

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

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday June 6, 2011 at 2:00 PM.

Members in attendance were: Hon. Barbara M. Quinn, Hon. Patrick L. Carroll III, Hon. Linda K. Lager (chair), Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. Robert L. Holzberg, Attorney David W. Cooney, Attorney Michael J. Dorney, Attorney Joseph A. Mengacci, Attorney Ralph J. Monaco, Attorney Catherine Smith Nietzel, Attorney Jonathan B. Orleans, Attorney Edward Maum Sheehy, Attorney Richard A. Silver (by teleconference), and Attorney William J. Sweeney.

Guests in attendance: Hon. Raymond R. Norko, Ms. Krista Hess

1. Welcoming Remarks and Call to Order – Judge Quinn was unable to attend the meeting. Judge Lager welcomed the commission members.
2. Approval of March 14, 2011 minutes – Upon motion by Judge Holzberg and second by Attorney Sweeney, the minutes were approved unanimously.
3. Limited Scope Representation – Judge Norko, the chair of the newly formed Access to Justice Commission, addressed the commission members on the issue of limited scope representation. A packet of materials containing proposed rules and statutory changes, and frequently asked questions was provided to the members. Pursuant to the direction of the Chief Justice, efforts have been made to obtain input from the bar on limited scope representation, including meetings with local bar associations and a scheduled presentation at the Connecticut Bar Association annual meeting on June 23<sup>rd</sup>. A symposium is planned for the end of October, at which a national expert on limited scope representation will be speaking.

Judge Norko mentioned the two main concerns that the lawyers generally raise: (1) fear of experiencing difficulties in withdrawing from a case in accordance with the limited scope appearance agreement; and (2) fears that limited scope representation will financially harm lawyers. The first concern has been addressed by the rule, which provides for the filing of a certification that would result in a withdrawal; the second concern is one that has not been a problem in the 43 other state where limited scope representation has been allowed. Most of the states have reported that lawyers have positive reaction to limited scope representation. Other states have also not found an influx of complaints based upon misunderstandings of the limited scope agreements.

Judge Norko explained that the purpose of the rule on limited scope representation was to allow people who could not otherwise afford an attorney to obtain legal representation. Atty. Monaco mentioned statistics indicating that there has been an almost 40% drop in the number of lawyers representing individuals. Outside of cases with a contingency fee, most people cannot hire attorneys because the cost is prohibitive. Limited scope representation allows them to obtain counsel for particular portions of the case – for example, retain counsel to handle a summary judgment motion based on municipal liability or to draft a separation agreement. The rule as drafted permits limited scope

representation in any type of case in which the attorney believes it is appropriate. Based upon information from other states, limited scope representation is most common in family cases, although other states do not limit this type of representation to family matters.

Judge Berger asked about the situation where the attorney has filed an appearance for a limited purpose and then withdraws that appearance. Ms. Hess explained that the limited scope appearance can only be filed “in addition to” an appearance already on file, pursuant to the proposed rule.

If any commission members have additional comments or questions, they can contact Ms. Hess at [Krista.Hess@jud.ct.gov](mailto:Krista.Hess@jud.ct.gov).

4. Judgment Files in Appellate Cases – Judge Lager reported to the commission that the commission’s suggestion that judgment files be eliminated was conveyed to the Appellate Rules Committee. Justice Vertefeuille responded on behalf of the Appellate Rules Committee that after discussion, the committee found the judgment files helpful, and that the rule would not be changed.
5. ADR Commission – Judge Lager provided an update on the progress of the Commission, and she showed the Civil Commission members the wiki pages (<http://adrcommission.wikispaces.com/>), where documents posted include information about the nature of present ADR programs and data about those programs. Four subcommittees have been formed to look at different aspects of ADR: Utilization of Court-Sponsored ADR; Delivery of Court-Sponsored ADR; Training; and Evaluation. The work of the subcommittees is coordinated through the use of the same staff for the subcommittees, and information on the commission and its subcommittees is available on the Judicial Branch website. Judge Lager invited interested members of the commission to contact the chairs of the subcommittees or the staff. The Commission plans to develop recommendations over the summer, come together as a Commission in September, and complete the report for the Chief Justice by the end of the year.
6. Rules – Judge Lager reported that the rules and changes proposed by the Civil Commission, including those on electronic discovery, have gone to public hearing on May 31, 2011, and will next be voted on by the judges at their annual meeting on June 20, 2011. Judge Lager had met with the Litigation Committee of the bar and discussed with the members about how the rules were developed by both defendant’s and plaintiff’s bars and addressed their concerns about the scope of the rules. Judge Bellis had requested that the commentary remain with the rules for two years from the effective date of the rules, and that request was approved.

Judge Lager raised a new proposal for the commission’s consideration. In doing the nonarguable calendar, she noticed how many motions for extension of time go unopposed. Statistics indicate that 29% of the nonarguable calendar is motions for extensions of time. The volume of motions that must be ruled on by a judge and processed by a clerk takes up a great deal of time. Current practice book rules permit the filing of a request for extension of time to respond to discovery requests (Sec. 13-7(2) and 13-8(2)). Judge Lager suggested there might be some merit in proposing a rule change that would treat extensions of time to plead in the same way: permitting the filing of requests for extension of time to plead in lieu of motions. Unless a party filed an objection, the request would not come up on the calendar for a ruling. Judge Bellis mentioned the confusion that exists over the distinction between requests and motions and the resulting confusion in e-filing of these documents. Judge Lager suggested that

with the default being request in all situations and with some education, the confusion might be alleviated.

