

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

MINUTES OF SPRING MEETING

APRIL 30, 1998

MEETING called to order at 12:15 p.m.

PRESENT: Paul H. Aloe, Harry Mooney, J. David Burke, Sharon Stern Gertsman, Ray Bragar, Burt Lipshie, Jill Nagy, Rob Knapp, Maurice Chayt, John J. Jablonski, David A. Goldstein, Jim Blair, Jim Gacioch, David Hamm, Prof. Oscar Chase, Hon. Myriam J. Altman, Steve Critelli, David Ferstendig.

- I. Paul opened the meeting by reporting that, through the efforts of Steven Critelli, our Web Site is being developed so that it now includes up-to-date CPLR decisions and articles.
- II. We then discussed the following CPLR proposals made by other groups:
 - (a) Simplified Case Resolution: We felt this proposal was a substantial improvement over the prior draft but felt it could be further improved with the following modifications:
 - (1) The action be commenced with the service of a summons and complaint without further documentation.
 - (2) If defendant elected not to opt out, plaintiff would then serve detailed affidavit.
 - (3) The opt out period should be extended to at least 20 days.
 - (4) If the court intends to render judgment at the initial conference, it should provide the parties with reasonable notice of its intention so that the parties would have an opportunity to respond.
 - (5) We believe there should be an appeal as of right only from the final judgment and, by an 8-7 vote, we were in favor of eliminating the "substantial justice" requirement. We also felt that an appeal from an interlocutory order should be by permission only.
 - (6) There should be a provision limiting the preclusive effect of a judgment entered pursuant to this procedure.
 - (b) By a vote of 14-0 with 3 abstentions we approved OCA's proposal to amend CPLR 3113 and 3115.
 - (c) We generally disapproved the proposed amendments to the CPLR contained in the Civil Justice Reform Act. Harry Mooney and Sharon Stern Gertsman will draft a report embodying our positions.
 - (d) We approved Jim Gacioch's report on the proposal to amend CPLR 8303-a.
 - (e) Matthew Kreinces' report disapproving the bills extending the statute of limitations

in medical malpractice actions under certain circumstances by establishing a discovery rule and providing for one year revival of previously dismissed actions was approved by the Committee.

III. The last item on the Agenda was status reports on the following proposed bills:

- (a) E-mail privilege: should pass in the Senate, Assembly passage is not certain.
- (b) Parent-child privilege: Besides our bill there are two others that offer less protection to parent-child communications. In the Committee's view our bill's approach is preferable.
- (c) Service on limited liability companies: OCA has raised objections which we can accommodate.
- (d) Settlement discussion: OCA in agreement, should pass in the Senate.
- (e) Motion practice bill: awaiting OCA's development of pilot projects.
- (f) Motions for reargument: OCA bill revised per our suggestions, should pass this year.

The meeting adjourned at 4:00 p.m.