

**APPELLATE PRACTICE SECTION**

March 24, 2006

*Farmington Hills, Michigan*

*Present:*

Deb Hebert  
Linda Garbarino  
Barbara Goldman  
Paul Bernard

Janet Boes  
Megan Cavanagh  
Mark Cooney  
Judith Curtis [phone]  
Tim Diemer [phone]  
Don Fulkerson [phone]  
Marcia Howe  
Anica Letica  
Roz Rochkind  
Mary Massaron Ross [phone]  
Liisa Speaker  
Mike Updike  
Vic Valenti  
Jill Wheaton [phone]

*Excused Absences:*

John Bursch  
Terry Flanagan  
Christina Ginter  
Ron Lederman  
Gerald Posner

*Guests:*

Noel Massie  
Sandra Mengel  
Hon. Christopher M. Murray

I. Welcome and call to order. The Chair called the meeting to order at 2:10 p.m. and welcomed Judge Murray.

A change in the agenda was announced; due to the need to discuss the Court of Appeals' budget issue, the meeting with Denise Devine has been postponed and will be rescheduled for a later date.

II. Approval of minutes of the February 24, 2006 meeting. One correction was noted. It was **moved** (Linda Garbarino) and **seconded** (Liisa Speaker) that the minutes be approved as corrected. *Motion carried* (unanimous).

III. Treasurer's Report.

Paul Bernard reported that no unusual expenses were incurred since the last report.

IV. Committee Reports.

- A. Court Liaison/Rule Comment. No report.
- B. Michigan Court Practice. No report.
- C. Publications.

Newsletter. Deb Hebert said that the winter issue of the Section newsletter had been mailed.

D. Federal Practice.

Paul Bernard has arranged a panel discussion on Supreme Court litigation from 3:00-5:00 p.m. on Friday, May 19, 2006 at Dickinson Wright's office in Detroit. The participants include three attorneys with experience appearing before the United States Supreme Court: Marvin Krislov (General Counsel, University of Michigan); Tim Baughman (Wayne County Prosecutor's Office); and David Moran (Wayne State University Law School). Paul will work on publicity with the program committee of the Sixth Circuit Judicial Conference. It was agreed without motion that a special mailing to the Appellate Practice Section should be sent.

E. Technology. No report.

F. Economics of Appellate Practice. No report.

G. Good Deeds. The United States District Court for the Eastern District of Michigan is looking for "volunteer lawyers" to advise pro per litigants. Deb Hebert will post a message on the general membership listserv.

H. Legislative Action. Noel Massie indicated that he continues to stay informed about pending legislation of potential interest.

I. Circuit Court Appellate Rules. Anica Letica indicated that there have been no developments since Don Fulkerson's last report.

J. 2006 Annual Meeting. No report.

K. Ad Hoc Committees and Projects.

1. Supreme Court Historical Society meeting. No report.

2. Michigan Bar Journal theme issue. Marcia Howe is the chair of the ad hoc committee.

L. 2007 Michigan Appellate Bench Bar Conference. Liisa Speaker reported that an invitation has been extended to a possible keynote speaker for lunch on Thursday; the committee is waiting for a response.

V. Old Business.

A. Letter re: conflict between MCR 2.602(A) and MCR 7.204(A). Deb Hebert will prepare.

B. Young Lawyers Section. Deb Hebert has been in touch with Dawn King, a member of the council of the Young Lawyers Section. She is very interested in a program on appellate practice. Deb referred her to Tim Diemer and offered the assistance of other members of the Council if needed.

VI. New Business.

A. Meeting with Denise Devine. The meeting with Denise Devine, director of information systems for the Court of Appeals, will be rescheduled, tentatively to June.

B. Court of Appeals fiscal year 2007 budget.

Sandra Mengel explained that, although the Governor had recommended an increase in the Court of Appeals' budget for FY 2007, the court projects that the appropriation will fall short by approximately \$400,000, due to anticipated increases in pension and insurance costs. If there is no additional income, the court will be forced to lay off employees.

