

Appellate Practice Section Council
November 21, 2008
Farmington Hills, Michigan–Secrest Wardle

MEETING MINUTES

Present:

Barbara Goldman
Christina Ginter
Megan Cavanagh [by Phone]
Liisa Speaker

Excused Absences:

Stuart Friedman
Ron Lederman
Anica Letica
Mary Massaron Ross

Frank Bernacki
Paul Bernard
Geoffrey Brown
Graham Crabtree
Judith Curtis [by Phone]
Phil DeRosier
Linda Garbarino
Christina Ginter
Deb Hebert
Marcia Howe
Stephanie Morita
Gerry Posner
Stephen Rhodes [by Phone]
Elizabeth Sokol
Peter Van Hoek
Jill Wheaton [by Phone]

Guests:

Nancy Dembinski
Sandy Mengel [by Phone]
Vic Valenti

Welcome and Call to Order

- A. Barb Goldman called the meeting to order at 2:05 p.m.
 - B. Introduction of members and guests.
- I. Approval of Minutes
- A. July 11, 2008 telephone conference (previously circulated). Gerry Posner **moved** and Marcia Howe **seconded** that the minutes of the July 11, 2008 special meeting be approved (carried unanimously).

- B. October 17, 2008. Phil DeRosier **moved** and Graham Crabtree **seconded** that the minutes of October 17, 2008 be approved (carried unanimously).
- II. Treasurer's Report.
- A. Barb Goldman reported that we have a balance that has carried over from the past several years. (See attachment p 5-9)
- III. Committee Reports
- A. Court Liaison/Rules Comment
 - 1. ADM 2008-24 [proposed amendment to MCR 2.614; Stay of judgment]. Barb Goldman will draft letter to Supreme Court indicating the Section's support of the rule change.
 - 2. ADM 2007-40 [alternate proposed amendments to MCR 7.205; equitable tolling for delayed applications for leave to appeal] (attached to agenda at pages 4-9). Council engaged in a lengthy discussion of various proposals and whether to limit equitable tolling for dismissals for lack of jurisdiction. Christina Ginter **moved** and Linda Garbarino **seconded** that the Section comment favorably on a tolling provision for filing a delayed application for leave to appeal. (**Carried unanimously**). Christina Ginter **moved** and Gerry Posner **seconded** that the Section adopt a tolling provision regardless of the grounds for dismissal. (**11 in favor; 5 opposed; 2 abstained**). Linda Garbarino **moved** and Gerry Posner **seconded** that Council adopt Alternative A as proposed by the Supreme Court. (**8 in favor; 7 opposed**). Barb Goldman will draft a comment that reflects Council's vote, along with some of the concerns raised by Council regarding the types of dismissals and the period of time in which to pursue the delayed application.
 - 3. ADM 2007-42 [proposed amendments to MCR 7.302, 7.314, and 7.316; supreme court rules to mirror 7.212(l)]. Council agreed to not submit any comment on that rule change.
 - B. Michigan Court Practice.
 - 1. No report.
 - C. Publications.
 - 1. Newsletter. Deb Hebert reported that the newsletter has been submitted to the State Bar, and should be published the first week of December. We have authors for the next three issues. The next deadline January 16, 2009.
 - D. Technology.

1. Listserv. The committee is working on listserv rules and will circulate them to Council before the next meeting.
 2. Electronic filing. Sandy Mengel reported that the Court of Appeals is expanding criminal e-filing project to all criminal appeals, beginning January 1, 2009.
- E. Federal Practice
1. Status of program. Jill Wheaton and Marcia Howe will schedule a conference call with Mary Massaron Ross to discuss a spring program.
- F. Legislative Action.
1. Graham Crabtree reported on legislation not directly affecting appellate practice.
- G. Good Deeds
1. Michigan Youth in Government Donation. (Attached to agenda at page 10). Barb Goldman reported that she sent the Section's donation to Michigan Youth in Government.
- H. Economics of Appellate Practice
1. Stephanie Morita reported that the company that did the survey last time still exists. She invited council members to submit proposed survey questions. The 2001 survey will be circulated before the next meeting.
- I. 2010 Michigan Appellate Bench Bar Conference. Jill Wheaton will follow up with Mary Massaron Ross for an update on the committee.
- J. Ad Hoc Committee on Record Production. Sandy Mengel reported on the record production work group that formerly existed. Vic Valenti will invite Don Fulkerson to attend the next meeting.
- IV. Old Business
- A. Listserv Policy. Discussed above.
 - B. Circuit Court Appeals. The committee has finally finished the zoning appeals issue and will be circulating proposed rules soon.
- V. New Business

- A. Liisa Speaker reported that Janet Boes was appointed as Saginaw County Circuit Court judge in September 2008. Barb Goldman will send a congratulatory note to Judge Boes.
- B. Barb Goldman suggested that Council send a letter to any new appellate judges to congratulate them and let them know about the Section (after January 1, 2009).

VI. Next Meeting

- A. Next meeting: Friday, December 12, 2008, 2:00 p.m. by telephone.
Call-in Number: 800-270-1153; pass code: 124048#.

VII. Adjournment

- A. Geoff Brown **moved** and Christina Ginter **seconded**. Motion carried. Meeting adjourned by unanimous vote at 4:51 p.m.