the question and answer portion of the seminar. Ms. Liisa Speaker gave a separate presentation on how technology has impacted the economics of appellate practice.

The Committee is currently looking into the problem of deposition transcripts read or played into the record but not transcribed by the trial court reporters who prepare the appeal transcript. The lack of such testimony in the trial record can greatly complicate an appeal and cause difficulty with the Court of Appeals' record requirements.

The Committee is also considering an updated survey of appellate practitioners with respect to fees and hourly rates. The Committee last conducted such a survey in the 1990's.

Section members interested in joining this Committee should contact Michael Updike at 248-851-9500 or mupdike@secrestwardle.com.

Ad Hoc Committee on Legal Specialization – L. Speaker, Chair

The Committee on Legal Specialization has prepared a compilation of specialization requirements for all states that have a specialty area for appellate practice. The Committee is monitoring the completion of a study by the Council of Appellate Lawyers' Task Force on Specialization and will the State Bar of Michigan's interest in

investigating this issue. Section members who are interested in joining this committee should contact Liisa Speaker at (517) 321-9770.

Technology Committee – J. Firestone and B Goldman, Co-Chairs

The Technology Committee has been following the Court of Appeals' e-filing pilot project and the work of the State Bar of Michigan's e-filing task force. Section members who are interested in joining this committee should contact Barbara Goldman at bgoldman@michiganlegalresearch.com.

Respectfully submitted,

Deborah A. Hebert
Section Chair