



**Michigan Appellate Bench
Bar Conference Foundation**

May 11–13, 2022



The Inn at St. John's Conference Center, 44045 Five Mile Rd., Plymouth, MI 48170



May 11 – 13, 2022
The Inn at St. John's
Conference Center
44045 5 Mile Rd, Plymouth, MI 48170
(734) 414-0600

Michigan Appellate Bench Bar Conference

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, May 11, 2022

5:30-7:00 p.m. **Grand Reception - Judea**
An opportunity to socialize with justices, judges, court staff, and fellow practitioners.

Thursday, May 12, 2022

8:30 a.m. **Registration - Garden Gallery**

8:30-9:00 a.m. **Continental Breakfast - Garden Gallery**

9:00-9:15 a.m. **Welcome – Grande Ballroom**
Chief Justice Bridget McCormack, *Michigan Supreme Court*
Chief Judge Elizabeth Gleicher, *Michigan Court of Appeals*
Co-Chairs: Phillip DeRosier, *Dickinson Wright PLLC* and Matthew Nelson, *Warner Norcross + Judd LLP*

9:15-10:30 a.m. **Plenary – “Lessons Learned From the Pandemic: May it please the (virtual) court?”**
A panel discussion among judges, practitioners and clerks regarding the pros and cons of conducting appeals remotely from the claim of appeal to remand among the different practice areas. What aspects of remote appeals are effective and should remain, and what aspects of live appeals cannot be replaced. Grande Ballroom

10:30-11:00 a.m. **Refreshment Break – Throughout Hotel**

11:00-12:15 p.m. **Plenary - Lessons Learned From the Pandemic: 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.

Thursday, May 12, 2022 cont.

12:30-2:00 p.m. **DeWitt C. Holbrook Memorial Fund Luncheon – Grande Ballroom**
Speaker: Honorable Joan L. Larsen, U.S. Court of Appeals, Sixth Circuit

2:15-3:30 p.m. **Law Practice Breakout Sessions**
The breakouts will be participatory — not traditional lectures. This is what makes the bench bar conference unique. All who attend the breakouts will be encouraged to participate in the discussion.

Criminal

All You Wanted to Know About the Sex Offenders Registration Act (SORA) but Were Afraid to Ask

The session will address the requirements of registered individuals under the SORA in light of the amended Act (Public Act 295 of 2020) for conduct that occurs on or after March 24, 2021 (effective date of Act) as well as what conduct is subject to prosecution before that date. The session will address the implications of the federal district court litigation in Doe v Snyder as well as the Michigan Supreme Court's actions in People v Betts and Snyder. **Executive Board Room**

Criminal

Continuing Issues for Sentencing Juveniles Convicted of First Degree Murder Pursuant to MCL 769.25

The session will talk about continuing issues in hearings for juveniles convicted of first degree murder and the appeals generated by these hearings. What are the issues particularly relevant to hearings under MCL 769.25 with recent offenses, compared to cases with potentially decades of DOC history? What are the effects of the United States Supreme Court's decision in Jones v Mississippi, __ US __ (2021), and other recent decisions by the state and federal courts? How can both prosecutors and defense attorneys effectively advocate in the trial and appellate courts in these often difficult cases? **Nazareth Room**

Criminal

Court Rule Changes Important for Criminal Appellate Practice

This breakout will address important court rule changes since the last bench/bar conference. MCR 7.208(B)(1) now allows a post-judgment motion such as a motion for new trial or to correct an invalid sentence to be filed in the trial court as long as a timely defendant-appellant's brief may be filed in the trial court (including with any extensions of time) and MCR 7.211(C)(1)(a) no longer sets a time limit on filing a motion to remand. Should that result in changes in practice such as filing less motions to remand? Could it be appropriate to file a motion to remand on an issue in some circumstances after a trial court denies a post-judgment motion on the issue, e.g. to try to obtain an evidentiary hearing the trial court denied? We will also discuss change to MCR 7.118(D)(3) to provide for appointed counsel for an indigent person who is granted parole where a prosecutor or victim files an application for leave to appeal from the grant of parole and other important court rule changes." **Ruth Room**

Thursday, May 12, 2022 cont.

