

MINUTES
Civil Commission
January 24, 2007

The Civil Commission met in the Supreme Court Attorneys' Conference Room at 231 Capitol Avenue in Hartford on Wednesday, January 24, 2007 from 1:00 p.m. to 2:50 p.m.

Members in attendance were: Judge William J. Lavery, Judge Michael A. Mack, Judge Arthur A. Hiller, Judge Linda K. Lager, Judge Aaron Ment, Judge Joseph H. Pellegrino, Judge Richard A. Robinson, Charles A. Deluca, Michael J. Dorney, Frank H. Finch, Jr., William F. Gallagher, Robert L. Hirtle, Joseph A. Mengacci, Edward Maum Sheehy, Richard A. Silver, Michael A. Stratton, William J. Sweeney, Frederic S. Ury and William P. Yelenak.

Guest: Janice Calvi
Patrick J. (P.J.) Deak

Agenda:

1. Welcoming Remarks and Call to Order. The Honorable William J. Lavery called the meeting to order at 1:15 p.m.
2. Approval of Minutes. The Minutes of the September 28, 2006 meeting were reviewed and subsequently accepted and approved.

(Judge Lavery indicated that he would have to leave in one hour for a 2:30 appointment with the Legislature. The agenda was modified in that the meeting commenced with agenda item 12. Changing Short Calendar Days.)

12. Changing Short Calendar Days (Danbury Request). Judge Lavery indicated that a request to move the family short calendar from Monday to Friday had been received from the Family Bar in the Danbury Judicial District. A letter from Attorney Eva M. De Franco (Collins, Hannafin, Garamella, Jaber & Tuozzolo) was distributed. He inquired as to whether both the civil and family short calendars should be moved to Friday. Judge Hiller and Judge Lager both indicated that the short calendars in Bridgeport and New Haven respectively are separate; the civil short calendar is scheduled for Monday and the family short calendar is scheduled for Thursday. Attorney Yelenak inquired as to whether this created any problems with trial schedules. Judge Hiller indicated that, generally, this has not been an issue as the Family Bar is separate. On occasion, when a conflict exists, accommodations are made.

Judge Pellegrino mentioned that previously the civil short calendar was switched from Friday to Monday because the receipt of the calendar was a problem. He explained that counsel can now prepare over the weekend, that the civil short calendar is heard uniformly statewide on one day of the week, and that there is no problem with trial dates.

Judge Lavery inquired of Commission members as to whether there were any problems and whether they were happy with the civil short calendar being heard on Mondays; the Commission unanimously agreed.

3. Complex Litigation Statistics. A packet entitled "Complex Litigation Docket, Civil Commission Meeting, January 24, 2007" was distributed. Judge Hiller noted that the number of cases pending from 2003 to 2006 had decreased - 980 compared to 727. He further explained that since May 1, 2006, when he started as Chief Administrative Judge, that there were 211 applications and that the percent of denials was 21%. He noted that of the 211 applications, 52 were medical malpractice actions and that of these 52 cases, 14 or 25% were denied.

Judge Hiller provided a comparison of the documents entitled "Time to Process Complex Litigation Cases for Cases Disposed..." for fiscal years 2005 and 2006. The next document presented by Judge Hiller was entitled "Hearings on Referral to Complex Litigation", which illustrated that 33 cases had been set for hearing during the period May 30, 2006 through January 17, 2007 and that 15 had not been referred.

The next document that Judge Hiller referenced related to the Fairfield Judicial District and medical malpractice actions. He explained the procedures implemented for screening medical malpractice actions in order to determine whether the action should be referred for designation as a complex litigation matter. He explained that since May 1, 2006, there have been 27 referrals in Bridgeport and that 25 have not been referred - 16 by agreement of counsel and 9 determined not sufficiently complex.

The next documents mentioned by Judge Hiller were entitled "Complex Litigation Docket, Case Breakdown"; the periods covered in the documents commenced with June 2, 1998 and ended with September 13, 2006 and January 17, 2007, respectively. He noted that the total cases pending were reduced from 846 to 727 during the 2006 to 2007 period. He further explained that the range of pending cases for each judge varied from 106 for Judge Beach to 48 for Judge Jennings, whose docket was previously assigned less cases due to Judge Adams' illness.

