

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, June 9, 2014
2:00 p.m.

Those in attendance: Chief Justice Chase T. Rogers, Hon. Patrick L. Carroll III, Hon. Elliot N. Solomon, Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Marshall Berger, Hon. William Bright, Hon. Mark H. Taylor, Atty. David L. Belt, Atty. David W. Cooney, Atty. Joseph D. D'Alesio, Atty. Michael J. Dorney, Atty. Deborah Etlinger, Atty. Timothy S. Fisher, Atty. Kimberly A. Knox, Atty. Douglas Mahoney, Atty. Catherine S. Nietzel, Atty. Karen Noble, Atty. Jonathan B. Orleans, Atty. Richard A. Silver, Atty. Alinor C. Sterling, Atty. William J. Sweeney, Atty. Martha Triplett, Atty. Frederic S. Ury, and Atty. William P. Yelenak.

The meeting was called to order at 2:03 p.m.

- I. Welcome – Judge Lager welcomed the group and Chief Justice Rogers to the meeting.
- II. Approval of the Minutes – Upon motion by Atty. Sweeney and second by Judge Berger, the minutes were approved unanimously.
- III. Presentation on Civil Initiatives –Chief Justice Rogers talked to the Commission about the work that is being done on the next phase of the strategic plan, specifically on civil re-engineering. She said that her goals for the re-engineering are to reduce costs and improve access to justice. Some changes have already started; others will require further discussion and evaluation. She emphasized that the information and proposals being presented today are not finalized. The re-engineering process is a work in progress, and the Branch will continue to solicit feedback and participation from the bar in evaluating the proposals. Atty. D'Alesio invited the commission members to ask questions or make comments at any point in the presentation.

The Chief Justice reviewed the process undertaken by the Branch, soliciting feedback from five focus groups about the civil system and what works and what doesn't. From those focus groups came the four area of focus: improving litigation management, confronting current discovery issues, enhancing alternative dispute resolution options, and addressing the needs and impact of self-represented parties.

Atty. D'Alesio and the Chief Justice summarized the many proposals and ideas that will be researched, discussed and evaluated as the re-engineering process continues. In the first focus area, the Chief Justice talked about suggestions such as analyzing and developing ways to increase uniformity, consistency and predictability of the litigation process, expanding individual calendaring statewide, discussing the voir dire process particularly with respect to prescreening of jurors and the involvement of the judge in the process; providing training in case management, settlement techniques, and in substantive and evidentiary knowledge; and ensuring optimum utilization of judges, JTRs, non-judicial officers through greater administrative oversight.

The Chief Justice and Atty. D'Alesio then talked about the second focus area, confronting current discovery issues. Many suggestions from the focus groups are worth considering. In addition, many states are currently experimenting with various discovery and litigation reforms such as additional standard disclosure requirements, early mandated discovery, automatic disclosure orders, limits on discovery, depositions and expert witnesses, and expedited litigation tracks with simplified rules and limited discovery. Some states have instituted pilots that include expedited litigation tracks with discovery limitations; others imposed discovery limitations alone; some programs are mandatory; others are voluntary. The practices of other states will be looked at.

The Chief Justice then outlined the suggestions proposed in the third focus area, enhancing alternative dispute resolution options. Many of the proposed suggestions had been recommended by The Commission of Civil Court Alternative Dispute Resolution. Although some recommendations were already implemented, the Chief Justice said the Branch must now do more in this area. She reported that a common theme in the focus groups was that the Judicial ADR program was working, but it can be difficult to find mediators with appropriate expertise and sufficient time to mediate a dispute. One possibility that is under consideration is to have a mediation docket. The first step will involve the chief court administrator's conducting focus groups with judges to obtain feedback on threshold questions that must be discussed in the process of developing a mediation docket.

Atty. Silver commented that the idea of a mediation docket is a good one, and is long overdue. It will address the problem of scheduling mediation sessions and may resolve more cases. Atty. Ury expressed concern with being able to continue the existing J-ADR program, which allows people to schedule mediations with any judge. The mediation docket would be supplemental to the existing J-ADR program.

The Chief Justice also briefly touched on arbitration, which is another type of alternative dispute resolution that will be looked at, particularly with respect establishing uniform criteria for recruiting and selecting attorneys to serve as arbitrators, developing training for arbitrators, and developing ways to solicit feedback and monitor the effectiveness and utilization of the arbitration program.

