

MINUTES
CIVIL COMMISSION

Monday, December 5, 2011
2:00 PM

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday December 5, 2011.

Members in attendance: Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. Robert L. Holzberg, Hon. Linda K. Lager (chair), Hon. Aaron Ment, Hon. John W. Pickard, Attorney David L. Belt, Attorney Victor A. Bolden, Attorney David W. Cooney, Attorney Joseph D. D'Alesio, Attorney Michael J. Dorney, Attorney Keith Bradoc Gallant, Attorney Catherine Smith Nietzel, Attorney Jonathan B. Orleans, Attorney Edward Maum Sheehy, Attorney Richard A. Silver (via teleconference), Attorney William J. Sweeney, Attorney Frederic S. Ury, and Attorney William Yelenak.

1. Welcome – Judge Lager welcomed the members of the Commission.
2. Approval of September 12, 2011 minutes – Upon motion and second, the minutes were unanimously approved. Attorney Silver was not present when the vote was taken.
3. Work Group on Civil Rules and Statutes – Judge Berger reported that the work group is discussing a number of options for addressing the large number of requests and motions for extension of time that appear on the short calendars, such as lengthening the period of time for discovery or having a fixed time for discovery. The work group has discussed the difference between motions and requests, reasons for continuing that distinction, ways to ensure timely status conferences, eliminating the return day, proposing other methods of service, and other ideas for streamlining and improving civil practice. Some of the proposed changes would involve statutes as well as rules.

Judge Lager raised the question of prejudgment remedies. Discussion was had regarding a review of the PJR to determine whether a PJR remains an appropriate option today and if so, whether the process is too cumbersome. After general discussion, it was determined that the work group on civil rules and statutes would include the PJR in its discussions.

4. Discovery Subcommittee - Attorney DeLuca was unable to attend today, but Judge Lager, on his behalf, reported that the subcommittee has not yet met but is hoping to meet before the next Commission meeting in March. Attorney DeLuca would like to raise again the possibility of using special masters for discovery disputes. Two years ago, the subcommittee presented a proposal on e-discovery special masters, but the Commission declined to pursue it. A new Practice Book rule providing for the appointment of a Discovery Special Master in family cases will become effective January 1, 2012. (Sec. 25-32B) Judge Lager read the text of the rule, which provides allows the judicial authority to specify the duties, authority and compensation of the Discovery Special Master and to specify how compensation shall be allocated between the parties. The suggestion was made that the Commission look at the possibility of proposing a similar rule for civil cases. Discussion ensued regarding the use of special masters, including concerns about ordering people to go to and pay for a special master to resolve a dispute; the advantages of a special master to handle particularly complex or extensive discovery matters; the likelihood of parties' agreeing to the assignment to a special master; the need for consistency in rulings on discovery matters; the judges' inherent power to order the appointment of a special master; the possible use of complex litigation judges, if there were enough of them, to handle specific discovery issues; the greater complexity presented by increasing e-discovery issues; and the need to develop a clearly defined process for objecting to a special master's ruling.

After discussion, the Commission agreed to table this matter until the March meeting, and ask Attorney DeLuca to address the question of special masters at that time. Judge Lager will seek input from civil judges, particularly the complex litigation judges, on the discovery issues they have encountered.

5. E-Filing - Attorney Ericson provided a brief update on electronic filing, including the recently-implemented public access to notices and orders in e-filed cases on the website, the upcoming elimination of order pages from civil motions pursuant to an amended Practice Book Section 11-1, and the addition of a certification requirement on appearances because of changes to Practice Book Section 3-4. The Branch will no longer provide status of appearance notices to counsel and self-represented parties.

A discussion was had regarding the problem of “short service” that occurs when a matter is on the short calendar and opposing counsel files a reply or response electronically after the marking period closes but does not provide a copy to other counsel electronically. Attorney Orleans suggested that electronic service should become the default and parties should be required to “opt out” of it rather than consent to it.

A discussion was had on the electronic filing of an offer of compromise and other electronically filed documents that could be viewed by jurors, and others, once the court files are publicly available. Jurors are given instruction on not using the Internet, but other steps may be needed.

Judge Lager briefly spoke about Practice Book Section 4-7 and personal identifying information. Notices regarding personal identifying information are being sent to members of the bar with appearances in court files and to bar associations and paralegal associations for distribution to members, and notices will also be posted on the Branch’s website. She suggested using a three-step process with respect to personal identifying information: (1) Is there any personal identifying information in the documents being filed? (2) Is it necessary to file the document/information? (3) If it is necessary, redact the personal identifying information before filing the document.

Attorney Smith Nietzel pointed out that the plaintiffs’ bar should be reminded that the rule only covers what is filed with the court. It does not apply to compliance with discovery.

Judge Lager emphasized that compliance with the joint trial management orders for civil court and civil jury trials is extremely helpful to the court, particularly the sections on pre-marking exhibits and e-filing the joint trial management report. She asked that the members encourage everyone to look at the trial management orders and make sure that they comply with those orders.

6. Jury Selection – Judge Lager reported that she had conducted a survey of presiding judges about the availability of panel jury selections in response an inquiry from Attorney DeLuca at the last Commission meeting. Panel jury selection is offered in almost all districts, but it is not frequently accepted. Most districts have available judicial resources to preside over panel jury selection. In the districts where it is not offered, the reasons given were that there was no interest in it or the district lacked the necessary space and judicial resources to offer it. Judge Lager invited any member of the Commission to speak with her privately regarding situations where panel jury selection was requested but declined by the Court.

Judge Lager then reported on some preliminary data collected by surveys conducted on juror utilization in each district from April 18, 2011 to November 19, 2011. During that time period, the majority of the cases that started jury selection were civil. Approximately half of the approximately 16,000 jurors impaneled for civil cases were actually questioned. More than 65% of the civil cases resolved before verdict with most resolving during jury selection. At this time, no conclusions have been drawn from the data. In response to Attorney Silver’s

question, Judge Lager noted that these statistics reflect only cases that start jury selection. Overall, only 2–3% of cases are tried. Discussion ensued regarding the possible reasons why matters resolve short of trial. Judge Lager will report back to the Commission once the data has been analyzed further.

7. Standing Orders – This agenda item was covered during earlier discussion.
8. New Business – No new business was brought before the Commission.
9. Next Meeting – The next meeting of the Commission will be March 12, 2012. As a result of a conflict with the CTLA annual meeting, the Commission will reschedule its June meeting to Tuesday, June 5, 2012 at 2:00 p.m. Notice will be provided.

The meeting adjourned at 3:45 p.m.