

## COMMITTEE ON CIVIL PRACTICE LAW AND RULES MINUTES OF THE JUNE 3, 1999 TELEPHONIC MEETING

MEETING called to order at 5:10 p.m.

PRESENT: Steven M. Critelli, Chair, Sharon Stern Gerstman, Vice Chair, Kim Juhase, Secretary, Paul Aloe, Raymond A. Bragar, James N. Blair, Maurice Chayt, James C. Gacioch, David L. Ferstendig, Christopher J. Garvey Michael Evan Greenspan, David B. Hamm, Robert P. Knapp, III, Edward R. Mevec, Harold B. Obstfeld, Michael C. Schmidt

### **I. Introduction to meeting by chairman.** **II. Status report on current bills.**

#### a. CPLR Committee Bills

Paul Aloe reported on the current status of the committee's proposed bills. The legislature will adjourn next week. Since the budget has not been passed, the legislature will probably be called back -- but the extended session will be devoted exclusively to budget matters.

1. Parent/Child Privilege- S0156 and A3604 - We have received support but there are competing bills from the OCA Advisory Committee and the Law Revision Committee. The Law Revision proposal would give the court the power to override the privilege. Our committee has rejected this approach. Today, we received formal opposition from the District Attorney Association. Therefore, the bill is unlikely to pass the Assembly. Maurice Chayt said that the bill has not yet passed the Senate. If it reaches the Assembly floor, it may be pushed through -- but it is touch and go.
2. Motion Practice Bill, A3319 - We have received opposition from the OCA and its advisory committee. Their main objection is the extra time allotted for motions and they believe this would delay standard and goals. They conducted a survey of clerks of the court which reported that the clerks had no problem with the current law. Our position is that this proposal establishes a more realistic time frame and will avoid unnecessary adjournments. It appears that the bill will not move in face of the opposition of OCA.
3. Judicial Applications in Connection with Arbitrations, A5937 - The bill has passed the Senate and was on the verge of passing the Assembly today. The Trial Lawyer's Association has proposed an amendment to exempt any proceeding relating to a claim for personal injury or property damage under a policy of automobile liability insurance. See attached. If we can get our Senate and Assembly sponsors to amend these bills, we should consent to the Trial Lawyer's proposed language. Sharon Stern Gerstman said she had a problem about carving out specific narrow exceptions. Paul Aloe pointed out that we had done that before for landlord-tenant proceedings. He said that if we do not agree to the amendment, the bills will not pass.

**MOTION: SHOULD THE COMMITTEE AGREE TO THE PROPOSED AMENDMENT FROM THE TRIAL LAWYER'S ASSOCIATION?**

Motion passed: 10 Yes; 3 No; 2 abstain

4. [Service on Limited Liability Partnerships, S01206](#) - We anticipate that the bill will pass with the OCA and Attorney General's suggested amendments.
5. [Commencement of Special Proceedings, A6393](#) - We are currently optimistic.
  - a. Association of the Bar of the City of New York Bills- report by Paul Aloe.
    1. [Joint Interest Privilege](#) - The measure is not likely to move.
    2. [Telephonic Deposition Bill, S3524](#) - Jim Blair is working on a report on this bill.

#### I. Reports discussed by the committee.

1. [A07118](#) - Amends CPLR 208 regarding the toll of infancy- David Hamm gave a summary of his comments ([Comments by David Hamm](#)) and objections to Sue English's report ([Draft Report By Sue English](#)) on this issue. There is a split among the Appellate Divisions whether the infancy toll is absolute or is lost when some type of legal guardian is appointed for the infant. David Hamm said that it would be unfair for defendants to be sued years after an accident took place. But he also said, on the other hand, a child should not lose a cause of action. It is not clear under the recent court ruling (*Henry v. City of New York*, 249 AD2d 93) whether the mere fact that a child has a parent would automatically eliminate the toll. He pointed out that one the *Henry* case is scheduled to be argued before the Court of Appeals and could be decided by the Fall.

#### **MOTION: WHETHER A DECISION ON THIS ISSUE SHOULD BE PUT OVER TO NEXT MEETING.**

Motion was approved by a voice vote by acclamation.

David Ham will make a formal report for next meeting.

2. [S05289](#) - Amends CPLR 3012-a relating to the filing of certificates of merit in medical, etc. malpractice actions. If such certificate is not filed within the specified time, the case will be dismissed with prejudice. Maurice Chayt filed a draft report disapproving it. He stated that current law permits a court to allow a late filing, irrespective of the time limits stated in CPLR 3012-a. Certain revisions in the report were suggested by Paul Aloe, Steven Critelli and Jim Blair. [See proposed Revision of Chayt Draft Report.](#)

#### **MOTION: WHETHER TO APPROVE MAURICE CHAYT'S REVISED REPORT.**

Motion was approved 10 Yes, 0 No.

3. [S3398/A07679](#) - Amends Judiciary Law §2-b to allow service of subpoenas outside of New York State. Committee [Report No. 29](#) by Michael Schmidt disapproved the bills. The OCA has proposed amendments to the bills to state that a court can compel a party who has appeared in the action to appear in court for any purpose, even for supplemental proceedings. After discussions, the committee informally decided to tell OCA that it had problems with the amended version of the bill. Paul Aloe will propose new language for the OCA to consider but he is to make clear it is his own and has not been endorsed by the committee.

A motion to adjourn the meeting was made and seconded. The meeting adjourned at 8:22 p.m.

Kim Steven Juhase, Secretary

