

STATE BAR OF MICHIGAN SECTION ANNUAL REPORT

Bar Year: 2012 - 2013

Section Name: Appellate Practice Section

Report Prepared by: Phillip J. DeRosier

Mission Statement: The Appellate Practice Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, its website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan. Statements made on behalf of the Section do not necessarily reflect the views of the State Bar of Michigan.

Officers and Council Members:

Officer	Name	Address	Telephone	Email
Chair	Phillip J. DeRosier	Detroit	(313) 223-3866	pderosier@dickinsonwright.com
Chair-Elect	Jill M. Wheaton	Ann Arbor	(734) 214-7629	jwheaton@dykema.com
Secretary	Stephanie Simon Morita	Farmington Hills	(248) 489-4100	smorita@jrsjlaw.com
Treasurer	Nancy Vayda Dembinski	Farmington Hills	(248) 476-6900	ndembinski@lmdlaw.com

Member	Term	Member	Term
Anthony F. Caffrey, III	9/30/2015	Judith A. Curtis	9/30/2015
Larry S. Saylor	9/30/2015	Ronald S. Lederman	9/30/2015
Barbara H. Goldman	9/30/2015	Danielle C. Schoeny	9/30/2015
Graham K. Crabtree	9/30/2013	Lauren DuVal Donofrio	9/30/2013
Noel D. Massie	9/30/2013	Gerald F. Posner	9/30/2013
Beth A. Wittmann	9/30/2013	Geoffrey M. Brown	9/30/2014
Marilena David-Martin	9/30/2014	Stuart G. Friedman	9/30/2014
Gaetan Edward Alain Gerville-Reache	9/30/2014	Elizabeth L. Sokol	9/30/2014
Victor S. Valenti	9/30/2014		
Liisa R. Speaker	Immediate Past Chair	Megan K. Cavanagh	Ex Officio
Christina A. Ginter	Ex Officio	Hon. Michael J. Riordan	Comm. Liaison

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Council Meeting Schedule:

Meeting Type	Date	Location
Council Meeting	October 29, 2012	Farmington Hills
Council Meeting	November 16, 2012	Farmington Hills
Council Meeting	December 21, 2012	Phone meeting
Council Meeting	January 18, 2013	Southfield
Council Meeting	February 15, 2013	Lansing
Council Meeting	March 15, 2013	Detroit
Council Meeting	April 19, 2013	Ann Arbor
Council Meeting	May 10, 2013	Grand Rapids
Council Meeting	June 12, 2013	Brighton
Annual Meeting	September 19, 2013	Lansing

Section Membership: 667

General Budget Information: YTD through April 2013

Beg. Balance	\$18,946.43
Revenue	\$17,400.00
Expenses	\$12,174.03
Ending Balance	\$24,172.40

Events and/or Seminars:

Event or Seminar Title	Date	Location
Use of Supreme Court Peremptory Orders	January 18, 2013	Southfield
Motion Practice in the Court of Appeals [planned]	September 19, 2013	Lansing

The section also assisted and provided financial support (\$5,000) to the Michigan Appellate Bench Bar Foundation for the 2013 Michigan Appellate Bench Bar Conference, held on April 24, 25, and 26, 2013 in Plymouth. At the conference, the section presented its Lifetime Achievement Award to former Michigan Court of Appeals Chief Clerk Sandra Schultz Mengel.

Legislative issues: None.

Court Rules/Policy Positions:

Court Reporter Fees for Certain Services – Council voted unanimously to send a letter to the Court Reporter and Recorder Board of Review raising concerns about excessive fees being charged by certain court reporters.

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Comment on ADM File No. 2011-09 – Proposed Revision of Administrative Order 1989-1 – In ADM File No. 2011-09, the Supreme Court proposed to amend Administrative Order No. 1989-1 to add language addressing requests for film or electronic media coverage of court proceedings in the Court of Appeals and the Supreme Court. Council voted unanimously to support the proposed amendment in principle, but with certain revisions to ensure proper notice to the parties and an opportunity to object.

Section council member Liisa Speaker (ex officio) testified in support of ADM File No. 2011-10, concerning the appointment of counsel for indigent defendants in parole appeals.

The Section is currently working on:

Proposed amendment to MCR 7.106 and 7.207 to clarify when a cross-appeal is necessary.

