

Minutes  
CIVIL COMMISSION  
225 Spring Street, Fourth Floor, Room 4B  
Wethersfield, CT  
Monday, September 21, 2015 at 2:00 pm.

Those in attendance: Hon. Elliot N. Solomon (ex officio); Hon. William H. Bright, Jr.; (chair), Hon. James W. Abrams; Hon. Barbara N. Bellis; Hon. Marshall K. Berger, Jr.; Hon. Linda K. Lager; Hon. Aaron Ment; Hon. Cesar A. Noble; Hon. Angela C. Robinson; Hon. Mark H. Taylor; Atty. David M. Belt; Atty. Agnes Cahill; Atty. William H. Clendenen, Jr.; Atty. David W. Cooney; Atty. Karen L. DeMeola; Atty. Michael J. Dorney; Atty. Karen Noble (CDLA); Atty. Ralph J. Monaco; Atty. Jonathan B. Orleans; Atty. Rosemarie Paine; Atty. Agostinho J. Ribeiro; Atty. Richard A. Silver; Atty. Alinor C. Sterling; Atty. Chris Bernard and Atty. Angelo A. Ziotas.

- I. Welcome and Introduction of members – Judge Bright called the meeting to order at 2:02 p.m. He began by thanking Judge Lager for all of her work as chair of the Civil Commission. The new members then introduced themselves.
- II. Approval of Minutes – Upon motion by Judge Berger, and second by Judge Taylor, the minutes from the last meeting were unanimously approved.
- III. Subcommittee Reports
  - A. Prescreening jurors – Judge Abrams then reported on the work of the subcommittee on prescreening jurors. He is still assembling the screening options that will then be reviewed by the subcommittee. He will have something to present at the next meeting of the Commission. Judge Bright mentioned that some of this material may be presented at the fall meeting of the civil judges to obtain some advance feedback.
  - B. Discovery - Attorney Paine, who is reporting on the work of the Discovery Subcommittee, is at a deposition and will arrive shortly. This item will be passed for the moment.
- IV. Workgroup on Civil Rules and Statutes - Judge Berger reported on behalf of the workgroup. The first proposal was to amend Sec. 13-4(b)(1) by adding language to clarify that a written report, if it exists, should be included as part of the expert disclosure. Discussion ensued, including possibly adding the word “final” to describe report, whether the change was intended to require the creation of a report; if there is a continuing duty to disclose a written report prepared after the expert disclosure; and whether to add “existing” to modify “report.” After discussion, Atty. Sterling moved and Judge Abrams seconded a motion to amend the proposed draft of Sec. 13-4(b) to read: “...In addition, the disclosure shall include the following: (1) Except as provided in subdivision (2) of this subsection, the field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; the substance of the grounds for each such expert opinion; and the written report of the expert witness, if any. The report shall not be filed with the court.....” The motion passed unanimously.

Judge Berger then discussed the draft proposal to extend the time for responding or objecting to interrogatories to sixty days, or within such shorter or longer time as the judicial authority may allow, and to eliminate the request for extension of time from the rules. Atty. Monaco asked for clarification as to whether a party filing supplemental responses to interrogatories would have to sign the response. Judge Bright pointed out that the language changes were not substantive in terms of signing

of the interrogatories, and after discussion, the decision was made to leave the language as it is since it does not seem to be a problem. If necessary, a party could file a motion asking that the supplemental disclosure be signed.

Similar changes have been made to the sections on production requests in connection with the time for responding or objecting to the production request. Section 13-10 has also been reorganized and broken down into several subsections. Subsection (f) has also been amended to include language requiring an objecting party to specifically state the reason for the objection and further state whether any responsive materials are being withheld on the basis of the stated objection.

Judge Abrams moved, and Judge Taylor seconded a motion to submit the proposed draft of Sections 13-7, 13-8 and 13-10 to the Rules Committee. After brief discussion, the motion passed unanimously.

Judge Berger then reported on the change to Sec. 17-45 regarding the time limit for filing a response to a motion for summary judgment and building in the fourteen day period permitted by the rule on reply memoranda so that the motion for summary judgment will be placed on the short calendar to be held not less than sixty-five days following the filing of the motion, unless otherwise ordered by the judicial authority. Discussion followed. Judge Lager asked whether the rule even needed subsection (c) to come on the calendar, thinking that the objection would come up on the calendar more quickly than 65 days. She is concerned about the interaction between a scheduling order and the rule, and whether the proposed language would require the clerks and/or caseflow to monitor motions for summary judgment. Judge Taylor asked whether this section was applicable to summary judgment motions in foreclosure matters. Judge Bright suggested that the workgroup consider carving out foreclosures and C40s from the extended time frames in the proposed revision.

The workgroup will consider these issues, and report back at the December meeting on the foreclosure/C40 question and on the concerns about short calendar scheduling.

Judge Berger then discussed the proposed revision to Practice Book Section 2-16 on Attorneys Appearing Pro Hac Vice. The proposal is to add language to subsection (2) of the rule. Apparently, some attorneys have raised the argument that “proceedings” does not include a deposition. Some clients balk at paying for both local counsel and the PHV attorney to attend a deposition so allowing local counsel to seek permission of the court to be excused is an attempt to make it less onerous and costly for the litigants. Discussion ensued: whether judges would have sufficient control over a PHV who violates our rules of practice or conduct; concern that this language would increase the number of applications to appear without local counsel at proceedings; whether a judge already has the authority to waive the presence of local counsel; whether “proceedings” should be defined; concerns over ethical issues with out-of-state counsel; the fact that the federal courts already have a rule like this, which works well; and that the rule potentially impacts family, criminal and juvenile.

