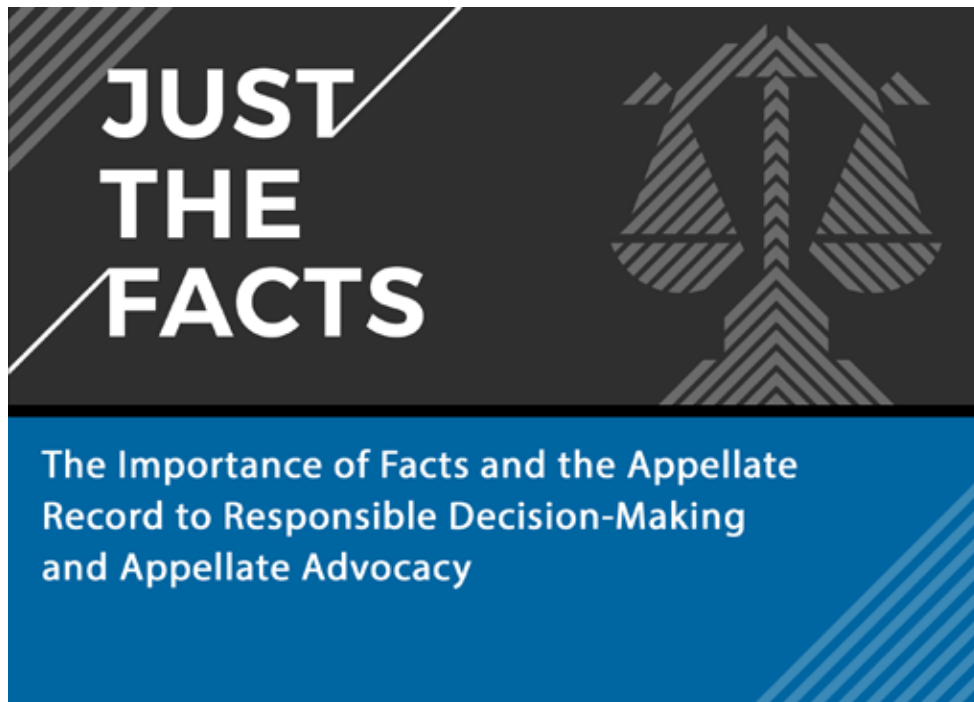




## **Michigan Appellate Bench Bar Conference Foundation**

### **Michigan Appellate Bench Bar Conference**



**March 27-29, 2019**  
**The Inn at St. John's  
Conference Center**  
44045 5 Mile Rd, Plymouth, MI 48170  
(734) 414-0600



**Michigan Appellate Bench Bar Conference**  
*Just the Facts: The Importance of Facts and the Appellate Record  
To Responsible Decision-Making and Appellate Advocacy*  
**March 27-29, 2019**  
The Inn at St. John's

**Mission Statement**

*Our mission is to improve the administration of appellate justice in Michigan through conferences designed to encourage an exchange of ideas among Michigan appellate lawyers, judges, and court staff. The Michigan Appellate Bench Bar Conference Foundation believes that this interchange of ideas allows for participants to learn how to better perform their roles in the process and collectively to improve it.*

**Get Started**

1. Review the brochure and identify sessions of interest to you
2. Share this brochure with colleagues
3. Complete the form in the back of the brochure
4. Add the program to your calendar

**Schedule of Events**

**Wednesday, March 27, 2019**

5:30-7:00 p.m.

**Grand Reception**

*An opportunity to socialize with justices, judges, court staff, and fellow practitioners.*

**Thursday, March 28, 2019**

8:30 a.m.

**Registration**

8:30-9:00 a.m.

**Continental Breakfast**

9:00-9:15 a.m.

**Welcome**

Chief Justice Bridget M. McCormack

Chief Judge Christopher M. Murray

Co-Chairs Mary Massaron, Plunkett Cooney, and Phillip DeRosier, Dickinson Wright PLLC

9:15-10:45 a.m.

