Draft Minutes
Civil Commission
Work Group on Civil Rules and Statutes
225 Spring Street, Room 206
Wethersfield, CT
Monday, December 8, 2014
11:00 a.m.

Those attending: Hon. Marshall K. Berger, Jr., Atty. Catherine Nietzel, Atty. Jonathan B. Orleans, Atty. Alinor Sterling, and Atty. William Sweeney.

1. Welcome and call to order – The meeting was called to order at 11:05 a.m.

2. Discuss amendment to Sec. 4-7 to include the name of any party proceeding under a court-ordered pseudonym – The workgroup discussed the draft of the revision to Section 4-7 of the Practice Book. After the judicial authority has entered an order permitting a party to use a pseudonym in a case, the real name of the party should no longer be used in pleadings or documents filed with the court. If a pleading or document containing the name is accidentally filed with the court, it is a situation which should be rectified as quickly as possible. The revision to the definition of "personal identifying information" in Section 4-7 to include a person's name after the entry of an order permitting the use of a pseudonym will mean that a party or the judicial authority on its own motion can proceed to seal the document under the streamlined procedures under Practice Book Section 11-20B. The sealing can be done without following the publication requirements set forth in Section 11-20A.

   After discussion, the workgroup unanimously agreed to submit the proposed revision to the full Commission for review and discussion.

3. Discuss the following proposed rules:

   a. Proposal to amend the rules to explicitly allow the filing of reply memoranda – The workgroup then began a discussion of the proposal from Atty. Smith to permit the filing of a reply memorandum. Currently the rules are silent on whether such a filing is permitted, and some courts will allow it, but others will not. The workgroup discussed the proposal and suggested simplifying subsection (b) of Section 4-6 on page limitations for briefs, memoranda of law and reply memoranda, but maintaining the ten-page limit included in that subsection. The group also agreed to revise subsection (b) of Section 11-10 on requiring the filing of memorandum of law and permitting reply memoranda by eliminating the reference to page limitations because it is redundant and by changing the order of the sentences. The group discussed the fourteen-day time limitation, and after discussion, agreed that the time limit should remain as drafted.

After discussion, the workgroup unanimously agreed to submit the revised proposal to the Civil Commission for review and discussion.

b. Offer of Compromise (C.G.S. Sec. 52-192a; P.B. Sec. 17-11 – 17-18) – The workgroup then began a discussion of the offer of compromise proposal. At the last meeting, the group was unable to reach a consensus on revisions to the rule and statute. Atty. Nietzel suggested tying the deadline for accepting the offer to the disclosure of the expert witness. Often, it is the expert witness that can make a difference in determining the reasonableness of a proposed offer. Atty. Sterling disagreed with tying it to expert disclosures, pointing out that the plaintiff runs a risk in putting an offer on the table just as the defendant runs a risk in accepting or rejecting an offer. She also did not believe that a "good cause shown" standard was an acceptable basis for permitting an extension of the time to respond to an offer of compromise. Lengthy discussion ensued, and the group was unable to come to a consensus on this proposal. The current proposal contains the "for good cause shown" standard as the basis for the judicial authority permitting an extension of time to accept or reject an offer of compromise. This proposal will be presented to the Commission for discussion and comment, and Judge Berger will report that the workgroup had been unable to arrive at any consensus on it.

c. Obtaining documents from a third-party witness without a deposition – The workgroup will discuss this proposal at its next meeting.

Judge Berger then raised again the suggestion that C.G.S. Section 52-190b is not practical or effective. Discussion ensued on the utility and effectiveness of this statute that mandates an early conference in medical malpractice cases to ascertain whether the case belongs in the complex litigation docket. The group discussed it, and generally felt that the statute should be repealed. This will also be raised at the Civil Commission meeting.

The workgroup briefly discussed the idea of developing standard discovery for commercial cases of eliminating interrogatories entirely. Atty. Orleans suggested that retaining interrogatories that identified people who had information or materials relevant to the claim would still be necessary. Those types of interrogatories are helpful.

The workgroup then briefly talked about the proposed revisions to the rules on special defenses. After the discussion, the group agreed to eliminate "failure to mitigate" as a defense that must be specially pleaded. It was also agreed that the special defense "notice" should include the word "statutory" to make it clear that statutory notice is what must be specially pleaded. The proposed revisions will be brought to the Civil Commission as well.

4. Prejudgment Remedy statutes (C.G.S. 52-278a – 52-278n) – The general proposal is to eliminate the service of an unsigned writ, summons and complaint, and simply serve the action. A hearing date would be set for the motion for a prejudgment remedy after the case is returned to court. The proposal would be to retain the ability of a plaintiff to file an ex parte application in those situations where it is permitted by the statute. The group will present this proposal to the Commission to get their reaction to it before proceeding any further.

The meeting adjourned at 1:15 p.m.