

## APPELLATE PRACTICE SECTION

April 20, 2007

Grand Rapids, Michigan

*Present:*

Linda Garbarino  
Paul Bernard [phone]  
Barbara Goldman  
John Bursch

Megan Cavanagh [phone]  
Judith Curtis [phone]  
Phillip DeRosier [phone]  
Tim Diemer [phone]  
Christina Ginter [phone]  
Deb Hebert [phone]  
Marcia Howe [phone]  
Anica Letica [phone]  
Roz Rochkind [phone]  
Gerald Posner  
Stephen Rhodes  
Mary Massaron Ross [phone]  
Liisa Speaker  
Vic Valenti [phone]

*Excused Absences:*

Janet Boes  
Mark Cooney  
Anica Letica  
Mike Updike  
Jill Wheaton

*Guests:*

Tim McMorrow

I. Welcome and call to order. The meeting was called to order at 2:25 p.m. The Chair thanked John Bursch for making the meeting arrangements and, on behalf of the Council members from the metro Detroit area, acknowledged the sacrifices made by members from Lansing and Grand Rapids to attend meetings in Farmington Hills.

II. Approval of minutes of meeting of March 23, 2007.

It was **moved** (Liisa Speaker) and **seconded** (Gerald Posner) that the minutes of the meeting of March 23, 2007 (previously circulated) be approved. *Motion carried* (unanimous).

III. Treasurer's report.

John Bursch reported that the Section is in "great shape" financially.

IV. Committee reports.

A. Court Liaison/Rule Comment.

1. ADM File No. 2006-44, proposed amendments to MCR 7.306 (amicus briefs). The Council endorsed "Proposal B" at the March 23, 2007 meeting, but Mary Massaron Ross had indicated some concerns with the adoption of a rule providing that an amicus brief must be filed within 28 days of the brief of the party whose position it supports. The consensus of the group was that there should be some recommendation that the Supreme Court continue "liberally" to grant motions to file amicus briefs outside the 28-day period. John Bursch drafted an addition to the

Section's comment, which he read out loud. It was **moved** (Liisa Speaker) and **seconded** (Gerald Posner) that the additional language be incorporated into the Appellate Practice Section's comment letter on ADM File 2006-44. *Motion carried* (unanimous). John will e-mail the text to Linda Garbarino.

2. Suggested revisions to MCR 7.204(a) proposed by Noreen Slank. No report.
- B. Michigan Court Practice Committee. No report. The year 3 "fast track" comment will be discussed at the May meeting.
- C. Publications.
  1. Newsletter. The Spring 2007 issue of the Appellate Practice Section newsletter was mailed during the week of April 15, 2007, to general acclaim. Deb Hebert has already received one article for the next issue; submission deadline is June 9, 2007.
  2. Michigan Bar Journal appellate practice theme issue. Marcia Howe described the issue as "on track" and expects to incorporate material from the 2007 Michigan Appellate Bench Bar Conference.
- D. Federal Practice.

Paul Bernard indicated that there are no plans to present a federal practice program in 2007-2008, in part because there will be federal judges participating in the 2007 Annual Meeting program.
- E. Technology. No report.
- F. Economics of Appellate Practice. No report.
- G. Good Deeds.
  1. Michigan Youth in Government. No report.
  2. Michigan Supreme Court Historical Society. Linda Garbarino reported that the Council "showed a presence" at the April 18, 2007 luncheon.
  3. 2007 Michigan Appellate Bench Bar Conference. The Michigan Appellate Bench Bar Foundation has requested \$1500 to defray expenses of the 2007 conference. It was **moved** (Deb Hebert) and **seconded** (Mary Massaron Ross) that the Appellate Practice Section donate \$1500 to the Michigan Appellate Bench Bar Foundation to underwrite expenses of the 2007 Michigan Appellate Bench Bar Conference. *Motion carried* (unanimous).
- H. Legislative Action. No report.
- I. Circuit Court Appellate Rules. No report.
- J. 2007 Annual Meeting.
  1. Program. Paul Bernard said that he had asked former Justice Charles Levin to particulate, but had not received a response yet.
  2. Presentation of the Appellate Practice Section Lifetime Achievement Award. Linda Garbarino asked Kari Brandel, events manager of the State Bar of Michigan, about presenting the award during one of the State Bar of Michigan Annual Meeting functions. She has not yet received a response.

