Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, December 7, 2015 at 2:00 p.m.

Those in attendance: 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. Mark H. Taylor; Atty. Chris Bernard; Atty. William H. Clendenen, Jr.; Atty. Joseph D. D'Alesio (ex officio); Atty. Karen L. DeMeola; Atty. Michael J. Dorney; Atty. Scott Harrington (guest); Atty. Victoria Metaxas; Atty. Ralph J. Monaco; Atty. Catherine Smith Nietzel; Atty. Jonathan B. Orleans; Atty. Rosemarie Paine; Atty. Patricia Cruz Fragoso (in place of Atty. Agostinho J. Ribeiro); Atty. Richard A. Roberts; Atty. Richard A. Silver; Atty. Alinor C. Sterling; Atty. William J. Sweeney; and Atty. Angelo A. Ziotas.

I. Welcome – Judge Bright called the meeting to order at 2:07 p.m.

II. Approval of Minutes – Upon motion and second, the minutes from the meeting of September 21, 2015 were unanimously approved.

III. Subcommittee Report

- Prescreening jurors – Judge Abrams presented the Judicial Prescreening Subcommittee Memo and report. Their charge was to develop questions for prescreening jurors once they are divided into individual panels for each case, and after the judge addresses the panel on the specifics of the case and some basic juror "do's and don'ts" and the attorneys address the panel. The judge would then ask jurors a series of questions, and if a juror's answer is in the affirmative, he or she would then be interviewed individually. The subcommittee developed a list of questions that the judge can use as part of the prescreening process. Potentially, any of the questions developed by the subcommittee could be used as part of a questionnaire, depending upon the judge's interpretation of Sec. 51-240(c) of the General Statutes. The questions are broken down into six subsections, including familiarity with the participants, juror scheduling conflicts and juror's attitude toward litigation. Judge Abrams moved the adoption of the report; and Atty. Monaco seconded the motion.

  Discussion ensued. Judge Berger suggested eliminating the subsection (c) of the statute to allow greater flexibility in prescreening about general matters through technology, while still providing for individual voir dire. The group approved the concept of judges doing prescreening, although concern was expressed about any delays for jurors waiting for a judge to be available, and about wasting a judge's time asking about scheduling conflicts. Some concern was also expressed about the impact on an attorney's ability to interact and follow up on responses if the judge is doing the prescreening.

  The members then went through each subsection. The prescreening questions on familiarity with the participants or juror scheduling conflicts presented no issue. Judge Bellis suggested adding "eldercare" to question B. 1 c. so that it reads "child care and elder care obligations." After a brief discussion, the decision was to add "family care obligations" to encompass all possibilities (elder care, adult child, etc.)

  The group expressed concern about the judges asking the questions listed in sections C through F. Judge Abrams suggested that since some judges will do prescreening, it would be helpful to provide these questions as an option for them. Judge Bright suggested that providing these questions to the bar as well would allow the attorneys to choose the questions and also have the opportunity to follow up on the answers during individual voir dire.

Judge Bright proposed that these questions be sent out to the civil judges with a cover memo telling the judges that these are the questions the Civil Commission came up with as a guideline, and that the attorneys would agree prior to or at the trial management conference on the level of prescreening. The questions are a resource meant for both the bar and the judges, and are not intended to infringe upon individual voir dire in any way.

The possibility of amending C.G.S. 51-240(c) to allow a questionnaire on availability/conflict information was discussed. Judge Abrams made a motion that the commission should submit a proposal to the branch to amend Section 51-240(c) to permit the use of a questionnaire on demographic, biographic and scheduling issues. Judge Berger seconded the motion.

Discussion ensued, including concerns about confidentiality, and Section 51-215, and the impact on criminal. (This proposal is only about prescreening in civil cases.)

The motion was then passed unanimously, with Atty. Ziotas abstaining, pending the language of the final draft proposal.

The commission then returned to the pending motion on accepting the report of the committee. The report was unanimously accepted.

The discussion then turned to the questionnaire, again agreeing with the use of sections A and B, but also reiterating concerns with infringing on the ability of the attorneys to ask questions and follow up on potential juror's reactions and answers in connection with section C through F.

Judge Bright will send the prescreening questions (A through F with the minor revision to section B) out to all the civil judges along with a memo stating that the sense of the Civil Commission is that section A and B should be covered, and sections C through F should only be covered if the lawyers agree. Otherwise, the judge should allow the attorneys to proceed with individual voir dire.

Judge Abrams said that the Judicial Branch should continue to collect data on the length of individual voir dire, and Judge Bright thanked the committee Prescreening Jurors Subcommittee for its work.

IV. Workgroup on Civil Rules and Statutes – Judge Berger reported that the workgroup has discussed five proposals. Three of them will be discussed today. Discussion ensued on the proposal to eliminate P.B. Section 13-19, which permits filing a demand for disclosure of defense. Concern was raised about disposing of cases if a defendant files an answer without merit or fails to file an answer. There are options for handling these situations, including defaults or a motion for summary judgment.

Judge Berger moved that the proposal to eliminate this section be sent to the Rules Committee. Judge Noble seconded the motion. The motion passed without opposition.

Judge Berger then discussed the proposal to amend the section on pro hac vice attorneys. The original proposal from the workgroup was to establish that depositions were proceedings under the rule and to allow local counsel to be excused from attending the deposition with the permission of the court. That proposal was amended to incorporate a proposal from the Connecticut Bar Association's Committee on the Unauthorized Practice of Law establishing a process by which an attorney may request permission to appear pro hac vice in any matter before any Connecticut state or municipal agency, commission, board or tribunal. This committee believes that this amendment is necessary in

light of the Connecticut Supreme Court opinion in Persels and Associates, LLC v. Banking Commissioner, 318 Conn. 652 (2015).

