

**Appellate Practice Section Council**  
**May 15, 2009**  
**Farmington Hills, Michigan – Secrest Wardle**

**MEETING MINUTES**

***Present:***

Barbara Goldman - Chair  
Christina Ginter - Chair Elect  
Megan Cavanagh - Treasurer  
Liisa Speaker - Secretary

Geoffrey Brown  
Paul Bernard  
Anthony Caffrey [by Phone]  
Graham Crabtree [by Phone]  
Judith Curtis [by Phone]  
Phil DeRosier  
Stuart Friedman  
Marcia Howe  
Ron Lederman  
Stephanie Morita  
Gerry Posner  
Steve Rhodes [by Phone]  
Elizabeth Sokol

***Excused Absences:***

Deb Hebert  
Anica Letica  
Peter Van Hoek  
Mary Massaron Ross  
Jill Wheaton

***Guests:***

Vic Valenti  
Brian Shannon [by Phone]

- I. Welcome and Call to Order.
  - A. Barb Goldman called the meeting to order at 2:14 p.m.
- II. Approval of Minutes.
  - A. April 17, 2009 minutes (previously circulated). Geoffrey Brown **moved** and Gerry Posner **seconded** that the minutes of the April 17, 2009 council meeting be approved (carried unanimously).
- III. Treasurer's Report.
  - A. Megan Cavanagh circulated the latest financial report. (Attached to Agenda)
- IV. Committee Reports

- A. Court Liaison/Rules Comment.
  - 1. No report. (See Old Business on Disqualification Proposals)
- B. Michigan Court Practice.
  - 1. Megan Cavanagh reported that the committee will submit a proposed rule on unpublished opinions to the Council.
- C. Publications.
  - 1. Newsletter. Christina Ginter reported that the next newsletter is in production. Liz Sokol volunteered for the Publications Committee.
- D. Technology.
  - 1. Gerry Posner reported that you can use Macs for e-filing in the 6<sup>th</sup> Circuit.
- E. Federal Practice
  - 1. Marcia Howe reported that the Federal Appeals seminar is planned. So far only 25 people have signed up. Council discussed how to bring in more attendees.
- F. Legislative Action.
  - 1. Graham Crabtree reported the that none of the bills or resolutions have moved. The Governor's Executive Order cut judiciary budget by 4%.
- G. Good Deeds
  - 1. See New Business (Straker).
- H. Economics of Appellate Practice
  - 1. Stephanie Morita reported that the Smith v Khouri work group has been meeting and discussing a new survey. The Council will want to see what the work group does before taking any action.
- I. 2010 Michigan Appellate Bench Bar Conference.
  - 1. Liisa Speaker reported that the 2010 Bench Bar Conference has been scheduled for June 10-11, 2010 at the St. Johns Conference Center in Plymouth. The next planning meeting is on June 9, 2009 at the Supreme Court Detroit Office.
- J. Ad Hoc Committee on Record Production.

1. No report.
- K. Circuit Court Appeals.
1. Barb Goldman reported that Don Fulkerson is attempting to modify zoning rules and the proposed Circuit Court appeals rules have not been submitted to the Supreme Court yet.
- V. Old Business
- A. "Essentials of Appellate Practice" seminar. Phil DeRosier reported that Sandy Mengel has permission to staff the seminar which will occur sometime in the Fall 2009. Council agreed to allow the Ad Hoc Committee to incur reasonable expenses for the seminar.
  - B. 2009 Annual Meeting. Christina Ginter reported that the topic is e-filing in the Court of Appeals and technology for appellate practitioners. Judge Talbot, Denise Devine, Sandy Mengel, and Stu Friedman will speak on the panel.
  - C. ADM 2009-04 (standards for recusal of Supreme Court justices; comment deadline is August 1, 2009). Council discussed the three proposals to amend or revise the disqualification rule. Council discussed the following topics: (1) Whether there should be a separate rule for justices (and whether that separate rule would appear under 7.300); (2) Whether there should be a provision to replace a disqualified justice with a visiting justice; (3) Should there be separate recusal standard for justices than there currently exists for judges? (4) Who can move to disqualify a justice (including justices moving as to another justices); (5) Procedure for making a challenge and whether the justice should state his or her reason when ruling on the recusal; (6) The timing to raise the recusal issue. Council agreed to take the following actions: (1) Oppose the proposal that allows a challenge by another justice; (2) Oppose the proposal that requires a recusal motion to be filed within a 14 days discovering the basis for the recusal and support a provision that would allow a party to file the motion to recuse within a reasonable period of time and without undue delay; (3) Support the proposal that includes a non-exhaustive list of grounds for disqualification; (4) Take no position on whether there should be judicial review of the recusal decision; (5) Oppose proposal that would replace a disqualified justice with a visiting justice.
  - D. 2008-09 annual report. No report.
- VI. New Business
- A. Michigan Supreme Court Historical Society publication. No action.
  - B. Straker Bar Association dinner in honor of Cynthia Stevens. Barb Goldman will post it on listserv.

VII. Future Meetings

- A. Next meeting: Wednesday, June 18, 2009, 4:30 p.m., at Ciao Amici. (Time and location was finalized after the May 15 meeting). There is no call in number for the June meeting.

VIII. Adjournment

- A. Geoff Brown **moved** and Gerry Posner **seconded**. Motion carried. Meeting adjourned by unanimous vote at 4:55 p.m.