

From: Stevens, Barry
Sent: Friday, February 28, 2020 2:53 PM
To: Del Ciampo, Joseph; McDonald, Andrew
Subject: RE: Rules Committee
Attachments: rules committee 13-14 revision.wpd

To: Justice Andrew McDonald, Chair Rules Committee
cc: Joseph Del Ciampo, Director of Legal Services
From: Judge Barry Stevens
Re: Practice Book Sections 13-14 (a) and (b)

As explained further in the attachment, I request that the Rules Committee to review and revise Practice Book Sections 13-14 (a) and (b) to better conform to appellate court precedent on the issuance of orders of non-suit or default for discovery violations.

To: Justice Andrew McDonald, Chair Rules Committee
CC: Joseph Del Ciampo, Director of Legal Services
From: Judge Barry Stevens
Re: Practice Book Sections 13-14 (a) and (b)

I request that the Rules Committee review and revise Practice Book Sections 13-14 (a) and (b) to better conform to appellate court precedent on the issuance of orders of non-suit or default for discovery violations.

Both the Supreme and Appellate Courts have held that when imposing a sanction against a party for failing to comply with discovery, the remedy of dismissal “should be imposed only as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and . . . [this] reasoning . . . applies equally to non-suits and dismissals.” *Blinkoff v. O & G Industries, Inc.*, 89 Conn. App. 251, 257–58, cert. denied, 275 Conn. 907 (2005) (“the sanction of dismissal should be imposed only as a last resort, and where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and . . . [this] reasoning . . . applies equally to non-suits and dismissals”), citing *Millbrook Owners Assn., Inc. v. Hamilton Standard*, 257 Conn. 1, 16-17 (2001); accord, *Ridgaway v. Mount Vernon Fire Insurance Company*, 328 Conn. 60, 71-77 (2018).

Practice Book § 13-14 (b) provides a non-exhaustive list of orders that the court may impose for discovery violations without any qualification comparing the availability of the sanction of non-suit or default with the other alternative remedies. More specifically, in providing the list of orders that the court may impose for discovery violations, the present wording of Practice Book § 13-14 (a) does not specifically or explicitly state non-suit or default should be utilized as a remedy of last resort as provided by this case law. As a result, in some cases, parties move for dismissal automatically as an immediate or initial sanction for a violation of the discovery rules, and in some instances, these motions are granted contrary to this appellate authority.

I have attached the current rule and a suggested revision.

PRACTICE BOOK § 13-4 (a) and (b)

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require.

(b) Such orders may include the following:

- (1) The entry of a nonsuit or default against the party failing to comply;
- (2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee;
- (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence;
- (5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

PROPOSED PRACTICE BOOK § 13-4 (A)

(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production or for disclosure of the existence and contents of an insurance policy or the limits thereof, or has failed to submit to a physical or mental examination, or has failed to comply with a discovery order made pursuant to Section 13-13, or has failed to comply with the provisions of Section 13-15, or has failed to appear and testify at a deposition duly noticed pursuant to this chapter, or has failed otherwise substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11, the judicial authority may, on motion, make such order as the ends of justice require, which may include:

- (1) an order of compliance if not yet issued;
- (2) the award to the discovering party of the costs of the motion, including a reasonable

attorney's fee;

(3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence.

The court may also issue an order of dismissal, non-suit or default as a remedy of last resort.