

Appellate Practice Section Council (197)

As of April 25, 2018

Chair

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Chair-Elect

P46888 Bridget Brown Powers, Petoskey

Secretary

P64957 Lauren M. London, Ypsilanti

Treasurer

P53864 Stephanie Simon Morita, Farmington Hills

Council Member

Term Ending: 2018

P37150 Anne L. Argiroff, Farmington Hills
P31978 Judith A. Curtis, Grosse Pointe
P46290 Barbara H. Goldman, Southfield
P68924 Bradley R. Hall, Lansing
P71145 Kristin E. LaVoy, Detroit
P70902 Joseph E. Richotte, Bloomfield Hills

Term Ending: 2019

P33231 Scott G. Bassett, Portage
P31590 Graham K. Crabtree, Lansing
P55595 Phillip J. DeRosier, Detroit
P27553 Richard C. Kraus, Lansing
P24269 Gerald F. Posner, Southfield

Term Ending: 2020

P64658 Drew W. Broaddus, Troy
P66026 Lauren DuVal Donofrio, Lansing
P69844 Paul Daniel Hudson, Kalamazoo
P67883 Jason D. Killips, Birmingham
P75090 Mark J. Magyar, Grand Rapids
P67762 Ann M. Sherman, Lansing

Commissioner Liaison

P43980 Hon. Michael J. Riordan, Detroit

Ex Officio

P54144 Nancy Vayda Dembinski, Farmington Hills
P63233 Beth A. Wittmann, Detroit
P68718 Gaetan Gerville-Reache, Grand Rapids

STATE BAR OF MICHIGAN SECTION ANNUAL REPORT

Council Meeting Schedule:

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Please attach any additional information needed regarding Council meetings as an addendum.

Meeting Type	Date	Location
See attached Appellate Practice Meeting Schedule (10 reg meetings)		
Special Mtg to approve comment on ADM File No. 2002-37	Nov. 21, 2017	Electronic
Special Mtg to approve comment on ADM File No. 2016-13	Jan. 9-11, 2018	Electronic
Special Mtg to approve comment on ADM File No. 2016-25	Jan. 9-11, 2018	Electronic
Special Mtg to approve purchase of table at MSC Hist Soc Lunch	Mar 30-Apr 2, 201	Electronic
Special Mtg. to approve recipient of APS Lifetime Ach. Award	Ap.24-26, 2018	Electronic

Addendum Information: Please list any addendums attached.

Appellate Practice Section Meeting Schedule

Description of Committee Work and Accomplishments/Other Section Activities

Events and/or Seminars:

Please attach any additional information needed regarding events and/or seminars as an addendum.

Event or Seminar Title	Date	Location
Rethinking Appellate Briefing in the Digital Age (See Addendum)	9/28/2017	Detroit
Michigan Supreme Court Historical Society Luncheon	4/19/2018	Detroit
Volunteer Activity - Ronald MacDonald House	3/4/2018	Lansing

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STATE BAR OF MICHIGAN SECTION ANNUAL REPORT

Legislative issues:

See Description of Committee Work and Accomplishments/Other Section Activities, particularly the summary of the Court Liaison/Rules Comment Committee

Recommendations for next Council:

Follow-through on several initiatives currently underway will benefit appellate practitioners and section members. 1. Continue efforts to gain approval of the proposed readability briefing pilot program, and provide "how-to" training to appellate practitioners. 2. Develop and implement a plan to enhance the section website through the inclusion of a greater array of information and resources. 3. Complete the migration to SBMConnect. 4. Work to increase membership by reaching out to appellate practitioners who are not section members and publicizing the benefits of section membership. 5. Work with the appellate courts to explore options for accessibility to on-line dockets. 6. Continue to foster the tremendous collegiality, camaraderie, and enthusiasm of council members. This is an amazing group of hard working professionals.

Other Information:

The Appellate Practice Section presented its 2017 Lifetime Achievement Award to former Supreme Court Clerk Corbin Davis. Judge Michael Talbot has been selected to receive the 2019 Lifetime Achievement Award, which will be presented at the Michigan Appellate Bench Bar Conference.

Reports must be submitted before May 31, 2018 to:

Jennifer Williams
Administrative Assistant
306 Townsend Street, Lansing MI 48933
Email: jwilliams@mail.michbar.org
Phone 517-367-6421 Fax: 517-482-6248

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e-mail form

Description of Committee Work and Accomplishments/Other Activities

Appellate Practice Section - May 25, 2018

Good Deeds Committee

The Good Deeds Committee prepared and served a delicious dinner for the families at the Ronald McDonald House of Mid-Michigan in early March of 2018. The smells of parmesan chicken, potatoes and onions, garlic green beans, and dessert pizza filled the house and were a warm welcome to the parents of seriously ill children at Sparrow Hospital in Lansing.

Membership Committee

The Membership Committee discussed ways to increase our membership. Future plans include additions to our website that highlight the benefits of Section membership, and an invitation to non-member appellate practitioners throughout the State to attend a meet-and-greet and our annual program at the 2018 NEXT conference.

