

MINUTES
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, September 16, 2013
2:00 pm

Those in attendance: Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Aaron Ment, Hon. Lisa K. Morgan, Hon. Barbara Quinn, Hon. Mark H. Taylor, Attorney David L. Belt, Attorney Victor A. Bolden, Attorney Robert Chomiak, Attorney Michael J. Dorney, Attorney Deborah Etlinger, Attorney Timothy S. Fisher, Attorney Kimberly A. Knox, Attorney Ralph J. Monaco, Attorney Catherine Smith Nietzel, Attorney Jonathan B. Orleans, Attorney Rosemarie Paine, Attorney Louis R. Pepe, Attorney Richard A. Silver, Attorney William J. Sweeney, Attorney Martha Triplett, Attorney William P. Yelenak, and Attorney Angelo Ziotas.

Meeting called to order at 2:07 p.m.

- I. Welcome – Judge Lager welcomed the members to the 2013 – 2014 term of the Civil Commission. The members introduced themselves, and Judge Lager expressed how fortunate the Commission is to have so many talented members, with such a depth and breadth of experience. She then expressed the appreciation of the Commission to Judge Quinn, who is attending her final meeting as the Chief Court Administrator. She has been a regular attendee since November of 2007, and has been consistently supportive of the work of the commission and civil practitioners.
- II. Approval of June 18, 2013 Minutes – Upon motion by Judge Taylor, and second by Attorney Sweeney, the minutes were approved unanimously.
- III. 2013 Legislative Update – Judge Lager briefly discussed the legislative update that had been prepared by Atty. George, and shared with the commission members.
- IV. E-filing Update – Judge Bellis then presented a brief update on e-filing:
 - In May, self-represented parties were permitted to e-file, and about 400 documents have been e-filed by 200 self-represented parties who obtained electronic access to their files.
 - As of September 20, 2013, the Judicial Branch will be accepting American Express and Discover credit cards in addition to MasterCard and Visa.
 - Beginning in January, 2014, the Judicial Branch will make documents available to the public on the Internet in civil cases with a return date in 2014.
 - When files are open on the Internet, the clerk can shut off online access to a jury case when voir dire begins, although it remains available online to attorneys and self-represented parties, and at the courthouse to the public.
 - Legend code options available electronically have been streamlined and made more specific to ensure that the codes are selected. Legend codes tell the Judge, the clerk and other parties what is filed, and tell the system when and if to calendar a motion. Choosing the correct legend code and avoiding the use of “motion-see file” is important.
 - In August, the Branch implemented e-mail updates that allow anyone to sign up for an e-mail update when activity takes place on a file, including the filing of documents, entry of orders or the scheduling of events. They are a step toward electronic service in place of the certification process.

- Almost one million electronic orders have been entered since e-filing became mandatory.
- Family cases will be part of the e-filing system at the end of next year.

Judge Lager asked the commission member to assist in getting the word out about the upcoming online availability of documents in civil files with a return date of 2014 and forward. It is important that filers think carefully about the necessity for filing any kind of sensitive or confidential information, and consider possible options like submitting such information under seal or redacting unnecessary sensitive or confidential information. The Judicial Branch would be happy to collaborate with bar organizations in presenting programs on this topic.

V. Rules - Judge Lager indicated that this topic is the biggest item on the agenda. The Civil Commission has developed a wonderful relationship with the Rules Committee, which will continue. Judge Berger is now a member of the Rules Committee, and has promised to act as a voice for the Commission, as Judge Bellis has done in the past.

A. Report re: Bench-Bar Foreclosure Committee's Review of Proposed Revision to Practice Book § 17-45 - Judge Taylor reported the results of the Bench-Bar Foreclosure Committee's review of the proposal to revise Sec. 17-45 on summary judgment procedures. The Committee discussed the proposal as a large group, and then sent it to a subcommittee for discussion. The subcommittee and the Committee agreed that foreclosures are quite different from regular civil actions, and the consensus was that there was no need to change the rule for foreclosures. The Bench-Bar Foreclosure Committee voted to request an exemption from the proposed changes. Attorney Sweeney explained that the workgroup, which had proposed the changes, had discussed foreclosures and did not see a need to carve out an exception.

In foreclosure matters, a summary judgment motion is typically filed in situations when a party is self-represented, and the plaintiff cannot file a demand for disclosure of defense. Instead, the self-represented party files an answer, and the only way to bring the case to a conclusion is by means of summary judgment. These motions in foreclosures are typically driven by the plaintiffs, not defendants, and the issues are far more limited: whether the plaintiff owns the note, for example. Complex issues do not usually exist in foreclosures, and the additional time and filings in the proposed procedure would not be particularly helpful. In fact, it could add to the fees and costs the defendant/debtors have to pay and might be a further tripping point for an unwary self-represented party.

Attorney Sweeney expressed concern that carving out this exclusion for foreclosure matters could lead to additional exclusion requests from the collections bar, for example. Judge Lager pointed out that many of the same considerations mentioned by Judge Taylor in terms of foreclosure matters apply equally in collections matters. The Commission has already voted to change the rules on obtaining a judgment under Sec. 17-23, making it more stringent for the plaintiff, and perhaps the Commission might want to consider this option for summary judgment matters in the collections area.

Substantive discussions on the proposal will take place at the next meeting in December. Judge Bellis expressed concern that the perspective of the debtors be taken into account in these discussion. Judge Lager encouraged the members to talk to people on both side of this issue prior to that meeting.

