

**APPELLATE PRACTICE SECTION**

March 23, 2007

*Farmington Hills, Michigan*

*Present:*

Linda Garbarino  
Barbara Goldman  
John Bursch [phone]

Janet Boes [phone]  
Megan Cavanagh  
Mark Cooney  
Judith Curtis [phone]  
Phillip DeRosier  
Christina Ginter  
Deb Hebert  
Marcia Howe  
Anica Letica [phone]  
Roz Rochkind  
Liisa Speaker  
Mike Updike  
Vic Valenti  
Jill Wheaton

*Excused Absences:*

Paul Bernard  
Tim Diemer  
Terry Flanagan  
Ron Lederman  
Gerald Posner  
Stephen Rhodes  
Mary Massaron Ross

*Guests:*

Sandra Mengel

I. Welcome and call to order. The Chair called the meeting to order at 2:12 p.m.

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

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

III. Treasurer's Report.

A. Financial reports for period ending 2/28/07. See agenda packet. John Bursch reported that the Section has "plenty of money."

IV. Committee Reports.

A. Court Liaison/Rule Comment.

1. ADM File No. 2006-44 (proposed amendments to MCR 7.306 [amicus briefs]). Linda Garbarino said that the State Bar of Michigan would like any comments from the Appellate Practice Section by April 20, 2007, although the deadline for comments to the Supreme Court is June 1, 2007.

Anica Letica indicated that the Prosecuting Attorneys Association of Michigan supports the proposed elimination of fees for amicus briefs from public entities. After discussion, it was **moved** (Mike Updike) and **seconded** (Anica Letica) that the Appellate Practice Section endorse ADM File No. 2006-44, Proposal B. *Motion carried* (unanimous).

2. Suggested revisions to MCR 7.204(a) proposed by Noreen Slank. No report.
3. Committee membership. Gerald Posner and Geoffrey Brown plan to join the committee.
4. ADM File No. 2007-02 (amendment of MCR 7.202(5)). Change in definition of “custody case” to refer to “family division of circuit court.” No action required.
5. ADM File No. 2007-02 (amendment of MCR 7.313(A)(4)). Include reference to fee for motions in MCR 7.319(B)(7). No action required.

B. Michigan Court Practice Committee.

1. Letter of March 8, 2007 from Judge Whitbeck with testimony before the Judiciary Subcommittee and Senate Appropriations Committee. See agenda packet.
2. Court of Appeals expedited summary disposition docket. Sandra Mengel indicated that the court’s report to the Supreme Court is due on November 1, 2007. It was agreed without motion that the Council should solicit comments on the effect of the 2007 revisions to the Administrative Order via the newsletter and the general membership listserv. The Council should start discussing the Section’s comment on Year 3 at the May meeting. Liisa Speaker asked whether it would be possible to assess the effect on other cases of the expedited docket. Sandy will find out if the court can generate that data.

It was suggested that the Council might delay its June 2007 meeting until later in the summer, in order to discuss the comments gathered during the 2007 Michigan Appellate Bench Bar Conference, or else plan a special meeting in early September. After discussion, it was agreed without motion that a special meeting would be tentatively scheduled for Friday, September 7, 2007 at 3:00 in Farmington Hills (with lunch).

3. Proposed reduction in Court of Appeals FY 2007 budget. Linda Garbarino will post a message on the general membership listserv if the Court of Appeals requests it.

C. Publications.

1. Newsletter. The next issue is “on schedule” and should contain four articles, “Shannon’s Soapbox” and some book reviews.
  - a. New title. Mark Cooney circulated a number of possible names for the Appellate Practice Section newsletter to the Council listserv. It was agreed without motion that a new name would be a good idea. The Publications Committee will make a recommendation.
  - b. New direction. There was discussion of the type of publication the Section should be providing. Some Sections publish newsletters with a more academic style and/or in a magazine-type format. After discussion, it was agreed without motion that the Council would give the Publications

Committee discretion to adopt a new format for the Appellate Practice Section newsletter, within reason as to any increase in production costs.

- c. [New item.] Content. A number of suggestions were made, including a “judges’ corner;” a Sixth Circuit practice column; and something on appellate procedural issues. The Publications Committee will solicit articles from the general membership listserv and the reporters and moderators at the 2007 Michigan Appellate Bench Bar Conference.
  - d. [New item.] Editorial policy. Liisa Speaker recommended that the Publications Committee adopt an editorial policy. It was agreed without motion that each issue of the newsletter should include a statement regarding submission requirements and a disclaimer about the Appellate Practice Section’s position as to the content of articles submitted. The Publications Committee is not expected to check citations or make editorial changes and has the discretion to reject submissions.
  - e. [New item.] Sending the Section’s newsletter to other Sections. Someone should ask the State Bar of Michigan if it can identify former members of the Appellate Practice Section so we can send them an issue of the newsletter and urge them to rejoin. No action was taken.
  - f. [New item.] Distribution of additional copies. Sandra Mengel will be happy to place extra copies of the Appellate Practice Section newsletter in the Court of Appeals’ offices and outside the courtrooms.
2. Michigan Bar Journal appellate practice theme issue. Marcia Howe reported that Elmer E. White has been assigned to the issue. Marcia assured him that it is “on track.”