Judge Whitbeck has proposed a series of increases in user fees to make up for approximately \$340,000 of the shortfall. Briefly, the proposal would increase the filing (entry) fee from \$375 to \$400; increase motion and other fees by approximately 7%, or the increase in the Consumer Price Index since October 2003, when the present fee schedule was adopted; increase the fee for copies of court documents; add a fee payable to the Court of Appeals when an application for leave to appeal to the Supreme Court is filed; and impose a new fee of \$200 for stipulations to extend time for filing appellate briefs. None of the increases would apply in cases where counsel was appointed. According to Sandy, both Michigan Defense Trial Counsel and the Michigan Trial Lawyers Association have indicated support for the proposal. Judge Whitbeck is scheduled to appear before the State Bar of Michigan Board of Commissioners on April 7, 2006 to discuss the proposal.

Most members agreed that the proposed fee for stipulations was unrealistic and that, if it were adopted, practitioners would simply file motions to extend time instead. Several members thought a small fee would be acceptable. Most members also opposed an increase in the entry fee, even if other fees are raised. Various suggestions were made. Judge Murray commented wryly that the discussion was similar to that at judges' meeting at the court.

Sandy thanked the Council for a thoughtful and informative meeting. She indicated that the court would be interested in the Council's input on an informal basis. Deb Hebert thanked Sandy for bringing the matter to the Council at this early stage in the proceedings. Sandy and Judge Murray retired.

Extensive discussion followed. Many members wanted to support the Court in seeking full funding from the Legislature and were troubled by a pattern of reducing general fund appropriations for the court in response to increases in revenue via user fees. After discussion, it was **moved** (Mary Massaron Ross) and **seconded** (Janet Boes) that the Appellate Practice Section Council take a formal position to the effect that the judiciary is essential to the state of Michigan; that responsibility for the courts rests on the citizens as a whole; and that the Legislature should fully fund the judicial system, including the Michigan Court of Appeals.

The Chair called for discussion on the motion. The principal issue was whether the Council should address the specifics of Judge Whitbeck's proposal or concentrate on attempting to obtain full funding for the court from the Legislature. At the same time, however, there were concerns that if the Section is not heard before any legislation is introduced, it may be unable to influence the process at all.

There was general agreement that it would be advisable to make contact with the Section's liaison from the Board of Commissioners, particularly as the Section would not be able to take a position in opposition to the position of the State Bar of Michigan if one is adopted. It was **moved** (Barbara Goldman) and **seconded** (Linda Garbarino) that the motion be tabled until after the April 7, 2006 meeting of the State Bar of Michigan Board of Commissioners. **In favor:** 17. **Opposed:** 1. *Motion carried.*

It was agreed without motion that Deb Hebert should discuss the Section's opinions about the proposal with Janet Welch (General Counsel of State Bar of Michigan); Scott C. Strattard (Board of Commissioners liaison); and Brian Einhorn (member of the Board of Commissioners). The council also authorized Deb to convey its impressions about the proposal orally to Judge Murray.

- C. Letter from Hon. Victoria Roberts. See Item IV(G), *supra*.
- D. Acknowledgement of retirement of Hon. Hilda Gage. Judge Gage retired effective December 31, 2005. Deb Hebert will send her a letter.
- E. Appellate Practice Section web site. Deb Hebert announced that a new associate at her office, Geoffrey Brown, has volunteered to help with the web site.
- F. State Bar of Michigan inquiry about attorneys with impaired mental capacity. See agenda packet. We have no experience with this issue; no response required.
- G. SB 908 (proposed amendments to MCL 55.287 (§27 of the notary public act). Anica Letica said the change would help keep notarized documents to one page instead of two. No action was taken.

VII. Next Meeting.

**Friday, April 21, 2006, 2:00 p.m., University Club, 10<sup>th</sup> Floor, Grand Rapids.**

Call-in number: 1-800-270-1153; participant code 124048#.

VIII. Adjournment.

It was **moved** (Vic Valenti) and **seconded** (Mark Cooney) that the meeting be adjourned at 4:30 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman

Secretary