

NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON CIVIL PRACTICE LAW AND RULES
MINUTES OF FALL MEETING - NOVEMBER 6, 1997

MEETING called to order at 12:20 p.m.

ATTENDANCE: Paul H. Aloe, Harry P. Mooney, J. David Burke, Jim Gacioch, Joe Einstein, Jill Nagy, Jim Blair, Burt Lipshie, Brian Schare, David Hamm, Andrew Zeitlin, Thomas DiNovo, Maurice Chayt, Rob Knapp, Kim Juhase, Ray Bragar, David L. Ferstendig, Jason A. Grossman, Sharon Stern Gerstman.

- A. Paul opened the meeting by welcoming the new members and reporting on the last Legislative session. In his view, the session was not productive since only one major bill affecting the CPLR was enacted - the amendment of CPLR 306-b. Because of legislative gridlock, Paul pointed out that OCA, through the promulgation of Uniform Rules, has been encroaching the matters that should have been addressed by the Legislature, i.e., jury reform, sanctions. After extended discussion, we decided to form a committee to prepare a report discussing this problem. Ray Bragar will chair the committee whose members are: Rob Knapp, Jill Nagy, David Ferstendig and Joe Einstein.
- B. Paul reported that at the last legislative session, the following legislation was enacted or vetoed:
1. ch 365 - eliminates need to obtain court order when submitting infant's personal injury claim to arbitration when claim is brought pursuant to certain provisions of Insurance Law.
 2. ch 476 - repeals and replaces CPLR 306-b.
 3. ch 519 - amends CPLR 214-d regarding claims against licensed engineers and architects.
 4. ch 476 - notice of appeal from order directing summary judgment shall be deemed to specify judgment ultimately entered.
 5. S3512 extending time for commencement of an action against a proprietary manufacturer of blood products which cause HIV or AIDS has been passed but has not yet been signed or vetoed.
 6. S2872 adding a new CPLR 214-e reviving certain expired fraud causes of action was vetoed. This is a bill we opposed.
- C. We next reviewed the status of our bills.
1. Motion practice bill: passed the Senate but failed in the Assembly after OCA raised objections. We decided we would attempt to work with OCA to reach an accommodation. Paul will arrange a meeting with Judge Lippman.
 2. The E-mail bill passed the Senate but failed in the Assembly. Will be resubmitted.
 3. Election Law bill - Sharon Gerstman doesn't think the new CPLR 306-b affects this bill. She will rework the language and rewrite the supporting memorandum justifying the bill which will be resubmitted.
 4. Parent-Child Privilege - passed Senate but failed in the Assembly apparently because of concern that it might have criminal justice implications. Maurice Chayt will report on its status at the next meeting.
- D. The next item of discussion was the new OCA Uniform Rules on sanctions and juries. With respect to sanctions, Jim Gacioch, along with Sharon Gerstman and Harry Mooney, will draft a report proposing that the present CPLR 8303-a statutes should be repealed and replaced by Uniform Rule 130-1. Insofar as the jury rules are concerned, Sharon Gerstman will draft a report suggesting that the option of not discharging the non-deliberating alternate jurors be extended to civil trials and that the procedure of designated undesignated alternate jurors be adopted, i.e., attorneys know who the alternates are but the jurors do not.

- E. The Committee will pursue the following new projects:
1. Joe Einstein and Jim Blair will draft proposed legislation providing that an order should be effective upon service, not upon entry.
 2. Burt Lipshie will rework his proposed amendment of CPLR 5519 to conform to the holding of the Appellate Division, Second Department.
 3. At our next meeting, Harry Mooney will present proposed legislation providing for service upon LLP's, LLC's and PLLC's
 4. David Hamm raised the issue as to whether there should be a privilege covering pharmacy records and agreed to present proposals at our next meeting.
 5. Paul will draft proposed legislation precluding the admission of settlement discussions into evidence.

F. Our next meeting will be a teleconference meeting on December 5, 1997 at 1:00 p.m.

The meeting adjourned at 3:00 p.m.