

**Association of the Bar of the
United States Court of Appeals
For the Eighth Circuit**

Minutes of Meeting of Board of Directors of the Association

January 15, 2004

A meeting of the Board of Directors of the Association of the Bar of the United States Court of Appeals for the Eighth Circuit was held by telephone conference call at 9:00 am, January 15, 2004. President Jim Layton called the meeting to order at 9:00 am as previously noticed.

Present at the meeting were the following:

Officers:

Eric Magnuson, Past President
Jim Layton, President
Craig Eichstadt, Secretary
Krista Kester, Treasurer

District Representatives:

Leigh Chiles, Eastern Arkansas
Thomas Keiklak, Western Arkansas
Diane Kutzko, Northern Iowa
Margaret Callahan, Southern Iowa
David Herr, Minnesota
Robert Herman, Eastern Missouri
Barry Pickens, Western Missouri
Robert Rossiter, Nebraska
Douglas Bahr, North Dakota
Mark Marshall, South Dakota

At Large:

Thomas Sullivan

Absent were the following:

At large:

LaJuana Counts, who was arguing before the Eighth Circuit
Thomas Weaver, who was in trial

President Layton stated four agenda items:

1. Progress on bylaw amendments.

2. Status of the Association's web page.
3. Status of various Association committees.
4. The annual meeting of the Association for 2004 and future years.

Bylaw Amendments

Eric Magnuson reported on proposed bylaw amendments. He and Barry Pickens are working on bylaw amendments. The possible amendments were discussed at the February, July and September Association Board meetings in 2003. The main issues are:

1. Staggered terms for board members (which was not a problem this year because of replacing officers and others leaving the Board after the first year);
2. The need to eliminate officer positions that we have not used;
3. The need to assure that all meetings are held in accordance with Missouri law;
4. Whether we wish to continue with the provision that states that an officer or board member is automatically removed if she or he misses three consecutive board meetings.

The proposed bylaw amendments and issues were shared with the officers of the Association in a January 9 e-mail from Eric and Barry. Between now and the February Board meeting:

1. Eric and Barry will do a "red line" version of proposed amendments;
2. Eric and Barry will get the draft out to the rest of the Board;
3. All board members should take a look at the bylaws (they are on the web site) and propose any amendments or bring up any issues they may have with the bylaws as written.

If there are any major issues with the bylaws, Eric and Barry will take note of them, otherwise they probably will propose amendments to be acted on at the next meeting, assuming they can meet the time lines of Missouri law and the present bylaws for amendment of bylaws.

Web Page Issues

Krista Kester indicated that she and Tom Weaver have worked on the web page. The cost to host a web page is small, under twenty dollars per month for most web hosts. We might consider formation of a web committee. The other circuit bar associations have a large range, from very good to very unhelpful. Our page is somewhere near the middle of the pack. We can accomplish a lot if we have somebody to update the page, keep it current and supervise it.

President Jim Layton asked if this task should be rolled into the Communications Committee. Margaret Callahan indicated that the current committee does not have the energy and personnel to take on a new task, particularly if it involves membership and

renewals through the web page, which would be much more difficult and technical than updating the web page for other purposes.

Margaret offered to ask the membership for volunteers to supervise and update the web page in the next newsletter. Krista will write up the solicitation, Margaret will see that it runs. Several board members expressed thanks to Margaret and her committee for the very excellent newsletter they have been publishing.

Eric Magnuson indicated that he has been maintaining the web page since its inception, and that it is about as good as it can get without a great deal more effort on his part. Several board members expressed the hope that we would find a member who is interested in supervising a web page. Several also expressed thanks to Eric for doing the task thus far.

Tom Sullivan has talked to the law librarian at the Arkansas Law School where he teaches. The law school library might be willing to undertake hosting the Association web page, and might also be willing to keep it up to date and to place it on their part of cyberspace.

Jim Layton asked Krista and Tom Weaver to confer with Tom Sullivan and the Arkansas law school librarian. He observed, and several board members agreed, that it would be desirable to get the web page away from being hosted by a law firm or firms that have a significant practice before the Eighth Circuit.

