

Appellate Practice Section Council  
December 12, 2008  
Telephone Conference

MEETING MINUTES

*Present:*

Barbara Goldman  
Christina Ginter  
Liisa Speaker

Paul Bernard  
Geoffrey Brown  
Graham Crabtree  
Judith Curtis  
Phil DeRosier  
Stuart Friedman  
Christina Ginter  
Ron Lederman  
Anica Letica  
Gerry Posner  
Stephen Rhodes  
Mary Massaron Ross  
Elizabeth Sokol  
Peter Van Hoek

*Excused Absences:*

Frank Bernacki  
Megan Cavanagh  
Linda Garbarino  
Marcia Howe  
Stephanie Morita  
Jill Wheaton

*Guests:*

Sandy Mengel  
Brian Shannon  
Vic Valenti

Welcome and Call to Order

- A. Barb Goldman called the meeting to order at 2:09 p.m.
- I. Approval of Minutes
  - A. November 21, 2008 Minutes (previously circulated). Several minor revisions were noted. Mary Massaron Ross **moved** and Christina Ginter **seconded** that the minutes of the November 21, 2008 meeting be approved as revised (carried unanimously).
- II. Treasurer's Report.
  - A. No report.

### III. Committee Reports

#### A. Court Liaison/Rules Comment

1. ADM 2008-24 [proposed amendment to MCR 2.614; Stay of judgment]. Council discussed minor revisions to Barb Goldman's letter.
2. ADM 2007-42 [proposed amendments to MCR 7.302, 7.314, and 7.316; supreme court rules to mirror 7.212(l)]. No report.

#### B. Michigan Court Practice.

1. No report.

#### C. Publications.

1. Newsletter. Christina Ginter reported that the newsletter is in final review and the committee hopes that it will be mailed to Section members in December. The next deadline January 16, 2009. Council discussed the possibility of including an article about Diane Hathaway.

#### D. Technology.

1. No report.

#### E. Federal Practice.

1. Status of program. Mary Massaron Ross reported that she still wants to have a program, including some of the Michigan judges and a case manager from Cincinnati. Judge McKeague was in charge of the Court's e-filing program. The Section discussed holding the program on June 5, 2008 in metro Detroit. Mary Massaron Ross **moved** and Christina Ginter **seconded** that Chair have approval to authorize expenditure for the venue (carried unanimously).

#### F. Legislative Action.

1. Graham Crabtree reported that the lame duck session is underway and pending legislation does not directly affect appellate practice.
2. Sandy Mengel reported that the Court of Appeals will be closed two additional days (without pay for Court employees) December 26, 2008 and January 2, 2009.

#### G. Good Deeds

1. Michigan Youth in Government Donation. Barb Goldman reported that Youth in Government received the Section's donation.
  2. Access to Justice. Barb Goldman reported that Access to Justice contacted the Section asking about the pledge the Section made in 2004. Ron Lederman will write letter to clarify that, although we made a donation in 2004, we did not pledge to make recurring donations to the organization.
- H. Economics of Appellate Practice
1. No report.
- I. 2010 Michigan Appellate Bench Bar Conference.
1. Mary Massaron Ross reported that the Committee is waiting to find out who the new Chief Justice of the Michigan Supreme Court is before reserving a location and date for the next Bench Bar Conference.
- J. Ad Hoc Committee on Record Production.
1. Judith Curtis reported that the Committee is gathering topics to address, and will be soliciting topics from Council and the Section as a whole.
- IV. Old Business
- A. Listserv Policy. No report.
  - B. Circuit Court Appeals. The committee has finally finished the zoning appeals issue and will be circulating proposed rules soon.
  - C. ADM 2007-40 [alternate proposed amendments to MCR 7.205; equitable tolling for delayed applications for leave to appeal]. Barb Goldman will draft the policy position and submit to State Bar. Brian Shannon plans to send a letter to Supreme Court with his own proposal for tolling.
- V. New Business
- A. Barb Goldman reported that Cara Heflin Edwards has taken a new job and will not be able to stay on Council. Her resignation is effective immediately. Christina Ginter suggested that Geoff Brown take over her term (which is longer) and then have Council appoint someone new to the shorter unexpired term. Barb Goldman proposed that we reconstitute the Nominating Committee to discuss possible candidates. Christina Ginter and Liisa Speaker agreed and will

review potential candidates. Mary Massaron Ross proposed that Council use its discretion in appointing a candidate.

- B. *Caperton v Massey*. Mary Massaron reported on a West Virginia case that asks whether there a due process right to insist upon recusal when a litigant has given millions of dollars in support of a Supreme Court justice's campaign. Mary proposed that the Section may have some thoughts on what a rule would be and might want to submit an amicus brief in the West Virginia case. Barb reported that the Brennan Center sent a letter inviting the Section to be listed as supporting its amicus brief, but the deadline to respond was December 9, 2008.
- C. February meeting. Liisa Speaker volunteered to find location for Lansing meeting in February. Liisa will coordinate with Sandy Mengel and we plan to invite Denise Devine from Court of Appeals to speak about technology.

VI. Next Meeting

- A. Next meeting: January 16, 2009, 2:00 p.m., in Farmington Hills.  
Call-in Number: 800-270-1153; pass code: 124048#.

VII. Adjournment

- A. Gerry Posner **moved** and Geoff Brown **seconded**. Motion carried. Meeting adjourned by unanimous vote at 3:27 p.m.