

Appellate Practice Section 2002-2003 Annual Report

The purpose of the Appellate Practice Section 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 660 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. supported funding requests of the Supreme Court and Court of Appeals.
3. commented on proposed amendments to the State Bar's Bylaws.
4. conducted a program and seminar to improve the advocacy skills of appellate lawyers. And,
5. has financially supported worthwhile causes such as the Hall of Justice's Learning Center, the first Michigan Conference on Racial and Ethnic Fairness in the Legal System and the Michigan High School Mock Trial Tournament.

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, particularly relating to the Court of Appeals' "delay reduction" proposal.

After Chief Judge Whitbeck announced the Court of Appeals' delay reduction plan and proposed court rule amendments, in May 2002, the Section Council formed an ad hoc committee on Delay Reduction in the Court of Appeals. In September 2002, the Delay Reduction Committee issued a report on the plan and proposed amendments. The Council adopted and released this report, with some revisions, in November 2002.

In its eight-page "Report on the Court of Appeals' Delay Reduction Plan and Proposed Court Rule Amendments", the Section supported the overall goal of reducing delay in the Court of Appeals. It also supported court rule amendments reducing intake time for docketing statements, transcripts in some cases and transmission of circuit court records. The Section, however, opposed the proposed amendments to MCR 7.212 that would cut filing times for appellants' briefs and reply briefs, eliminate stipulated extensions and eliminate motions for

extension except on substantial showings of good cause. The Section opposed these amendments as unnecessary, premature, unduly disruptive to practitioners and inimical to quality briefs and decision-making.

In mid-2002, the State Bar formed the Delay Reduction Task Force, chaired by past President Bruce Neckers. Among others, two past Appellate Practice Section chairs, Evelyn Tombers and Timothy McMorrow, served on the Task Force. In early 2003, the Delay Reduction Task Force issued its report. The report took essentially the same positions on the proposed court rule amendments as the Appellate Section had.

After issuance of the State Bar of Michigan's Delay Reduction Task Force, the Court of Appeals agreed to extend the comment time for the proposed court rule amendments and table the issue from the Supreme Court's June 19, 2003 public hearing. In the meantime, with consent of the Court of Appeals, the State Bar formed a new ad hoc committee, the Appellate Delay Intake Management Task Force Committee. As of June 2003, this committee, chaired by Scott Brinkmeyer and comprised of appellate lawyers and Court of Appeals representatives, is exploring options for reducing delay in the Court of Appeals.

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

Support for the appellate courts' funding requests. In March 2003, after a series of severe budget cuts, the Supreme Court and Court of Appeals presented its fiscal year 2004 budget requests. These included filing fee rate increases for both courts.

While the Section Council was concerned that increased filing fees may preclude access to appellate justice for some Michigan citizens, it reached the unavoidable conclusion that adequate funding of the Supreme Court and Court of Appeals is essential to the administration of justice in this State. The Council accordingly voted to support the Courts' budget requests. In April 2003, the Section's chair sent a mass mailing supporting the budget requests to members of the House and Senate.

Comment on proposed amendments to the State Bar's Bylaws. As an outgrowth of the Section Summit Advisory Group Report and Recommendations, the State Bar proposed amendments to Bylaws Articles VIII and IX. The Appellate Practice Section Council supported many portions of these proposed amendments that updated antiquated technology provisions. Others, such as the proposal requiring advanced web site posting of Section and Council positions, the Council opposed as unworkable.

Improving Advocacy Skills. In September 2002, as its annual meeting, the Section presented a program on "The Judicial View of Effective Advocacy and the Use of Precedent in the Supreme Court and Court of Appeals." A panel of Supreme Court Justices and Court of Appeals Judges discussed several pertinent issues facing both the courts and practitioners.

In June 2003, the Section, Wolverine Bar Association and the Eastern District of Michigan Chapter of the Federal Bar Association held a seminar titled “Sixth Circuit Appeals for Michigan Lawyers – From Basics to Best Practices.” Like past Section programs, this was a free seminar. It focused on handling Sixth Circuit appeals, with insights from representatives of the Sixth Circuit bench, Eastern District bench, Sixth Circuit’s Clerk’s office, as well as prominent Michigan practitioners.

