PBA APPELLATE ADVOCACY COMMITTEE

SEPTEMBER 9, 2021

12:00 p.m. (by videoconference)

I. Introduction and Welcome

Maureen McBride opened the meeting and welcomed Committee members. Attendance was taken by Zoom and is indicated below.

II. Adoption of Minutes

Charles T. DeTulleo noted that in the first sentence of Section I.B, “where” should be replaced with “were.”

There were no other comments on the minutes.

Karl Myers moved to adopt the minutes with the above revision, and Charles seconded. The minutes were approved without objection with the above revision.

III. Financial Report

Karl Myers presented the financial report for Jill Beck. Jill has submitted the annual budget request, which included an additional amount for potential in-person events, as well as for Commonwealth Court 50th anniversary and Supreme Court 300th anniversary events that the Committee may want to participate in. The request is pending approval. Typically PBA grants most of our requested budget.

IV. Subcommittee Reports

A. Education & Conference

Maureen McBride presented for Jill Beck. A two-hour CLE is currently scheduled for the afternoon of October 14, which will feature Justice Donohue, Judge Nichols, and a Commonwealth Court judge. The CLE, which will be advertised shortly, will discuss COVID-related updates to court policies and procedures. Maureen invited members to send her or Jill specific questions to ask the panelists.

David Robbins asked whether this is a PBI event, and Maureen and Karl confirmed that it is. David inquired whether the Committee had ever considered doing a free CLE independent of PBI. Karl explained that PBA’s relationship with PBI requires that CLEs be presented through PBI. The Committee is not allowed to use its budget to offset members’ CLE expenses, but we can request that PBI keep costs as low as possible. David suggested that a low-cost CLE might attract new members to the Committee. Karl noted that the Administrative Law Section presents lunch and learn (non-CLE) events via Zoom, which have been very well attended, and the Government Lawyers Committee does something similar. Our Committee may also want to consider such programming.
Pam Kance noted that a benefit of PBI is that it markets to the legal community generally, not just to PBA members, and that PBI also performs the work of organizing the CLE event and providing a platform. Karl added that PBI ensures that CLE administrative requirements are satisfied, such as having a written curriculum and recording the program.

Sharon Lopez suggested that the Committee have a mix of events – i.e., CLEs and lunch and learn programs. Karl agreed.

Karl addressed the Supreme Court’s anticipated anniversary programming. The Court is tentatively planning to center its 300th anniversary events around the Philadelphia session week of May 2022 (i.e., the third week of that month). We have reached out to the Court through Jill and are waiting for them to indicate how we can assist. In the meantime, members are encouraged to save the date.

Sharon Lopez is serving on the Supreme Court’s advisory committee and agreed with Karl’s summary. Planning is still in progress. The Court is interested in making sure that there are events open to the public, particularly that relate to the history of the Court. Karl asked Sharon to keep the Committee updated.

David Robbins confirmed that the first permanent location of the Supreme Court, as opposed to the provincial court, was the 1724 Chester Courthouse. 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.

B. Website

Sharon Lopez and Althea Bennett reported on the website. Sharon suggested that the style of the webpage be updated to feature “above the fold” videos that market the Committee in a meaningful way. Other legal organization websites, such as the National Bar Association, effectively use this style. Pam also had provided links to other PBA groups, e.g., the Family Law Section, that feature videos. Sharon and Althea suggested three “above the fold” videos: one would be a welcome from the chair, another would provide tips on oral advocacy from an experienced practitioner, and another would feature an appellate judge or justice on the Committee. Below the videos would be links to content. The appearance of the webpage on mobile sites would have to be considered. This approach would require us to develop our own videos, but they could be hosted on YouTube. Members of the Committee could also be periodically featured.

Sharon noted that a timeline and plan to keep content updated would be required, possibly on a bimonthly schedule. Sharon suggested forming a committee to develop other knowledgeable members to take over at an appropriate time. Althea and Sharon asked any interested members to contact them by email.
C. Rules Committee

Carl Solano presented on rules updates.

Information had been circulated regarding a proposed rule requiring that petitions for allowance of appeal include a statement regarding issue preservation, similar to an appellate brief. The Supreme Court wants to avoid accepting appeals where it turns out the issues have been waived. Comments are due by September 10, 2021.

The various rules committees have developed an omnibus proposal that would, among other things, create uniform rules of construction that would govern the interpretation of all the procedural rules. The proposed rules would be located in the Rules of Judicial Administration. The deadline for comments is November 1, 2021.

Finally, members should have received a survey regarding the possibility of amending the Rules of Appellate Procedure to allow virtual technologies in future proceedings even after the pandemic has subsided. As background, earlier this year, the PBA appointed a task force to consider continuity of providing legal services in light of the pandemic and contingencies for future emergencies. The task force produced a report in February that was eventually approved by PBA’s House of Delegates. President Wilkinson has asked the Judicial Administration Committee to consider its recommendations, one of which is that all courts be prepared to make use of advanced communication technologies going forward. Meanwhile, an AOPC task force also concluded that advanced technology should be utilized in trial court proceedings. The Judicial Administration Committee is planning to make a proposal to the appellate courts, but before doing so, wanted to inquire of this Committee, which prompted the survey to members.

Judge Stabile commented that he is very interested in the survey results. The Superior Court was considering going live when the delta variant appeared. There was also discussion of the feasibility of having virtual arguments going forward, although that presents logistical difficulties with panel scheduling.

Karl suggested that the Committee make a general expression of support for using virtual technologies and asked Pam for clarification on how to present that to the PBA. Pam indicated that a committee recommendation has to be presented to the Board of Governors and the House of Delegates. There is no deadline because it is a new rule. The recommendation needs to be drafted, and the committee has to approve, with a quorum of at least a third of the membership. Carl suggested further discussing offline, in light of the fact that the proposal is part of a recommendation that has already been approved by the House of Delegates.

Judge Stabile added that the Rules of Professional Conduct were amended to require that lawyers maintain technological competence. As such, there should be sensitivity to how quickly members of the bench and bar can learn these technologies so as not to violate that rule.

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 welcomed suggestions from the Committee membership and will work with Phil Yoon before the next meeting.

V. Open Floor

Matt Kloiber from the Plain English Committee indicated that committee was reaching out to various sections and committees to encourage them to include a plain English component in their CLEs. Maureen said that the upcoming CLE is still being planned and suggested Matt contact her with any specific suggestions.

VI. Adjournment

The meeting adjourned at 12:51 p.m. The next meeting will be at PBA committee and section day on November 18.

Roll Call:

1. Althea Bennett
2. Jonathan Bruno
3. Shalisa Brunson
4. Norma Chase
5. William Cluck
6. Chester Corse
7. Charles T. DeTulleo
8. Kaitlin Gorman
9. Pam Kance
10. Rachel King
11. Matt Kloiber
12. Kyle Kopko
13. Tricia Martino
14. Maureen McBride
15. Karl Myers
16. Lisa Rau
17. David Robbins
18. Carl Solano
19. Andrew Sperl
20. Paul Stockman
21. Hon. Victor Stabile