

**Minutes  
Civil Commission  
October 22, 2008**

The Civil Commission met in the Supreme Court Attorney's Conference room at 231 Capitol Avenue in Hartford on Wednesday, October 22, 2008 at 1:00 PM.

Members in attendance were: Judge Barbara Quinn, Judge Patrick Carroll, Judge Arthur A. Hiller, Judge Marshall Berger, Judge Linda Lager, Attorneys Joseph D. D'Alesio, Charles A. DeLuca, Michael J. Dorney, Frank H. Finch, Jr., Robert L. Hirtle, Kevin R. Murphy, Louis R. Pepe, Edward Maum Sheehy, Richard A. Silver, Michael A. Stratton, William J. Sweeney, and William P. Yelenak.

Guests: Chief Justice Chase Rogers, Attorney Tais Ericson and Attorney Janice Calvi

The Honorable Barbara Quinn called the meeting to order at 1:20 p.m.

1. Approval of minutes of February 28, 2008 – The first item on the agenda was the approval of the minutes. Upon motion and second, the minutes were unanimously approved.
2. Public Service and Trust Commission – Chief Justice Rogers addressed the Commission regarding the work of the Public Service and Trust Commission and the status of the implementation of the strategic plan. The Chief Justice presented a list of issues and suggested activities relating generally to case management, civility among the bar, discovery, foreclosure, and the development of an elderly court. The Chief Justice asked that the Civil Commission work quickly and efficiently to develop recommendations to address the issues so that the recommendations could be presented to her and be implemented within the year.
3. Update on Complex Litigation Committee – Judge Hiller reviewed the report of the Complex Litigation Committee. The Committee had divided into three subcommittees and discussed many ideas related to the Complex Litigation docket. The Committee has made its recommendations, but the report has not yet been reviewed by the Chief Justice. Judge Hiller reviewed the report, including recommendations on naming a presiding judge of complex litigation, extending the length of a complex litigation assignment, increasing the number of complex litigation docket locations, providing input of the bar in the assignment process and revising the process of filing objections to transfer of a case to complex litigation. No action is required of the Commission, but comments are welcome.
4. Proposed amendments and rules re electronically stored information (ESI) – Atty. DeLuca presented proposed rules on the discovery of electronically stored information (ESI). The federal courts have rules on discovery of ESI, and the majority of states have rules or have proposed rules on ESI. Initially, rules on ESI first came up in 2007, after the National Conference of Commissioners on Uniform State Laws adopted uniform rules on electronic discovery. Subsequently, a subcommittee of this Commission was appointed to study the issues, and the subcommittee determined that rules should be adopted. In conjunction with the Connecticut Bar Association Committee on the Courts, rules were developed and have been approved by the subcommittee. The rules were adapted from the uniform rules and revised to fit Connecticut practice. (Proposed uniform rules were submitted to the Rules Committee and were referred to Judge Hiller and the Civil Task Force.) After extensive discussion and suggested revisions, Attorney DeLuca will modify the proposed rules in accordance with the discussion (eliminating Sec. 13-36 regarding special masters).

Attorney Sheehy then moved that the rules be approved as modified. Attorney Sweeney seconded the motion. The rules on ESI as modified were approved unanimously.

5. Foreclosure Committee Update – Judge Mintz reviewed the recommendations of the Bench-Bar Foreclosure Committee which had been appointed to the Chief Justice. The Committee and subcommittees recommendations include the advertisement of foreclosure sales on the branch website, the display of a property address on the case detail screen on the website, the expansion of access to e-filed documents to the public, proposed uniform standing orders on foreclosures by sale and on foreclosures, and the revision of four practice book rules to provide more protection for the owners of the equity. Copies of the proposed rules are available from Judge Mintz. The committee also revised some forms and drafted new forms to simplify the process overall. After discussion of the recommendations, including web posting of foreclosure by sale advertisements and pending federal legislation on a moratorium on all foreclosures, the Commission moved on to the next related item.
6. Foreclosure mediation program – Proposed changes to Practice Book rules –The committee discussed recommendations on rule changes to address conflicts between the Practice Book and the foreclosure mediation program submitted by Attorney Raphael L. Podolsky, including clarifying responsibility for the service of the mediation request and the possibility of treating the request for mediation as an appearance. Atty. Tais Ericson then presented an update on the foreclosure mediation program. Of eligible foreclosure cases to date, 26% have had mediation requests filed. Of the 427 cases that have been actually mediated and closed out, 226 have resulted in homeowners' being allowed to remain in their homes. The program is having an impact and will continue to be necessary according to the projections on the numbers of future foreclosures.
7. Adding Experienced Trial Lawyers to the Rules Committee of the Superior Court – Atty. Silver suggested that the Civil Commission study whether Connecticut should have a civil advisory committee to provide direct consistent involvement of the trial bar on an ongoing basis in the rule-making process. Atty. Silver discussed the federal system, which has advisory committees comprised of judges, lawyers and advisers/consultants that meet on a regular basis. He suggested that the Civil Commission study whether a Civil Advisory Committee that would meet on a regular basis to comment on proposed rules and propose new rules would be appropriate. Extensive discussion ensued on whether a civil advisory committee would be duplicating or diluting the efforts of the Civil Commission and the CBA Committee on the Courts, the interaction of an advisory committee with the Civil Commission and the Civil Task Force, and the need to streamline the rule recommendation process so that there is a single entity that looks at proposed rules.

The suggestion was made that a subcommittee be formed with representation from the Civil Commission, and criminal (the Criminal Practice Commission), family (the Workgroup on Family Rules) and juvenile (Juvenile Task Force). The origin of the Civil Task Force was briefly discussed.

Atty. Silver moved that the subcommittee to study the issue of forming an advisory committee on rules be formed. Atty. Stratton seconded the motion. The motion was passed unanimously.

The subcommittee members from the Civil Commission will be Attorneys Silver, Sweeney, DeLuca and Hirtle.

8. Short Calendar Update – Atty. Janice Calvi from Superior Court Operations provided the Commission with an update on the status of short calendar revisions. The marking of short calendar matters electronically through E-Services will become mandatory as of December 1, 2008. Only attorneys with an exclusion from E-Services requirements, and self-represented parties will be permitted to mark short calendar matters by telephone, and no fax markings will be accepted.

9. Special Master in Discovery Process – Judge Hiller reported that he had discussed with Complex Litigation Docket judges providing the option to appoint special masters in the discovery process and the consensus was that it would be a good option to have available. He asked if Atty. DeLuca could adapt the proposed rule on the use of special masters in connection with electronically stored information to apply to special masters in general. Discussion ensued as to who would serve as special masters and how the process would work. After discussion, the consensus was that the rule should be a broad rule that would allow the judge to appoint a special master (not limited to trial referee, lawyer, etc.), regardless of whether the parties agree, who would recommend rulings to the court for the court's use. Atty. DeLuca will redraft the rule on special masters and bring it back to the Commission.
10. Other Business – The Commission will meet next on Thursday, December 11, 2008 regarding the items mentioned by the Chief Justice to discuss how the Commission members will propose to address the issues. A list of all of the issues will be sent out prior to the next meeting.

The meeting adjourned at 3:00 p.m.