

Minutes  
CIVIL COMMISSION  
225 Spring Street, fourth floor, room 4B  
Wethersfield, CT

Tuesday, June 5, 2012  
2:00 PM

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Tuesday June 5, 2012.

Members in attendance: Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. Patrick L. Carroll III, Hon. Linda K. Lager (chair), Hon. Aaron Ment, Hon. John W. Pickard, Hon. Barbara Quinn, Hon. Richard A. Robinson, Attorney David L. Belt, Attorney Victor A. Bolden, Attorney David W. Cooney, Attorney Joseph D. D'Alesio, Attorney Michael J. Dorney, Attorney Deborah Etlinger, Attorney Keith Bradoc Gallant, Attorney Richard A. Roberts, Attorney Edward Maum Sheehy, Attorney Richard A. Silver, and Attorney William J. Sweeney.

Meeting called to order 2:10 PM

1. Welcome - Judge Lager called the meeting to order at 2:10 p.m. She expressed the gratitude of the commission to Judge Hiller, Judge Holzberg and to the bar association members whose terms will expire at the end of June and are not continuing as members. The commission has benefited from their knowledge, experience and wise counsel. She encouraged their continuing participation in bringing ideas and suggestions to the commission for consideration. Judge Lager also commended Attorney Ericson on the article she did on the Civil Commission for the Connecticut Lawyer.

Judge Lager briefly reviewed what the commission had accomplished in the 2011-12 term including reconstituting the discovery subcommittee, forming a workgroup on discovery for workers compensation lien holders, ongoing work of the workgroup on civil rules and statutes, a continuing successful relationship with the Rules Committee and continuing the very important dialogue between the Bench and the Bar.

2. Approval of March 12, 2012 minutes – Upon motion by Attorney Sweeney and second by Judge Robinson, the minutes were unanimously approved.
3. Rules – Judge Lager raised a proposal to revise section 17-25 of the Practice Book to conform the practice on the regular civil docket to the practice in the small claims court with respect to requirements for obtaining a motion for judgment on a liquidated damages claim. The small claims rules provide a clear set of directions as to what kinds of documents need to be attached when seeking judgment after the entry of a default, what the affidavit needs to contain, requirements re military affidavits, and the ability of the court to conduct a hearing if it is deemed necessary. She then moved to review the proposed revision and Judge Berger seconded her motion.

Discussion of the proposed revision ensued. Judge Berger suggested adding “requiring the submission of additional written documentation or” to the second line of subsection (b) to allow a judge to receive other information and documentation. The language will be added. Judge Pickard asked about combining subsections, but to remain consistent with the small claims rules, the subsections will remain separate. Judge Robinson asked about subsection (b)(1)(B), requiring the plaintiff to state the basis upon which it claims the statute of limitations has not expired. After discussion, that subsection will remain as written.

Judge Lager pointed out that the proposal would also amend Sec. 17-33 on defaults for failure to appear for trial or failure to plead to include the same requirements for affidavits and attachments in contract actions based upon a claim for liquidated damages.

Judge Berger moved that the proposed revisions be referred to the Rules Committee. The motion was seconded by Judge Robinson.

The commission voted unanimously to approve the motion.

Judge Lager then raised a question with respect to any potential conflict between Practice Book Sec. 13-29 (a), (b) and (c) and Sec. 13-30 (h), specifically whether sec. 13-30 (h) creates a problem if the party noticing the deposition wants to conduct the deposition with the deponent physically present. A lengthy discussion occurred, including the possible conflict between the sections, any existing issues with remote depositions, the need to reference Sec. 13-30 (g) – (j) in Sec. 13-29, the applicability of Sec. 13-30 to deponents. The commission discussed referring the question to the Rules Committee for review, leaving the rules as they are since it does not appear to be a real problem, drafting a separate rule to apply to remote deposition procedure, or referring the matter to the subcommittee on discovery.

Judge Lager moved to table the discussion until September and at that time ask if the discovery subcommittee would be willing to look at the sections and the issue. Attorney Sweeney seconded the motion.

Judge Berger then suggested that the commission look at the issue of remote expert depositions and a discussion ensued. The consensus of the commission is that there are no issues or problems regarding remote expert depositions that need to be addressed at this time. However, Judge Berger and Judge Ment indicated a willingness to look at practices in other states regarding remote expert depositions and report back to the commission at a later date.

The commission then voted in favor of the motion to table made by Judge Lager and seconded by Attorney Sweeney regarding sections 13-29(a)(b) and (c) and 13-30(h). The motion carried with Judge Berger voting against it.

4. Workgroup on Intervening Worker's Compensation Lien Holders – Attorney Roberts reported on behalf of the workgroup. The group met and discussed recommendations regarding standard interrogatories and requests for production for intervening workers' compensation lien holders made by Attorney Widem. The workgroup recommended that a rule change to include such standard interrogatories and requests for production be proposed to the Rules Committee.

Attorney Sweeney moved that the proposal be approved and forwarded to the Rules Committee. Judge Berger seconded the motion.

The work group is proposing three items: (1) adopting a standard set of interrogatories and requests for production to be answered by the intervening workers' compensation carrier; (2) adding two questions to the existing standard interrogatories to a plaintiff, establishing employment and a potential claim from the workers' compensation lien holder; and (3) adopting a set of supplemental interrogatories to be answered by the plaintiff in a case where the injury occurred in the course of employment, but no compensation carrier has intervened.

The work group will circulate a proposal with commentary in draft form prior to the next meeting of the commission in September. Judge Lager will also contact Attorney DeLuca, chair of the discovery subcommittee to ask if he would be able to put together a draft of standard definitions for the September meeting as well.

5. Judge Berger reported briefly on the work of the workgroup on civil rules and statutes. The group is generally looking at Practice Book Chapter 10 and is also discussing amending the summary judgment procedure with the intent of making Connecticut's procedure similar to F.R.C.P. 56A. The work group is also looking at Chapter 11 and motions and requests.

6. Offers of Compromise – Judge Bellis talked about the bar's concerns regarding non-party access to electronic civil files once full remote public access is implemented, particularly with respect to jurors having access to the file during voir dire and trial. Discussion ensued regarding the concerns about access and possible options to prevent jury contamination. After discussion, the commission agreed to continue its discussion at the September meeting. Commission members should send proposed changes to Practice Book Sections 17 -11 and 17-14 in draft form to Attorney Ericson by September 1, 2012. .

7. E-Filing – Judge Lager reminded the members of the commission of the upcoming scheduling changes in connection with short calendars and of the weekend shutdown of e-filing from 5:00 PM, Friday, June 22<sup>nd</sup> through 7:00 AM, Monday, June 25<sup>th</sup>. The Branch is also working on the implementation of e-notification, which was a repeated request that came from the focus groups on e-filing. The e-notification would be implemented in phases. The Branch is also developing a mechanism that would allow an attorney or any interested person to sign up for notice on a particular case. The commission was advised that e-notification will take time to develop and implement.

8. New Business – Judge Lager talked briefly about the use of teleconferencing, which Attorney Smith Nietzel had raised in an email to her. The topic will be added to the agenda for the September meeting and Judge Lager will discuss this with the civil presiding judges.

9. Meeting schedule 2012-2013 – Judge Lager provided the dates for the meetings for the upcoming year: September 10, 2012; December 3, 2012; March 11, 2013; and June 18, 2013.

Efforts to locate a facility in the southern part of the state, which is large enough for the meetings, will continue. In the meantime, downstate members are encouraged to take advantage of video-conferencing for the meetings.

The meeting adjourned at 3:35 p.m.