

APPELLATE PRACTICE SECTION

February 23, 2007

Farmington Hills, Michigan

Present:

Linda Garbarino
Paul Bernard
Barbara Goldman
John Bursch

Excused Absences:

Marcia Howe
Roz Rochkind
Mary Massaron Ross

Janet Boes
Megan Cavanagh
Judith Curtis [phone]
Phillip DeRosier
Tim Diemer
Christina Ginter
Terry Flanagan [phone]
Deb Hebert
Ron Lederman
Anica Letica [phone]
Gerald Posner
Stephen Rhodes
Liisa Speaker [phone]
Mike Updike
Jill Wheaton

Guests:

Sandra Mengel [phone]

Mark Cooney [phone]
Vic Valenti

- I. Welcome and call to order. The Chair called the meeting to order at 2:09 p.m.
- II. Approval of minutes of meeting of January 26, 2007. One correction, previously requested, has been incorporated.

It was **moved** (Gerald Posner) and **seconded** (Christina Ginter) that the minutes of the meeting of January 26, 2007 be approved as corrected. *Motion carried* (unanimous).

The Chair requested a resolution of the issue, discussed at the January 26, 2007 meeting, of posting the minutes of the Council meetings on the Appellate Practice Section's web site. It was **moved** (Gerald Posner) and **seconded** (Mike Updike) that the minutes of the meetings of the Appellate Practice Section Council be posted on the Appellate Practice Section web site. *Motion carried* (unanimous).

- III. Treasurer's report.

John Bursch indicated that the Section's income exceeds its expenses by approximately \$9,000-10,000 per year.

IV. Committee Reports.

A. Court Liaison/Rule Comment.

1. ADM File No. 2005-36 (proposed amendments of MCR 7.204 and MCR 7.205 to clarify time for filing appeal of right) (comment deadline March 1, 2007).

Ron Lederman said that he had discussed the proposed changes with Sandra Mengel and the office of the clerk of the Supreme Court. They indicated that the intent of the proposed changes was to codify what is currently the court's informal practice of treating a claim of appeal as timely if it is filed within 21 days after denial of a timely motion for reconsideration.

There was considerable discussion of the wording of the proposed amendment to the rule, particularly the implications of referring to appeals from "an order denying . . . post-judgment relief." It was agreed without motion that Linda Garbarino would post a proposed alternate version on the Council listserv during the week of February 26, 2007. It was **moved** (Deb Hebert) and **seconded** (Ron Lederman) that the Appellate Practice Section send a comment to the Supreme Court regarding ADM File No. 2005-36, suggesting alternative language for MCR 7.205(A)(2).

2. Suggested revisions to MCR 7.204(a) proposed by Noreen Slank. No report.
3. Committee membership. A member of the Section called Linda Garbarino, looking for a committee to join. She will refer him to the Court Liaison/Rule Comment Committee. Gerald Posner also plans to join the committee.

B. Michigan Court Practice.

1. February 1, 2007 letter from Judge Whitbeck and Court of Appeals Progress Report No. 19. See agenda packet.
2. Court of Appeals expedited summary disposition docket. There will be two sessions on the "fast track" at the 2007 Michigan Appellate Bench Bar Conference.

C. Publications.

1. Newsletter.
 - a. Deb Hebert reported that the next issue was "on schedule." Submission deadline is March 9, 2007.
 - b. The newsletter needs an article on the 2007 Michigan Appellate Bench Bar Conference. Linda Garbarino will do one.
 - c. The next issue should include an ad and registration form for the bench bar conference. Deb will get in touch with Mary Massaron Ross.
 - d. Another issue is planned for July or August, which will include reports on the bench bar conference. Deb Hebert will take photos. Someone should arrange to do a report on each series of sessions for the newsletter.
 - e. The committee is looking for articles for the October issue.

2. Michigan Bar Journal theme issue on appellate practice.
 - a. The committee currently consists of Marcia Howe, Christina Ginter, John Bursch, Liisa Speaker, Jill Wheaton and possibly Evelyn Tombers.
 - b. The copy deadline will be in November of 2007. Planning should get started in May or June.