**Plenary - Just the Facts: The Importance of Facts and the Appellate Record to Responsible Decision-Making and Appellate Advocacy**

*In this informative and interactive plenary session, a panel of Court of Appeals judges and court staff will discuss various issues relating to the facts and record on appeal, including topics such as correcting or expanding the record, ensuring that the record is complete, the Court's handling of "box" cases, and the effective use of facts in brief-writing.*

10:45-11:00 a.m.

**Refreshment Break**

11:00-12:15 p.m.

**Break Out Sessions**

*These breakout sessions will provide an opportunity for members of the bench and bar to further explore issues raised in the plenary session.*

12:30-2:00 p.m.

**DeWitt C. Holbrook Memorial Fund Luncheon**

**Speaker: Paul Clement**

2:15-3:30 p.m.

**Law Practice Breakout Sessions**

*The breakouts will be participatory — not traditional lectures from a panel of speakers. This is what makes the bench bar conference unique. All who attend the breakouts will be encouraged to participate in the discussion.*

**Criminal**

**Expanding the Facts on Appeal: Motions to Remand and Judicial Notice**

*In this session, we will discuss the development of off-record facts through motions to remands, evidentiary hearings, and judicial notice.*

**Evidentiary Standards and Changes in Technology**

*In this session, we will discuss how changes in technology might affect the court's standard of review when analyzing video or audio evidence or testimony.*

**Offense Variables, Juvenile Lifer Resentencings, and Other Fact-Intensive Sentencing Questions**

*In this session, we will discuss appellate review from fact-driven records in standard felony cases and juvenile life without parole cases.*

**Stating the Facts in the Statement of Facts**

*In this session, we will discuss best practices for writing a compelling and accurate Statement of Facts that will aid the court when analyzing the legal issues presented.*

**Civil**

**Brief Writing: Basics and Beyond (A)**

*Discussing new trends in brief writing, structure, and presentation, including: shaping the facts; working with a complex record; preservation of issues; standards of review; formulating arguments; and making a forceful case for the relief requested.*

**Oral Argument: Basics and Beyond (A)**

*How to prepare for oral argument and what to expect; bringing out the salient facts; addressing unfavorable facts; oral argument in the Supreme Court.*

**E-Filing Nuts and Bolts**

*Making the most of e-filing and service.*

**Taking It Up – Applications and Appeals in the Supreme Court**

*When to apply for leave; how to make your case stand out; briefing and argument of calendar cases.*

## **Family**

### **The Good, the Bad, and the Ugly of Family Law Appellate Jurisdiction**

*This session will explore multiple final order issues prevalent in family law appeals, including whether an order qualifies as a post judgment order affecting custody, when an attorney fee order is “final,” and handling finality problems created by a trial court bifurcation of decisions. If time allows, record issues in family law cases will be discussed.*

## **Child Welfare**

### **Show Me the Money!**

*A discussion about court-appointed fees in termination of parental rights appeals. What are fees currently? What were they ten years ago? Are they reasonable? If not, what can be done about it?*

### **Michigan Supreme Court Mini-Oral Arguments (MOAs) - How Are They Working?**

*This breakout session will provide for a candid discussion of the costs and benefits derived from the increased use of MOAs in recent years. The discussion will be based on statistical information about the MOAs as well as analysis of the Court’s orders and opinions issued with and without oral argument and an order granting leave to appeal, and will include a discussion of strategy and tactics in responding to MOA orders, both as appellant and appellee.*

3:30-3:45 p.m.

## **Refreshment Break**

3:45–5:45 p.m.

### **Plenary – Thinking Outside the Box: What’s Working and What Might Be Improved in Our Appellate Courts**

*Are meritorious interlocutory appeals being granted with enough frequency? Is the current process for assigning cases to panels working? Should summary remands be used more often when the record isn’t sufficiently developed? How can our current practice of scheduling and holding oral arguments be improved? This plenary session will tackle these issues and more.*

6:00 p.m.

## **Reception and Dinner** (Dinner tables will be hosted by members of the bench)

The Appellate Practice Section’s Lifetime Achievement Award will be presented to Retired Chief Judge Michael J. Talbot, Michigan Court of Appeals.

