

Minutes  
CIVIL COMMISSION  
Work Group on Civil Rules and Statutes  
225 Spring Street, Room 133  
Wethersfield, CT  
Monday, September 15, 2014  
11:00 a.m.

Those in attendance: Hon. Marshall Berger, Atty. Catherine Nietzel, Atty. Jonathan Orleans, and Atty. Alinor Sterling.

1. Welcome and call to order – The meeting was called to order at 11:02 a.m. Judge Berger talked briefly about C.G.S. 52-190b - Designation of negligence action against health care provider as complex litigation case. The workgroup will discuss further whether the timing of the legislatively-required conference concerning complex litigation referral is premature.

The discussion then turned to early status conferences, the utility of requests to revise and motions to strike, the need for additional standard discovery, and the use of video depositions. At this time, video depositions are an option, but given the concern with reducing the cost of litigation, video conferencing for expert depositions, for example, could at some point become a requirement. Currently, it is an option only. After discussion, the group turned to item #5 on the agenda: Application for Commission to Take a Foreign Deposition.

2. Service of Process in cases against the state and/or municipalities (C.G.S. Sec. 52-64(a)) – Many different possibilities were discussed, including adopting an alternative process that would involve e-filing the complaint and then requesting that the defendant waive service of process. After much discussion on the risks of creating different procedures and the need to establish clear procedures on service, the discussion shifted to using email service on corporations and limited liability corporations that are required to have a registered agent for service of process. The proposal is to require an agent for service to provide an email address at which service could be made and would be accepted. A similar proposal would be to permit service on the state to be made to a dedicated email address of the attorney general. The complaint and summons would be emailed to the attorney general with the statement that “I filed the case and here is the docket number and the defendants.” This method would save transmittal by the defendants to the attorney general. This item will be discussed at the next meeting.
3. Offer of Compromise (C.G.S. Sec. 52-192a; P.B. Sec. 17-11 – 17-18) – The work group discussed the possibility of amending the statute to provide more time to accept the offer of compromise and what the time should be. Is it appropriate to set an objective time, as the statute currently does? Should the acceptance deadline be tied to the plaintiff’s expert disclosure and depositions? In some cases, such as one in which liability is dependent upon

a standard of care, expert depositions are critical in evaluating a case. In others, the critical issue may be the amount of damages, which could be based on the deposition of the plaintiff. In short, it is a challenge to determine a reasonable amount of time that is applicable in all cases. A default option may be to permit the extension of the acceptance date for good cause shown. The discussion will continue at the next meeting.

4. Prejudgment Remedy statutes (C.G.S. 52-278a – 52-278n) – This item was not discussed.
5. Application for Commission to Take Foreign Depositions – When a Connecticut lawyer seeks to take a deposition in another state, the lawyer must satisfy the requirements in the state or country where the witness is located in order to take a deposition. Atty. Sterling said that in California, one option allows a Connecticut attorney to file an application here in Connecticut, and then to retain local counsel in California. The local lawyer can then issue the subpoena based upon the Connecticut subpoena. The group discussed the Uniform Interstate Depositions and Discovery Act. This uniform act has not been adopted in Connecticut, but it could provide some guidance as to ways to revise and simplify our procedures.

Currently, Connecticut has two options for deposing a Connecticut resident for use in a foreign jurisdiction. The first option requires the out-of state attorney to obtain a motion for commission to take a deposition in the court jurisdiction where the case is pending. (trial state) Once the order is signed by the court, a certified copy must be sent to the Connecticut attorney or notary, who will then schedule the deposition and issue the subpoena. The second option is to initiate an action here in Connecticut (discovery state) by filing the certified copy of the order from the foreign jurisdiction together with an application for the issuance of a subpoena, and appearance by Connecticut counsel or a self-represented party, a proposed order and an entry fee of \$350.00.

A Connecticut lawyer seeking to depose a resident of another jurisdiction (discovery state) for use in a Connecticut case (trial state) would have to comply with the laws of that jurisdiction. The attorney would file a motion for commission and order to produce documents or a motion for commission only, depending upon what information/documents are being sought, in the trial state to obtain an order from the trial court appointing a commission who can then under the laws of the discovery state compel discovery from a non-resident witness. The process requires judicial action in ruling on a motion and issuing the commission.

The Uniform Interstate Depositions and Discovery Act, which applies to discovery in state courts, essentially, and does not include foreign countries, permits the party to submit a foreign subpoena (trial state) to the clerk of the court in the discovery state, and the clerk will then issue the subpoena for service upon the proposed deponent. The party seeking the subpoena needs to present the foreign subpoena and the draft subpoena to the clerk in the discovery state. Under the act, the party would *not* have to retain local counsel to conduct the deposition nor would the attorney have to obtain a commission from the

foreign jurisdiction (trial state) to take a deposition of a Connecticut resident, as is currently the case in Connecticut. Any application for a protective order or to quash a subpoena, for example, would be filed in the discovery state, although the act permits it to be filed in the trial state as well.

The workgroup is proposing that forms be created for an application for commission to take a foreign deposition. The group may also suggest changes in the current procedures along the lines of the Uniform Interstate Depositions and Discovery Act.

This will also be discussed at the next meeting.

Meeting adjourned at 1:05 p.m.