

Minutes  
CIVIL COMMISSION  
225 Spring Street, Fourth Floor, Room 4B  
Wethersfield, CT

Monday, December 8, 2014  
2:00 p.m.

Those in attendance: Hon. Patrick L. Carroll III (ex officio), Hon. Elliot N. Solomon (ex officio), Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. William H. Bright, Jr., Hon. Aaron Ment; Hon. Lisa K. Morgan, Atty. David M. Belt, Atty. David W. Cooney, Atty. Joseph D. D'Alesio (ex officio), Atty. Michael J. Dorney, Atty. Ralph J. Monaco, Atty. Catherine Smith Nietzel, Atty. Jonathan B. Orleans, Atty. Agostinho J. Ribeiro, Atty. Richard Roberts, Atty. Richard A. Silver, Atty. Alinor C. Sterling, Atty. William J. Sweeney, Atty. Martha Triplett, Atty. Frederic S. Ury, Atty. William P. Yelenak, and Atty. Angelo A. Ziotas.

- I. Welcome - Hon. Linda K. Lager – The meeting was called to order at 2:10 p.m.
- II. Approval of Minutes – Hon. Linda K. Lager – Upon motion by Judge Abrams and second by Atty. Sweeney, the minutes of the meeting of September 15, 2014 were approved unanimously.
- III. Subcommittee Reports – Judge Lager then invited Judge Abrams to report on the subcommittee on prescreening jurors.
  - A. Prescreening jurors –The subcommittee, which is chaired by Judge Abrams and has the following as members: Atty. Cahill, Atty. Monaco, Atty. Triplett, Atty. Yelenak, and Atty. Ziotas, is planning to develop some blueprints for different prescreening approaches for use by judges, and is soliciting examples from various sources. The first meeting will be January 12, 2015 in New Britain. If people have any information on prescreening, or questions they use, Judge Lager asked that they send it to Judge Abrams by the first of the year so he can circulate them.
  - B. Discovery – Atty. Cooney then reported out on the Subcommittee on Discovery. The subcommittee has not yet had a meeting, but the members plan to look at amending interrogatories and standard interrogatories to include some additional questions concerning existing prior permanency ratings, look at the time period included in the interrogatories for disability ratings, and to address any Medicare payments. The subcommittee will also look at clarifying the availability of videotapes of a slip and fall, for example. Objections to providing these videos can be an issue. The subcommittee will meet and develop some recommendations for the Commission before the March meeting. It was suggested that the subcommittee also develop some standard interrogatories on loss of consortium. These will be added to the tasks for the subcommittee to address.

Judge Berger's workgroup is working on the suggestion from Atty. Michael Menapace regarding obtaining documents from non-party witnesses without scheduling a deposition.
- IV. Workgroup on Civil Rules and Statutes – Judge Berger reported out on behalf of the workgroup.
  - A. Rules Committee – Smith Referral – The Rules Committee received a proposal to amend the rules to specifically permit the filing of a reply memorandum as a matter of right by the proponent of a

motion. Draft amendments to two sections of the Practice Book, section 4-6 on page limits for briefs and section 11-10 on memoranda of law were proposed. Discussion ensued on the impact the additional time for filing a reply memorandum would have on the scheduling of short calendar matters, on the fourteen day time limit on filing the reply brief and on including language regarding surreplies.

After discussion, the language of the proposal on Section 11-10 was changed to include the following subsection: (c) Surreply memoranda cannot be filed without the permission of the judicial authority.

Atty. Dorney moved that the Commission approve the proposed change to Section 4-6 and the proposed change to Section 11-10, as amended. Atty. Orleans seconded the motion.

Discussion ensued on the fourteen day limit on the time to file because it could slow things down. It was suggested that the proposal be amended to remove the time limit entirely or to add “unless otherwise ordered by the court” to the section. Another suggestion was to require the reply memo to be filed a certain period of time before the hearing on the motion. After lengthy discussion, the commission voted on Atty. Dorney’s motion.

The motion was approved 21-1. Judge Bright voted against the motion. Judge Lager will submit this proposal to the Rules Committee.

- B. On-going Work – Judge Berger next discussed the proposed amendment to Section 4-7. The proposal would amend the definition of personal identifying information to include the actual name of a person when there is a court order allowing the person to proceed under a pseudonym. Adding the language to section 4-7 allows the application of Practice Book section 11-20B, permitting the court to order, on request or its own motion, the sealing of a filing that inadvertently names the party allowed pseudonym status. Upon motion by Judge Bright to approve the proposed change, and second by Atty. Ziotas, the commission voted unanimously to approve the change. Judge Lager will forward this proposal to the Rules Committee.

Judge Berger reported that the workgroup had discussed the issue of obtaining documents from a non-party without a deposition, and the group will come up with language at their next meeting in January.

