PBA APPELLATE ADVOCACY COMMITTEE

January 20, 2022

12:00 p.m. (by videoconference)

I. Introduction and Welcome

Maureen McBride called the meeting to order and welcomed members of the Committee, especially new members.

II. Adoption of Minutes

Maureen presented the minutes. Maureen had prepared the minutes because Andrew Sperl was absent from the November meeting due to a court appearance. Maureen opened the floor for changes or comments.

Karl Myers commended Maureen on the minutes. He noted that David Robbins had suggested a potential change to the minutes and turned the floor over to him. David recalled that there was a previous discussion on the potential for programs that might be offered on a non-fee basis to promote the work of PBA and the Committee. However, because of a lack of recollection among the Committee about the particulars of any such discussion, it was suggested that no addition to the minutes be made.

Karl moved to adopt the minutes as prepared by Maureen, without revision, and Dara DeCourcy seconded the motion. The motion was approved without opposition, and the minutes were adopted without amendment.

III. Financial Report

Jill Beck presented the financial report and indicated that there were no new developments. Maureen opened the floor to comments. There were none.

IV. Subcommittee Reports

A. Education & Conference

Karl presented for the Education and Conference Subcommittee. We remain in a holding pattern with respect to the ability to conduct in-person events.

One significant upcoming event is the Supreme Court’s 300th anniversary celebration, which is scheduled for May 2022. Sharon Lopez is on the planning committee. The event would likely be held in a hybrid format. The event will occur during the Supreme Court’s sitting in Philadelphia. Justice Kennedy is tentatively scheduled to host an event at the Constitution Center. Karl welcomed comments from others.

Maureen noted that the event is scheduled for May 18-20, 2022. The event is by invitation only, but it will be livestreamed and CLE credit will be available. Besides our Supreme Court
Justices and Justice Kennedy, other presenters include President of Duquesne University Ken Gormley and other scholars, dean of Stanford Law School Pam Karlan, and Supreme Court Justices from other jurisdictions, including Ohio, Rhode Island, and South Carolina.

Karl also noted that he is on the planning committee for the Commonwealth Court Practicum, which occurs every two years, although it was skipped in 2020. It is currently scheduled for Tuesday, April 5, with a likely start time of 1:00. The format will be similar to previous years, with three hours of substantive CLE in three 1-hour segments. It is a worthwhile program and offers the opportunity to hear from both judges and staff. Hopefully there will be a cocktail reception following the CLE. It is the Administrative Law Section’s major fundraising event and is almost always sold out. It will be held at the Pennsylvania Judicial Center in Harrisburg, likely in the Bowman Courtroom, i.e., the en banc courtroom.

**B. Website**

Dara presented for the Website Subcommittee. Dara reported that the Subcommittee has met three times since the last Committee meeting. The leadership video, which explains the benefits of Committee membership, was recorded on January 12, 2022. Pam Kance said it will be posted soon.

Meanwhile, Dara, Sharon Lopez, Jill Beck, and Althia Bennett have contacted about 10 members of the Committee requesting assistance in recording videos of appellate practice tips. Most members have responded and have agreed. Members were given suggestions but also options for their own topics regarding appellate practice tips. Additionally, Maureen and Karl have contacted Justices Wecht and Mundy about the possibility of recording videos and are awaiting their responses. Scripts are under development, and the Subcommittee will provide a further report at the next meeting. It is anticipated that completed videos will be posted in groups of three and will start with a video on the chronology of an appeal. Dara opened the floor to questions.

Karl complimented Dara, Jill, Sharon, and Althia for their hard work on the website, which was outdated before their contributions. Since then, Dara and members of the Subcommittee have revolutionized the website, which has become a very helpful marketing tool for the Committee. The larger the Committee becomes, the more help it can provide to the bench and the bar, and the Subcommittee’s hard work in developing a forward-facing website is instrumental to that effort. Maureen seconded Karl’s comments and appreciation.

Judge Bowes asked whether the website is limited to PBA members. Pam indicated that there are sections of the website that are open to the public, and other portions that are available only to PBA members. The videos previously discussed are anticipated to be publicly available. Dara added that this is so that the videos can be used as a marketing tool for the Committee. They will also be featured in the PBA e-newsletter and in the YLD regular newsletter. Judge Bowes commented that it is good that the videos will be publicly available so that they can be used to market both the Committee and the PBA.

