

## APPELLATE PRACTICE SECTION

October 20, 2006

*Farmington Hills, Michigan*

*Present:*

Linda Garbarino  
Paul Bernard  
Barbara Goldman  
  
Megan Cavanagh  
Judith Curtis  
Phillip DeRosier  
Tim Diemer [phone]  
Christina Ginter  
Deb Hebert  
Marcia Howe  
Ron Lederman [phone]  
Gerald Posner  
Stephen Rhodes [phone]  
Mike Updike  
Vic Valenti  
Jill Wheaton

*Excused Absences:*

Janet Boes  
John Bursch  
Mark Cooney  
Terry Flanagan  
Anica Letica  
Roz Rochkind  
Mary Massaron Ross  
Liisa Speaker

*Guests:*

I. Welcome.

Linda Garbarino welcomed new members Phillip DeRosier and Stephen Rhodes.

Mike Updike agreed to be the custodian of the Access to Justice campaign's "Benefactor's Award," presented to the Appellate Practice Section at the State Bar of Michigan's 2006 Annual Meeting.

II. Approval of minutes of June 22, 2006 and September 14, 2006

- A. Approval of minutes of June 22, 2006 (previously circulated). It was **moved** (Mike Updike) and **seconded** (Christina Ginter) that the minutes of the meeting of June 22, 2006 be accepted. *Motion carried* (unanimous).
- B. Approval of minutes of September 14, 2006 (previously circulated). One correction was noted. It was **moved** (Gerald Posner) and **seconded** (Vic Valenti) that the minutes of the September 14, 2006 meeting be accepted as corrected. *Motion carried* (unanimous).

III. Treasurer's Report.

- A. Financial reports for 11 months ending August 31, 2006. See agenda packet and item III(B).
- B. Financial reports for 12 months ending September 30, 2006. Linda Garbarino indicated that only the preliminary financial report was available. There was an error in the division of costs for the 2006 Annual Meeting between the Appellate Practice Section and the Litigation Section, but the State Bar is correcting it.

Deb Hebert said that the State Bar had mistakenly issued a second check to the Michigan Humane Society, representing the Section's donation in memory of Tammy Reiss. Linda will resolve the problem.

C. Section Reimbursement Form. See agenda packet.

D. Section Payment Form. See agenda packet.

#### IV. Committee Reports

A. Court Liaison/Rule Comment.

ADM 2005-19 (trial procedures). On July 11, 2006, the Supreme Court proposed for comment a series of changes to the subchapter 2.500 of the Michigan Court Rules, dealing with trials. Vic Valenti and Ron Lederman reviewed them but did not see any implications for appellate practice. The committee did not recommend that the Section Council take a position on the proposed amendments. It was agreed without motion that the Appellate Practice Section Council accept the recommendation of the Court Liaison/Rule Comment Committee.

B. Michigan Court Practice.

1. Memorandum from William C. Whitbeck to Case Management Work Group. See agenda packet.

2. AO 2002-34 and 2002-44 (Court of Appeals expedited summary disposition docket). Megan Cavanagh reminded the Council that it had been decided previously that we would wait to comment on the upcoming conclusion of the initial two-year period for the "fast-track" appeal procedure until the Court of Appeals had made its recommendation.

The Case Management Work Group developed a proposed revision of the administrative order and an accompanying summary report and recommendation, which were distributed at the meeting. The proposed revision are expected to be available on the Court's web site very soon. The Work Group has requested that the proposed changes take effect no later than January 1, 2007.

The main points of the proposal are: a one-year extension of the expedited docket program; increasing the time to file a cross-appeal to from 14 to 21 days; and eliminating the motion fee for motions to remove a case from the expedited docket.

After discussion, it was agreed that the Section should review the proposal and prepare to make a recommendation at the November 2006 meeting of the Section Council. Megan Cavanagh will post a message on the general membership listserv, with a link to the proposal on Court of Appeals' web site. Comments can be posted on the listserv, but an e-mail address for private replies should also be available. The Michigan Court Practice committee will monitor responses on the listserv.

3. Possible survey of the Court of Appeals regarding quality of opinions and briefs.

There was discussion of the idea, previously raised, of conducting a survey of the Court of Appeals' judges, to see if they thought the "fast-track" appeal deadlines had affected the quality of either the parties' briefs or the court's opinions. It

should be coordinated with the 2007 Michigan Appellate Bench Bar Conference. No action was taken.

C. Publications

1. Newsletter. Deb Hebert apologized for not having been able to produce a summer issue of the newsletter. The materials for the next issue have been received and it is almost complete, but there is nothing beyond that. Linda Garbarino noted that the “appellate limerick” and “haiku” contests that were described on the general membership listserv in August might be worth pursuing. Paul Bernard suggested having an interview with or contribution from Sandra Mengel as a regular feature.

Deb recommended that the Council create a “newsletter committee,” which could divide up responsibility for the work. Marcia Howe and Christina Ginter volunteered to participate; John Bursch may interested as well. It was agreed without motion that there should be a notice in the next issue of the newsletter, soliciting participation on the committee and urging anyone who is interested to attend a meeting of the Section Council.