The next proposal from the workgroup is to recommend repeal of C.G. S. Section 52-190b, which requires a conference in medical malpractice cases within six months of the return date to determine whether the case should go to the complex litigation docket. A long discussion ensued about the origin and intent of the statute; the utility and need for this conference in these cases; how the conferences are handled; and the potential impact of individual calendaring on these conferences. A motion was made by Judge Berger that the Civil Commission recommend the repeal of Section 52-190b. The motion was seconded by Judge Abrams. Atty. Yelenak, Atty. Nietzel, Judge Abrams, Judge Berger, Judge Bright, and Judge Morgan voted in favor of the motion. The remaining members of the Commission who were present voted against the motion. The motion failed.

Judge Berger reported that the workgroup had tried to reach a consensus on amending the statutes and Practice Book rules on offers of compromise, particularly with reference to the time for accepting the offer and for extensions of that time. He articulated the positions of the defense and

plaintiff's bar as expressed by the members of the workgroup, and Commission members expressed similar concerns. Extensive discussion took place, including the inherent power of the judicial authority to allow extra time for a response to an offer of compromise; the split of authority among the trial courts on whether the statute permits a judge to extend the time; the purpose of the offer of compromise statute (encourage early settlement/ conserve judicial resources); whether the statute needs to be amended to allow extensions of time; the difference between case types (e.g. motor vehicle cases vs. medical malpractice cases) in connection with the timing of offers of compromise; obtaining discovery needed; changing the time for filing an offer of compromise to a later point in the case; and the likelihood of success of any proposed statutory amendment. After extensive discussion, the Commission members agreed that they would be unable to reach any kind of consensus on this issue, and the proposal was tabled without date.

A second part of the offer of compromise proposal was to recommend amending Section 13-14 to include striking an offer of compromise as a sanction under that rule. An appellate court case, *Yeager v. Alvarez*, 302 Conn. 772 (2011) held that "...the Superior Court's rule-making and sanctioning authority encompasses the power to strike an offer of compromise from the record as a penalty for violation of a discovery order." (P.780-782) The language of the proposal was drawn from that Supreme Court decision. Discussion ensued, including adding language to permit the plaintiff to amend its offer of compromise in response to a defendant's discovery misconduct; the authority of a judge to enter this type of an order without adding any language to Section 13-14; and the potential need for a full hearing before entering such a sanction. A motion was made by Atty. Sweeney and seconded by Atty. Nietzel to adopt the proposal with the addition of language permitting an amendment of the offer of compromise. After further discussion, a new motion was made by Atty. Ribeiro and seconded by Judge Bright to table the proposal and allow the workgroup to rework the language. The Commission unanimously agreed to table the proposal until the next meeting, and the workgroup will look at the *Yeager* case to incorporate language from it.

Judge Berger suggested that the Commission look at the proposals on amending the Practice Book rules on special defenses at the next meeting.

Judge Berger then reported that the workgroup is recommending that the prejudgment remedy statute be revised to do away with the service of the unsigned proposed writ, summons and complaint. Atty. Silver moved to adopt this recommendation, and Judge Ment seconded the motion. After discussion, the commission voted unanimously to adopt the recommendation. Judge Lager moved that the Commission ask Judge Carroll to consider this recommendation as part of the legislative package for the 2015 session. No formal vote was taken on the motion.

Judge Berger reported that the workgroup is looking at the whole issue of service of process – how cases are initiated and how process is served. Discussion ensued, including the enormous cost of service, the effectiveness of orders of notice by publication and potential opposition to reform of the process by interested groups.

## V. New Business

- A. Limited Scope Representation – Judge Bright reported that the Branch began a pilot of limited scope representation in family cases. The pilot has worked very well, with 430 limited scope appearances and 168 certificates of completion filed. The bar's concerns about a negative impact on their business have not materialized, and the question now is whether the program should be no longer be a pilot program and whether limited scope appearances should be expanded to civil cases as well. After a brief discussion, the consensus was that expanding the program would be beneficial to pro bono efforts and would be a good idea in general. Judge Lager said that the proposal to take this out of the pilot program will come out of the chief court administrator's office.
- B. Other – Judge Lager discussed an issue that had come up at the presiding judges' meeting. The standing orders do not include deadline to file motions to preclude or motions in limine. They do require that parties provide a list of motions that have to be decided before the trial. The presiding judges' consensus was not to recommend adding a deadline to the standing orders. Members of the Commission concurred. Discussion ensued, including the suggestion that trial management conferences be held far enough in advance of jury selection to allow sufficient time for the filing of these motions; the difficulty in setting hard deadlines because of case-by-case variations; and the benefits of individual calendaring in connection with these kinds of questions.

Atty. Monaco raised a question about increasing requests for primary care physician's records and the potential impact on a person's privacy. The records can and frequently do include information on issues totally unrelated to the issue in the case. He suggested that the discovery subcommittee look into coming up with some recommendations on standardizing requests for production in this area. Atty. Cooney asked that Atty. Monaco send him something regarding this issue and the subcommittee will discuss it and try to develop some tailored set of interrogatories.

- VI. Next Meeting – The next meeting of the Civil Commission is March 9, 2015 at 2:00 p.m. in Wethersfield.

The meeting adjourned 3:58 p.m.