PBA APPELLATE ADVOCACY COMMITTEE

November 18, 2021

11:00 a.m. (by videoconference)

I. Introduction and Welcome

Karl Myers opened the meeting and welcomed Committee members. Karl expressed his hope that this will be the last virtual Committee meeting we have and explained how he looks forward to seeing everyone in person in the new year.

PBA President Kathleen Wilkinson was asked if she would like to make a few remarks. She discussed the fact that the Federal Practice Committee is in the process of setting up a “State of the Courts” event in which Third Circuit Chief Judge D. Brooks Smith will be speaking in a “fireside chat” format. Kathleen said the presentation, assuming it goes forward, will take place on Monday, December 13, 2021. She asked if our Committee would be interested in co-sponsoring the event. Karl indicated that our Committee would enthusiastically support it and that our members would be happy to attend.

Kathleen also thanked Phil Yoon for his contributions to the PBA. Kathleen explained that, in addition to the PBA Appellate Advocacy Committee, Phil is Chair of the PBA’s Equity and Inclusion Committee, is on the Board of Governors and is involved in the Young Lawyers Committee of the PBA. Kathleen echoed statements made during the Leadership call held earlier on November 18, 2021 about Phil’s great work for the PBA.

II. Adoption of Minutes

Karl noted that Andrew Sperl, secretary of the Committee, who normally takes the minutes during Committee meetings, was unavailable because he was in Commonwealth Court arguing a case. He wished Andrew well and noted that Maureen McBride would take notes in Andrew’s stead.

Karl paused to recognize Committee member, Michael Krimmel, who was in attendance for the meeting, Karl noted how Michael’s court has been very busy with a multi-week trial in the Commonwealth Court’s original jurisdiction.

There were no comments or corrections to the minutes.

Bob Graci moved to adopt the minutes and the motion was seconded. The minutes were approved.

III. Financial Report

Jill Beck presented the financial report. Jill stated that she did not have much to report as Covid has been “good” to our budget in that we are not spending any money and are not looking to spend any money in the near future. Jill explained how the Committee tried to use some of our budget to incentivize people to attend seminars but that it was not permitted to do so.
Jill discussed the Supreme Court’s 300th Year Anniversary and indicated that there may be some opportunities to spend money in our budget in connection with that event.

IV. Subcommittee Reports

A. Education & Conference

Karl explained how the Education & Conference Subcommittee, (Jill Beck and Maureen McBride) put together a virtual CLE seminar on October 14, 2021 which featured Justice Donohue, Judge Nichols, and Judge Ceisler, addressing COVID-related updates to court policies and procedures in the appellate courts.

Jill explained how the CLE went well notwithstanding some technical “glitches” that made the presentation somewhat “problematic.” Jill explained how the technical difficulties resulted from some internal problems at PBI and from the lack of a “run through” that would have allowed issues to be addressed before the presentation began. Jill explained that these issues have been directly addressed with PBI and thanked Karl for not only stepping in to help but also staying involved in the presentation and offering his very good insights (which she described as Karl “hitting it out of the park.”)

The CLE program had a large audience (65 participants) and provided good information for appellate practitioners. Among other things, Jill explained, the program addressed the protocol for the three Pennsylvania appellate courts post-COVID. The Supreme Court is holding oral arguments in person, the Superior Court asks the Panel members for their preference and will hold oral argument if the vote is unanimous that the Panel do so and the Commonwealth Court still appears to be working some of these issues out. Jill noted that the presentation should be available on the PBA’s website.

Karl explained the details of the technical difficulties and how steps are being taken to remedy the situation. He also noted that we may be “in person” for CLE events in the future and that this may not be an issue going forward.

Sharon Lopez was then asked to address the Supreme Court’s 300th Anniversary celebration. Sharon, who is on the advisory committee for the event, explained that while she is not at liberty to discuss all of the details, the event will take place after the Supreme Court’s May session in Philadelphia. There will be two argument days and then a two-day symposium at the Constitution Center that will feature former United States Supreme Court Justice Anthony Kennedy as the keynote speaker.

The presentation likely will be available via livestream, will be recorded and will include a presentation from a historian who will discuss the history of the Supreme Court and the Pennsylvania Constitution. The Committee is looking to coordinate with schools and law schools. Sharon mentioned that AOPC, in particular, Terry Sachs, has been doing most of the heavy lifting in this regard.

David Robbins asked whether there had been any follow up to his suggestion that the celebration include reference or a visit to the 1724 Chester Courthouse which was the first permanent location of the Supreme Court. He suggested that information be brought to the Court’s
attention. Sharon noted that Terry Sachs is the advisory committee’s staff person, and suggested David communicate with Terry.

Karl added a reference to the Commonwealth Court’s belated 50-year anniversary celebration which will be held in the Capitol Rotunda on December 14, 2021 at 5:30 p.m. The celebration is co-sponsored by the PBA and the Commonwealth Court Historical Society. Karl noted that information for the event is available on the Commonwealth Court Historical Society’s website.

David Robbins mentioned the multi-week trial currently underway in Commonwealth Court on the issue of school funding. Michael Krimmel explained that the trial is being livestreamed on Youtube and noted that the link for each day is different. He encouraged those who are interested to check the Commonwealth Court’s website and calendar (where the Youtube link is embedded) for details.

