I. Introduction and Welcome

Karl Myers called the meeting to order and welcomed Committee members. Attendance was taken through members’ identification on Zoom. See below for the roll call.

II. Adoption of Minutes

Karl introduced the minutes from the previous meeting and invited comments. Jim Sargent moved to adopt the minutes and Dara DeCourcy seconded the motion. The minutes were approved without amendment.

II. Question Regarding COVID-19 Assistance

Susannahih Bultron, a new member, introduced herself and asked whether the Committee may use its budget for COVID-19 related initiatives, such as advocating for individuals affected by COVID-19. Karl indicated that direct advocacy for individuals was not the purview of the Committee but suggested that PBA may have other COVID-19 resources available. Pam Kance confirmed that PBA has established a COVID task force and suggested that Susannahih contact them.

III. Financial Report

Jill Beck presented the financial report. We started the budget year. The budget this year was slightly reduced, probably because the Committee did not spend its full $850 allocation last year. Although the budget is allocated for certain types of expenses, we can use the budget for any Committee business.

Jill also noted that the Committee had previously discussed using its budget to offset members’ CLE costs, but it was unclear whether that was permitted by the PBA. Pam Kance indicated that it is not permitted to subsidize members’ CLE costs, but the budget may be used for CLE-related activities such as speaker honoraria or costs of in-person events.

IV. Subcommittee Reports

A. Education

Karl Myers reviewed that Althia Bennett and Andrew Sperl had been working on a pandemic-related CLE and had made contact with the Statutory Law Committee regarding potential collaboration. The Statutory Law Committee’s upcoming CLE was actually its annual legislative update CLE, which was not a COVID-specific program. The Statutory Law Committee did carve out an hour for our Committee. Karl participated in a discussion during that time with other panelists regarding the Friends of Danny DeVito case, which dealt with the
governor’s authority to issue executive orders, and the Wolf v. Scarnati case, which concerned the government’s authority regarding disaster declarations. The Committee hopes to plan a more COVID-specific CLE at some point in the future, once it is possible to take a more retrospective view of COVID-related litigation.

Althia noted that potential participants in a pandemic-related CLE, particularly government lawyers, may be discouraged from participation because of Pennsylvania’s lobbying disclosure law. Karl agreed that this is sometimes an issue.

Karl invited suggestions for future CLE programming.

Susannahih Bultron suggested a program related to human rights related issues. Karl noted that the Committee’s focus is on appellate procedural issues rather than specific areas of substantive law. He suggested that there may be a PBA committee with a more applicable focus.

B. Website

Dara DeCourcy reported that the website was updated to include Carl Solano and Bruce Merenstein’s article regarding appeals of collateral orders. She also suggested that it may be appropriate to add something to the website regarding geographic apportionment of appellate court seats. Karl suggested tabling a discussion of that issue until the open floor discussion.

C. Rules and Court Technology

Carl Solano reported that there were no new developments.

V. Open Floor

A. Supreme Court Policy on Extensions of Time

Karl Myers noted that in recent months, extensions of time for submitting briefs have seemingly become more difficult to obtain from the Supreme Court. For instance, a first extension may be for only 14 days, with a provision that no further extensions will be granted. Per an article in the Legal Intelligencer, which was attached to the meeting materials, public interest groups have expressed concern that this will hinder their advocacy. Karl inquired whether others have observed this.

Althia noted that there may be internal reasons for a change in policy that we are not aware of.

Jill Beck commented that based on her experience working for the Court, there was sometimes an issue with cases getting postponed after being scheduled for argument, which creates scheduling problems for other arguments. Perhaps the Court’s policy regarding extensions is motivated by similar concerns.

Dara DeCourcy asked whether this is an issue only affecting the Supreme Court. Karl responded that his understanding is that each court manages its briefing independently and that this is only a Supreme Court issue.
Judge Bowes noted that the Superior Court is typically generous with extensions of time. She was unaware of the Supreme Court’s current practice, but suggested that the issue might be discussed at the mid-winter meeting and noted that Phil Yoon is involved in that meeting. Karl responded that was one of the questions he provided to Phil for inclusion at the event’s discussion panel, and Phil agreed the topic was appropriate for the panel.

Karl suggested that, now that the issue has been raised publicly, we re-visit it at the mid-winter meeting if still appropriate.

Susannahh Burton asked for clarification regarding how the briefing schedule operates typically, and Karl provided some background on the issue.

B. Remarks from PBA President Schwager

PBA President David Schwager extended his greetings to the Committee.

C. Legislative Apportionment of Judicial Seats

Karl introduced discussion of the General Assembly’s legislation concerning geographic apportionment of appellate judicial seats. The previous version was H.B. 136, and the current iteration is now H.B. 38. Included in the meeting materials was PBA’s formal opposition to H.B. 38. Karl provided some general background and invited Tom Wilkinson to provide additional comments.