Discussion ensued, including the responses of the chief administrative judges for criminal, family and juvenile to the original proposal that would allow the court to excuse local counsel from attendance at a deposition, the inherent power of a judge to excuse attendance without any rule, the existence of a similar rule in the federal courts, and the potential negative impact, ethical implications, and potential for exposing local counsel to professional liability claims that could result from allowing out-of-state counsel to practice here without supervision of local counsel.

After discussion, Judge Ment moved to table the motion, with Atty. Sweeney seconding the motion. The motion was defeated.

Discussion then continued. Judge Lager suggested that there should be a separate rule for an attorney appearing PHV in an administrative proceeding. She moved that the proposal amending Sec. 2-16 be amended to delete the language regarding administrative proceedings and the commentary regarding the Persels case to leave only the deposition language. Judge Bright seconded the motion.

Judge Bellis then asked if the proposal still needed, "unless otherwise excused by the judicial authority". Discussion followed on whether the motion had removed that language. Judge Bellis then made a motion, which was seconded Atty. Sterling to remove the language. The motion was passed with Judges Bellis, Ment, Noble and Taylor, and Attorneys Clendenen, Meola, Metaxas, Monaco, Paine, Roberts, Silver, Sterling, Sweeney and Ziotas voting in favor; and Judges Abrams, Berger, Bright and Lager, and Attorneys Dorney, Orleans and Triplett voting against it.

Further discussion ensued about allowing counsel to agree on attendance by local counsel and the economic cost of requiring both out-of-state and local counsel to attend depositions. Judge Ment then moved the question.

The motion to approve and send to the Rules Committee the proposal with the language "including depositions" following the word proceedings was passed with Judges Abrams, Bellis, Bright, Ment, Noble, Attorneys Clendenen, Dorney, Meola, Metaxas, Monaco, Paine, Roberts, Silver, Sterling, Sweeney and Ziotas voting in favor; and Judges Berger, Lager, Taylor, and Attorneys Orleans and Triplett opposing the motion.

Judge Berger then reviewed the proposal on increasing the time for responding to and scheduling a hearing on a motion for summary judgment. He reported that the workgroup was unanimous that no exception should be made for foreclosures and contract collections matters. Judge Berger moved and Atty. Clendenen seconded the motion to submit the proposed rule to the Rules Committee.

Discussion on the proposal ensued, including the approval from the Connecticut Bar Association, the position that some categories of cases have different pleading schedules for various reasons, and the benefits for self-represented parties to have a defined date for hearings on these motions. Atty. Sterling proposed a friendly amendment deleting the word "Exceptions" from the section heading since the sections as written does not contain any exceptions. The amendment was accepted.

The motion passed unanimously, with Judge Taylor abstaining.

V. Discovery and Expedited Litigation – Comments – Judge Bright then invited the input from the Civil Commission on the proposals from the Committee on Discovery and Expedited Litigation. The Chief

Justice asked the committee to look at ways to streamline the civil litigation process to address the rising costs, particularly with respect to discovery. The committee, which was composed of lawyers and judges from different backgrounds and geographical areas, made multiple recommendations.

The Committee recommended developing standard interrogatories for employment and medical malpractice cases. This recommendation was referred to the Discovery Subcommittee of the Civil Commission for discussion and development. In the employment area, the committee recommended utilizing the federal standard discovery.

The committee also suggested that consideration be given to requiring automatic disclosures in cases and eliminate the need to serve discovery requests in case types where there are existing standard disclosures, such as the tort cases. After discussion, the commission agreed it was worth developing automatic disclosures requiring the production of such items as police reports and witness statements.

A recommendation on eliminating boilerplate objections to disclosures was already addressed.

The committee recommended that there be a limit on the length of depositions in cases other than motor vehicle and premises liability cases, essentially have the limit apply to cases other than those with standard discovery. The suggested limit is 7 hours, like that in the federal courts. Approximately half the states have similar limits. If additional time were needed, the judge could allow it. Discussion ensued on this proposal including the possibility of allowing parties to agree or the court to order additional time, the risk of someone employing delaying tactics, whether lengthy depositions are actually a problem, the possible increase in court appearances and motions because of time limits, the unique needs of medmal cases, and addressing the issue through proportionality requirements.

The committee recommended limiting the number of interrogatories and subparts, subject to the court ordering otherwise. Discussion ensued including whether interrogatories are actually useful, using them in place of depositions, and whether this limit is only needed in smaller commercial cases.

The committee also suggested establishing a discovery dispute resolution process that requires parties to actually talk with one another to attempt to resolve disputes before filing a motion and then have a pre-motion conference with the judicial authority.

The committee also proposed language adding proportionality as a consideration in limiting the scope of discovery as a way to reduce costs by permitting only discovery that is commensurate with the value of the case. Atty. Ziotas indicated that if there is an issue in small commercial cases, direct this type of provision toward those case types. The CTLA would be opposed to such limits.

After discussion, the proposal is that the discovery committee will proceed with the drafting of proposed standard disclosures in medical malpractice and employment cases, and will draft automatic disclosures for cases in which standard discovery is already in place. A small committee of Atty. Clendenen, Atty. Sweeney, Atty. Roberts and Atty. Orleans will meet with Judge Bright to look at the needs of the small commercial cases, and perhaps develop rules for those case types separately.

VI. New Business – No new business was raised.

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

The meeting adjourned at 3:40 PM.