

DRAFT MINUTES
CIVIL COMMISSION

Monday, March 12, 2012
2:00 PM

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday March 12, 2012.

Members in attendance: Hon. Barbara Quinn, Hon. Patrick L. Carroll III, Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. Arthur A. Hiller, Hon. Linda K. Lager (chair), Attorney David L. Belt, Attorney Victor A. Bolden, Attorney David W. Cooney, Attorney Joseph D. D'Alesio, Attorney Charles A. DeLuca, Attorney Michael J. Dorney, Attorney Deborah Etlinger, Attorney Barry Hawkins, Attorney Joseph Mengacci, Attorney Kevin R. Murphy, Attorney Catherine Smith Nietzel, Attorney Richard A. Roberts, Attorney Richard A. Silver, Attorney Michael Stratton, Attorney Martha Triplett, Attorney Frederic S. Ury, and Attorney William Yelenak.

1. Welcome – Judge Lager welcomed the members of the Commission and asked that they introduce themselves.
2. Approval of December 5, 2012 minutes – Upon motion by Attorney Dorney and second by Attorney Ury, the minutes were unanimously approved.
3. Rules – Judge Lager provided information on the status of several proposed rule revisions.
 - (a) The revision to P.B. Section 10-13 would require parties to serve electronically-filed pleadings electronically on anyone who has agreed to accept electronic service. This proposed rule was approved at the last meeting of the commission, and at its January meeting, the Rules Committee unanimously voted to submit the proposal to public hearing.
 - (b) Judge Berger talked about the proposed revision to P.B. Sec. 10-29, which directs the plaintiff not to attach exhibits to the complaint. The plaintiff would instead be required to serve any exhibits on appearing parties within seven days of receiving notice of their appearance. If the exhibits were attached to the complaint and served by a marshal, the plaintiff would not be able to recover costs of the service.

After discussion, Judge Berger proposed the following motion to address the concerns raised regarding the length of time after an appearance and the potential issues in a malpractice case with the required good faith certificate:

That revision to P.B. Sec. 10-29 be approved as amended to include the requirement that the exhibits be served within 10 days of a party's appearance, and that the rule take into account the any exhibit required to be filed with the complaint by statute, such as the good faith certificate in a medical malpractice action. Attorney Stratton seconded the motion.

Attorney Hawkins asked if increasing the time for service to ten days in a civil case would be applicable to housing cases in subsection (b). After discussion, the consensus was to leave the seven day requirement in subsection (b) for housing cases.

The commission then voted unanimously to approve the proposed rule as amended. A revised version of the rule will be drafted to include the 10 days and specific statutory provisions requiring the attachment of exhibits to complaints. The revision will be circulated to the members of the commission and then sent to the Rules Committee as quickly as possible.

- (c) Judge Lager then discussed an amendment to P.B. Sections 13-6 and 13-9, proposed by Assistant Attorney General Widem, and referred by the Rules Committee to the commission. The amendment proposes the creation of standard interrogatories and request for production for service upon the intervening workers' compensation lien holder. Attorney Widem provided a draft of interrogatories and request for production.

The commission discussed the need for standard discovery, the potential disadvantages to having standard discovery, and the possibility of limiting the applicability of standard discovery.

A work group was formed to look at the proposal and address the concerns raised by the members of the commission. The members of the work group are: Attorney Cooney, Attorney Roberts, Attorney Stratton and Attorney Triplett. The group will work with staff to set up a meeting to draft language to present to the Rules Committee in the fall.

- (d) Judge Lager then discussed the revisions to P.B. Sec. 10-14, proposed by the Judges' Advisory Committee on e-filing. The primary purpose of the proposed revision is to deal with the certification requirements when appearances are filed in court, which is a common occurrence in family cases and with self-represented parties. The commission discussed the proposal and expressed concern over whether the revision should be amended to require delivery specifically to an electronic address or to a physical address or whether the rule should define "address." Discussion also ensued on whether it would be preferable or less confusing to amend the appearance sections of the rules if appearances are the issue.

After discussion, upon motion by Judge Berger and seconded by Judge Bellis, the commission voted unanimously to table the discussion indefinitely and report back to the Judges' Advisory Committee that the commission had tabled it.

