

**MINUTES  
CIVIL COMMISSION  
MARCH 14, 2011**

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday March 14, 2011.

Members in attendance were: Hon. Barbara M. Quinn, Hon. Patrick L. Carroll III, Hon. Marshall K. Berger, Jr., Hon. Robert L. Holzberg, Hon. Linda K. Lager (chair), , Hon. John Pickard, Hon. Richard Robinson, Attorney David W. Cooney, Attorney Joseph D. D'Alesio, Attorney Charles A. DeLuca, Attorney Michael J. Dorney, Attorney Robert C.E. Laney, Attorney Joseph A. Mengacci, Attorney Ralph J. Monaco, Attorney Kevin Murphy, Attorney Jonathan B. Orleans, Attorney Edward Maum Sheehy, Attorney Richard A. Silver, and Attorney William J. Sweeney.

Guests in attendance: Hon. Dennis G. Eveleigh, Chair of the Superior Court Rules Committee

1. Welcoming Remarks and Call to Order: Judge Quinn called the meeting to order at 2:12 p.m.
2. Approval of December 6, 2010 minutes – Upon motion and second, the minutes were approved unanimously, with the Hon. Barbara Bellis, Hon. John Pickard, and Hon. Barbara M. Quinn abstaining from voting.
3. Rules Committee – Justice Eveleigh, the new chair of the Superior Court Rules Committee, addressed the Commission on the process of the Rules Committee and how he envisions the role of the Civil Commission. The Rules Committee is seeking to obtain input from as many interested parties as possible in reviewing a proposed rule. With the addition of the presidents the Civil Defense Lawyers Association, the Connecticut Trial Lawyers Association and the Connecticut Bar Association to the membership of the Civil Commission, it will be able to provide a broad range of viewpoints to the Rules Committee, streamlining the process of moving a proposal to public hearing. Once a proposal comes to the Rules Committee, it will be put on the agenda for consideration and discussion. Ideally, March is the cut-off date for the submission of proposals in order to ensure that a matter will be ready for a public hearing and submission to the judges for their vote in June. The Rules Committee would look to the Commission for comment on proposed civil rules as well as for new proposals.
4. Proposed rules -
  - a. Electronic Discovery Rules – Attorney DeLuca reported that the subcommittee had collaborated with Judge Bellis, and re-submitted some e-Discovery Rules, incorporating them into the existing Practice Book rules on discovery. The revised rules are scheduled for a public hearing in May. After discussion, the Commission recommended that the drafter's commentary continue to be published with the rules. Attorney Horwitch will convey the Commission's recommendation for the continued publication beyond the customary one year to the Rules Committee. Attorney DeLuca also recommended that an education program on electronic discovery be developed for the Bench to ensure that there is an awareness of what e-discovery involves, including what is available and what the cost of requested items might be.
  - b. P.B. §13-4 Experts – Judge Lager discussed an issue that had been brought up at the Judges Advisory Committee on e-filing: attorneys attaching medical reports to their expert disclosure. These records contain a great deal of personal information and the rule does not require the attachment of these reports. The proposed rule revision would make it clear that the expert's written reports, including reports involving trade secrets, for example, are not to be attached to the expert disclosure. After discussion that included concerns about handling motions to preclude, objections to the adequacy of reports, the possibility of amending P.B. Section 4-7 as to the definition of personal identifying

information to include this type of personal information, and how this information can come into the court file in other filings, a motion was made by Attorney DeLuca and seconded by Judge Berger.

The motion: The Civil Commission agrees with and recommends the passage of the revision to P.B. Section 13-4 (b)(1) and (b)(2) to make it clear that reports of expert witnesses and medical records and reports are not to be filed with the court as part of the disclosure of expert witness process.

The Commission voted unanimously to approve the motion.

