

COMMITTEE ON CIVIL PRACTICE LAW AND RULES MINUTES OF MARCH 19, 1999 TELEPHONIC MEETING

MEETING called to order at 1:00 p.m.

PRESENT: Paul Aloe, Chair, Sharon Stern Gerstman, Vice-Chair, Steven Critelli, Secretary, Steven Curvin, Rob Knapp, Ray Bragar, David Ferstendig, Richard Lauder, David Hamm, Richard S. Laudor, Andrew Zeitlin, Jim Blair and Venita A. Parker.

Introduction to Meeting

1. **Report on OCA Advisory Committee Position on CPLR Bills** (Sharon Gerstman)
 - a. [Amendment to CPLR 5513](#) concerning the timing of notice of appeal where appellant serves order with notice of entry by mail. OCA Committee supports Committee proposal in the spirit of advancing beneficial legislation; however, OCA may introduce their own bill which only gives the 5 days to the serving party.
 - b. [Amendment to CPLR 304, 306-a and 306-b](#) with respect to commencement of special proceedings. OCA reversed position in support.
 - c. [Amendment to CPLR 7502](#) OCA Committee in support.
2. **Pressing Items in Legislature for Committee Action**
 - a. [Joint Interest Privilege](#) (sal of Association of the Bar of the City of New York, Council on Judicial Administration). Measure previously endorsed by the committee, subject to any comments regarding the language of the proposal, and subject to consideration by the author of whether or not it is intended to apply to criminal proceedings. Committee supported Ms. Gerstman recommendation to refer proposal to criminal justice section for comment.
 - b. Telephonic Deposition Bill. Committee voted to endorse Jim Gacioch's version of the proposal. The vote was 8 yes, 2 no, 1 absention. By acclamation, the phrase "for good cause shown" was removed from the Gacioch text.
 - i. Current Working Version ([S3524*](#) [Volker])
 - ii. [Version proposed by Jim Gacioch*](#)
 - iii. [OCA Proposed Version*](#)
 - iv. [Report of Jim Blair Disapproving Previous Measure](#)
 - c. Tort Reform. NYSBA has a task force. The CPLR committee previously issued a report on the prior bill relied upon by the Task Force. The Task Force has invited comments from the CPLR Committee, which must be received by April 5, 1999. Sharon Gerstman to review and report to Committee.
 - i. Report of the NYSBA Task Force to Consider tort Reform Proposals regarding Civil Justice Reform Act (To be Disburbuted by Fax to Members of the Committee). [See CPLR Committee Report to the NYSBA Task Force from April 7, 1998 Meeting.](#)
 - ii. [S2277](#) "Civil Justice Reform Act".
 - d. OCA Proposal: Pilot Program Permitting Use of Facsimile Transmission or Electronic Means for Filing Papers in an Action or Special Proceeding (To be distributed by fax to members of the Committee). The Committee tabled discussion until proposed regulations are circulated.
 - e. OCA Proposal on commencement of election law proceedings (Gerstman) - proposal to commence by service (rather than filing) - we will write to amy vance and george carpinello to advise of the logistical problems with proposal. and circulate OCA proposal and Committee proposed response.

3. Affirmative Legislation Proposals Proposed CPLR Committee for Consideration by Members

- a. [Proposal to Amend CPLR 3102](#) with regard to timing of discovery (Curvin). Issue was whether proposed language is too broad an approach to remedy DiNardo. Should we have directly addressed DiNardo rule. Steve Curvin will rework proposal to address DiNardo more directly.

4. Preview of Matters to be Discussed in April (NB. Other matters from January meeting will be discussed in April)

- a. Various Measures to Amend CPLR art 50-A
 - i. OCA Proposal - To be circulated to the Committee.
 - ii. [S2275](#) Proposal to amend CPLR 5031 & 5041, relating to the calculation of annuity payments on judgments. The bill provides that such annual payment shall be calculated by dividing the remaining amount of future damages by the number of years over which such payments shall be made and removes the four percent annual adjustment added to the calculation of annuity payments or judgments.

5. Other New Business No new business was discussed.

Meeting ended 3:45 p.m.