

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT

Monday, March 11, 2013
2:00 pm.

Those attending: Hon. Linda K. Lager, chair; Hon. Barbara N. Bellis; Hon. Marshall K. Berger; Jr., Hon. Patrick L. Carroll III; Hon. Aaron Ment; Hon. Barbara M. Quinn; Hon. Mark H. Taylor; Atty. David L. Belt; Atty. Victor A. Bolden; Atty. Agnes Cahill; Atty. David W. Cooney; Atty. Joseph D. D'Alesio; Atty. Michael J. Dorney; Atty. Barry C. Hawkins; Atty. Rosemarie Paine; Atty. Richard A. Roberts; and Atty. William J. Sweeney.

- I. Welcome – The meeting was called to order at 2:15 PM.
- II. Approval of December 3, 2012 Minutes – Upon motion and second, the minutes were approved unanimously.
- III. Rules

- A. Report re: Referrals to Rules Committee – The proposals regarding workers' compensation have been approved and referred to a public hearing. Justice Eveleigh expressed the appreciation of the Rules Committee to the members of the Civil Commission for their efforts.

The proposed revision to Section 14-8 to allow the assignment of a trial date without regard to the filing of the certificate of closed pleadings was returned by the Rules Committee to reconcile the Civil Commission's proposal with a proposal submitted by Judge Quinn on behalf of a work group revising the administrative appeals rules. Judge Lager proposed adding the language from the administrative appeals work group to the proposed language from the Civil Commission.

Judge Quinn moved to approve the proposal and Judge Taylor seconded her motion.

A discussion ensued on why the commission was proposing this change. The current rule made the filing of a certificate of closed pleadings a prerequisite to the assignment of a case to the trial list. The revised rule provides flexibility in assigning a case for trial but will not result in a case being forced to trial unreasonably.

The motion passed unanimously.

- B. Discovery Subcommittee – Attorney Roberts and Attorney Dorney presented the subcommittee's proposals in the absence of Attorney DeLuca. Attorney Dorney discussed the privilege log. The subcommittee addressed the suggestions and concerns including requiring a privilege log only when it is requested by the party seeking discovery. Discussion of the proposal included concern about the necessity for disclosing a joint representation agreement where there is a written agreement among multiple defendants to share documentation in a common defense, and whether the language should be expanded to include P.B. Section 13-8. After discussion, Judge Berger suggested adding the language "or as otherwise ordered by the judicial authority" at the end of the proposed language.

Attorney Dorney moved to adopt the proposed new section with Judge Berger's additional language. Attorney Belt seconded the motion, and it was passed unanimously.

Judge Lager moved that the Commission permit the chair to draft commentary for the rule in consultation with the Discovery Subcommittee and submit it to the Rules Committee in proper format. Judge Berger seconded the motion, and it was passed unanimously.

Attorney Roberts reviewed the change to the definitions that the subcommittee had proposed for Sections 13-1 and 13-9. The commentary will make clear that the definitions are not meant to inhibit the ability of a respondent to raise a “burdensome” objection to a request. Attorney Dorney moved to adopt the definitions. Attorney Roberts seconded the motion, which then passed unanimously.

Attorney Roberts then presented the instructions proposed by the subcommittee. The instructions would be added to the standard (form) interrogatories. Section 13-6 would be amended to add language making the standard instructions applicable to all interrogatories unless leave of court is granted. Discussion ensued about the language “within their knowledge, possession and/or power.” Sec. 13-2 (scope of discovery) references “knowledge, possession or power” and Sec. 13-9 (production requests) references “possession, custody or control.”

Judge Lager moved that the instructions on the form interrogatories be amended to conform to the recommendations of the subcommittee, adding the language “in compliance with Practice Book Section 13-2” and adding the language: “In answering these Interrogatories, the defendants/plaintiffs, are required to provide all information within their knowledge, possession or power. If an Interrogatory has subparts, answer each subpart separately and in full, and do not limit the answer to the Interrogatory as a whole. If any Interrogatories cannot be answered in full, answer to the extent possible” and deleting the language beginning with “insofar as the disclosure sought...through otherwise be obtained.” Judge Berger seconded the motion, which was passed unanimously.

Judge Lager then moved that the instructions on the form requests for production be amended to conform to the recommendations of the subcommittee, adding the language: “In answering these production requests, the Plaintiff(s) are required to provide all information within their possession, custody or control. If any production request cannot be answered in full, answer to the extent possible.” Attorney Roberts seconded the motion, which passed, with two members, Judge Berger and Attorney Belt, voting against the motion.

Judge Berger then moved to amend Practice Book Section 13-6 by adding a subsection that requires the use of the standard interrogatory instructions for all nonstandard interrogatories unless leave of court is granted and by adding a subsection to Practice Book Section 13-9 that requires the use of the standard production instructions for all nonstandard production requests unless leave of court is granted. Attorney Dorney seconded the motion, which then passed unanimously.

- C. Workgroup on Civil Rules and Statutes – Judge Berger presented the recommendations of the work group on Civil Rules and Statutes, including revisions to Section 10-30 (Motion to Dismiss), 10-40 (Motion to Strike) and 10-8 (Time to Plead) to provide additional time to plead and file responsive pleadings and clarifying the process for filing and opposing motions to dismiss and motions to strike.

