

APPELLATE PRACTICE SECTION

May 18, 2007

Farmington Hills, Michigan

Present:

Linda Garbarino
Paul Bernard
Barbara Goldman
John Bursch [phone]

Janet Boes [phone]
Megan Cavanagh [phone]
Judith Curtis
Mark Cooney [phone]
Tim Diemer [phone]
Christina Ginter
Deb Hebert
Marcia Howe
Ron Lederman
Gerald Posner
Stephen Rhodes
Liisa Speaker
Mike Updike
Vic Valenti
Jill Wheaton [phone]

Excused Absences:

Phillip DeRosier
Terry Flanagan
Anica Letica
Roz Rochkind
Mary Massaron Ross

Guests:

Anne Argiroff
Rita Buitendorf [phone]
Sandra Mengel
Henna Mirza

- I. Welcome and call to order. The Chair called the meeting to order at 2:10 p.m. and welcomed the guests.
- II. Minutes of the meeting of April 20, 2007. Two corrections were noted. It was **moved** (Gerald Posner) and **seconded** (Vic Valenti) that the minutes be approved as corrected. *Motion carried* (unanimous).
- III. Treasurer's report.

The Chair asked Megan Cavanagh if the Section needed to maintain the post office box that was rented for receipt of comments about the Court of Appeals expedited summary disposition docket program. Megan indicated that she would not renew the rental after the close of the current quarter in July.
- IV. Committee Reports.
 - A. Court Liaison/Rule Comment.
 1. Membership. Vic Valenti will arrange a conference call with the new members before fall. Additional members are welcome.
 2. Suggested revisions to MCR 7.204(a) proposed by Noreen Slank. Vic will make this part of the conference call agenda.

3. Rules changes suggested at the 2007 Michigan Appellate Bench Bar Conference. Dennis Pollard indicated to Linda Garbarino that he would prepare something on original actions under the Headlee Amendment over the summer.

B. Michigan Court Practice.

1. Court of Appeals expedited summary disposition docket. Megan Cavanagh reported that the “fast track” program had been suspended as of May 7, 2007, at the request of the Court of Appeals. The committee, however, still plans to do a summary report on the third year of the program. There should be an attempt to determine what was learned about differentiated case management. Sandra Mengel indicated that the Court would probably do something similar in the future.
2. Practitioner seminars [new item]. Vic Valenti asked for information about a series of seminars for practitioners being presented by Hannah Watson, a deputy clerk of the Court of Appeals. Sandra Mengel indicated that the seminars are intended for the “occasional” appellate practitioner.

C. Publications.

1. Newsletter.

- a. Upcoming issues. Deb Hebert reported that she has one long article for the next issue and expects to get several shorter ones from the 2007 Michigan Appellate Bench Bar Conference. She will check with Mary Massaron Ross about including some of the photos that were taken there in the newsletter. Deb will also post a request for newsletter articles on the general membership listserv and John Bursch will include it in one of the Appellate Practice Section Section Briefs.
- b. Name. The Publications Committee will consider a new name for the Appellate Practice Section newsletter by the next issue.
- c. Authors’ copies. The Section currently receives only 15 extra copies of the newsletter. It was agreed without motion that Deb Hebert should order additional copies and provide “author’s copies” to contributors.
- d. Distribution at the Court of Appeals. Sandra Mengel suggested that copies of the Appellate Practice Section newsletter could be placed in wall racks at the Court of Appeals’ clerks’ offices. Deb Hebert will see that some of the extra copies are provided to Sandy for distribution at the Court.

2. Michigan Bar Journal appellate practice theme issue. The committee is compiling material.

D. Federal Practice. No report.

E. Technology.

Sandra Mengel said that the Court of Appeals is continuing to work with Wiznet, the vendor for its e-filing project, on developing a method of “e-service.” A decrease in processing costs would benefit the court by increasing efficiency.

F. Economics of Appellate Practice.

1. Referral project. Mike Updike spoke to Laurie Longo about her proposal for an appellate referral service. He will work on it over the summer.

G. Good Deeds.

1. Michigan Youth in Government. Ron Lederman circulated information about this organization and its model judiciary program via e-mail. There were some concerns raised regarding its affiliation with the Michigan YMCA. Ron discussed the issue with a staff member and was assured that the model judiciary program is “100% secular” and that religious considerations do not figure into the selection of topics, etc. In a message to Ron on May 17, 2007, Janet Welch, Executive Director of the State Bar of Michigan, indicated that there the State Bar had no policy that would prevent a donation to the program.

Ron recommended that the Section donate \$1000 to Michigan Youth in Government for its model judiciary program. It was **moved** (Ron Lederman) and **seconded** (Vic Valenti) that the Appellate Practice Section donate \$1000 to Michigan Youth in Government for its model judiciary program. **In favor:** 16. **Opposed:** 0. **Abstentions:** 2. *Motion carried.* Linda Garbarino will arrange to send the check with a cover letter.

2. Michigan Supreme Court Historical Society. Some members thought it might be inappropriate for the Appellate Practice Section to sponsor an attempt to preserve the history of the current Supreme Court. There were additional questions regarding the value to the Section of a corporate membership in the society.

After discussion, the Chair requested a motion. It was **moved** (Deb Hebert) and **seconded** (Marcia Howe) that the Appellate Practice Section allocate \$1000 for the purchase of a corporate membership in the Michigan Supreme Court Historical Society during the 2007-2008 fiscal year. **In favor:** 10. **Opposed:** 4. **Abstentions:** 2. *Motion carried.*

3. 2007 Michigan Appellate Bench Bar Conference. The Section Council approved a donation of \$1500 at the April 20, 2007 meeting. John Bursch will arrange for a check.

