

MINUTES
CIVIL COMMISSION
September 20, 2010

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday September 20, 2010.

Members in attendance were: Hon. Barbara M. Quinn, Hon. Patrick L. Carroll III, Hon. Marshall K. Berger, Jr., Hon. Linda K. Lager (chair), Hon. Aaron Ment, Hon. Richard Robinson, Attorney Joseph D. D'Alesio, Attorney Charles A. DeLuca, Attorney Michael Dorney, Attorney Frank Finch, Attorney Kevin Murphy, Attorney Jonathan Orleans, Attorney Louis Pepe, Attorney Catherine Smith Nietzel, Attorney Edward M. Sheehy, Attorney Richard A. Silver, Attorney Michael Stratton, and Attorney Frederic S. Ury,

1. Welcoming Remarks and Call to Order: Judge Quinn called the meeting to order at 2:07 p.m.
2. Introduction of Chief Administrative Judge – Civil – Judge Quinn introduced Judge Lager as the new Chief Administrative Judge - Civil. Judge Lager briefly discussed her planned visits to the judicial district courts and invited members to contact her if they are interested in setting up informal meetings when she is visiting the courts. Some dates have already been set: October 6 in Stamford; October 27th in New Britain; and November 10th in New London. Other dates will be set in the near future. Members are also welcome to contact Judge Lager by email or phone with any concerns or suggestions.

Judge Lager also suggested that at the next meeting, the members of the civil commission examine the role of the commission, particularly in the context of the Public Service and Trust Commission and the tasks being undertaken by the other commissions. The Civil Commission was originally formed to address the backlog of jury trials, which has been addressed. The members should talk about what the mission and the membership of the commission should most practically be.

3. Approval of April 19, 2010 minutes – Upon motion and second, the minutes were unanimously approved.
4. Update on Electronic Discovery Rules – Attorney D'Alesio reported on the status of the electronic discovery rules. The rules were referred back to the Commission by the Superior Court Rules Committee. A packet distributed at the meeting included some questions and comments from Judge Bellis, one of the members of the Rules Committee. After discussion, Attorney DeLuca agreed to review the changes that have been made to the rules since the electronic discovery rules were originally submitted to the Rules Committee and to address the concerns raised by Judge Bellis with respect to the proposed rules. Attorney Orleans and Attorney Sheehy will work with Attorney DeLuca. Judge Lager suggested that it could be helpful to the Rules Committee to see the proposed rules and the existing rules side-by-side so that it is easier to view the changes.
5. Discovery subcommittee - Attorney DeLuca, who chaired the Discovery Subcommittee, reported on several matters that had been addressed by the Committee.
 - a. Update on Special Masters proposal – The subcommittee had suggested this rule initially in connection with the electronic discovery, but at the suggestion of Judge Hiller, the committee had expanded the language of the rule to apply it to all discovery. At the last meeting, Attorney DeLuca had agreed to rework the rule so that it covered all the details such as the contents of the order and the determination of the payment of the fees. Although the subcommittee drafted additional language, Attorney DeLuca reported that it was the sense of the subcommittee that the bar in general does not see a need for this rule. After discussion, which included the inherent power of a judge to assign a special master or to order the appointment of one in response to an agreement of the parties, a

motion was made by Attorney Murphy to permanently table the rule. The motion was seconded by Attorney Sheehy. The vote to permanently table the rule was unanimous.

- b. Update on proposed amendment to P.B. Section 13-30(j) – The subcommittee drafted a revision to 13-30(j) to provide that the person who notices the deposition must pay for the original transcript and a copy of the deposition. If an adverse party or anyone else wants a copy of the deposition, he or she would pay for it. The proposed rule is in accord with the practice in 26 out of 32 states looked at by the subcommittee.

Discussion ensued regarding the potential for abuse, the definition of a “reasonable fee,” and whether the plaintiff is benefited by this rule. Attorney DeLuca pointed out that this is the federal practice and there is no suggestion that there has been abuse of this procedure in federal cases. After discussion, it was suggested that the words “at his or her own expense” be inserted in the rule in place of “upon payment of a reasonable fee.”

