

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT

Monday, September 10, 2012
2:00 pm.

Those attending: Hon. Barbara N. Bellis; Hon. Marshall K. Berger, Jr.; Hon. Patrick L. Carroll III; Hon. Linda K. Lager; Hon. Aaron Ment; Hon. Lisa K. Morgan; Hon. Barbara J. Quinn; Hon. Mark H. Taylor; Atty. David L. Belt; Atty. Victor A. Bolden; Atty. Agnes Cahill; Atty. David W. Cooney; Atty. Joseph D. D'Alesio; Atty. Charles A. Deluca; Atty. Michael J. Dorney; Atty. Deborah Etlinger; Atty. Kimberly Knox (on behalf of Atty. Barry C. Hawkins - CBA); Atty. Kevin R. Murphy; Atty. Catherine Smith Nietzel; Atty. Jonathan B. Orleans; Atty. Rosemarie Paine; Atty. Richard A. Roberts; Atty. Edward Maum Sheehy; Atty. Richard A. Silver (by video conference); Atty. Michael A. Stratton; Atty. William J. Sweeney; Atty. Martha Triplett; and Atty. Frederic S. Ury (by teleconference).

- I. Welcome – The meeting was called to order at 2:10 p.m. Judge Lager and Judge Quinn welcomed the new and returning commission members, who each introduced themselves.
- II. Approval of June 5, 2012 minutes – Upon motion by Judge Berger and second by Atty. Sweeney, the minutes of the meeting of June 5, 2012 were approved unanimously.
- III. 2012 Legislative Update – Judge Lager presented a brief summary of new legislation that would most directly impact civil practitioners.
- IV. Land Use Docket - Judge Berger provided a brief summary of the newly implemented land use docket, available upon referral by presiding judges or requests from counsel or litigants for zoning, subdivision, inland wetlands, environmental and affordable housing matters. The docket will simplify and expedite the handling of administrative appeals, specifically appeals that appear to have serious issues and require additional time and attention. The docket will begin in Hartford, and in subsequent phases, be expanded to other locations in the state.
- V. E-filing – Judge Bellis reported on e-filing developments and issues. A revision to P.B. Section 10-13 that requires electronic service of e-filed documents upon any party who has agreed to accept such service was passed and will become effective January 1, 2013. A special vote of the judges will be taken to permit the new rule to be effective immediately to address short service issues that occur when documents are filed electronically, but “snail mailed” to other counsel and self-represented parties by mail.

Judge Bellis asked commission members for feedback on a proposal to provide attorneys with the option to designate an email address on the appearance form when agreeing to accept electronic service and the option of filing a notice in order to elect or change email service information, including the agreement to accept electronic service and the email addresses to which such service should be sent.

Atty. Roberts moved that the appearance form be revised to permit the addition of two additional email addresses for service. Judge Berger seconded the motion.

Discussion ensued, including whether a rule change was necessary, if designating more than one email address should be allowed, possible problems with enforcing an email address designation, and possible abuse by people designating multiple email addresses. After discussion, Atty. Roberts then revised his motion and moved that a new form be developed that would allow the designation of up to three email addresses for service. Judge Berger seconded the motion. The motion passed with only Judge Ment opposed.

Judge Bellis then reported on changes to the way motions appear on the calendar, including the addition of six days to motions to dismiss, strike and for summary judgment, and the creation of specific legend codes for motions for order of compliance so that they are calendared immediately or only after reclaim in accordance with the Practice Book rules. E-filing automatically calendars motions so this review to ensure compliance is critical.

Judge Bellis also asked the commission members about whether a “free text” field was necessary on system-populated forms, such as the withdrawal form. Counsel and legal support staff have asked for the option of inserting information such as “with prejudice” or “contingent upon payment” on withdrawal of action forms. Currently, the system does not permit additional text. After discussion, the consensus was that no change is needed. Judge Lager will bring this information back to the Judges’ Advisory Committee.

Finally, Judge Bellis and Judge Lager talked about the creation of a form requesting court annexed mediation, which will be known as Judicial ADR. The form will be e-filable and should be available on the website in October.