- c. Other rules – Judge Lager reported that the Rules Committee had unanimously voted to submit to public hearing the proposed revisions to Sections 13-7, 13-8, 13-10 and 13-30. Several other proposed rules are being presented and the input is requested from the Civil Commission as to any problems or issues with the proposals.
- A new proposal was made in the Judges' Advisory Committee on e-filing regarding appearances filed on behalf of a represented party. Currently, the rule provides ten days within which the attorney being replaced can object to the in place of appearance. The rule suggests that the existing appearance should remain in the file for ten days, but in reality, the existing appearance is removed immediately. The proposed change would make the rule consistent with reality. As a practical matter, objections are rarely, if ever, filed.

After a discussion on what changes were necessary to address the problem presented by the existing Practice Book Section 3-8, a motion was made by Judge Lager and seconded by Judge Robinson.

The motion: The Civil Commission believes that to accomplish what the Judges' Advisory Committee is seeking to do, a revised proposed rule, incorporating the first three sentences and the final sentence of the proposed Practice Book Section 3-8 should be referred to the Rules Committee for approval.

The Commission voted unanimously to approve the motion.

- Another new proposal was made in the Judges' Advisory Committee on e-filing to revise Practice Book Section 11-1 for the purpose of eliminating the existing requirement of attaching a proper order to a motion. A concern was expressed about situations when a filer wanted an order that was very specific and detailed seeking specific relief. The proposed rule does not prohibit the filing of an order, nor does the proposed rule preclude the filing of the proposed order in the body of the motion. The proposed rule is intended to eliminate the unnecessary drafting and filing of orders that judges do not need or use. Attorney Horwitch pointed out that in addition to the rules being discussed at this meeting, a comprehensive package of rule changes to 20 – 25 rules that don't make sense in an electronic environment is being presented to the Rules Committee this year.

After brief discussion, Judge Berger moved that the Civil Commission approve the proposed change to Practice Book Section 11-1. Attorney Orleans seconded the motion. The Commission voted unanimously to approve the motion.

- Finally, a proposal to change Practice Book Section 11-18 to incorporate language in the rule to make it consistent with the instructions on the nonarguable calendars has also been proposed. Since November, a notice has been posted on the nonarguable short calendar directing that a party seeking argument on a nonarguable matter has to mark the matter "ready" and file a separate request for argument. The proposed

rule adds the language to Section 11-18, which addresses oral argument of motions in civil matters. This proposed rule was presented and approved at the Rules Committee meeting on February 28, 2011. Judge Lager asked the assistance of the members of the Commission in getting this information out to the Bar.

Judge Berger pointed out that the proposed revision uses language that is more appropriate in a “paper” environment. Since the rule is already approved, Attorney Horwitch will see what can be done to make this minor change in terminology.

5. Update on Restructuring of Civil Commission – Judge Lager reported that the Commission now included two new judges and the presidents of the Connecticut Bar Association, the Connecticut Trial Lawyers Association and the Civil Defense Attorneys Association. Members of the Civil Commission will also receive a letter from the Chief Justice, probably in June, appointing them to one, two or three year terms. Terms will run from the first of July until the end of the following June. The Commission will also meet on a regular basis, in September, December, March and June. The Commission agreed that Monday afternoons work well for the meetings. Possibly varying the location or utilizing video conferencing for meetings was briefly discussed.
6. Judgment Files in Appellate Cases – Attorney Sweeney reported on his discussion with Attorney Gallagher, who has taken the position that from an appellate standpoint, judgment files are unnecessary in nearly all cases, except those that impact title to or use of real estate, family matters, in criminal cases or in cases seeking declaratory or injunctive relief. Discussion followed, including other mechanisms that exist for ensuring that the judges’ order is accurate and specific enough, and the appellate court’s looking at this rule as well.

After a brief discussion, Attorney Orleans moved that the Civil Commission suggest to the Appellate Rules Committee that consideration be given to eliminating the requirement for the creation of a judgment file. Attorney Silver seconded the motion.

The Commission voted unanimously in favor of the motion. Judge Lager will draft a letter to the Appellate Rules Committee.

