

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, March 10, 2014
2:00 p.m.

Those in attendance: Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Marshall Berger, Hon. Patrick L. Carroll III, Hon. Aaron Ment, Hon. John W. Pickard, Hon. Elliot N. Solomon, Hon. Mark H. Taylor, Atty. Victor A. Bolden, Attorney James Budinetz, Atty. Agnes Cahill, Atty. David W. Cooney, Atty. Joseph D. D'Alesio, Atty. Michael J. Dorney, Atty. Douglas Mahoney, Atty. Ralph J. Monaco, Atty. Kevin Murphy, Atty. Catherine S. Nietzel, Atty. Jonathan B. Orleans, Atty. Louis R. Pepe, Atty. Richard A. Roberts, Atty. Paul A. Slager, Atty. Alinor C. Sterling, Atty. William J. Sweeney, Atty. Martha Triplett and Atty. Angelo Ziotas.

Meeting called to order at 2:00 p.m.

- I. Welcome – Judge Lager welcomed the group and asked Commission members to observe a moment of silence in memory of Attorney William Gallaher, who was one of the original members of the Civil Commission and served as a member until 2011.
- II. Approval of the Minutes – Upon motion by Judge Taylor and second by Judge Abrams, the minutes were approved unanimously.
- III. E-filing Update – Judge Bellis reported that family e-filing is being worked on by the Branch. Electronic documents in civil cases with a 2014 return date are publically available but clerks disable jury cases on the public site once voir dire begins. Commission members had no questions or concerns.
- IV. Rules
 - A. Proposal re: § 17-45 – Since the last meeting of the Commission, Judge Lager solicited and received comments on the proposal from the bench and bar. The comments are mixed. Atty. Budinetz, chair of the CBA Litigation Section, reported that after a lengthy debate the section voted 8 to 6 to oppose the proposed changes because of the concern about the added burden the change would impose upon small practitioners and litigants. The CBA Legislative Policy and Review committee then reviewed the section's vote and voted 3 to 2 with two abstentions to allow the Litigation Section to oppose the proposal.

Atty. Roberts reported that after a long debate, the CDLA voted unanimously to support the proposal. The CDLA believes the requirements of the proposal are not an additional burden with respect to identifying material issues and issues that are in dispute. He did mention a concern of the defense bar that it can be difficult to get a summary judgment motion argued prior to the trial date, and asked that the judiciary be sensitive to setting deadlines in scheduling orders.

Atty. Mahoney reported that the CTLA is not in favor of the proposal as reflected in the minutes of the Commission's last meeting. In particular, CTLA members who litigate employment cases are concerned about the potentially onerous impact of the proposal in the employment law area.

Judge Berger reported that the Workgroup on Civil Rules and Statutes discussed the proposal in light of the comments at its meeting this afternoon. The workgroup is willing to attempt to revise the proposal to meet the legitimate concerns expressed by all. Attorney Nietzel pointed out that some comments suggested the proposal was a defense bar effort to overwhelm the plaintiffs' bar. She pointed out that the workgroup members are plaintiff's attorneys, defense attorneys and judges.

The proposal will be tabled until the fall and returned to the workgroup. Members should send their comments to Judge Berger. Research will be done on how other states that do not follow the federal rules narrow the issues and handle summary judgment motions. Consideration may be given to other approaches, such as a limited motion with limited information required.

