Pennsylvania Bar Association
Committee/Section Day
March 23, 2017
Harrisburg, Pennsylvania

APPELLATE ADVOCACY COMMITTEE

MEETING MINUTES

Attendees: Maribeth Wilt-Seibert (Chair), Scot Withers (Vice-Chair), Karl Myers (Secretary), Hon. Mary Jane Bowes (via telephone), Hon. Victor Stabile (via telephone), Michael Krimmel, Philip Yoon, Daniel Siegel, Sharon Lopez, Deb Fourlas, Jennifer Traxler, Andrew Sperl, Angie Edris, Pam Kance, Judy Gilroy, Susan Moyer, Dennis Whitaker, Tom Wilkinson, Jill Beck (via telephone), Jay Evans (via telephone).

Welcome and Introduction –

Maribeth opened the meeting at 9:15 and welcomed the members attending in person and on the telephone. Maribeth noted that minutes will be taken at this and future meetings and circulated for comment by members before they are finalized. Later, discussion was held concerning potential publication or posting of the minutes on the PBA website.

Comments by Vice President Lopez –

Maribeth invited Vice President Lopez to speak. She welcomed members and thanked them for participating. Vice President Lopez noted that at the roundtable discussion this morning members discussed cross-committee and section collaboration. She also noted the initiatives of the PBA to better meet the needs of members and seek ways to bring younger attorneys into the fold.

Chair’s Report –

Maribeth noted that she has not heard anything on whether the appellate commerce court proposal will be reintroduced in the legislature, but would welcome information members have in that regard. Later, Karl mentioned his sources indicate there is little interest in this proposal in the legislature.

Maribeth also raised the question of a safe harbor protecting pro bono lawyers from potential malpractice claims. She noted it would seem to be important to protect these volunteer lawyers, and noted she has discussed it with retired Commonwealth Court Judge Friedman, who is looking into this issue. Judge Bowes commented that she has been working on a pro bono appellate program in Allegheny County. That program provides for the county bar association’s insurance to protect the pro bono attorney.
Judge Bowes also noted that developing the appellate pro bono program has proved difficult, as the time constraints in the appellate process mean involvement is needed at the trial court level. Later, the Committee again addressed the safe harbor issue. In this regard, Tom Wilkinson mentioned the PBA proposal concerning emeritus counsel. It is unclear where this proposal stands, but members indicated they would look into its status.

**Vice Chair’s Report** –

Scot reported on the proposed amendment to Pa.R.A.P. 126. This change would permit citation to unreported decisions, and provides uniform standards for citation across the three appellate courts. It would allow citation to these decisions for persuasive value. Scot further noted the proposal had been circulated to the Committee’s members, and the consensus appeared to be support for the measure. Members were encouraged to submit feedback to the Appellate Rules Committee. The comment period closed February 9th.

Scot also reported on two sets of amendments since our last meeting. First, on December 2, Rules 906 and 1911 were amended. These changes were ministerial in nature, as they were conforming amendments referencing the rules pertaining to transcript preparation. Scot encouraged members to review the new transcript rules. Second, effective April 1, Rule 2572 was amended. The rule now provides that an application to stay the remand of the record is to be addressed to the court possessing the record. This change was made to address confusion about where such motions were to be filed by parties seeking U.S. Supreme Court review.

Scot noted for the minutes that he will take responsibility for circulating rules proposals in the future. This role previously was fulfilled by Hon. Carl Solano, prior to his appointment to the Superior Court.

**Budget** –

Maribeth opened a discussion about the Committee’s budget. Discussion was held about how the $250 committed to the March 21 event at Duquesne Law should be attributed in the budget. Maribeth also asked Judy Gilroy to comment on this event. Judy indicated the event was a success, and featured Judges Wojcik, Cosgrove, and Pellegrini, as well as important contributions from Rob Byer and Lucinda Glinn. A reception was held after the presentation. The event was well-attended. Judy reported the event was a success.

With regard to the budget, Pam Kance noted that the $900 allocated to the Committee may be used as the Committee desires, but that PBA also would support other initiatives by the Committee beyond that budget allocation. Pam also fielded questions concerning the costs associated with regular Committee events, such as its meetings on PBA Committee/Section Day.
**CLE Programs**

Maribeth opened discussion about CLE programs, and asked if members would be interested in putting together another program for the Committee this year. Karl indicated he is in discussions with President Judge Gantman about a CLE in the fall at the Montgomery Bar Association and would explore partnering with the Committee.

Judge Bowes raised the question of whether the Committee does or should coordinate with PBI. A discussion was held about the relationship between the Committee and PBI. Angie commented that PBI always is willing to work with anyone who wishes to approach it to conduct CLE programs.

A number of CLE programs were discussed. On March 31, a program on advanced appellate advocacy will be held in the morning at PBI in Philadelphia. Additional programs are expected to be held in July and December. Phil is putting together one of these programs.

Dan Siegel noted he is on the PBI Board and mentioned that PBI is working towards creating greater awareness between PBI and practitioners. He also noted that PBI is working to educate the bar about recent changes relative to public access to records, which are effective January 6, 2018. A discussion was held about this change.

**Strategic Plan**

Maribeth opened discussion about the PBA’s Strategic Plan, as the PBA has invited Committees and Sections to comment on the Plan.

As to Member Services and Growth Goal 4, Maribeth noted the earlier discussion of efforts to enhance interaction between the Committee and PBI. Maribeth also inquired if the group would be interested in quarterly phone conference calls between the Committee’s bi-annual meetings. The consensus was that we should hold those calls. Dennis Whitaker also commented with regard to encouraging enhanced cross-committee participation and collaboration. Maribeth solicited the committee about collaborating with the Civil Litigation Section. Deb Fourlas and others volunteered to be involved in that effort.

As to Diversity and Inclusion Goal 2, Judge Bowes suggested collaborating with the PBA’s diversity committee, perhaps by having a joint program on seeking to increase diversity in appellate practice. Phil indicated he would bring this idea up at the diversity committee meeting this afternoon. Phil also commented that more solo and small firms are involved in appellate practice, and he recommended collaborating with the solo and small firm practice attorneys. Tom Wilkinson suggested that webinars could be conducted on appellate practice. Judy Gilroy suggested collaboration with the Women in the Profession Committee, perhaps by presenting a program to law students at Penn-State Dickinson or Widener. Judge Bowes and Jen Traxler volunteered to support this effort.
Other Business –

Phil raised the potential of educating the practicing bar about issues with the rollout of electronic filing, and how the PACFile system has been working. Phil indicated he will reach out to AOPC over the coming year on this topic.

The Committee also briefly discussed the most recent developments concerning the proposal to tax legal services. A number of Committee members noted their concerns with this proposal and communicated their continued awareness and attention to this issue of significance to the profession.

Next meeting –

Maribeth announced that the Committee will not meet in Pittsburgh at the PBA annual meeting. The Committee will communicate next via email and then during an expected quarterly conference call.

The meeting was adjourned at 10:29 AM.

Respectfully submitted,

Karl S. Myers
Committee Secretary
April 5, 2017