O'Donnell, Shanna RC ID # 2020-010 b

From: Gregory Harris <gharris@dpapc.com>
Sent: Sunday, November 1, 2020 11:39 AM
To: Rules Committee
Subject: Quick comments in opposition to proposed rule change

1/ The proposed revision should be numbered Section 13-4 because it has no subsections if former subsection (b) is absorbed into subsection (a).

2/ If nonsuits and dismissals are so drastic that they must be used only as a last resort, are not interlocutory judgments of default equally drastic or, as a practical matter, so nearly so as not to make a difference?

3/ The practical effect of the change is likely to be either (a) nothing, or (b) greater reluctance on the part of trial judges to enforce discovery meaningfully.

4/ The phrase "remedy of last resort" is vague. It is undefined and non-obvious. One thing it apparently does *not* mean is that it "would be the only reasonable remedy available to vindicate the legitimate interests of the other party," because that is the second requirement for dismissal set forth in *Blinkoff* and *Millbrook*. (The second requirement is equally vague and undefined.)

Also, if the proposed revision includes the first requirement for a discovery dismissal ("last resort"), why not include the second requirement ("only reasonable remedy available to vindicate legitimate interests")?

One shudders to think of the post-appeals motions for articulation of the subordinate facts underlying the conclusion that dismissal was the last resort. How could a judge ever know that no other or additional measure

would produce the desired action?

5/ The addition of "an order of compliance" as a "remedy" for a party's failure to comply with mandatory discovery already issued is (a) needless and (b) harmful. (a) It's needless because the issuance of a discovery request under the Practice Book rules is already an "order" to comply, the way a subpoena is an order ab initio. (b) It's harmful because it further complicates the process of getting discovery by incentivizing receiving parties to put off compliance till the court has rendered an order of compliance.

6/ If the objective to be achieved by the revision is to keep trial court judges from imposing excessively harsh sanctions (or "remedies") for discovery delicts, it might suffice to periodically circulate a memo to the trial bench reminding them of the applicable appellate caselaw under Practice Book Section 3-4 as it stands.

7/ It would be better not to to change Section 3-4 at all than to make these suggested changes.

Please forgive any failures of tact to haste.
Respectfully,
Gregory Harris

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