

APPELLATE PRACTICE SECTION

June 17, 2005

Novi, Michigan

Present:

Mark Cooney
Deb Hebert
Barbara Goldman
Linda Garbarino

Paul Bernard
Janet Boes
Brion Brooks
Judith Curtis
Don Fulkerson
Marcia Howe
Anica Letica
Kathleen McCree Lewis
Tim Noonan
Mary Massaron Ross
Liisa Speaker
Mike Updike
Vic Valenti
Ed Wyszynski

Excused Absences:

Terry Flanagan

Guests:

Megan Cavanagh
Sandra Mengel

- I. Welcome, introduction and call to order. The Chair called the meeting to order at 11:55 a.m.
- II. Approval of minutes of May 20, 2005 meeting. One correction was noted. It was **moved** (Liisa Speaker) and **seconded** (Linda Garbarino) that the minutes be approved as corrected. *Motion carried (unanimous).*
- III. Treasurer's Report. No new information.
- IV. Committee Reports.
 - A. Court Liaison/Rule Comment.

MCR 7.205 amendment (reduce time for delayed application for leave to appeal to 6 months). See agenda packet for comments received (all opposed to proposed amendment). Vic Valenti will draft a proposed comment and circulate it to the Council. Comment deadline: August 1, 2005.
 - B. Michigan Court Practice.
 1. Court of Appeals Court Improvement Program. Mark Cooney reported that he submitted the Section's proposals to Judge Whitbeck by the June 1, 2005 deadline.

2. Court of Appeals expedited summary disposition appeals program. Sandra Mengel provided some statistics on the program, indicating that as of approximately June 16, 31 opinions had been issued; 14 were pending; and 20 cases were on the call. Vic Valenti and Megan Cavanagh asked for a list of cases on the "fast track;" Sandy said that she could probably provide a list of docket numbers.

Several members had questions about oral argument. Originally, it was assumed that all "fast track" cases would be submitted to summary panels and decided without oral argument. Sandy explained, however, that due to the larger than expected number of summary disposition appeals in the first half of 2005, some of the "fast track" cases had to be submitted to regular panels even though the cases will stay on the "fast track." If their cases are assigned to regular panels, parties who requested and preserved the right to oral argument will be entitled to it. Parties who did not request oral argument should file motions to permit it. If a case is placed on a regular panel, the parties will be advised through the usual case call letter.

Mark Cooney indicated that Mary Massaron Ross would have reported that the Case Management Work Group had created a subcommittee (Mary, Don Fulkerson and Judge Talbot) to look into problems with transcript orders in Wayne County.

C. Publications.

Mark Cooney said that the next issue of the newsletter is expected to be published soon.

D. Federal Practice. No report.

E. Technology.

1. State Bar of Michigan E-Filing Task Force. Barbara Goldman has been appointed to the State Bar of Michigan's E-Filing Task Force, chaired by Joe Firestone.
2. Court of Appeals e-filing pilot program. Sandra Mengel reported that the Court of Appeals' pilot e-filing project, for MPSC appeals, is set to begin on June 20, 2005. The current plan is to permit electronic filing but still require service by mail. Documents filed electronically will be available only to case participants at this point. The Court will consider expanding the program later.
3. Court of Appeals case inquiry function. Several Council members took the opportunity to thank Sandy Mengel for instituting the case inquiry capability.

F. Economics of Appellate Practice.

Mike Updike reported receiving "lots" of calls and e-mails about the June 17 seminar. An associate at Secrest Wardle, Michael Taylor, has been enlisted to handle check-ins and door registrations.

G. Good Deeds.

Don Fulkerson thanked the Council for its contribution to the Center for Civic Education, which saved its mock trial project, but noted that the center needs another \$3900 to continue operating. A constitutional law exercise is planned for January 2006.

H. Legislative Action. No report.

I. Circuit Court Appellate Rules.

Don Fulkerson reported that the committee is trying to resolve an impasse involving appeals of driver's license matters. It has also discovered a need to address rules for appeals from gun board decisions.

Don noted that the committee had recently observed its fourth anniversary and commended Ann Byrne for keeping the minutes all that time. A 40-page interim report has been drafted and should be circulated to the Council over the summer.

J. 2005 Annual Meeting program.

Deb Hebert is assembling panelists for the program and plans to meet with the Michigan Court Practice Committee regarding the "fast track feedback" project.

