Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 48
Wethersfield, CT
Monday, December 3, 2012
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. Mark H. Taylor; Atty. David L. Belt; Atty. Victor A. Bolden; Atty. Agnes Cahill; Atty. David W. Cooney; Atty. Joseph D. D'Alesio; Atty. Charles A. Deluca; Atty. Michael J. Dorney; Atty. Barry C. Hawkins; Atty. Joseph A. Mengacci; Atty. Catherine Smith Nietzel; Atty. Jonathan B. Orleans; Atty. Rosemarie Paine; Atty. Richard A. Roberts; Atty. Edward Maum Sheehy; and Atty. Martha Triplett.

I. Welcome – Judge Lager welcomed the members of the commission, and introduced Roberta Palmer, the new deputy director for Civil Matters.

II. Approval of September 10, 2012 minutes – Upon motion and second, the minutes were unanimously approved.

III. E-filing – Judge Bellis provided a brief update on e-filing, including the February 1, 2013 target date for opening civil files on the Internet; the inclusion of self-represented parties in civil e-filing next spring; the development of way to sign up for unofficial notices of activity on a specific file; and the availability of a new Form JD ES 286 for use in accepting or changing electronic service information. A discussion about the retention of electronic files ensued. The current retention rules, in chapter 7 of the Rules of Court, were created for a paper world, and it may be time to re-examine those rules in light of electronic files. One suggestion is to keep electronic files "forever." Even with electronic files, storage and maintenance can be expensive, and corporations are trying to identify what they can safely get rid of. The length of time the courts retain files can impact lawyers and law firms as well. Looking at the costs of retaining files should be part of the analysis. After discussion, the consensus of the group is that keeping files "forever" would not be wise, and looking at the current retention schedule in light of changing electronic media, and looking into what other states are doing would be good steps in determining what changes, if any, should be made to the retention schedule.

Judge Lager brought up the issue of the offer of compromise in connection to public access to civil files online. The offer contains a monetary figure that could be misleading to anyone not involved in the case who does not understand the purpose of the filing, such as a potential juror. A discussion ensued about whether taking steps to protect this information would be necessary or recommended. After discussion, the commission agreed that members would discuss this issue with their organizations, and report back at the next commission meeting where this will be an agenda item.

IV. Rules -

A. Workgroup on Intervening Worker's Comp. Lien Holders – Atty. Triplett presented the revised proposal from the workgroup. Discussion ensued.

The first question discussed was Section II.A. 3. of the supplemental discovery to be served on a plaintiff who received workers' compensation benefits when there is no intervening plaintiff. Discussion ensued on whether the question should ask for a breakdown of the amounts of benefits. It could be more burdensome for the plaintiff who may not know which benefit is which over a period of time. It is arguably more information than the defendant would need if the purpose of the interrogatory is to determine the amount of the lien. A suggestion was made to provide the option of having the plaintiff provide an authorization to allow the defendant to obtain the information from the carrier if providing the breakdown was too onerous.

A motion was made by Judge Lager and seconded by Attorney Sheehy to insert the following language in place of the existing section II.A.3. of the Supplemental Discovery:

> State the total amount paid on your behalf on each of the claims filed as a result of the incident/occurrence alleged in the complaint and referred to in interrogatory number two, and if known, specify the amount of medical benefits, loss of income benefits, and specific award benefits.

Discussion ensued about also drafting an authorization, but the consensus was that it was unnecessary at this time. Additional discussion included shifting the burden for responding to these questions from the plaintiff to the compensation carrier, since the carrier wants the money, and seeking a change in the statute to require the carrier to file in these cases.

The motion was approved with Judge Berger abstaining, and Attorneys Cooney, Paine and Mengacci voting against the motion.

Attorney Roberts then moved to amend the language of the motion to include the words: "and if unknown, provide an authorization for the same." His motion was seconded by Attorney Sheehy.

After discussion, the commission voted to approve this motion, with Judge Lager and Attorneys Paine, Triplett, Cooney and Mengacci opposing the motion, and Judge Berger and Attorneys Belt and Hawkins abstaining.

The commission then looked at the parallel language in section III.A.3. of the Supplemental Discovery directed to the intervening plaintiff. The commission decided to remove the additional language that said "when a compensation carrier intervenes in the action." A motion was made by Judge Lager and seconded by Attorney Roberts to change the language of this section to the following:

> State the total amount paid on each claim referenced in the answer to Interrogatory #2, specifying the amount of medical benefits, loss of income benefits, and specific award benefits paid.

The motion passed unanimously.

The commission then discussed the language contained in section II.A.4. of the Supplemental Interrogatories, which currently refers to "independent or commissioner's medical examination

reports." Concern was expressed that the exam is not an "independent medical exam"; it is the respondent's medical exam. After lengthy discussion, a motion was made by Judge Lager and seconded by Attorney Roberts to change the language as follows:

> II.A.4. Identify any First Report of Injury, Notice of Claim for Compensation, Notice of Intention to Reduce of Discontinue Benefits, Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits, and any reports of medical exams requested by the commissioner, respondents and/or employer arising out of the incident/occurrence alleged in the complaint.

The motion was approved unanimously.

Judge Lager then moved to add the same language to the standard interrogatories directed to the intervening plaintiff and re-number the existing interrogatories to reflect the addition. Attorney Roberts seconded the motion. The motion was approved unanimously.

A motion was made and seconded to remove the language "which you entered into with the worker's compensation carrier" from section II.A.5. The motion was approved unanimously.

A motion was made and seconded to remove the language "that you consulted in formulating your answer to interrogatory number three" from now-section III.A.5. The motion was approved unanimously.