It was suggested that the Appellate Practice Section try to “reserve” a future issue. Marcia Howe will inquire about it.

D. Federal Practice. No report.

E. Technology.

- 1. New members. The company that hosts all the State Bar of Michigan listservs indicated in February that it would update them, to eliminate people who are no longer members of each Section and invite new members to join. Nothing has happened
- 2. Listserv rules. Joe Firestone plans to repost the rules of the Appellate Practice Section general membership listserv, to remind subscribers of the breadth of the membership.

F. Economics of Appellate Practice.

- 1. Appellate practitioner referral service. Mike Updike will call Laurie Longo.

G. Good Deeds.

1. Michigan Youth in Government. Ron Lederman recommended that the Appellate Practice Section contribute \$1000 to Michigan Youth in Government. Tabled.
2. Michigan Supreme Court Historical Society.
  - a. Corporate membership. Linda Garbarino determined that a “corporate membership” in the Michigan Supreme Court Historical Society would cost \$1000/year. It was **moved** (Mike Updike) and **seconded** (Marcia Howe) that the Appellate Practice Section appropriate \$1000 for a one-year corporate membership in the Michigan Supreme Court Historical Society. It was **moved** (Vic Valenti) and **seconded** (Barbara Goldman) that the motion be tabled. The Chair called for a vote. **In favor:** 9. **Opposed:** 0. *Motion to table carried.*
  - b. Annual membership luncheon. The 2007 annual membership luncheon of the Michigan Supreme Court Historical Society will be held on Wednesday, April 18, 2007, at the Detroit Athletic Club. It was **moved** (Deb Hebert) and **seconded** (Marcia Howe) that the Appellate Practice Section appropriate \$280 to purchase eight tickets for a table at the 2007 annual membership luncheon of the Michigan Supreme Court Historical Society. *Motion carried* (unanimous). John Bursch, Mark Cooney, Judith Curtis, Christina Ginter, Deb Hebert, Marcia Howe, Ron Lederman and Mike Updike will attend. Linda Garbarino will send the check.
3. Free membership to new members of the State Bar of Michigan. It has been suggested that the Appellate Practice Section offer a one-year free membership in the Appellate Practice Section to new members of the State Bar of Michigan. Linda Garbarino commented that this type of program is cumbersome to administer. No action was taken.
4. [New item.] 2007 Michigan Appellate Bench Bar Conference. The Michigan Appellate Bench Bar Conference has not requested an additional donation.

H. Legislative Action.

1. HB 4368/SB 307 (excise tax on services). Barbara Goldman reported that SB 307 was defeated.

I. Circuit Court appellate rules.

Anica Letica said that Don Fulkerson is still working on the final proposal on appeals from zoning board decisions.

J. 2007 Annual Meeting.

1. Letter from Judge James Ryan re: Appellate Practice Section Lifetime Achievement Award. Judge Ryan plans to attend the State Bar of Michigan 2007 Annual Meeting. The award could be presented to him at the Appellate Practice Section’s annual meeting or, if the State Bar agrees, during the Executive Director’s address at the Thursday luncheon. It would also be

possible to have the award announced at the luncheon but presented at the Section's meeting. Tabled until the April meeting.

Christina Ginter suggested involving the Sixth Circuit judges. Linda Garbarino will talk to Mary Massaron Ross and Kathleen McCree Lewis.

Sandra Mengel offered to insert an announcement of the Annual Meeting in mailings from the Court of Appeals.

K. 2007 Michigan Appellate Bench Bar Conference.

1. Invitation to past recipients of the Lifetime Achievement Award. Linda Garbarino will send a "save the date" notice.
2. Registrations and hotel reservations are now being accepted. Council members are urged to register and to promote the conference to others.

V. Old business.

A. ADM File No. 2005-36 (proposed amendment of MCR 7.204 and MCR 7.205) (comment deadline March 1, 2007). The Appellate Practice Section's comment has been submitted. See agenda packet.

B. ADM File No. 2003-59 (proposed amendment of MCR 2.112 and MCR 7.206, original proceedings under the Headlee Amendment). No report.

VI. New business.

1. Posting of appellate briefs. Sandra Mengel indicated that, Wiznet, the vendor that is developing the Court of Appeals' e-filing program, is interested in making appellate briefs available for purchase. If enough customers pay for the briefs, the company will be able to reduce the price it charges for e-filing. Several Council members indicated that they would not anticipate making use of such a service. There were also concerns about appropriation of attorneys' proprietary work by others and about the accessibility of sensitive and/or personal information in some cases. No action was taken.

VII. Next meeting.

Friday, April 20, 2007, 2:00 p.m., Grand Rapids.

Call-in number: 800-270-1153; pass code 124048#.

VIII. Adjournment.

It was **moved** (Mark Cooney) and **seconded** (Mike Updike) that the meeting be adjourned at 7:28 p.m. *Motion carried* (unanimous).