



**Michigan Appellate Bench
Bar Conference Foundation**

Michigan Appellate Bench Bar Conference

**Shaping the Law:
Tools of Advocacy and Decision Making**



April 20-22, 2016

The Inn at St. John's Conference Center

44045 5 Mile Rd, Plymouth, MI 48170

734-414-0600

Michigan Appellate Bench Bar Conference

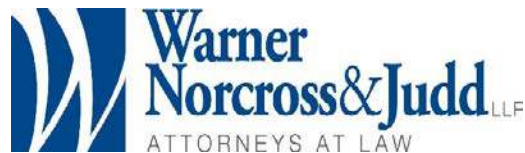
Shaping the Law: Tools of Advocacy and Decision Making

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.

The Michigan Appellate Bench Bar Conference Foundation gratefully acknowledges the significant financial contribution made to this conference by the *DeWitt C. Holbrook Memorial Fund*.

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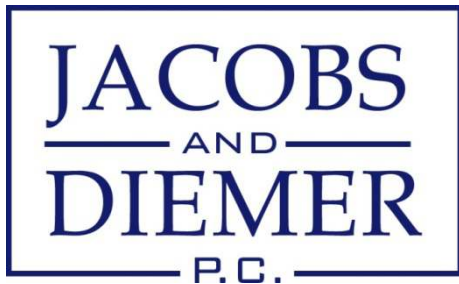
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Schedule of Events

