

CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, December 9, 2013
2:00 pm

Those in attendance: Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Marshall Berger, Hon. Patrick L. Carroll III, Hon. Lisa K. Morgan, Hon. Elliot N. Solomon, Hon. Mark H. Taylor, Attorney David L. Belt, Attorney David W. Cooney, Attorney Deborah Etlinger, Attorney Timothy S. Fisher, Attorney Kimberly A. Knox, Attorney Douglas Mahoney, Attorney Jonathan B. Orleans, Attorney Rosemarie Paine, Attorney Richard Roberts, Attorney Alinor C. Sterling, Attorney William J. Sweeney, Attorney William P. Yelenak

Meeting called to order at 2:03 p.m.

- I. Welcome – Judge Lager introduced Attorney Alinor Sterling who was recently appointed to the Commission. Judge Lager also introduced the Hon. Elliot N. Solomon, Deputy Chief Court Administrator.
- II. Approval of September 16, 2013 Minutes – Upon motion being made and seconded, the minutes were approved unanimously.
- III. E-filing Update – Judge Bellis gave a brief update on e-filing: All documents, except sealed documents, in all cases filed with a return date of January 1, 2014 and thereafter will be viewable by the public on the internet. However, during jury selection and jury trial, cases will not be viewable on the internet; cases will, however, be viewable at any courthouse location. Judge Lager emphasized that everyone should be aware that any sensitive information attached to a filed document or referenced in a document will be available for public viewing and asked the members to advise colleagues and others to be aware of this. Judge Bellis also mentioned that care should be taken not to specify sensitive information in a continuance requests, such as health issues of an attorney or party.
- IV. Rules
 - A. Summary of New Rules Effective Jan. 1, 2014 – Judge Lager referred members to a handout provided for today's meeting which includes a brief summary of the rule changes. Judge Lager asked the members to get the word out to other firms and organizations regarding these rule changes.
 - B. Proposal re: § 17-45 – Judge Lager mentioned that PB § 17-44 was amended last year based on the Commission's recommendation, however, the Commission decided to continue to work on proposed PB § 17-45. By way of background, Judge Lager explained that the proposal is modeled after the U.S. District Court's local rule 56(a)(2). The Bench-Bar Foreclosure Committee recommended, through Judge Taylor, that foreclosure cases be exempted from the proposed rule. Following the Commission's September meeting, Roberta Palmer contacted Attorney Jeff Gentes, Managing Attorney for foreclosures at Connecticut Fair Housing. He supports Judge Taylor's position because he believes the original proposal would add costs which would be a detriment to the homeowner.

A lengthy discussion then ensued as to reservations expressed by the CTLA with respect to the proposed changes to the summary judgment practice in proposed §17-45, particularly with respect to concerns regarding cost and time. Judge Berger discussed reasons why the workgroup on civil rules and statutes proposed amending § 17-45 to require statements of undisputed and disputed facts. Generally, the workgroup believes that these statements will aid the court to determine if there are facts in issue in a timely manner. Some members of the commission noted that the federal court practice does not add cost or time to the summary judgment process, that it helps the parties prepare effectively for arguing the motion and that it benefits the court in identifying whether there are issues in dispute. Other members disagreed, saying that there can be confusion between the facts cited in the brief or statements and the actual evidence attached in support of the statements of fact. Some members

questioned the overuse of summary judgment motions and expressed concerns that the motion practice is used aggressively to burden the non-moving side. Members expressed the view that the motion for summary judgment should not be filed unless there is a good reason to do so. Discussion also ensued as to the value of the proposed rule in the context of the individual calendaring program which is now being piloted in the state.

In light of the discussion and Judge Lager's suggestion that the Commission seek an appropriate compromise to address the concerns, the proposal was tabled to the Commission's March meeting. In the interim, Judge Lager encouraged the members of the litigating bar associations (CBA, CDLA, CTLA) to solicit views of their members seeking a definitive position if possible, so that they can report back to the Commission. In addition, Judge Lager will circulate the proposal to the individual calendaring judges and the civil presiding judges.

C. Revised Proposal re § 1-25

Judge Berger, who is also a member of the Rules Committee, explained that in light of certain questions the Rules Committee had regarding a proposed new § 1-25 which the Commission forwarded to that Committee after its September 16, 2013 meeting, he is recommending a revised proposed § 1-25 (dated 11/13/13 on the draft). The revised proposed rule is more closely modeled on the language of Appellate Rule § 85-2. After discussion about certain inconsistencies in the language of the proposed revision, Judge Abrams made a motion to remove the words "if appropriate," from subsection (d) and Judge Taylor seconded the motion. Attorney Fisher moved to amend the motion, which was seconded, so that the word "discipline" be changed to "sanctions" and that the words "if appropriate" are removed in (d). The motion, as amended, was approved unanimously. Discussion continued with Attorney Roberts suggesting that the word "repeated" be taken out of the commentary. A motion was made and seconded to remove "repeated" from the commentary. Further discussion ensued. Judge Lager made a motion to amend the proposed rule to read "included but not limited to fines pursuant to CGS § 51-84," and to delete "/or" after "attorney's fees," leaving the word "and". The motion was seconded. The technical amendments to the language were approved unanimously.

