

**MINUTES OF JANUARY 30, 2004 NYSBA CPLR MEETING AT 12:30PM AT
MARRIOTT MARQUIS**

MEMBERS PRESENT: Sharon Stern Gerstman, David L. Ferstendig, Jim Blair, Pat Connors, Rob Knapp, Joseph Einstein, Jim Gacioch, Michael Greenspan, Sanford Konstadt, Jacqueline Hattar, Michael D. Stallman, Steven L. Sonkin, Steve Critelli, Paul Aloe, Ray Bragar, Ron Kennedy, Oscar Chase, Bob Redis

ALSO PRESENT: Amy Vance and Brian Shoot of the OCA Advisory Committee

The meeting was called to order at 12:45pm

I INTRODUCTION/APPROVAL OF MINUTES

Motion to approve the minutes of the October 24, 2003 meeting, was unanimously passed.

**II. REPORT ON LEGISLATIVE PROPOSALS BEFORE
EXECUTIVE COMMITTEE (1/29/04) MEETING (SHARON GERSTMAN)**

Sharon Gerstman provided a review of what transpired at the 1/29/04 Executive Committee meeting:

- a. CPLR 4532-a proposal was passed unanimously by Executive Committee.
- b. Mendon Ponds proposal: There was some opposition to this proposal. Concern was expressed about all of the diverse local rules. There was discussion about trying to establish a separate committee to investigate whether the rules could be made uniform.

SG: We should look at the interlocutory papers issue under CPLR 2102(b), run it by the Commercial and Federal Litigation Section and resubmit it in April.

III REPORT ON LEGISLATIVE PROPOSALS STILL PENDING (RON KENNEDY)

Ron Kennedy provided an overview of legislative proposals pending. Ron will continue to promote the view of our committee.

A very active bill was the notice provision as to a subpoena duces tecum.

Apparently, prosecutors were using the new subpoena statute for unintended purposes.

The main focus in the Legislature is the budget. Hearings will conclude in early February.

The OCA summary judgment motion bill, which came close to passage last year, should come up again this year.

IV **REPORT ON OCA MEASURES (GERSTMAN, SHOOT, VANCE)**

Sharon Gerstman discussed briefly the following measures:

- (1) Timing of depositions vis-à-vis surveillance tapes
- (2) Articles 50-A and 50-B

Brian Shoot: The OCA proposal is reactive to what happened in the past year (i.e. the decision in Desiderio; hospital self-insurers convinced the Legislature that reform was necessary, resulting in Article 50-A amendment / CPLR 4111, without OCA or CPLR committee input.) Before those developments, the OCA was in favor of repealing the Articles because they were not achieving their intended purpose and they were too complicated to define and understand. The outcome of the recent amendment was that it impacted any case where the plaintiff had any economic damages. Thus, even if the damages were only \$10,000, the jury's work increased. The OCA proposal realizes that periodic payments will not "go away" because defendants still want to save money because of the incidence of plaintiffs dying before all of the annuity payments have to be made.

CPLR 306-b: Paul pointed out an error in the accompanying report relating to General Construction Law §20

AUTHORIZATION FORM (AMY VANCE)

Amy Vance handed out an authorization form which attempts to create a uniform form that will be accepted by medical providers, and complies with HIPAA.

OCA only received comments from our committee and the Health Law Section.

This form has been proposed for the benefit of those who wanted and needed it; not to require anyone to use it. Many hospitals had approached the OCA about this issue.

We discussed the following, among other, issues:

- there are 9 required elements under HIPAA
- Amy addressed the issues raised by the committee

Paul Aloe: insert on form that it is optional; otherwise it will be accepted as “mandatory” and there will be numerous problems and comments from all sides (i.e. trying to achieve uniformity).

- re disclosure to other people (¶ 4)
- effect on trial subpoenas
- consistency with mental hygiene law

CPLR 213(8): No problems

CPLR 3217: No problems

Electronic Filing: **Paul Aloe:** expansion is good, why put any restriction on it?

Amy Vance: It has been very difficult to get Legislature to move on expansion; it is not politically feasible.

V REVISED UNIFORM ARBITRATION ACT (RUAA)

a. Representatives of the NYSBA ADR committee, NYSBA Commercial and Federal Litigation Section, and the ABCNY arbitration committee advised as follows:

- They were reacting to our committee report re the RUAA
- They provided a background as to the bases for their support of the RUAA
- They asked the committee to take a “second look” at the RUAA
- RUAA has been adopted in 8 states and proposed in others.
- They would welcome our participation and suggestions, and have no problem dealing with our four areas of change and would consider amending the RUAA based on those suggestions.

Steve Critelli: Our report was not only focused on the four areas where we wanted the RUAA to conform to CPLR Article 75. We were concerned about endorsing the RUAA especially where the ADR committee has so many reservations. Our conclusion was that our current system is fine and we should fill the holes by amending the CPLR.

Paul Aloe: RUAA “punts” about some essential issues (e.g. manifest disregard), while at the same time, in essence, it advocates the repeal of CPLR Article 75. The Federal Arbitration Act has been interpreted to apply to any

matter affecting interstate commerce. Thus, we could be raising conflicts on the state level with the federal law.

Sharon Gerstman: We can put together a small group of CPLR committee members who could meet with the working group on the RUAA from the other entities, and work out differences, but we will have to see the final draft and make a decision as to whether the Committee will approve or reject. The representatives agreed.

CPLR COMMITTEE MEMBERS: Joe Einstein, Pat Connors, Paul Aloe, Jim Blair, Steve Critelli

NOTICE TO ADMIT (M. Greenspan) CPLR 3123. The circulated language was discussed by the committee. The committee came to the conclusion that in order to expand the uses and remedies regarding notices to admit, CPLR 3123 (a) would also have to be amended to redefine the scope. Mike Greenspan will work with some other committee members (Joe Einstein volunteered) to prepare a short report on the pros and cons of enlarging the scope of notices to admit and report back at the next meeting.

Due to lack of time, other subject matters on the agenda will be addressed at the next meeting. The meeting was adjourned at 3:40 pm.

Respectfully submitted,

David L. Ferstendig
Secretary