

MINUTES OF THE OCTOBER 4, 2013 NYSBA CPLR COMMITTEE MEETING  
Held at the New York City Bar Association, 42 West 44<sup>th</sup> Street, New York, NY

**In Attendance:**

Paul H. Aloe, Esq., William Altreuter, Esq. (by telephone?), Thomas Bivona, Esq., James N. Blair, Esq., Blaine Bortnick, Esq., Raymond Bragar, Esq., Hon. Stephen Crane, Steven M. Critelli, Esq., Brendan Cyr, Esq., Paul Feigenbaum, Esq. (by telephone) David L. Ferstendig, Esq., Daniel Finger, Esq., Sharon Stern Gerstman, Esq., David Hamm, Esq., Helene Hechtkopf, Esq., Souren Israelyan, Esq., Ronald Kennedy, Esq. (Staff Liaison), Ken Jewell, Esq. (secretary), Seunghwan Kim, Esq., Robert P. Knapp III, Esq., Bonnie Mohr, Esq., James Thomas E. Myers, Esq. (Executive Committee Liaison) (by telephone), Harold Obstfeld, Esq., James E. Pelzer, Esq., Hon. Erin Peradatto, Christine M. Rodriguez, Esq. (by telephone?), Jorge A. Rodriguez, Esq., Herbert Ross, Esq., Daniel Schiavetta, Esq., Daniel Schiavetta, Esq., Joseph Schmit, Esq., Joel Sharrow, Esq., Hon. Michael Stallman, Thomas Wiegand, Esq.

Guests: Hon. Laura Drager, Hon. Deborah Kaplan, Hon. Matthew Cooper, Hon. Sherry Klein-Heitler; Jim McElligot, Chief Matrimonial Clerk, Supreme Court, New York County; John Werner, Chief Clerk, Civil Division, Supreme Court, New York County.

The meeting was called to order by the Chair, Robert P. Knapp III, Esq. at 12:15 p.m.

**Agenda:**

- I. Approval of Minutes: On motion to approve the minutes, which motion was seconded, the minutes of the May 10, 2013 meeting were unanimously approved.
- II. Website Update: Provided by Ron Kennedy who advised the Committee of the Association's migration/transition from a website having a listserv-based system to that which has a more 'communities'-based platform. Handouts containing more information are forthcoming.
- III. Venue Proposal Requiring Matrimonial Actions to be Filed in County of Plaintiff's or Defendant's residence.
  - A. Proposal brought to Committee by Ken Jewell, Esq. after follow-up with the Manhattan matrimonial bench concerning an early 2013 decision outlining a problem with the venue statute.
  - B. Proposed legislation would amend up to three sections of CPLR Article V and is designed to give a court the *sua sponte* authority to transfer an inappropriately-venued action to the county of plaintiff or defendant's residence.
  - C. The four judges appearing in support of the proposal described the problem and the results of having non-resident parties file actions in New York County:

