

CONFERENCE MATERIAL

[Welcome letter from Chief Justice Marilyn Kelly](#)

[Welcome letter from Chief Judge William B. Murphy](#)

[Welcome letter from Foundation Chairperson Mary Massaron Ross](#)

[Welcome letter from Foundation Treasurer Timothy Diemer](#)

[Officers, Committee Members, and Performers of Special Tasks](#)

[Session Moderators and Reporters](#)

Wednesday, June 9, 2010

5:30-7:00 p.m. **Registration and Reception • Garden Gallery/Lobby & Grande Ballroom (first floor)**
An opportunity to socialize with justices, judges, court staff, and fellow practitioners.

Thursday, June 10, 2010

8:00-8:30 a.m. **Registration • Garden Gallery/Lobby**

8:30-8:45 a.m. **Welcome and Opening Remarks • Grande Ballroom (first floor)**
Supreme Court Chief Justice Marilyn Kelly
Court of Appeals Chief Judge William B. Murphy
Foundation Chairperson Mary Massaron Ross

8:45-10:30 a.m. **Plenary • Grande Ballroom (first floor)**
[*The Case for Civility and Collegiality: Fostering Integrity and Respect for the System*](#)
In this plenary session, the results of a survey of the Michigan appellate bench and bar will be presented, followed by a discussion of civility and collegiality in Michigan appellate practice.

10:45-12:00 p.m. **Breakouts • Please match your room number to the room name on the map (all three floors rooms 1 through 10)**
Civility and Collegiality – Intimate Conversations with the Michigan Bench and Bar
All attendees will be assigned to these breakout sessions to discuss their experience with civility and collegiality in Michigan appellate practice.

12:05-2:00 p.m. **Luncheon • Atrium (lower level)**

Theme: Civility & Collegiality

Speaker: Indiana Court of Appeals Judge Margret G. Robb

Judge Robb will address the conference theme of civility and collegiality in the context of Colin Powell's well-publicized rules for leadership.

2:15-3:15 p.m.

Breakouts • Please match your room number to the room name on the map

Technical Issues in Practice Areas

These breakout sessions are designed to offer informational discussions about technical, procedural, and advocacy considerations in handling appeals. Participants are encouraged to select sessions according to their general area of practice including criminal law, civil law, family law, and child welfare and parental termination law. With minor exceptions, the same sessions will be repeated on Friday.

Criminal

[Guilty Pleas & Sentencing Appeals](#)
[\(first floor room 1-Nazareth and room 2-Ex. Board room\)](#)

An overview of the recurring issues involved in appeals after guilty pleas and, in all appeals (plea or trial), preserving guidelines scoring challenges. Includes issues such as conflicting time limits, preservation of issues, sentencing guidelines challenges, and miscellaneous issues arising after sentencing. Discussions moderated by experienced appellate defense counsel and prosecutors.

[Issues & Changes in Criminal Law](#)
[\(second floor room 3-Sarah and room 4-Ruth\)](#)

An experienced prosecutor and experienced defense attorney will lead a discussion on recurrent issues which have yet to be resolved, and issues in pending cases, that will affect the practice of criminal law. Particular emphasis on United States Supreme Court and Michigan Supreme Court cases.

Civil

Effective Brief Writing: Facts & Issues

(second floor room 5-Judith)

Discussion of strategies such as working with an unfavorable record; maximizing the impact of the statement of facts; and creating persuasive argument headings and “questions presented.”

Effective Brief Writing: Preservation & Standards of Review

(second floor room 6-Esther)

Questions about when an argument is really preserved for appeal and what to do if it is not; what if the standard of review is unclear; and what is “abuse of discretion”?

Oral Advocacy

(lower level room 7-Samuels)

Consideration of issues such as whether it is ever better to forego oral argument; dealing with a hostile bench; and introducing an idea for the first time at oral argument.

Applications for Leave

(lower level room 8-Kings II)

Evaluation of what makes for an effective application; when to seek interlocutory relief; and what long-range effects should be considered.

Family

When is a Domestic Relations Order “Final”? *(lower level room 10-Kings I)*

Determining what constitutes a final order in a family law case continues to be a vexing problem for practitioners. This session will explore how the Court of Appeals has interpreted post-judgment orders “affecting custody” and provide attorneys’ suggestions for resolving final order dilemmas.