The sixth and final document reviewed by Judge Hiller related to the next available trial dates for each complex litigation docket; the dates ranged from May 2008 to June 2009. He explained that in the past if counsel requested a referral it would be approved by Judge Langenbach if he felt the system was not

overburdened. With this concern in mind, Judge Hiller explained that he is now trying to make sure that cases sent to the complex litigation docket are appropriate.

Attorney Silver questioned as to the parameters for the caseload. Judge Hiller responded that he looks for complaints from the judges and that he views the docket as overburdened when you can't try cases. He noted also that consideration must be given to the time period for getting a trial and that the trend is headed in the right direction. Attorney Silver stated that there is a delicate balance between too many and too few. He indicated that originally 18 judges were to be assigned to the complex litigation docket and that the docket provides a terrific advantage to the system. He further stated that a balance is necessary in order to make good use of the docket.

4. Letter to Judges on Emergency Cases in Complex Litigation. A copy of the letter from Judge Hiller to all civil presiding judges and complex litigation docket judges was distributed. Judge Hiller indicated that he sent this letter in an attempt to address the problem of a need for an immediate trial. The complex litigation docket judges have been informed to notify him of any emergency. He stated that he would then assign the case immediately on trial based upon P.B. §14-17 and find another civil judge to try the matter. He indicated that no one has taken him up on this proposal as yet.

Judge Hiller indicated that the letter also addressed a second issue of one judge reviewing all motions. He stated that the civil presiding judges were informed to notify all judges that any case with discovery problems should be brought to the presiding judge's attention. Judge Hiller explained that prior to referral of such a case to the complex litigation docket that the presiding judge should assign the case to a judge within the courthouse to handle discovery. Judge Hiller indicated that his attempt is to avoid the referral of cases that don't need the complex litigation docket but need discovery resolution. Attorney Ury inquired as to whether counsel could ask for assignment; Judge Hiller responded that he saw no reason why they couldn't.

5. Upcoming Foreclosure Meeting. Judge Hiller indicated that a meeting of all foreclosure judges is scheduled for February 22 to discuss foreclosure procedures and the lack of uniformity from one judicial district to another. Judge Lavery asked that any suggestions be brought to the foreclosure committee's attention. (The meeting has subsequently been rescheduled to April 4, 2007 at 1:00 p.m.)
6. Discovery Dispute Calendar. Judge Hiller indicated that he has asked for input on this new practice and that he's received some good responses. He further indicated that it is working in some areas, yet in other areas some people are not as comfortable with it. Judge Hiller noted that the Order has been published in the Connecticut Law Journal twice and he thought also in the trial counsel's and

defense lawyers' magazines. He mentioned that he was surprised when an attorney from Stamford informed him that he was unaware of the Order. Judge Hiller stated that for the most part, those individual that use it and ask for it, like it as it avoids delay in getting discovery completed. Attorney Deluca indicated that he has used it ten times, that he thought it was a great Order, and that he endorsed it.

7. Identity Theft. Attorney Joseph D'Alesio distributed a pamphlet on identity theft prevention and survival and indicated that a committee of experts has been formed to study this issue. Judge Pellegrino is Chair of the committee. Attorney D'Alesio explained the personal aspect of identity theft, how it occurs and the methods that thieves employ, such as skimming and phishing.

As to the legal aspect, Attorney D'Alesio explained how a contract collection action could have the credit card agreement in the file and that there is a large amount of information in our files which lends itself to identify theft. He further explained that the committee is looking at the statutes, practice book rules, and where and what data is collected. Attorney D'Alesio noted that this is a huge project and the first concern is the personal information in the court files, how we can protect it, and the effect on the Bar as to what's filed.

Judge Lavery indicated that this issue cost Florida 3-4 million dollars and that we are trying to meet the issue head on. He noted that there is so much personal information in the domestic files which is needed for a decision. Attorney Ury indicated that a retraining of the Bar as to what to include in documents would have to occur.