- B. Workgroup on Civil Rules and Statutes – Special Defenses – Judge Berger reported that the group is working to make the special defense rules more clear and helpful. He reported that the group is also working on revising the rule on motions to reargue (Sec. 11-12). An earlier proposal for a new section 1-25 is before the Rules Committee and will be discussed at its next meeting.
- C. Referrals from Rules Committee –
 - 1. Recognizance: Upon request of the Rules Committee to the Civil Commission, the Workgroup on Civil Rules and Statutes, chaired by Judge Berger, is working on proposing statutory and rule changes eliminating the existing recognizance requirement, but creating an option for either party to seek a bond in any case. Members expressed concern that this change could result in motions for bond being filed in a harassing way. Attorney Monaco commented that he was unable to get a bond for prosecution recently from any insurance company. The workgroup's proposal will be forwarded to the Commission members for review and comment before the next meeting.
 - 2. CBA Proposal re: § 9-9 – The CBA's proposal is to amend the rule to permit cy pres distribution of residual class action funds to support legal services organizations. On behalf of the CBA, Attorney Budinetz explained that the proposal adds language with respect to the disposition of the residual funds so that any order, judgment or approved settlement in a class action suit will establish a process to designate the recipients of any residual funds and, in the absence of such a designation, the rule provides that the residual funds would be distributed to the Connecticut Bar Foundation, which administers the IOLTA program pursuant to General Statutes § 51-81c, to support legal services. A similar proposal for a local rule has been made to the federal judges.

Attorney Orleans moved for the Commission to support the proposal; Attorney Cooney seconded the motion.

A brief discussion ensued including the applicability of the rule to existing settlements, a mechanism for identifying cases with residual funds, and the mechanism for requesting the distribution of such funds.

The Commission voted unanimously to support the proposal.

- D. Proposal re: § 11-12 – Judge Bellis reported that the workgroup is drafting a proposal to amend Section 11-12 to incorporate language from existing case law regarding the criteria to obtain reargument. The change would provide greater guidance on when the motion to reargue is appropriate. A proposed draft will be circulated to the Commission members before the next meeting.

The workgroup plans to propose an amendment to Section 11-13 to require the filer to include the scheduled trial date for the case on the first page of any motion or objection. The proposal would reinstate a former requirement for trial date information.. After a brief discussion, the consensus was that the proposal should be pursued. A draft will be circulated to the Commission before the next meeting.

V. New Business –

- A. Scheduling Orders – Attorney Mahoney raised the issue that when there is agreement to modify a date in a scheduling order and the proposed modification does not impact the trial date at all, the parties should be able to agree to the modification without judicial intervention or approval. Discussion ensued, including the need for realistic deadlines in scheduling orders; proposed changes to the existing scheduling order form; the need to be aware of the scheduled trial date in modifying deadlines for filing summary judgment motions; ensuring that modifications to the order truly do not affect the trial date; and what the parties should do to keep the court apprised of any agreed-upon modifications to the scheduling order. Any suggestions regarding scheduling order are welcome and can be submitted to Judge Lager.
- B. CGS § 52-549u – Arbitrations – Attorney Mahoney suggested that if the parties agree that participation in the non-binding arbitration program for jury cases with a value of under \$50,000 would not be fruitful, there should be able a mechanism to opt out of the program or decline participation. Discussion ensued. Attorney Nietzel mentioned that sometimes the lawyers think it is not worthwhile, but the clients might want to go through the process. Even in situations where the result is a trial de novo, the fact that someone has looked at a case and put a number on it can help facilitate settlement. The program is not used in every location and in some locations judges have allowed counsel to opt out of the program. Obtaining a continuance if the arbitration is scheduled too early in the process is also possible. Other comments were directed to the use of the program, the qualifications of the arbitrators and the timing of arbitrations. Many of these issues were discussed in the ADR Commission and will be addressed as part of the civil re-engineering process.
- C. Other – Attorney Roberts mentioned that some caseflow requests are not ruled on in a timely manner. Judge Lager asked to be informed if parties are experiencing delays with caseflow requests or getting compliance issues heard in a timely manner, so that the problem can be addressed. On a related issue, it was noted that motions for order of compliance on discovery matters have to be claimed to the short calendar no less than ten days after filing by Practice Book rule.

VI. Next Meeting – The next meeting of the Civil Commission is scheduled for June 9, 2014.

The meeting adjourned at 3:27 p.m.