Wednesday, April 20, 2016

5:30 – 7:30 p.m.
*Garden Gallery/
Lobby, First Floor*

Registration and Grand Reception

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

Thursday, April 21, 2016

7:30 a.m.
Lobby, First Floor

Registration

7:30 – 8:30 a.m.
*Garden Gallery,
First Floor*

Continental Breakfast

<p>8:30 – 8:45 a.m. <i>Grande Ballroom, First Floor</i></p>	<p>Welcome Letters Chief Justice Robert P. Young, Jr., Michigan Supreme Court Chief Judge Michael J. Talbot, Michigan Court of Appeals Foundation Co-Chair, Mary Massaron, Plunkett Cooney MABBC Treasurer Timothy Diemer, Jacobs & Diemer</p>																																	
<p>8:45 – 10:30 a.m. <i>Grande Ballroom, First Floor</i></p>	<p><u>Plenary – Shaping the Law: Tools of Advocacy and Decision Making</u> <i>Please see the polling questions in preparation for this plenary session.</i></p> <p>In this interactive and informative plenary session, a “mega-panel” of Court of Appeals judges will discuss ways in which both the bench and bar shape the law, including topics such as approaches to precedent, development of the common law, publication of decisions, statutory interpretation, and judicial restraint.</p> <p>Panel: Court of Appeals, Chief Judge Michael Talbot, Hon. Jane Beckering, Hon. Mark Boonstra, Hon. Michael Kelly, Hon. Amy Ronayne Krause, Hon. Patrick Meter, Hon. Michael Riordan, Hon. David Sawyer, Hon. Cynthia Stephens, Hon. Kurtis Wilder, Hon. Douglas Shapiro, Hon. William Saad, Hon. Peter O’Connell, Hon. Colleen O’Brien, Hon. Elizabeth Gleicher, Hon. Jane Markey, Hon. Michael Gadola, and Hon. Christopher Murray</p> <p>Moderator: Megan Cavanagh, Garan Lucow Miller, PC</p> <p>Reporters: Ann Sherman, Assistant Attorney General, Office of the Attorney General; and Bienenstock Nationwide Court Reporting & Video</p>																																	
<p>10:30 – 10:45 a.m.</p>	<p>Refreshment Break, <i>Garden Gallery, Nazareth Balcony, Executive Boardroom Lobby – First Floor</i></p>																																	
<p>10:45 – 12:00 p.m.</p>	<p>Shaping the Law Breakout Sessions</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> <table border="0"> <thead> <tr> <th><u>Moderators</u></th> <th><u>Reporters</u></th> <th><u>Locations</u></th> </tr> </thead> <tbody> <tr> <td>Kimberlee Hillock</td> <td>Nathan Scherbarth</td> <td>Executive Board Rm</td> </tr> <tr> <td>Sue Zitterman</td> <td>Anne Argiroff</td> <td>Nazareth</td> </tr> <tr> <td>Christina Ginter</td> <td>Dan Saylor</td> <td>Ruth</td> </tr> <tr> <td>Joanne Geha Swanson</td> <td>Phil DeRosier</td> <td>Sarah</td> </tr> <tr> <td>Nancy Vayda Dembinski</td> <td>Julie McCann O’Connor</td> <td>Esther</td> </tr> <tr> <td>Barbara Goldman</td> <td>Larry Saylor</td> <td>Kings II</td> </tr> <tr> <td>Ann Sherman</td> <td>Liisa Speaker</td> <td>Judith</td> </tr> <tr> <td>Beth Wittman</td> <td>Sarah Nadeau</td> <td>Samuels</td> </tr> <tr> <td>Jacqueline Klima</td> <td>Stephanie Douglas</td> <td>Kings I</td> </tr> <tr> <td>Hillary Ballentine</td> <td>Caryn Ford</td> <td>Wisdom</td> </tr> </tbody> </table>	<u>Moderators</u>	<u>Reporters</u>	<u>Locations</u>	Kimberlee Hillock	Nathan Scherbarth	Executive Board Rm	Sue Zitterman	Anne Argiroff	Nazareth	Christina Ginter	Dan Saylor	Ruth	Joanne Geha Swanson	Phil DeRosier	Sarah	Nancy Vayda Dembinski	Julie McCann O’Connor	Esther	Barbara Goldman	Larry Saylor	Kings II	Ann Sherman	Liisa Speaker	Judith	Beth Wittman	Sarah Nadeau	Samuels	Jacqueline Klima	Stephanie Douglas	Kings I	Hillary Ballentine	Caryn Ford	Wisdom
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<p>12:05 – 2:00 p.m. <i>Grande Ballroom, First Floor</i></p>	<p>Dewitt C. Holbrook Memorial Fund Luncheon Speaker: General William Suter</p> <p>General William Suter has been described as a “towering figure” at the U.S. Supreme Court, where he served for 22 years as Clerk under two chief justices and 14 associate judges. Upon his recent retirement, General Suter was lauded by Chief Justice John Roberts, Jr. for managing “the Court’s docket with unparalleled organization and</p>																																	

	<p>efficiency.”</p> <p>Moderators: Mary Massaron, Plunkett Cooney; and John Bursch, Warner Norcross & Judd LLP</p>
<p>2:15 – 3:30 p.m. <i>Grande Ballroom, First Floor</i></p>	<p><u>Plenary – A Day in the Life of the Clerk’s Office</u></p> <p><i>Please see the polling questions in preparation for this plenary session.</i></p> <p>In this plenary session, members of the clerk’s offices of both the Supreme Court and the Court of Appeals will provide insight into how the offices handle an appeal or original action from initiation to resolution and discuss a wide variety of topics including: jurisdictional review, transcripts and record production, briefing, oral argument, motions, and remand procedure.</p> <p>Panel: Larry Royster, Chief of Staff/Clerk of Court, Michigan Supreme Court; Inger Meyer, Deputy Clerk, Michigan Supreme Court; Jerome Zimmer, Chief Clerk, Michigan Court of Appeals; Gary Chambon, Michigan Court of Appeals; and Angela DiSessa, District Clerk, Michigan Court of Appeals</p> <p>Moderator: Sandra Mengel</p> <p>Reporter: Bienenstock Nationwide Court Reporting & Video</p>
<p>3:30 – 3:45 p.m.</p>	<p>Refreshment Break, Nazareth Balcony, Executive Boardroom Lobby – First Floor</p>
<p>3:45 – 4:45 p.m.</p>	<p>Law Practice Breakout Sessions – Sessions are offered twice</p> <p>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.</p>
	<p>Criminal</p>
<p><i>Nazareth, First Floor</i></p>	<p><u>Unlocking Lockridge: The Key to Fact-Finding at Sentencing</u></p> <p>The session will explore the implications of the Michigan Supreme Court’s decision in <i>People v. Lockridge</i> on fact-finding at sentencing. All aspects of how the decision affects the scoring of the prior record variables and offense variables, and the practical responses to the decision are on the table for discussion.</p> <p>Judges: Hon. Michael Gadola, Hon. Michael Riordan, Hon. Cynthia Stephens, Hon. Colleen O’Brien, and Hon. Henry Saad</p> <p>Moderators: Brett DeGroff, State Appellate Defender Office; and Tim Baughman, Wayne County Prosecutor’s Office</p> <p>Reporter: Linus Banghart-Linn, Assistant Attorney General</p> <p>Court Staff: Mark Stoddard, District Commissioner, Grand Rapids Office</p>
<p><i>Executive Board Room, First Floor</i></p>	<p><u>Mitigation and Litigation in Juvenile Lifer Resentencing Hearings</u></p> <p>The decision in <i>Miller v. Alabama</i> and the Michigan’s legislative response have fundamentally altered the way sentencings for juveniles who commit murder in Michigan are conducted. The session will discuss the nature of sentencing proceedings since <i>Miller</i>, the strategic considerations for prosecutors and defense attorneys, and the related issues that remain for conducting these hearings.</p> <p>Judge: Hon. Jane Beckering</p> <p>Moderators: Eric Restuccia, Deputy Solicitor General, Attorney General; Jessica Zimbelman, State Appellate Defender Office; and Jason Williams, Wayne County</p>