Child Welfare

The Ins and Outs of Child Welfare Appeals

Training Materials Same as 2:15 Breakout

(lower level room 9-Wisdom)

This session will cover internal handling of child welfare appeals in the Michigan Court of Appeals

and in the Michigan Supreme Court; common technical issues on appeal, including timing, jurisdiction, appeal of right/appeal by leave, transcript production; technical requirements of the appeal (transcripts, record production, etc.); common problems the Court of Appeals sees in child protection appellate filings; and how to get oral argument.

3:30-4:30 p.m.

Breakouts • Please match your room number to the room name on the map

Know Your Court

*Unlock the Mystery – A Tour of the Court
(first floor room 1-Nazareth and room 2-Boardroom)*

Unlocking the mystery – a tour of the Court of Appeals for the less-experienced lawyer and occasional appellate practitioner.

*Know Your Court – Beyond the Facts & Law
(second floor room 3-Sarah and room 4-Ruth and room 5-Judith)*

Experienced practitioners and court staff will address • jurisdiction – statutes, court rules, common mistakes • rules & IOPs on briefing and argument • relief requested – why it matters • getting to know the panel before argument • published and unpublished opinions – common questions.

*Technology Tips & Tricks from Practitioners & Courts
(lower level room 9-Wisdom)*

In this session, tech-savvy appellate practitioners and court staff will discuss how appellate lawyers can make better use of technology in their offices, in their cases, and in their filings with the Court of Appeals. Court staff will also talk about future uses of technology to communicate court letters, notices, orders, and opinions to practitioners and parties.

*Family Law Transcript Problems
(second floor room 6-Esther)*

Transcript problems can be the bane of an appellate lawyer's practice – even more so in family law cases which can involve hearings spread

over several weeks or months (or more!); several different court reporters; Friend of the Court hearings (often on audiotape only); and arbitration hearings. In addition, there is the perennial problem in post-judgment appeals of which hearings should be included in the transcript order. These issues and more will be explored.

Child Welfare: What Advocates Need to Know ****Training Materials Same as 6-10 Breakout****
(lower level room 7-Samuels)

In the first two sessions, practitioners and court staff will begin to discuss issues such as brief-writing best practices, including leave applications in the Supreme Court; internal handling of child welfare appeals in the Court of Appeals and Supreme Court; amicus briefs; common issues on appeal; and must-reads for all appellate lawyers in child welfare cases.

4:45-5:45 p.m.

Plenary • Grande Ballroom (first floor)

Top Tips and Pet Peeves – Emergency Filings

A Court of Appeals Judge and staff from both the Supreme Court and Court of Appeals will provide practice tips on filing and responding to emergency appeals.

6:00 p.m.

Reception and Dinner • Atrium (lower level)

The conference planners have informally dedicated this conference to the memory of our friend, Kathleen McCree Lewis.

The Appellate Practice Section's **Lifetime Achievement Award** will be presented to the Family of appellate attorney **Kathleen McCree Lewis**, who passed away in October 2007. Kathleen was an appellate attorney who was highly regarded in Michigan and nationally, who was a friend to all, and who personally fostered the growth of these conferences with her unflagging enthusiasm, creativity, and professional contributions.

Dinner tables will be hosted by members of the bench.

Friday, June 11, 2010

8:00-8:15 a.m.

Continental Breakfast • Garden Gallery/Lobby

8:15-9:15 a.m.

Plenary • Grande Ballroom (first floor)

[Collegiality Between Parallel Courts - Erie / Reverse Erie / Certified Questions](#)

Panel: The Honorable Marilyn Kelly, Chief Justice, Michigan Supreme Court; The Honorable Robert J. Jonker, Judge, United States District Court for the Western District of Michigan; Mark Cooney, Professor, The Thomas M. Cooley Law School.

Moderator: Matthew T. Nelson, Partner, Warner Norcross & Judd LLP.

This distinguished plenary panel will address the complexities that arise when one court tries to apply another jurisdiction's laws, including certified questions and *Erie* and reverse-*Erie* situations.

9:15-10:30 a.m.