### **Prior Recipients**

1998 Justice Charles Levin  
2001 Justice Patricia Boyle  
2004 Judge Harold Hood  
2007 Judge James Ryan  
2010 Kathleen McCree Lewis  
2012 Justice Marilyn Kelly  
2013 Sandra Schultz Mengel  
2015 Justice Michael F. Cavanagh  
2016 Justice Maura D. Corrigan  
2017 Corbin Davis

**Friday, March 29, 2019**

8:00-8:30 a.m.      **Continental Breakfast**

9:15-10:15 a.m.    **Plenary – Technology and the Record**

*What are the effects of technology on the appellate process? Does the role of a reviewing court change when the “record” below consists of more than a printed transcript? What implications are there for standards of review? A panel of appellate judges and practitioners, with input from the audience, will consider these and other questions.*

10:15-10:30 a.m.    **Refreshment Break**

10:30-11:30 a.m.    **Law Practice Breakout Sessions**

*The breakouts will be participatory — not traditional lectures from a panel of speakers. This is what makes the bench bar conference unique. All who attend the breakouts will be encouraged to participate in the discussion.*

### **Criminal**

#### **Expanding the Facts on Appeal: Motions to Remand and Judicial Notice**

*In this session, we will discuss the development of off-record facts through motions to remands, evidentiary hearings, and judicial notice.*

#### **Evidentiary Standards and Changes in Technology**

*In this session, we will discuss how changes in technology might effect the court’s standard of review when analyzing video or audio evidence or testimony.*

#### **Offense Variables, Juvenile Lifer Resentencings, and Other Fact-Intensive Sentencing Questions**

*In this session, we will discuss appellate review from fact-driven records in standard felony cases and juvenile life without parole cases.*

#### **Stating the Facts in the Statement of Facts**

*In this session, we will discuss best practices for writing a compelling and accurate Statement of Facts that will aid the court when analyzing the legal issues presented.*

### **Civil**

#### **Brief Writing: Basics and Beyond (B)**

*Discussing new trends in brief writing, structure, and presentation, including: shaping the facts; working with a complex record; preservation of issues; standards of review; formulating arguments; and making a forceful case for the relief requested.*

#### **Oral Argument: Basics and Beyond (B)**

*How to prepare for oral argument and what to expect; bringing out the salient facts; addressing unfavorable facts; oral argument in the Supreme Court.*

#### **Fast Action – Motions, Emergencies and Unusual Cases**

*Interlocutory appeals and motions; defining and working with an unsettled record; emergency appeals and motions in the Court of Appeals and Supreme Court; delayed appeals; original proceedings in the Court of Appeals.*

## **Dealing With the Facts and the Record**

*Presenting complex facts; going beyond the paper record; maximizing the effect of digital briefs.*

## **Family**

### **What's Your Standard (of Review)?**

*Reviewing the standards of review in family law cases, exploring the meanings the appellate courts have ascribed to the standards, and discussing what the standard should be in family law cases. If time allows, record issues in family law cases will be discussed.*

## **Child Welfare**

### **Keeping Up with The Joneses (Cases You Should Know)**

*University of Michigan professor Joshua Kay will lead a discussion on cases appellate attorneys need to know and use when writing child welfare appeals.*

## **Supreme Court**

### **Michigan Supreme Court Mini-Oral Arguments (MOAs)—How Are They Working?**

*This breakout session will provide for a candid discussion of the costs and benefits derived from the increased use of MOAs in recent years. The discussion will be based on statistical information about the MOAs as well as analysis of the Court's orders and opinions issued with and without oral argument and an order granting leave to appeal, and will include a discussion of strategy and tactics in responding to MOA orders, both as appellant and appellee.*

11:30-11:45 a.m.

### **Refreshment Break**

11:45-12:45 p.m.

### **Dewitt C. Holbrook Memorial Fund Luncheon**

*Friday's luncheon will be a special time for advocates and justices, judges, and court personnel to meet each other informally over the meal. Since practice before appellate tribunals is formal and there are few opportunities for bench and bar to talk to each other less formally than in a courtroom argument, don't miss this chance to spend an hour together getting to know those we work with.*

12:45-1:45 p.m.

