

Minutes  
Civil Commission  
Monday, September 15, 2014  
2:00 p.m.

Those in attendance: Hon. Patrick L. Carroll III (ex officio), Hon. Elliot N. Solomon (ex officio), Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. William H. Bright, Jr., Hon. Lisa K. Morgan, Hon. Mark H. Taylor, Atty. David M. Belt, Atty. James A. Budinetz, Atty. Agnes Cahill, Atty. Robert J. Chomiak, Atty. David W. Cooney, Atty. Joseph D. D'Alesio (ex officio), Atty. Michael J. Dorney, Atty. Douglas Mahoney, Atty. Ralph J. Monaco, Atty. Catherine Smith Nietzel, Atty. Rosemarie Paine, Atty. Louis R. Pepe, Atty. Agostinho J. Ribeiro, Atty. Paul A. Slager, Atty. Alinor C. Sterling, Atty. Martha Triplett, Atty. William P. Yelenak, and Atty. Angelo A. Ziotas.

- I. Welcome – The meeting was called to order at 2:08 p.m. Judge Lager welcomed new members and designees from the CBA, CDLA and CTLA, who serve as liaisons to those organizations. Judge Lager announced changes on the existing Discovery Subcommittee, which is now chaired by Attorney Cooney. The subcommittee will have the following members: Atty. DeLuca, Atty. Dorney, Atty. Orleans, Atty. Paine, Atty. Roberts and Atty. Silver. Judge Lager reminded the members that if they are unable to attend a commission meeting, they can designate someone to attend in their place. Please email Judge Lager to let her know.

Judge Lager thanked Atty. Peggy George for preparing the legislative update handout that contains information on the statutory changes that most directly impact civil litigation.

- II. Approval of Minutes –Upon motion by Judge Berger and second by Judge Abrams, the minutes were unanimously approved.
- III. Civil Re-engineering – Judge Lager briefly talked about the civil re-engineering concept paper that was circulated to the commission members. Before Judge Carroll and Atty. D'Alesio describe some of the steps that are already being taken in connection with the re-engineering process, Judge Lager asked the committee to discuss one of the proposals: prescreening of potential civil jurors before individual voir dire. The consensus in the focus groups conducted as part of the re-engineering process was that the bench and the bar consider the lawful prescreening of such jurors. After discussion, a motion was made by Judge Lager, and seconded by Judge Bellis, that the Civil Commission create a subcommittee on civil jury voir dire prescreening. The motion was approved unanimously. The subcommittee is to be chaired by Judge Abrams and the members are Atty. Cahill, Atty. Monaco, Atty. Triplett, Atty. Yelenak, and Atty. Ziotas.

Judge Carroll and Atty. D'Alesio then briefly updated the commission on steps that have been taken in connection with civil re-engineering, including the appointment of a steering committee, the formation of a committee, chaired by Judge Bright, to look at discovery and expedited litigation; the formation of a mediation docket development committee, chaired by Justice Schaller; the

development and administration of surveys of each judicial district on short calendar and caseflow scheduling practices; and the current status of individual calendaring and preliminary evaluations of the program. Judge Carroll emphasized that civil re-engineering is an ongoing process. The committees will be seeking input from the Bench and the Bar, and any recommendations from these committees will come back to the Civil Commission for comment.

#### IV. Rules

- A. Referral from Rules Committee – The Rules Committee had referred a proposal by Atty. Joanne Faulkner regarding possible remedies for boiler plate objections to discovery requests and those made at the time of depositions. The commission had received copies of the proposal. The proposal essentially seeks (1) to require an objecting party who provides some information notwithstanding an objection to written discovery to identify whether something has been withheld; (2) to require that evidence be submitted at deposition even though it is objected to; and (3) to preclude, without the need to file of a motion to compel, a party from introducing any information or documents that are not produced in response to a discovery request. Discussion ensued about the extent of the problem, the existing mechanisms within the rules to address these kinds of issues, the projected benefits of individual calendaring and the development of more standard interrogatories in addressing these issues. After a lengthy discussion, Judge Bellis moved that the Civil Commission notify the Rules Committee that it reviewed and discussed the proposal and does not think it is necessary to draft or amend any rules at this time. Atty. Yelenak seconded the motion. The motion passed unanimously.
  
- B. Workgroup on Civil Rules and Statutes – Judge Berger reported on the rules the workgroup is proposing: (1) eliminating the recognizance/bond for prosecution requirement in the statutes and the rules; (2) making minor changes to P.B. Sec. 11-12 (Motion to Reargue) and 11-13 (Short Calendar process and lists); and (3) revising P.B. Sec. 10-46 et seq. (Answer, Special Defenses and Replies). He asked the Commission members to review the second and third proposals for discussion at the next meeting, and to discuss the proposed changes to bond for prosecution and recognizance today. After brief discussion, Judge Berger moved that the Commission make the proposed recommendations to the Branch to advise the legislature to amend C.G.S. Sections 185 – 190 and C.G.S. Sec. 47a-23 as proposed herein and recommend to the Rules Committee that Practice Book sections 8-3 – 8-12, section 14-7A, and sections 23-45 through 23-47 be amended as reflected in the proposal. This motion was seconded by Atty. Ziotas. Judge Lager then moved to amend the proposal as follows: that the Branch propose legislation and subsequently forward the workgroup’s proposals to the rules committee to eliminate the requirement of a recognizance and bond for prosecution for the reasons stated in the proposed commentary to the proposal. The amendment was accepted. The amended motion was seconded by Judge Taylor, and passed unanimously. The proposed statutory changes will be forwarded for inclusion in the Judicial Branch’s legislative package. If the statutory changes are made, the proposed rules will be forwarded to the Rules Committee.

Judge Berger then discussed some of the current proposals the workgroup is looking at, including amending service of process procedures for serving the state, municipalities and corporations; revising the offer of compromise statutes and rules; revising the prejudgment remedy processes; revising the process for applying to take a foreign deposition; and proposing the repeal of C.G.S. Sec. 52-190b.

The commission then briefly discussed the proposed amendments to P.B. Sec. 10-46. The proposal seeks to simplify a complicated process by itemizing in a single place common law and statutory special defenses. Many comments were made, including the need to identify common law vs. statutory defenses, eliminating redundancy in the list, the need to provide guidance on the appropriate use of the identified defenses, and the need to consider possible timing issues for defendants. Members are asked to solicit comments, suggestions and concerns on the proposed revisions to bring back to the commission. Comments can be sent to Judge Berger.

- V. Scheduling Orders – The new scheduling order, which replaces the existing JD CV 71, is available online. It is a fillable form and will also be available as a template for judges to use electronically. This form specifically references the expert discovery schedule form (JD CV 115). Some concerns were expressed about the parties' ability to agree to alter parts of the scheduling order without the court's approval, but the court is free to not use the order form at all or enter additional orders to tailor the scheduling order.
- VI. New Business – Atty. Chomiak raised a problem with existing standard discovery for plaintiffs, which requires the disclosure of any prior disability rating for injuries other than those complained of in the complaint, but has no similar question regarding any prior disability rating for the specific injuries complained of in the action. Atty. Chomiak also suggested that the subcommittee should consider adding some specific Medicare questions to standard discovery. The Discovery Subcommittee will consider both of these items and review the existing standard discovery for any other possible revisions.
- VII. Next Meetings – Judge Lager reminded the commission of the next meetings dates: December 8, 2014, March 9, 2015, and June 1, 2015.

Upon motion by Judge Taylor and second by Judge Bellis, the meeting was adjourned at 3:25 p.m.