

Civil Commission  
Workgroup on Civil Rules and Statutes

February 6, 2012

In attendance: Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Attorney Catherine Smith Nietzel, Attorney Jonathan B. Orleans, and Attorney William J. Sweeney

The minutes of January 9, 2012 were approved.

Motion vs. Request

The group began with a discussion about Sec. 11-2 of the Practice Book in which requests and motions are defined. After discussion, which included the inconsistency of the use of the word "request" in the rules and the confusion of the bar in knowing whether to refer to something as a motion or as a request, a motion was made by Judge Berger and seconded by Judge Bellis to recommend that Section 11-2 and the distinction between motion and request be deleted. The motion was passed unanimously.

Extending the time for pleadings and discovery

The group then discussed what its purpose was. Should the time for pleadings and discovery be extended, thereby reducing the need for either requests or motions for extension of time? Should the goal be to educate the bar on the distinction between requests and motions? Is there really a problem with the amount of time the practice book currently allows for pleading and discovery? Practice Book section 10-8 permits thirty days from the return date and then fifteen days for any subsequent pleading motion or request.

The group continued to discuss the use of requests and motions and the need to extend the time permitted for filing pleadings and motions. The advantages of the automatic granting of a request for extension of time without an objection was raised, along with the disadvantages of requiring judicial action on every motion for extension of time filed. It then addressed individual motions.

P.B. Section 10-30 – Motion to Dismiss

The rule requires a defendant to file a motion to dismiss within thirty days of the filing of an appearance. The motion is then placed on the short calendar to be held not less than fifteen days following the filing, unless the judicial authority directs otherwise. With ten days of the filing, the adverse party can file a request for extension of time to respond to the motion, which the clerk shall grant and cause the motion to appear on the short calendar not less than thirty days from the filing of the request.

Various proposals were made for addressing the need for additional time for a response while ensuring that the case is not unreasonably delayed. The draft of the proposed language is:

Sec. 10-30

Motion to Dismiss

Any defendant wishing to contest the court's jurisdiction shall do so by filing a Motion to Dismiss within 30 days of the filing of an appearance. Any adverse party shall have 30 days to respond by filing and serving an objection in accordance with Sec. 10-12 through 10-17, a memorandum of law and, where appropriate, supporting affidavits as to facts not apparent on the record. Except in summary process matters, the motion shall be placed on the short calendar to be held not less

than 45 days following the filing of the motion, unless the judicial authority otherwise orders. If an evidentiary hearing is required by law, any party shall indicate such a need in his or her motion or objection.

Atty. Smith Nietzel asked if the workgroup were just going to address the four or five sections of the practice book where this request issue comes up.

Judge Berger then pointed out that Sec. 10-37 provides for the automatic granting of the request unless an objection is filed within thirty days of the filing. He pointed out that if want to do something to a complaint, it should require a court order, not an automatic granting unless an objection is filed. A request to revise could eliminate the entire complaint. Another possibility is someone thinking that they had complied with a request to revise, but find out too late that they had not done so. Discussion ensued as to how to address this issue. Do we eliminate the automatic granting if no objection is filed provision in the current rule or increase the time within which an objection would have to be filed? Should we make it a motion that would then appear on the calendar and be acted upon by a judge, which would provide better notice and a definite direction on how the complaint would be revised? Should there be a "good faith conferral" requirement added to the rule? For example, add language to the section that says you cannot file a request to revise unless you have served and filed an affidavit that you had tried to resolve it.

Attorney Orleans pointed out that section 10-40 on motions to strike (date for hearing motion to strike; request for extension of time to respond) contains similar language to that in the section on a motion to dismiss. That section could be conformed to the proposed language for sec. 10-30. Judge Berger said that the motion to strike results in nothing but delay and wastes time. Attorney Smith Nietzel did not agree and pointed out that the motion to strike is a mechanism for eliminating from a complaint counts that do not state a cause of action without subjecting the defendant to discovery or to a probably futile motion for summary judgment.

The workgroup agreed to meet again on March 12<sup>th</sup> at 11:30 a.m. before the next meeting of the Civil Commission. The group agreed that a more detailed agenda could be helpful in approaching the tasks of the workgroup.

At the next meeting, the group will reconsider the Request to Revise (Sec. 10-37); look at the rules on a request to amend and a motion to amend (sec. 10-60) as to whether it is a distinction that should be retained; and continue to look at extending the time for filing.

The meeting adjourned at 3:30 p.m.