### **Plenary: Supreme Court Practice Tips**

*In this ever-popular session, justices of the Michigan Supreme Court will provide insight into appellate practice before the Court.*

**2019 Michigan Appellate Bench Bar Conference**  
**Just the Facts: The Importance of Facts and the Appellate Record to Responsible Decision-Making**  
**and Appellate Advocacy**  
**Wednesday, March 27 through Friday, March 29, 2019**

Advance Registration Deadline: March 6, 2019- Conference Fee \$ 375  
 Late Registration - \$400.00; Onsite Registration - \$425.00  
 The Inn at St. John's Conference Center, 44045 Five Mile Road, Plymouth, Michigan 48170

The conference fee includes program materials, Wednesday's pre-conference reception, Thursday breakfast, Thursday's luncheon at the conference, Thursday's reception and dinner with the justices and judges, and Friday's luncheon. Hotel room fees are not included.

**All conference participants will attend plenary sessions & the advocacy breakouts, but space for other breakout sessions is limited. Assignments to breakout sessions will be made on a first-come / first-serve basis according to your preferences noted below.**

**Check all that apply to you:**

Reporter  Moderator  Speaker/Presenter

***(All attendees must complete a registration form – This includes reporters and moderators)***

<p>Name: _____</p> <p>Title: _____</p> <p>Firm Name: _____</p> <p>Address: _____</p> <p>City: _____ State: ____ Zip: _____</p> <p>Phone: (    ) _____ Fax: (    ) _____</p> <p>*Cell Phone: (    ) _____ * Required for messages during the conference.</p> <p><input type="checkbox"/> <b>Civil</b> ( <input type="checkbox"/> Civil Defense <input type="checkbox"/> Civil Plaintiff )  <input type="checkbox"/> <b>Criminal</b> ( <input type="checkbox"/> Criminal Defense <input type="checkbox"/> Criminal Prosecution )  <input type="checkbox"/> <b>Family</b> <input type="checkbox"/> <b>Child Welfare</b></p> <p>E-Mail Address*: _____  <i>*Required - Link for electronic handouts.</i></p>	<p><b>Scholarship Request:</b> <input type="checkbox"/> yes <input type="checkbox"/> no  <input type="checkbox"/> SADO <input type="checkbox"/> MACC <input type="checkbox"/> Child Welfare <input type="checkbox"/> Other</p> <p><b>If yes, please attach a completed scholarship application. The form is available for download at <a href="http://www.benchbar.org">www.benchbar.org</a>.</b></p> <hr/> <p><b>Thursday, March 28 - Plenary</b>  <b>9:15-10:45 a.m.</b></p> <p>Just the Facts: The Importance of Facts and the Appellate Record to Responsible Decision-Making and Appellate Advocacy</p> <p><b>Thursday, March 28 – Advocacy Breakout Sessions – 11:00-12:15 p.m.</b></p> <p>These breakout sessions will provide an opportunity for members of the bench and bar to further explore issues raised in the plenary session.</p> <p><b>Thursday, March 28 – Law Practice Breakout Sessions - 2:15-3:30 p.m.</b></p> <p><input type="checkbox"/> <b>Civil</b> ( <input type="checkbox"/> Civil Defense <input type="checkbox"/> Civil Plaintiff )  <input type="checkbox"/> <b>Criminal</b> ( <input type="checkbox"/> Criminal Defense <input type="checkbox"/> Criminal Prosecution )  <input type="checkbox"/> <b>Family</b> <input type="checkbox"/> <b>Child Welfare</b></p> <p>Please indicate your first (1) and second (2) preferences in each time period for the following breakout sessions (your area of law):</p> <p><b>Thursday, March 28 Breakout Sessions</b></p> <p><i>Criminal:</i></p> <p>_____ Expanding the Facts on Appeal: Motions to Remand and Judicial Notice          _____ Evidentiary Standards and Changes in Technology          _____ Offense Variables, Juvenile Lifer Resentencings, and Other Fact-Intensive Sentencing Questions          _____ Stating the Facts in the Statement of Facts</p>
<p><b>I will attend the following events: <i>Food is ordered based on your attendance, please confirm your attendance by checking the boxes.</i></b></p> <p><input type="checkbox"/> Wednesday, March 27: Grand Reception – 5:30-7:00 p.m.</p> <p><input type="checkbox"/> Thursday, March 28: Luncheon – 12:30-2:00 p.m.          Speaker: Paul Clement</p> <p><input type="checkbox"/> Thursday, March 28: Dinner with the Bench – 6:00 p.m.          *Please confirm your attendance for seating arrangements</p> <p><input type="checkbox"/> Guest/Spouse name: _____          I will pay seperately for guest/spouse meal fee \$50.00</p> <p><input type="checkbox"/> Friday, March 29: Luncheon – 11:45-12:45 p.m.</p>	

