

MINUTES OF THE STATE BAR OF MICHIGAN
CIVIL PROCEDURE AND COURTS COMMITTEE

June 18, 2005
10:00 a.m.
Dickinson Wright
38525 Woodward Ave, Ste 2000
Bloomfield Hills, MI

The Committee met at the offices of Dickinson Wright, Bloomfield Hills, Michigan at 10:00 a.m.
Attendance was taken and recorded by the Chair.

Present in person or by telephone:

Richard Bisio
Janet Brandon
Robert Filiatrault
Bruce Jerris
Hon. David Lawson
Ronald Longhofer
Thaddeus Morgan
John Mulcrone
Jules Olsman
Dan Quick
Karen Safran
Timothy Taylor
Victoria Valentine
Brian Einhorn, Commissioner Liaison

Absent:

John Dudley
Jonathan Frank
Donn Fresard
Hon. Nanci Grant
David Mendelson
Gary Peterson
Tammy Repaso

The minutes of the April 16, 2005 meeting were approved.

The committee reviewed, discussed and/or voted on the following agenda items:

Old Business

1. Electronic Discovery Rules

The sub-committee consisting of Dan Quick, Karen Safran, Vicky Valentine and Ron Longhofer agreed to continue working on this project during the Summer recess.

2. Proposed new rule governing appeals from municipal zoning decisions.

Karen Safran agreed to continue working on this project during the Summer recess.

New Business

3. 2005-HIB-4846 (proof of serious impairment)(BOC requests comments by 7/13/05)

The committee voted unanimously to take no position.

4. 2005-SIB-0541 (structured settlements) (BOC requests comments by 7/13/05)

The committee voted unanimously to recommend that Sec. 6(1) be revised to read as follows:

“The transferee shall apply for approval of a transfer of structured settlement payment rights with the court or responsible administrative authority that approved the structured settlement agreement.”

Rationale: The committee believes that the approval of a transfer of a structured settlement should be in the hands of the court or authority that approved the settlement. The revision would remove the options of seeking approval in the counties where the payee resides, or where the structured settlement obligor or annuity issuer have their places of business, if these are not where the approval occurred.

The committee further voted unanimously to recommend that Sec. 2(k) be revised to specify the “government authorities” that are intended by the phrase “responsible administrative authority.”

Rationale: It is unclear exactly what government authorities are “vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.” The statute should name such authorities to avoid possible interpretation problems.

5. MCR 9.205 (costs in JTC proceedings)(comment period expires 8/1/05)

The committee voted to oppose both alternatives A and B, for the reasons stated by Justice Weaver. The vote was 11-1, with Judge Lawson abstaining.

6. MCR 3.925 (destruction of juvenile offense records)(comment period expires 8/1/05)(BOC requests comments by 7/13/05)

The committee voted 11-0 to oppose the amendment, with Judge Lawson and Dan Quick abstaining.

Rationale: The committee believes that the information regarding adjudicated offenses described in MCL 712A.18e(2) may be of assistance in adjudications of future criminal conduct, and in sentencing based on resulting convictions. Given modern electronic storage media, the volume of records should not be an issue.

7. MCR 4.101 (waiver of officer appearance at civil infraction hearing) (comment period expires 9/1/05)(BOC requests comments by 7/13/05)

The committee voted unanimously to recommend that the amendment be adopted with subrule (C)(2) amended to read as follows:

“receipt by the court of a written statement under penalty of perjury of the officer setting forth the facts that the police officer would testify to at the informal hearing if present,”

Rationale: The committee believes that the written statement of the officer will have more evidentiary weight and reliability if sworn to under penalty of perjury.

8. MCR 8.108 (certification course for court reporters) (comment period expires 7/1/05)

The committee voted unanimously to take no position.

9. MCR 9.124 (reinstatement petition)(comment period expires 7/1/05)

The committee voted 12-1 to oppose the amendment.

Rationale: The committee believes that the proposed changes are overbroad, in that they would require expansion of the materials required to be served with every petition for reinstatement to include matters that may have no relevance to the particular case. If specific items are deemed relevant, they can always be requested from the petitioner.

10. MCR 9.223-9.224 (JTC appendix requirement eliminated)(comment period expires 7/1/05)

The committee voted unanimously to oppose the amendment.

Rationale: The committee believes that the burden should remain on the commission to file an appendix in the first instance.

11. 2005-SIB-0481 (eliminate cyber court committee)(BOC requests comments by 7/13/05)

The committee voted unanimously to take no position.

12. 2005-SIB-0471 (eliminates court information management commission)(BOC requests comments by 7/13/05)

The committee voted unanimously to take no position.

13. 2005-SIB-0448 (probate court jurisdiction etc)(BOC requests comments by 7/13/05)

The committee voted unanimously to take no position.

14. 2005-HIB-4133 (repeal of prohibition of Sunday process service)(BOC requests comments by 7/13/05)

The committee voted unanimously to support repeal of the ban on Sunday service of process, for the reasons stated in the Legislative Analysis of the House Fiscal Agency, i.e., it will “expedite the process, reduce backlogs, and increase the efficiency of courts across the state.”

15. Apsey Decision and MCLA 600.2102. Rick Bisio.

The committee voted unanimously to recommend to the Board of Commissioners that it support appropriately drafted legislation that would accomplish the following:

a. Adoption of a provision paralleling 28 U.S.C. §1746, providing for the validity of a declaration under penalty of perjury in all cases where a sworn declaration, verification, certification, statement, oath, or affidavit is legally required.

b. Repeal of MCL 600.2102, with the repeal effective as to all currently pending cases.

MEETING ADJOURNED