

MINUTES  
CIVIL COMMISSION  
December 6, 2010

The Civil Commission met in room 4B at 225 Spring Street, Wethersfield, CT on Monday December 6, 2010.

Members in attendance were: Hon. Patrick L. Carroll III, Hon. Marshall K. Berger, Jr., Hon. Linda K. Lager (chair), Attorney Joseph D. D'Alesio, Attorney Michael Dorney, Attorney Joseph A. Mengacci, Attorney Kevin Murphy, Attorney Jonathan Orleans, Attorney Richard A. Silver, Attorney William Sweeney, Attorney Frederic S. Ury and Attorney William Yelenak.

1. Welcoming Remarks and Call to Order: Judge Carroll called the meeting to order at 2:10 p.m., explaining that Judge Quinn is away and sends her regrets.
2. Approval of September 20, 2010 minutes – Upon motion and second, the minutes were unanimously approved.
3. By way of background, the original mission of the Civil Commission, which was convened in November of 2000 by the Honorable Francis M. McDonald, Jr., was to address a significant backlog of jury trials. Over the ensuing years, the Commission has had a role in many tasks that have improved civil practice including the reduction of the jury list, substantial short calendar reform, and uniform markings statewide, and ways to address discovery issues.

Judge Lager then raised the issue of the composition of the Commission. Currently, the Commission has approximately twenty members, with Judge Quinn and Judge Carroll serving as *ex officio* members. Members serving on the Commission have been consistent since its formation in 2000. The current members of the Commission have a tremendous amount of legal experience, but there is little representation of those with less experience or those who may have a different perspective, including solo practitioners, small practices, and minority practitioners.

The question for the Commission is whether these factors should result in any change in the size or composition of the Commission and whether service on the Commission should have a term limit. Discussion ensued on the questions raised. Responses included concern with making the commission too large, making it more difficult to manage and to meet, thereby decreasing its efficiency and efficacy; and concern about duplicating efforts of other committees or commissions or organizations. In the past, the presidents of the CTLA, the CDLA and the CBA used to sit on the Commission, by virtue of their office. The suggestion is that the presidents of these organizations could be included in a rotating capacity on the Commission. It was also suggested that adding some representation from minority litigators to the Commission would be appropriate.

Discussion then returned to the mission of the commission. The Civil Commission has been a nuts and bolts civil practice organization, and it would be unwise to stray from the focus on dealing with and resolving issues that affect civil practitioners. The existence of other committees that are charged with foreclosures, civility and decorum and other areas that are perhaps tangential to the mission of the Civil Commission was also discussed. The Commission also talked about the need to let the Bar know that the Civil Commission exists and the identity of the members to facilitate the communication of any issues to the Commission and through the Commission, to the Branch.

Discussion then returned to the question of increasing and diversifying the membership of the Commission. It was pointed out that a benefit to including representation from the CBA, CTLA and CDLA is that any change can be communicated and implemented more readily with the cooperation of these organizations. The concern would be to avoid a large-scale increase in the size of the Commission, but to include people who are involved in the day-to-day handling of cases, including minority members, younger lawyers, and women.

After extensive discussion, Judge Lager summed up the main functions of the commission. The Civil Commission serves: as a forum where bar and bench can communicate regarding issues that impact the day to day handling of civil cases in our courts; as an incubator for new ideas and reforms; as a place for the Branch to present new initiatives and obtain feedback; as a group that proposes rules and amendments to rules; as a place to which the Rules Committee can refer rules for comment; and as a source of continuity and collective memory on civil matters.

The consensus of the group was that a more formal process for including input from bar leadership should be put into place. The following motion was made by Judge Lager and seconded by Attorney Sweeney:

The presidents of the Connecticut Bar Association, the Civil Defense Lawyers' Association and the Connecticut Trial Lawyer's Association should be invited to participate as members of the Civil Commission during their terms themselves or to appoint a designee to participate in their place.

After discussion, the Commission voted unanimously to approve the motion.

Attorney Silver then moved and Attorney Yelenak seconded a motion to add two trial judges to the Civil Commission. After brief discussion, the motion was approved unanimously.

The Commission then discussed the implementation of term limits. Discussion included the benefits of term limits; the general trend toward having term limits on Branch committees and commissions; the discretion on the part of the chair to extend a stated term; the need to consider the perception of the bar about the Commission if there are no term limits; and how the implementation of term limits would impact the members currently on the Commission.

After discussion, Attorney Ury moved and Attorney Silver seconded a motion to implement a three-year term limit for Civil Commission members. The Commission approved the motion unanimously.

4. Rules – The Commission next discussed the pending proposed rule changes.

- a. Electronic discovery – The proposal from Attorney DeLuca was provided to the members of the Commission, although he was unable to attend the meeting. The proposal handed out is a new version of what had been circulated before. Attorney DeLuca believed that the revised version addressed the concerns raised by Judge Bellis, and he will be discussing it with her. Judge Lager invited comments from the group, assuming that it would be helpful if the committee gave its view on these rules.

