CDLA
The Voice of Connecticut's Civil Defense Trial Lawyers

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Via Email Only
Rules Committee of the Superior Court
Counsel to the Rules Committee
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106
RulesCommittee@jud.ct.gov

Re: Request for Comment on Proposed Amendments to Practice Book § 13-14

To the Rules Committee of the Superior Court:

Thank you for providing the Connecticut Defense Lawyers Association ("CDLA") with this opportunity to comment on a proposed amendment to Practice Book § 13-14. We circulated the proposal to all CDLA members for comment. The CDLA is not in favor of the proposed amendment, for two reasons: (1) there does not appear to be a need to incorporate the current caselaw standards into the Practice Book, and (2) the proposed amendment may remove some of the trial court's discretion in determining an appropriate sanction, when the trial court is much more familiar with the facts and the parties in any given case.

On the first point, CDLA members have relayed their collective experience that the sanctions of dismissal, non-suit and default are rarely granted. Based on existing caselaw, trial courts recognize that these remedies should be provided "as a last resort." The CDLA is not aware of an epidemic of dismissals or defaults, which have been reversed on appeal, and would require a rule change as a corrective measure. Practice Book § 13-14 currently provides that the trial court may "make such order as the ends of justice require," which requires a court to weigh the circumstances of the case and order a remedy that would do "justice." Our experience has been that trial courts apply these standards carefully and are often hesitant to grant a request for default, dismissal or nonsuit. There is plenty of case law to guide trial courts on this issue.

One may argue that the caselaw should be incorporated into the rule for better clarity. However, courts often expound on the standards set forth in a Practice Book rule, without the rules being amended. Indeed, if this Committee decided to incorporate changing caselaw into the relevant sections of the Practice Book, it could become a monumental task that would require continual updating of the rules as the Supreme

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Court and Appellate Court issue new decisions. The CDLA is not in favor of starting down that path. In addition, by way of comparison, we note that Federal Rule of Civil Procedure 37(b)(2), which addresses discovery violations in federal courts, is similar to the current Practice Book § 13-14, in that it provides that the trial court may make "just orders" and then lists some of the available remedies, without ranking them into order of preference or labeling any as a "last resort." There is simply no need to amend the current Practice Book § 13-14.

On the second point, CDLA members raised concerns that the proposed amendment to Practice Book § 13-14 might make trial judges even ***more*** reticent to grant appropriate sanctions for discovery violations. As noted above, in the experience of CDLA members, trial courts are already quite hesitant to issue the sanction of default, dismissal or nonsuit in response to a discovery violation. By adding the proposed amendment language, there is a risk that trial courts will observe the amendment as imposing a standard ***beyond*** what is already contained within appellate precedent, making it even more difficult to obtain relief for a discovery violation.

Discovery compliance is vital to the efficient and orderly administration of justice in our courts. There are presently a limited number of sanctions available to litigants and the courts to encourage compliance. The trial court is most familiar with the facts and circumstances surrounding any discovery non-compliance and can "make such order as the ends of justice require." The proposed amendment threatens to remove some of the trial court's discretion in selecting a potential remedy for discovery non-compliance, and thereby weaken the tools available to a trial court to ensure that parties are complying with discovery. Moreover, as a practical matter, the remedies of dismissal, default and/or nonsuit permit the trial court to clear/clean its docket of matters involving parties who have failed to take their discovery obligations seriously. The trial courts are in the best position to identify those cases and provide an appropriate remedy pursuant to Practice Book § 13-14 and the existing case law.

Thank you again for this opportunity to provide comments on the proposed amendment to Practice Book § 13-14. I would be happy to discuss this further, at the Committee's convenience.

Sincerely,

Erika L. Amarante

Erika L. Amarante
Connecticut Defense Lawyers Association, President