

Appellate Practice Section Council
November 16, 2007
Farmington Hills, Michigan

MEETING MINUTES

<i>Present:</i>	<i>Excused Absences:</i>
Paul Bernard	Mark Cooney
Barbara Goldman	Tim Diemer
Liisa Speaker	Linda Garbarino
Megan Cavanagh	Deb Hebert
	Mary Massaron Ross
Frank Bernacki	Gerry Posner
Graham Crabtree	<i>Guests:</i>
Judith Curtis	Anthony Smykla
Phil DeRosier	Stephanie Morita
Christina Ginter	
Cara Heflin [by phone]	
Marcia Howe	
Ron Lederman	
Anica Letica [by phone]	
Roz Rochkind	
Stephen Rhodes	
Mike Updike	
Peter Van Hoek	
Jill Wheaton [by phone]	

Welcome and Call to Order

- A. Paul Bernard call the meeting to order at 2:03 p.m.
- B. Introduction of members and guests.

I. Approval of Minutes

- A. October 19, 2007 (previously circulated). Mike Updike **moved** and Peter Van Hoek **seconded** that the minutes of the October 19, 2007 be approved.

II. Treasurer's Report.

- A. Paul Bernard has not received report from State Bar, nor has Megan.

III. Committee Reports

A. Court Liaison/Rules Comment

1. ADM 2006-06, proposed amendment of MCR 7.215 (conflict panels in the Court of Appeals) (comment deadline January 1, 2008; State Bar has requested comments by November 30, 2007). Committee has no problem with those two changes and recommend Council accept it. Council discussed proposed rule change. Mike Updike **moved** to follow committee recommendation. Marcia Howe **seconded**. Motion carried (unanimous).
2. ADM 2005-36, proposed amendment of MCR 2.119, 7.204 and 7.205 (appeals of right and by leave from orders on motion for reconsideration) (comment deadline February 1, 2008; State Bar has requested comments by November 30, 2007). Changes to rules in response to Council suggestions. Committee recommends approval. Council discussion regarding whether proposal on MCR 7.204 and 7.205 takes away discretion from trial court to give more time for motions for reconsideration, rehearing, and new trial, and providing strict 21-day filing deadline. Some members suggested that we ask the Court to re-insert the proposed deleted language of the rule "or within further time the trial court may have allowed during that 21 day period" in MCR 7.204(A)(1)(b) and MCR 7.205(F)(3)(b). We discussed other rules (such as MCR 2.611) that were not included in the comment to the proposed rule change that was made "for consistency." Committee to work on proposed comment, which we will vote on once the comment is prepared.

B. Michigan Court Practice.

1. Megan Cavanagh reported that she will provide summary report in December 2007.

C. Publications.

1. State Bar Theme issue. Marcia Howe reported that all articles are in and we are over the word limit.
2. Newsletter. Christina Ginter reported that the issue will go to State Bar next week.

D. Technology.

1. Barb Goldman is now administering listserv. 300 or so members on the listserv. Barb Goldman will be updating listserv so it better reflects our current membership, and then add in appellate judges who are not members of the Section. Will notify members without email address at State Bar that they can subscribe to listserv. Joe Firestone sent out letters to accomplish this task 5 years ago. Barb Goldman requests Council permission to recreate the listserv sometime in January 2008.

E. Federal Practice

1. Mary Massaron Ross spoke with John Bursch about Sixth Circuit program in Spring 2008, invite Michigan Sixth Circuit judges and staff. Council will need to figure out location and budget to reimburse court staff that travels from Cincinnati, OH.

F. Legislative Action.

1. No report.

G. Good Deeds

1. No report.

H. Economics of Appellate Practice

1. Paul Bernard received email from Candace Crowley. State Bar wants five questions from our practice area for the economics of law practice (deadline November 27, 2007). Mke Updike volunteered to draft five questions and will post on listserv.

I. Circuit Court Appellate Rules

1. Paul Bernard was supposed to remove committee from agenda.

IV. Old Business

A. *Houdini* Amicus Brief

1. Oral argument occurred in Supreme Court last week. Phil DeRosier reported that attorney for Houdini appreciated our amicus brief.

B. *Beavers* Amicus Brief

1. Liisa Speaker reported that she circulated draft amicus brief. Discussion about state bar policies regarding submitting policy position prior to submitting brief. Council discussed substance of brief. We discussed whether we have actually voted to file brief, or just for rule change. We reviewed minutes and determined that we needed on vote to file amicus brief. Paul Bernard proposed that we have email vote by end of day Monday on whether to file brief. If the vote passes, then Paul will send it to the State Bar to approve so that we can file at Supreme Court on Tuesday. The council recognized the efforts of Liisa Speaker for her work on the brief.

V. New Business

A. Law Student Section.

1. Tony Smykla guest from law student section. The law student section is looking for two distinct contributions from APS. First, they are looking for

recommendations for area of law for the section's annual moot court competition. They also want to invite our members to be judges for the moot court competition, which is scheduled on January 26, 2008. The competition will consist of 2-3 rounds and will be held in Ann Arbor. The section asks for a 2-3 hour commitment. Dwayne Streisman from his section is heading up project. They also would like to have speakers at law schools about substantive area of law. 30-45 minute presentation. Suggested even doing practice round for oral argument. Paul Bernard volunteered to post on the listserv if Tony submits information.

VI. Next Meeting

A. December 13, 2007, 2 p.m. (by teleconference)

VII. Adjournment