*Civil:*

- \_\_\_\_\_ Brief Writing: Basic and Beyond (A)
- \_\_\_\_\_ Oral Argument: Basics and Beyond (A)
- \_\_\_\_\_ Nuts and Bolts of E-Filing
- \_\_\_\_\_ Taking It Up – Applications and Appeals in the Supreme Court

*Family:*

- \_\_\_\_\_ The Good, the Bad, and the Ugly of Family Law Appellate Jurisdiction

*Child Welfare:*

- \_\_\_\_\_ Show Me the Money! Fees in Court-Appointed Termination of Parental Rights Appeals

*Michigan Supreme Court:*

- \_\_\_\_\_ Mini-Oral Arguments (MOAs) – How Are They Working?

**Thursday, March 28 – Plenary  
3:45-5:45 p.m.**

Thinking Outside the Box: What's Working and What Might Be Improved in Our Appellate Courts

**Friday, March 29 – Plenary  
9:15-10:15 a.m.**

Technology and the Record

**Friday, March 29 –Law Practice Breakout Sessions - 10:30-11:30 a.m.**

*Criminal:*

- \_\_\_\_\_ Expanding the Facts on Appeal: Motions to Remand and Judicial Notice
- \_\_\_\_\_ Evidentiary Standards and Changes in Technology
- \_\_\_\_\_ Offense Variables, Juvenile Lifer Resentencings, and Other Fact-Intensive Sentencing Questions
- \_\_\_\_\_ Stating the Facts in the Statement of Facts

*Civil:*

- \_\_\_\_\_ Brief Writing: Basics and Beyond (B)
- \_\_\_\_\_ Oral Argument: Basics and Beyond (B)
- \_\_\_\_\_ Fast Action – Motions, Emergencies and Unusual Cases
- \_\_\_\_\_ Dealing With the Facts and the Record

*Family:*

- \_\_\_\_\_ What's Your Standard (of Review)?

*Child Welfare:*

- \_\_\_\_\_ Keeping Up With the Joneses (Cases You Should Know)

*Michigan Supreme Court:*

- \_\_\_\_\_ Mini-Oral Arguments (MOAs) – How Are They Working?

**Friday, March 29 – Plenary  
12:45-1:45 p.m.**

Supreme Court Practice Tips

- Check     PayPal–

Visit <https://benchbar.org/conferences/2019-conference/> to pay once you have sent this form to the address below if you chose PayPal

**To pay by check, enclose your conference fee, with check payable to Michigan Appellate Bench Bar Conference, and Return this form to:**

Michigan Appellate Bench Bar  
Conference Foundation  
P.O. Box 66  
Grand Ledge, MI 48837  
Phone: 517-627-8700  
Fax: 517-627-3950

Payment Check# \_\_\_\_\_

Total Enclosed: \_\_\_\_\_

*Please list any special needs:* \_\_\_\_\_

*Dietary restrictions for all meals:* \_\_\_\_\_

**Continuing Legal Education: Ohio**

**For Office Use Only:**

Date Rec: \_\_\_\_\_

Staff: \_\_\_\_\_

*Space is Limited. Onsite Registration Allowed Only if Space is Available. Advance Registration Recommended.*

**Hotel Reservation Deadline: March 6, 2019**

**The Inn at St. John's ~ 44045 Five Mile Road, Plymouth, MI 48170**

A limited number of hotel rooms have been reserved for conference participants.

Call 734-414-0600 for reservations and ask for the conference rate of \$155.00.