Comment on ADM File No. 2011-31 – Proposed Amendment of Rules 7.105, 7.111 and 7.205 of the Michigan Court Rules (the proposed amendment, which the section initiated by a request submitted to the Supreme Court at the end of 2011, would permit filing of a reply brief in support of an application for leave to appeal in the circuit court and Court of Appeals).

Proposed amendment to MCR 7.205 to change the time for filing a delayed appeal from 6 months back to 12 months.

Proposed court rule amendment to address the transcribing of video depositions.

Jurisdictional memo in conjunction with ADM File No. 2011-30 – Proposed amendment of MCR 5.801, 7.102, 7.103, 7.108, and 7.109 to direct that all appeals from probate court be considered by the Court of Appeals instead of some orders being appealed to the Court of Appeals and other orders being appealed to the circuit court.

Proposed amendment to MCR 7.202 and 7.203 (final order rule in domestic relations cases).

Other:

Council sent a representative to the April 27, 2013 meeting of the State Bar Representative Assembly to report on the proposed resolution to amend the Michigan Constitution to delete the prohibition on being appointed or elected to judicial office after age 70, as well as a presentation by former Justice Marilyn Kelly on the April 2012 Michigan Judicial Selection Task Force Report on selecting justices.

The section continued its financial support of the Michigan Historical Society.

Council reviewed and discussed several proposed court rule amendments, but determined not to offer comment. Those proposals included:

ADM File No. 2013-12 – Proposed amendment of MCR 7.313 to clarify that a decision whether to grant rehearing in the Supreme Court should be made consistent with the standards contained in MCR 2.119(F)(3).

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ADM File No. 2012-28 – Proposed amendment of MCR 7.203 to codify the prohibition in 2012 PA 333 that an order assigning a case to the business court may not be appealed.

SB 0236 – Civil procedure, costs and fees; Law, sunset. Civil Procedure; costs and fees; fee for publication of legal notice; eliminate sunset for annual increases for inflation.

Committee Reports:

Michigan Court Practice - The Michigan Court Practice Committee was involved in attempting to increase the amount of notice of oral argument provided to practitioners in the Court of Appeals. The court practice committee has also looked into a possible rule change to establish a uniform procedure for transcription of video depositions played during trial. The committee also discussed possible methods to improve the quality of oral argument in the Court of Appeals for both practitioners and judges.

Federal Court Practice – The committee advise council regarding the retirement of Leonard Green as Clerk of the Sixth Circuit Court of Appeals and the new policies and procedures proposed by the new Clerk.

Court Liaison/Rules Comment - The committee worked with the Michigan Court Practice Committee on a possible rule change to establish a uniform procedure for transcription of video depositions played during trial.

Publications – The section published four issues of the Appellate Practice Section Journal. Each issue of the journal features regular columns advising practitioners of important opinions released by the Michigan Court of Appeals and Michigan Supreme Court, as well as columns regarding technology issues, court rules developments and book review of interest to the appellate practitioner. Lead articles over the past year included an in-depth review of Michigan’s abuse of discretion standard, changes in the Court of Appeals’ staff and workings, and revisions to the Circuit Court appellate rules.

Economics of Appellate Practice — This committee did not have a project this year.

Technology – The Technology Committee contributed to the organization and presentation of the technology plenary session, “Where the Brief Meets the Brain: Appellate Practice in the Digital Era” at the 2013 Michigan Appellate Bench Bar Conference on April 25, 2013.

Legislative Committee – The committee followed and advised council on legislation related to or affecting appellate practice.

Bench Bar Conference Liaison - The committee assisted the Michigan Appellate Bench Bar Conference Foundation in planning the 2013 Michigan Appellate Bench Bar Conference, held on April 24, 25, and 26, 2013.

Good Deeds – The Good Deeds Committee coordinated the contribution of \$500.00 to Michigan Youth in Government, \$500.00 to Just the Beginning Foundation, \$500.00 to ABA Council of Legal Education Opportunity Prelaw Summer Institute and \$1000.00 to Wolverine Bar Association.

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Ad Hoc Committee on Probate Rules – The committee continued working in conjunction with representatives from the Probate and Estate Planning Section, the Michigan Judges' Association, the Michigan Probate Judges' Association and the Court of Appeals to modify the proposed amendment to the probate appeal rules contained in ADM 2011-30.

Ad Hoc Committee on Record Production – The committee recommended and prepared a letter to the Court Reporter and Recorder Board of Review raising concerns about excessive fees being charged by certain court reporters.

Recommendations for next Council: No specific recommendations.