	<p>Prosecutor's Office Reporter: Marilena David-Martin, State Appellate Defender Office Court Staff: Mary Ann Mercieca, Senior Research Attorney, Detroit Office</p>
<i>Sarah, Second Floor</i>	<p><u>The Challenge of Ineffective Assistance of Counsel Claims on Appeal</u></p> <p>This session will examine the central nature of ineffective assistance of counsel claims, the proper framework for examining the claims, and the responses of prosecutors and defense attorneys. This session will be discussion-based, relative to the need for attorneys to educate themselves in these areas as well as the need for complete investigation in these cases and the importance of understanding specific areas of law.</p> <p>Judge: Hon. Douglas Shapiro Moderators: Robyn Frankel, Defense Attorney; Anica Letica, Attorney General's Office; and Bill Valliencourt, Prosecuting Attorney, Livingston County Prosecutor's Office Reporter: Chris Allen, Attorney General's Office Court Staff: Patricia Murray, Research Supervisor, Grand Rapids Office; and Erin Birkham, Senior Research Attorney, Detroit Office</p>
<i>Ruth, Second Floor</i>	<p><u>The Importance of Staying in Motion: Effective Motion Practice in the Court of Appeals</u></p> <p>The ability to file effective motions in the Court of Appeals is a challenge. This session will discuss motions generally, but will mainly focus on motions to remand for ineffective assistance of counsel claims for defense attorneys and interlocutory appeals and their corresponding motions for prosecutors.</p> <p>Judges: Hon. Amy Ronayne Kraus and Hon. Kurtis Wilder Moderators: Stuart Friedman, Defense Attorney; and James Benison, Kent County Prosecutor's Office Reporter: Marla McCowan, Michigan Indigent Defense Commission Court Staff: Gary Chambon, Jr., Michigan Court of Appeals; and Julie Isola Ruecke, Research Director</p>
	Civil
<i>Judith, Second Floor</i>	<p><u>Technology and Appellate Advocacy</u></p> <p>The finer points of e-filing; maximizing the effect of a digital brief; lawyers and cyber security; remote law office practice; tools for collaboration; what to anticipate next.</p> <p>Judge: Hon. Elizabeth Gleicher Moderators: Barbara Goldman, Barbara H. Goldman PLLC Reporter: Scott Bassett, Michigan Family Law Appeals Court Staff: Denise Devine, Michigan Court of Appeals; and Kimberly S. Hauswer, District Clerk, Michigan Court of Appeals</p>
<i>Samuels, Lower Level</i>	<p><u>Civil Appeals: The Basics and Beyond</u></p> <p>Whether you are a more experienced practitioner or new to appellate practice, this session will provide a useful and informative review of appellate practices and procedures. It will offer an opportunity to discuss issues with knowledgeable judges and court staff. Everything from applications to briefs to oral argument, and anything in between, is open for discussion in an informal environment.</p> <p>Judges: Hon. Christopher M. Murray and Hon. Patrick Meter</p>

