

State Bar of Michigan | 2018–2019

Article VIII §1, Bylaws of the State Bar of Michigan

Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the association year which shall be submitted to the Secretary on or before May 31. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.

Appellate Practice Section

Chair

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Chair-Elect

P68924 Bradley R. Hall, Lansing

Secretary

P37150 Anne L. Argiroff, Farmington Hills

Treasurer

P53864 Stephanie Simon Morita, Farmington Hills

Council Member

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, Farmington Hills

Term Ending: 2020

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

Term Ending: 2021

P61545 Hon. Nicholas S. Ayoub, Grand Rapids
P46290 Barbara H. Goldman, Southfield
P80408 Jonathan B. Koch, Southfield
P71145 Kristin E. LaVoy, Detroit
P70902 Joseph E. Richotte, Bloomfield Hills
P44302 Marcelyn A. Stepanski, Farmington Hills

Commissioner Liaison

P74182 Andrew Frederick Fink, III, Hillsdale

Ex Officio

P63233 Beth A. Wittmann, Detroit
P68718 Gaetan Gerville-Reache, Grand Rapids
P33594 Joanne Geha Swanson, Detroit

**STATE BAR OF MICHIGAN
SECTION ANNUAL REPORT**

Council Meeting Schedule:

Reset Form

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

Addendum Information: Please list any addendums attached.

Meeting Schedule (for regular monthly meetings) Summary of Committee Reports

Events and/or Seminars:

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

Reset Form

STATE BAR OF MICHIGAN SECTION ANNUAL REPORT

Legislative issues:

None, with the exception of Senate Bills 1182 and 1183, addressing assessment of sanctions on appeal and a new "loser pays" rule. The Council voted to take a position in opposition to those Bills, but the Bills were taken off the meeting agenda for lack of the support required to report it and did not receive any further attention.

Recommendations for next Council:

Continue efforts to add information to website. Continue efforts to recruit new Section members. Complete in-progress committee projects. Educate membership with regard to transitioning from the Modern Listserv to SBM Connect. Secure location for next Annual Meeting and commence planning program several months in advance.

Other Information:

The Section amended its Bylaws to allow the Section to hold its Annual Meeting and Program at a time and place separately from the SBM.

The Chair presented the Section's Lifetime Achievement Award to Ret. Judge Michael Talbot at the Appellate Bench Bar Conference on March 28, 2019.

Reports must be submitted before May 31, 2019 to:

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

APPELLATE PRACTICE SECTION COUNCIL COMMITTEE REPORT SUMMARIES

Legislative:

Graham Crabtree followed and reported to the Council on legislation of interest, but the Counsel did not take any positions on any of it, with the exception of Senate Bills 1182 and 1183 addressing assessment of sanctions on appeal and a new “loser pays” rule. The Council voted to take a position in opposition to those Bills, and Mr. Crabtree went over to present written and oral testimony to the Senate Judiciary Committee on behalf of the Council, but the Bills were taken off the meeting agenda for lack of the support required to report it and did not receive any further attention.

Court Liaison/Rules Comment:

The committee analyzed and advised Council on the following proposed court rule amendments:

- ADM 2018-77 (proposed amendment of MCR 3.993 to add a list of specific orders that can be appealed by right regarding an Indian child subject to a child protective proceeding pursuant to statute);
- ADM 2017-27 (proposed amendment of MCR 6.425 to require requests for appointed appellate counsel to be “filed,” as opposed to “made” or “completed or returned,” within 42 days and remove the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate from the guidelines range);
- ADM 2018-04 (proposed amendments of MCR 7.212 and 7.312 to require amicus briefs to indicate certain information regarding the preparation of the brief and disclosure of monetary contributions).

With respect to ADM 2017-27, the committee consulted with Council member Brad Hall on the Michigan State Appellate Defender Office’s (SADO) recommended changes to the proposed amendment of MCR 6.425, and advised Council regarding Mr. Hall’s request that the Section endorse SADO’s proposal.

Finally, the committee advised Council on ADM 2018-25, which would amend MCR 7.312 to formalize the procedures for cases being argued on the application (i.e., MOAAAs), and prepared a proposed comment for the Supreme Court’s consideration.

Publications:

The APS Publications Committee is comprised of co-chairs Elizabeth L. Sokol and Nancy Vayda Dembinski, and committee members Bridget Brown Powers, Lauren London, Howard Yale Lederman, Jonathan Koch, Anne Argiroff, and Ann Sherman. In 2018, three issues of the Appellate Practice Section Journal were published. The summer and winter editions were published in the traditional print format, but the spring publication was published in electronic-only format. The continued practice of publishing two print editions and one non-print/electronic-only edition of the Journal annually reflects the APS Section

Council's effort to reduce printing and mailing costs to the Section, while recognizing that many Section members prefer the traditional print publication.

As in years past, each of the 2018 APS Journal editions featured the following recurring columns: From the Chair (by 2017-2018 Chairperson Joanne Geha Swanson, and 2018-2019 Chairperson Bridget Brown Powers); 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 Anita Comorski); and Recommended Reading for the Appellate Lawyer (by Mary Massaron). There were also two "Meet the Justice" columns in 2018, featuring interviews with Justice Kurtis Wilder (by Conor Dugan) and Justice Beth Clement (by Ann Sherman), respectively.

