

APPELLATE PRACTICE SECTION

September 22, 2005

East Lansing, Michigan

Present:

Deb Hebert
Linda Garbarino
Barbara Goldman
Paul Bernard

Janet Boes
John Bursch
Megan Cavanagh
Mark Cooney
Judith Curtis
Don Fulkerson
Marcia Howe
Anica Letica
Gerald Posner
Roz Rochkind
Mary Massaron Ross
Liisa Speaker
Mike Updike
Vic Valenti

Excused Absences:

Ron Lederman

Guests:

Anne Agiroff
Sarah Robertson
Evelyn Tombers
Michael Yates

Deb Hebert called the meeting to order at 6:30 p.m. and thanked Liisa Speaker for arranging the location.

I. Proposed amendments to Administrative Order 2004-05.

The Chair explained that this was a special meeting, for the purpose of considering the Appellate Practice Section's response to the Court of Appeals' proposed amendments to 8(A) and 9(B)(1) and 9(B)(2) of AO 2004-5, the expedited summary disposition appeals docket. The Case Management Work Group has a meeting scheduled for October 14, 2005. Mary Massaron Ross has written a letter, previously circulated to the Council, to the Case Management Work Group, commenting on the underlying issues.

Mary explained that the proposal was designed to reduce the complexities caused by multiple "triggers" of due dates, which have created an unexpected burden on both practitioners and the Court of Appeals' clerk's office. The court would like to have the changes in effect by January 1, 2006. Evelyn Tombers reported that the clerk's office was "overwhelmed" by problems related to transcripts from summary disposition appeals.

As described by Mary, the intent of the proposal is to restore to the appellant the obligation of preparing the record and presenting it to the court. The proposal would follow the outline of MCR 7.212, timing briefing dates from the filing of the claim of appeal or the completion of the last timely transcript.

There was considerable discussion of various possible changes to the work group's proposal and the current rule. Several members were concerned about the need to show-cause court reporters, but it is clear that the Court of Appeals does not want to have to "police" transcript production itself. There were also suggestions to modify briefing deadlines and increase the permissible length of reply briefs.

According to members of the work group, the court's perception is that practitioners are not dissatisfied with the "fast track" process. Megan Cavanagh noted that, based on the feedback she has collected, it is the regular appellate practitioners, as opposed to those attorneys who do appeals only occasionally, who had comments on the plan. Mark Cooney suggested that "clear deadlines are appealing."

The Chair asked the Council to redirect its comments to a response to the proposed amendment of AO 2004-05. Specifically, we should decide whether to send a comment letter or to offer a proposal of our own, to be submitted to the Supreme Court separately from the Court of Appeals' proposed amendments. Several suggestions were made.

John Bursch proposed a summary proposal. The appellant would be required to order the transcript of the summary disposition hearing, unless all parties stipulated that it was not needed. The appellant's brief would be due 56 days from the filing of the claim of appeal and the appellee's brief would be due 77 days from the filing of the claim of appeal, unless a show-cause motion had been filed. The appellant would have 21 days from the filing of the appellee's brief to file a reply brief. The length of the reply brief would be extended to 10 pages. Either party could file a show-cause motion before the date its brief was due. It was **moved** (Don Fulkerson) and **seconded** (Vic Valenti) that the proposal summarized by John Bursch be adopted.

Deb Hebert recommended forwarding the Appellate Practice Section's proposal to the Case Management Work Group before approaching the Supreme Court. If the work group does not adopt the Section's proposal, the Section can submit it directly to the Supreme Court. Mike Updike reminded the Council that the proposed amendment also included proposals regarding the cover sheet for briefs after leave is granted and to time the filing of reply brief from the date of service on the appellee, both of which the Council has indicated it supports. The Chair called for a vote on the motion. **In favor: 17. Opposed: 0. Motion carried.**

It was agreed that John Bursch would circulate his proposal to the Council in writing via e-mail by October 7, 2005. Deb Hebert will draft a letter to the Case Management Work Group in time for its October 14, 2005 meeting. If the work group does not adopt the Appellate Practice Section's proposal, Deb will send it to the Supreme Court.

II. Future meetings.

Deb Hebert distributed a list of proposed dates for meetings of the Section Council in 2005-2006.

Next meeting: Friday, October 21, 2005, 2:00 p.m., Secrest Wardle auditorium, Farmington Hills.

III. Adjournment.

It was **moved** (Gerald Posner) and **seconded** (Evelyn Tombers) that the meeting be adjourned at 7:25 p.m. *Motion carried by acclamation.*

Respectfully submitted,

Barbara H. Goldman
Secretary