VI. Rules

A. Workgroup on Intervening Worker’s Comp. Lien Holders – Atty. Triplett reported on the three part proposal, which is based on Assistant Attorney General Lawrence Widem’s suggestion. The proposal encompasses questions that would be added to the existing standard interrogatories for plaintiffs in a personal injury action (Form 202); supplemental discovery that may be served when a plaintiff has received worker’s compensation benefits but there is no intervening plaintiff; and standard discovery for the intervening plaintiff. Members of the commission discussed the three proposals at length. After discussion, the proposed questions were changed to the following:

- Did you make a claim for worker’s compensation benefits as a result of the incident/occurrence alleged in the complaint?
- Did you receive worker’s compensation benefits as a result of the incident/occurrence alleged in the complaint?

A motion was made by Judge Lager that the questions as revised and the commentary as revised by staff to reflect the revised questions be forwarded to the Rules Committee. The motion was seconded by Attorney Dorney, and it was passed unanimously.

Discussion ensued on the second proposal: standard supplemental discovery for a plaintiff who received worker’s compensation benefits in cases in which no intervening plaintiff appears. Discussion included the documents that should be requested, the best way to identify those documents and the scope of the discovery in general.

Several items were added to the production request and to the interrogatories, including the First Report of Injury (Form FRI), Notice of Claim for Compensation (Form 30C), Notice of Intention to Reduce or Discontinue Benefits (Form 36), and Notice to Compensation Commissioner and Employee of Intention to Contest Employee’s Right to Compensation Benefits (Form 43), and the language was changed to refer to “denial” as opposed to “dismissal” of a claim. The language in the commentary will also include “may be served without leave of court” to make clear that the supplemental discovery can be served in appropriate cases without seeking permission from the court.

A motion to accept the language changes and to allow staff to work on the commentary was made by Attorney Stratton, seconded by Attorney Cooney, and approved unanimously.

For the third proposal, standard discovery directed to an intervening plaintiff, Judge Lager suggested making the changes in conformance with those made to the second proposal. Judge Ment moved that the changes be made. The motion was seconded by Attorney Sweeney and approved unanimously.

A discussion ensued as to the impact of these proposed standard discovery requests on a party's right to conduct further discovery of intervening plaintiffs. The consensus of the commission was that the standard interrogatories would only apply motor vehicle and premises liability cases. In all other cases, there would be no restrictions on discovery, and in those motor vehicle and premises liability cases, further discovery would be permitted upon motion to the court. This information should be added to the commentary. In addition, Attorney Cooney suggested that the release the plaintiff is providing to the defendant (see the note after production request number 2) to be given to the carrier is only as to the specific incident or occurrence alleged in the complaint.

The changes the proposed interrogatories, production requests and commentary will be made and reviewed by the commission at the December meeting.

- B. Discovery Subcommittee – Attorney Deluca reported on behalf of the Discovery Subcommittee. The subcommittee has three proposals: (1) the development of standard definitions for Chapter 13 discovery; (2) the development of standard instructions for discovery; and (3) the proposal of a new rule creating a privilege log.

Attorney Orleans discussed the definition proposal, which involves bringing definitions from the local federal rule into the state court rules. Two additional definitions identifying oral communications and an act or event were added. Discussion ensued on the definitions, the applicability of the definitions and the breadth of the two definitions on oral communications (#5) and acts or events (#6). After discussion, the subcommittee will further develop the proposal, work on definitions #5 and #6 to make them less burdensome, make the definitions applicable only to interrogatories, requests for production and requests for admission, clarify the language (b)(iii) of the definitions to preclude the inclusion of “more inclusive definitions”, and revise the “gender” definition.

Attorney Deluca then presented the proposed rule on a privilege log. Currently, the rules do not define “privilege log.” The proposal takes language from federal rule 26(e) to come up with a standardized privilege log. Two questions were discussed. The first is: when should the privilege log be provided to opposing counsel? The second is: should written or electronic communications between a party and its trial counsel be excepted from the privilege log requirement or should such communications created after the commencement of the action be included in the privilege log as required under the federal rule?