Financial support for worthwhile causes. During 2002-2003, the Appellate Practice Section donated funds to support the Hall of Justice’s new Learning Center and Michigan’s first Conference on Racial and Ethnic Fairness in the Legal System. The Section also earmarked a contribution for September 2003 to support the Michigan High School Mock Trial Tournament, facilitated by the Center for Civic Education Through Law.

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.

Standing Committees

The Section maintains four standing committees and six 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 B Victor S. Valenti, current Chair; Ronald S. Lederman, incoming Chair

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 specifically included the issue of non-unanimous Court of Appeals decisions issued without oral argument and the proposed amendment of MCR 7.211 to require separate motion when seeking MCR 7.216(C) sanctions. Section members interested in joining this committee can contact Mr. Valenti at vvalenti@voyager.net or Mr. Lederman at rlederman@swbta.com.

Federal Court Practice Committee B Mark Cooney, Chairperson

In June 2003, the Federal Practice Committee, in conjunction with the Wolverine Bar Association and Eastern District of Michigan Chapter of the Federal Bar Association, presented the seminar “Sixth Circuit Appeals for Michigan Lawyers – From Basics to Best Practices.” The Committee also continues to monitor issues affecting appellate practice in the federal court system, such as proposed rule changes and new court technology. New members are welcome and anyone interested in working on the Committee should contact Mark Cooney at cooneym@cooley.edu.

Michigan Court Practice Committee B Susan Zitterman & Deborah Hebert, Co-Chairs

The Michigan Court Practice Committee has continued working on its project on stays and bonds. After the Supreme Court expressed interest in clarifying the court rules, the Committee has continued working on proposed revisions to clarify and streamline the process.

Expanding on a prior project that addressed the question of what is a final order in various contexts, the Committee also looked into the impact of a dismissal without prejudice of a claim or party on the finality of an order for purposes of appeal. The Committee met with members of the Court of Appeals staff to identify the Court's common practice in dealing with dismissals without prejudice in a variety of hypothetical situations, in order to determine the existence and scope of possible pitfalls for practitioners. The Committee plans an article to shed light on the process. Section members interested in assisting The Michigan Court Practice Committee may contact either Ms. Zitterman at zitts1@kitch.com, or Ms. Hebert at dhebert@Chl-pc.com.

Publications Committee B Marcia Howe, Chairperson

This committee continues to prepare and publish the Appellate Practice Section Newsletter under Tammy Reiss=s editorship. Beginning next year, Mark Cooney will take over as our Newsletter editor. 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 Chief Justice's request, this is a joint ad hoc committee of the Appellate Practice Section and the Michigan Judges= Association. This committee is composed of 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. When its work is complete, 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@voyager.net or Judge Cooper at scoop@aol.com.

Delay Reduction in the Court of Appeals B Victor S. Valenti, Chair

This ad hoc committee was formed in May 2002 to investigate and comment on Chief Judge Whitbeck=s proposals to reduce delay in the Michigan Court of Appeals. It issued its report that the Section Council adopted in November 2002.

Economics of Appellate Practice Committee B Michael L. Updike, Chair

This committee is exploring a seminar for the fall of 2003. Anyone with seminar suggestions or interested in working on the committee please contact Mike Updike at mupdike@secrestwardle.com.

Good Deeds – Linda M. Garbarino, Chair

In 2002-2003, the Appellate Practice Section was fortunate to be able to make several contributions to worthy causes and organizations. A contribution of \$1,000 was made to the Open Justice Commission as a sponsor for the First Michigan Conference on Racial and Ethnic Fairness in the Legal System. In addition, the Section contributed \$2,500 to the new Michigan Hall of Justice Learning Center for needed teacher training and educational resources. Finally, the Council approved a \$1,000 contribution to be made in September 2003 to the Michigan High School Mock Trial Tournament, facilitated by the Center for Civic Education Through Law.

Legislative Liaison B Gary Field, 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 has not recommended to the Council that the Section pursue any legislative action or comment on any specific pending legislation that was reviewed. Members interested in assisting this committee may contact Mr. Field at GLField@loomislaw.com.

Technology Committee B Joseph Firestone & Patrick Rose, 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@amflpc.com or Mr. Rose at patrickrose@voyager.net.

Respectfully submitted,

Donald M. Fulkerson,
Section Chair