

Minutes  
Civil Commission Workgroup on Civil Rules and Statutes  
225 Spring Street, Room 206  
Wethersfield, CT  
Thursday, June 4, 2015  
1:00 p.m.

Those attending: Hon. Barbara Bellis; Hon. Marshall Berger; Atty. Catherine Nitzel; Atty. Jonathan Orleans; Atty. William Sweeney

1. Welcome – Judge Berger welcomed those attending.
2. Approval of Minutes – March 30, 2015 – Approved.
3. Follow-up on Discussions of proposals at the Civil Commission – Discussion was incorporated into the agenda items below.
4. Future Efforts:
  - (a) Discuss proposal on subpoenas for documents only – This item was passed until the special defenses proposal was discussed.
  - (b) Research on Special Defenses – The group agreed to ask Legal Research to look at the special defenses listed in in Moller and Horton’s chart to confirm that case law supports their characterization as requiring the pleading of a special defense as being admissible under a general denial.

The group discussed the elimination of replies to special defenses. After discussion, including Rule 8 of the F.R.C.P. and whether the reply is really a bothersome issue, the consensus of the group was to leave the reply in the rules.

Judge Berger then raised the issue presented by Sec. 14-8, which requires the filing of an “accurate certificate of closed pleadings.” Discussion included the perspective that the certificate is useful as a trial management tool and that it is no longer necessary. After discussion, the consensus was to leave Sec. 14-8 as it is.

Judge Berger then asked the group to consider eliminating the concept of “privileged cases” found in Sec. 14-9 of the rules because we no longer need it. There is no delay in obtaining a trial date. It was pointed out that this concept is in multiple statutes, but Judge Berger would like the group to look at it.

Judge Bellis had raised a question about getting the report from the record review doctor. She has found that this is an issue. Existing sections of the Practice Book do not seem to address this question. For example, Section 13-11 addressed the IME, but it does not address the report of the record review doctor. Judge Berger asked if Section 13-28 covered the report of the record review doctor. Judge Bellis pointed out that you would only get the report if you are taking the deposition of the person who did the record review. The feeling of the workgroup is that there is no reason that the record review report should not be produced if the doctor is going to testify. The group then discussed where this should be included in the practice book: scope of discovery/definitions; experts? If it is an expert who is expected to testify at trial, Sec. 13-4 (b) requires disclosure of reports, lists of cases in which the expert has testified, etc. Judge Berger suggested adding some language to 13-4(b) (2) to say that it applies to record review. Another option is to eliminate “who rendered care or treatment to the plaintiff” from the section. Or possibly eliminate (b) (2) and roll it into (b) (3). Other suggestions were to leave (b) (2) alone and simply add a

section for experts expected to testify at trial, regardless of their deposition. Still another option is to add language to (b) (1) to a more complete expert disclosure.

Another issue that the group may address is whether you have to disclose correspondence with lawyers, such as the communications with your experts. This will be added to the list of items for future discussion.

Atty. Nitzel asked about the federal rules. Atty. Orleans said that a testifying expert must disclose a report, but not any draft reports, and in general, must disclose communication between the lawyer and the expert regarding the expert's compensation, the facts or data supplied and used, and any assumption that the attorney supplied or the expert uses.

Atty. Nitzel proposed adding language to 13-4(b) (1): "Any written report of the expert witness shall be contemporaneously produced to all parties but shall not be filed with the court." This language will be added and the section reviewed at the next meeting of the workgroup.

A discussion about whether Practice Book section 13-11, on independent medical examinations, should be amended occurred, but no definite decision was reached on that question. Currently, the party causing the examination to be made must provide a copy of the written report upon request of the party who undergoes the examination.

The group then discussed the interplay between standard requests for disclosure and production and situations when one party notices the deposition of a party and accompanies that notice with a production request. Currently, Sec. 13-27(g) limits the use of that production request to document that are within the scope of the standard production request. The group then briefly talked about subpoenas for documents only, which would allow parties to obtain documents from non-parties without depositions. This option is one that the workgroup is working on.

As a part of the effort to add a section to the rules on obtaining documents from non-parties without the need for a deposition, the group discussed the Practice Book sections regarding deposition procedures and subpoenas, and noted that the titles of the sections as they exist are somewhat confusing. The group agreed to review sections 13-26 through 13-33 to identify ways to make the section as a whole more user-friendly.

(c) Revisions to the PJR statutes – The PJR statutes are being researched and the workgroup will address those at a future meeting.

(d) Revisions to Service of Process statutes – This topic was not discussed.

The meeting adjourned at 3:30 PM