

ANNUAL COMMITTEE REPORT

(Due May 1, 2003)

Committee Name: Civil Procedure and Courts

Jurisdiction: Shall concern itself with court rules and statutes related to civil practice in the courts and with the administration, organization, and operation of the trial courts.

Officers and Membership:

Co-Chairs: Richard Bisio and Robert M. Filiatrault

Members: 15 (after resignations during the year)

Associates: 3

(If the above membership should change for the 2003-04 Bar year, please indicate your preference for the number of members and associates.)

2002-03 Meeting Schedule (date and location):

November 23, 2002	Michigan State University-Detroit College of Law, East Lansing
December 18, 2002	State Bar offices, Lansing
January 18, 2003	State Bar offices, Lansing
March 15, 2003	State Bar offices, Lansing
April 23, 2003	State Bar offices, Lansing
May 17, 2003	tentatively scheduled for Southeast Michigan area

Committee Activities:

- Membership Activities and Benefits
- Public Policy Initiatives and Positions

The Civil Procedure and Courts Committee has a diverse mix of practitioners, from large and small firms, plaintiff and defense attorneys, as well as judges from both the state and federal courts. The committee considered and acted on a wide range of matters during the 2002-03 bar year.

The committee is pleased to note the following actions during the 2002-03 bar year on the committee's recommendations and comments from the 2001-02 bar year:

- The Supreme Court adopted rule amendments requiring a party to seek concurrence before filing discovery motions and allocating the costs of producing and copying documents with some of the language changes that the committee recommended.

- The Board of Commissioners adopted some of the committee's recommended changes in an amendment to the interpleader rule (providing for an award of costs to an interpleader plaintiff) and sent those comments to the Supreme Court. The Supreme Court included those changes in the amendment that it adopted.
- After the committee commented and appeared at a Supreme Court administrative hearing on the Court's proposal to incorporate the expert witness statute into MRE 702, the Court published for comment two alternative amendments based on the committee's comments. The proposals remain pending. The committee submitted a new comment, advocating that the Court adopt a rule identical to the federal rule. A committee representative will appear at the Court's June 19, 2003 administrative hearing on the new proposals.
- The Board of Commissioners adopted the committee's recommendations on a rule amendment involving computation of contingent fees on structured settlements and sent those comments to the Supreme Court. A committee representative appeared at the Supreme Court's administrative hearing on the proposal. The Court followed some of the committee's recommendations in the rule that it adopted.
- The Board of Commissioners adopted the committee's recommendation supporting a rule amendment that would eliminate small-form briefs in the Supreme Court and made that recommendation to the Supreme Court. The Court adopted the amendments.

During the 2002-03 bar year, the committee prepared comments on the following proposed rule amendments and legislation and recommended action to the Public Policy Committee of the State Bar Board of Commissioners or to the Board of Commissioners directly:

- The committee recommended that the Board of Commissioners (1) oppose proposed rule amendments that would permit a court to impose sanctions against a party for failure to participate in good faith in a settlement conference or ADR proceeding and (2) support other proposed amendments that more clearly define the nature of the knowledge and authority of a person whom the court may require to attend settlement conferences, ADR proceedings, and trial. The Board of Commissioners adopted a similar recommendation of the Alternative Dispute Resolution Section and sent that recommendation to the Supreme Court. The Court substantially followed those recommendations in the amendment that it adopted.
- The committee recommended that the Public Policy Committee support an rule amendment to require a showing of due diligence in attempting to serve a summons in order to obtain a second summons. The Board of

Commissioners adopted that recommendation and sent it to the Supreme Court. The proposal remains pending.