7. Overview of PSTC and Branch Committees – Attorney D’Alesio provided an overview of the work of the Public Service and Trust Committees and other Branch Committees to date. The Branch is in the third year of the implementation of the strategic plan. Work is being done in each of the five main areas: access, changing demographics, delivery of services, collaboration and accountability. Initiatives include a new Access to Justice Commission, which will continue the work of the Committee on Self Represented Parties and the Pro Bono Committee. Projects have included increasing the availability of plain language forms, volunteer attorney advice days in family courts, grouping of related forms on the Branch website, plain language brochures on short calendars, and letter explaining what to expect in court in each district. A standing committee on individuals with limited English proficiency is continuing efforts to increase accessibility to forms and information packets for non-English speakers. A Committee on Court Recording Monitors and Court Reporters has completed its work, and the implementation has begun, with a focus on utilizing technology to increase more affordable and efficient access to justice by making digital audio recordings of court proceedings available. More than half the courtrooms have been wired, and that process should be complete in the near future. Through the efforts of the Jury Committee and its subcommittees, juror utilization has improved, and training programs for judges and staff are being developed. A courthouse observation and simulation team has been trained to go out to branch facilities to observe day-to-day operations in clerks’ offices, at metal detectors and in other branch offices, to enhance awareness and consistency in the provision of services to the public. The Commission members were encouraged to provide direct feedback to Attorney D’Alesio, Judge Carroll or Judge Quinn regarding any issues they encounter in the courts. An advisory panel on judicial performance evaluation program has developed a pilot

program for the evaluation of judges in high volume courts such as arraignment courts. Other committees and programs, such as the Committee on Reengineering the Clerk's Office and the Pillars of Service Excellence Program, which is a staff training program based upon the values identified by the Branch's constituents, are also moving the Branch closer to achieving the goals set out in the strategic plan.

8. ADR Commission – Judge Lager briefly reported on one of the new commissions: the Commission on Civil Court Alternate Dispute Resolution. The Commission is charged with studying and assessing the utilization and effectiveness of currently available court-sponsored ADR programs for civil, non-family cases from the perspective of litigants and stakeholders and making recommendations that will improve the utilization and effectiveness of court sponsored ADR. The Commission met for the first time on January 20, 2011, and is in the process of gathering information through focus groups. The Commission has also created a “page” on wikispaces.com, which members of the commission can access. Anyone can sign up for access to view the history of what people on the commission are doing, but only members of the commission can enter information on the page. The members of the Civil Commission are invited to go to the page, and also to fill out the form-version of the focus group exercise that the ADR Commission has been using to gather information on ADR. Attorney Ericson will send an electronic version of the form to all members of the Civil Commission so that the members can share the form with members of their firms. Once the forms are filled in, members are asked to return them to Attorney Tais Ericson, Attorney Roberta Palmer or to Judge Lager, chair of the ADR Commission.
9. Differentiated Case Management – At the last meeting of the Commission, the commission had some discussion about differentiated case management. Following the meeting, Attorney Ericson sent commission members links to the National Center for State Courts information on the subject. Much of that information is dated. The concept of creating different tracks of paths for the disposition of different types of civil cases is not a new concept. For example, Middletown implemented various tracks in 1998, the complex litigation docket, asbestos docket in Bridgeport and the lead paint cases are examples. The Bridgeport Pilot Project was an example of an effort that was not successful. Does the Commission see a need to consider or look at this for Connecticut? Is the Commission interested in creating a subcommittee to look at this?

A discussion of many different aspects of case management ensued. Topics included the need for an expeditious system for obtaining judge intervention in cases that are not complex, but do require more judicial attention; the potential for “Balkanization” of the courts with multiple special interest dockets; the perceived need to deal with multiple requests for specialty dockets; differentiated case management as just a specific type of case management tool; the lack of a uniform method of selecting a trial date; the scheduling of trial dates on cases so far in the future; and whether or not a problem exists at all that requires the implementation of any new programs for case management.

The Commission agreed to continue the discussion in order to determine what is working and what is not working, and to have a general discussion of case management issues as well.

10. New Business – No new business was raised.
11. Next meeting – The next meeting will be June 6, 2011 at 2:00 PM in Room 4B at 225 Spring Street, Wethersfield.

The meeting adjourned at 4:30 PM.