

Minutes
CIVIL COMMISSION
Work Group on Civil Rules and Statutes
Monday, December 3, 2012
11:30 AM

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

1. Welcome and call to order – The meeting was called to order at 11:35 AM.
2. Approval of October 26, 2012 minutes – This item was passed.
3. Discussion of draft rules for Civil Commission meeting – The rules have been circulated to the members of the Commission and are on the agenda for the Civil Commission meeting today.
4. Discussion of PJR practice – Discussion was had about the existing prejudgment remedy process. The process, which requires the service of an unsigned summons and complaint together with the application for a prejudgment remedy, is cumbersome, impractical, and confusing, resulting in multiple services of process for a single action and frequent errors by the filers. The process also involves two separate fees: one for the application and one for the actual action. In addition, the process puts a tremendous burden on the court staff. The consensus was to propose to the Civil Commission the revision of the process, which would require a statutory change. If the response is positive, the work group can pursue drafting a revision.
5. Discussion of rules on special defenses: 10-57 and Sec. 10-63 – The group next discussed special defenses, some of which are listed in the practice book rules. Special defenses are intended to provide people with notice of the proposed defenses and to allocate the burden of proof in an action. Section 10-50 lists defenses which must be specially alleged, but then sections 10-53 and 10-54 list additional variations. These sections of the practice book can trip up people who are unfamiliar with the rules, and result in a defendant's inability to offer proof on something that is key to a defense. Several other sections, including the pleading of matters in avoidance and special denials, Sec. 10-46 and 10-57, are also confusing, for defendants and plaintiffs. The sections from 10-46 through 10-57 at the very least, could be rewritten to use active voice, and clarify what are things to be specially pleaded and cross-reference other sections. Additional references to matters that must or need not be specially pleaded are found in 10-68 (pleading notice), 10-70 (foreclosure of municipal tax liens), 10-78 (collateral source payments), 10-76 (probate appeals), 10-73 (pleading charters), and 10-79 (policy limitations). Jon suggested that someone go through the sections from 10-46 until the end of Chapter 10 to come up with a draft of a re-write for the group to discuss. Catherine agreed to work with the annotated version of the rules and attempt a re-draft, while leaving the sections where they are.
6. Discussion of other rules for review – Section 10-47, regarding evasive denials could also be revised to include a good faith requirement, for example, incorporating language similar to that contained in Section 13-23, answers to requests for admission. A brief discussion about the current need for a statement of an amount in demand took place.
7. Next meeting – No date set