

**APPELLATE PRACTICE SECTION**

April 15, 2011  
Grand Rapids, MI

**MEETING MINUTES**

*Present:*

Megan Cavanagh (Chair)  
Liisa Speaker (Chair-Elect)  
Marcia Howe (Treasurer) (phone)  
Phil DeRosier (Secretary)

*Excused Absences:*

Jill Wheaton  
Danielle Schoeny  
Liz Sokol  
Paul Bernard (Ex Officio)

Geoff Brown  
Judith Curtis (phone)

*Guests*

Tim McMorrow  
Court of Appeals Judge David Sawyer

Jerry Posner  
Stuart Friedman  
Nancy Dembinski  
Anthony Caffrey  
Noel Massie  
Stephanie Morita (phone)  
Ron Lederman (phone)  
Graham Crabtree  
Gaetan Gerville-Reache  
Beth Wittmann (phone)  
Lauren DuVal Donofrio (phone)  
Steve Rhodes (phone)  
Christina Ginter (Immediate Past Chair)  
Barbara Goldman (Ex Officio)

I. Welcome and Call to Order

A. Megan Cavanagh called the meeting to order at 2:04 p.m.

II. Approval of Minutes

A. Liisa Speaker **moved** and Jerry Posner **seconded** that the March 18, 2011 minutes be approved. *Motion carried* (unanimous).

III. Treasurer's Report

A. Marcia Howe reported that the Section has a balance of approximately \$31,000.

IV. Committee Reports

A. Court Liaison/Rules Comment (Ron Lederman / Phil DeRosier)

1. Phil DeRosier introduced Gaetan Gerville-Reache's proposal for an amendment to MCR 7.205 that would permit reply briefs at the application stage as a matter of right. There was discussion concerning various issues, such as whether there should be a 14- or 21-day deadline, whether there should be a page limit, whether such a rule change would make the filing of a reply brief standard of care, and how filing a reply brief might be affected by a late answer.
  2. There was also discussion about the extent to which motions for leave to file are granted under the current rule. A few Council members shared their personal experiences. Judge Sawyer stated that on panels on which he has participated, such motions are usually granted.
  3. Gaetan will draft a proposed rule for the Council's consideration. A straw vote indicated that a majority of Council members would favor a 14-day deadline and a 10-page limit.
  4. Megan Cavanagh will contact Larry Royster as to any potential economic impact on the Court.
- B. Michigan Court Practice (Beth Wittmann)
1. No report.
- C. Publications (Nancy Dembinski / Liz Sokol)
1. Nancy Dembinski reported that the first issue for 2011 was submitted to the State Bar, but that it has not yet been sent out. Geoff Brown and Ron Lederman have volunteered to write articles for the next issue. Due to the delay in the first issue coming out, Nancy will circulate a revised publication schedule.
- D. Technology (Barbara Goldman / Geoff Brown)
1. Barbara Goldman suggested a future seminar on cloud computing.
- E. Federal Practice (Jill Wheaton)
1. No report.
- F. Legislative Action (Graham Crabtree)
1. Graham Crabtree reported that two judiciary budget bills are being considered by the Senate and House judiciary committees. The Senate Bill reflects a 1.3% decrease in the judiciary's budget, while the House Bill reflects a 1.7% decrease.

2. There was discussion about the movement in the Legislature, the Governor's office, and the Supreme Court to reduce the size of the judiciary and how the various proposals might affect the Court of Appeals. It was reported that Governor Snyder does not intend to fill the two current vacancies on the Court of Appeals, and that all proposals share a common goal of eventually reducing the number of Court of Appeals judges from 28 to 24.
- G. Good Deeds (Anthony Caffrey/Danielle Schoeny)
1. No report.
- H. Economics of Appellate Practice (Stephanie Morita / Liisa Speaker)
1. Liisa Speaker reported that seminar notices have gone out and that registrations are starting to come in. Liisa will monitor the registrations and consider whether additional marketing is needed.
  2. Gaetan Gerville-Reache will contact Matt Nelson about participating on the panel in order to provide a large firm perspective.
  3. Stu Friedman has also volunteered to be on the panel.
- I. Ad Hoc Committee on Record Production (Judith Curtis / Geoff Brown / Gaetan Gerville-Reache)
1. No report.
- J. Annual Meeting (Liisa Speaker)
1. There was discussion regarding how to increase attendance. Liisa Speaker is working on putting a panel together.
  2. The Council agreed to give Liisa discretion regarding food for the meeting.
  3. There was discussion regarding the process for publishing opinions and whether the rule should be changed to allow nonparties to request publication. Judge Sawyer discussed how panels generally approach publication of opinions.
- V. New Business
- A. Appointee from APS on State Bar Committee on Unauthorized Practice of Law.
1. The Council agreed that it would not appoint a representative from the Section.

- B. Michigan Supreme Court Historical Society – request for renewal of annual corporate membership (\$1,000) and purchase of a table at the annual luncheon (\$280).
  - 1. Geoff Brown **moved** and Liisa Speaker **seconded** that the Section renew its annual membership and purchase a table. *Motion carried* (18 in favor; 1 opposed; 1 abstention).

VI. Unfinished Business

- A. Proposed Rule Changes – Gaetan Gerville-Reache
  - 1. See prior discussion.
- B. ADM 2008-10 (Amendment to MCR 6.425, 7.210)
  - 1. The proposed amendment would require a trial court imposing a minimum sentence outside the recommended minimum range to explain its reasons in a SCAO-prescribed “sentencing guideline departure” form, in addition to stating those reasons on the record.
  - 2. Megan Cavanagh reported that the Supreme Court declined to adopt the proposed amendment, which the Section had opposed.
- C. ADM 2008-28 (Amendment to MCR 6.005)
  - 1. The proposed amendment would require appointed defense counsel in a criminal case either to file a substantive response to a prosecutor’s interlocutory appeal or notify the Court of Appeals that the lawyer does not intend to do so.
  - 2. Megan Cavanagh reported that the Section’s comment (supporting the proposed amendment) has been submitted.
- D. ADM 2010-05 (Amendment to MCR 2.112, 7.206, 7.213)
  - 1. The proposed amendment would establish new procedures for Headlee Amendment actions.
  - 2. Megan Cavanagh reported that the Section’s comment has been submitted.
- E. Funding to send Liisa Speaker to the 2011 State Bar of Michigan Leadership Forum (June 10-11, Grand Hotel, Mackinac Island) was approved by acclamation.
- F. Megan Cavanagh reported that a planning meeting for the 2013 Bench Bar Conference has been scheduled for Tuesday, May 31, 2011 at 3:00 pm in the Supreme Court’s Detroit conference room.

VII. Next Meeting

A. May 20, 2011, Embassy Suites, Livonia.

VIII. Adjournment

A. The meeting was adjourned by acclamation at 3:09 p.m.

Respectfully submitted,

Phillip J. DeRosier

Secretary