

Draft Minutes
Committee on Discovery and Expedited Litigation
225 Spring Street, Wethersfield, CT
Room 204
January 21, 2015
2:00 p.m.

The Committee on Discovery and Expedited Litigation met on Tuesday, January 21, 2015, at 2:00 p.m. at 225 Spring Street, Wethersfield in Room 204.

Those attending: Hon. Marshall K. Berger, Jr.; Hon. William H. Bright, Jr. (chair); Hon. Sheila A. Ozalis; Hon. Antonio C. Robaina; Atty. Jared Alfin; Atty. Eileen Becker; Atty. Michael O. Connelly; Atty. David J. Crotta, Jr.; Atty. Joseph D. Foti, Jr.; Atty. Elizabeth Greenspan; Atty. John J. Kennedy, Jr.; Atty. Margaret A. Pothin; Atty. James K. Smith; Atty. Elizabeth J. Stewart; and Atty. Kirkor D. Tavtigian, Jr.

- I. Welcome – Judge Bright called the meeting to order at 2:05 p.m. Upon motion by Atty. Crotta, and second by Atty. Kennedy, the draft minutes of the meeting on November 25, 2014 were approved.
- II. Continue Discussion of Expedited Litigation Track – The group returned to a discussion of various tracks for different kinds of cases. The vast majority of cases require very little managing. Judge Bright presented a proposal for streamlined dockets, which would include collections (C 40); motor vehicle cases (V 01) and premises liability cases (T 02, T 03, T 11 and T 12). The streamlined docket is separate and apart from an expedited litigation docket, which would be a voluntary docket for cases under a certain amount, such as \$100,000. Collections may not need to be on this streamlined docket, except for the more complex commercial collections cases, because in most cases, the defendants do not appear.

The goal of a streamlined docket is to make getting to trial more economical by creating a process to formulate the issues more quickly and clearly without spending a great deal of time on the pleadings process. The intent would be for cases on the streamlined docket to be tried within a year of filing as a result of a more streamlined process.

The proposal is to require parties to develop a scheduling order within sixty days of the defendant's appearance. The parties could meet with a judge at a much earlier date and time, but if parties develop a plan and submit the scheduling order, there is no need for a status conference unless issues arise. They could agree to modify internal dates, but they would not be able to change the trial date without a motion. The court has a strong interest in controlling its schedule, but flexibility is also necessary. If the case develops into something more complicated, such as when a plaintiff unexpectedly requires surgery, the parties can ask for a status conference and a change in the trial date – just not a week before the trial date.

The group discussed the development and use of form complaints, containing the basic information: where and when the accident occurred, for example, a list of possible negligence allegations, and the opportunity to describe the damages. These form complaints could eliminate requests to revise and motions to strike. Discussion on the proposal ensued, including the possibility of requiring the use of the form by self-represented parties; encouraging the voluntary use of the form by

precluding the defendant from filing a request to revise or a motion to strike in those cases; the potential difficulty of developing a form that would apply to situations that went beyond the basic motor vehicle and premises liability cases; the difficulty in crafting a form to cover situations where “reckless” conduct may be alleged; and the possible need for a mechanism to address situations where the information included in the form complaint is not complete or sufficient for the defendant to respond. Also discussed was the possibility of eliminating the reply to special defenses or developing form special defenses.

Cases on the streamlined docket would also have mandatory initial disclosures, requiring parties to provide specific classes of documents, such as medical records or authorizations, witness statements, police reports, photographs of a defect or motor vehicle damage, lists of known treaters, and collateral source information, as appropriate. These disclosures would be triggered off of the defendant’s appearance. Concerns were raised regarding the difficulty in obtaining medical reports, police reports in certain cases (e.g., dram shop actions), and time constraints that occur when the case is not referred until the last minute. The group discussed the possibility of requiring the parties to exchange the documents listed in the mandatory disclosure “no later than 120 days after the defendant’s appearance.” Mandatory disclosures would not preclude other discovery.

The suggestion was made that specific objections be required in response to production requests, including the identification of any document that is being withheld, although some concern was expressed regarding situations when the request really is “vague, burdensome or overbroad.” Judge Bright said he requires people to actually talk on the phone rather than just sending an email in an effort to resolve a discovery dispute. Telephone conversations seem to encourage collegiality. If the phone conversation between the attorneys/parties does not resolve an issue, he schedules a conference and requires a brief email explanation of each side’s position. Generally, this process eliminates lengthy briefs and streamlines the resolution of the issue.

For cases on the streamlined docket, arbitration would be voluntary, and the use of videoconferencing would be encouraged. Currently, although the Branch has the capability, videoconferencing is not widely used in civil matters. It was suggested that doing a seminar at the courthouse on taking witness testimony by videoconference would help the Bar to feel more comfortable in using this technology. A possible rule change, requiring a party who refuses to conduct the examination of a witness or expert by video to pay the costs of an in-person deposition, was discussed.

Several suggestions from the group will be addressed by other committees: simplifying the out-of-state deposition rule; adding the disclosure of collateral source information as part of standard discovery; adding cell phone records (text and talk); allowing service of process by email on corporations and LLCs; revising the prejudgment remedy statutes; and revisiting the concept of an omnibus motion addressed to the pleadings.

A discussion of streamlined procedures for all other cases ensued. The proposal was to have a comprehensive initial scheduling conference within thirty to forty-five days of the defendant’s appearance. At that conference, parties would establish a scheduling order and discuss the case with the judge. No motion to modify the scheduling order would be necessary unless the change affects the summary judgment or trial date or adds additional parties. Rules would be developed that would allow the judge to set limits on the number of depositions, interrogatories and requests for production. The intent would be to permit discovery but to ensure that the amount would be

proportional to the complexity and value of the case. Parties could discuss their projected needs prior to the status conference. If there were e-discovery, the presumption would be that costs of the e-discovery would be borne by the requestor. In determining costs, it was suggested that it might be necessary to have a provider give an estimate to protect the requestor from any unreasonably high costs.

On smaller and simpler cases, there would not be a need for an initial status conference although parties would be able to request it. The idea is to minimize judicial involvement for these types of cases, which will proceed without issues, allowing additional time to address issues in the more complicated and contentious cases.

For the simple cases, no substantive trial management conference would be required, but for others, it would be required, along with pre-trial exchange of exhibits and witness lists. Use of electronic exhibits would be encouraged.

The group then began a discussion of special masters, attorney trial referees, and discovery.

- III. Continue Discussion of Discovery Issues – The possibility of using special masters for discovery issues and the question of requiring parties to go to a special master and the cost factor was discussed. The group also talked about an individual calendaring judge, for example, having three or four volunteer special masters to address discovery disputes. The sense of the group was that an agreement by the parties might be necessary in order to refer a dispute to someone other than the judges for a discovery dispute.

The group then talked about some standard discovery for medical malpractice cases, employment cases and contract cases. Atty. Kennedy offered to talk with other plaintiff and defense counsel to develop some standard interrogatory and production requests for medical malpractice cases. Atty. Stewart offered to do the same for employment cases. Contract cases can cover such a broad range, it may not be possible to develop standard discovery for all.

Discussion then returned to form complaints. Atty. Foti and Atty. Becker will draft a form complaint and special defenses for motor vehicle cases. Atty. Smith and Atty. Connelly will develop a form complaints and special defenses for premises liability cases. The possibility of limiting motion practice in response to a form complaint was discussed.

The implementation of what has been discussed will be determined.

- IV. Future Meeting Dates – Dates will be circulated for the next meeting, which will probably be in March.