

## APPELLATE SUBCOMMITTEE REPORT

*Kendyl Hanks, Subcommittee Chair*

At the ABA Section of Business Law Fall Committee Meeting in Washington, D.C. in November, 2007, the Appellate Subcommittee of the Business and Commercial Litigation Committee presented a well-attended and highly successful Committee Forum entitled *Wingman or Backseat Driver: Retaining Appellate Counsel to Maximize "Mission Critical" Business Litigation Strategies*.

Chair of the Appellate Subcommittee **Kendyl T. Hanks** (Senior Associate in the Appellate Practice Group of Haynes and Boone, L.L.P. in New York and Dallas), moderated the panel, which consisted of two of the country's top appellate advocates who provided a practitioner's perspective on the value of appellate counsel: **Beth S. Brinkmann**, Partner and Chair, Appellate Practice Group, Morrison & Foerster LLP, Washington, D.C., and **Lynne Liberato**, Partner in the Appellate Practice Group and Member of the Board of Directors of Haynes and Boone, LLP in Houston, Texas. Providing a "view from the bench" were esteemed jurists **Hon. Judge Thomas Ambro, Third Circuit Court of Appeals** and **Hon. Justice Henry DuPont Ridgely, Delaware Supreme Court**. These panelists shared with the audience their extensive experience in both state and federal courts, and at both the trial and appellate levels, as they discussed the variety of ways appellate counsel can help business and industry clients maximize long-term and "mission critical" business litigation strategies before and after the appeals process begins.

The panelists explored, from the business perspective, how appellate counsel can assist both clients and the courts in clarifying legal issues, preserving error, and maximizing

efficiencies by applying their expertise in appellate procedure, legal briefing and argument. The panelists discussed why—and when—business clients should consider hiring appellate counsel, and did an excellent job of making the discussion relevant to non-appellate practitioners and corporate lawyers. Specifically, they discussed how appellate counsel often do much more than handle appeals—they can add value and increase efficiency in the pretrial process. They can also be of great value to non-litigants seeking to have their voices heard in significant cases moving through the U.S. Supreme Court and other appellate courts through the use of amicus briefs. The program was well attended and feedback was positive, and has led to discussion of similar panels in the future.

The Subcommittee has also developed ideas for future panels and programs. Specific proposals include a panel pertaining to developments and problems in the area of business torts (specifically contract/fraudulent inducement and fiduciary duty), and an integrated panel discussion of the process of affecting policy change through lobbying and appellate law, which we anticipate will include government affairs specialists, industry group representatives, appellate lawyers, and will address significant changes in national policy that have been brought about by lobbying efforts on the one end, and appellate advocacy (*e.g.*, through amicus briefs in Supreme Court cases) on the other. We will explore opportunities to co-sponsor such a program with other committees and, possibly, sections. And of course, new ideas are always welcome!

We are always looking for new participants and ideas—so sign up online, or contact the Subcommittee Chair, Kendyl Hanks of Haynes and Boone, e-mail: [kendyl.hanks@haynesboone.com](mailto:kendyl.hanks@haynesboone.com). For more information, visit our Subcommittee website at: <http://www.abanet.org/dch/committee.cfm?com=CL150009>.