Discussion ensued on the questions. The consensus of the commission was that written or electronic communications between a party and its trial counsel withheld on the basis of a claim of privilege or work product protection should be excepted from the privilege log requirement. The commission suggested several options for the time the claiming party would provide or serve the privilege log on the asking party, including upon the request of the asking party, when the objection based upon a claim of privilege is made or within thirty days of filing an objection, upon request of the asking party but prior to filing the good faith conferral affidavit, or as otherwise agreed by counsel.

Atty. Roberts then reported on the proposed standard instructions. The purpose of the proposal is to avoid the inclusion in discovery of the elaborate instructions some attorneys and firms are using. The three options were to have no “approved” form instructions, include some basic instructions or include basic instructions and proposed a rule change that would require the permission of the court to include additional

instructions. After discussion, the subcommittee will revise the proposed standard instructions to incorporate and reference, as appropriate, the Practice Book rules, including the definition of “knowledge, possession or power of the party or person to whom the discovery is addressed”, and the provision that the disclosing party can provide the requested information or documents with “substantially greater facility than it could otherwise be obtained by the party seeking disclosure” set out in Practice Book sec. 13-2. The subcommittee will also look at the possibility of separating instructions for interrogatories from instructions for production.

The subcommittee will report back to the commission on all three proposals in December.

- C. Expert Discovery – Judge Lager reported that at the June meeting, a discussion took place as to a possible conflict between Sec. 13-29 and 13-30 of the Practice Book. This issue is being referred to Atty. Deluca’s subcommittee on discovery for review. Also, Judge Berger and Judge Ment will be looking into how other states handle remote expert depositions in order to report back to the commission at the next meeting.
- D. Workgroup on Civil Rules and Statutes – Judge Berger reported that the work group had again discussed the omnibus motion that has been submitted at least twice to the Rules Committee and rejected, but decided not to re-submit it at this time. Proposed rule changes with respect to Sections 10-30 (Motions to Dismiss), 10-40 (Motion to Strike), 10-8 (Time to Plead) and a revised proposal on 17-44 (Motions for Summary Judgment) that was proposed in 2003 will be submitted to the commission before its next meeting. The group will also discuss special defenses and will look for feedback from the commission on proposing the elimination of some esoteric rules in the Practice Book.

- VII. Offers of Compromise – Judge Lager reported that the Branch is implementing a process whereby remote public access to a case file will be blocked from any location other than the courthouse from the date jury selection starts in the case. Although most jurors understand and comply with the oath and the court’s orders, removing remote public access during the trial will avoid the temptation to look something up online. The “lock out” during the trial is an attempt to strike a compromise between protecting the parties and allowing public access.

At the last meeting, the commission had discussed the problem of a juror viewing an offer of compromise, and members were asked to submit any proposals to amend the sections on offers of compromise. The lock out option would prevent a juror from viewing the offer of compromise from home, but the issue of its availability in the file still exists. In June, the suggestion was made to change the process so that the offer itself was exchanged by the parties, but only the notice that the offer had been made would be filed with the court. Judge Lager suggested that such a proposal be drafted.

- VIII. Teleconferencing – Judge Lager reported that she has discussed with the civil presiding judges the use of teleconferencing as an option for routine events like status conferences. Some judges will use teleconferencing for pretrials and even hearings on the record. She encouraged commission members to continue to request teleconferencing and to be aware that in many locations, video-conferencing is also available.
- IX. New Business – Attorney Silver asked that a discussion of the rates charged by private court reporters be put on the agenda for the next meeting of the commission. The item will be added to the agenda for the next meeting. Judge Lager would like the commission to discuss whether the certificate of closed pleadings is useful or necessary. Attorney Stratton would like the commission to review the time between filing and resolution for cases in the various judicial districts. Statistics will be put together for the next meeting on disposition rates by case type and also on statewide juror utilization rates.

Upon motion and second, the meeting adjourned at 4:35 p.m.