2:15-3:30 p.m.

Criminal

There's an Expert for That

This session will address the evolving use of expert witnesses on appeal. Indigent individuals have the right to expert assistance at state expense. Access to defense experts at the trial level has become more streamlined and independent through the Michigan Indigent Defense Commission. The Michigan Supreme Court has issued several decisions addressing the scope of this right in the trial court, on appeal, and for individuals represented by court-appointed and retained counsel. See People v Ackley, People v Kennedy, People v Ceasor. In this session, we will discuss trends, challenges, and changes in expert witness case law development, along with practical considerations for practitioners. Sarah Room

2:15-3:30 p.m.

Civil

Writing Persuasive Briefs

Your brief is your best and most effective opportunity to influence the decision on appeal. Discuss new trends in brief writing and what the Justices, Judges and experienced appellate advocates think of the experience so far with Administrative Order 2019-6. Learn how to structure your brief and make the best presentation possible, especially if you are working with a complex record or have to address difficult facts or adverse precedent. And pick up some pointers on how to tie the entire brief together to make a persuasive and forceful case for the relief you are requesting. Esther Room

Civil

Applications for Leave to Appeal

Applications for leave to appeal are different from a brief on an appeal because the advocate must persuade the Supreme Court or Court of Appeals not only that the lower court made an erroneous decision, but that the error is significant enough to consider. Learn when to apply for leave to appeal from a trial court decision to the Court of Appeals, how the type of lower court decision affects the prospects for a successful application for leave to appeal, what type of relief to request, and how to make your case stand out so that the Court will exercise its discretion and hear your case on the merits. Kings II Room

Civil

Reply Briefs: The Last Word

A reply brief is the last chance that an appellant has before oral argument to make an impact on the case. What are the best practices for identifying, framing, and addressing issues from the Appellee's Brief on Appeal? What makes a reply brief effective and what reply brief practices have a negative impact on your case? Judith Room

Thursday, May 12, 2022 cont.

2:15-3:30 p.m.

Civil

Motion Practice in the Court of Appeals

Motion practice in the Court of Appeals is significantly different from trial court motion practice. Learn how the COA processes motions, when to file appellate motions, what are the most common appellate motions, when to expect a decision, whether to move for immediate consideration, how to address transcript issues and how to best frame your arguments in support of and in opposition to the most common motions. **Samuels Room**

2:15-3:30 p.m.

Family

The Search for Clarity on Post Judgment Final Orders

The continuing saga of post judgment final orders for custody and related matters, MCR 7.202(6)(a)(iii), and attorney fees, MCR 7.202(6)(a)(iv). **Kings I Room**

2:15-3:30 p.m.

Child Welfare

Top 20 Child Welfare Cases Everyone Should Know

There is a dynamic, growing body of child welfare case law affecting every stage of these proceedings, from petition drafting to removal decisions, adjudication, service provision, and termination of parental rights. It is incumbent upon trial court and appellate judges as well as litigators on all sides of these sensitive cases to know, understand, and apply the holdings of these cases. This presentation covers the most important Court of Appeals and Michigan Supreme Court child welfare opinions, clarifying their holdings, underlying facts, and reach, as well as best practices for their application. **Wisdom Room**

3:30-4:00 p.m.

Refreshment Break – Throughout Hotel

4:00–5:15 p.m.

Law Practice Breakout Sessions

Criminal

Oyez+

TV shows aren't the only thing streaming these days. This session will address how the bench and the bar have adapted to remote arguments, compare the different virtual formats used in the Supreme Court and the Court of Appeals, and assess how the parties and the public perceive streaming appeals. This session will also explore ways to improve the experience of digital appeals to the extent they will remain used after the pandemic. **Executive Board Room**

Thursday, May 12, 2022 cont.

4:00–5:15 p.m.

