

APPELLATE PRACTICE SECTION

January 26, 2007

Lansing, Michigan

Present:

Linda Garbarino
Paul Bernard
Barbara Goldman
John Bursch

Excused Absences:

Phillip DeRosier
Anica Letica
Mary Massaron Ross

Guests:

Janet Boes [phone]
Mark Cooney
Judith Curtis [phone]
Tim Diemer [phone]
Christina Ginter [phone]
Terry Flanagan [phone]
Deb Hebert [phone]
Marcia Howe [phone]
Ron Lederman [phone]
Gerald Posner
Roz Rochkind [phone]
Liisa Speaker
Mike Updike [phone]
Vic Valenti [phone]
Jill Wheaton [phone]

Evelyn Tombers

- I. The meeting was called to order at 2:10 p.m. The Chair thanked Evelyn Tombers for making arrangements for the meeting at the Thomas Cooley Law School.

The Chair indicated that an agenda with attachments is sent by e-mail to all member of the Council no later than the Tuesday preceding the meeting. Anyone who has not received the agenda by that point should contact Denise Seccia, at Linda Garbarino's office.

II. Minutes of prior meetings.

- A. Approval of minutes of the December 14, 2006 teleconference (previously circulated). It was **moved** (Mark Cooney) and **seconded** (Mike Updike) that the minutes be approved. *Motion carried* (unanimous).
- B. Posting of minutes of Appellate Practice Section Council meetings. Linda Garbarino reported a suggestion by one member of the Section that minutes of the Council meetings be posted on the Section's website. Tabled.

III. Treasurer's Report.

John Bursch reported that the current balance is approximately \$42,000. The donation for the 2007 Michigan Appellate Bench Bar Conference, approved at the December 2006 meeting, has been disbursed.

IV. Committee Reports.

A. Court Liaison/Rule Comment.

1. ADM 2005-36 (proposed amendment of MCR 7.204, MCR 7.205 [clarify time for filing application for leave to appeal from post-judgment motions]) (comment deadline, March 1, 2007). It appears that the intent of the rule is to codify what is already the Court of Appeals' practice, i.e., treating as timely an application for leave to appeal from a timely motion for reconsideration, new trial, etc. Deb Hebert suggested asking Sandra Mengel why the Court made the request for the proposed change. Vic Valenti and Ron Lederman will try to set up a conference call with Sandy, then Vic will post a message to the general membership listserv and request comments.
2. Membership. Vic indicated that the committee currently consists only of him and Ron Lederman. John Bursch suggested a potential addition to the committee; Linda Garbarino will contact him.
3. [New item.] AO 2006-33 (amendment of MCR 2.116 [allow motions for summary disposition to be filed at any time]). See Item VI(B), *infra*.

B. Michigan Court Practice. No report.

C. Publications.

1. Newsletter.

- a. Members congratulated the Newsletter Committee on the latest issue, which was mailed the week of January 15, 2007.
- b. Future issues. Deb Hebert's goal is to produce four issues per year, in January, April, July and October, with accommodation for the Michigan Appellate Bench Bar Conference this year. Each issue should have one or two "substantive articles."
- c. Distribution by e-mail. Marcia Howe raised the possibility of distributing the Appellate Practice Section's newsletter by e-mail, as some other Sections do. After discussion, however, it was agreed without motion to continue to distribute the newsletter by regular mail.

2. Michigan Bar Journal appellate practice theme issue. Marcia Howe talked to the editor and determined that no deadlines have been set yet. The theme section will be allotted a specified number of words, to be divided up as desired. Several suggestions for articles and contributors were offered.

3. Appellate Practice Section website.

- a. 2006 State of the Law. It was agreed without motion that the "State of the Law 2006" of appellate practice should be posted on the Section's website. John Bursch will work with Janet Boes to have it done.

D. Federal Practice. No report.

E. Technology. No report.

F. Economics of Appellate Practice. No report.

- G. Good Deeds. John Bursch and Linda Garbarino were able to determine that the Section's contribution to the Michigan Center for Civic Education had, in fact, been sent, although it was not fully identified by the State Bar of Michigan. In the future, the Chair should notify the appropriate person at the State Bar in advance, so that when a donation check is issued, it is designated as a donation from the Section.

