

## **Appellate Practice Section 2003-2004 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 630 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 and assisted the Appellate Bench Bar Foundation's two-day seminar to improve the advocacy skills of the appellate lawyers; and,
3. has financially supported worthwhile causes such as access to the Justice Development Campaign of the State Bar of Michigan and the Appellate Bench Bar Conference.

### **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 first to the Court of Appeals' "delay reduction" proposal and then to the follow-up proposal for the expedited processing of civil appeals from orders on motions for summary disposition.

On September 25, 2003, Section members including the current Chair, the two immediate past Chairs, a Council member and other appellate attorneys appeared before the Supreme Court to voice the Section's concerns with the Court of Appeals delay reduction plan and accompanying court rule amendments.

Subsequently, on November 4, 2003, the Supreme Court tabled the proposals and directed the Court of Appeals to develop a plan for the management of civil cases that includes "just in time" briefing and encourages the Court of Appeals to continue to work with the State Bar and the Appellate Practice Section. As a result, the Court of Appeals established a Case Management Work Group that included four past Chairs of the Section and several other highly regarded Section members. In February 2004, the Work Group proposed "fast-tracking" summary disposition appeals instead of "just-in-time" briefing.

In April 2004, the Supreme Court issued its proposed Administrative Order Concerning Delay Reduction in the Court of Appeals. The Council will comment on the proposal before the August 1, 2004 deadline and expects to again testify before the Supreme Court on the proposal at a meeting to be scheduled.

The Section's Michigan Court Practice committee has been assigned the task of monitoring the proposal and its possible implementation, and the Section will continue to be in the forefront on this issue that is of vital interest to appellate practitioners.

### **Improving Advocacy Skills.**

In September 2003, at its Annual Meeting, the Section presented the program Appellate Vexation-Thoughts and Imposing Sanctions For Frivolous Appeals. Two Court of Appeals Judges and the Court's Chief Clerk discussed pertinent issues facing both the appellate courts and practitioners.

### **Financial support for worthwhile causes.**

During 2003-2004, the Appellate Practice Section contributed to support the Michigan High School Mock Trial Tournament facilitated by the Center for Civil Education Through Law. The Section also financially supported the Access to Justice Development Campaign of the State Bar of Michigan and the Appellate Bench Bar Conference.

### **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 specifically included proposing a rule to amend MCR 2.403 to eliminate appellate attorney fees and costs as case evaluation sanctions. Section members interested in joining this committee can contact Mr. Lederman at [rlederman@swappc.com](mailto:rlederman@swappc.com).

**Federal Court Practice Committee -- Paul Bernard, Chairperson**

The Committee continues to monitor issues affecting appellate practice in the federal court system, including recently proposed rule changes to the Federal Rules of Appellate Procedure and new court technology. New members are welcome and anyone interested in working on the Committee should contact Paul Bernard at [pbernard@dickinsonwright.com](mailto:pbernard@dickinsonwright.com).

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

The Michigan Court Practice Committee has continued working on its project on stays and bonds. At the Appellate Bench Bar Conference, Paul Bernard, Deborah Hebert and Court of Appeals Judge Christopher Murray led a breakout session for practitioners on bonds and stays.

Expanding on a prior project that addressed the question of what is a final order in various contexts, the Committee met with Court of Appeals staff which proposed amendments to MCR 7.202, 7.204, 7.205 and 7.212 clarifying the definition of "entry" of an order for jurisdictional purposes at the Court of Appeals.

The Section also prepared an Amicus Brief in support of a Supreme Court application for leave to appeal in Haliw v City of Sterling Heights, opposing the Court of Appeals ruling that interprets MCR 2.403 to allow appellate attorney fees and costs as case evaluation sanctions. Since leave has been granted the Section will again be filing an Amicus Brief refining our position. Those amendments were approved by the Supreme Court effective May 1, 2004.

Section members interested in assisting The Michigan Court Practice Committee may contact either Ms. Zitterman at [zitts1@kitch.com](mailto:zitts1@kitch.com) or Ms. Hebert at [dhebert@chl-pc.com](mailto:dhebert@chl-pc.com).

**Publications Committee -- Marcia Howe, Chairperson**

This committee continues to prepare and publish the Appellate Practice Section Newsletter. Anyone interested in assisting this committee may contact Ms. Howe at [mhowe@jrlaf.com](mailto: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 has continued to perform the much-needed task of updating and streamlining the court rules governing appeals to the circuit court. That work is now nearly complete. Once it is done, the committee will send the Supreme Court a proposed revision of subchapter 7.100. New SCAO forms will likely follow. At the Appellate Bench Bar Conference Committee Members Anne Byrne, Anica Letica and Tim McMorrow were joined by Court of Appeals Judges Brian Zahra and Pat Donofrio in presenting practitioners with an advance look at the Committee's work and its impact on Circuit Court Appeals. For more information, contact Mr. Fulkerson at [dfulkerson@voyager.net](mailto:dfulkerson@voyager.net) or Judge Cooper at [sccoop@aol.com](mailto:sccoop@aol.com).

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

This committee is exploring a seminar for the Fall of 2004. Anyone with seminar suggestions or interested in working on the committee please contact Mike Updike at [mupdike@secrestwardle.com](mailto:mupdike@secrestwardle.com).

**Good Deeds -- Linda M. Garbarino, Chairperson**

In 2003-2004, the Appellate Practice Section was fortunate to be able to make several contributions to worthy causes and organizations. A contribution of \$2,000 was made to the Access to Justice Development Campaign of the State Bar of Michigan. In addition, the Section contributed \$2,500 to the Appellate Bench Bar Foundation to defray expenses and provide the Section's needed scholarships for the April 1, 2004 Appellate Bench Bar Conference. Finally, the Council finalized a \$1,000 contribution to the

Michigan High School Mock Trial Tournament, facilitated by the Center for Civic Education Through Law.

**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 Section supported SB 1252 which would increase the page rate for Court Reporters handling summary disposition appeal transcripts. Members interested in assisting this committee may contact Mr. Massie at [nmassie@kohp.com](mailto:nmassie@kohp.com).

**Technology Committee** -- Joseph Firestone, Chairperson

During the past year, the Committee continued its work on electronic filing and related areas. The Committee's efforts this year were focused on the Appellate Bench Bar Conference. With the invaluable assistance of Chief Clerk Sandra Mengel, Barbara Goldman moderated a panel discussion on a test e-file case at the Court of Appeals. The panelists included Judges Michael Talbot and Stephen Borrello, as well as Denise Devine, IT Director for the Court. Ms. Devine also presented a prototype of the forthcoming electronic filing system. Committee members have been fortunate to participate in a review of the system with Court and vendor representatives. Members interested in assisting this Committee (or signing up for the Sections' Listserv) may contact Mr. Firestone at [jfire@amflpc.com](mailto:jfire@amflpc.com).

Respectfully submitted,



Victor S. Valenti,  
Section Chair

VSV/lp