

Appellate Practice

Theme Introduction

By Richard Kraus

In past *Michigan Bar Journal* issues devoted to appellate practice, the target audience has been the growing number of attorneys who concentrate their practice on appeals. The theme made sense. Appellate law has gained recognition as a specialized practice in recent years; a number of state bars grant specialty certifications in appellate law, as do several professional associations. More clients, lawyers, and judges see the advantages of the different skills, perspectives, and strategies that attorneys with extensive experience in appeals can offer. Nonetheless, most appeals are still handled by attorneys who do not focus in this area. And in very many cases, the briefs are excellent, the oral arguments are effective, and the clients are well-served. Good lawyering, after all, is good lawyering.

For that reason, the articles in this theme issue are designed for a broader audience. We hope to offer insight for all attorneys who may be handling appeals.

The issue begins with an informative tour behind the scenes at the Michigan Court of Appeals with Chief Judge Michael Talbot, Chief Clerk Jerry Zimmer, and Research Director Julie Isola Ruecke as guides. The article by Joanne Geha Swanson will benefit the practitioner who occasionally files an appeal and wonders what happens next, as well as the appellate specialist who wants to delve into the processes used by one of the nation's busiest intermediate appellate courts. (Added thanks are due to Joanne for serving as co-liasion for the SBM Appellate Practice Section Council.)

The other articles are also aimed at both trial and appellate practitioners. Properly used, the right precedent can compel a court to accept your argument. Nancy

Dembinski explains why using precedent is not as simple as many attorneys and judges may think. She offers guidance for selecting appellate opinions that will serve as binding or persuasive authority in particular courts. Unless properly preserved, the most compelling argument why the court erred by not ruling in your favor may be in vain. Gaëtan Gerville-Réache explores the murky waters of preservation and forfeiture, highlighting what must be done to avoid the dreaded ruling that "appellant failed to preserve this issue, and we deem it waived on appeal." And, unless properly protected by a stay, a good appeal provides little solace to your client if the opposing party enforces the judgment while you demonstrate it should not have been granted in the first place. Geoff Brown provides a detailed how-to guide to the procedures and options for obtaining a stay pending appeal.

We also encourage interested readers to attend the Michigan Appellate Bench-Bar Conference, which will be held April 20–22 at The Inn at St. John's in Plymouth. The conference is an excellent chance to join Supreme Court justices, Court of Appeals judges, staff of both courts, and other practitioners. More information is available at www.benchbar.org. ■



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