H. Legislative Action.

1. HB 4861 (fee increases in the Court of Appeals). Barbara Goldman reported that nothing has happened yet.
2. SB 220 (reduction in FY 2007 appropriations). Sandra Mengel said that the bill is still in committee.

I. Circuit Court Appellate Rules. No report.

J. 2007 Annual Meeting.

1. Program. Paul Bernard reported that former Justice Charles Levin will not be able to participate on the panel. Paul plans to invite Judge James Ryan of the Sixth Circuit, as he will be at the meeting to receive the Lifetime Achievement Award.

2. Lifetime Achievement Award. Linda Garbarino will try to get a decision from the State Bar of Michigan by June on whether the award can be presented during one of the luncheons. If not, we should plan to give the award to Judge Ryan as part of the annual meeting program.
3. Publicity. Linda Garbarino obtained pricing information for advertising in the Michigan Bar Journal (see agenda packet). It was **moved** (Gerald Posner) and **seconded** (Deb Hebert) that the Appellate Practice Section purchase a ¼ or ½ page advertisement in the appropriate issue of the Michigan Bar Journal, to promote the 2007 Annual Meeting program and presentation of the Lifetime Achievement Award. *Motion carried* (unanimous). If there is room, the ad might also solicit articles for the newsletter.

It was agreed without motion that the program and award presentation should also be publicized via a news release and that the relevant information should be posted on the Section's web site and included in the newsletter.

K. 2007 Michigan Appellate Bench Bar Conference.

Linda Garbarino congratulated the organizing committee of the 2007 Michigan Appellate Bench Bar Conference and praised the program as "one of the best" of the bench bar conference series. Sandra Mengel said that the Court of Appeals staff also enjoyed it. There was general agreement that the St. John Conference Center was an excellent facility and worth the additional cost. It was suggested that the Appellate Practice Section might make a larger contribution to the next conference if necessary to have it held at the same or a comparable location.

V. Old Business.

- A. ADM File No. 2006-44, proposed amendments to MCR 7.306 (amicus briefs). The Section's comment has been sent out. See agenda packet.
- B. HB 4501 (fee increases in Court of Appeals). The Section's comment has been sent out. See agenda packet.
- C. Annual Report. The Chair repeated a request for committee reports by May 17, 2007.
- D. Letter from Judge Avern Cohn. Linda Garbarino has drafted a response, which will be mailed during the week of May 20, 2007.

VI. New Business.

- A. Dues increase. The possibility of increasing the dues for membership in the Section was raised. After discussion, it was agreed that no dues increase is necessary at this time.
- B. Court of Appeals Fiscal Year 2007 budget.
 1. Budget reductions. Sandy Mengel indicated that there had been a \$230,00 shortfall in filing fees, because filings in the Court of Appeals had decreased, in addition to the budget reductions imposed on all state departments by the Governor. She explained that the court would close its offices for eight days between May 20 and October 1, 2007, primarily around scheduled holidays. A skeleton crew will be available, by telephone, to handle emergencies and judicial panels will be "on call." Parties needing emergency decisions will be encouraged to file documents by e-

mail or facsimile. In addition, the court will forgo staff salary increases and judges and staff members with state-issued motor vehicles will be required to turn them in.

2. Contract attorneys program. During the 2007 Michigan Appellate Bench Bar Conference, Judge Whitbeck indicated that the reduction in the Court of Appeals' budget would require it to discontinue using contract attorneys to prepare prehearing reports on termination of parental rights appeals. The budget for the program is approximately \$230,000.

Sandra Mengel confirmed that termination of parental rights appeals are "top priority" and they would be reassigned to other members of the Court's research staff. The net effect will be to slow the processing of other cases. Sandy anticipated that the time for handling termination of parental rights appeals would increase by only "a couple of weeks" as a result of the change. Judith Curtis was afraid that the overall time for custody appeals might be slowed, because the contract attorneys worked faster than other staff attorneys.

Vic Valenti asked if there was any role for the Appellate Practice Section in this matter, such as volunteering to prepare reports for the court. After discussion, it was agreed that no action was necessary at this point and the Section will wait and see what the effect is of eliminating the contract attorneys program. Sandy Mengel will let Judge Whitbeck know that the Section is willing to assist if it can.

Evelyn Tombers, Chair of the Children's Law Section, had called Sandy Mengel immediately after the conference, to express concern; Sandy referred her to the court's web site, where statistics are available on a weekly basis. The Family Law Section is also interested. Linda Garbarino will call Evelyn and the Chair of the Family Law Section [David C. Sarnacki], which has a lobbyist, and find out if the Appellate Practice Section can assist either of those Sections.

- C. Nominating Committee. Liisa Speaker and John Bursch will serve as the Nominating Committee. Deb Hebert will put an announcement and solicitation of nominations in the next issue of the newsletter.

VII. Next Meeting.

The next meeting will be **Thursday, June 21, 2007, 5:00 p.m., at Ciao Amici's in Brighton.** See agenda packet for additional information.

Linda Garbarino will notify Judge Christopher Murray (liaison from the Board of Commissioners) and make a point of inviting all the past Chairs of the Appellate Practice Section to attend.

VIII. Adjournment.

It was **moved** (Mike Updike) and **seconded** (Gerald Posner) that the meeting be adjourned at 4:00 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman
Secretary