Judge Bowes asked whether the website includes a link to Kevin McKeon’s blog, *Pennsylvania Appellate Practice*, which provides up-to-date analysis on appellate issues. Karl seconded Judge Bowes’s endorsement of the blog. Kevin noted that the blog, among other things,
always includes the current Supreme Court argument list with some detail regarding each case, generally posted a week before argument. It also includes updates on other areas. Kevin thanked Judge Bowes for her reference to it. Judge Bowes noted that she frequently refers practitioners to it.

Judge Bowes also asked whether the website includes links to the Pennsylvania courts’ Twitter feeds. Dara responded that we have links to the appellate courts’ webpages, but do not currently have separate links to their Twitter feeds. Maureen suggested that it would be a good idea to add such links.

Judge Bowes also asked whether the Committee has a Twitter feed. Karl responded that we do not. Judge Bowes asked about the PBA twitter feed, and Pam confirmed that there is one. Judge Bowes suggested that the Committee’s events should be publicized through the PBA’s Twitter feed. Judge Bowes also asked whether there is a PBA Instagram account, and Pam reported that there is not. Judge Bowes commented that social media is important as younger practitioners become more reliant on social media as opposed to, e.g., email. Dara indicated that she would add these issues to the Subcommittee’s agenda for its upcoming February 8 meeting. She noted that the Subcommittee’s pace of meeting (e.g., three meetings since the Committee’s last meeting) will continue until the video project is completed.

C. Rules and Court Technology Committee

The Supreme Court issued three orders last month amending the Rules of Appellate Procedure. Two amendments were previously discussed by the Committee when they were proposed by the Appellate Court Procedural Rules Committee. One was to amend Rule 1115 to require petitions for allowance of appeal to indicate where issues were preserved. The Supreme Court promulgated that amendment on December 7, and it becomes effective April 1.

An amendment to Rule 1925 provides for the possibility of remand to the trial court where there has not been proper service of a Rule 1925 statement. Previously, a remand was possible if a Rule 1925 statement was improperly filed, but not if it was improperly served. The amendment also clarifies issues with respect to criminal cases. That amendment was promulgated on December 17 and becomes effective April 1.

The Supreme Court issued an order on December 1 amending the Rules to provide that confidential information must be filed with a confidential information form, eliminating the option under the Rules of submitting a redacted and unredacted version of the filing. That amendment was promulgated on December 1 and becomes effective January 1.

Maureen asked about the rationale for this rule change. Jill Beck responded that this was in response to surveys done among practitioners in different counties, which had varying procedures. In addition, storage issues were a concern. This was the approach that seemed best for the majority of practitioners and courts.
V. Diversity and Inclusion

Maureen turned the floor over to Jill to report on diversity and inclusion issues. Jill noted that she is the Committee’s diversity and inclusion liaison to the PBA. Each committee has been asked by the PBA’s leaders on that effort (including Phil Yoon) to consider ways of improving diversity and inclusion at the committee level. For instance, a goal in the recent website effort was to assemble a group of presenters who are diverse with respect to gender, geography, and race. However, there is limited diversity on the Committee with respect to race and ethnicity.

One idea is to conduct outreach to firms with appellate divisions to introduce the Committee’s diversity and inclusion efforts and to request contact information for diverse attorneys who may be interested in participating. Phil commented that this would be a good first step. Jill plans to draft a communication to go to managing partners and appellate group leaders at firms. She will work with Pam to make sure it is circulated to the right people. Maureen encouraged members to reach out to practitioners who may be interested in participating in the Committee and thanked Jill for her ideas.

Judge Bowes suggested reaching out to local bar associations, which have appellate practice committees.

Richard Klein noted that Philadelphia has a specific affinity group for various minority groups. He also commented that the proportion of diverse lawyers is tending to increase as practitioners get younger. As such, it might make sense to direct outreach to the Young Lawyers’ Division. At a minimum, that would also have the positive effect of encouraging participation by young lawyers.

Karl Myers acknowledged that as a specialty, appellate advocacy has an even worse record on diversity than the legal profession as a whole. A relatively new initiative, called the Appellate Project (th applateproject.org/), a DC-based organization, seeks to diversify appellate practice with a focus on mentoring.

