

**APPELLATE PRACTICE SECTION COUNCIL MEETING MINUTES**  
**December 16, 2016, 2:00 p.m.**  
*Teleconference*

*Council Members Present:*

Gaëtan Gerville-Réache (Chair)  
Joanne Geha Swanson (Chair-elect)  
Bridget Brown Powers (Secretary)

Anne Argiroff  
Scott Bassett  
Graham K. Crabtree  
Judith A. Curtis  
Conor B. Dugan  
Christina A. Ginter  
Barbara H. Goldman  
Bradley R. Hall  
Richard C. Kraus  
Lauren M. London  
Jerry F. Posner  
Larry J. Saylor

*Ex-Officio Present:*

Nancy Vayda Dembinski  
Liisa Speaker  
Beth A. Wittmann

*Excused Council Member Absences:*

Phil DeRosier  
Stephanie Simon Morita (Treasurer)  
Valerie Newman  
Ann Sherman  
Jill Wheaton (*Ex-officio*)

*Unexcused Council Member Absences:*

Mark Magyar

*Others in Attendance:*

Joe Richotte

**I. Welcome and Call to Order:** The meeting was called to order at 2:02 p.m.

**II. Approval of Minutes**

Scott moved to approve the minutes of the November 18, 2016, meeting. Joanne seconded. The motion was approved.

**III. Special Agenda Items**

A. **Office of Secretary:** A motion was made by Nancy and seconded by Jerry to elect Bridget to the office of Secretary to fill the position vacated by Liz, as a result of her recent resignation. (Bridget was not present for the discussion or the vote.) The motion was approved.

- B. **Open Council Seat:** Bridget's election to the office of Secretary has created a vacancy on the Council. Gaëtan asked that all persons interested in filling the balance of Bridget's term contact a member of the Nominating Committee or Gaëtan. Interested persons should be invited to attend our January 20, 2017, Council meeting.
- C. **Special meeting report:** Gaëtan reported that he called a special meeting of the Council via its listserv on December 2, 2016, after he was contacted by the State Bar advising that the Board of Commissioners postponed its deliberation on ADM File No 2015-02 to provide time for us to comment. Anne made a motion, seconded by Scott, to provide a position statement opposing the application of MCR 7.213 to domestic relations appeals and recommending that the amendment specifically exclude domestic relations appeals. The motion passed by email vote: 13 in favor, none opposed, and 10 not voting. Gaëtan further reported that he thereafter sent the position statement to the State Bar.

#### IV. **Treasurer's Report**

No report.

#### V. **Committee Reports**

- A. **Court Liaison/Rules Comment (Phil/Larry/Joanne):** Larry reported that, with respect to the proposed amendments of MCR 7.121, regarding concealed pistol license appeals, the Committee has no comment. With respect to the proposed amendments of MCR 5.801, *et al.*, Larry reported that the Committee defers to the recommendations previously made by our probate practitioners, except that the Committee notes two typos in MCR 7.202. After discussion, Jerry made a motion, seconded by Larry, to recommend to the Board of Commissioners that the amendments be supported with two minor concerns: Correct the reference to MCR 5.801(B) to MCR 5.801(A) in MCR 7.202(6)(a)(vii) and combine the proposed MCR 7.202(6)(vi) with the existing MCR 7.202(6)(i) to avoid duplication. The motion passed unanimously.
- B. **Michigan Court Practice (Beth/Joanne/Larry):** No report.
- C. **Publications (Liz/Nancy/Bridget/Lauren L./Howard):** Nancy reported that the next issue of the *Appellate Practice Journal* is running behind schedule, but should go out soon. The next deadline is February 15, 2017, by which Liisa and Jill will be submitting articles. A discussion was had regarding whether one of the Publications Committee members should assume the role of Committee Chair, inasmuch as Liz has resigned as Secretary and will not seek to finish the balance of Bridget's term. Nancy will follow up with the Committee members.
- D. **Technology (Barb):** No report.

- E. **Federal Practice (Jill/Richard):** Gaëtan reported for Jill that she will not have enough time to organize a federal practice seminar in the forthcoming year and will need someone to help. Richard reported about changes to the 6<sup>th</sup> Circuit's rules regarding time extensions and agreed to write a blurb summarizing same for the next issue of the *Appellate Practice Journal*.
- F. **Legislative Action (Graham):** Graham reported that the Michigan Legislature wound up its lame-duck session on December 15, 2016. Energy legislation and legislation raising the speed limit to 75 mph on certain roadways were passed; however, nothing of interest to appellate practitioners occurred.
- G. **Good Deeds (Joanne/Christina):** Joanne reported about possible good deeds activities for the coming year. Gleaner needs volunteers for late January or early February 2017. And, after it gets warmer, a Greening of Detroit or Habitat for Humanity activity could be held.
- H. **Economics of Appellate Practice (Brad/Judith/Liisa):** No report.

Annual **Meeting (Joanne):** Joanne reported that she is thinking about having the program theme be something that dove tails with the readability of e-briefs. This would be a topic of interest for both appellate practitioners and circuit court participants. Joanne further reported that the annual meeting is scheduled for September 28-30, 2017, at the Cobo Center in Detroit; however, the exact day and time is to be determined. It is likely that the State Bar will schedule it for Thursday afternoon (September 29), consistent with previous years.

- I. **Bench Bar (Phil):** Barb reported that the next Bench Bar Committee telephone meeting is January 5, 2017.
- J. **Ad-Hoc Committee on E-briefing (Gaëtan, et al.):** Gaëtan reported that he will call a telephone meeting in January. Jerry advised that he would like to be added to the Committee.

## VI. New Business

- A. **ADM File No. 2016-29 – Proposed Amendments of MCR 7.121:** This item was previously discussed.
- B. **ADM File No. 2016-32 – Proposed Amendments of MCR 5.801, et al:** This item was previously discussed.
- C. **ADM File No. 2014-25 – Proposed Amendments of MCR 7.306 and MCR 7.316:** After discussion, it was moved by Scott and seconded by Anne that the Section take the following position with regard to ADM File No. 2014-15: That any mediations in

the Michigan Supreme Court exclude domestic relations cases, for the reasons stated in the previous position taken with regard to MCR 7.213; that the Section shares in the concerns stated by Justice Markman in his concurring comments in the Order; and that, if a case were ordered to mediation, then the Court would listen to the mediator's recommendation(s) with regard to tolling or extending deadlines. The motion passed unanimously.

## **VII. Unfinished Business**

**ADM File No. 2015-02, Proposed Amendment to MCR 7.213 (Mediation):** The Board of Commissioners took a position slightly different than ours (that the rule should not apply to domestic relations cases); the Board accepted the rule generally, but did adopt our recommendation. There was consensus that no further action by the Council would be necessary.

## **VIII. Next Meeting:**

The next meeting will be held on Friday, January 20, 2017, at 2:00 p.m. at Warner Norcross & Judd LLP, 2000 Town Center, Suite 2700, Southfield, Michigan. Gaëtan advised that, because Liisa Speaker will not be available to host the following February meeting as scheduled, we will switch that scheduled venue with our scheduled venue for March, such that we will meet in Troy in February and Lansing in March.

## **IX. Adjournment:**

Jerry moved to adjourn. Larry seconded. Motion approved by acclamation. The meeting was adjourned at 3:03 p.m.

Respectfully submitted,

Bridget Brown Powers, Secretary