D. Federal Practice. No report.

E. Technology. No report.

F. Economics of Appellate Practice.

Liisa Speaker brought up a suggestion, posted by Laurie Longo on the general membership listserv, that the Appellate Practice Section develop a referral service for appellate attorneys. Some concerns were raised. It was decided without motion that Linda Garbarino and Mike Updike would talk to Laurie Longo and invite her to attend a meeting of the Council if she is interested in pursuing this idea.

G. Good Deeds.

1. Michigan Youth In Government donation. After the January 26, 2007 meeting, Evelyn Tombers sent a request to Ron Lederman for a donation of \$1000 to Michigan Youth In Government, noting that approximately 1600 students a year participate in its programs. It was agreed without motion that Ron should post the URL (website address) for the organization (www.myig.org). Tabled.
2. Michigan Supreme Court Historical Society. Linda Garbarino received a request from the Michigan Supreme Court Historical Society that it make another "Corporate Member" donation. See agenda packet. Linda noted that, although the Section has made donations to the society in the past, it was not committed to making one every year. Ron Lederman will check with the Supreme Court Historical Society to determine what constitutes a "corporate" membership.
3. Free membership to new members of the State Bar of Michigan. The possibility of offering free membership in the Appellate Practice Section to all new members of the State Bar of Michigan was raised. Paul Bernard suggested some sort of reciprocal membership with other sections. Linda Garbarino recalled that there were difficulties in coordinating these kinds of offers with the State Bar of Michigan. No action was taken.

H. Legislative Action. No report.

I. Circuit Court Appellate Rules. Anica Letica reported that the Don Fulkerson is still working on a rule for appeals from zoning board decisions.

J. 2007 Annual Meeting. It was agreed without motion that we should invite retired Supreme Court Justice Charles Levin to participate.

K. 2007 Michigan Appellate Bench Bar Conference.

Linda Garbarino circulated the invitation letter to the Section membership via the general membership listserv.

V. Old Business.

- A. ADM File No. 2003-59 (MCR 2.113, MCR 7.206 (original proceedings under the Headlee Amendment)) (comment deadline, October 1, 2006; public administrative hearing not scheduled). Linda Garbarino is still trying to get in touch with Dennis Pollard.

VI. New Business.

- A. ADM File No. 2006-44 (proposed amendments to MCR 7.306, amicus briefs in the Supreme Court). The current rule provides that “the time for filing [an amicus] brief corresponds with the time for filing the brief of the party whose position the amicus curiae supports.”

There are two proposed versions of the revision. Proposal A would leave the rule as it is, but allow prosecutors and public entities to file amicus briefs without a motion (analogous to FRAP 29(a)). Anica Letica indicated that the Prosecuting Attorneys Association of Michigan had been concerned about the fees for motions for leave to file amicus briefs. The Council may want to propose that this proposed change be extended to include “the State Bar of Michigan or any of its Sections.”

Proposal B would also change MCR 7.306(D)(1) to provide that “The brief of an amicus curiae is to be filed within 28 days after the brief of the appellee, or at such other time as the Court directs.” Referred to Court Liaison/Rule Comment. Vic Valenti will discuss it with Deputy Supreme Court Counsel Mark Gates.

- B. HB 4368/SB 307 (excise tax on services).

The State Bar of Michigan has issued a “Position Paper on a Tax on Legal Services” opposing HB 4368/SB 307, which would impose a 2% excise tax on most services. On February 8, 2007, Elizabeth Lyon of the State Bar of Michigan requested that all the State Bar of Michigan Sections “provide [her] with information on how the [proposed tax] will impact your practice area.” There was discussion of how the Council should respond. It was agreed without motion that Linda Garbarino should post a message to the general membership listserv requesting that input of the type solicited in Elizabeth Lyon’s message be forwarded directly to the State Bar.

The State Bar of Michigan is also seeking endorsements of its position from individual Sections. It was **moved** (Mike Updike) and **seconded** (Jill Wheaton) that the Appellate Practice Section endorse the State Bar of Michigan’s Position Paper on a Tax on Legal Services. *Motion carried* (unanimous).

- C. Michigan Supreme Court Historical Society. See Item IV(G)(2), *supra*.

VII. Next Meeting.

Friday, March 23, 2007, 2:00 p.m. in Farmington Hills. Call-in number: 1-800-270-1153, pass code 124048#.

VIII.Adjournment.

It was **moved** (Mike Updike) and **seconded** (Janet Boes) that the meeting be adjourned at 3:57 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman

Secretary