Evelyn Tombers suggested that the Section consider making a donation to Michigan Youth in Government, a program for middle and high school students that includes a mock trial and moot court competition. She will provide information to Ron Lederman.

- H. Legislative Action. No report.

- I. Circuit Court Appellate Rules. No report.

- J. 2007 Annual Meeting (Thursday, September 27, 2007, 2:00-5:00 p.m., Grand Rapids). Paul Bernard reported that Judge Henry Saad and Prof. Steven P. Croley of the University of Michigan School of Law have agreed to participate in a panel discussion on judicial elections and judicial independence. Several other possible panelists were suggested. Michigan Lawyers Weekly should be invited to cover the meeting.

- K. 2007 Michigan Appellate Bench Bar Conference.

1. Lifetime Achievement Award.

- a. Award to Judge Ryan. Mary Massaron Ross reported that Judge James Ryan of the Sixth Circuit was "thrilled" to receive the award, but that he will be out of the country on May 3, 2007, the date of the award dinner. It was agreed that the award should be announced at the conference but that the presentation could be made later, possibly at the State Bar of Michigan luncheon preceding the 2007 Annual Meeting. An announcement, with a photo of the judge, should also be posted on the Section's website, together with a list of past recipients.
- b. Criteria for the Lifetime Achievement Award. It was agreed without motion that the criteria for the Lifetime Achievement Award should be posted on the Section's website.
- c. Past recipients. As discussed previously, all the past recipients of the Lifetime Achievement Award should be invited to attend the Thursday night dinner at the 2007 conference.

2. Reprints from Appellate Practice Section newsletter. Marcia Howe requested approval to reprint articles originally published in the Appellate Practice Section newsletter in the conference materials. It was **moved** (Deb Hebert) and **seconded** (John Bursch) that the Appellate Practice Section grant permission to reprint any article published in the Appellate Practice Section newsletter in the written materials for the 2007 Michigan Appellate Bench Bar Conference. *Motion carried* (unanimous).

3. Break out sessions.

Liisa Speaker indicated that moderators and reporters are still needed. Any suggestions should be sent to her.

V. Old Business.

- A. ADM 2003-59 (MCR 2.113, MCR 7.206 [original proceedings under the Headlee Amendment]) (comment deadline, October 1, 2006). Linda Garbarino sent a message to Dennis Pollard but has not yet received a response.
- B. Court of Appeals Court Improvement Program, 2006. Linda Garbarino sent a letter to Judge Whitbeck, enclosing copies of the proposals the Section made in response to the 2005 request.

VI. New Business.

- A. AO 2006-08 (confidentiality of deliberations in the Supreme Court). Linda Garbarino reported that “numerous” people had contacted her about the rule before the January 17, 2007 public administrative hearing. Some members opposed the rule while others felt it was unnecessary. There was extensive discussion. It was agreed without motion that the Section would not comment on AO 2006-08 or take a position on Justice Weaver’s proposal for creation of an investigatory commission.
- B. AO 2006-33 (amendment of MCR 2.116 [allowed motions for summary disposition to be filed at any time]). This rule involves primarily trial court practice and the plaintiffs’ and defense bar are likely to be divided in their opinions on it. Vic Valenti and Ron Lederman did not find it relevant enough to appellate practice to warrant consideration by the Court Liaison/Rule Comment Committee.
- C. Suggested revisions to MCR 7.204(a). Noreen Slank offered two proposed revisions to MCR 7.204(a). Referred to Court Liaison/Rule Comment Committee.
- D. State Bar of Michigan Director. The State Bar of Michigan is looking for a new Executive Director. Janet Welch is serving as Executive Director in the interim.

VII. Next meeting.

The next meeting of the Appellate Practice Section Council will be Friday, February 23, 2007, 2:00 p.m. in Farmington Hills. Call-in number 1-800-270-1153, pass code 124048#.

VIII. Adjournment.

It was **moved** (Gerald Posner) and **seconded** (Mike Updike) that the meeting be adjourned at 3:55 p.m. *Motion carried* (unanimous).