Attorney Ury moved that the Commission approve the rule, and Attorney DeLuca seconded the motion. Hon. Barbara M. Quinn, Hon. Patrick L. Carroll III, Hon. Marshall K. Berger, Jr., Hon. Aaron Ment, Hon. Richard Robinson, Attorney Joseph D. D'Alesio, Attorney Charles A. DeLuca, Attorney Michael Dorney, Attorney Frank Finch, Attorney Kevin Murphy, Attorney Jonathan Orleans, Attorney Louis Pepe, Attorney Catherine Smith Nietzel, Attorney Edward M. Sheehy, Attorney Richard A. Silver, and Attorney Frederic S. Ury voted to approve the rule. Attorney Stratton voted against approving the rule. The motion passed.

Judge Lager directed that the proposed language be reviewed by Legal Services and asked Attorney DeLuca to draft a brief memo or letter to submit to the Rules Committee explaining the nature of and reason for the proposed change. He agreed to do so.

- c. Update on questions for standard interrogatories – Attorney DeLuca provided a brief overview of the impact of the Medicare, Medicaid and SCHIP Extension Act of 2007. The portion of the act that impacts civil practitioners provides that providers of liability insurance are required to determine the Medicare enrollment status of all claimants and report that status to the Secretary of Health and Human Services. The reporting requirement under the act is effective January 1, 2011, and the information reported goes back to October 1, 2010. Currently only the recipients of Medicare must be reported. A substantial penalty (a thousand dollars a day) is imposed if providers fail to make the reports.

The standard interrogatories do not include questions that would provide the liability carriers with the information needed to comply with the act. The subcommittee has proposed making additional interrogatories that would solicit the necessary information part of the standard interrogatories.

Discussion ensued on the proposed additional interrogatories, including the applicability of the act to any settlement from October 1, 2010 forward, the applicability of the act to persons eligible and **reasonably anticipated to be eligible** for Medicare within the next thirty months and to people with various diseases or conditions, including ALS and end stage renal disease, problems presented by possible future medical expenses for Medicare eligible parties, possible HIPAA concerns, the difficulty of making payment within thirty days, and the need to obtain a final demand letter from Medicare before settling a case. Issues associated with complying with the act will make resolving cases difficult and some understanding on the part of the Bench and the Bar will be required.

Judge Lager discussed the need to have revisions to the standard interrogatories go to the Rules Committee. Several judges are attending the CBA seminar on the issues presented by the act and its reporting requirements, and the information from the seminar will be shared and discussed by the judges. The option of circulating among the judges a set of interrogatories that are agreed upon by both the plaintiff and defense bar was suggested. Attorney DeLuca and Attorney Stratton will work together to develop

standard interrogatories that would provide enough information to indicate the triggering of the reporting requirement but do not get into too much detail. They will report out at the next meeting of the Commission.

6. Proposed Revision to P. B. Section 10-29 – Judge Berger discussed his proposal for revising Section 10-29 to eliminate the service of exhibits in cases by marshals. He proposes that exhibits should not be attached to the complaint at all, although they can be referred to in the complaint. Once a party has appeared, the exhibits could be sent with a certificate of service by the plaintiff. The elimination of attached exhibits would result in cost savings and would not be detrimental to the litigants.

After discussion, a motion to remove this item from the Civil Commission agenda and work on the proposed revision internally was made by Attorney Sheehy and seconded by Attorney Pepe. The motion was approved unanimously. Judge Berger will work with Attorney Horwitch on this revision.

7. Limitations on the duration of depositions – Judge Lager first reminded the Commission of the standing order on discovery disputes. A form has been drafted to make it easier for the bar to take advantage of the standing order, and the standing order is being revised to conform it to e-filing. The Discovery Subcommittee had initially suggested this limitation, but the suggestion met with considerable resistance at the last meeting of the Commission. At that time, it was agreed that the proposed limitation would be discussed at a future meeting. After brief discussion, a motion was made by Attorney Stratton and seconded by Judge Berger to permanently table this proposal. The motion was passed unanimously.
8. Elimination of Judgment files – The discussion of the proposal that judgment files be eliminated was tabled so that the Commission could seek input from appellate attorneys and appellate judges. Attorney Gallagher was unable to attend the meeting, but he had emailed comments on this proposal to Judge Quinn. After brief discussion, the Commission agreed to have Attorney Gallagher's email distributed to the members, and to obtain input from the appellate clerks, the Chief Justice and Justice Katz. This proposal will be put on the agenda for the next meeting.
9. New Business – A number of issues were raised for discussion.