Criminal

Pandemic Implications on Due Process and Criminal Practice

The pandemic forced courts and lawyers to stop in their tracks and rethink everything they thought they knew about how to administer and seek justice. In this session, we will discuss the unique challenges that have arisen in criminal practice and appeals. We will discuss how courts and lawyers have adjusted to ensure compliance with the constitutional rights of the accused, while offering meaningful access to complainants and the public. **Nazareth Room**

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All You Wanted to Know About the Sex Offenders Registration Act (SORA) but Were Afraid to Ask

The session will address the requirements of registered individuals under the SORA in light of the amended Act (Public Act 295 of 2020) for conduct that occurs on or after March 24, 2021 (effective date of Act) as well as what conduct is subject to prosecution before that date. The session will address the implications of the federal district court litigation in Doe v Snyder as well as the Michigan Supreme Court's actions in People v Betts and Snyder. **Ruth Room**

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Effective Oral Argument

Learn how to use oral argument to maximize your chances of success on appeal, including the differences between oral argument in the Court of Appeals and the Supreme Court, how to use your time most effectively at oral argument in each court, including organizing your argument, determining what questions are likely to be asked, why Justices or Judges ask questions, addressing unfavorable facts or legal authority, how to answer tough or unexpected questions while staying on theme and using oral argument to improve your client's chances of success on appeal. **Esther Room**

Thursday, May 12, 2022 cont.

4:00–5:15 p.m.

Civil

Amicus Curiae Practice

There has been an explosion of amicus curiae briefs submitted in both state and federal courts, especially in the Supreme Court over the past two decades. A truly effective amicus curiae brief can have a significant impact on the decisions by appellate courts. But, some critics are raising a concern that too many amicus curiae briefs are being filed, and it is becoming harder to make an impact with them. Learn when amicus curiae briefs are most helpful to the Court and your clients, how to solicit amici curiae, what counsel for the parties are permitted to do and cannot do, and how to write an amicus curiae brief. Kings II Room

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4:00–5:15 p.m.

Family

Immediate Action Required! Appealing *Ex Parte*, Temporary, and Interim Orders

How to handle the appeal of ex parte, interim, and temporary custody orders, including burdens of proof, preservation of issues, and whether harmless error is applicable. We touch on how to request emergency relief and how to convince the Court of Appeals to immediately vacate legally improper orders. Kings I Room

Thursday, May 12, 2022 cont.

4:00–5:15 p.m.

Child Welfare

The Indian Child Welfare Act (ICWA) After the Fifth Circuit’s *En Banc* Decision in *Brackeen v Zinke*

The Indian Child Welfare Act was enacted in 1978 in an effort to response to a crisis affecting American Indian and Alaska Native children, families, and tribes. Studies showed that large numbers of Native children were being separated from their parents, extended families, and communities by state child welfare and private adoption agencies. Brackeen v Zinke involved the appeals by various non-American Indian persons who sought to adopt American Indian children, and challenged the constitutionality of the ICWA. On April 6, 2021, the Fifth Circuit Court of Appeals in a 300-plus page en banc decision, ruled some provisions of the ICWA to be unconstitutional. How does this ruling affect cases subject to the ICWA and the MIFPA in Michigan? **Wisdom Room**

6:00 p.m.

Reception and Dinner Atrium – Lower Level

The Appellate Practice Section’s Lifetime Achievement Award will be presented to Mary Massaron and Justice Stephen J. Markman

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
2019 Hon. Michael J. Talbot, Retired

Friday, May 13, 2022

7:30 – 2:00 p.m.

Registration – **Garden Gallery**

8:00-9:00 a.m.

Continental Breakfast – Garden Gallery

9:00-10:00 a.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. **Grande Ballroom**

Friday, May 13, 2022 cont.

