

MINUTES
Civil Commission
February 28, 2008

The Civil Commission met in the Supreme Court Attorney's Conference room at 231 Capitol Avenue in Hartford on Thursday February 28, 2008 from 1:00 to 2:58 pm

Members in attendance were: Judge Barbara M. Quinn, Judge Patrick L. Carroll, III, Judge Arthur A. Hiller, Judge Aaron Ment, Judge Joseph Pellegrino, Judge Robert L. Holzberg, Judge Linda Lager, Judge Richard A. Robinson, Attorneys Joseph D. D'Alesio, Charles A. Deluca, Michael J. Dorney, William H. Gallagher, Joseph A. Mengacci, Frederic S. Ury, William P. Yelenak, William J. Sweeney, Kevin R. Murphy, Jonathan B. Orleans, and Catherine Smith Nietzel. Guests: Judge Douglas Mintz, Attorney Jay Sandak, Attorney James Sullivan, Attorney Philip S. Walker.

At 1:04 PM Judge Quinn called the meeting to order and asked the members to introduce themselves.

Agenda: Judge Hiller began the meeting –

1. Class Actions Rules: It was reported that the Class Action Task Force has finalized its proposal. At this time Jamie Sullivan reported: Federal Rule 23 was adopted a long time ago and has since been amended but has not been adopted by Connecticut. Accordingly, it was suggested that Practice Book Rule 9-7 should be updated. Attorney Sullivan mentioned that there was a new Supreme Court decision, Friendly Ice Cream, which determined that class certification is not a final judgment for appeal purposes.

There was also discussion about special compensation for class representatives.

2. Objections at Depositions (Item #9): Handout on this topic – Attorney James Sullivan's proposal for amending PB Rule 13-30. Attorney Sullivan indicated that clarification was needed as to the content of objections at depositions. There was general agreement with the proposed language: **"Any objection during a deposition must be stated concisely in a non argumentative manner and framed so as not to suggest an answer to the deponent. The questioning attorney may request that the objecting attorney provide the basis for any objection and, in response, the objecting attorney shall include a clear statement as to any defect in the form or other basis of error or irregularity. Except to the extent permitted by subsection (c) of this section, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning."**

3. Court-Annexed Mandatory Mediation: Attorney Jay Sandak submitted and discussed a proposal (handout) regarding Mediation. He suggested mediation

be mandatory, and the program begin with a pilot program in Stamford for their complex litigation cases. For this test, trained volunteer mediators would be used.

Discussion regarding the proposal noted that the court has been using voluntary mediation programs for years and the parties do not have to pay for it. Parties are also able to go to private mediators. There was concern about adding to costs of litigation.

4. Special Masters in Discovery Process: Handout: Georgia Bar Journal article regarding Special Masters. Attorney Walker spoke regarding his proposal to have Special Masters for discovery. He noted that discovery in complex cases places a burden on the court's resources. Advantages and concerns were discussed including: bias, need for judge approval of orders, finding masters with expertise & costs,

Judge Hiller suggested that the committee seek input from complex litigation judges and set up a subcommittee to work on discovery issues.

5. E-Discovery Subcommittee Update: Handouts – Summary of State E-Discovery Efforts, Uniform Rules Relating to the discovery of Electronically Stored Information, Conference of Chief Justices – Guidelines for State Trial Courts Regarding Discovery of Electronically-Stored Information.

Attorney DeLuca provided the summary of existing state E-discovery rules. He noted that Connecticut has had an E-discovery rule since 1997 but it has not been used. It requires that a motion be filed. Common provisions of the rules include reasonable accessibility, cost-shifting provision, safe harbor provision, forms and a call-back provision. He recommends that a draft rule be prepared.

Discussion about who should draft the rule. It was noted that the Bar Association is working on this, but that others should be involved. Judge Hiller suggested that some contacts be made to see if we can get this started.

6. Creation of Complex Litigation Subcommittee: Joe D'Alesio said that the Public Service and Trust Commission is working on a strategic plan and conducting focus groups. The concerns of the Commission include re-evaluation of complex litigation, criteria, availability of judges, scheduling, rules and assignment of complex litigation judges. He requested that if anyone is interested in serving on the subcommittee or if they know of others from outside that the names be emailed to Judge Quinn. Attorney Nietzel volunteered to be on the subcommittee.

7. Unity of Interest/Peremptory Challenges Update: Handout – Re: Jury Selection-Unity of Interest.

Judge Hiller requested comments. Attorney Gallagher said that rule, as existing, is working fairly well. The rule and statute create a presumption that there is unity if no cross-claim, etc.

There is a problem in implementation and handling jury selection. Individual voir dire is becoming a threat to the jury system. Judge Lager said that she has used a hybrid technique, having questions that would always be asked,

having the judge ask those questions rather than the lawyers. Then the individual voir dire would take less time. Judge Hiller asked Judge Lager to send some samples to the Presiding Judges.

8. Update on Foreclosure Committee: Judge Mintz reported that a Bench – Bar Foreclosure Committee has been established. He noted that there has been a 34% increase in foreclosures since 2004-2005 resulting in more files, more paper, pro se parties and more issues. Four subcommittees have been set up to look into making procedures more uniform, look into the short calendar process and advertising sales on the web.

9. Update on Short Calendar Process: Janice Calvi of Court Operations reported on revisions to the short calendar process. Two Practice Books Rules, 11-14 and 11-18, have been revised as to the printing and distribution of the calendar so that at some point in the future the calendar will be electronic. There are also revisions with regard to what motions will be arguable and non-arguable. Notices are being standardized statewide. Beginning in either October or January, electronic markings will be mandatory for attorneys, unless they have been excluded from the requirement; fax markings will be eliminated; phone markings will be allowed for pro se parties and attorneys who have been excluded from the electronic marking requirement; only markings allowed will be Ready, Take Papers or Off (no longer Ready Arguable).

10. Other Business: Minutes of September 25, 2007 Civil Commission Meeting were approved.

Attorney Dorney mentioned that with issue as to Fact-Pleading/Notice-Pleading, two elements are being recommended: 1) that complaints be separated into counts labeled as to party; and 2) substitute a motion addressed to the pleadings for motions to strike, dismiss or revise. The Rules Committee will come up with suggested language and come back to Civil Commission for review.

2:58 PM Meeting Adjourned.