B. Website

Dara DeCourcy reported on the website. She reiterated the ideas that had been presented at the last meeting, regarding re-styling the webpage to feature “above the fold” videos that market the Committee in a meaningful way. Specifically, the subcommittee has proposed videos that would include welcome videos from the two co-chairs as well as from Althia and Dara, welcome videos from Justices Mundy and Wecht (who are members of our committee) and various videos from members providing tips on oral advocacy. The goal is to feature various members of the Committee while also allowing those who view the website to see an attorney who looks like them (in terms of age, experience and the like).

Sharon noted that a future goal would be to have judges from the Superior and Commonwealth Courts also participate to help recruit and retain members. Sharon also explained how the new tech person at PBA and Pam Kance have been helpful in this regard. Karl thanked Dara, Sharon and Althia for their hard work, in particular, in putting together a script that we can immediately begin to use and for all of their other efforts in this regard.

C. Rules Committee

Carl Solano was not present to provide rules updates but Karl Myers noted that he had reviewed the Rules Committee’s website and did not see any rules with open comment periods that require any responses.

Phil Yoon explained that before or after our last meeting, the appellate courts modified the rule governing the number of paper copies that must be submitted. He recommended that practitioners review the letters they are sent from the Court to determine the appropriate number of copies to send.

Bob Graci brought up the fact that there is going to be a change in the public access policy which he noted while reviewing the Disciplinary Board’s website. Mike Krimmel explained that the new rule, which he believes is set to take effect in April, 2022, will no longer require litigants to submit “redacted” and “unredacted” versions of documents but will require only one version of
any document to be accompanied by a confidential information statement. Mike said this is intended to bring uniformity to the public access rules across the various courts.

V. Pro Bono

Maureen presented on pro bono. We are still in the early stages of coordinating with the court to see if there is an opportunity to take over cases in which litigants are self-represented. She will continue to work on this issue.

VI. Tribute Resolutions

Karl explained how we recently lost two judges from the appellate world, Judge Gene Strassburger and Judge Justin Johnson. The Minority Bar drafted a tribute for Judge Johnson and Phil Yoon prepared an outstanding tribute to Judge Strassburger. The Committee expressed its condolences to both judges’ families. Phil explained that the resolutions will be presented tomorrow to the House of Delegates for approval.

Karl also informed the Committee that the many comments and kind words from Committee members expressed on the listserv were printed and put in a card for Judge Johnson’s family to review. He thanked the members for their comments and trusts that the family will find the Committee members’ words comforting.

VII. Court Changes

Karl updated the Committee on recent court changes. He discussed how President Judge Brobson will become a Supreme Court Justice in January, and how Megan Sullivan will be sworn in to the Superior Court. He also explained that while Stacey Wallace won her race for Commonwealth Court judge, there will be a recount to determine whether Judge Compton or Judge Dumas will take the second Commonwealth Court seat. Karl believes that, by law, the recount must be completed by next Wednesday, November 24, 2021.

Karl also informed the Committee that Judge Jackie Shogan has retired from the Superior Court and expressed his gratitude for her service and his own view of her wonderful thoughtfulness and competence as a Superior Court judge over the years. Phil Yoon echoed Karl’s remarks and said how much Judge Shogan, whom he described as thoughtful and whose resignation he described as a “big loss” to the court, will be missed. Judge Shogan’s seat will be up in the next election.

VIII. Open Floor

Bob Graci congratulated Karl Myers on his appointment to the Board of ABA Council of Appellate Lawyers.

Phil Yoon noted that the Superior Court posted specific protocol for oral arguments, including forms that must be signed prior to argument. Phil also noted that there is an opportunity for those who are not comfortable attending to opt out of live argument. However, Phil emphasized that any opt-out requests must be made promptly (as soon as the case is listed for argument) and should not be made the day of or the day before the argument.
Stewart Weintraub asked Bob Graci to explain again the Rule change with regard to Public Access.

Bob then gave the Committee some insight into his recent experience appearing live in the Supreme Court in Harrisburg. While there was not true “social distancing,” Bob explained how the experience was not a “fearful” one because everyone was masked and only those who were actually arguing or with someone who was arguing were permitted in the courtroom. Karl described his experience appearing live in court in Connecticut which was his first time back in a courtroom in a year and a half.

Maureen explained that she had a similar experience arguing before the Supreme Court in Pittsburgh. She explained how she felt very safe with the protocols that were in place, which everyone observed.

VI. Adjournment

The meeting adjourned at 11:55 a.m. The next meeting will be in January, 2022 and will either be by conference call or by zoom.

Roll Call

Matthew Sullivan
Rich Gerace
Karl Myers
David Keller Trevaskis
Stewart Weintraub
Dara DeCourcy
Sharon R. Lopez
Kaitlin Gorman
J. Leon Peace
Andrew Stafford
Jill Beck
David Robbins
Rachel King
Allie Falk
Philip Yoon
Bob Graci
Marie Kramer
Maureen McBride
Shalisa Brunson
Kathleen Wilkinson
Jonathan Bruno
Michael Krimmel
Lindsey E. Wilkinson
Carl Solano