

MINUTES OF RULES PROCEDURE COMMITTEE
FEBRUARY 2, 2005

The meeting was called to order by Co-Chairs, Bob Szostak and Tom Wilkinson. A recap of the January 5, 2005, Charter Meeting of the Civil Litigation Section was discussed. The National Center for State Court's Report was the focus of the Section Meeting. In particular, the concept of self-executing discovery for auto and premises liability arbitration limits cases was debated with emphasis on the fact that the Court was moving forward with this type of compulsory discovery. The process started two years ago. According to Judge Fitzgerald and Judge Manfredi, the Court is operating pursuant to a tight time frame and all recommendations are anticipated to be implemented by July, 2005.

Judge Rau spoke at length on discovery rules and process changes. She noted that people favor standard interrogatories and many changes. The Court is looking at the Federal Court model of self-executing discovery. The sooner the Bar provides input, the better.

Ron Kovler, noted a dichotomy within the Bar regarding self-executing discovery. As the complexity of the case increases, the number of people in favor of self-executing discovery decreases. He stressed that he believed the Court was going to use arbitration cases as a model. There is no consensus from the Bar. He believed that from the model, consensus can be achieved.

Stan Edelstein voiced a position against self-executing discovery for construction and commercial cases. He stressed that each case is different and complex and cautioned that standard interrogatories would be ineffective. Self-executing discovery for commercial cases was described as a total waste of time. Mr. Edelstein recounted the experience from the Federal Expense and Delay Reduction Act which did not work for commercial cases because of their fact-sensitive nature.

Rudy Garcia added that most people disfavored Federal Court self-executing discovery. Over time, the reluctance quieted down and evolved into a system where litigants disclosed only what they intended to prove. Mr. Garcia ardently advocated that the implementation of any self-executing discovery must be thought through very carefully, not on a fast track. He asked that we prioritize this issue at our next monthly meeting.

M. Mark Mendel added that self-executing discovery will burden plaintiffs and become another mechanism for defense billing.

Judge Rau then discussed discovery in general, with emphasis on the time it takes to present a motion in Discovery Court. There is apparently a lack of diligence regarding the duty to update and supplement discovery. For this reason, self-executing discovery, where there can be no objection and strict time limits, would be beneficial.

Ron Kovler then discussed the perceived limited communication between the Court and Bar on the NCSC recommendations. He asked that we be afforded the knowledge of what the Court has addressed to date and what the Court wants for the future. Tom Wilkinson confirmed that Judge Fitzgerald truly desires the views and thoughts of the Bar. Judge Rau assured everyone that the internal operating procedures were being revised and that the Court desires our input. Mr. Mendel said that it is critical that any discovery reforms be triaged so that substantive issues could be separated from Agarbage@ presentations to enable the Court to appropriately review and issue opinions on the more complex and difficult discovery challenges. Mr. Edelstein felt that sanctions would be in order for bad discovery motions. He noted that in Federal Court, the case is immediately assigned. In State Court there is no penalty for being late with discovery. Federal Court enforces the penalty.

Paul Czech stated that the real problem is the abusers of the discovery system. Ron Kovler felt that we should implement a system where certain disputes are decided without the appearance of counsel. He also said that if sanctions become part of any discovery process, they must have teeth in the form of monetary penalties and attorney's fees. He felt that guidelines would have to be issued for sanctions. Judge Rau related that the Federal Rules have been studied and that discretionary sanctions changed the way things are done. The Court has discretion; sanctions are not mandatory.

Mr. Kovler stressed that we need a Bar liaison to interact with the Court on these issues. He stated, with the resounding approval of all present, that he would ask the Chancellor Andrew Chirls to appoint a liaison. Judge Rau clarified that self-executing discovery is a long-range concept Mr. Mendel expressed his dismay over the fact that there are no uniform local rules. Judge Rau said that while there is no uniformity, the rules are published and better organized statewide. Paul Czech asked that a Discovery Task Force be formed to assess whether standard discovery should be compulsory in all cases.

Mr. Szostak suggested that he would prepare an outline of the NCSC recommendations for the next meeting of the Rules & Procedure Committee to debate and formulate recommendations for the Court. Mr. Szostak further asked that Mr. Wilkinson speak with Judge Manfredi. It was decided that input from the Rules & Procedure Committee on the recommendations would be sought for the next meeting via electronic communication.

Mr. Wilkinson then discussed the Lawsuit Abuse and Reduction Act. It was passed by the House and referred to Senator Spector. It is an attempt to federalize frivolous issues in State Court if the underlying case implicates interstate commerce. This is not defined in the Act. Rule 11 sanctions would be mandatory without judicial discretion and without safe harbor. The proposed legislation does not include a 21-day grace period or a 28 day grace period to fix any challenged claims or defenses as permitted under the Federal Rule and Pennsylvania Rule of Civil Procedure 1023.1. Mr. Wilkinson noted that the safe harbor provision has eliminated many Rule 11 problems in Federal Court. He observed that under Rule 1023.1, very few sanctions have ever been imposed. The proposed legislation would supplant Rule 1023.1. The Pennsylvania Bar Association and the Chester County Bar Association opposed this Act. The ABA House of Delegates is anticipated to vote against it. Mr. Wilkinson presented a resolution to the Rules & Procedure Committee intended for adoption by the Board of Governors concerning H.R. 4571 amending Fed. R.C.P. 11. The Resolution takes the position that the Philadelphia Bar Association opposes enactment of any congressional legislation with provisions resembling those contained in the Lawsuit Abuse Reduction Act. Mr. Kovler moved to approve and Ed Smith seconded. 18 out of 18 Committee members voted in favor of the resolution and its presentation to the Board.

Jerry Marks then discussed his view that Motions for Summary Judgment hardly ever get granted in Philadelphia County. Judge Lachman noted that the number of summary judgment motions handled by each judge varies. Typically, the Day Forward Leader receives such motions and distributes them to team members. Mr. Marks noted that identical motions are being granted in Pittsburgh and denied in Philadelphia. If such motions were uniformly treated, he maintained that cases lacking merit could be eliminated from the system, freeing up valuable time and resources for meritorious matters.

Mr. Szostak concluded the meeting with the promise to provide a bullet outline on the NCSC Court recommendations within one week. The meeting was adjourned at 1:20 p.m. A list of attendees is attached to these Minutes.

Respectfully submitted,
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Co-Chairperson
Philadelphia Bar Association
Rules and Procedure Committee

Dated: February, 2, 2005