2. Michigan Bar Journal theme issue on appellate practice. Marcia Howe said that contributions will be due in November of 2007. She recommended waiting until after the 2007 Michigan Appellate Bench Bar Conference to decide what subject areas should be included.
3. Appellate Practice Section web site. Linda Garbarino reported Janet Boes has had the web site updated.

D. Federal Practice.

1. New co-chair. Paul Bernard stated that he would continue to serve as co-chair of the committee. It will not be necessary for a new co-chair to be appointed.

E. Technology

1. Appellate Practice Section listserv. Joe Firestone has agreed to continue as administrator of both the general membership listserv and the section council listservs.
2. Listserv policies. See agenda packet.

F. Economics of Appellate Practice. No report.

G. Good Deeds.

1. New Chair. Ron Lederman volunteered to replace Linda Garbarino as chair of the committee.
2. Michigan Humane Society letter. The Michigan Humane Society sent a letter, thanking the Section for its contribution in memory of Tammy Reiss. See agenda packet.

H. Legislative Action.

Linda Garbarino reported that Noel Massie has said he is unable to continue as public policy liaison. Barbara Goldman offered to take over the position.

I. Circuit Court Appellate Rules. Linda Garbarino will ask Anica Letica for a report at the next meeting.

J. 2007 Annual Meeting.

Paul Bernard said that he was considering a program on judicial independence, from both federal and state perspectives, for the 2007 Annual Meeting. It was suggested that he talk to Judge Christopher Murray, the Section's liaison from the Board of Commissioners.

K. Ad Hoc Committees and Projects.

1. Program with the Michigan Supreme Court Historical Society. No report.

L. 2007 Michigan Appellate Bench Bar Conference.

1. Lifetime Achievement Award. The Appellate Practice Section has given a "Lifetime Achievement Award" to a Michigan judge at three of the four Michigan Appellate Bench Bar Conferences. There was a discussion of who should receive it at the 2007 Michigan Appellate Bench Bar Conference. Various possibilities were raised, including giving the award to an attorney, or to one attorney and one judge. Deb Hebert favored a single award, to be presented to someone who is retiring or otherwise leaving the profession.

Megan Cavanagh and Christina Ginter indicated that the materials for the conference are due in mid-January of 2007, so the recipient should be selected in time for that information to be included. It was agreed without motion that members of the Section Council should bring nominations to the November meeting and that a vote should be taken no later than the December 2006 phone conference.

V. Old Business.

A. AO 2006-07 (amendments of MCR 7.211(B)). The Supreme Court adopted the proposed amendments on October 18, 2006. Sandra Mengel sent Linda Garbarino a note, thanking the Section for its support.

B. AO 2006-08 (amendment of MCR 7.211(C)). See item V(A).

C. Invitation to Denise Devine. Linda Garbarino has not yet been able to talk to Denise Devine, Director of Information Systems, Court of Appeals, but will make arrangements to invite her to a meeting, possibly in January of 2007.

VI. New Business.

A. ADM File 2004-48 (proposed amendments to MCR 8.103, 8.108 and 8.109 [transcription of video record]); comment deadline November 1, 2006. Vic Valenti will call Don Fulkerson and ask whether he thinks it is necessary for the Appellate Practice Section to comment on this proposal.

B. ADM File 2006-05 (proposed amendments to MCR 6.610, 6.625 and 7.103 [provide seven days for appointment of appellate counsel for indigent criminal defendants]); comment deadline November 1, 2006. Gerald Posner was concerned that seven days might not be enough time for a defendant to determine that he wanted to request

appointed counsel. Linda Garbarino will post a message on the general membership listserv, requesting comments from criminal practitioners, and will contact the Criminal Law Section to determine if it plans to make a comment.

C. Compensation for Section Services. See agenda packet.

D. Recording of oral arguments in the Court of Appeals.

Linda Garbarino read a message from Sandra Mengel, responding to a recent thread on the general membership listserv. She indicated that all oral arguments are recorded digitally and stored on the court's server, where court personnel have access to them. Practitioners and others may obtain copies by motion pursuant to IOP 7.214-3. Linda gave Sandy's message to Deb Hebert for the newsletter.

E. [New item.] Court of Appeals practitioners' program. Linda Garbarino reported that Sandy Mengel had also written to her about a new project undertaken by the Court, in which Hannah Watson, the Lansing District Clerk, made a presentation on practice before the Court of Appeals in Lansing. She plans to repeat it in other parts of the state. There were some concerns that the court's program might detract from attendance at the 2007 Michigan Appellate Bench Bar Conference.

VII. By-laws.

See agenda packet.

VIII. Next meeting.

Friday, November 17, 2006, 2:00 p.m., Farmington Hills.

IX. Adjournment.

It was **moved** (Gerald Posner) and **seconded** (Deb Hebert) that the meeting be adjourned at 3:30 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman

Secretary