



Dear Colleagues:

It is my privilege, as co-chair of the Michigan Appellate Bench Bar Conference Foundation, to welcome you to the Ninth Michigan Appellate Bench Bar Conference. This year's theme, *The Importance of the Facts and the Appellate Record to Responsible Decision-Making and Appellate Advocacy*, offers us a chance to reflect on an aspect of the appellate process that rarely forms the focus of discussion. It is a truism that factfinders at the trial courts deal with the facts and appellate courts are focused on the law. But it is a truism that, like many such statements, overstates the point – and unduly diminishes the importance of facts to the appellate process and appellate decision-making.

The quality of appellate decisions depends in part on the amount, accuracy, and relevancy of the information that the appellate court obtains as part of the process. I hope that during this conference, we will be able to ask what kind of information is important to the decision-making process, how it is best evaluated, what sources provide the information, and how do appellate courts use the information.

I began thinking about these questions long ago when it was my privilege to clerk for Justice Patricia J. Boyle, a scholar who thought deeply about matters of appellate process and the interplay between the Supreme Court's role and that of the trial court. Another source that has guided my thinking in this area is Thomas V. Marvell's book, *APPELLATE COURTS AND LAWYERS: INFORMATION GATHERING IN THE ADVERSARY SYSTEM*. Appellate practice is not just about the law; it requires careful, thoughtful focus on the connection between abstract rules (constitutions, statutes, rules of common law, contract provisions) and the facts of the particular case- the law school question - how does the rule apply to these facts? And for a court of last resort when deciding what cases to take, are these facts outliers or do they offer the basis for a rule of broad application? Is this record sufficiently developed that we will have the necessary information to decide the case in a way that results in a sound rule of broad application? Must we take the case despite concerns about the factual development and, if so, is there a way to narrow the ruling or remand for further factual development.

The process by which appellate courts undertake to fulfill their functions is both critically important and inherently difficult, and the just outcome of decisions depends in part on adequate fact-gathering at the trial court stage, but also adequate analysis of the facts on appeal. So we hope in this conference to have the opportunity to jointly consider how we can best ensure that the information-gathering process at the appellate stage is as effective as possible – in terms of the advocacy of the lawyers, the processing and review of cases on appeal, and the analysis and decision-making by the judges and justices issuing decisions.

At the conference, we will also welcome former Solicitor General Paul Clement as our keynote luncheon speaker. And we will hear from the judges on the Court of Appeals

ATTORNEYS & COUNSELORS AT LAW

and the justices on the Michigan Supreme Court in plenary sessions and participating in breakout sessions. At the dinner, Michael J. Talbot, former Chief Judge of the Michigan Court of Appeals, will receive the prestigious Appellate Practice Section's Lifetime Achievement Award.

I am grateful for the enthusiastic support of the Michigan Supreme Court and the Michigan Court of Appeals, both of which are co-sponsors of the conference. The justices, judges, chief clerks, and court staff from both courts have worked to help make the conference a success. I am also grateful for the hard work of co-chair, Phil DeRosier, Treasurer, Tim Diemer, the planning committee and subcommittees and our Foundation staff, all of whom have helped to make this conference a success.

I hope you enjoy this time to meet your colleagues outside the courtroom and away from our day-to-day tasks. I hope that this chance to talk with each other informally about the great work that we are all privileged to be engaged in will renew your commitment to your role in the process. And I thank you for the opportunity to serve as your co-chair, a role that renews my own love of the law each time we plan and participate in these bench and bar conferences.

Sincerely,



MARY MASSARON
Direct Dial: (313) 983-4801
E-mail: mmassaron@plunkettcooney.com

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