Civil Commission
Workgroup on Civil Rules and Statutes

December 5, 2011

In attendance: Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Attorney Catherine Smith Nietzel, Attorney Jonathan B. Orleans, and Attorney William J. Sweeney

Several items were discussed:

1. Return Date - The discussion involved the reason for having a return date, and the end result of the discussion was that a return date provided an objective time from which to measure other deadlines, including returning the action to court and the commencement of pleading time frames pursuant to other Practice Book rules. There was some cursory discussion of eliminating the return date and keying off the filing date, as in the federal court.

2. Service of Process – The discussion involved a consideration of using certified mail instead of personal service by a marshal to commence an action. The group also discussed the requirement of the federal system, which under Rule 4 requires the plaintiff to send a notice of lawsuit and a request for waiver of service of summons. The other party gets thirty days to send a response to the waiver request and then an additional thirty days to file a responsive pleading. The consensus was that given the difference in numbers of cases, kinds of cases and kinds of parties, this kind of change might not be feasible at the present time.

3. Serving exhibits along with the Complaint – Section 10-29 of the Practice Book allows a party to make a copy of any document part of the complaint without annexing it to the complaint, and then requires that the plaintiff serve a copy of the exhibit or exhibits on each other party upon receipt of notice of the appearance of the party, and then to file the original or a copy of the exhibit in court with proof of service on each appearing party. It also limits recovery of costs to two pages, regardless of the length of the exhibit if a party annexes the exhibits to the complaint and has them served.

4. Eliminating the distinction between requests and motions – In general, this distinction is not well-understood by anyone. Section 11-2 of the Practice Book defines a request as an application to the court which shall be granted by the clerk by operation of these rules unless a timely objection is filed. A motion is defined as an application to the court for an order, which application is to be acted upon by the court or any judge thereof. This discussion has come up in the context of the tremendous number of motions for extension of time that are filed on a weekly basis with the court. One suggestion was to eliminate requests but make the granting of the motion automatic as long as it is timely and properly filed. Some concern was expressed regarding allowing non-judges to grant such motions. Another suggestion was to eliminate requests and extend the time for responsive pleadings so that you would have fewer motions filed. The time for filing an offer of compromise is an example of a pleading for which the allotted time is too short.

   This discussion was re-visited after the proposal for longer automatic discovery deadlines. After the automatic discover discussion, the following question came up. Should we eliminate requests and only permit motions? The process of permitting a request that is granted automatically by operation of the rules unless an objection is filed is a time-saver. Perhaps an option would be to leave both requests and motions, but clarify the distinction in the practice book. With respect to discovery extensions of time, it was suggested that if the time limit is extended, a party would have to file a motion to extend the time.

5. Stipulations/Scheduling orders - Atty. Orleans suggested permitting stipulations on time for pleading, in the absence of any scheduling order by the court, the parties could set their own schedule by agreement. Concern was raised that this process would not work in higher

volume courthouses and that it would not work in terms of the plaintiff's desire to obtain a trial date. Most PJs would probably not want to bring every case in within a certain number of days of filing to establish a trial date. Discussion about burden on the courts; perhaps limit the types of cases to which this would apply. No need for scheduling orders in collections cases or for some types of personal injury cases, and many of them would be fine without scheduling orders. Also, any proposal would have to take into account the fact that many lawyers cannot agree on the time of day let alone a scheduling order or trial date.

A suggestion was made that the Court establish the parameters of the scheduling order, and the parties would then work from those parameters to set up the specific dates for the case. For example, within ninety days, you have to provide dates for the following events within certain parameters. In at least two JDs, parties receive a notice that says "this is your scheduling conference date; be there unless you have an agreement."

6. Standard discovery cases (premises liability and motor vehicle accidents) – In cases for which standard interrogatories/discovery exist, discovery is to be completed by the defendant within a set period after the return date, such as six months, and by the plaintiff within nine months of the return date. Another option would be simultaneous discovery exchanged within six months of the return date. If this were a standing order, defendants would not have to serve discovery, the rule/order would control. The deadline could be varied or eliminated for good cause shown. The advantage to this order would be fewer motions for extension of time, greater certainty about the trial date, and a benefit to the bar in not having to send out notices of interrogatories, for example. Date certain deadlines make tracking cases easier for the Bar.

   The proposal would not apply to product liability or medical malpractice cases. In those instances, the case would be filed and there would be a scheduling order and a conference.

   Perhaps set up a pilot in a big district and a small district to see how this works?

7. Offer of Compromise – Motions to extend the time for filing the offers of compromise are already coming in. The 180-day legislatively established deadline for filing is too short. If we are considering six months from the return date for the automatic discovery sharing, something will have to be done in connection with the offer of compromise deadline.

8. Setting the trial date - Given the four or six month deadline for exchanging standard discovery and production materials, we need a trigger for setting the trial date. In any case that is not covered by the standard discovery, people would get a status conference. Possibly, we could establish an automatic status conference date for all cases so that upon filing, the system will assign a status conference date after a certain period of time. The parties could utilize that date for whatever is appropriate, including settlement discussions or scheduling dates for motions and trials. Parties could by-pass the status conference with a stipulated order regarding the trial dates. The possibility of having a calendar available for the court to permit parties to go online to view the available trial dates and select date for trial was discussed. Also, parties could call caseflow or propose three dates in their proposed scheduling order.

The next meeting of the work group will be January 9th.