The Chief Justice and Atty. D'Alesio then discussed the fourth area: addressing the needs and impact of self-represented parties. The Chief Justice pointed out that the Branch has been committed to providing programs and services to assist self-represented parties for many years. For example, the Branch currently has six volunteer attorney programs in foreclosure, family and small claims areas, and court service centers or public information desks in all locations. Consideration will be given to the suggestion that the Branch should expand the volunteer attorney program to more locations and to new areas, such as consumer collection matters. Training and guidance for staff and judges can be developed.

Discussion about the needs and impact of self-represented parties ensued including considering modest and moderate means programs, a Civil Gideon program like the program that just received some funding in New York, and using legal clinics run by the three law schools in the state. Dean Fisher said that an externship is a much less expensive and allows a student to work with an attorney. He mentioned that the large number of people who cannot afford an attorney and the number of students who cannot get a job represents a classic marketing opportunity.

Judge Lager discussed expanding the existing subcommittee on discovery and the workgroup on statutes and rules to address some of the proposals.

The Chief Justice expressed her appreciation to the commission for its efforts, and assured the group that the Branch is firmly committed to this process and will move toward implementation once necessary information and feedback is collected.

Atty. Silver expressed concern at what he saw as a down-sizing of the complex litigation docket. He does not want individual calendaring to supplant the CLD. The Chief Justice assured Atty. Silver and the commission members that would not occur. A brief discussion about the number and granting of applications and the use of complex litigation ensued.

Atty. Yelenak asked about how settlement discussions in individual calendaring cases would be handled because of the possible disqualification of an individual calendaring judge from hearing a court trial if he or she has pretried a case. This is not an issue in a jury case unless there is a courtside issue, such as a CUTPA claim in the case. Judge Taylor said it is very helpful to have the person who understands the case the best be the one who tries to settle it. Judge Lager pointed out that the parties could waive the disqualification if they chose to do so. Additional discussion will take place on this issue.

- IV. Rules – Judge Lager reported that the proposed new rule on sanctions, new section 1-25, was voted out of the Rules Committee and will be voted on by the judges at the annual meeting on Friday together with the *cy pres* proposal that the Civil Commission approved earlier this year and certain technical changes proposed by the commission. If anyone has any other proposals or changes, they can send them to Judge Lager by email.
- V. New Business – Judge Lager told the commission about the new scheduling orders for VO 1 cases and reported that the revision of the existing JD CV 71 scheduling order is in progress.

Attorney Yelenak returned to the subject of jury selection, and reported on a positive jury selection experience in Waterbury that involved prescreening of jurors by the judge. Attorney Cooney talked about a very negative experience his partner had in jury selection, where the judge did not get involved in the process. Atty. Nitzel talked about prescreening through the use of a written questionnaire. It would be helpful if people could agree on witnesses and medical records to be submitted prior to the first day of jury selection so that the information could be given to the venire people earlier. Atty. Silver also agrees with prescreening.

Atty. Noble said that attorneys have agreed that prescreening would be of great benefit, but some presiding judges do not want to have it. Uniformity remains an issue. Judge Abrams said he was initially resistant to the idea of prescreening, but he is now in favor of it, even though it does take some time for the judge. Atty. Yelenak said that a prescreening questionnaire works well with individual voir dire.

Atty. Ury said two things have to be fixed: (1) jury selection and (2) discovery – or all trials will disappear because of the costs.

Judge Berger suggested that technology could be of assistance in developing prescreening, perhaps developing a prescreening questionnaire that could be sent out in advance.

Atty. Nitzel asked if the Branch provided information to jurors about such questions as what does it mean to be self-employed. Judge Lager explained that the Branch provides a great deal of information to jurors in advance. She suggested that the commission review the recommendations in the Jury Committee report to see what they would like to see implemented in civil and send her an email. Judge Lager also suggested training on prescreening could be helpful. The support of the bar for prescreening is important.

VI. Meeting Schedule 2014 – 2015 – The dates for the upcoming year's meetings, which will all be held at 225 Spring Street, Room 4B, Wethersfield at 2:00 p.m. are:

- September 15, 2014
- December 8, 2014
- March 9, 2015
- June 8, 2015

Judge Lager asked that members let her know if the June date conflicts with the meeting dates for CTLA or CDLA.

Judge Lager then thanked the members for their service. Members whose terms are expiring will be receiving re-appointment letters.

Upon motion by Atty. Yelenak and second by Atty. Triplett, the meeting adjourned at 3:20 p.m.