Tom noted that the PBA has consistently opposed legislative districting of judicial seats. The effect of this proposal would be that the General Assembly would obtain the right to decide which judges you can vote for. Currently you can vote for all 30 judges; if this is enacted, you could only vote for 3. He expressed disagreement with the notion that geographic apportionment is necessary to ensure that each part of the state is represented. Our expectation is that members of the judiciary will not seek to advance only local interests, and to the extent that Philadelphia and Pittsburgh are disproportionately represented on the bench, that is simply a function of where lawyers are trained and practice. Tom also noted that there is some overlap between the reasons to oppose this proposal and merit selection, which the PBA has long supported, but this proposal is problematic for its own independent reasons. It is also partisan. He encouraged members to communicate with colleagues, legislators, and community members to oppose this proposal. It may come up for a full vote in the next couple of weeks.

Fredrick Cabell, PBA’s Director of Legislative Affairs, updated the Committee on the PBA’s efforts to lobby against the proposal. From a lobbying perspective, it is less productive to highlight the partisan nature of the proposal, and more productive to approach the issue as one of public policy. The PBA is well positioned to make that argument given its consistent support of merit selection. The proposal passed by only two votes in the Senate. Our argument is that judges should not have constituencies. These public policy arguments have been persuasive with some legislators. He noted that it is possible that there will be a vote in the next two weeks, but also that it is unlikely that leadership will call for a vote unless the votes are there.

Virginia McMichael noted that she is working on an article for the Pennsylvania Lawyer on the issue. In addition to the policy issues already discussed, she disputed the argument raised
by some that districts will reduce the role of money in judicial elections. If anything, candidates in smaller districts with less expensive media markets may be even more likely to be influenced by contributions. Virginia invited anyone to contact her with comments to improve her article.

Karl raised the previously tabled issue regarding what to put on the Committee’s website regarding the districting issue. Karl suggested, at a minimum, linking to the PBA’s official position and any other relevant links from PBA sources. He also suggested linking to Virginia’s article when published.

Virginia noted that opposition to geographic districting is the position not only of the PBA but also other groups such as the Committee of Seventy.

Rob Byer noted that he agreed with the approach suggested by Fred and that he appreciates the efforts of the PBA. He noted that in the mid-1990’s, a similar proposal had been raised by Senator Corman, father of current Senate President pro tempore Jake Corman. Then-Senator, current Judge Michael Fisher made some eloquent marks against that proposal on the record.

Chester Course noted that some very good judges had been elected from Schuylkill County. He suggested that if the General Assembly passes this again, it will be important to educate the public on the issue, as they might not appreciate its implications.

President Schwager responded that is why the PBA is attempting to lobby in the House, so that the proposal does not proceed to the Senate. He noted that it is important for the PBA to be careful in its affiliations with other interest groups, because the PBA wants to maintain its credibility as an impartial advocate for the bar generally.

Fred agreed that one of the PBA’s strengths is that it is not viewed ideologically, and also noted that legislators are willing to consider the public policy implications and are not necessarily ideological. It is important to presume good faith on the part of legislators.

Virginia suggested that when talking to laypeople, it would be helpful to emphasize that the effect of this proposal is to reduce the number of judges an individual can vote for.

Rob Krebs noted that if there is a vacancy on the Supreme Court, not everybody in the state would get to vote on that vacancy.

Several members discussed whether the underlying rationale for the proposal is properly characterized as geographic representation, or the concept that judges might vote differently on a legal issue depending on their constituency.

President Schwager noted that if geographic judicial districts are implemented, they would be population based. Most likely, that would result in Philadelphia and Pittsburgh having a lock on a majority of seats.
D. Miscellaneous Business

Phil Yoon noted that at the beginning of the pandemic, Superior Court had adopted a policy of automatic submission on briefs with a provision that parties could move to have video argument. That changed as of a couple of weeks ago to a policy providing for argument if requested by the parties.

Karl reminded the Committee that next week is the PBA’s mid-year meeting. It would include a panel with Justice Wecht and Judges Brobson and Panella on the state of the appellate courts.

President Schwager noted that he will be moderating a judicial roundtable the morning of January 29, including Justices Wecht, Baer, Todd, and Mundy, and Judges Lazarus, McLouglin, Stabile, Nichols, Brobson, Cohn-Jubelirer, and Covey, as well as the president of the state conference of trial judges. He would also be moderating a discussion with members of the General Assembly.

New member Kyle Kopco introduced himself.

Roll Call:

1. Jill Beck
2. Althia Bennett
3. Hon. Mary Jane Bowes
4. Susannahih Bultron
5. Robert L Byer
6. Norma Chase
7. William Cluck
8. Chester Corse
9. Ian Courts
10. Dara DeCourcy
11. Rich Gerace
12. Pam Kance (PBA)
13. Kyle Kopko
14. Marie Kramer
15. Robert Krebs
16. Kevin McKeon
17. Virginia McMichael
18. Sharon Meisler
19. Jeremy Mercer
20. Karl Myers
21. Lisa Rau
22. Jim Sargent
23. David Schwager (PBA President)
24. Dan Siegel
25. Carl Solano
26. Andrew Sperl
27. Jessica Webb
28. Tom Wilkinson
29. Philip Yoon
30. Unidentified phone numbers:
   a. 215-416-1950
   b. 717-422-7504
   c. 215-796-9263
   d. 412-394-5404
   e. 412-736-6955