The workgroup recommended removing the existing note that follows section III.B.3. of the standard requests for production. The commission agreed.

Attorney Roberts then moved to remove the language "that are in your possession and control" from II.B.2 and just leave the language "that relate to one or more of the claims referenced in your answer to interrogatory number two." That motion was approved unanimously.

Judge Lager then moved that the commission permit the staff to clean up the interrogatories and make conforming changes to the standard interrogatories. Attorney Roberts seconded the motion, and the motion was approved unanimously.

B. Discovery Subcommittee – Attorney Deluca reported for the Discovery Subcommittee regarding three proposals that had been discussed at the last meeting of the Commission. He first talked about the changes that were made to the proposed rule on the privilege log after the last commission meeting. Discussion ensued on various aspects of the proposal, including when the privilege log should be provided, whether the log would be served on the parties and filed with the court, and what communications could be excluded from listing in the privilege log. The commission agreed that the five items listed in the proposal as being covered by the privilege log were adequate. The commission did not see the need for the sentence "This rule shall apply only to requests for documents of electronically stored information." The commission also questioned whether the privilege log would include instances where portions of a document are redacted as well. This issue may need to be addressed in the commentary. Attorney Dorney suggested adding that the log would <u>initially</u> be served upon all parties but not filed with the court." Other suggestions included adding "shall provide within 45 days after the request, unless otherwise ordered by the

court" to the first paragraph or to the sentence regarding service upon the parties, to establish a time frame for producing the privilege log, and adding language regarding the good faith requirement and referencing Sections 13-8, 13-10 and 13-5. Attorney Belt will circulate a decision on a ruling on a motion to compel that involved the good faith requirement. Concern was expressed about the language, "need not be disclosed", which is language from the federal rule.

Attorney Orleans reported on the revisions to the definitions that had been made in response to feedback at the last commission meeting. Subsections c. 5 and c.6 have been made less burdensome, and the gender language in subsection d.4 has been revised. The proposed definitions are similar to the federal rules except for the definitions for "identify with respect to oral communications" and "identify with respect to an act or event." Subsection b. was revised to make it clear that no broader definitions could be used. These definitions would be applicable to all discovery requests, including requests for admissions.

Attorney Belt raised his concern that the definition of oral communications imposes a substantial burden on the respondent. Attorney Bolden pointed out that if it is made a definition, it could be difficult to make the "burdensome" objection. It was suggested that the commentary could indicate that an objection could be filed if compliance is burdensome, and the definition would not eliminate that argument by the respondent. Suggestions were made to reword some of the definitions to avoid making them a "trap" for a respondent: ask the "general subject matter" of what was said or ask that the respondent "summarize" or "state in general terms" what was said, for example.

Attorney Roberts then discussed the proposed instructions. The consensus at the last meeting was to provide simple instructions that conform to the practice book. The proposal could also preclude the inclusion of any other instructions without the leave of the court. Discussion ensued, and concern was expressed over making the new instructions different from the instructions in the existing standard interrogatories, whether it would be beneficial to change those instructions or simply require the proposed instructions in any custom interrogatories, whether the instructions should contain some strong language about "playing games"; and whether amendments to the sanctions rule (section 13-14 of the Practice Book) should be considered.

The subcommittee will take the suggestions and concerns under advisement and report back on the privilege log, the definitions and the instructions at the next meeting.

C. Expert Discovery – The issue of remote expert depositions will be tabled.

D. Workgroup on Civil Rules and Statutes – Judge Berger briefly went over the four proposed rules from the workgroup, including revisions to the motions to dismiss and motion to strike, the time for pleading, and the motion for summary judgment. These proposals will be discussed more fully at the next meeting of the commission.

E. Proposed revision to P. B. Sec. 14-8 – Judge Lager discussed the proposal to amend 14-8, regarding certificates of closed pleadings. The revision is meant to provide more options for presiding judges to assign cases for a trial date at any time. This revised rule continues to allow the certificate to be used, but it does not preclude the scheduling of a trial prior to the

filing of the certificate. This rule will be referred to the Rules Committee. Attorney Orleans subsequently moved that the commission endorse this proposal and upon second by Attorney Sheehy, the motion was approved unanimously.

V. Private Court Reporter Fees – Atty. Silver had requested that this item be placed on the agenda, and in his absence, it was tabled.

VI. Statistics – Judge Lager briefly reviewed some statistics on civil jury trials and civil statistics, regarding jury selection, jury trials, and verdicts.

VII. Division of Judicial Mediation – Atty. Silver had requested that this item be placed on the agenda, and in his absence, it was tabled.

VIII. New Business – Judge Lager briefly reviewed some rules that the Rules Committee had asked that the Civil Commission consider. One is a proposal to paginate briefs. Judge Bellis suggested that the pagination requirement apply to any multi-page document filed with the court. A second proposal was whether briefs should be limited to ten pages unless otherwise ordered by the Court. Two additional proposals related to adding two additional areas of specialty certification: social security disability and civil trial practice. The final two matters were also referred to the Connecticut Bar Association for consideration. These matters were tabled for the next meeting.

One other issue came from the Judges' Advisory Committee on e-filing regarding Sec. 5 – 9 of the Practice Book, which requires a filer to append a copy of an opinion that is not officially published when it is cited before a judicial authority. The question is whether this rule is still necessary in the electronic world. Judge Lager will have this item on the agenda for the next meeting, and asked that the commission members check with their constituencies about their thoughts on this rule.

Upon motion and second, the meeting was adjourned at 4:43 p.m.