

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Tuesday, June 18, 2013 at 2:00 pm.

Those attending: Chief Justice Chase T. Rogers, Hon. Linda K. Lager, chair; Hon. Barbara N. Bellis; Hon. Marshall K. Berger; Jr., Hon. Patrick L. Carroll III; Hon. Aaron Ment; Hon. Lisa K. Morgan; Hon. John Pickard; Hon. Barbara M. Quinn; Hon. Mark H. Taylor; Atty. Victor A. Bolden; Atty. David W. Cooney; Atty. Joseph D. D'Alesio; Atty. Michael J. Dorney; Atty. Barry C. Hawkins; Atty. Kevin Murphy; Atty. Jonathan B. Orleans; Atty. Rosemarie Paine; Atty. Louis R. Pepe; Atty. Richard A. Roberts; Atty. Richard Silver; Atty. William J. Sweeney; Atty. Frederic Ury; and Atty. William Yelenak.

- I. Welcome – The meeting was called to order at 2:05 PM. Judge Lager requested a moment of silence in honor of Attorney Edward Maum Sheehy, who had passed away. Judge Lager also thanked the members who will be leaving the Commission for their service: Judge Robinson, Atty. Mengacci, Atty. Stratton, Atty. Hawkins and Atty. Cooney.
- II. Approval of March 11, 2013 Minutes – Upon motion and second, the minutes were approved unanimously.
- III. Discussion re: Re-engineering of Civil Justice System – The Chief Justice then thanked the members of the commission for their service and asked their input on the re-engineering of the civil justice system. A session was already held with members of the bar, and two additional sessions are planned with other bar groups and with private industry, to obtain feedback on what the Branch is doing right and what it is doing wrong with respect to the management and resolution of civil disputes. The Branch is looking for more efficient and cost-effective ways to resolve disputes. Some steps have been taken in an effort to stay relevant and responsive to the needs of individual and corporate litigants and members of the bar: streamlining the ADR process; approving a pilot program for limited scope representation; and implementing the first phase of individual calendaring to provide better case management, better scheduling and more accountability and satisfaction for litigants and judges. The Chief Justice then invited the members of the Commission to discuss the topics that had been provided or to raise any other concerns.

The initial discussion was about the role and function of house counsel. The following issues were raised by members of the Commission: How their roles as employees of an insurance company and an officer of the court sometimes conflict.; the role of adjusters in managing the cases; concerns that often nothing happens until the eve of trial; finding someone responsible for a filing can be hard; unnecessary motions are filed on behest of adjusters, not on the needs of the particular case; a frequent response to questions is "it is not my file" or "I don't know who has the file." These kinds of complaints are showing up more frequently on the blogs for lawyers. It was also noted that: House counsel for many companies are quite overworked, and claims departments are keeping more control and not settling out. Adjusters rarely show up for pretrials, and house counsel does not seem to have much authority to settle.

Next members discussed that having individual judges assigned cases might help so that if there is a pattern with a firm, it could be addressed by the judge. Earlier intervention by the Judicial Branch in these cases could also be helpful. Cases do not always need 18 months to 2 years to get to trial.

The idea that it is important to provide an environment where the parties have the sense that this is their day in court, and it is the day the case is going to be disposed of, was raised. The assignment of a case to a specific judge – individual calendaring – really makes sense. It avoids explaining positions repeatedly to different judges and streamlines the process. However, a problem occurs when the judge to whom the case is assigned moves on to another entirely unrelated assignment in another judicial district.

Another important point raised is the need to have real, reasonable deadlines. A firm trial date should be firm, and people should know that they will be forced to go forward at that time. It concentrates the attorneys' thinking and your focus.

It was suggested that setting a definite day to resolve cases, that is a day when there is a chance to resolve a case, might be helpful. Give a six month heads up and then bring in ten judges to settle the cases on that date. It could be an alternative to arbitration or mediation, and it would be presented as the day to resolve the case. It provides a definite date that is not the trial date.

Members observed that pretrials held before a case is ready for meaningful discussions are pointless. It was suggested that maybe a system could be implemented that automatically sends a notice to appearing counsel asking if they are ready for a pretrial and requiring counsel to provide a reason if the case is not ready for pretrial. It makes the lawyers/parties accountable. If the first time you are talking about settlement occurs at the trial management conference, then people have already invested a great deal of money. Trial management conferences are not getting you ready for settlement; they are getting you ready for trial.

Issues were raised regarding getting quick trial dates in complex litigation. It is not true of the general courts, but still seems to be true in CLD. It was suggested that perhaps more CLD judges with more status conferences could benefit everyone. It was pointed out that now CLD judges double and triple book cases, and a plan is in place for handling any conflicts so that trial dates are quicker than they used to be. Nevertheless, earlier intervention in the form of status conferences would still be helpful in avoiding delays.