B. Workgroup on Civil Rules and Statutes – In the absence of Judge Berger, who is at a Rules Committee meeting, Attorney Sweeney reported on the two proposals from the Workgroup on Civil Rules and Statutes. The first proposal is a new section 1-25. The rule covers both party conduct and counsel's conduct with respect to filing documents and pleadings that are not in good faith. A similar rule exists in

the appellate rules, Section 85-2. The basic text of section (a) of this proposal was taken from Rule 3.1 of the Rules of Professional Conduct. It talks about what is “not good faith” and it is not meant to prevent the filing of complaints or motions that seek to extend or modify existing law. Currently, although some judges agree that they have the inherent authority to control the proceedings before them, and to impose fines, costs and expenses, or other sanctions against parties, many judges are reluctant to exercise that authority, particularly in the situations discussed in subsection (b)(3) and (b)(4) of the proposed rule.

Judge Bellis pointed out Section 4-2 of the Practice Book, which states that the attorney’s signature on a document constitutes certification that the signed has read the document, that there is good ground to support it, that it is not interposed for delay, and that the signed has complied with Section 4-7, on personal identifying information. The consensus of the group was that a specific rule is needed. The discussion included the observation that there is some aggressive litigation by lawyers and some extraordinarily litigious self-represented parties. The aggressive practices and frivolous pleadings may not occur frequently, but when they do occur, it is incredibly expensive for the clients.

Further discussion ensued, including the possibility of charging a fee for filing a motion for sanctions, the possible impact of such a rule on self-represented parties, the danger of such a rule being used as a sword rather than as a shield to protect parties from frivolous or groundless filings, and the observation that the federal courts have even more explicit authority for sanctions, but there is not an overwhelming number of motions for sanctions filed.

Judge Lager also pointed out that Chapter 1 of the Practice Book applies to family, juvenile and criminal cases as well as civil cases, so that it would need to be shared with the chief administrative judges in those areas as well.

Judge Ment moved that the Commission adopt Section 1-25 as proposed. Attorney Pepe seconded the motion.

Discussion continued. Attorney Pepe expressed the view that this rule is just another tool for use in maintaining what we want to see in the litigation process, and the judges can be relied upon to be judicious in exercising the power. Judge Morgan asked whether there would be an evidentiary hearing on what was frivolous and whether sanctions could be imposed on a judge’s own motion or whether a party would have to file a motion. Attorney Nitzel pointed out that the rule does not require a motion, and permits *sua sponte* action by a judge. Judge Ment agreed that the rule gives the Judge the widest possible discretion. Attorney Bolden pointed out that the standard the court would use in determining whether sanctions were appropriate is set forth in subsection (a), which comes from the Rules of Professional Conduct.

The Commission voted on Judge Ment’s motion to adopt Section 1-25 as proposed. The Commission voted in favor of adopting Section 1-25 as proposed, with Judge Bellis, Judge Morgan and Attorney Ziotas voting against the motion.

Judge Lager then asked the Commission to give her the authority to refer the proposal together with commentary to the other Chief Administrative Judges. Attorney Orleans made the motion and Judge Abrams seconded the motion to allow Judge Lager to refer the proposal. The Committee voted unanimously in favor of the motion.

Attorney Sweeney then briefly discussed the second proposal from the workgroup to eliminate subsection (3) “improper venue” from Section 10-30 (a) as a ground for a motion to dismiss. The grounds for a motion to dismiss will be part of Section 10-30 effective January 1, 2014, as a result of amendments proposed by the Civil Commission and approved by the Judges in 2013.

Judge Taylor moved that the proposed revision eliminating “improper venue” from Section 10-30 be adopted. Attorney Monaco seconded the motion. The Commission voted unanimously in favor of the motion.

- C. Referrals from Rules Committee – Judge Lager then discussed the two letters forwarding certain proposals from the Rules Committee to the Civil Commission for discussion. One was Attorney Faulkner’s proposal to incorporate language into Section 17-25 from Section 17-46 regarding the requirements for affidavits filed in support of and in opposition to motions for summary judgment. Attorney Faulkner’s letter contained some examples of unreliable submissions the Commission found troubling. The Commission decided to table further discussion until the next meeting so that Judge Lager could speak with Attorney Faulkner and gather applicable case law. The second letter was from Attorney Joel Ellis, seeking a further amendment to the new Section 10-39 (formerly Section 10-41) regarding the required specificity of reasons in a motion to strike. The proposal was referred to the Workgroup on Civil Rules and Statutes, which will report back at the December meeting.

VI. New Business

- A. Mediation Division of Superior Court – Attorney Richard Silver talked about the possibility of having a mediation division, which could be a more effective and efficient method of handling mediation. Attorney Silver discussed the meetings that the Chief Justice is having on civil reengineering with the members of the bar, and suggested that before having further discussions about a mediation division, the Commission should wait for an indication from the Chief Justice as to the direction she wants to go.

Judge Lager discussed the information on J-ADR that was distributed to the members of the Commission which included the request form, scheduling options, and a list of J-ADR mediators, and asked that they disseminate this information to members of the bar. The process of scheduling J-ADR has been made easier, including allowing attorneys to schedule directly with a judge or go directly to a caseflow coordinator to find an available judge and providing an E-filable J-ADR request form with a decentralized process that sends the request to the caseflow coordinators. The branch has scheduled a skill building programs to provide training for judges on settlement strategies and techniques.

- B. Other New Business – No other new business was raised.

- VII. Next Meetings - Judge Lager asked about the Commission’s meeting scheduled for June 2, 2014. The date conflicts with the annual meeting of the CTLA. The Civil Commission will switch its meeting to June 9, 2014, as long as that date does not conflict with any other bar meetings. The remaining meetings for the 2013 – 2014 Civil Commission term are:

- December 9, 2013
- March 10, 2014
- June 9, 2014