8. Unity of Interest Rule on Preemptory Challenges. Attorney Gallagher indicated that he has prepared an analysis of the law pertaining to unity of interest and preemptory challenges and that he would try to distribute it prior to the next meeting. Judge Lavery informed Attorney Gallagher that it could be sent to the Chief Court Administrator's Office for distribution.
9. Bench and Bar Committee. Judge Lavery indicated the Bench and Bar will meet with the legislature and finance committee.
10. Independent Medical Exam (IME) Issue. Judge Hiller indicated that at the last meeting the subject arose as to the definition of an IME and what does it mean. He noted that, in addition to himself, a committee of Attorney Dorney, Attorney Deluca, Attorney Gallagher, and Attorney Yelenak had been formed to work on a rule. Attorney Deluca stated that the IME is a controversial issue and that it may be best abandoned by the Commission as legislation would be needed. He further explained that the CTLA had lobbied unsuccessfully in the past. A discussion ensued as to areas where possibly ground rules could be set. Judge Lavery asked that this topic be placed on the next agenda.

Attorney Silver inquired as to whether a committee could be appointed to look at notice pleading. He noted that the request to revise is a waste of time and that judicial time could be better spent. Attorney Gallagher indicated that the CBA Study on the Courts had prepared a proposal on notice pleading and that it was a hybrid compromise. Judge Lager reminded the Commission that they had spent a tremendous amount of time on this issue in the past. Attorney Dorney indicated that there had been many meetings over a 1 ½ - 2 year span and the Commission had signed off on a proposal, which went nowhere. He further indicated that feedback was needed in order to determine if there was a problem with it. He stated he didn't know what occurred in the Rules Committee.

Attorney D'Alesio indicated that previously he had checked with Attorney Carl Testo and that the proposal had been tabled due to the volume of items facing the Rules Committee. Judge Lavery asked that a copy be redistributed to the Commission for review and any updates; he indicated that he would then sit down with the Rules Committee chairman.

Attorney Gallagher noted that the fact/notice pleading project started in 2002 and continued into 2004 and that the summary judgment proposal also had a favorable vote by the Commission. Judge Lavery asked that Attorney Gallagher send the summary judgment proposal to Attorney D'Alesio so that it could also be redistributed to the Commission. Attorney Deluca noted that the standard interrogatories would need to be changed if notice pleading were adopted. Judge Lager indicated that notice pleading might be the answer to identity theft and that now might be the appropriate time to revisit it.

11. Civil Short Calendar Proposal. Attorney D'Alesio explained that short calendar is an antiquated practice and that it is not uniformly applied statewide. He further explained that a committee comprised of Court Operations personnel was formed to study the current civil short calendar procedures and that a proposal to streamline the process in order to save time for the Bar, Bench and the public had been drafted. Attorney D'Alesio introduced Attorney Janice Calvi and Patrick (P.J.) Deak as the guest speakers who would present the PowerPoint presentation entitled "Short Calendar Proposal". The presentation provided members with an update on E-filing, the pros and cons of the current short calendar, and a cost analysis of the current version. In addition, the presentation outlined elements of Phase I, Phase II, and Phase III including the challenges and the benefits. Upon completion of the presentation, Judge Pellegrino asked whether there was a motion in favor of proceeding with Phase I. Judge Hiller inquired as to all members and the Commission unanimously approved moving forward.
12. Changing Short Calendar Days (Danbury Request). This agenda item was discussed at the beginning of the meeting.

13. Other Business. Attorney Deluca indicated that the Connecticut Defense Lawyers Association had a meeting with Mark Dubois to discuss the new rules and that the change regarding informed consent in Rule 1.8 (Conflict of Interest: Prohibited Transactions) causes a problem for defense lawyers. He noted that sometimes they can't find their client and that the retainer letter is returned. He also mentioned Rule 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer) in regards to the issue of settlement as a problem. Attorney Deluca indicated that they would be asking for a modification of that rule. Attorney Ury suggested sending it to Wes Horton. Judge Hiller asked that a copy be sent to the Commission. Attorney Gallagher noted that the trial lawyers have a problem with Rule 1.5 (Fees), subsection (e) and the word "interest". He suggested maybe clarifying the commentary rather than change the rule.

Attorney Deluca mentioned that there are new e-filing rules in the Federal courts and a set of subcommittee recommendations pertaining to the procedural handling of e-discovery. He noted that this will happen in the states courts and that guidance and recommendations would be beneficial. Attorney D'Alesio indicated that he has a booklet addressing this subject and offered to obtain copies for Commission members. He suggested that the topic be placed on the next meeting's agenda.

Attorney Silver requested that any materials be distributed in advance of the next meeting. A list serve will be established.

A future meeting date was not scheduled.

The meeting was adjourned at 2:50 p.m.