

## **APPELLATE PRACTICE SECTION COUNCIL MEETING MINUTES**

**Friday, November 16, 2018 at 2:00 p.m.**

Rosati Schultz Joppich & Amtsbuechler, PC.

Farmington Hills, Michigan

### **Council Members Present:**

Bridget Brown Powers, Chair (In person)  
Bradley Hall, Chair Elect (In person)  
Stephanie Simon Morita, Treasurer (In person)  
Anne Argiroff, Secretary (In person)

Nick Ayoub (By phone)  
Scott G. Bassett (In person)  
Graham Crabtree (In person)  
Jonathan Koch (In person)  
Richard Krause (By phone)  
Kristin Lavoy (In person)  
Jerry F. Posner (In person)  
Ann Sherman (By phone)  
Marcie Stepanski (In person)  
Drew W. Broaddus (By phone)

### **Excused Council Members:**

Barbara Goldman  
Joe Richotte  
Jason Killips  
Phil DeRosier  
Paul D. Hudson  
Mark J. Magyar

### **Unexcused Council Members**

Lauren DuVal Donofrio

### ***Ex-Officios Present:***

Nancy Vayda Dembinski (By phone)  
Joanne Geha Swanson (By phone)  
Beth A. Wittmann (By phone)

**NOTICE:** All votes taken are pursuant to a majority vote of the members.

### **I. Welcome and Call to Order**

The meeting was called to order at 2:00 p.m.

### **II. Minutes from 10/19/18 Meeting:**

Motion to accept the Minutes was made by Scott and seconded by Marcie.  
Passed by majority vote.

### **III. Treasurer's Report**

No financial report. Stephanie discussed a list of services the State Bar provides both for free and for a fee. The second page is list of Council account numbers for expense-reimbursement purposes.

Email Stephanie later if questions about reimbursement, etc.

#### **IV. ADM-2017-20:**

[Taken out of order because Scott Bassett was catching a plane.]

##### Procedural Request:

Delay the effective date of and republish the Supreme Court's Final Order Rule Amendment (MCR 7.202(6)(a)(iii)). ADM 2017-20.

##### Discussion:

There was overwhelming support for the Supreme Court's original proposed amendment, but the Supreme Court ultimately issued an amendment of MCR 7.202(6)(a)(iii) that was very different from that original proposal, which sets out a more limited definition of post-judgment final orders in domestic relations cases than the current language (and than in the original proposal, which would have slightly expanded the definition). Scott proposed language for a brief letter from the Section/Council to the Supreme Court.

A friendly amendment was offered and accepted. Council would not be commenting on substance, but process: it benefits everyone, including the Court, to have additional opportunity to comment on the resulting amendment, which again was radically different than the Court's original proposed amendment.

##### Language:

"Without taking a substantive position, but in line with this Court's longstanding policy of transparency, the State Bar Appellate Practice Section requests that the Michigan Supreme Court hold in abeyance the effective date of its September 20, 2018 order in ADM 2017-20. The Section further requests that the new MCR 7.202(6)(a)(iii) language adopted in the September 20, 2018 order be published for public comment to be followed by a public hearing."

The motion passed by majority support.

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

**A. Court Liason** - No Report

**B. MI Court Rule Practice** - (Bradley Hall, Phil DeRosier).

**ADM File No. 2017-27.** Brad presented a draft letter from SADO/MAACS and sought Council's input on the proposed changes to MCR 6.425(F). Brad does not support the proposal because requiring indigent defendants to "file" the request for appellate counsel rather than

“complete and return” it could lead to the loss of appeal because of technical filing defects. He plans to offer an alternate rule change. Based on suggestions, including oral requests for appellate counsel on the record, Brad is going to tweak the letter before submitting it to the Supreme Court, and he anticipates that he will then seek Council’s support.

Brad discussed an APS survey and a letter from the Washington Supreme Court in support of electronically accessible briefs. Among the 100 APS members who responded to the survey, there is widespread support for greater online access to briefs and applications in the Court of Appeals and Supreme Court. Brad and Bridget are going to write a general letter of support to the Supreme Court, noting that the APS would support efforts in this direction and pointing out some areas of concern.

**ADM File No. 2018-04.** Proposed Amendments of MCR 7.212 and 7.312 (would require amicus briefs to indicate certain information regarding the preparation of the brief and disclosure of monetary contributions. FRAP 29 has a similar requirement, as do some states courts. This seemed inevitable. We see no reason for Council to comment.

**ADM File No. 2018-07.** Proposed Amendment of MCR 3.993 (would add a list of specific that can be appealed by right regarding an Indian child subject to a child protective proceeding pursuant to statute). The staff comment to the proposed amendment of MCR 3.993 says that it was recommended by the State Bar. We see no reason for Council to comment.

**C. Publications** (Nancy Dembinski).

Journal

Nancy was gathering final articles for Journal edition  
Same deadlines for 2019 as in 2018.

Feb 15, 2019

June 15, 2019

October 15, 2019

The committee welcomes anyone interested in substantive articles  
The committee welcomes more than one article

New Business - looking for additional council members to join committee

**D. Technology** (Barbara Goldman).

Barb has updated the listserv  
Stephanie has had an email change

**E. Federal Practice** (Richard Kraus)

Three (3) rules have been amended as of 12/1/18:

1. The time to file reply briefs has been extended from 14 to 21 days;
2. Circuit courts now have the option to refuse any amicus briefs that might result in a judge's disqualification; and
3. A motion to stay a mandate before the Supreme Ct decides a petition automatically extends 90 days.

**F. Legislative Action** (Graham Crabtree).

Graham - The Legislature is back post-election and has introduced bills.

Of potential concern:

SB 1182-1183 - establishing a loser pays attorney fee system There was no previous traction before, but in lame duck now. Duty on Appellate courts to impose sanctions. State Bar wants expedited views. Requires appellate courts impose sanctions.

Motion to Oppose, including based on timing, and the lack of substantive input, focusing particularly on not enough time to address a bill that will have a major impact on a variety of cases.

Motion - Send a Letter to the State Bar that Council opposes SBs 1182 and 1183 (assessing attorney fees against the losing party in civil litigation and appellate attorney fee sanctions) for a number of reasons, including based on overbreadth, ambiguity, and the lack of sufficient time for more meaningful input concerning the necessity for this legislation, as well as its impact on a variety of cases.

Motion was passed unanimously.

**G. Good Deeds** (Ann Sherman).

No report. Ann is looking at scheduling in January or February (volunteer opportunities saturated around the holidays; greater possible need in beginning new year).

**H. Economics of Appellate Practice**

No report.

**I. Annual Meeting**

No report

**J. Bench Bar** (Phil DeRosier).

Next planning call November 29, 2018 at 4 pm  
Send email to Phil if you want to become involved  
Training for Reporters and Moderators - February 23, 2019

**K. Ad Hoc E-Briefing** (Jerry Posner)

Brief discussion. Court not issuing defect letters concerning appendices issues at this time.

**L. Membership** (Ann Sherman).

No report

**M. Website Committee**

No report

**VI. New Business**

Bridget revised the meeting schedule - the April meeting moved up a week to April 12, 2018.

**VII. Unfinished Business**

**A. Listserv v SBM Connect**

No response from Sandy yet.

**B. Section Archives**

Tabled.

**C. Appellate Haiku**

Joanne will continue to work on this project.

**NEXT MEETING:**

Next meeting will be telephonic. **December 21, 2018**

**Meeting was adjourned at 3:46 p.m.**