10:00-10:30 a.m. **Refreshment Break – Throughout Hotel**

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10:30-11:45 a.m. **Family**

Rapid Fire Family Law Wrap Up

Quick recap of final order rule problems, appealing ex parte and temporary orders, plus bonus topics about lack of uniformity and accuracy in trial court registers of action, avoiding falling into the hole of missing transcripts, and motion practice under MCR 7.211. **Samuels Room**

Friday, May 13, 2022 cont.

10:30-11:45 a.m. **Child Welfare**

Reasonable Effort, Appeals from Removal Orders, and What to do.....

*Issue-spotting and preserving the record for appeals from orders entered at all stages of a Child Protective Proceeding. **Kings I Room***

Child Welfare

Giving the Child a Voice on Appeal: The Importance of the LGAL's Participation in Appeals

Countless appeals are filed in the State of Michigan from orders entered in Child Protective Proceedings. In many of those appeals, the child's Lawyer Guardian Ad Litem does not file an appearance nor a brief, nor participate in oral argument or any other aspect of the appeal. Best practice would dictate the LGAL continue to be a voice for the children throughout the entire appeals process. We will discuss these issues and more.

Wisdom Room

12:00-1:00 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. **Grande Ballroom***

1:00-2:00 p.m. **Plenary – “Hear Ye, Hear Ye: Remote Oral Arguments in the Court of Appeals.”**

*Oral argument has long been a staple of appellate practice, valued by judges as well as attorneys, but 2020 forced them to adapt to new modes of interaction. Should videoconference oral arguments continue to be available? Should they become the default choice of practitioners or the court? What economic implications do remote arguments have for access to the appellate process? What modifications should be considered? How can attorneys best present their arguments in the remote environment? These and other questions will be considered by a panel of judges, practitioners and representatives of the Court of Appeals. **Grande Ballroom***

May 11–13, 2022



The Inn at St. John's Conference Center, 44045 Five Mile Rd., Plymouth, MI 48170

Advance Registration Deadline: Before April 13, 2022 - Conference Fee \$400.00

Late Registration Deadline: After April 13, 2022- \$425.00; Onsite Registration - \$450.00

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

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Cell*: _____ Fax: _____

Email*: _____

* Email and cell phone number required to access conference app and receive notices during the conference

Check all that apply:

Reporter Moderator

Practice:

Civil (Defense Plaintiff)

Criminal (Defense Prosecution)

Family Child Welfare

Scholarship Request

Are you applying for a scholarship? Yes No

If yes, you must submit your scholarship application with this form.

I will attend the following events:

Wednesday, May 11th: Grand Reception – 5:30-7:00 p.m.

Thursday, May 12th: Plenary - 9:15-10:30 a.m.

Thursday, May 12th: Plenary Breakouts – 11:00-12:15 p.m.

Thursday, May 12th: Luncheon – 12:30-2:00 p.m.
With speaker: Hon. Joan L. Larsen, U.S. Court of Appeals, Sixth Circuit

Thursday, May 12th: Law Practice Breakouts – 2:15-3:30 p.m.

Thursday, May 12th: Law Practice Breakouts – 4:00-5:15 p.m.

Law Practice breakout selection on next page.

Thursday, May 12th: Reception/Dinner– 6:00 p.m. **@ \$45**

Dinner Guest First Name: _____
Last Name: _____ **@ \$45**

Friday May 13th: Plenary - 9:00-10:00 a.m.

Friday, May 13th: Law Practice Breakouts – 10:30-11:45 a.m.

Friday, May 13th: Luncheon – 12:00-1:00 p.m.

Friday, May 13th: Plenary – 1:00-2:00 p.m.

Please list any special needs: _____

Dietary restrictions for all meals: _____

Payment Information - You may pay by check or PayPal, which accepts credit cards.

To pay by check, enclose it with your form, payable to Michigan Appellate Bench Bar Conference Foundation, and note the check number below.

