

Draft Minutes
Civil Commission Workgroup on Civil Rules and Statutes
225 Spring Street, Room 204
Wethersfield, CT
Wednesday, December 2, 2015

Those attending: Hon. Marshall Berger, Atty. David Belt, Atty. Catherine Nitzel, Atty. Jonathan Orleans and Atty. William Sweeney

1. Approval of Minutes – September 11, 2015 – No action was taken.
2. Review of proposed amendment to Sec. 2-16 – pro hac vice – The workgroup had presented a proposal to amend this section to clarify that depositions were “proceedings” for which local counsel and out-of-state counsel admitted pro hac would both have to appear and to add language that would permit the judicial authority to excuse local counsel from attendance.

The Committee on the Unauthorized Practice of Law independently drafted a revision to the same section to add language to the rule that would require out-of-state counsel to apply to be admitted pro hac vice before appearing in the presentation of a proceeding before an administrative agency, commission, board or tribunal. A recent Supreme Court opinion, Persels and Associates, LLC v. Banking Commissioner, 318 Conn. 652 (2015), held that that the sole authority to license and regulate the general practice of law rests in the Judicial Branch. The committee proposed the revision to this rule to add explicitly language regarding administrative agencies, commissions, boards or tribunals, and to require the approval of a judge before permitting any such appearance by out-of-state counsel. A lengthy discussion ensued, including concern over the impact on such a change on local counsel in administrative proceedings, and whether the provision permitting the judicial authority to excuse the presence of local counsel should be applicable to administrative proceedings, the type of process that would be required to obtain court approval, and who would have to be noticed in connection with any application for admission as PHV for an administrative proceeding.

After discussion, the workgroup agreed to refer the proposal to the Civil Commission for discussion and comments.

Atty. George also suggested amending the rule to require that applicants provide the juris number they were assigned if they have already been admitted pro hac, as well as a list of docket numbers for cases they have appeared in, and the business name, address and telephone number of the applicant.

3. Revised Extension of Time – Sec. 17-45 Summary Judgment – The workgroup discussed the proposed revision, and adjusted the language in subsection (c), which has been revised to require the proponent of the motion for summary judgment to claim the motion to the calendar. The impact of individual calendaring on summary judgment motions was discussed as well. The group discussed adding an exclusion for mortgage foreclosure and contract collection matters, but the decision was to submit the rule without the exclusion. The discussion included the fact that the greatly shortened time frame negatively impacts self-

represented parties, who are most commonly the defendants in these types of cases. Allowing them some additional time to respond seemed reasonable.

The proposal will be brought to the Civil Commission at the meeting on December 7th.

The workgroup also discussed eliminating P.B. Section 13-19, which provides that in foreclosures, action to discharge a mortgage or lien, or to quiet title or in an action upon a written contract, if there is an appearance by an attorney for any defendant, a plaintiff can file and serve a written demand that the attorney file with the court a writing regarding whether a bona fide defense exists and will be made together with a general statement of the defense. Unless such statement is filed within ten days of the filing of the demand, the defendant can be defaulted for failure to disclose a defense.

The workgroup discussed this provision, and does not see the purpose for the rule. A plaintiff can move for default for failure to plead, and an attorney filing an answer and/or special defenses is required to sign, which constitutes a certification that the signed believes there is good ground to support the document, and it is not interposed for delay. The workgroup agreed to submit this proposal to the Civil Commission as well.

4. Revisions to PJR statutes – A summary of the necessary revisions was provided. The drafting of the revised statutes will be worked on and presented to the workgroup early 2016.
5. Update on Special Defenses research – The group discussed the proposal, with particular focus on the listing of special defenses. After discussion, the decision was to break the sections down to separate special defenses from matters in avoidance (as it had originally been written), and to have everyone review the list and continue this discussion at the next meeting. Some of the proposed defenses on the list, such as agency, fall into murky areas, so further consideration should be given to the list, before providing it to the Civil Commission for their comments.
6. Revisions to Service of Process statutes – The proposal is to amend the options for service of process on corporations and other entities required to register annually with the Secretary of State by permitting service by email. The statute on registration for each of these entities would also be amended to require that the entities provide and maintain an email address for the registered agent for service of process.

The group also discussed service of process under the federal rules, which provide for a waiver of service of a summons (F.R.C.P. 4). This change would be beneficial, but the group will begin by proposing service by email first.

The meeting adjourned at 3:30 PM.