V. Old Business.

A. Proposals to Judge Whitbeck (Court of Appeals Court Improvement Program). See Item IV(B)(1) and agenda packet.

B. Appellate Practice Section Annual Report. The Section's 2005 annual report was submitted on time. See agenda packet.

C. Supreme Court Public Administrative Hearing (May 26, 2005).

1. MCR 7.302 amendment (time for application for leave to appeal from order of remand). Mark Cooney attended the meeting and indicated the Appellate Practice Section's support for the proposed amendment. The Supreme Court adopted the proposed amendment after the meeting.

2. MCR 7.211 amendment (sealed files in Court of Appeals). Mark also appeared at the hearing to indicate that the Section Council suggested that the proposed amendment be clarified. Chief Justice Taylor and Justice Young did not consider the rule as proposed to be ambiguous. Justice Corrigan expressed concern over delay caused by motions to reopen trial court files. The Court has not yet acted on the proposed amendment.

D. Michigan Court Practice Committee's compilation of data on the Court of Appeals' expedited summary disposition appeals docket. Megan Cavanagh indicated that some forms have been sent in, prompted in part by Vic Valenti's post on the general membership listserv. Megan will continue to work on the project over the summer.

E. Senate Bill 33 (transcript fees increase). Mark Cooney reported that the State Bar of Michigan has "tabled" taking a position on this bill, because it wants to be able to present a uniform position to the Legislature. Mark asked the representative of Western Michigan Legal Services, who has opposed the bill, to draft a paragraph expressing her concerns about the effect of the fee increase on indigent litigants. The Appellate Practice Section could then try to incorporate that material into its comment on the bill. Mark stressed that the Section remains "firm" that this is the time to seek a fee increase for court reporters.

F. Section Briefs. See agenda packet.

G. State Bar of Michigan Leadership Forum.

Deb Hebert attended the 2005 State Bar of Michigan Leadership Forum on Mackinac Island and found it very informative. She was able to meet with staff from the State Bar, members of the Legislature, chairs of local bar associations and representatives of other organizations. Janet Welch explained the need for the “public statements” rules in the State Bar of Michigan by-laws, saying that the Legislature looks to the State Bar for advice, etc., and that many legislators are not aware of the distinction between the State Bar and individual sections.

VI. New Business.

- A. MCR 8.108 proposed amendment (certification of transcripts). Comment deadline, July 1, 2005. Don Fulkerson explained that the proposal adds “operators and voice writers” to the list of those who can prepare and certify transcripts. He was concerned that these people are “equipment operators,” not court reporters. He plans to discuss the proposal with the Court Reporting Board of Review, but does not consider it “controversial.”

The proposed amendment does not address the issue, raised by Patrick Rose on the general membership listserv, of who certifies transcripts of video proceedings. A court reporter is still required to review either the transcriptionist’s notes or the transcript in order to certify the transcript [see AO 1990-7]. Don and Mark Cooney will confer with the Rose/Flanagan group about their concerns.

Deb Hebert suggested having a court reporter on the Annual Meeting panel, to address this topic. After discussion, however, it was agreed that the issues might better be dealt with at a separate program, such as a mid-year seminar.

- B. Court of Appeals Internal Operating Procedures. Sandra Mengel indicated that there has actually been only one change to the IOP’s, regarding cases where a party was in bankruptcy.
- C. Senate Bill 541 (regulation of structured settlements). Liisa Speaker reviewed the bill and did not find any significant appellate implications.
- D. Senate Bill 481 (elimination of legislative oversight committee of the cyber court). Because the cyber court was never funded, there is no need for a legislative oversight committee.

VII. Future Meetings.

- A. Next meeting. Thursday, September 22, 2005, 2:00 p.m., Kellogg Center, East Lansing. The Annual Meeting will be followed by a business meeting and elections, which will be managed by Ellen Mason. Brion Brooks is not standing for reelection.
- B. Future meetings. Deb Hebert urged members of the Council to attend upcoming meetings.

VIII. Thanks to the Chair.

On behalf of the Section Council, Vic Valenti offered thanks and congratulations to Mark Cooney for serving as Chair of the section this year. Mark thanked the Council for its assistance and reminded the members that there will be work to do over the summer.

IX. Adjournment.

It was **moved** (Vic Valenti) and **seconded** (Deb Hebert) that the meeting be adjourned at 1:05 p.m. *Motion carried (unanimous).*

Respectfully submitted,

Barbara H. Goldman
Secretary