Technology Committee

The Technology Committee worked with the ad hoc committee on e-briefing to develop recommendations for proposed additions to the Michigan Court Rules. The committee is also evaluating the possibility of transferring Section communications from a hosted listserv to SBM Connect.

Ad Hoc E-Briefing Committee

More than a year of work spanning two State Bar years culminated in the Appellate Practice Section proposing a pilot program to improve the readability of appellate briefs. Submitted to the Court of Appeals in March 2018, the program, if adopted, would allow attorneys to follow a different set of brief formatting rules. The pilot program rules permit briefs that are easier to read, both on screen and on paper, than briefs formatted under existing rules.

Our work began with a referral to the Section from then Chief Judge Michael Talbot of an ABA article on recommendations to improve the readability of electronically filed briefs. These briefs, often called e-briefs, are being read by judges and court staff on tablet or computer screens without printing a paper copy. 2016-2017 Section Chairperson Gaëtan Gerville-Réache appointed an ad hoc committee to review the article and develop a proposal to improve the readability of e-briefs. The committee's work was completed under 2017-2018 Section Chairperson Joanne Geha Swanson.

The committee is chaired by Scott Bassett. Committee members include Lauren D. Donofrio, Mr. Gerville-Réache, Jason D. Killips, Richard C. Krause, Gerald F. Posner, Joseph E. Richotte, Larry J. Saylor, and Brian G. Shannon.

The key element to the pilot program is the switch from a page limit to a word limit for the length of appellate briefs. The existing page limit rule encourages formatting choices that make briefs less readable. A word limit provides greater flexibility to incorporate techniques known to make briefs easier to read, such as increased use of white space, larger fonts, use of bullet points, and

better line spacing. Data collected by the committee suggested that a 16,000-word limit would equal the current 50-page limit for principal briefs. Reply briefs would be limited to 3,200 words, which is the equivalent of the current 10-page limit.

The Section believes judges, clerks, and lawyers will benefit from the more readable briefs allowed by this pilot program. Reading legal briefs is inherently fatiguing. It requires long stretches of focused attention. Poor formatting encouraged by the existing rules exacerbates fatigue by creating obstacles to extended deep reading. If those obstacles are eliminated, judges and clerks will have more energy to spend understanding and evaluating the lawyers' arguments. We are hopeful the Court of Appeals will soon implement the pilot program proposed by the Section.

The Pilot Program was publicly introduced to the bench and bar at the Section's annual meeting program on September 28, 2017. Panel members included Stuart Friedman, Scott Bassett, Joe Richotte, Lauren Donofrio, Court of Appeals Judge Lisa Gleicher, Supreme Court Chief Commissioner Dan Brubaker, and Michigan Court of Appeals Senior Research Attorney John Hiemstra.

Court Liaison/Rules Comment Committee

The committee analyzed and advised Council on ADM 2016-25 (proposed amendment of the court rules to incorporate an appendix requirement for Court of Appeals briefs) and ADM 2002-37 (proposed efilng rules). The committee also consulted with Council member Brad Hall on his proposal to amend MCR 7.205 to simplify the deadlines for applications for leave to appeal in criminal cases. Finally, the committee was pleased to report that the Supreme Court adopted Council's proposed amendments to MCR 7.209 to clarify the authority of trial courts to stay enforcement of money judgments without a bond.

The Council also approved and submitted comment on the following additional administrative orders: ADM 2016-07 (MCR 6.310, 6.429, and 6.431); ADM 2017-08 (MCR 3.997 and 6.425); ADM 2014-36 (MCR 6.425); ADM 2016-13 (proposed addition of MCR 3.810); ADM 2016-42 (MCR 6.310, 6.429, 6.431).

Annual Meeting Program Committee

Each year, the Chair-Elect of the Appellate Practice Section Council organizes an appellate-practice-related program for presentation immediately following the Section's annual business meeting. This year's Program will be held on Thursday, September 27, 2018 from 2:00 p.m. to 4:00 p.m., at the DeVos Place in Grand Rapids as part of the State Bar of Michigan NEXT Conference. The Program, themed *The Do's and Don'ts of Oral Advocacy in Michigan's Appellate Courts*, will feature an eight-member panel consisting of Michigan Supreme Court Chief Justice Markman and Justices Zahra, McCormack, and Viviano, as well as Michigan Court of Appeals Judges O'Connell, Gleicher, Beckering, and Riordan. Chair-Elect Bridget Brown Powers will moderate the Program in a question-and-answer format. All members of the bar are welcome to attend at no cost, including young lawyers having an interest in learning about appellate practice. If anyone would like to submit a question to the panel, he or she may email same to Bridget Brown Powers at bbrownpowers@brownpowers.com at least 10 days prior to the

event. The Council is excited about this Program and is honored and grateful to have these justices and judges participate on the panel.

