

Civil Procedure & Courts Committee

Thursday, July 12, 2012 ~ 4:00 p.m.

TELECONFERENCE

MINUTES

Present by Telephone:

Tom Bannigan
Frank Greco
Maureen Kinsella
Hon. David Lawson
Martha Moore
Gary Peterson
Daniel Quick
Karen Safran
George Strander
Randy Wallace
Peter Webster
Ronald Longhofer (Advisor)
Sean McNally (Advisor)
Dennis Barnes (Commissioner Liaison)
Peter Cunningham (SBM Liaison)
Janeice Morrow (SBM Liaison Assistant)

Absent:

Curt Benson
Richard Bisio
Sean Crotty
Pamela Dausman
Lori Frank
Kaveh Kashef
Joey Niskar
Victoria Valentine
Janet Brandon (Advisor)

1. Chair Daniel Quick welcomed the members to the meeting and introduced Peter Cunningham, the new Director of Governmental Relations and SBM Committee Liaison. Peter Cunningham provided a brief overview of his professional background to the Committee.

The May 23, 2012 Minutes were unanimously approved – a quorum was met.

2. **Old Items**

No follow-up report was provided.

3. New Items

- a. [2011-09 - Proposed Revision of Administrative Order No. 1989-1 \(rules regarding media access in the Court of Appeals and the Supreme Court\)](#)

The proposed amendment of Administrative Order No. 1989-1 adds new language that clarifies and expands the standards for allowing film or electronic media coverage of court proceedings in the Court of Appeals and the Supreme Court.

Issued: June 7, 2012

Comment period expiration: October 1, 2012

--After discussion, the Committee concluded that it would take no position, but provide recommendations for clarification. A motion was brought, seconded, and unanimously passed to take no position with comments. **A public policy report will be prepared upon receipt of proposed language and will be submitted for electronic approval.**

- b. In May of this year, the Committee on Justice Initiatives (CJI) created a Language Access Workgroup (Workgroup) to study and make recommendations on [2012-03 - Proposed Adoption of Rule 1.111 and Rule 8.127 of the Michigan Court Rules](#):

This proposal includes two separate proposed rules that relate to foreign language interpreters. The first proposed rule, MCR 1.111, would establish the procedure for appointment of interpreters, and establish the standards under which such appointment would occur. The proposed rule includes alternative language for subrules (B) and (F)(4).

The second proposed rule, MCR 8.127, would create a board to oversee certification of interpreters and other interpreter-related functions, and provide a procedure for imposing discipline upon interpreters who commit misconduct. The board's structure and responsibilities are similar to those of the Court Reporting and Recording Board of Review described in MCR 8.108.

The Workgroup studied the proposed court rules, met several times to discuss the rules, and unanimously adopted the recommendations. CJI met on June 25 to review those recommendations. Eight of the ten CJI members were present at that meeting, and those eight members voted to approve the recommendations of the Workgroup.

These recommendations will be reviewed by the Board of Commissioners on July 27, 2012. If you wish to submit comments on these recommendations for consideration by the Board, please do so by July 25, 2012. Comments should be submitted via a [template](#) located at the [Public Policy Resource Center](#).

--During the Committee discussion, Candace Crowley was summoned from the State Bar, to provide some history as to the formation of the Language Access Workgroup and address a few questions from members of the Committee.

--Candace noted that the issue of language access has been looked at by the Equal Access Initiative (EAI) and Commission on Justice Initiative (CJI) of the State Bar for quite some time. The Judicial Crossroads Task Force addressed the fact that within the last 10 years the number of limited English-proficient individuals has dramatically increased and their ability to understand court proceedings is key to access issues. It was heightened by an August 2010 Letter from the DOJ to every Supreme Court in the country that required courts to have a plan in place to address these issues and to provide adequate access to all kinds of court services based on Title VI and in the standards set out in *Lau v. Nichols* (414 U.S. 563 [1974]).

--Currently in Michigan, there is a pending complaint with the DOJ that is under investigation with some advocacy groups claiming that certain trial courts were refusing interpreters in key civil proceedings. While there is a statute in Michigan that sets forth the requirements for criminal proceedings, there is no clear direction on civil matters. When the court issued these rules with the alternative, especially with the direction from Elizabeth Lyon, a process was created whereby the CJI would assemble a workgroup from its initiatives that would put together some basic comments. Their product was sent to the CJI and it was pretty much adopted in whole cloth by the CJI.

--Janet Welch, the Executive Director for the State Bar of Michigan, was also asked to come into the meeting to provide a timeline for submission of the Committee's comments to the Board of Commissioners (BOC) and to address any procedural questions the Committee might have. Janet explained that the July 25 deadline for submitting comments was so that the BOC could address the Committee's position at their July 27 meeting. She expressed that the Committee should not count on the Court being receptive to an extension on the deadline but if they needed more time, their comments could be submitted in mid-August for consideration by the Executive Committee, rather than the BOC. The Committee expressed that based upon the important nature of this issue, they felt it was best to have consideration of the Board of Commissioners.

--A motion was made, seconded, and unanimously passed, to form a subcommittee composed of Dan Quick and George Strander to develop a position to be reviewed by the full Civil Procedure Committee before the July 25th deadline. A request was made for a liaison from CJI to be identified to the subcommittee to serve in an advisory capacity. **Bob Gillett and Candace Crowley were contacted and have agreed to assist the subcommittee. Dan Quick will circulate proposed language for the Committee to vote on.**

- c. [2011-14 - Proposed Amendment of Rule 2.105 of the Michigan Court Rules \("diligent inquiry" would include an online search if the moving party has reasonable access to the Internet\)](#) The proposed amendment of MCR 2.105 would state that a "diligent inquiry" in support of a request for substituted service must include an online search if the moving party has reasonable access to the Internet.

Issued: June 20, 2012

Comment period expiration: October 1, 2012

--After discussion, the Committee concluded that it would take a position to oppose the proposed amendment and provide additional comments. A motion was brought to oppose with comments. The motion was seconded, and passed unanimously. **A public policy report will be prepared upon receipt of proposed language and submitted for electronic approval.**

- d. [2012-15 - Proposed Administrative Order No. 2012-XX \(proposed implementation of trial court performance measures\)](#) This administrative order would implement the use of performance measures in trial courts.

Issued: July 5, 2012

Comment period expiration: November 1, 2012

-- After discussion, the Committee concluded that it would take no position, but would submit comments reflecting the Committee's interest in providing comments at a time in the future once the standards have been developed. A motion was brought to take no position with comments, which was seconded, and unanimously passed. **A public policy report will be prepared upon receipt of proposed language and submitted for electronic approval.**

- c. [2012-16 - Proposed Administrative Order No. 2012-XX \(proposal would allow State Court Administrative Office to authorize judicial officer's appearance by video communication equipment\)](#) This administrative order would allow the State Court Administrative Office to authorize a judge to preside using videoconferencing equipment in certain types of proceedings.

Issued: July 5, 2012

Comment period expiration: November 1, 2012

--After discussion, the Committee concluded that it would oppose the proposed order. The motion was seconded and the passed unanimously. **A public policy report will be prepared upon receipt of proposed language and submitted for electronic approval.**

4. No items were raised for Good of the Order.

5. The meeting adjourned at 5:20 p.m.