

Draft Minutes  
Civil Commission  
Workgroup on Civil Rules and Statutes  
225 Spring Street, Room 206  
Wethersfield, CT  
Tuesday, March 8, 2016  
12:00 noon

Those attending: Hon. Marshall K. Berger, Jr., Attorney Jonathan B. Orleans, Attorney Alinor Sterling and Attorney William Sweeney (by phone).

The meeting was called to order at 12:20 PM.

1. Approval of Minutes – December 2, 2015 – This matter was tabled for the next meeting.
2. Review of proposed amendments to Sec. 2-16 – pro hac vice – The proposed revisions include the requirement that out-of-state counsel who want to appear in arbitrations, mediations, and administrative proceedings before state or municipal bodies, must apply to the court for permission to appear PHV. Rule now also contemplates the creation by the chief court administrator of a form for the application. After discussion, which included the questions about whether it is up to the entity to determine who can practice before it and whether this rule would impact in-house counsel attending a mediation, the group decided to present the rule again to the Civil Commission.
3. Discussion of proposal to amend Sec. 10-60 and 10-66 (referred from Rules Committee) – The group then discussed the proposed revisions to two of the sections on amendments which would require a party seeking to amend a pleading, or parts of a record or proceeding or a party seeking to amend a statement of amount in demand to attach both a “clean” copy of the amendment and a copy showing track changes, essentially. After discussion the group reworded the proposal slightly in 10-60, but determined that the revision was not necessary in 10-66, where the amount in demand is what is being changed. It is easy enough to identify that change. Other revisions were made to 10-66 to simplify it. The proposal will be sent to the Civil Commission for review and discussion.
4. Discussion on Sec. 13-2 – Scope of Discovery – This is a proposed rule that came out of the Committee on Discovery and Expedited Litigation. It is intended to address the costs of discovery. Some of the history behind the federal rule was discussed, as was the opposition to the federal rule, and the idea that this change would be quite controversial. Discussion included the idea that the existing rules already address “proportionality”: (excessively burdensome/not reasonably calculated to lead to the discovery of admissible evidence. This new language could be construed as entirely new law. It was suggested that this proposal is just an attempt to articulate what factors are considered in determining “excessively burdensome.” The group decided to put this over to the next meeting to continue the discussion before bringing back comments to the Civil Commission. The relevant pages from the report of the Committee on Discovery and Expedited Litigation will be circulated to the workgroup.
5. Discussion of revision to Sec. 13-31 – Use of Deposition Testimony – The group discussed the proposed revision, including who subsection (a) (2) referred to. Does it include only the

treating physician or does it also include expert witnesses and IME doctors as well? One possible change would make it applicable to the listed medical professionals “licensed under the provisions of the General Statutes and deposed in their professional capacity.” The group agreed to discuss this section further at the next meeting of the workgroup prior to presenting it to the Civil Commission.

6. Revisions to PJR statutes – This project will be continued to the summer months. It is too late for this year’s legislative session. Judge Berger talked briefly about the proposal to eliminate the demand for disclosure of defense. The workgroup briefly discussed the fact that the demand can only be filed when a defendant is represented by counsel, and it should not be necessary since attorneys are bound by the rules of professional conduct, Sec. 1-25, and Sec. 4-2 (meaning of a signature on a document), which impose obligations on an attorney not to pursue a claim or defense unless there is a basis in law or fact that is not frivolous for such a claim. The group agreed to re-submit it to the Rules Committee as is.

Judge Berger next mentioned a proposal that had come from Judge Adelman through Judge Bright. The proposal was to amend Sec. 13-27(g) to require that parties who have been requested to produce documents and tangible things at a deposition should be required to provide such material five days before the date of the deposition. After discussion, the workgroup agreed that existing rules (Sec. 13-9 through 13-11) can be used to address any issues with the production of documents. Most often, parties work these things out for themselves anyway.

The second part of the proposal was to create a new rule, 13-27A, which would require a party seeking a protective order to prevent or delay a noticed deposition to file a motion for protective order not less than five business days prior to the noticed date, unless a shorter time is permitted by the judicial authority for good cause shown. The workgroup agreed that late filings of these kinds of motions can be a problem, but the consensus was that it would be better to add this provision to Sec. 13-5, which addresses protective orders. A draft will be prepared and circulated among the work group members.

The meeting adjourned at 2:20 PM.