

STATE BAR OF MICHIGAN  
CIVIL PROCEDURE AND COURTS COMMITTEE

Draft Minutes  
May 19, 2007  
10:00 a.m.  
Dickinson Wright, PLLC  
Bloomfield Hills, MI

The Committee met at the offices of Dickinson Wright, PLLC at 10:00 a.m. Attendance was taken and recorded by co-chair Greco.

Present in person or by telephone:

Curt Benson  
Richard Bisio  
Hon. Nanci Grant  
Frank Greco  
Kaveh Kashef  
Ray Kethledge  
Ronald Longhofer  
Sean McNally  
Thaddeus Morgan  
John Mulcrone  
Joey Niskar  
Daniel Quick  
Karen Safran  
Victoria Valentine  
Peter Webster

Absent:

Janet Brandon  
Hon. David Lawson  
David Mendelson  
Jules Olsman  
Gary Peterson

1. The Minutes of April 19, 2007 meeting were approved without change.

Old Business

2. Daniel Quick reported on the Representative Assembly action on Committee's proposals regarding electronic discovery and masters. The proposals were adopted with one minor change in the electronic discovery rule. The State Bar will be submitting the proposals to the Supreme Court.

3. Sean McNally reported on the Supreme Court's May 16 public hearing at which he spoke on the proposals on which Committee submitted comments: 2005-36 Proposed Amendment of MCR 7.204 and 7.205 – effect of post-judgment motions in tolling time for appeal; 2006-33 Proposed Amendment of MCR 2.116 – time when motions for summary disposition based on governmental immunity or subject matter jurisdiction may be filed; 2006-29 Proposed Amendment of MCR 3.411 – binding effect of judgments involving real property.
4. 2007-12 Proposed amendment of MCR 2.107 – e-mail service of papers (Court deadline 8/1/07). Report of subcommittee.

The subcommittee draft was discussed and the Committee unanimously adopted several changes:

- a. Modify subrule (4) as follows:

*E-mail.* Some or all of the parties represented by attorneys may agree to service by e-mail by filing a stipulation in that case ~~a stipulation~~. E-mail service shall be subject to the following conditions:

- b. Add language to subrule (4)(f) as follows:

An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).

- c. Add language to subrule (4)(g), as follows:

A party may withdraw from a stipulation for service by e-mail by stipulation of the parties who agreed to e-mail service or ~~upon~~ leave of court on terms and conditions the court deems proper.

- d. Modify subrule (4)(h), as follows:

Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the ~~person~~ e-mail address to be served.

- e. In the added last sentence of subrule (G) change the reference to “docket sheet” to “register of actions”. That sentence should read:

If the clerk docket papers on a date other than the actual filing date, the clerk shall note the actual filing date on the register of actions.

5. HB 4422 – Increase jurisdictional limit in small claims division of district court. (BOC requests comments by 4/20/07) ([Note: this bill is similar to one which the Committee (and

the State Bar) opposed last year.] Reports on contacts with district judges and District Judges Association.

The committee voted 11 to 3 with 1 abstention to support the proposed increase in the small claims jurisdictional limit to \$6,000.

6. HB 4578 – allow attorneys to represent small claims clients for the purpose of enforcing judgments. (BOC requests comments by 6/1/07). Reports on contacts with district judges and District Judges Association.

The committee voted unanimously to support the proposal, but to recommend adding language to the last sentence of section 8409(1), to emphasize that attorney representation in small claims cases is limited to post judgment proceedings:

After entry of judgment, a party to an action under this chapter may be represented by an attorney at law in matters related to the issuance of execution or other enforcement of the judgment.

#### New Business

7. HB 4032 Recovery by drunk drivers. (BOC requests comments by March 14, 2007).

The Committee voted unanimously not to take a position on this bill because it was not a procedural issue within the committee's purview.

8. HB 4708 Evidence of expression of sympathy for injuries. (Introduced May 3, 2007; no BOC reference yet).

The Committee voted unanimously to oppose the proposed bill for several reasons:

- a. In general it is inappropriate to incorporate evidentiary rules in statutes.
  - b. The bill is ambiguous regarding the distinction between expression of sympathy and admission of fault.
  - c. The limitation to expressions of sympathy to family members is illogical.
  - d. The limitation of the rule to medical malpractice cases is illogical.
9. General discussion of Committee procedures and future projects.
  10. Proposed rule regarding zoning and land use appeals.

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