The members discussed the proposals and suggested some further revisions. After discussion, Judge Berger moved that the rules be amended in accordance with the proposals on Section 10-8, 10-30, 10-31, 10-40, with the following additions: Section 10-41 is deleted and the language of that section is incorporated into Section 10-39 (b) and that Section 10-42 is deleted and the language requiring the filing of a memorandum of law is moved to Section 10-39 as subsection (c). Attorney Roberts seconded the motion, which then passed unanimously.

Judge Taylor suggested a further amendment to Section 10-31, deleting improper venue as a ground for a motion to dismiss. This proposal will be added to the agenda for the next meeting.

Judge Berger then presented the recommendations of the work group on the summary judgment process. The work group proposed amending Section 17-45 to increase the amount of time to respond to a motion to 45 days and to add a requirement that the parties provide a statement of undisputed material facts or a statement of disputed material facts if the other party disagrees. The proposed process essentially follows the federal rules. The work group also proposed amending Section 17-44 to clarify when a summary judgment can be filed under three circumstances: as of right at any time if there is no scheduling order and the case is not assigned for trial; with permission of the court if there is no

scheduling order and the case has been assigned for trial; or as provided in a scheduling order. The current rule does not address the existence of scheduling orders. The same filing provisions would apply in administrative appeals covered by Section 14-7 which is the subject of a proposed rule change by the administrative appeals group.

Discussion of the proposals ensued, particularly with respect to the recommendations regarding Section 17-45, including the potential delays that can result from motions for summary judgment, the amount of work involved in filing these kinds of motions, the potential benefit to the court in having these the moving party clearly set out that there is no material disputed fact, and the possible practical effect of this change on summary judgments filed in foreclosures.

Judge Lager then moved that the Commission recommend the proposed amendment to Section 17-44, including the change regarding administrative appeals as proposed in Section 14-7. Judge Berger seconded the motion, which was approved unanimously.

Judge Lager then moved to table the proposed amendments to Section 17-45. Judge Taylor seconded the motion, which was then approved unanimously.

Judge Lager will ask Judge Mintz, who is the chair of the Bench-Bar Foreclosure Committee, to look at the proposal to amend Section 17-45.

D. Proposal re: P.B. Sec. 4-7 and 11-20B – This item was discussed in conjunction with Agenda Item IV.

E. Topics from December 3, 2012 meeting

1. Pagination of briefs – Per Judge Bellis the Rules Committee is asking for input from the Civil Commission regarding pagination of briefs and submitted multi-page documents. Attorney Dorney pointed out that paginating large exhibits with sequential numbers could be burdensome to the parties. The consensus of the Commission is that there is no problem with requiring pagination of briefs or multi-page documents, but there is concern about requiring the pagination of exhibits.
2. Brief page limits – In response to a query about changing the current 35 page allowance for briefs, the consensus is that Section 4-6 is fine in its current form and should not be amended to reduce the page allowance.
3. Specialty certification – The Rules Committee has asked the Commission for feedback on the creation of specialty certification for social security disability specialists and civil pretrial specialists. Attorney Hawkins will take this inquiry to the Litigation Section and the Elder Law Section of the Connecticut Bar and then report back to the Rules Committee.
4. P. B. Sec. 5-9 – Judge Lager recommended that Section 5-9 of the Practice Book be eliminated. This section requires that a party citing to an opinion that is not officially published must provide a copy of the opinion to the judicial authority and other parties. Discussion ensued. After discussion, Judge Lager moved that the rule be eliminated. Judge Berger seconded the motion, which was approved, with Judge Bellis voting against it.

IV. E-filing – For informational purposes, Judge Lager presented a proposal to amend Section 4-7, Section 11-20B and Section 11-20A which had been circulated to the members by e-mail in advance of this meeting. The proposal is directed to concerns about the volume of sensitive personal medical and financial information in court files that is not relevant to the case. When electronic civil files are made available to members of the general public, this information could be data-mined or used to embarrass people. Currently, Section 4-7 only addresses specific personal identifying information and Section 7-18 addresses the filing of medical, hospital and psychiatric records. The proposal would mandate that this type of sensitive information should not be filed unless it is relevant and material to an issue before the court.

Discussion on the proposals included concern over the difficulty for filers to identify what information would be a problem and what information is proper, the burden of going through documents to redact potentially covered information, the large number of statutes that provide for confidentiality, the inability to “unfile” this kind of information once it has been filed; the way the federal court handles this type of information by not prohibiting the filing of this type of information but urging parties to use caution when they include it; and the wide availability of all kinds of information through Internet searches.

The Commission did not need to vote on this proposal because it is being submitted by the Judges’ Advisory Committee on e-filing.

Judge Bellis reported that the titles for motions were going to be changing to eliminate those that were duplicative or used in family matters only, and to add more specific titles for motions in the discovery area, for example.

- V. New Business – Juror access to offers of compromise, in the context the general public’s access to electronic court files was discussed. A mechanism to shut down remote electronic access to a file once voir dire on the case begins has been developed. Another proposal is to use a statutory reference in the document title rather than the current title.

- VI. Next Meeting - The next meeting of the Civil Commission is Tuesday, June 18, 2013.

The meeting adjourned at 4:25 p.m.