

APPELLATE PRACTICE SECTION

October 19, 2007

Farmington Hills, Michigan

Present:

Paul Bernard
Barbara Goldman
Liisa Speaker [phone]
Megan Cavanagh

Excused Absences:

Mark Cooney
Tim Diemer
Linda Garbarino
Roz Rochkind

Frank Bernacki
Graham Crabtree [phone]
Judith Curtis [phone]
Phillip DeRosier
Christina Ginter
Deb Hebert
Cara Heflin
Marcia Howe
Ron Lederman [phone]
Anica Letica [phone]
Mary Massaron Ross [phone]
Gerald Posner
Stephen Rhodes [phone]
Mike Updike
Peter Van Hoek [phone]
Jill Wheaton

Guests:

Vic Valenti

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Welcome and call to order.

- A. Paul Bernard called the meeting to order at 2:27 p.m. Mike Updike apologized for the technical difficulties with his firm's new phone system, which delayed the start of the meeting.
 - B. Introduction of members. Paul invited the new members of the Council, Frank Bernacki, Graham Crabtree, Cara Heflin and Peter Van Hoek, to introduce themselves and asked that continuing members do the same.
- I. Approval of minutes
- A. June 21, 2007 (previously circulated). It was **moved** (Gerald Posner) and **seconded** (Megan Cavanagh) that the minutes of the meeting of June 21, 2007 be approved. *Motion carried* (unanimous).
 - B. September 6, 2007 special meeting (previously circulated). It was **moved** (Mike Updike) and **seconded** (Gerald Posner) that the minutes of the September 6, 2007

special meeting by teleconference be approved as corrected. *Motion carried* (unanimous).

- C. September 27, 2007 annual meeting (previously circulated). It was **moved** (Jill Wheaton) and **seconded** (Mike Updike) that the minutes of the 2007 Annual Meeting be approved as corrected. *Motion carried* (unanimous).

II. Treasurer's Report.

Megan Cavanagh indicated that the Section has an adequate balance on account. One incorrect charge of \$200 appearing on a prior report has been removed. Megan will check out another questionable item on the most recent statement.

III. Committee Reports.

A. Court Liaison/Rule Comment.

1. ADM 2006-06, proposed amendment of MCR 7.215 (conflict panels in the Court of Appeals) (comment deadline January 1, 2008). Vic Valenti indicated that the committee will evaluate this proposal and report at the November meeting.
2. ADM 2005-36, proposed amendment of MCR 2.119, 7.204 and 7.205 (appeals of right and by leave from orders on motions for reconsideration) (comment deadline February 1, 2008). The Supreme Court accepted the Section's comments of March 2007 on an earlier version of this proposal but has republished the proposed rule with additional changes. Vic said that the committee will plan to circulate a report and recommendation.
3. Membership. The current active members are Vic Valenti, Ron Lederman and Geoffrey Brown.

B. Michigan Court Practice.

Megan Cavanagh tentatively plans to have a final report on the accelerated summary disposition docket program by December.

C. Publications.

1. Michigan Bar Journal theme issue. Marcia Howe reported that the committee is "doing fine" and that articles are being received. Sandra Mengel and Sheri Oberg provided material on the Court of Appeals and the Supreme Court, respectively. No Court of Appeals or Supreme Court judges, however, made contributions.
2. Newsletter.
 - a. Next issue. Deb Hebert is waiting for two articles for the next issue, which will have only one "substantive" piece instead of two.
 - b. Publication schedule. Deb asked whether the Section should continue to publish the newsletter on a quarterly basis. She noted that this schedule requires eight major articles every year, although the Michigan Bar Journal theme issue in 2008 may effectively substitute for one issue of the Appellate Practice Section newsletter. No action was taken.
 - c. Contributions by Council members. Deb requested that every member of the Section Council commit to "being responsible for," i.e., writing or finding

another person to write, one major newsletter article during his or her three-year term. Deb will post a message on the general membership and council listservs, seeking suggested topics.

- d. New features. The Publications Committee is considering adding a column on “recent developments in appellate law,” to describe Supreme Court orders and recent opinions of interest. The idea was greeted with enthusiasm.