	<p>Moderators: Julie McCann O’Connor, O’Connor DeGrazia Tamm & O’Connor PC Reporter: Elizabeth Sokol, Law Offices of Elizabeth L. Sokol PLLC Court Staff: Matthew C. Dawson, Michigan Court of Appeals; Michelle Harrison, Senior Research Attorney, Detroit Office; and Clare Cylkowski, Michigan Court of Appeals</p>
<i>Kings II, Lower Level</i>	<p><u>Interlocutory and Emergency Appeals</u></p> <p>When is an interlocutory appeal justified? What factors does the Court consider in determining whether an appeal presents an “emergency”? How do I maximize my chances of receiving timely relief? This breakout session will explore these and other issues relating to requests for interlocutory and emergency relief in the Michigan Court of Appeals and Supreme Court.</p> <p>Justice: Justice Brian Zahra Judge: Jane Markey COA Commissioner: Neal Villhauer, District Commissioner, Troy office; and Jack Walrad, District Commissioner, Troy office Supreme Court Commissioner: Daniel Brubaker, Chief Commissioner Moderator: Larry Saylor, Miller Canfield Paddock & Stone PLC Reporter: Phillip DeRosier, Dickinson Wright PLLC</p>
<i>Esther, Second Floor</i>	<p><u>Writing to Win – From Basics to Brilliance</u></p> <p>Tips and tools for improving appellate briefs and motion papers. Court staff, commissioners, judges, justices, and practitioners—including session attendees—will discuss what works and what does not, what’s just wrong, and what really makes an impact and changes perceptions.</p> <p>Justice: Chief Justice Robert Young Supreme Court Commissioner: Shari Oberg, Deputy Chief Commissioner Moderator: Jill Wheaton, Dykema Gossett PLLC Reporter: Mark Magyar, Dykema Gossett PLLC Court Staff: J. Michael Thomas, Senior Research Attorney, Detroit Office; and Julie Van Groningen, Senior Research Attorney, Detroit Office</p>
<i>Kings I, Lower Level</i>	<p>Family</p> <p><u>Domestic Relations Appeals: Track I – Jurisdiction 101</u></p> <p>Final Order Issues in Domestic Relations Appeals. This session will address bifurcation under MCR 7.202(6)(a)(i) and what post-judgment attorney fee, custody, parenting time, change of residence, and other orders are appealable by right under MCR 7.202(6)(a)(iii) & (iv).</p> <p>Judges: Hon. David Sawyer and Chief Judge Michael Talbot Jurisdictional Clerk: John P. Lowe, District Clerk Moderators: Anne Argiroff, Anne Argiroff PLC; and Liisa Speaker, Speaker Law Firm PLLC Reporter: Rebecca Shiemke, Michigan Poverty Law Program</p>
<i>Wisdom, Lower Level</i>	<p>Child Welfare</p> <p><u>Child Welfare Appeals 101: The Procedure</u></p> <p>Explore how child welfare cases are managed at the Court of Appeals; address final</p>