- a. Addition of Judges to the Complex Litigation Docket – Attorney Silver expressed concern over the number of judges currently assigned to the Complex Litigation Docket. The number of judges assigned to the docket has varied, but it has never exceeded ten. Attorney Ury pointed out that the cost of additional judges is a significant factor because of the necessary support staff and space. Attorney Silver and Attorney Stratton pointed out that it can take an extremely long time to get cases tried. Although it appears that the caseload is down, it seems that fewer cases are settling, which creates a delay in trials.

Judge Quinn and Judge Lager said that a review of the complex litigation docket is in process. The review is looking at various aspects of the docket, including the types of cases and the number of cases on the docket, the scheduling of cases for trial, the number of trials, and the assignment of cases to a complex litigation location. An extensive discussion ensued, including the suggestion that an extra judge could be made available to handle cases, the need for a firm trial date, the long wait for a trial if the initially scheduled date cannot be kept, the length of time some trials on the complex litigation can take, the determination that a case should be on the complex litigation docket, and the possibility of returning a case to the originating district for trial.

Judge Lager invited the members of the Commission to contact her regarding problems or issues they encounter.

- b. Adequate number of jurors available for significant cases in civil litigation – Attorney Silver had asked that this issue be discussed because in some districts, particularly Stamford, it can be difficult to get a sufficient number of jurors from which to select a jury

for a civil case. Judge Lager provided the commission with information on the efforts of the Public Service and Trust Commission Jury Committee, which is addressing, among other issues, juror utilization. A discussion ensued as to the source of the problem: management of jurors, prioritization, the criteria for excusing jurors prior to voir dire, the possibility of scheduling extra jurors based upon upcoming trials, and the logistical problems (i.e., parking for jurors) impacting the number of jurors that can be summoned.

Judge Lager asked the Commission to continue to share their experiences with her, both positive and negative.

- c. Counsel pay for their own depositions – This issue was already discussed.
- d. Attorney DeLuca raised a question about filing of papers with the appellate courts. Notices of appeal can be filed in any judicial district, but from that point forward, all filings must be done in Hartford. Would it be possible to file any appellate papers in the local courts? Weather and traffic issues can make getting to Hartford difficult at times. Judge Lager suggested adding this question to the discussion with the clerks of the appellate courts regarding the elimination of judgment files. Judge Berger said that the discussion with the appellate court has already started.
- e. Judge Quinn talked about the New Hampshire discovery pilot program rules packet that was distributed to the Commission. The Chief Justice and Judge Quinn heard about the program, which provides a more streamlined pleading and discovery practice for smaller cases, at a meeting. Judge Lager mentioned the Commission's prior proposal for an omnibus motion directed at the pleadings, and suggested that the Commission discuss the concept of some differential case management at its next meeting, including identifying cases where time is of the essence.
- f. A proposed draft of amendments to Practice Book Sections 13-7, 13-8 and 13-10, eliminating cover sheets, was briefly discussed. The elimination of cover sheets was recommended by the Discovery Subcommittee. After a brief discussion, Judge Lager suggested that this item be taken up at the next meeting.
- g. Attorney D'Alesio provided information on the work of the Committee on Court Recording Monitors and Court Reporters, which is discussing how the records and transcripts are produced. Judge Berger and Attorney D'Alesio will provide the Commission with information on the work of this committee at the next Commission meeting.
- h. Judge Carroll asked for any comments or feedback about e-filing from the members. He said that e-filing is working well from the perspective of the judges and is a benefit to the clerks. The Bar is happy with e-filing as well. Remote access to electronically viewable documents is currently provided to any attorney with an appearance in a file and access to electronically viewable documents in any file statewide is provided at the judicial district courthouses. Before providing remote access to everyone, the Judicial Branch is trying to ensure through rule and practice that personal identifying information is not included in documents filed with the court unless it is required by statute, rule or order of the court. Currently, the inclusion of this information is being monitored.

The next meeting is scheduled for December 6, 2010.

The meeting adjourned at 3:47 PM.