Mary Massaron Ross suggested sending a questionnaire to the Court of Appeals judges and justices of the Supreme Court and using their responses as the basis of an article in each issue. Members of the Council could also conduct “interviews” with the judges and base articles on those. As there are 28 judges and seven justices, there should be enough material to cover several years’ worth of issues.

3. Section briefs.

Barbara Goldman volunteered to take over preparation and submission of the Appellate Practice Section “section brief” in the Michigan Bar Journal.

D. Technology.

It was suggested that a new administrator be selected for the Appellate Practice Section listservs, as Joe Firestone has recently taken a new position in East Lansing and is not actively involved in appellate practice. Barbara Goldman offered to assume the position.

E. Federal Practice.

A new chair is needed to replace Paul Bernard. Paul explained that the committee’s rule is to educate the members of the Section on issues of federal practice and to comment, when necessary, on federal rules. Mary Massaron Ross volunteered to co-chair the committee with John Bursch, if he plans to continue as a member of it. Paul will contact John and find out. Phillip DeRosier will also join the committee. They will tentatively plan on a program for the spring of 2008.

F. Legislative Action.

Graham Crabtree offered to take over the Legislative Action Committee, noting that his office is located near the Capitol in Lansing.

G. Good Deeds.

See Item V(A), *infra*.

H. Economics of Appellate Practice.

Paul Bernard reported that the State Bar of Michigan has developed an ongoing on-line survey and that individual sections can include questions in it “periodically.” Paul will obtain additional information and forward it to Mike Updike. Paul also circulated a demographic study of the Appellate Practice Section from the State Bar of Michigan.

I. Circuit Court Appellate Rules.

Anica Letica reported Don Fulkerson is still finishing up the zoning rules. Paul Bernard indicated that he would remove the committee's report as a regular item on the Appellate Practice Section Council agenda.

IV. Old Business.

- A. Amicus brief in *Houdini Properties v Romulus* (Supreme Court docket number 132018). John Bursch circulated a draft of a proposed brief amicus curiae to the Council via e-mail. Paul Bernard will forward copies to new members of the Council who have not yet been added to the Council listserv. Marcia Howe and Gerald Posner made brief comments on the draft. The case is set for oral argument the first week of November, 2007. Paul will post a request for a vote by e-mail, to close on October 23, 2007. Deb Hebert will put a short item in the newsletter.
- B. Amicus brief in *Beavers v Barton Malow Co* (Supreme Court docket number 133294). Liisa Speaker, with Judith Curtis and Gerald Posner, will prepare a draft of a brief amicus curiae and circulate it in November. Oral argument has not yet been scheduled. A notice that the Section "is considering" an amicus brief should be included in the newsletter.

V. New Business.

- A. Appellate Practice Section tribute to Kathleen McCree Lewis.
 1. Paul Bernard called for a moment of silence in recognition of former Council member Kathleen McCree Lewis, who died on October 15, 2007. A memorial service will be held on Friday, October 26, 2007.
 2. Appellate Practice Section Lifetime Achievement Award. Several members of the Section suggested, via the general membership listserv, that the Appellate Practice Section give its Lifetime Achievement Award, posthumously, to Kathleen McCree Lewis. It was **moved** (Mary Massaron Ross) and **seconded** (Jill Wheaton) that the Appellate Practice Section confer the Lifetime Achievement Award on Kathleen McCree Lewis.

There was broad agreement that Kathleen was an appropriate recipient of the Lifetime Achievement Award but discussion over how best to present it. The award has always been presented during the Michigan Appellate Bench Bar Conference, but the next conference is not expected to take place until 2010. Some members suggested making the presentation sooner. Possibilities included a State Bar of Michigan function during the 2008 Annual Meeting; the Appellate Practice Section's 2008 Annual Meeting program; or a special session of the Michigan Supreme Court.

The Chair called for a vote on the motion to confer the award, noting that the decision on when to present it could be made separately. *Motion carried* (unanimous).

