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News Story

Let's go to the video

Attorneys say putting high court oral arguments online gives them a leg up on how to best prepare

By Douglas J. Levy

In 2007, after 11 years in practice, appellate attorney Phillip J. DeRosier finally got to stand in front of the seven Michigan Supreme Court justices and argue a case.

He said that was the easy part.

The hard part was self-assessment.

It's not that he didn't want to look at himself at the stand. Rather, DeRosier of Dickinson Wright PLLC had to arrange for his in-laws a few towns over to record his argument via Michigan Government Television (MGTV), because his city's cable provider doesn't carry MGTV.

And ordering a DVD of his argument through MGTV meant paying \$25 and waiting a number of weeks for it to arrive.

Now, all DeRosier has to do is turn on his computer.

Thanks to a new joint venture between the Supreme Court and the Michigan State Bar, Supreme Court oral arguments and administrative conferences and hearings can be viewed 24 to 48 hours afterward via online, on-demand video streaming.

Right now, the site (www.michbar.org/courts/virtualcourt.cfm) only features a welcome message from Chief Justice Marilyn Kelly and coverage of the court's July 15 administrative conference. The high court has recessed for the summer, so no oral arguments will be posted until October.

But attorneys like DeRosier, who specialize in appellate work, say this new service will impact their practice in many positive ways once the "fall season lineup" begins.

For example, he said, it'll be helpful to see other attorneys presenting their arguments.

"You get a feel for what works, what doesn't work, what matches up with your own style," DeRosier said. "You might get some ideas on how to present things, and there's also just reaching a comfort level about how the court operates and how oral arguments go. No matter how many times you [litigate], it always benefits you to see how others are doing it."

Meet the justices

The video feeds also allow for attorneys to get to know the seven justices who ask those questions.

"Obviously if you're a new attorney, you want to see what's going on and learn what it's like to be in front of that court," said Jill M. Wheaton of Dykema Gossett PLLC. "But even if you're a more seasoned attorney, because the bench changes over time, there are new judges with new styles, [and] the questioning may differ from issue to issue."

Wheaton said that's the case with Justice Diane M. Hathaway, who has been on the bench for only eight months.

"The more information you have about the judges you're arguing in front of, the better," said Barbara H. Goldman, chair of the Appellate Practice Section of the State Bar of Michigan and a Southfield-based solo practitioner. "... [I]t's always to your advantage as an oral advocate to be able to see how the judges behave on the bench as opposed to just reading what they write. It certainly will be a plus."

Just as much of a plus is how non-attorneys will view the leaders on the Hall of Justice's top floor, said Anthony F. Caffrey III of Cardelli Lanfear & Buikema PC in Grand Rapids.

"I think the population is very skeptical and cynical these days, and if anything, it'd be great if the layperson can become more interested in what the court does," he said. "It has as much as impact on the law as any aspect of government."

Gerald F. Posner of Posner Posner & Posner in Detroit concurs, adding that even though Supreme Court opinions are published online, they give the public only one part of the process.

"Transparency is always critical to the public's faith in the judicial system," he said, adding that the videocasts would contribute to "the public's understanding of what goes on in the Supreme Court and how issues get argued and decided."

Who's watching?

Wheaton acknowledges that, even though oral arguments are recorded on video and shown via MGTV, there's another element at play here: a worldwide audience that's now a mouse click away.

And in a society that turns people into unintentional overnight sensations via YouTube, the courtroom cameras could make attorneys a little more self-conscious.

"One does try to be careful in [the court] setting anyway, because what you say may turn up in an opinion somewhere, so you do have to pay attention to your argument even without the external witness, so to speak," Wheaton said. "But yes, it does add a little extra dimension that wasn't there before."

Liisa R. Speaker of the Lansing-based Speaker Law Firm PLLC added that the on-demand aspect of it also will help quash any debate over, well, any debate.

"If people are taking things [a justice said] out of context, it will make it easier for people to respond, because there's easy access, to say, 'Look, that really wasn't what was going on when the justice asked that question and this person responded,'" Speaker said.

"It may not be my case, but it might really give me insight into the problems that the justices have. Just reading the opinion may not give me the full flavor of what issues they had in that specific case, the things that don't come out of the opinion. Because you hear it in their questioning, you may be able to try to resolve it in *your* case."

And when it comes to "your case," the video feed provides instant self-analysis.

"You don't remember after your argument every little question that was asked," she said.

Shifting viewership

Bill Trevarthen, executive director of the nonprofit MGTV, said he doesn't feel the online streaming will take away from MGTV viewership.

If anything, he said, it emphasizes important differences between the two mediums.

"Don't forget, we're carrying [oral arguments] live," Trevarthen said, "and there's still a lot of power to live television."

He said that MGTV is one of only three government-oriented networks in the country that, like CSPAN, is funded by the cable industry to operate. But, Trevarthen added, other states that don't run this way are usually funded and produced through those respective states' legislature, and can have a higher bandwidth to provide its content than MGTV does.

As such, he said MGTV has submitted grant proposals to find funds for a bigger bandwidth so that current and archived legislative sessions, governor's addresses and Supreme Court oral arguments can be streamed online.

"It's inevitable, down the road, all of us will be looking at things like podcasts, because this is the direction that technology is going," said Trevarthen, who mentioned that 13 years of MGTV archives are available for viewing at Michigan State University. "People want things when they're available."

But with the Supreme Court video streaming, the need for DVDs will be reduced and those sales will be shifted away from MGTV. When asked whether there's concern about the network's DVD sales going down, Trevarthen said, "We will lose some money on that, absolutely. While it's not a huge amount of money for us [to produce and sell the DVDs], in these tight times everything counts, so we're a little concerned on that."

Ultimately, Trevarthen said, the message is the same, even if there are two visual mediums to deliver it.

"I don't think this is a competitive thing at all," he said. "It's a goal we share that this information be out there and available to people."

If you would like to comment on this story, please contact Douglas J. Levy at (248) 865-3107 or douglas.levy@mi.lawyersweekly.com. On the Web: www.michbar.org/courts/virtualcourt.cfm

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