In 2018, lead articles featured in the APS Journal included: an overview of the Appellate Practice Section Council's recommendations for an e-briefing pilot program in the Michigan Court of Appeals (by Gerald F. Posner, on behalf of the Appellate Practice Section Council's Ad-Hoc E-Briefing Committee); a discussion of the trending "(cleaned up)" post-citation parenthetical (by Joseph E. Richotte); and an article discussing ADM 2017-20, entitled "Process Failure?" (by the Michigan Coalition of Family Law Appellate Attorneys (MCFLAA)).

Technology:

The Technology Committee has been in the process of preparing for the transfer of Section communications from a hosted listserv to SBM Connect.

Website:

The website committee continued its work this year, exploring ways to improve the functionality and content of the Section's webpage on the SBM website.

Annual Meeting and Program:

The Chair-Elect of the Appellate Practice Section Council is responsible for organizing a program to be held in conjunction with the annual business meeting. Traditionally, the program and annual meeting have been held during the State Bar of Michigan's annual meeting and NEXT Conference. In 2019, however, the NEXT Conference will not be held, and sections have been encouraged to plan their annual meetings separately and independent from the State Bar's annual meeting. This presents an opportunity for the Appellate Practice Section to try something new.

On October 25, 2019, the Section will host a one-day Writing Workshop for civil and criminal practitioners at the Hall of Justice in Lansing. The workshop will feature small group writing exercises as well as plenary presentations and a judges' panel discussion, all with a focus toward stories and themes in appellate writing. Planned presenters include Michigan Supreme Court Chief Justice Bridget McCormack, former Michigan Solicitor General John Bursch, MAACS Administrator and APS Chair-Elect Brad Hall, SADO Training Director Marilena David-Martin, and others.

While the morning session will focus on small group writing exercises and the nuts-and-bolts of brief writing, the program will open to non-workshop participants beginning at 1:45 pm. The afternoon session will include lunch, a plenary presentation, the APS Annual Business Meeting, and a judges' panel

discussion. Upon the conclusion of the program at 5:00 pm, the Section will host a networking reception at the Hall of Justice.

Space is limited and registration will be required for any portion of the program. Registration details will be provided in the summer of 2019.

Good Deeds:

The Committee set up a volunteer event at the Ronald McDonald House in Lansing on April 20, 2019.

Membership:

The Membership Committee has been looking at various options to recruit new members. Attorneys were invited to the Annual Program. Follow-up telephone calls will be made to attorney who have appeared in the Court of Appeals, but who are not current members of the Section.

Bench Bar:

The Appellate Bench Bar Conference was held on March 27-29, 2019, at the Inn at St. John's in Plymouth, Michigan. The Committee is working on finalizing the summary reports and will meet this summer to discuss topic ideas for the 2022 Conference.

Ebriefing Ad Hoc:

After starting its work in early 2017, the Ad Hoc Ebriefing Committee proposed a pilot program with non-mandatory formatting options designed to produce briefs that are easier to read, both on screen and on paper. A central feature of the proposal is to allow greater readability by substituting a word limit for a page limit governing the length of briefs. Page limits encourage less readable formatting by creating an incentive to use smaller, less-readable fonts, and elimination of white space. Word limits allow lawyers to use larger fonts and white space to make briefs less fatiguing to read.

The pilot program was approved by the APS Section Council and submitted to the Michigan Court of Appeals in the spring of 2018.

The Court of Appeals issued its response during the summer of 2018 raising concerns about the formatting options in the proposal. Among other objections, the Court of Appeals disagree with the pilot proposal for a 16,000-word limit instead. The Committee's research showed that a 16,000-word limit equaled a 50-page limit. The Court of Appeals believes 13,000 words equals the current 50-page limit.

The committee is concerned that the pilot program proposal could be used by the Court to reduce the length of briefs across the board. The committee is working on a reply to the Court of Appeals' offering additional research and samples showing both that the 16,000-word limit equals the current 50-page limit and that double-spaced (200%) text is harder to read than the pilot proposal's 120% to 150% line spacing.

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 we can adequately address the Court of Appeals' concerns and move forward with the pilot program.

**2018-2019 Meeting Schedule for the Appellate Practice Section Council
State Bar of Michigan
All meetings begin at 2 p.m.**

- October 19, 2018 Kerr Russell and Weber, PLC,
 500 Woodward Ave., Suite 2500
 Detroit

 (Hosted by Joanne)
- November 16, 2018 Rosati Schultz Joppich & Amtsuechler, PC.
 27555 Executive Drive, Suite 250
 Farmington Hills

 (Hosted by Stephanie)
- December 21, 2018 Telephonic Conference
- January 18, 2019 Dykema
 300 Ottawa Avenue, N.W., Suite 700
 Grand Rapids

 (Hosted by Mark)
- February 15, 2019 Hall of Justice, 925 W Ottawa St, Lansing
 (with after-event at Liisa Speaker's home)

 (Hosted by Liisa)
- March 15, 2019 Michigan State Appellate Defender Office
 645 Griswold, Suite 3300
 Penobscot Building
 Detroit, MI 48226

 (Hosted by Brad)
- April 12, 2019 Warner Norcross & Judd LLP, 900 Fifth Third Center,
 111 Lyon Street N.W.
 Grand Rapids

 (Hosted by Gaëtan)
- May 17, 2019 Petoskey (Perry Hotel or Bay View Inn)

 (Hosted by Bridget)
- June 19, 2019 Ciao Amici,
 217 W Main St,
 Brighton (@ 4:00 p.m.)