After additional discussion, it was **moved** (Deb Hebert) and **seconded** (Mike Updike) that the Lifetime Achievement Award be presented posthumously to Kathleen McCree Lewis at the 2010 Michigan Appellate Bench Bar Conference; that the decision to confer the Appellate Practice Section Lifetime Achievement Award be reported to the Lewis family; that the Appellate Practice theme issue of the Michigan Bar Journal be dedicated to Kathleen McCree Lewis; and that an article about her be submitted to the Michigan Bar Journal on behalf of the Appellate Practice Section. *Motion carried* (unanimous). It was agreed that Deb Hebert and Mary Massaron Ross would draft a letter to the Lewis family for Paul to send; Marcia Howe would prepare the dedication of the Michigan Bar Journal theme issue; and Paul Bernard would discuss the Michigan Bar Journal article with Janet Welch, Executive Director of the State Bar of Michigan, who has offered to publicize the award.

3. New award. It was suggested that a new award be created, perhaps one specifically for practitioners, to be named after Kathleen McCree Lewis. Tabled until January 2008.
4. Contribution in memory of Kathleen McCree Lewis. The Lewis family prepared a list of charitable organizations to which donations could be made. Several members agreed with the suggestion, posted on the general membership listserv, that the Section make a donation to Wade McCree Scholarship Fund at Wayne State University Law School which seemed, of the organizations named, the one most consistent with the Section's purposes. Paul Bernard and Jill Wheaton suggested that the Wade McCree Endowed Professorship at the University of Michigan Law School was also an appropriate choice.

It was **moved** (Deb Hebert) and **seconded** (Marcia Howe) that the Appellate Practice Section donate \$1,000 each to the Wade McCree Scholarship Fund at Wayne State University Law School and the Wade McCree Endowed Professorship at the University of Michigan Law School in memory of Kathleen McCree Lewis and that news of the donation be included in Paul's letter to the Lewis family regarding the Lifetime Achievement Award. *Motion carried* (unanimous).

B. 2008 Annual Meeting.

The 2008 Annual Meeting of the State Bar of Michigan will be September 17-18, 2008 at the Hyatt Regency in Dearborn. Barbara Goldman will arrange the Appellate Practice Section's program.

C. Access to Justice Fund.

Paul Bernard reported that the Access to Justice Fund appears to have requested a pledge of \$2000 from the Section. He referred the request to the Good Deeds Committee.

The fund is also seeking "strategic partnerships" with State Bar of Michigan Sections, specifically volunteer lawyers to provide legal services to organizations that need assistance. It was agreed without motion that the Appellate Practice Section could serve as a "clearinghouse" for appellate assistance via the general membership listserv.

D. Listserv membership for nonmembers of the Section.

A member of the Section who is leaving Michigan made a request, via the general membership listserv, to be permitted to remain as a subscriber to it. Barbara Goldman explained that, although the listserv was created based on membership in the Appellate Practice Section of the State Bar of Michigan, the subscriber list is not updated automatically. New members must sign up and be approved by the listserv administrator, or be added manually by the administrator, and inactive and former members must be unsubscribed the same way. No action was taken.

E. Proposed 2007-2008 schedule of Council meetings.

Paul Bernard circulated a proposed schedule of meetings of the Appellate Practice Section Council. After discussion, it was agreed that the Council would meet as follows:

November 16, 2007.	Farmington Hills.
December 14, 2007.	Teleconference.
January 18, 2008.	Lansing (location to be determined).
February 22, 2008.	Farmington Hills.
March 21, 2008.	Farmington Hills.
April 18, 2008.	Grand Rapids (location to be determined)
May 16, 2008.	Farmington Hills.
June 18, 2008.	Location to be determined (dinner meeting).

VI. Next meeting.

Friday, November 16, 2007, 2:00 p.m. Farmington Hills. Call-in Number: 800-270-1153; pass code: 124048#.

VII. Adjournment

It was **moved** (Mike Updike) and **seconded** (Megan Cavanagh) that the meeting be adjourned at 4:30 p.m. *Motion carried* (unanimous).

Respectfully submitted,

Barbara H. Goldman
Acting Secretary