- a. Manhattan had 14,000 uncontested divorce judgments in 2012 compared to the next-highest county, Kings, with 3,500.
  - b. Post-judgment proceedings must be brought in New York County – which litigants do not understand at the time they sign the papers, usually prepared by non-lawyer “mills” to be filed *pro se*.
  - c. Litigants living in counties far from New York County incur burdensome travel expenses which would be alleviated if local courts heard matrimonial/post-judgment issues.
  - d. New York County courts are not comfortable with deciding many non-resident issues because of the courts’ unfamiliarity with what services are available in non-resident parties’ home counties.
  - e. Risk of Defendants defaulting because of their inability to learn about and/or attend proceedings filed in New York County.
  - f. Family Court already has the power to change venue *sua sponte*. Why not Supreme Court?
- D. First concern raised by Sharon Gerstman, Esq. over possibility that legislation could render void forum selection clauses in contracts. Mr. Jewell responded by advising the Committee that if there is ‘good cause shown’ as stated in the proposed legislation, the action could remain in New York County.
- E. Second concern raised by Ms. Gerstman concerning notice to the parties of the Court’s impending decision to change venue. After discussion of what the legislation is designed to control, the judges and Committee agree to modify legislation to include 30 day notice language to the parties to be mailed by the clerk in advance of any transfer.
- F. Consideration of whether Defendant’s consent to jurisdiction sufficient to keep non-NY County resident action in New York County.
- G. Regarding CPLR § 511(e), the term ‘shall’ should be changed to the term ‘may’ so that a court may transfer action to county of plaintiff or defendant.
- H. James Pelzer, Esq. moves to create sub-committee to study proposal and make recommendations. Mr. Jewell seconds motion. Sub-committee created by unanimous vote. Ray Bragar, Esq., Blaine Bortnick, Esq., Hon. Stephen Crane, Steve Critelli, Esq., David Ferstendig, Esq. Sharon Gerstman, Esq., David Hamm, Esq., Helene Hechtkopf, Esq., Bonnie Mohr, Esq., James Pelzer, Esq., Jorge Rodriguez, Esq., and Hon. Michael Stallman are sub-committee members. Ken Jewell, Esq. is sub-committee chairman.

- IV. Ron Kennedy described the progress, or lack thereof, of bills in the Senate and the Assembly. The Consumer Credit Fairness Act (on which Jorge Rodriguez reported at the May meeting) will be hard to pass in Senate, Ron said. Senator DeFrancisco, former chair of the Senate Judiciary Committee, introduced our proposed amendment to CPLR 3216 (S 5416) but not our related amendment to CPLR 3402, which he thought would have a negative impact on discovery and would slow down cases. Senator DeFrancisco was interested in our proposed amendment to CPLR 5501. Harold Obstfeld's last proposed amendment to CPLR 3213 was presented in the Assembly but got "pushback," on the grounds that it was adverse to consumers. Harold has a new proposal that has yet to be introduced in either house. Assemblyman Weprin is willing to sponsor it but wants a "same as" in Senate. Ron said he had tried to float David Hamm's 3101(a) "special circumstances" bill in the legislature, but that there must have been some resistance. Ron Kennedy suggested that the Committee review David's proposal in light of *Cooper*. More and more, Ron said, bills just don't move – with no explanation of why not. We used to have an easier time introducing bills through Senator DeFrancisco and Assemblyman Weprin. Rob Knapp is travelling to Albany on October 16 to meet with legislative staff about our proposals.
- V. Report on Proposed Amendments to CPLR 2221 to address Second Department's decision in *Biscone v. Jet Blue Airways Corp.*, which held that all the original moving papers must be attached to a motion to reargue, and that reference to previously e-filed papers is insufficient. Mr. Pelzer, who disagreed with the result in *Biscone*, agreed following the failure of his own motion in May, to draft a report and bill codifying the result in that case. There followed a discussion whether *Biscone* should be written into the CPLR. Ms. Gerstman's motion to postpone indefinitely consideration of Mr. Pelzer's proposed amendment to CPLR 2221(g), pending development of caselaw, passed 16-6. (It was also agreed that there could be a motion to table another motion indefinitely.) Mr. Pelzer added that there was no point addressing his proposed subsection (b) separately. But there remained the question whether on an e-filed motion to reargue, the movant should re-e-file all the original papers or just insert a hyperlink to the original e-filing. Mr. Pelzer moved to make a recommendation to the Chief Administrative Judge to allow but not require hyperlinking in this situation. The motion passed 14-7; Mr. Aloe's motion to table indefinitely this second motion, failed by the same margin. Mr. Knapp is to draft a letter to the Chief Administrative Judge containing the recommendation on page 4 of Mr. Pelzer's report.
- VI. Remaining Agenda Items: Per Chairman Knapp, the other items on the agenda will be addressed at the next Committee Meeting.
- VII. Next Meeting: The next Committee Meeting will be scheduled for January 31, 2014 at the New York Hilton Hotel.