

MINUTES
Civil Commission
May 23, 2007

The Civil Commission met in the Supreme Court Attorney's Conference room at 231 Capitol Avenue in Hartford on Wednesday, May 23, 2007 from 1:00 to 2:24 pm

Members in attendance were: Chief Justice Chase Rogers, Judge William J. Lavery, Judge Barbara Quinn, Judge Arthur A. Hiller, Judge Marshall Berger, Judge Linda Lager, Judge Richard A. Robinson, Attorneys Joseph D. D'Alesio, Charles A. Deluca, Michael J. Dorney, Frederic S. Ury, William P. Yelenak, Robert L. Hirtle, Edward Maum Sheehy, Richard A. Silver, Michael A. Stratton, William J. Sweeney, Garrett M. Moore, Kevin R. Murphy, Jonathan B. Orleans, and Catherine Smith Nietzel.

Welcoming Remarks and Call to Order: The Honorable William J. Lavery called the meeting to order at 1:05 p.m.

Chief Justice Rogers welcomed the members to the meeting.

1. Update on Complex Litigation. Judge Hiller gave members a handout with statistical data. He stated that most of the Judges are doing multiple booking of trials, giving dates in mid-2009 now, with the length of time a complex case is pending being about the same as that of a regular civil case. Approximately 22% of the applications for complex litigation are denied usually because the case is not sufficiently complex. Denials will be reconsidered at the attorney's request.
2. Foreclosure Procedure Update. Judge Hiller presented a draft of proposed changes to the Standing Orders for Foreclosures, modeled after Danbury's orders, which is likely to go into operation shortly. He also discussed the plan to transition from newspaper advertising to Internet advertising in foreclosure cases, a change which would benefit the public. The technology group is working on this project.
3. Discovery Dispute Calendar Update. Judge Hiller reported that the discovery dispute hearings he has held have been an overwhelming success. The lawyers have an opportunity to resolve the issues, and avoid delays in trials. The hearing can be set up by a call to the casflow office.
4. Identity Theft Update. Attorney D'Alesio reported that the Identity Theft Committee had reviewed 880 Branch forms to check whether personal identifiers are required on the forms and whether the information is necessary according to the units that use these forms. The Committee will hear explanation from those people at its meeting next week. He also gave the members proposed changes to P.B. Rules, including a method for redacting personal identifiers and discouraging their inclusion in court files. This proposal will be discussed by the Committee at its meeting. Judicial staff will also present a seminar on identity theft at the CBA annual meeting.

5. Update on Unity of Interest and Rule on Peremptory Challenges. Continued to next meeting.

6. Mediation Proposal. Judge Hiller invited discussion on Judge Silbert's letter of April 16, 2007. Many thought that assigning judges as mediators was a great idea that could result in quicker resolution of cases. Some concerns were expressed about what judges would be assigned and whether an assignment to mediation would take the judge away from trials particularly since some of the best mediators are the best trial judges. Overall, the Commission spoke in favor of mediation in general and of the current system of court annexed mediation, and said that having mediation through the Judicial Branch was valuable. One suggestion was that times could be more flexible rather than a strict 9:00 to 5:00 schedule. Judge Lavery suggested that there could be a special training for Senior Judges and Judge Trial Referees to get them involved in mediation. Chief Justice Rogers stated that there should be a review of the strengths and weaknesses of mediation assignments. Judge Lavery asked the members to review Judge Silbert's letter and to give Judge Hiller any other comments.

7. Update on Proposed Rule re: Fact/Notice Pleading. This issue has been pending for a long time. A previous proposal, which combined notice and fact pleading, was unanimously approved by the Commission in 2004 and submitted to the Rules Committee by Judge Pellegrino, but it had been tabled by the Rules Committee. Justice Zarella says it will be considered next year.

A discussion ensued as to the background of the proposed rule, including a discussion of the Federal Rules and whether those rules could be adopted for the State. The Federal Rules require notice pleading which results in more voluminous and burdensome discovery prior to trial, but can be handled in the Federal Courts because there are fewer cases. With the heavier case load in state courts, this rule might not work. The proposal is a compromise between the two systems. Judge Hiller reiterated the new policy on discovery disputes being handled by the presiding judges within six months of trials. Attorney Hirtle said that in malpractice cases the disputes arise earlier than the time of trial and need resolution. Suggestions were made that the Court could determine who the trial judge would be and assign any dispute to that judge; or, assign all discovery disputes by terminal digit order to a specific judge in order to reduce the number of hands on the file; or, could bring possible problems to the attention of the Presiding Judge.

Attorney Orleans stated that the discovery issue is separate from the notice/fact pleading issue. In connection with the fact/notice pleading he said he favors going to notice pleading, but that goes hand-in-hand with the proposed summary judgment rule. Attorney Nietzel was in favor of the requirement to identify the legal theory under which the action is proceeding. Judge Lager suggested that the Civil Commission compile the reasons that the proposal should be adopted and re-submit it to the Rules Committee.

8. Out of State Attorneys Appearing In Malpractice Cases. Attorney Silver expressed concern over the number of cases where out-of-state attorneys appear pro hac vice for the defense where there appears to be no good cause shown. Judge Hiller referred to case

law that sets forth the right of parties to counsel of their choice and to the Practice Book Rule which requires the court to consider the facts and circumstances of the client and strike a balance. Further discussion ensued about judicial control over pro hac vice attorneys and what is required of local counsel by the practice book rules. Judge Hiller said that the Judges could discuss this issue.

9. E-Discovery Update. Attorney DeLuca provided handouts to the Commission and referenced the book on Rules of Law: Electronic Discovery and the Challenge of Rulemaking in the State Courts (2005) which was previously provided to the members. He stated that only 4 states have rules regarding electronic discovery, with Texas having a very detailed rule. Connecticut has P.B. Rule 13-9(d). Attorney DeLuca said the rule is good, but may not be enough. He suggested that Connecticut has a number of options at this point, from doing nothing to referring all cases with electronic discovery to Complex Litigation to coming up with a set of rules to deal with these issues. After a brief discussion, it was suggested that a subcommittee be formed to look at these issues. Attorney DeLuca agreed to chair the subcommittee, and Attorneys Nietzel, Orleans, Hirtle, and Sweeney agreed to serve as well. Judge Lavery stated that all of the judges will need training in this area, and he will note it for next year's Judicial Institute.

10. Centralized Small Claims Update. Joe D'Alesio reported that with the increase in the jurisdictional amount, the number of cases has increased, with more than 90,000 cases filed annually. The office is only about 2 weeks behind in entering the cases now.

Judge Hiller asked if there were any other issues to be discussed, and Judge Lavery discussed the legislation requiring any rule changes be submitted to the judiciary committee of the General Assembly for approval.

Meeting adjourned at 2:24 p.m.

Proposed Items for Next Meeting Agenda

Please let Attorney D'Alesio know if there are any other items you would like to add to this list.

- Update on Unity of Interest Rule on Peremptory Challenges
- Mediation Proposal
- E-Discovery Subcommittee Update
- Attorney Weinstein's letter
- Update on Fact/Notice Pleading