A motion was made and seconded to forward the revised proposed Rule 1-25, as amended, to the Rules Committee. The Commission approved this motion on a vote of 15 to 5.

D. Workgroup on Civil Rules and Statutes

Judge Berger reported that the workgroup is working on the special defense rule. After that the workgroup will be working on pre-judgment remedies.

E. Referrals from Rules Committee

1. Adelman Proposal

Judge Lager explained a proposal from Judge Adelman, forwarded by the Rules Committee, to amend § PB 13-4(c)(2) to provide for payment of court appointed experts for their preparation time. Discussion ensued which included the view of the Commission's Discovery Subcommittee that § 13-4(c)(2) does not apply to court appointed experts. Attorney Roberts moved that the Adelman proposal be rejected, as there is no need for a rule change and that the proposal is inapplicable to civil, non-family cases. The motion was seconded. The Commission approved the motion unanimously.

2. Cohn Proposal

Judge Lager explained Judge Cohn's concern with the recognizance requirement on the service-by-mail form for administrative appeals under the revised PB § 14-7A(a), effective 1/1/14, and recommendation that the rule be revised to eliminate the recognizance. Discussion ensued, including discussion regarding the provisions of chapter 8 of the Practice Book with respect to a recognizance. A motion was made and seconded to defer to the Rules Committee to consider Judge Cohn's proposal with regard to Chapter 8; the Civil Commission does not have a view on Judge Cohn's proposal. The Commission approved this motion unanimously.

3. Vertefeuille Proposal

Judge Lager explained that this proposal is to prohibit a judge who conducts a pretrial conference from presiding at trial whether the trial is to the court or a jury. As civil judges presently do not sit on court trials when they have conducted a pretrial conference unless the parties consent, this proposal would only impact civil judges who preside over jury trials. Judge Lager read a letter submitted by Commission Member Attorney Richard Silver who disagrees with the proposal and does not believe a judge conducting a pretrial is an impediment to presiding over the trial. Attorney Mahoney said that the CTLA would not support this proposal; Attorney Roberts said the CDLA would not think this is necessary; Attorney Knox stated that the CBA does not have an official position on this proposal, and Judge Abrams stated that this would be a nightmare for a small judicial district. Attorney Sweeney recommended that the Commission vote against this proposal. Judge Lager made a motion, which was seconded, that the Commission acknowledges Justice Vertefeuille's concerns but the proposal is not needed at this time for civil jury trials; the prohibition already applies to civil court trials. The Commission approved the motion unanimously.

4. Faulkner proposal

Judge Lager explained that she had followed up with Attorney Faulkner on this agenda item regarding further amendment to PB § 17-25 (revised to go into effect on 1/1/14) which had been discussed and tabled at the last meeting. Judge Lager met with Attorney Faulkner and acknowledges her concerns. Having discussed this issue with Professor Dalie Jimenez of the UConn Law School, Judge Lager thinks that the best way to address these concerns is through an educational program for judges handling debt collection matters. Judge Lager made a motion that no further rule changes are needed at this time and it was seconded. The Commission approved the motion unanimously.

5. Ellis Proposal

Judge Lager explained that this proposal is to remove the requirement from PB § 10-39 that each claim of insufficiency in a motion to strike be enumerated and that references in the movant's brief should suffice. Attorney Roberts made a motion, seconded by Judge Lager, that this suggestion be rejected as unnecessary. The Commission approved the motion unanimously.

V. New Business

Attorney Fisher stated that the Deans of the Law Schools request that the rule regarding waiver into the bar for certain law professors be amended. The clinical faculty can waive in now; the deans would like this extended to all professors. The bar is in favor of this – the goal is to enable them to do pro bono work. Judge Lager recommended that the Commission vote on this proposal. She made a motion to amend PB § 2-13 to allow full-time law faculty who have taught 5+ years and are members of another bar to waive into the Connecticut bar. The motion was amended to indicate that any proposal conveyed by Attorney Tim Fisher could represent that the Civil Commission has no objection. The motion, as amended, was seconded. The Commission approved the amended motion unanimously.

VI. Next Meetings – The next meeting of the Civil Commission will be March 10, 2014.

A motion was made and seconded to adjourn the meeting.
SO ADJOURNED 3:57 pm.