To pay with PayPal, visit <https://benchbar.org/conferences/2022-conference/>

Registration Fees:

Advance Registration before April 13, 2022 \$400.00

Late Registration after April 13, 2022 \$425.00

Onsite Registration \$450.00

Remember to include dinner costs. Dinner \$45.00 Dinner Guest \$45.00

Amount Paid: _____ PayPal (online) Check #: _____

Form submission with check:

Michigan Appellate Bench Bar Conference Foundation
P.O. Box 66
Grand Ledge, MI 48837

If you paid using Pay Pal, you can fax (517-627-3950) or email (support@benchbar.org) us this completed form.

Cancellation/Refund Policy:

To obtain a refund, notice of cancellation must be received in writing in at least 15 days' advance of the event, less \$100 administrative fees.

Hotel Reservation Deadline: April 26, 2022

Space is limited. Onsite registration allowed only if space is available.
The Inn at St. John's ~ 44045 Five Mile Road, Plymouth, MI 48170
Call 734-414-0600 for reservation and ask for the conference rate of \$159

Phone: 517-627-8700 | Fax: 517-627-3950 | Email: support@benchbar.org | Web: www.benchbar.org

For Office Use Only

Date Rec: _____

Date Entered: _____

Staff: _____

Staff: _____

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All conference participants will attend plenary sessions & the plenary breakout, but space for law practice breakout sessions is limited. See brochure for the complete schedule. Assignments to breakout sessions will be made on a first-come / first-serve basis according to your preferences.

Law Practice Breakout Sessions

Please number your **top 5** (total, not per day) preferred breakout sessions, where 1 is most preferred. *Failure to indicate preference will result in assignment to available breakouts. (Note: Some sessions repeat with the exception of Family Law – three options – and Child Welfare – four options)*

Thursday, May 12th: Law Practice Breakouts – 2:15-3:30 p.m.

Criminal:

- ☐ All You Wanted to Know About the Sex Offenders Registration Act (SORA) but Were Afraid to Ask
- ☐ Continuing Issues for Sentencing Juveniles Convicted of First-Degree Murder Pursuant to MCL 769.25
- ☐ Court Rule Changes Important for Criminal Appellate Practice
- ☐ There's an Expert for That

Civil:

- ☐ Writing Persuasive Briefs

Civil cont'd:

- ☐ Applications for Leave to Appeal
- ☐ Reply Briefs: The Last Word
- ☐ Motion Practice in the Court of Appeals

Family:

- ☐ The Search for Clarity on Post Judgment final orders

Child Welfare:

- ☐ Top 20 Child Welfare Cases Everyone Should Know

Thursday, May 12th: Law Practice Breakouts – 4:00-5:15 p.m.

Criminal:

- ☐ Oyez+
- ☐ Pandemic Implications on Due Process and Criminal Practice
- ☐ All You Wanted to Know About the Sex Offenders Registration Act (SORA) but Were Afraid to Ask
- ☐ Continuing Issues for Sentencing Juveniles Convicted of First-Degree Murder Pursuant to MCL 769.25

Civil:

- ☐ Effective Oral Argument

Civil cont'd:

- ☐ Amicus Curiae Practice
- ☐ Writing Persuasive Briefs
- ☐ Applications for Leave to Appeal

Family:

- ☐ Immediate Action Required! Appealing Ex Parte, Temporary, and Interim Orders

Child Welfare:

- ☐ The Indian Child Welfare Act (ICWA) After the Fifth Circuit's En Banc Decision in Brackeen v Zinke

Friday, May 13th: Law Practice Breakouts – 10:35-11:45 a.m.

Criminal:

- ☐ Court Rule Changes Important for Criminal Appellate Practice
- ☐ There's an Expert for That
- ☐ Oyez+

Civil:

- ☐ Reply Briefs: The Last Word
- ☐ Motion Practice in the Court of Appeals
- ☐ Effective Oral Argument

Civil cont'd:

- ☐ Amicus Curiae Practice

Family:

- ☐ Rapid Fire Family Law Wrap Up

Child Welfare:

- ☐ Reasonable Effort, Appeals from Removal Orders
- ☐ Giving the Child a Voice on Appeal: The Importance of the LGAL's Participation in Appeals