After discussion, the proposed draft was revised to read “(2) a member of the bar of this state must be present at all proceedings, including depositions, unless otherwise excused by the judicial authority.” Judge Bright will refer this proposal to the chief administrative judges of criminal, family and juvenile, and commission members will bring the proposal back to their organizations for feedback.

Judge Berger said that the workgroup hopes to have a legislative proposal on prejudgment remedies for the December meeting.

The commission then returned to Item III. B. on the agenda: the report of the Subcommittee on Discovery. Atty. Paine reported that the subcommittee had revised the prior proposals on cell phone

use and loss of consortium in response to the comments from the Civil Commission at the June meeting. First, the proposed standard interrogatories on cell phone use were revised to reduce the amount of time covered by the question to go back to simply asking about “cell phones” not “any mobile communication device.” There was then a lengthy discussion regarding the burden this proposed standard discovery could impose on the litigants in terms of cost and additional time to obtain the records; potential invasion of privacy issues; whether some evidence should be provided to trigger this question to avoid a “fishing expedition”; whether cell phone records from a period after the accident should be part of the inquiry; and how frequently this issue comes up. After discussion, the commission agreed to table the discussion and return the proposal to the subcommittee with the direction to make the inquiry even more narrow and targeted in terms of the records and the time of the incident.

The commission next discussed the subcommittee’s revised proposed loss of consortium standard discovery and suggested a further revision to the language in question #15 to state that the changes are ones the respondent “claims were caused by the accident.” The commission expressed concern over the breadth of the language in question #16, specifically “counseling regarding your relationship”; concern over whether the question delves into matters that are protected by privilege; and finally whether five years is before and after the accident or is too long a time.

Attorney Sterling also mentioned that Sec. 13-6 might have to be amended. Would these interrogatories and request for production be used in any case in which there is a loss of consortium claim, or would they be limited to use in cases for which there is standard discovery?

The subcommittee will look at the question of privilege and other concerns the commission raised, and will have a revised proposal for the December meeting. Judge Taylor will share information that he has concerning the privilege issue with Atty. Paine and the subcommittee.

Atty. Cooney mentioned that the subcommittee was also working on uninsured motorist coverage discovery and would have a proposal for the December meeting on standard discovery for those kinds of cases.

## V. New Business

- A. Committee on Discovery and Expedited Litigation – Judge Bright provided an update on the work of the Committee, formed as part of the civil re-engineering process and charged with looking at the civil litigation process and developing ways to better manage and dispose of cases in a more efficient way, with a particular focus on reducing the costs of discovery and providing an appropriate and potentially more streamlined litigation process for different case types. Some of the recommendations from the report that the commission received have been referred to the subcommittee on discovery and the workgroup on civil rules and statutes. Others are in progress.

Concern was expressed about the three tiers of cases based upon case types mentioned in the report. Judge Bright explained that the tiers are basically what we have now. Regardless of its initial tier classification, any case type, including a medical malpractice case, could go to the complex litigation docket by application or request from a judge. The complex litigation docket remains available for any complicated case, regardless of type.

Judge Bright briefly discussed the proposal to create a voluntary pilot program for smaller value cases for which there would be no individual voir dire, streamlined discovery and faster trial dates. He then touched on other recommendations of the committee, including requiring parties to state

whether they are withholding materials based upon a discovery objection, and adding a proportionality requirement to the discovery rules.

Judge Bright asked that the members reserve any comments until the next meeting of the Civil Commission. The committee that developed these proposals comprised a broad spectrum of attorneys – geographically, type and size of practice and experience. The proposals were already submitted to the Chief Justice and the chief court administrator and we are now seeking the input of the commission members.

Judge Bright discussed the concept of Civil Gideon – providing lawyers in civil matters for people who are unable to afford them. The Chief Justice has mentioned this concept in several speeches, and Atty. Clendenen, as president of the Connecticut Bar Association is making this a goal of his term. The areas of need include housing, foreclosures, and family, among others. Judge Bright wants to put together a subcommittee of the Civil Commission to look at these issues. Atty. Clendenen is interested in participating in the subcommittee.

- B. Limited Scope Representation –A rule extending limited scope representation to all civil, small claims and housing cases was voted on by the judges, and it is effective January 1, 2016.
- C. Civil Re-engineering – Mediation Centers – Judge Bright reported that the Branch is preparing two mediation centers: one in Waterbury, which will be available in September; and a second in Hartford, which will be available later this year. The centers have more space, break-out rooms and more technology, including video-conferencing equipment. J-ADR is still being used to schedule mediations, and if parties are interested, attorneys can discuss the use of the center with the judge.
- D. Other - Judge Bright mentioned an issue raised by Judge Wilson regarding videos posted on YouTube. Our current rule only covers surveillance videos. This question has been referred to the subcommittee on discovery.

- VI. Upcoming Meeting Dates – The dates for the remaining Civil Commission meetings are as follows: December 7, 2015, March 14, 2016, and June 13, 2016.