	<p>orders in child welfare cases and appealing dispositional, adjudication, and removal orders; examine the parts of the child welfare file contained in the record for appeal; discuss appellate motion practice for child welfare appeals; and address the scope of appointment for appeal (and whether it continues beyond the issuance of the COA opinion).</p> <p>Judge: Hon. Peter O’Connell Moderator: John Ceci , John Ceci PLLC Reporter: Rita White, Law Office of Rita O. White Court Staff: Jerome Zimmer, Jr., Chief Clerk, Michigan Court of Appeals; Inger Meyer, Deputy Clerk, Michigan Supreme Court</p>
<p>4:50 – 5:45 p.m. <i>Grande Ballroom, First Floor</i></p>	<p><u>Plenary – The Commissioner’s Office: Behind the Scenes</u></p> <p><i>Please see the polling questions in preparation for this plenary session.</i></p> <p>In this plenary session, commissioners will give a glimpse behind the scenes of the Supreme Court and Court of Appeals and offer tips for navigating your appeal through the courts and avoiding common pitfalls.</p> <p>Panel: Daniel Brubaker, Michigan Supreme Court; Shari Oberg, Michigan Supreme Court; Neal Villhauer, Michigan Court of Appeals; Mark Stoddard, Michigan Court of Appeals; and Jack Walrad, Michigan Court of Appeals Moderator: Julie Isola Ruecke, Research Director, Michigan Court of Appeals Reporter: Bienenstock Nationwide Court Reporting & Video</p>
<p>6:00 p.m. <i>Atrium, Lower Level</i></p>	<p>Reception and Dinner</p> <p>The Appellate Practice Section’s Lifetime Achievement Award will be presented to Justice Maura D. Corrigan, Retired, Michigan Supreme Court.</p> <p>Maura Corrigan served as Justice of the Michigan Supreme Court from 1999 to 2011 and was Chief Justice from 2001 to 2004. Building on a lifetime of service to children and families, Corrigan left her seat on the bench to answer a call from Michigan’s Governor to lead the state’s Department of Human Services, where she focused on improving child welfare programs.</p> <p>History of Prior Recipients</p> <p>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 Cavanagh 2016 Justice Maura Corrigan</p> <p>Dinner tables will be hosted by members of the bench.</p>
<p>Friday, April 22, 2016</p>	
<p>7:30 a.m.</p>	<p>Registration</p>

<i>Lobby, First Floor</i>	
7:30 – 8:30 a.m. <i>Garden Gallery/ Lobby, First Floor</i>	Continental Breakfast
9:15 – 10:15 a.m.	<p><u>Plenary – Tech 2016: Gadgets, Widgets, and Apps for Appellate Practice</u></p> <p><i>Please see our poll questions in preparation for this plenary session.</i></p> <p>The latest and greatest in hardware and software for lawyers and judges.</p> <p>Panel: Scott Bassett, Michigan Family Law Appeals; and Stuart Friedman, Attorney at Law</p> <p>Moderators: Barbara Goldman, Barbara H. Goldman PLLC</p> <p>Reporter: Bienenstock Nationwide Court Reporting & Video</p> <p>Court Staff: Julie Isola Ruecke, Michigan Court of Appeals; and Patricia Murray, Research Supervisor, Grand Rapids Office</p>
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<p><i>Sarah, Second Floor</i></p>	<p><u>The Challenge of Ineffective Assistance of Counsel Claims on Appeal</u></p> <p>This session will examine the central nature of ineffective assistance of counsel claims, the proper framework for examining the claims, and the responses of prosecutors and defense attorneys. This session will be discussion-based, relative to the need for attorneys to educate themselves in these areas as well as the need for complete investigation in these cases and the importance of understanding specific areas of law.</p> <p>Judge: Hon. Peter O’Connell Moderators: Robyn Frankel, Defense Attorney; Anica Letica, Attorney General’s Office; and Bill Vaillencourt, Livingston County Prosecutor’s Office Reporter: Chris Allen, Attorney General’s Office Court Staff: J. Michael Thomas, Senior Research Attorney, Detroit office</p>
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	<p>Court Staff: Dawn Lemon, District Commissioner, Detroit office; and JoAnn Lank, District Commissioner, Detroit office</p>
<p><i>Kings II, Lower Level</i></p>	<p><u>Effective Oral Advocacy: From Preparation to Presentation</u></p> <p>Oral argument is considered by many to be the pinnacle of appellate advocacy, but others question whether oral argument makes any difference in the majority of appeals. This session is designed to assist the appellate practitioner in preparing and presenting an effective oral argument that maximizes the opportunity for success on appeal. Participants in this session will discuss the best way to prepare for oral argument, effective methods of influencing the panel, practical advice for the day of oral argument, and tips and tricks for dealing with a hot, cold, or even hostile bench.</p> <p>Justice: Chief Justice Robert Young Judge: Hon. Mark Boonstra Moderator: Beth Wittman, The Kitch Firm Reporter: C. Thomas Ludden, Lipson Neilson Cole Seitzer & Garin PC</p>
<p><i>Judith, Second Floor</i></p>	<p><u>What You Can Do To Make Your Michigan Supreme Court Application More Appealing</u></p> <p>It's a well-known fact that only a small percentage of requests for leave to appeal are found to merit the consideration of the Michigan Supreme Court. This session will explore applications for leave to appeal from the Court's perspective: What do the Commissioners screen for? Do the Judicial Clerks have a checklist? What makes an issue "jurisprudentially significant"? When will the Court correct error? Why does the Court sometimes schedule a mini oral argument: How does the Court decide whether to grant peremptory relief? Does no really mean no and/or when is a reconsideration motion warranted? These are just a handful of the questions that will be addressed at what promises to be a lively bench/bar discussion.</p> <p>Justice: Justice Stephen Markman Judge: Hon. Cynthia Stephens Moderator: Joanne Geha Swanson, Kerr Russell & Weber PLC Reporter: Jacquelyn Klima, Kerr Russell & Weber PLC Court Staff: Daniel Brubaker, Chief Commissioner, Michigan Supreme Court</p>
<p><i>Kings I, Lower Level</i></p>	<p>Family</p> <p><u>Domestic Relations Appeals: Track II – Jurisdiction 201</u></p> <p>Subject-matter jurisdiction, personal jurisdiction, and venue issues in domestic relations appeals. This session will address the nuances of subject-matter jurisdiction and personal jurisdiction, when they can be raised, and how much a party can participate in the litigation before waiving an objection to jurisdiction. This session will also cover the interplay of subject-matter jurisdiction with the statutory venue provision for divorce proceedings.</p> <p>Judge: Hon. Michael Riordan Moderators: Scott Bassett, Appellate Family Law Attorney; and Judith Curtis, Family Law and Appellate Practice Attorney Reporter: Rebecca Shiemke, Michigan Poverty Law Program Court Staff: Clare M. Cylkowski, Assistant Clerk, Detroit office; and Julie Isola Ruecke, Research Director</p>
<p><i>Wisdom, Lower</i></p>	<p>Child Welfare</p>