After discussion, it was the sense of the group that the changes to the rules regarding electronic discovery as proposed would be useful. Attorney Yelenak moved and Attorney Orleans seconded the following motion:

Attorney DeLuca has the authority to make appropriate adjustments to the proposed rule to address the concerns of Judge Bellis and the Rules Committee, and to work with Attorney Horwitch and Attorney Ericson and commission staff to put the proposed changes into the format that the Rules Committee prefers.

After a brief discussion, the Commission voted unanimously to approve the motion.

- b. Update on proposed amendment to Section 13-30 (j) of the Connecticut Practice Book – The Commission had approved the proposed amendment to Section 13-30 (j) at its last meeting in September. Attorney Orleans and Attorney DeLuca worked with Attorney Horwitch on formatting the rule and preparing drafter's commentary. Attorney Orleans noted that the rule as approved did not provide that a deponent could obtain a copy of his or her own deposition at his or her own cost. A version of the proposed amendment that

added the words “or the deponent” to the earlier approved version was provided to the Commission. Attorney Silver moved and Attorney Yelenak seconded the motion to approve the revised amendment, as proposed by Attorney Orleans

After a brief discussion, the Commission voted unanimously to approve the motion.

By a motion made by Attorney Orleans and seconded by Attorney Ury, the commission unanimously voted to approve the drafter’s comments to the rule as well.

- c. Practice Book Sections 13-7, 13-8 and 13-10 – The purpose of these amendments is to eliminate the requirement of a cover sheet on objections to discovery requests. After brief discussion, Attorney Yelenak moved and Judge Berger seconded a motion to approve the proposed amendments and comments, which was unanimously approved.

Judge Lager will forward these rules to the Rules Committee.

- d. Civil Pleading Rules – Judge Lager provided a brief update on the rules regarding streamlining civil pleadings. The proposed rules have been tabled by the Rules Committee. A discussion ensued regarding the history of these proposed rules, which were forwarded to the Rules Committee by Judge Pellegrino in 2004. At that time, the Rules Committee designated its own subcommittee to look at these proposals, which addressed only the request to revise and the motion to strike. Those pleadings were to be combined so that there would be a single pleading addressed to the complaint.

After further discussion regarding communication with the Rules Committee, Judge Lager said that she would discuss with the Rules Committee the role of the Civil Commission and how it could work more effectively with the Rules Committee.

- 5. MMSEA of 2007 Standard Interrogatories – The Commission understands that the CDLA and the CTLA are working on standard interrogatories to comply with the new reporting requirements of the Medicare, Medicaid and SCHIP Extension Act of 2007. The reporting deadline has been delayed until October 1, 2011. Based upon this information, the Commission will table this matter.
- 6. Judgment File and Appellate papers filed anywhere statewide – Judge Lager provided a brief update on the elimination of judgment files and the filing of appellate papers. The question was raised as to whether these two issues would be more appropriately raised before the Advisory Committee on Appellate Rules. After discussion, the consensus was to keep these matters on the agenda of the Civil Commission. Attorney Sweeney agreed to contact Attorney Gallagher to obtain a copy of an email he had sent regarding judgment files. The Commission will discuss these questions further at the next meeting.
- 7. Differentiated Case management – Judge Lager briefly reviewed differentiated case management, a concept that has been around for 15 years, and involves looking at different categories and types of cases to determine what treatment cases should receive. She then invited feedback from the members about whether there is any interest in pursuing the concept further here. A discussion ensued. Attorney Ericson will provide a link to the National Center for State Courts’ materials on differentiated case management, and the Commission will discuss this at the next meeting.
- 8. Update on Committee on Court Recording Monitors and Reporters – Judge Berger provided a brief summary of what is being recommended and piloted by the Committee on Court Recording Monitors and Reporters. The full report of the Committee and its recommendations will be posted on the Branch’s website in the near future.
- 9. Revised Standing Order Re Discovery and depositions disputes – Judge Lager provided information on the revised discovery and deposition dispute standing order and the newly developed form. The process is available for any case within six months of its scheduled trial date. The form helps keep a record of the events and expedites the scheduling process.

Attorney Orleans suggested that the form be revised to require that the moving party be identified because the required signatures sometimes are indecipherable. The form will be revised to require that the name be typed as well.

10. New Business - Attorney Yelenak raised a concern about e-filing and lack of personal contact with caseflow when scheduling the continuation of a pretrial. Attorney Yelenak's concerns will be looked into by Attorney Kierstead.

In response to concerns raised by Attorney Sweeney regarding coordination of the existing committees and commissions, Judge Carroll pointed out that the committees formed under the Public Service and Trust Strategic Plan are tracked by support staff on an ongoing basis.

11. Next meeting – The next meeting will be scheduled for March 14, 2011 at 2:00 PM. The Commission will attempt to meet on a quarterly basis. If possible, the dates for the meetings for the year will be determined and disseminated on an annual basis.

The meeting adjourned at 4:30 PM