

Draft Minutes
Complex Litigation Procedures Subcommittee

June 12, 2008

The Procedures Subcommittee met on Thursday, June 12, 2008 at the Hartford Judicial District courthouse, 95 Washington Street, Hartford, Connecticut in the 4th floor jury room. (Attendees later moved to Judge Berger's chambers on the 4th floor so that Attorney Nietzel, whose office is located in Stamford, could participate via conference call.)

In Attendance: Judge Robert E. Beach, Jr., Judge Marshall K. Berger, Jr., Attorney Catherine Smith Nietzel (via conference call) and Attorney Richard Weinstein (Chair)

1. Review of Complex Litigation Program Procedures Issues. The Chair, Attorney Richard Weinstein called the meeting to order at 3:10 p.m.

Attorney Weinstein explained that an e-mail identifying specific areas that might benefit from clarification had been sent to members prior to the meeting; this e-mail was also forwarded to the current CLD judges and court officers for their input.

Attorney Weinstein inquired as to whether Attorney Nietzel had received any additional comments from members of the defense Bar; she indicated that the list, which was previously forwarded to members, contained all concerns.

Attorney Weinstein suggested that the group review and discuss each item individually.

2. Discussion of Recommendations and Proposals Regarding Procedures Issues. The following items were discussed:

A. The Process and Time Period for Filing an Application for Case Referral to the CLD

Attorney Weinstein indicated that the case is basically on hold during the interim waiting period of filing an application and the final decision of whether it should be designated as complex litigation. He further explained that motions are not heard on the regular docket because of the pending CLD application. Attorney Weinstein also noted that sometimes all counsel are in agreement and support the referral; yet, it stills takes several months for the transfer.

In an effort to identify areas of delay, past and current procedures for the application process, including the objection and transfer, were discussed. Attorney Weinstein suggested that the application should be filed within 60 days of the return date except in extraordinary circumstances. Judge Berger commented that it should be a flexible standard and noted that in a smaller judicial district a complex case may not be identified quickly. He also suggested that the objection be filed within a specific time

period of the filing of the application rather than after the decision is rendered on the application. Judge Beach noted that it could be decided on the papers. After discussion, members reached a consensus that the application and objection should be filed early in the case.

Judge Berger inquired as to the suggested 60 days from return date. Attorney Nietzel indicated that the time period should be tied into the service and filing of the apportionment complaint. Judge Berger questioned as to 120 days from the return date. Attorney Weinstein indicated that, perhaps, there should be a different period for apportionment complaints.

Another area considered by members was review of medical malpractice actions in accordance with C.G.S. Sec. 52-190b. After discussion, it was decided that in those instances when a case is being referred to the CLD solely due to the length of trial and the hardship that it may cause for a smaller judicial district, a recommended alternative would be the transfer of the case to another judicial district by the Chief Court Administrator.

Recommendations: The application process should be streamlined. The application for case referral should be filed early in the case and the form should contain a box indicating that all parties consent to the referral. The objection should be filed within a specified time period of the filing of the application. An alternative to the referral of cases to the CLD solely due to the length of trial and the hardship that it may cause for a smaller judicial district would be the transfer of the case to another judicial district by the Chief Court Administrator.

B. The Request for Adjudication Process

Attorney Weinstein explained that it is often difficult to get a motion brought to the Court's attention. He suggested that there be a differentiation between procedural (discovery) and substantive motions such as motions to dismiss, motions to strike, and motions for summary judgment. Attorney Nietzel concurred that the request for adjudication process is unwieldy. She explained the problems that occur with trying to contact the opposing counsel relative to completing the form. Judge Berger suggested that the form be modified to include language to the effect that opposing counsel could not be reached and a space provided for explanation of the attempts made to contact.

Judge Beach inquired as to whether there was a problem with getting counsel together if a hearing was necessary. Attorney Weinstein indicated that in the Federal Court a telephone conference could occur; he noted the difference between the handling of a discovery motion, which could hold up a deposition, compared to a motion for summary judgment. He further indicated that substantive motions are not the issue.

Discussion ensued regarding means to address this issue including the use of conference calls and changes to the Request for Adjudication form.