Committee Matters

Now that Krista Kester is the Treasurer for the Association, we need a new membership chair. Leigh Chiles graciously volunteered. Krista said she would assist Leigh. The President expressed the gratitude of the Association to Leigh for taking this task on. The Excel program for memberships is in good shape thanks to Krista's work. The consensus of the Board, at Eric Magnuson's suggestion, was to time all membership renewals on a calendar year basis.

The President asked for any suggestions for new committees or how to get more active participation in committees. Although no suggestions were offered, the Board members agreed to continue to consider this question in the New Year.

Bob Herman agreed to serve on the programs committee. Mark Marshall agreed to help Leigh with membership matters. Bob Rossiter agreed to serve on the communications committee.

Meeting of Members in 2004 and Thereafter

Tom Sullivan reminded the Board of the sponsorship by the University of Arkansas School of law of the Eighth Circuit Appellate Practice Institute. He indicated that it can

be a money maker, and that the University depends on the funding through the Institute to continue to publish the Journal of Appellate Practice and Procedure.

In discussing a summer meeting or Continuing Legal Education Seminar, the President pointed out that a membership meeting is not required in our bylaws. The University of Arkansas has a track record in sponsoring the Institute. Tom Sullivan indicated that the University can work on a CLE or Institute this July or September. Although attendance at last year's Institute was low, Tom believes this was due to the upcoming war in Iraq, or to the fees for the Institute being too high.

Other circuits, notably the Fifth Circuit, have had this sort of CLE or Institute for many years. The Eighth Circuit Institute sponsored by the University of Arkansas dates to about five years ago when the Journal was founded. Tom Sullivan pointed out that the venue for the CLE or Institute should probably shift so that members can "see the Circuit," and it would be good to go to Colorado eventually because it is a desirable place to go in the summer. Tom feels that the only cities in the Circuit that are likely to be able to host the Institute are Minneapolis, St. Paul, St. Louis, Des Moines, Kansas City, Little Rock, and Omaha. He would also like to see the fees lower for members, perhaps \$150.00 for non-members, and \$125.00 for members.

Tom stated further that he would not be offended if the Association completely took the Institute over, because it has been quite difficult to set up an appellate practice institute. Tom has had trouble getting speakers. Judges are busy and have difficulty preparing a topic. The same seems to be true for lawyers who are quality CLE speakers. Tom would assist with a CLE, meeting or Institute in July or September. September probably would be easier, since it gives more time to prepare, to recruit speakers, and to come up with a location. Tom stated that he is glad to have an Association of practitioners who are interested specifically in appellate work; it should assist in the Institute.

David Herr and Eric Magnuson indicated that they had attended the Fifth Circuit CLE in New Orleans. It is a two day program. It includes judges, and there are at least two demonstration arguments. This is not a CLE where everybody can participate, but there are at least the demonstrations of argument. It is difficult to compare the Fifth Circuit Association with our Association. The Fifth Circuit Association has a funded office and circulates a reporter for that circuit. They have been doing CLE seminars for ten to fifteen years.

David Herr observed that we cannot put together a program by this spring, but perhaps we can in the fall. For now, a realistic goal would be to have a program in the years when there is no Eighth Circuit Judicial Conference, that is, the even numbered years. Also, he believes it is easier to hold the meeting/seminar in St. Paul or St. Louis during court week. Judges would be more likely to participate if they are in town already.

Jim Layton said that if we set it far enough in advance, we might be able to get the Court to send a panel to the city where the seminar is taking place. David Herr agreed that this may be possible, but he feels it is better to do it in St. Paul or St. Louis during court week.

If we do it in St. Louis, the Court would be eager to show us the new courthouse. Tom Sullivan pointed out that the courthouse is not big enough for the whole seminar, but parts of it may be held there.

