I. Roll Call

See below.

II. Introduction and Welcome

Scot Withers introduced the call and presided over the meeting. Karl Myers was unable to attend due to a family emergency.

III. Adoption of Minutes

Scot Withers opened floor for comments on the minutes from the November 14, 2019 meeting. Dara DeCourcy moved to adopt the minutes. Multiple members seconded the motion. There were no proposed edits. The motion passed by voice vote without opposition.

IV. Financial Report

Jill Beck presented the financial report. She reported that the Committee had received an increased budget. She discussed the possibility of using the increased funding for additional CLE/CJE programs. One possibility would be a Superior Court related CLE, possibly with a regional focus, this year or next year. She noted that a previously considered idea of organizing an appellate judge CLE would probably not occur for another year or two.

V. Judicial Conference Proposal

Scot Withers indicated that Karl Myers requested a vote of approval to continue planning efforts based on the two-page judicial conference proposal that Karl had circulated with the agenda materials in advance of the meeting. The proposal is for a conference in May 2021 or May 2022 with CLE and CJE programming. Scot opened the floor to questions and comments.

Bill Cluck asked for more clarification regarding what approval would be for – i.e., the concept, funding, or specifics. Scot responded that the vote is to approve continued planning toward the proposal as set forth. Specifics like funding and a specific date would be determined later.

Bill Cluck moved to approve continued planning efforts; Jill Beck and Bob Graci seconded the motion.

Bob Graci noted that at the bottom of the first page of the proposal that was circulated, there was a reference to CLE credit, but that the next page notes that the programs would be certified for CJE as well. He suggested that the opportunity for CJE credit should be referred to throughout. He noted that this was not a substantive change, but just a clarification.

Virginia McMichael noted that the Third Circuit has sent out its save the date for a judicial conference this May. Because it is generally held every other year, May 2022 may present a conflict with the Third Circuit conference, whereas May 2021 would not.

The motion was approved by voice vote with no opposition.
VI. Discussion of Appellate Districts Proposal

Tom Wilkinson began a discussion regarding HB 196, which would create districts for election of appellate judges.

The bill was introduced over a year ago. It came up through the Judiciary Committee in December, where the vote was along party lines.

In substance, the bill would amend the Constitution to create judicial districts for election of appellate judges. If approved twice by the electorate, the Constitution would be amended. It would create nine Commonwealth Court electoral districts, fifteen Superior Court electoral districts, and seven Supreme Court electoral districts. The stated basis for the bill is that around 60% of judgeships are occupied by judges from Pittsburgh or Philadelphia, although there may be a partisan motivation, as well, given that many judges are Democrats.

Bryan Neft, the immediate past president of the Allegheny County Bar Association, indicated that the Allegheny Bar and the Philadelphia Bar are working on recommendations in opposition to the bill.

Tom noted that the PBA has long supported some form of merit selection at the appellate court level. The last formal proposal on the subject was around 2002. The PBA’s position is similar to that of Pennsylvanians for Modern Courts. HB 196 is inconsistent with merit selection.

There was a discussion regarding how and whether the bill would impact diversity and representation on the courts. Women have been well represented on the courts, but minorities have not.

Bill Cluck noted that among the appellate courts, there are 20 female judges and 11 male judges. 30 judges are white and 1 is black. The majority are from Philadelphia, Pittsburgh, or the Philadelphia suburbs. He also noted that the Minority Bar Committee disagrees with the use of the term “geographic diversity” as used by the proponents of the bill. There is a difference between representation and diversity. He also noted that there are concerns about the impact of the proposal on minority voters, because a voter would be giving up voting rights for all but three appellate court seats.

Tom noted that a number of media editorials have come out in opposition. Also, Pennsylvania has statewide appellate courts, so it is inappropriate to implement constituencies. It is unclear how the legislature would carve up districts.

He suggested that the Committee consider joining with others in opposing the bill.

Rob Byer commented that it seems that one impact of the constitutional amendment would be to interrupt the terms of current incumbents. That would not only change how judges are elected, but would quickly cause a change in the composition of the court. Tom Wilkinson agreed that would be a strange result. Rob noted that Pennsylvania courts have previously held that office holders have no vested interest in their offices.

There was additional discussion regarding the merits of the bill, and over procedural requirements. It was noted that it would be impossible for this to be presented to the voters on the ballot this year. Several members noted that having constituencies for statewide appellate courts is inconsistent with the notion of judges as impartial decision makers. There was also
discussion regarding how closely the PBA’s opposition to this bill should be tied to its support for merit selection.

Tom suggested that the Committee vote to support the development of a recommendation that would be presented to the Board of Governors and House of Delegates depending on timing. Other committees could consider joining. There could be an additional vote later on specific language.

Pam Kance noted that the House of Delegates meets on May 8, and that Committee/Section Day on March 26 would provide an opportunity to review a draft recommendation, with sufficient time to submit materials to the Board of Governors and House of Delegates for review.

Rob Byer moved to oppose the proposed constitutional amendment set forth in HB 196 because it is fundamentally inconsistent with PBA’s longstanding position regarding judicial selection.

Scot Withers suggested that a subcommittee be authorized to draft written material consistent with that motion for presentation at the March meeting. Rob agreed to the amendment.

Lucinda Glinn suggested eliminating the specific language referring to merit selection, and instead authorize the subcommittee to determine the stated rationale for the opposition. Rob agreed.

Lucinda and Virginia McMichael seconded the motion as amended. It passed by voice vote without opposition.

Bill Cluck questioned which PBA committee or section should take the lead. Tom suggested that it should be a joint effort. It was suggested that it might be within the purview of the Judicial Administration Committee, but Tom indicated that they had already been approached and they had not moved forward with the issue.


VII. Subcommittee Reports

A. Rules & Court Technology

Scot Withers presented the report of the Rules & Court Technology Subcommittee. He said that there are two new proposals by the Appellate Court Procedural Rules Committee. One is an amendment to Pa.R.A.P. 302, with a due date for comments of February 18, 2020, and the other is a proposed amendment to Pa.R.A.P. 1925, also with a due date for comments of February 18, 2020.

B. Website

Dara DeCourcy presented the report of the Website Subcommittee. She reported that a link to the Third Circuit website was added to the resources section. She also noted that during the last call, there was discussion of soliciting volunteers to update the newsletter, and that the issue was tabled. She suggested that it be further tabled for discussion at the next meeting if time permits.

C. Education & Conference

The report of the Education and Conference Subcommittee was skipped due to Karl’s absence.
D. Appellate Certification Subcommittee

Althia Bennett presented the report of the Appellate Certification Subcommittee. She said that emails would be sent out to subcommittee members regarding another call. Since the subcommittee’s last meeting, the Supreme Court approved certifications in elder law and bankruptcy. The subcommittee needs to vote on whether to move forward with the project.

VIII. Adjournment

A motion to adjourn was made, seconded, and passed. The call was adjourned at 1:10 p.m.

Roll Call:

Jill Beck
Althia Bennett
George Bibikos
Rob Byer
Bill Cluck
Chester Course
Dara DeCourcy
Lucinda Glinn
Bob Graci
Pam Kance
Robert Kelly
Virginia McMichael
Jean Mosites
Bryan Neft
Mauria Nucci
Andrew Sperl
Kathleen Wilkinson
Tom Wilkinson
Scot Withers
Phil Yoon