Recommendations: In order to prevent delay, the Request for Adjudication form should be modified to address the difficulties in reaching opposing counsel and obtaining the

necessary information to complete the form. Procedures should be developed for the processing of this form based upon the differentiation of the types of motions in order to provide for prompt adjudication of discovery motions. Also, to expedite the processing of these motions, different methods such as telephonic scheduling conferences should be explored.

C. A Means of Identifying the Filer of a Motion

Attorney Weinstein explained that a great deal of time is being expended by counsel, their staff and court personnel to identify who filed a particular motion. He further explained that often the motions mimic one another and that it becomes difficult for counsel to monitor them. Attorney Weinstein suggested that an indicator be assigned to each motion in order to provide the capability of readily identifying the filer on the *Case Detail* page on the Judicial Branch's website. He also indicated that this is a system-wide issue and not just unique to the CLD.

After an overview of former computer system functions used for this purpose and the difficulties that would have to be overcome, Attorney Weinstein suggested that the party number be required on CLD filings.

Judge Berger raised the issue of duplicative documents attached to specific motions; for example, a motion to strike. He explained that the same complaint, the same case law etc. is filed by multiple parties creating extremely large files. Judge Beach suggested that counsel filing the same motion subsequently should reference the other motion and include language such as "I adopt the reasoning of Attorney...".

Recommendations: System changes should be considered in order to provide the capability of readily identifying the filer of a motion/objection on the *Case Detail* page of the Branch's website. If possible, a requirement should be adopted that the party number must be included on all CLD filings to facilitate the process.

D. Scheduling of CLD Trials

Attorney Weinstein indicated that the double-booking by CLD judges often causes havoc. He explained that if a trial can't proceed as scheduled, it could postpone the trial for a year or more. Discussion ensued regarding the consolidation of CLD judges in one location and whether this has alleviated the problem. Attorney Weinstein indicated that the problem had improved. No recommendations were made.

E. Accessibility of Parking

After discussion, members agreed that no recommendations should be made.

F. Wireless Fidelity (Wi-Fi) Access

Attorney Nietzel indicated that counsel had inquired as to the availability of Wi-Fi access in the courts. After discussion, Judge Berger indicated that he would mention it at an upcoming e-filing meeting scheduled for July 17.

Recommendation: Judge Berger will bring this issue to the attention of the e-filing committee.

G. Display of CLD Events on the Internet

Attorney Nietzel indicated that upcoming events scheduled on the regular dockets are displayed on the Judicial Branch website. This feature would assist counsel in monitoring their CLD cases. After discussion, it was recommended that scheduling information for CLD cases be entered into the *Edison* program by the court officers so that it could be displayed on the Branch's website. It was noted that it may take some time to convert to this new system.

Recommendation: The scheduling of CLD events should be entered into the *Edison* program so that this information may be available for viewing on the Branch's website.

H. End-of-Term Status Conference

Attorney Nietzel indicated that it was suggested that end-of-term conferences be held, if the parties or CLD judge were inclined to do so, to facilitate the transition and to assist the outgoing judge in creating a report of pending or upcoming issues that could be provided to the CLD judge taking over the case. After discussion, it was decided that methods currently employed by the CLD judges and court officers functioned appropriately in regards to this issue. There was a consensus that no recommendation would be made.

I. Daubert Motions

Attorney Nietzel explained that Daubert motions come up in CLD cases and that a few months should be built into the "standard" scheduling form for such motions. She further explained the time involved for voir dire of the expert, briefs, arguments and the rendering of the decision. Judge Berger indicated that this issue could be raised via a conference call or scheduling conference. After discussion, it was decided that no recommendation would be made.

J. Lack of Uniformity

Attorney Nietzel indicated that a uniform scheduling of pretrial steps by the CLD judges would be beneficial. After discussion, it was agreed that CLD cases did not lend themselves to uniformity.

3. Finalize Recommendations and Proposals to Report Out at Next Full Committee Meeting

Recommendations made by the subcommittee are referenced above under each individual item addressed.

4. Other Business.

Attorney Weinstein indicated that he did not know of any other issues raised for consideration by this subcommittee.

The meeting was adjourned at 4:25 p.m.

At this time, no further meetings of this subcommittee have been scheduled.

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