

EXECUTIVE SUMMARY

Summary of the Recommendation:

The Recommendation proposes that the Association adopt the 2004 amendments to the CIVIL DISCOVERY STANDARDS, which address practical aspects of electronic discovery that are not fully addressed by rules of evidence or procedure. These amendments advance the Association's core mission of promoting improvements to the system of justice in general and the civil jury trial in particular. They are designed to assist judges and lawyers who litigate civil cases in state and federal court.

Summary of the Issue which the Recommendation Addresses:

The civil jury trial is under attack, often on the theory that juries are unable to decide complicated cases fairly. The STANDARDS recommend practices and procedures that are particularly useful in complex cases. The STANDARDS are predicated on the recognition that, in an era of increasingly complicated litigation, there are methods for enhancing jury comprehension and minimizing jury confusion that merit wider consideration and use. The STANDARDS are designed to furnish practical guidance for the implementation and use of many of these methods.

Explanation of How the Proposed Policy Position Will Address the Issue:

Electronic discovery injects difficult, expensive and contentious issues into many otherwise routine disputes. In 1999, the American Bar Association adopted CIVIL DISCOVERY STANDARDS to serve as guidelines to assist the parties, counsel and the court in civil discovery. The CIVIL DISCOVERY STANDARDS included provisions addressing preservation duties and cost shifting in relation to electronic discovery. Those standards have been cited in some of the most celebrated decisions in the area. The 2004 amendments update the CIVIL DISCOVERY STANDARDS insofar as they relate to electronic discovery, which is a rapidly-evolving area that has grown dramatically in importance over the past 5 years since the STANDARDS were originally adopted.

Summary of Any Minority Views or Opposition which Have Been Identified:

There are no known minority views or opposition. The 2004 amendments to the CIVIL DISCOVERY STANDARDS, and the Recommendation, were unanimously adopted by the Council of the Section of Litigation on May 5, 2004, having previously been unanimously adopted by a Section Task Force. These amendments were distributed to all Entities of the Association, to all state bar

associations, to several selected local bar associations, and to hundreds of state and federal judges across the country. They were the subject of an open forum at the at the mid-year meeting of the House of Delegates in San Antonio in February of 2004; they were posted for public comment on the website of the Section of Litigation; and they were posted for comment on the website of the American Association of Law Schools' Civil Procedure Section. Numerous articles calling the attention of Bench and Bar to the 2004 amendments were also written, including articles in *The National Law Journal* (November 24, 2003, at p. 30); *U.S. Law Week* (December 9, 2003, at p. 2326); *BNA Expert Evidence Report* (December 22, 2003, at p. 597); *BNA Employment Discrimination Reporter* (December 10, 2003, at p. 670); *Digital Discovery & e-Evidence* (Pike & Fischer) (January 2004 at p. 1); and *Litigation News* (March 2004 at p. 1).

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