Michigan Court Practice Committee

The Michigan Court Practice Committee is exploring options for working with the Michigan Court of Appeals and the Michigan Supreme Court to make appellate briefs accessible electronically. The early stages of the committee's effort will include surveying the accessibility of on-line dockets in other states and applicable rules and procedures; developing a process for verifying adherence to redaction policies; limiting access to certain types of cases/filings; limiting access to attorneys; appropriate fees; and policies regarding purging documents.

Publications Committee

The APS Publications Committee is comprised of Elizabeth L. Sokol, Nancy Vayda Dembinski, Bridget Brown Powers, Lauren London, and Howard Yale Lederman. In 2017, four issues of the Appellate Practice Section Journal were published (the first issue was a combined 2016-2017 Winter edition). The Spring/Summer issue was a non-print/electronic-only edition again this year, in an effort to reduce printing and mailing costs to our section.

As in years past, each of the 2017 APS Journal editions featured the following recurring columns: From the Chair (by 2016-2017 Chairperson Gaëtan Gerville-Réache and 2017-2018 Chairperson Joanne Geha Swanson); Selected Decisions of Interest to the Appellate Practitioner (by Barbara H. Goldman); Cases Pending Before the Supreme Court After Grant of Oral Argument on Application (by Linda M. Garbarino); and Recommended Reading for the Appellate Lawyer (by Mary Massaron). There were also recurring "Meet the Judge" columns featuring interviews with Judge Michael Riordan and Judge Michael Talbot (by Ann M. Sherman) and Judge Jane M. Beckering (by Conor Dugan).

In 2017, lead articles featured in the APS Journal covered a wide variety of interesting topics including: a three-part Originalism series by Howard Yale Lederman; a discussion of Corpus Linguistics by John Ramer (a law student section member); an overview of the 2016 Amendments to the FRAP by Jill M. Wheaton; a discussion of the difference between "reverse" and "vacate" by Liisa Speaker and Jennifer Alberts; Joanne Geha Swanson's survey of various practitioner perspectives on the art of oral argument; a feature by Scott Bassett on using tech to improve your appellate documents; Bradley Hall's article about the conclusion of the MAACS Regional Pilot Project to standardize participating trial court attorney fee policies; and Phillip J. DeRosier's article discussing whether unresolved attorney fee disputes impact the finality of a judgment for purposes of appeal.

APS Website

The Council created a Website Committee to review, improve, and expand content on the Section's web pages hosted by the State Bar of Michigan. This project will work in conjunction with the pilot program briefing rules proposed by the Section's e-briefing committee and submitted to the Court of Appeals. A primary goal is to create a page dedicated to the e-briefing pilot project that

will include tutorials and how-to videos related to formatting briefs using the pilot program's standards.

The Section's website is also being reviewed for upgrades to member services, such as creating a "one-minute mentor" where Section members can provide practice tips, seek advice and respond to requests for advice. Other options include adding resources, member benefits, and announcements related to the Section and the practice of appellate law. The site may also be expanded to include pro bono opportunities and links to relevant podcasts. The APS website committee members are Jason Killips, Joe Richotte, and Scott Bassett.

Other

The section has reserved the September 2019 issue of the State Bar Journal for articles addressing appellate practice.

The section continues to hold its meetings at various locations around the state, typically at the offices of Council members (or for the Lansing meeting, at the Hall of Justice or the State Bar Building). Our May meeting in Petoskey provides a great setting for council members to get together informally for after-meeting activities. We appreciate the effort and generosity of Chair-Elect Bridget Brown Powers in planning and hosting those events. The Council also appreciates the hospitality of former Council member Liisa Speaker for hosting the "annual" after-glow after the Council meeting in Lansing and to Past Chair Gaetan Gerville-Reache for arranging a downtown gathering after the Grand Rapids meeting. These events, along with others, have contributed greatly to the collegiality and camaraderie among Council members.

2017-2018 Meeting Schedule for the Appellate Practice Section
State Bar of Michigan

All meetings (except June 13, 2018) begin at 2 p.m.

October 20, 2017	Kerr Russell and Weber, PLC, 500 Woodward Ave., Suite 2500, Detroit
November 17, 2017	Butzel Long, 150 West Jefferson Avenue, Suite 100, Detroit
December 15, 2017	Telephonic Conference
January 19, 2018	Kerr Russell and Weber, PLC, 500 Woodward Ave., Suite 2500, Detroit
February 16, 2018	Hall of Justice, 925 W Ottawa St, Lansing (with after-event at Liisa Speaker's home)
March 16, 2018	Johnson, Rosati, Schultz & Joppich, P.C., 27555 Executive Drive, Suite 250, Farmington Hills
April 20, 2018	Warner Norcross & Judd LLP, 900 Fifth Third Center, 111 Lyon Street NW, Grand Rapids
May 18, 2018	Petoskey (Perry Hotel or Bay View Inn)
June 13, 2018	Ciao Amici, 217 W Main St, Brighton (begins at 4:30 p.m.)