

Appellate Practice Section Council
March 13, 2009
Farmington Hills, Michigan – Secrest Wardle

MEETING MINUTES

Present:

Barbara Goldman - Chair
Christina Ginter - Chair Elect
Megan Cavanagh [by Phone] - Treasurer
Liisa Speaker - Secretary

Geoffrey Brown
Anthony Caffrey [by Phone]
Graham Crabtree
Judith Curtis
Stuart Friedman [by Phone]
Deb Hebert
Marcia Howe
Ron Lederman
Stephanie Morita
Gerry Posner
Elizabeth Sokol [by Phone]
Jill Wheaton

Excused Absences:

Paul Bernard
Frank Bernacki
Phil DeRosier
Anica Letica
Stephen Rhodes
Mary Massaron Ross
Peter Van Hoek

Guests:

Don Fulkerson

- I. Welcome and Call to Order.
 - A. Barb Goldman called the meeting to order at 2:08 p.m.
- II. Approval of Minutes.
 - A. February 20, 2009 minutes (previously circulated). Ron Lederman **moved** and Graham Crabtree **seconded** that the minutes of the February 20, 2009 council meeting as revised be approved (carried unanimously).
- III. Treasurer's Report.
 - A. Barb Goldman circulated the latest financial report. No report.
- IV. Committee Reports

- A. Court Liaison/Rules Comment.
 - 1. ADM 2007-40 [alternate proposed amendments to MCR 7.205; equitable tolling for delayed applications for leave to appeal]. Supreme Court adopted an amendment to MCR 7.205(F), reflecting many of the comments made by Council in course of discussions we have had on the topic.

- B. Michigan Court Practice.
 - 1. Megan Cavanagh reported that the Committee will begin to work on a rule proposal for citation to unpublished opinions.

- C. Publications.
 - 1. Newsletter. Deb Hebert reported that she has submitted the materials to the State Bar. Council agreed to rename our newsletter Michigan Appellate Practice Journal. The next deadline May 1, 2009. The March issue will bear the new name. Council also discussed whether to allow announcements for firm blogs in the Journal.

- D. Technology.
 - 1. Listserv. Barb Goldman reported that she posted the listserv policy.

- E. Federal Practice
 - 1. Status of program. Marcia Howe reported she spoke with clerks at the Sixth Circuit. The Court can purchase the airfare with their governmental rates and we will reimburse the participants from the Sixth Circuit. Jill Wheaton reported that Judges McKeague and Griffin would attend, and she is waiting to hear from Helene White.

- F. Legislative Action.
 - 1. HB 4332 - State Bar has requested for comments about funding of the courts (increasing filing fees and increasing costs of transcripts). The filing fees were discussed at the February 20, 2009 meeting. The bill would increase the cost of transcripts from \$1.75 per original page to \$2.00 for original page. There would also be increases in 2010 and 2011, and starting in 2012, a treasury adjustment based on rate of inflation. Council discussed the court reporter rate increases and agreed to wait to see if the bill passes out of the house.
 - 2. Graham Crabtree reported on bills related to judiciary funding and Supreme Court justice recusal.

- G. Good Deeds

1. No report.
- H. Economics of Appellate Practice
1. Stephanie Morita reported that we can send the survey electronically to all of the members of our Section. The State Bar is also considering doing a similar in depth survey of all the Sections as a result of the *Smith v Khouric* case. Stephanie proposed that the Council wait to see what the State Bar plans to do. She has also been invited to sit on the Committee that is working on this project.
- I. 2010 Michigan Appellate Bench Bar Conference.
1. Mary Massaron Ross reported that she met with Chief Justice Kelly. There will be a planning meeting soon, in which the Committee will select a date for the conference.
- J. Ad Hoc Committee on Record Production.
1. Geoff Brown reported the Committee is reviewing the responses to the listserv post requesting record production anecdotes.
 2. Don Fulkerson reported that the Court Reporter Board of Review sent proposed language to the Supreme Court for MCR 8.108. The court reporters did not want to be the arbiter of what is said in non-documentary, non-sworn evidence, such as taped confessions, 911 call, etc. As for depositions, the court reporters will transcribe or attach a cleaned up copy to the trial transcript. Gerry Posner and Stephanie Morita volunteered to work with Don Fulkerson on refining the language in the proposed rule amendment.
- K. Circuit Court Appeals.
1. Proposed Revisions to Subchapter 7.100 of the Michigan Court Rules. The proposed revisions to the Circuit Court rule were discussed. Council did not take a position. Don Fulkerson plans to submit the proposed rules to the Supreme Court.
- V. Old Business
- A. Detroit Metropolitan Bar Association Appellate Practice Section. Phil DeRosier reported that he will be working with Stuart Friedman on Essentials of Appellate Practice.
 - B. 2009 Annual Meeting. No report.
- VI. New Business
- A. Supreme Court office consolidation report. Barb Goldman sent a letter to the State Bar, but the Supreme Court has since rescinded the proposal to consolidate offices.

- B. ABA Appellate Practice Committee. Letter from Kevin Newsom attached to Agenda.
- C. Proposed revision to Code of Judicial Ethics - Canon 2 "Hiring of Court Employees." The proposal does not directly affect appellate practice. However, the proposal is so broad that Council agreed to send a short letter opposing the proposal.

VII. Next Meeting

- A. Next meeting: Friday, April 17, 2009, 2 p.m., Farmington Hills.
Call-in Number: 800-270-1153; pass code: 124048#.

VIII. Adjournment

- A. Geoff Brown **moved** and Deb Hebert **seconded**. Motion carried. Meeting adjourned by unanimous vote at 3:53 p.m.