3. Advertising. There was discussion of whether the Section should purchase an ad in the Michigan Bar Journal, to publicize the program and/or the award presentation and, if so, when. Tabled until it has been determined whether the award will be presented as part of the Section's program or at a State Bar of Michigan luncheon. Paul Bernard and Janet Boes should also work together to get information about the meeting onto the Section's web site.

K. 2007 Michigan Appellate Bench Bar Conference.

1. Registration. Mary Massaron Ross noted that registration to date was behind that for previous conferences and asked all Council members to urge friends and colleagues to sign up.
2. Invitation to past recipients of the Lifetime Achievement Award. Mary reported that both Judge Harold Hood and Justice Patricia Boyle had indicated that they were sincerely touched by the invitation to the Thursday evening dinner, but that neither of them would be able to attend. Both would like to be included in a comparable future event. Justice Charles Levin had not yet determined if he would be available.

V. Old Business

- A. SB 220 (reduction in appropriations for FY 2007). The Appellate Practice Section's comment opposing the proposed reductions in funding for the Court of Appeals and Supreme Court was sent to the House Appropriations Committee. See agenda packet.

VI. New Business.

- A. Annual Report. Linda Garbarino asked committee chairs to send her their annual reports by May 17, 2007, so that she can prepare the annual report for the Appellate Practice Section.
- B. HB 4501 (proposed increases in fees in the Court of Appeals).

HB 4501 would both increase filing and other fees and eliminate the "sunset" provision for the 2003 fee increases. It would also incorporate an automatic rate increase for transcripts, tied to the cost of living. It was noted that, while that the proposed fee increases were roughly in line with general price increases, the base amount, the result of the 2003 legislation, represented a 50% increase over the previous level.

Linda Garbarino reported that the State Bar of Michigan had not yet adopted a position and plans to review the Appellate Practice Section's recommendation. It was **moved** (Gerald Posner) and **seconded** (Vic Valenti) that the Appellate Practice Section oppose HB 4501. The Chair called for discussion.

Members noted that the Section had supported a fee increase in 2003, when it was tied to an increase in the Court of Appeals' research staff and the implementation of the expedited summary disposition docket. The Section opposed a second series of proposed increases, put forward in the spring of 2006, which were requested as a means of supplementing the court's FY 2007 appropriation.

Several members expressed strong concerns that the increased cost of appeals would reduce access to justice for individual clients and small firms. Many members were disturbed that the new revenue from the 2003 fee increase had simply been offset from the court's general fund appropriations.

The Chair requested a "straw vote" on whether any members supported HB 4501. None did. John Bursch offered a "friendly amendment" to the motion, that the Section's position avoid making a connection between the bill and SB 220 (see Item V(A), *supra*). Jerry Posner accepted the amendment. John will draft a proposed amendment.

A vote will be conducted via the Appellate Practice Section Council listserv the week of April 23, 2007.

- C. Letter from Judge Avern Cohn. Judge Avern Cohn, of the United States District Court for the Eastern District of Michigan, sent a letter, dated April 12, 2007, to Linda Garbarino, apparently suggesting that the 2007 Michigan Appellate Bench Bar Conference should address issues relating to the Michigan Supreme Court. After discussion, it was agreed without motion that Linda would write to Judge Cohn and suggest that the topic would make an interesting article for the Appellate Practice Section newsletter. Deb Hebert will provide Linda with deadline information and submission requirements for the newsletter.
- D. Section briefs. Paul Bernard will forward information about the Annual Meeting to John Bursch. There should also be a solicitation of articles for the newsletter.

VII. Future meetings.

- A. Friday, May 18, 2007, 2:00 p.m., Farmington Hills. Call-in number 1-800-270-1153, pass code 124048#.
- B. June meeting. It was agreed that the June 2007 meeting would be a dinner meeting, at 5:00 p.m. on Thursday, June 21. Linda Garbarino will decide on the location.

VIII. Adjournment

It was **moved** (Gerald Posner) and **seconded** (Stephen Rhodes) that the meeting be adjourned at 4:22 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman  
Secretary