Bill Phelan, who is chair of the PBA Disability Services Committee, also noted the importance of including lawyers and law students with disabilities. The PBA’s Disability Services Committee is available to assist lawyers and law students with disabilities.

Judge Bowes noted that about 10 years ago, she hosted mock oral arguments for the Homer S. Brown division, which is comprised of diverse attorneys in Allegheny County. That was well-received and may be worth trying across Pennsylvania. It encourages not only Committee membership but also active involvement in appellate work.

VIII. Open Floor

Maureen opened the floor for other comments.

Rich Gerace suggested that it may be worthwhile to reach out to graduating law students to encourage them to become active in the PBA. For instance, he and Althia both graduated from Temple Law in the same year. Temple and other law schools have moot court argument societies, which might be productive opportunities for outreach. It would also present an opportunity to
increase diversity. Pam noted that law students can join the PBA and committees and sections for free, and that the membership fee for practitioners is reduced for the first three years of practice. Committee membership is free for all members. Rich offered to reach out to Temple Law, and Althia said she would be happy to join in that effort. Maureen offered to reach out to Villanova Law and also suggested that she could reach out to the inn of court, where she is involved. Judge Bowes commented that she is involved in University of Pittsburgh School of Law. Maureen asked if PBA conducts outreach to law schools, and Pam responded that it does.

Kyle Kopko noted that he is a law student at the University of New Hampshire’s hybrid JD program. He noted that schools are developing professional development courses, which may be a point of contact, as well. Christopher Merken commented that legal writing professors may also be a point of contact, particularly because many law schools incorporate appellate writing requirements.

Dara asked whether any members had a contact at Duquesne Law School. Judge Bowes responded that Judge Lally-Green still teaches there and that she would reach out to her.

Kandice Hull asked whether there is a program for assignment of pro bono appeals and noted that could be another good way to get practitioners involved in appellate practice. Maureen responded that the idea had been discussed before. She was in contact with Phil Yoon and was in the process of trying to determine how best we could assist in such an effort. Judge Bowes responded that she has been working on such an effort for years. There have been efforts to establish a pro bono program for family law cases in Allegheny County, but there were challenges because of the time constraints involved in those expedited appeals and because of failure to properly preserve issues at the trial level in many cases. There are still working to develop that program with assistance from students at Duquesne and University of Pittsburgh. Before the pandemic, there were discussions about beginning such an initiative in Eastern Pennsylvania. The program is limited to family law and qualification for IFP status is a requirement, to avoid unfairly competing with practitioners.

Maureen noted that a challenge with such programs is issue preservation. It is important not to put appellate pro bono counsel in a difficult position because of waived issues. It might make sense to pair practitioners with trial counsel.

Kandice said she would be happy to help with any initiative.

Jill Beck noted that pending House bills 2141 and 1880 both seek to change the judicial election paradigm. H.B. 2141 would eliminate retention elections for all judges and make each election contested and partisan. H.B. 1880 seeks to impose term limits on appellate judges. The Judicial Administration Committee, of which Carl Solano is one of the chairs, is assembling reports and recommendations in opposition to both bills. There may not be time for this Committee to take a position, but interested members should feel free to reach out individually to Jill or Carl. Carl added that last week, the Judicial Administration Committee voted to oppose both recommendations and is in the process of drafting a recommendation to the PBA, which he expects to happen early next week. The Board of Governors will then consider the report and recommendation. He expects it to oppose the bills.
Maureen asked about the status of the redistricting proposal that has been previously discussed. Carl responded that it is still pending and periodically attracts attention. The consensus view of the bar association is that we need to remain aware of the initiatives’ status and make our views known. Maureen asked whether merit selection is a part of the discussions, and Carl responded that it is always an aspect of such discussions. When the PBA’s legislative department speaks to lawmakers, they mention that in the view of the PBA, an appointment process is a better way to select judges.

VI. Adjournment

The meeting adjourned at 1:05 a.m. The next meeting will be March 17.

Roll Call

Jill Beck
Althia Bennett
Judge Mary Jane Bowes
Shalisa Brunson
Norma Chase
William Cluck
Chester Corse
Dara DeCourcy
Rich Gerace
Deborah Gross
Kyle Kopko
Pam Kance (PBA)
Kandice Hull
Maureen McBride
Kevin McKeon
Christopher Merken