

Minutes  
Uniformity of Court Procedures  
Subcommittee on Civil  
Work Group on Trial Management Orders/Pretrials

The Uniformity of Court Procedures Subcommittee on Civil's Work Group on Trial Management Orders/Pretrials met at the Meriden Training Facility, Training Room A, Town-Line Square Plaza, 533 South Broad St., Meriden, CT on March 31, 2009.

Those in attendance: Hon. James J. Devine, Atty. Tais Ericson, Hon. James T. Graham, Ms. Jane Grein, Hon. Arthur A. Hiller, Atty. Susan E. Malliet, Hon. Douglas C. Mintz, Atty. Joseph R. Mirrione, Atty. Michael T. Ryan and Atty. Frederic S. Ury.

Guest: Hon. Patrick J. Carroll III

The meeting was called to order at 2:05 PM by Judge Graham.

1. Welcome and Discussion of Work Group Task – Judge Graham discussed the task of the work group: to look at the trial management/case management orders as they exist in each district to determine what variations exist and whether and how those variations should be addressed. The work group had received two summaries of trial management orders: one, summarizing these orders district by district, and the other, summarizing the orders on specific aspects of the orders, such as time of filing or description of the case.
2. Trial Management Orders/Case Management Orders and Pretrials – The second and third agenda items were discussed together. The discussion covered a range of issues, including the advantages and disadvantages of a uniform trial management order, the provisions of existing trial management orders, the need for meaningful pretrials, the possibility of having different orders for different types of cases (motor vehicle accident vs. medical malpractice, for example), the reasons for various requirements in a trial management order, and the need for enforcement of the orders. The group discussed the feasibility of requiring the attorneys/parties to provide certain information and material at the time of the trial management conference and requiring other materials (for example, the pre-marked exhibits) on the first day of jury selection.

The work group also discussed the impact of the number of available judges, the challenge of coming up with a uniform order, the purposes of a pretrial and the purposes of a trial management report, and ways of making the entire pretrial process more effective and efficient for both the Bench and the Bar.

Extensive discussion took place about marking exhibits. This process is time-consuming for the attorneys in a case that has large numbers of exhibits and is probably the most onerous requirement of a trial management order. The current practice of pre-marking exhibits and leaving them with the clerk prior to their entry at trial might also result in unintended consequences, such as the public availability of a proposed exhibit before it is offered as evidence or admitted exhibits being out of numbered sequence, causing inquiries from the Appellate Court. The work group talked about ways to make the process less onerous while still providing the Bench and the Bar with the necessary information in a timely manner. The attorneys and legal staff members of the work group will look at the current procedures on pre-marking and propose a method of pre-marking that would work best for the bar.

After extensive discussion, the work group is considering the following three-phase process for jury trials:

- A. At an earlier date (a period of time after the return date) schedule a pretrial to discuss settlement and to select trial dates. If there is no possibility of settlement at the time scheduled, counsel and parties would notify caseflow, select a trial date, and subsequently contact the caseflow office to schedule a pretrial when the case is ready for settlement discussions. (A suggestion was made that a form for requesting a pretrial would be helpful.)
- B. Within two weeks prior to trial, schedule a trial management conference with the judge focused on settlement and the basics of trial logistics for lawyer/court planning purposes. At that trial management conference, the attorneys/self represented parties would be required to provide the following:
- A brief non-argumentative description of the case
  - A list of witnesses with an identifier (party, witness, expert);
  - A list of pending and anticipated motions that need to be heard before evidence starts (including motions in limine);
  - An estimate of the amount of time required for jury selection
  - An estimate of the amount of time to try the case
  - A statement as to any anticipated scheduling problems
- C. On the day of jury selection, conduct a brief settlement conference (if such a conference appears to be warranted). On the first day of jury selection, the parties must provide the following:
- A list of legal and factual issues in dispute
  - A list of exhibits with a brief description of each one, pre-marked in accordance with procedures suggested by the Bar
  - Copies of the operative pleadings (complaint, answer, special defenses, counterclaims and disclosure of expert witnesses)
  - Proposed verdict forms
  - Proposed requests to charge (standard/non-standard) – submitted on paper and emailed to the Judges' secretary

For courtside trials, the group is considering a similar three-phase process with somewhat less extensive requirements for the production of documents and materials.

At the trial management conference one to two weeks before trial, parties would be required to provide the following:

- A brief legal memorandum containing statements of law and legal theories in the case
- A list of witnesses with an identifier (party, witness, expert);
- A list of pending and anticipated motions that need to be heard before evidence starts (including motions in limine);
- A statement as to any anticipated scheduling problems
- An estimate of the amount of time to try the case

On the first day of trial, counsel and self-represented parties would provide:

- A list of exhibits with a brief description of each one, pre-marked in accordance with procedures suggested by the Bar
- Copies of the operative pleadings (complaint, answer, special defenses, counterclaims and disclosure of expert witnesses)

4. Consider questions of docket management and uniformity – It was suggested that language should be included as a part of any pretrial notice to the effect that counsel and self-represented parties must contact each other to be certain that both will be at the pretrial or contact caseflow to reschedule the pretrial to a date when both sides will be available.

Another issue that was discussed was the procedures regarding discovery and deposition disputes. A procedure for handling discovery disputes has been in place and working well. A reminder notice about that procedure for seeking the court's assistance to resolve disputes that arise during a deposition will be going out to Judges, caseflow and clerks. Telephone conferencing and moving a deposition to the courthouse are available options for dealing with disputes that arise between counsel in the course of a deposition. These telephone conferences can be on the record.

The members of the work group also determined that the proposed trial management orders would not be applicable to complex litigation.

5. Future Meetings – The work group will meet on April 22, 2009 at 2:00 PM. At that time, the group will review the proposed trial management orders: one for jury cases and a second one, for courtside cases. The group will also review the process that the attorneys and paralegals come up with for handling exhibits. Staff will circulate information on the current clerk's office procedures for marking exhibits.

The meeting adjourned at 4:15 PM.