

**MINUTES OF THE SEPTEMBER 15, 2010 NYSBA CPLR COMMITTEE MEETING
held at the Association of the Bar of the City of New York, 42 W.44th Street, New York, NY**

In attendance: Paul H. Aloe, Esq.; William C. Altreuter, Esq.; Thomas C. Bivona, Esq.; Blaine H. Bortnick, Esq.; Oscar G. Chase; Sanjay Chaubey; Hon. Stephen G. Crane; Steven M. Critelli, Esq. (by telephone); Thomas M. Curtis, Esq.; Daniel Finger; Ellen B. Fishman, Esq.; Sharon Stern Gerstman, Esq. (by telephone); David P. Horowitz (by telephone); R. Kenneth Jewell, Esq.; Ronald F. Kennedy, Esq. Staff Liaison; Robert P. Knapp, III; James K. Landau, Esq.; Stuart W. Lawrence; Burton N. Lipshie; Thomas Myers (by telephone); Harold B. Obstfeld, Esq.; Joel D. Sharrow, Esq.; Hon. Michael D. Stallman.

The meeting was called to order by the Chair, the Hon. Stephen G. Crane, at 12:15 p.m.

I. Welcome and Introduction of New Members

Justice Crane welcomed and introduced David Finger and Sanjay Chaubey as new members of the Committee.

II. Approval of Minutes

The Minutes of the May 14, 2010 meeting were approved without amendment.

III. Agenda

A. Report on the 2010 Legislative Session

Mr. Kennedy advised that leadership focused on the budget for the judiciary. The budget was enacted intact and it included \$15 million in emergency appropriations for IOLA, the revenue source for civil legal services. It also included the creation of an indigent defense office and a compact for long-term care. Opposition to the Governor's proposal to increase court fees was successful; however other fee increases, such as fees for filing foreclosure actions and actions involving consumer credit. Also the attorney registration fee was increased.

Mr. Kennedy also advised that certain other bills passed including a bill promoting the prosecution of the unauthorized practice of law, no fault divorce and EPTL legislation.

Mr. Kennedy advised that no CPLR ALPs passed this year, but he expressed optimism that the change in the makeup of the legislature going forward would be conducive to getting such legislation passed.

B. Report on Meeting with NYSBA President

Justice Crane reported on his hour-long meeting with Stephen Younger, the new president of the NYSBA. In advance of his meeting, Justice Crane sent President Younger a letter in advance of his meeting giving him a list of open issues, including: CPLR 4547 and

4549; the impact of the definition of “serious injury” on CPLR 3212; and the creation of a subcommittee studying the 5 day add on for mailing in connection with CPLR 2103. Justice Crane reported that President Younger was interested in simplifying disclosure in general and expert witness disclosure in particular.

Justice Crane then asked whether, in light of President Younger’s interest, anyone on the Committee would be interested in forming a subcommittee to study and make recommendations re CPLR Article 31 reform. After much discussion, Justice Crane advised that he would re-post a copy of an e-mail on the List Serv containing a description of the report from the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System (chaired by Judge (Ret) Rebecca Love Kourlis, formerly of the Colorado Supreme Court) and invite comment.

C. Proposed CPLR § 4549

Mr. Aloe advised that it was his understanding that his proposal with respect to this prospective new section of the CPLR had been submitted to the Executive Committee.

D. CPLR § 4547

Mr. Aloe advised that CPLR § 4547, at its inception, adopted the then existing language of FRE 408 *verbatim*. He further advised that FRE 408 has since been amended. He advised that since our last meeting he had researched case law in this area and found that most cases were unreported and unremarkable. He continues to believe that CPLR § 4547 ought to be amended to be in harmony with FRE 408. Mr. Aloe advised that he will prepare a draft of proposed legislation with supporting memo, amending CPLR § 4547 to reflect the amendments made to FRE 408 by the next meeting.

E. Interlocutory Appeals

Ms. Fishman and her subcommittee submitted a proposal and report for the Committee’s review. She also advised that the Appellate Courts Committee agreed to keep the statute the same. Ms. Gerstman suggested that if the Appellate Courts Committee adopts the proposal and report, it should be a joint proposal and report by the two committees.

After some discussion, it was moved, seconded and unanimously decided that the subcommittee’s report be approved. Ms. Fishman will present the proposal to Justice Ellerin of the Appellate Courts Committee with the hope that it will be approved and become a joint proposal.

F. CPLR 4111

Ms. Fishman also submitted a proposal to amend CPLR 4111 and memorandum in support, pertaining to general and special verdicts and written interrogatories.

Ms. Fishman's proposal was unanimously approved by the Committee.

G. CPLR 2103

Mr. Aloe advised that his subcommittee is continuing to discuss whether CPLR 2103 ought to be modified to clarify it in light of CPLR § 5513. Mr. Aloe, Mr. Obstfeld and Mr. Jewell stated that they believed that people choosing to serve papers by mail should take on the burden of the 5-day rule (requiring them to serve 5 days earlier, rather than extend the other sides' time by 5 days. Mr. Aloe also advised that his subcommittee was continuing to discuss the situation where a party refuses to accept service of papers by electronic means. After much discussion, Mr. Aloe advised that the subcommittee would reconvene and report on their status by the next meeting.

H. Notice of Pendency

Mr. Curtis advised that his subcommittee was looking for an additional member, particularly one with real estate transactional or litigation expertise.

I. Note of Issue

Mr. Horowitz advised that he would prepare and submit a proposal and supporting memo regarding a proposed fix to Notes of Issue by the next meeting.

J. New Business

1. The date of the Committee's next meeting is January 28, 2011.
2. The date of the Committee's Spring meeting is May 13, 2011.

There being no further business to come before the Committee, the meeting was adjourned at 2:40 p.m.

Respectfully submitted,

James K. Landau
Secretary