- The committee recommended that the Public Policy Committee (1) oppose a statutory amendment that would permanently exclude convicted felons from jury service; (2) oppose an amendment that would exempt attorneys from jury service; and (3) strongly support an increase in compensation for jurors. The legislature adopted the bill without the exemption for attorneys.
- The committee recommended that the Public Policy Committee support a proposed rule amendment that would set standards for limiting public access to court hearings. The Board of Commissioners adopted that recommendation and sent it to the Supreme Court. The Supreme Court adopted the amendment.
- The committee recommended that the Public Policy Committee support proposed rule amendments that would permit reply briefs in the Supreme Court. The Board of Commissioners adopted that recommendation and sent it to the Supreme Court. The Supreme Court adopted the amendments.
- The committee recommended that the Public Policy Committee support proposed rule amendments that would give the Supreme Court discretion to order oral argument before deciding on applications for leave to appeal or taking other action in original proceedings and discretion to change the amount of time for oral arguments.
- The committee recommended that the Public Policy Committee support a statutory amendment that would require a \$20 filing fee for personal protection order petitions, with a caution that the judge, not the court clerk, should consider and decide on any request by an indigent person to waive the fee.
- The committee reiterated to the Public Policy Committee its previous comments on the court of appeals' proposed delay reduction rule amendments, in particular recommending against reducing the time for filing briefs, eliminating stipulated extensions for filing briefs, and narrowing the circumstances in which a party could obtain an extension of time for filing a brief by motion. The committee previously submitted these comments when the court of appeals informally circulated the proposed amendments. The committee renewed its comments after the Supreme Court formally published the proposals. The committee also recommended that the Board of Commissioners oppose an additional proposal to require filing a separate motion to seek sanctions for vexatious proceedings in an appeal (rather than including a request in a brief or oral argument).

- The committee recommended that the Board of Commissioners support a proposed rule for filing papers with the court by facsimile.

The committee also commented on the following items:

- A committee representative appeared at the Supreme Court's administrative hearing opposing a proposed amendment to MRE 703 that would require facts supporting expert opinions to be in evidence. (The committee had submitted a comment opposing the amendment last year.) The committee sent a followup comment to the Court after the hearing. Notwithstanding the committee's and other recommendations against the amendment, the Court adopted the amendment.
- The committee submitted a comment to the Supreme Court recommending against a proposed rule amendment that would permit a party to seek dismissal of a case for lack of progress. A committee representative appeared at the Court's administrative hearing on the proposal. The proposal remains pending.
- The co-chairs attended a meeting to discuss proposed amendments to the State Bar bylaws that would restrict the ability of committees to make public policy statements and the committee submitted written comments on the proposals. The committee strongly advocated for continuing to permit bar committees to make public comments without prior bar approval as long as the committee makes clear that the comment is that of the committee only and does not reflect the State Bar's policy.
- The committee submitted a comment to the Supreme Court on the Court's administrative order permitting differentiated case scheduling in the court of appeals generally supporting the program but recommending that the court of appeals report on the specifics of implementation and that there be time for parties to comment after that before the court permanently adopts the procedure.

During the 2001-02 bar year, the committee completed a proposal for rule amendments requiring prompt challenges to medical malpractice notices of intent to sue and affidavits of merit and meritorious defense; prompt challenges to expert witness qualifications; and clarifying a court's authority to set a motion cutoff for summary disposition motions. The committee presented that recommendation to the State Bar Representative Assembly on February 22 and April 26, 2003. The assembly adopted the committee's proposal with minor modifications and will transmit it to the Supreme Court.

The committee submitted a proposal to the Supreme Court for rule amendments to clarify and improve the practice in the area of notice of nonparty fault in tort cases.

The committee has the following matters under consideration:

- It is formulating a proposal for an amendment to the rule on jury selection that would encourage use of alternative methods of jury selection, including the “struck jury” method, in which the number of jurors qualified for cause equals the number of jurors to be seated, plus alternates, plus the total number of permitted peremptory challenges. The parties then alternately exercise their peremptory challenges.
- The committee is considering comments on the filing fee increases in the proposed fiscal year 2004 judicial budget.
- The committee is considering comments on a proposed statute that would allow a rental property owner to be represented in small claims court by a rental property manager acting under a written agreement with the owner.
- The committee will consider a proposal from a circuit judge that would limit the use of service by posting or publication to cases in which personal jurisdiction over the defendant is not required.

Resources Provided by the State Bar of Michigan in Support of Committee Work:

The bar provided meeting space for committee meetings (although not always at times and locations convenient to the committee). The bar also circulates meeting material and meeting notices to the committee and has arranged for conference calls (usually at the members’ own expense) so that members could participate in meetings by phone.

Future Goals and Activities:

The committee is continuing to work on the pending proposals listed above and expects to continue to both review proposed rule amendments and legislation and to initiate its own proposals.

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