

Motion Practice in the Michigan Appellate Courts: Valuable Insights from the Insiders at the APS & YLS Webinar

By Mark Magyar

On March 23, 2023, the Appellate Practice Section (APS) and the Young Lawyers Section (YLS) of the State Bar jointly presented the webinar, “Let’s Get Moving! Motions in the Michigan Supreme Court & Court of Appeals.” I had the opportunity and great pleasure to be the practitioner-representative on the panel for the webinar, which was designed and moderated by my fellow APS council member, Saraphoena Koffron.

But the real highlight and value-add of the webinar was the star-studded composition of the remainder of the panel. Attendees of the webinar benefited from the invaluable practical pointers and insights from panelists who are real insiders of the appellate system, including: Judge Brock Swartzle of the Michigan Court of Appeals; Daniel Brubaker, Chief Commissioner of the Michigan Supreme Court; Clare Cylkowski, District Commissioner for the Court of Appeals; and Gary Chambon, District Clerk for the Court of Appeals. This pre-eminent panel no doubt directly resulted in the exceptional attendance of 241 registrants for this webinar.

Topics of the webinar ranged from general to specific. The panel discussed the sources of the governing rules, internal operating procedures and case law instructing appellate motion practice, including its nimbleness and flexibility enabling the appellate courts to address the relief needed in any particular case. The insider-panelists provided immensely useful information regarding the differences between administrative and substantive motions, the types of motions that fall into these categories, and how and when such motions are handled by the courts.

The panel also discussed specific rules and specific motions. For example, did you know that some motions in the Court of Appeals require a supporting brief while others do not? Or that litigants are permitted as of right to file an answer to a motion for reconsideration in the appellate courts, unlike in the trial courts where no response is permitted unless requested by the trial court? Or that some types of motions, particularly motions for extension of time to file briefs, can be made through a court form available on the courts’ website? The panel also explored some of the nuances differentiating the handling of appeals of right versus applications for leave to appeal. These are just a few of the many topics explored by the intimately knowledgeable panel as they provided best practices pointers along the way.

Some (but certainly not all) of the specific types of motions discussed included: motions to dismiss an appeal for lack of jurisdiction or for other reasons, such as failure to pursue in conformity with the rules; motions to stay pending appeal; motions to expedite an appeal and the difference between a motion to expedite and a motion for immediate consideration; motions to expand the record on appeal; and motions for clarification, reconsideration, rehearing, and reinstatement (and the differences between them).

Finally, perhaps some of the most useful information imparted by the insider-panelists was their expressions of their pet peeves of incorrect filings or other procedural errors by litigants, as well as good practices that they see from litigants. I could repeat them here, but, better yet, you can check out the complete deck of slides presented at the webinar at [2023-03-23 APS YLS Let’s Get Moving Webinar Slides.pdf](#) (open link). (For any trouble accessing the link, please contact Saraphoena B. Koffron at sbk@austin-koffron.com.)

Mr. Magyar is a member in the Lansing office of Dykema Gossett, PLLC and resides in Grand Rapids. He focuses his practice on business litigation and appeals. He is a council member for the State Bar’s Appellate Practice Section.