David Herr summed up the discussion, and stated his views that:

1. There should be an annual Association member meeting;
2. In the “off years” (i.e., even numbered years when there is no Eighth Circuit Judicial Conference) this meeting should be held in conjunction with a CLE sponsored, at least in part, by the Association;
3. We should work on getting this on the calendar for the next five years;
4. In “on years” (when there is an Eighth Circuit Judicial Conference) our annual membership meeting should be held in conjunction with the Judicial Conference. Over time, we may be able to take over one-half day of the conference for our own CLE and meeting.
5. We can’t do an Eighth Circuit Practice Seminar every year. Minnesota can only get thirty to fifty participants in an appellate practice seminar every other year.

Bob Herman observed that we should do more than appellate practice. We should strive for some federal jurisdiction, section 1983, or other federal substantive areas in our seminars. Leigh Chiles stated that federal substantive law is not well covered in most state CLE programs.

President Jim Layton stated he would entertain a motion on whether we should have a membership meeting in the even numbered years, perhaps in conjunction with a CLE.

MOTION: Diane Kutzko moved, Mark Marshall seconded that we as an Association, hold a membership meeting in even numbered years (when there is no Eighth Circuit Judicial Conference), and that we hold a CLE program in conjunction with such meetings. **PASSED UNANIMOUSLY.**

Jim Layton indicated we would hold such a program in 2004, and Tom Sullivan stated that it should be held in either July or September. The consensus seemed to be that St. Louis in September is the right time and place for this year’s meeting/CLE. Jim expressed the opinion that in future years we should try to get our program to different parts of the Eighth Circuit. He observed further that the next Eighth Circuit Judicial Conference is in October, 2005, at the Broadmoor in Colorado Springs, Colorado.

President Jim Layton asked for a motion as to location and time for our 2004 meeting and CLE.

MOTION: Doug Bahr moved, Craig Eichstadt seconded, that we hold our membership meeting and CLE in St. Louis in September, in conjunction with the Eighth Circuit’s September court session. **PASSED UNANIMOUSLY.**

Tom Sullivan suggested that the seminar could consist of several speakers, but it is always good to give the Clerk, Michael Gans, one to one and a half hours to address “nuts and bolts” of appellate practice and any new developments on the Court. We are usually able to get one or more of the Eighth Circuit Judges to be speakers. There are other possibilities, including a lawyer from Houston, Texas who is an excellent CLE speaker. Tom observed that it is much easier to come up with possible names for speakers than to actually get them to commit to speaking and preparing materials. He stated that it is nearly impossible to do a good CLE program on appellate practice if you don’t think about it all the time.

President Jim Layton asked whether, now that we have committed to doing the CLE, we should co-sponsor with the University of Arkansas at Little Rock. Tom Sullivan indicated that the University is interested in doing this, as it is a money maker and is needed to help pay for publication of the Journal of Appellate Practice. David Herr pointed out that we would not be in it for the money; we want to provide a CLE for our members. Bob Herman observed that we need to address both appellate specialists and those lawyers who do some appellate work because they happen to have a case that gets appealed. The consensus was that we should appeal to interests our members and other practitioners have, not just have a CLE for credit. We also need to have our Association membership meeting.

Jim Layton requested that David Herr and Tom Sullivan get us a recommendation at the February meeting as to pursuing the meeting and CLE at St. Louis in September, 2004. Tom asked that we survey our membership to determine what their interests are in CLE topics. We can do this through the newsletter and the communications committee.

Bob Herman observed that there are Jewish holidays at the end of court week (September 15-16, 2004). Monday also would not be a good day, so we will have the meeting and seminar sometime in the middle of the week of September 13 to 17, 2004. Exact times and arrangements will be discussed further in our February meeting. It was also observed that this was baseball season. This could help us draw people to St. Louis, but also may make it difficult to get favorable room rates or to get a block of rooms held at a downtown hotel.

Next Meeting

The next meeting of the Association Board of Directors was set for 9:00 am, February 26, 2004. Tom Weaver has volunteered to set up the conference call for this meeting.

Adjournment

The meeting was adjourned by unanimous consent at 10:00 am, Thursday, January 15, 2004.

Respectfully Submitted,
Craig Eichstadt, Secretary