Plenary • Grande Ballroom (first floor)

[Redux – Civility and Collegiality From Advocacy to Sharp Practices and Beyond](#)

Training Materials Same as 6-10 Breakout

“He’s lying.” “She has misrepresented the record.”

“His argument is disingenuous.” Where is the line between zealous advocacy in the appellate courts and incivility between appellate advocates? What is the most effective way to address improper ad hominem attacks by opposing counsel? What role does civility play in the client’s perception of justices? An interactive conversation between appellate advocates and members of the bench.

10:45-11:45 a.m.

Breakouts • Please match your room number to the room name on the map

Technical Issues in Practice Areas

Criminal

[Guilty Pleas & Sentencing Appeals](#)

Training Materials Same as 6-10 Breakout

[\(first floor room 1-Zazareth and room 2-Ex. Boardroom\)](#)

An overview of the recurring issues involved in appeals after guilty pleas and, in all appeals (plea or trial), preserving guidelines scoring challenges. Includes issues such as conflicting time limits, preservation of issues, sentencing guidelines

challenges, and miscellaneous issues arising after sentencing. Discussions moderated by experienced appellate defense counsel and prosecutors.

[Issues & Changes in Criminal Law](#)

****Training Materials Same as 6-10 Breakout****

[\(second floor room 3-Sarah and room 4-Ruth\)](#)

An experienced prosecutor and experienced defense attorney will lead a discussion on recurrent issues which have yet to be resolved, and issues in pending cases, that will affect the practice of criminal law. Particular emphasis on United States Supreme Court and Michigan Supreme Court cases.

Civil

[Effective Brief Writing: Facts & Issues](#)

****Training Materials Same as 6-10 Breakout****

[\(second floor room 5-Judith\)](#)

Discussion of strategies such as working with an unfavorable record; maximizing the impact of the statement of facts; and creating persuasive argument headings and “questions presented.”

[Effective Brief Writing: Preservation & Standards of Review](#)

****Training Materials Same as 6-10 Breakout****

[\(second floor room 6-Esther\)](#)

Questions about when an argument is really preserved for appeal and what to do if it is not; what if the standard of review is unclear; and what is “abuse of discretion”?

[Oral Advocacy](#)

****Training Materials Same as 6-10 Breakout****

[\(lower level room 8-Kings II\)](#)

Consideration of issues such as whether it is ever better to forego oral argument; dealing with a hostile bench; and introducing an idea for the first time at oral argument.

[Applications for Leave](#)

****Training Materials Same as 6-10 Breakout****

[\(lower level room 7-Samuels\)](#)

Evaluation of what makes for an effective

application; when to seek interlocutory relief; and what long-range effects should be considered.

Family

After Your Appeal – Now What?

(lower level room 10-Kings I)

In family law cases, the Court of Appeals rarely imposes a final resolution. Instead, your case will be remanded, often for “proceedings consistent with this decision” and without further elaboration. In addition, in the year or two your appeal was pending, the facts “on the ground” may have changed dramatically. Many panels expressly require the trial court to consider new facts that occurred since the appeal was filed. All of this creates the possibility of “wobble room” for the trial court to convert your victory on appeal into a loss on remand. This session will explore the trial court’s duty on remand as well as other remand-related issues such as asking that the case is assigned to a different trial judge for remand proceedings.

Child Welfare

Briefing & Oral Advocacy in Child Welfare Appeals

Training Materials Same as 6-10 Breakout

(lower level room 9-Wisdom)

In the second of two sessions, practitioners and court staff will continue to discuss issues such as brief-writing best practices, including leave applications to the Supreme Court; internal handling of child welfare appeals in the Court of Appeals and Supreme Court; amicus briefs; common issues on appeal; and must-reads for all appellate lawyers in child welfare cases. (Part I offered as part of Know Your Court.)

12:00-2:00 p.m.

Dewitt C. Holbrook Memorial Fund Luncheon • Grande Ballroom (first floor)

Theme: Advocacy

Speaker: Bryan A. Garner

In this entertaining and educational presentation, nationally renowned lexicographer, teacher, and lawyer, Bryan A. Garner will discuss advocacy using video clips

of interviews with eight members of the United States Supreme Court and judges at all levels.