In situations where a scheduling order was in place, the proposal would require that the modification be done by motion not request. Other questions were raised as to how long an extension could be requested; and whether serial requests could be filed. Attorney Smith Nietzel observed that that such a rule would obviate the necessity for tracking by the practitioner, and would result in additional filing only if someone had an objection. Judge Berger expressed concern about a judge losing control of a case with an opened-ended option to extend time for pleading, and suggested that language be added to say extensions would be subject to a judge's order as part of the scheduling order. Attorney Orleans suggested limiting the amount of time that could be requested and the number of times a request could be filed or requiring the filing of a stipulation.

Discussion then ensued about the distinction between motions and requests, the elimination of short calendar, the proposing of an omnibus motions addressed to the pleadings, whether the time allowed for pleading in the rules is too short, and whether a need exists for changing the current rules on extensions of time. After discussion, Judge Lager asked if members would be interested in forming a subcommittee to discuss extending the period of time to respond to a pleading or discovery and the proposal to use requests rather than motions to obtain extensions. The commission formed a subcommittee. The members of the subcommittee are: Judge Bellis, Judge Berger, Attorney Smith Nietzel, Attorney Orleans and Attorney Sweeney.

Judge Lager reminded the Commission to send any proposals on rules changes to her before the Civil Commission's next meeting in September so that the proposals can be circulated and placed on the agenda for the meeting scheduled for September 12, 2011. This time frame will allow enough time for the Commission to get proposals to the Superior Court Rules Committee for consideration in the upcoming year's rules cycle.

7. Case Management Issues - Judge Lager reported that she had met with the civil trial judges and asked them to accommodate counsel's requests for earlier trial dates, even if it meant double-booking dates. If any conflicts came up at the time of trial, a judge would be found to try the case. Materials on the median age of pending court and jury cases were provided to the members. Over 80% of the business is disposed of in less than three years. Many of the complaints that the Branch is getting are that trial dates are coming up too fast. The median statewide for jury trials is fourteen months.

Judge Berger asked if the statistics included cases stayed for bankruptcy and cases on the complex lit list. Complex lit cases are included, but Attorney Ericson will have to check on the inclusion of bankruptcy cases.

Attorney Silver observed that the presiding judge should have some discretion in moving matters up on the trial list. Judge Berger and Judge Lager said a separate list for privileged cases no longer exists. If counsel wants a trial date, he or she can ask for it. Attorney Cooney observed that the presiding judge is often not the person counsel deals with; it is the caseload coordinators. Judge Lager said that this issue will be put on the agenda for the caseload coordinators' meeting, which is coming up later this month. If asking for an earlier trial date is not working, Judge Lager asked the members of the commission to let her know.

Judge Lager next discussed the change in the language of the form, JD CL 28 – List of Exhibits. Paragraph 6 has been changed to specifically require the redaction of personal

identifying information from exhibits filed with the court. As the commission looked at the form, questions were raised as to the timing for marking exhibits, which varies in different districts. The presiding judge needs to have a certain amount of flexibility to waive requirements, and the variation from district to district is a result of different management styles. It would be difficult to craft a single rule to cover all situations. The trial management orders do address some of these issues.

Several members asked how the trial management reports are used by judges. The use of them is mixed. Some presiding judges rely on them; others view them as something to assist the trial judge; still other judges use the trial management report as a settlement tool.

Judge Berger returned to the list of exhibits and noted that the form goes beyond the trial management order. He suggested that the trial management order and the form be consistent. A motion was made by Judge Berger and seconded by Judge Bellis:

- To amend the trial management order to include the reference to Practice Book Section 4-7 and the redaction of personal identifying information;

The motion was approved unanimously.

A second motion was made by Judge Berger and seconded by Judge Bellis:

- To conform the instructions on JD-CL 28 List of Exhibits to the trial management order

The motion was approved unanimously.

8. Bench/Bar Training - Judge Lager then invited suggestions from the members on ways the Branch could disseminate information on changes to the bar and how the member of the commission could help with this process. The website has so much information, and changes can only be prominently displayed for a limited period of time.

Attorney Monaco suggested an annual webinar. Attorney Smith Nietzel pointed out that in her office, people are on the website every day, but Attorney Monaco said that the sporadic litigator would not be on the website regularly.

Judge Bellis asked if there were a single hyperlink where all the information for attorneys is stored. She suggested that there be a specific page that is relevant to attorneys, with information that remains on the page for six months.

Attorney Orleans suggested preparing a list of the "top ten changes" and having the list disseminated through the listserv for the CTLA and the bar association.

Judge Lager then asked about any suggestions the members might have regarding training for civil judges. She mentioned some of the topics being offered at the Judges' Institute later this month. Judge Bellis mentioned that counsel had asked that more judges be trained on mediation. Judge Lager mentioned that Judge Holzberg is chairing the ADR Commission subcommittee on Training, which is charged with, among other tasks, identifying "methods to select and to train effective and ethical neutrals to preside for existing and potential court-sponsored civil ADR programs."

Attorney Monaco suggested that judges need to be aware of the blogs and comments sections that follow online newspaper articles. With more people getting their news online, it is important to be aware of the potential impact of these blogs on public opinion and on a jury. Judge Lager will provide the members of the commission with the template of the order for jurors, which talks about not going to or communicating on any electronic media, but Attorney Monaco pointed out that it is also a problem with the parties, who may attempt to get their friends to log onto these blogs and post comments in an effort to influence public opinion. He feels that judges need to be aware of this issue, even if there are limits to what orders can be entered to control it.

9. New Business – Judge Lager told the commission members that the appointment letters will be coming out in the middle of June, and the letters will include a listing of the upcoming meeting dates.

10. Next meeting – The next meeting is scheduled for September 12, 2011.

Upon motion and second, the meeting was adjourned at 3:45 PM.