The Chief Justice asked if the Commission had talked about changing the discovery rules for different types of cases, such as limiting discovery in cases based upon the amount in demand. This approach has been used in other states, including New Hampshire, as a way of streamlining litigation and reducing the costs. Currently, Connecticut has standardized discovery in motor vehicle/personal injury cases, premises liability cases and most recently, in worker's compensation cases. Not everyone agrees that discovery costs are out of control, particularly in the smaller cases. Even in larger cases, people are aware of the costs, and it is self-policed to a large extent for that reason. Requests for admission can be helpful, but depositions are often the best choice for discovery.

On the topic of unmet civil litigation needs, Atty. Ury pointed out that there is a huge unmet need on the commercial side with people who cannot afford to hire lawyers. Some of the smaller commercial cases now go to online dispute resolution sites. The Branch should consider offering this type of dispute resolution, for example in small claims cases.

It was pointed out that the numbers of self-represented parties in civil cases is increasing. Currently approximately 28% of the civil cases have at least one unrepresented party. This can impact the progress of cases for a variety of reasons. Not knowing the rules can lead to a self-represented party filing incorrect or improper motions or pleadings and failing to comply with deadlines, whether deliberately or inadvertently. The courts try to balance the situation without becoming an advocate for the self-represented party. Members of the commission suggested that some unrepresented parties have legitimate claims but cannot afford counsel; others may have mental health issues; still others may be deliberately gaming the system to slow things down. Individual calendaring might allow the judges to more readily identify and address the situation.

It was pointed out that there is no rule for the trial courts that addresses the filing of frivolous motions; only the appellate rules contain this kind of provision.

The Chief Justice said that jury trials are down by about 40% but courtside trials are up 30%, but the reasons for the shift are not clear. Looking at what cases are opting for courtside trials could be helpful. Commission members are satisfied with the quality of courtside trials, which can be more efficient and less costly than trials to a jury.

The implementation of a mediation division was suggested. Private mediation can be very expensive, but the Judicial Branch could provide mediation that would be effective, efficient and less costly. The Branch would need to have the mediators trained professionally; set up a formal division; have matters scheduled and organized by clerks; and establish specific time parameters because timely availability is critical. Lawyers cannot be forced to mediate or to mediate with somebody they do not want to use, so weeding out ineffective mediators through formal training and a mediation division is necessary. Concern about judges being reluctant to do mediations exclusively was raised, and the possibility of making the assignment six months on and six months off was raised. Further discussion included whether memos should be exchanged as part of the mediation process; and that mediation should be voluntary, both in terms of participation and in terms of the person you mediate with.

Commission members also discussed how helpful it can be to have judges who are willing to meet with clients as well as with the lawyers. Having clients included in discussions allows them to gain a more realistic understanding of the case and potential outcome. Seeing how hard a judge is working at resolving the case can also help with the resolution of a case. The members also discussed how important is to have both sides at pretrials with authority to settle a case. The Commission recommended that the Branch post on the website if a judge/mediator was willing to meet with clients, requires that memoranda be exchanged, or had an interest in a particular category of case.

Early intervention to get a case to mediation, in the right case, could be very effective if it is done before too much money has been invested in the case in costs and counsel fees

and before people's positions harden too much. It is difficult to judge whether the case is ready for this. The risk is that a failed mediation too early in the process could spoil any future attempts at mediation and it would waste resources. It might be more feasible in cases where there is an ascertainable value on a case, such as in contract disputes. Other factors influence readiness to settle, including control by the clients and interest in continuing the case for reasons external to the case.

A final topic was the expense of jury trials, and the unpredictability of the jury, and the reluctance of the judge to set aside the verdict. The reduction in the number of jury trials affects lawyers, judges and clients.

The Chief Justice thanked the members of the Commission and invited them to share any other thoughts, suggestions or concerns that come to mind in the coming weeks.

- IV. Review of Old Business – Judge Lager reported that all of the rules submitted by the Civil Commission were approved by the judges at the annual meeting on June 11th. The judges also approved a pilot for limited scope representation. Atty. Hawkins had sent a letter to Justice Eveleigh regarding specialty certifications. The proposal from Judge Berger's work group on summary judgments will be looked at by the Bench Bar Foreclosure at its next meeting, so it is tabled until the September meeting of the Commission.
- V. New Business – Attorney Cooney suggested that the Judicial Branch post the dates of the CJI and the Annual Meeting as soon as the dates are known. Trials dates are selected a year or more in advance, and knowing those dates would help avoid conflicts. Once these dates are definite, they will be posted for 2014.

Judge Taylor had raised the issue of eliminating improper venue as a basis for a motion to dismiss. This proposal will be referred to Judge Berger's work group for discussion. The work group will also look at proposing a rule to allow sanctions for frivolous filings.

- VI. Next Meetings: Judge Lager announced the dates of the meetings of the Civil Commission for 2013 – 2014. Meetings will be held at 2:00 p.m. on the following Mondays:
 - September 16, 2013
 - December 9, 2013
 - March 10, 2014
 - June 2, 2014

Upon motion and second, the meeting was adjourned at 3:30 PM.