Judge Bellis then asked the commission whether they had experienced any issues with the order of depositions. In three medical malpractice cases recently, involving different firms, there was an issue with who would be taking a deposition first. A lively discussion ensued on issues with depositions, including who takes the deposition first, delays encountered in taking depositions, the efficacy of scheduling orders in resolving deposition timing issues, whether the practice book provides "first filed/first taken", and whether developing a general rule and obtaining agreement on any proposed rule would be possible. The federal rule says there is no priority in discovery. No consensus was reached.

4. Workgroup on Civil Rules and statutes – Judge Berger reported that the group is working on the extension of time for pleadings in general and a myriad of other issues, and will be presenting the commission with a package of rules. The basic theory of the group is to extend the time and do away with the distinction between a motion and a request.

Judge Lager asked about the issue of attachments to filing, which seems to be related to e-filing. People are filing thousands of pages of documents with motions, such as unreported decisions. The volume causes issues in terms of storage and the copying of files for the appellate system on appeal. Judge Lager asked whether it would be possible to come up with reasonable designations of what can be attached to a motion. If members of the commission have any thoughts on this issue, they can email Judge Berger.

5. Discovery Subcommittee – Attorney DeLuca reported on behalf of the subcommittee. The subcommittee had discussed the possibility of proposing a rule for the use of special masters in civil matters. This proposal had been made several years ago in the context of e-discovery, and at Judge Hiller's suggestion, that initial proposal was expanded to include all kinds of cases. After discussion and revision, the commission did not want to propose a rule on special masters. P.B. Sec. 25-32B was recently adopted to provide for the appointment of

special masters in family cases, and the subcommittee thought it might be time to propose the adoption of a similar rule for civil cases to the commission again.

Attorney DeLuca pointed out that the federal rules and multiple state courts have similar rules. The rule would provide the option, and would potentially address issues faced with getting in front of a judge on a difficult discovery motion, and provide assistance to the court on complex e-discovery issues. Judge Lager had canvassed the civil judges on e-discovery issues and there is virtually nothing at this time. She suggested that the commission allow the new rules to be in place for a while before considering adding a special master option.

Discussion ensued about various aspects of the proposal, including the cost of a special master, the inability to get oral argument on a discovery issue, adding “with the consent of the parties” or “depending on the parties’ means” to the rule, and the inherent power of the judge to appoint a special master. The consensus was that the rule on special masters should be held off until the new e-discovery rules have been in effect for some time.

Attorney DeLuca then reported on the second suggestion from the subcommittee: the development of standard instructions and definitions for discovery. Some of the instructions and definitions inserted into discovery requests are quite onerous and go well beyond the requirements of the rules. Several members of the subcommittee have agreed to work on drafting a proposal, and it will be ready for discussion in June.

6. E-Filing – Judge Lager reported that civil files were going to be open to the public in the near future, and suggested that attorneys be vigilant about eliminating personal identifying information from filings with the court, and to be careful about how they caption their pleadings. She mentioned also that no short calendars will be held the week of July 4th as Judicial rolls out the new system.

Attorney D’Alesio reported on the results of the focus groups that have been conducted over the past six weeks with attorneys and paralegals around the state. The responses were overwhelmingly positive, and several excellent suggestions for enhancement were made by the participants. Attorney D’Alesio also briefly discussed the proposed bill that is before the legislature, raising fees to accrue to the benefit of legal services and to the Branch’s revolving fund for technology. The increase in fees would provide a stable source of funding.

7. ADR Commission Report – Judge Lager reported that the commission’s report has been posted on the website, and the Chief Justice has accepted the report. Many recommendations will require longer time periods for implementation, but some short terms changes will occur quickly.
8. New Business – Judge Lager reported the Attorney Silver had requested having half of the meetings of the commission in New Haven. Judge Lager pointed out that New Haven has no other judicial facility that has the room and parking provided by the facility where the commission meets in Wethersfield. If anyone can locate a facility downstate that would work, however, the commission could meet there.

On behalf of the Chief Justice, Judge Quinn and himself, Judge Carroll thanked the organized bar for their overwhelming support for creating a judicial compensation commission. Representatives from the CTLA, the CBA, regional bar associations, minority bar associations, insurance associations, and the NAACP provided written and oral testimony before the Judiciary Committee.

9. Next Meeting – The next meeting will be June 5, 2012.

The meeting adjourned at 4:00 p.m.