<p><i>Level</i></p>	<p><u>Child Welfare Appeals 101: The Substance</u></p> <p>Receive a recap of the significant legal events (and there were many!) since the last Appellate Bench Bar Conference. Exchange ideas on issue spotting for child welfare appeals—what issues should counsel be looking for in the record, which issues have not been resolved by the courts, which issues do counsel need to keep on challenging.</p> <p>Judge: Hon. Amy Ronayne Krause Case Law Update: Vivek Sankaran, Clinical Professor of Law, University of Michigan Law School Moderators: Liisa Speaker, Speaker Law Firm PLLC Reporter: Rita White Court Staff: Doug Messing, Assistant Research Director; and Patricia Murray, Research Supervisor, Grand Rapids office</p>
<p>11:30 – 11:45 a.m.</p>	<p>Break, Garden Gallery, First Floor</p>
<p>11:45 – 12:45 p.m. <i>Grande Ballroom, First Floor</i></p>	<p>Dewitt C. Holbrook Memorial Fund Luncheon</p> <p>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.</p> <p>Moderator: Mary Massaron, Plunkett Cooney</p>
<p>12:45 – 1:45 p.m. <i>Grande Ballroom, First Floor</i></p>	<p><u>Plenary: The Michigan Supreme Court’s view on Judging and Advocacy</u></p> <p>In this ever-popular session, justices of the Michigan Supreme Court will provide insight into appellate practice before the Supreme Court, including discussing the application for leave process and how the justices consider requests for leave, oral argument on applications, and what the advocates approach is most helpful, and merits appeals including briefing, oral argument, and motion practice</p> <p>Moderator: Mary Massaron, Plunkett Cooney Reporter: Bienenstock Nationwide Court Reporting & Video</p>