

Minutes
CIVIL COMMISSION
225 Spring Street, Fourth Floor, Room 4B
Wethersfield, CT
Monday, June 1, 2015
2:00 pm.

Those in attendance: Hon. Patrick L. Carroll III (ex officio), Hon. Elliot N. Solomon (ex officio), Hon. Linda K. Lager (chair), Hon. James W. Abrams, Hon. Barbara N. Bellis, Hon. Marshall K. Berger, Jr., Hon. William H. Bright, Jr.; Hon. Aaron Ment; Hon. Lisa K. Morgan;; Hon. Mark H. Taylor, Atty. David M. Belt, Atty. James A. Budinetz; Atty. David W. Cooney; Atty. Joseph D. D'Alesio (ex officio), Atty. Michael J. Dorney; Atty. Deborah Etlinger; Atty. Ralph J. Monaco; Atty. Catherine Nietzel; , Atty. Rosemarie Paine; Atty. Louis R. Pepe; Atty. Richard A. Roberts; Atty. Richard A. Silver; Atty. Paul A. Slager, Atty. Alinor C. Sterling; Atty. William J. Sweeney; Atty. Martha Triplett; and Atty. William P. Yelenak.

1. Welcome - Judge Lager opened the meeting at 2:05 p.m.
2. Approval of Minutes - Upon motion and second, the minutes were approved unanimously.
3. Subcommittee Reports
 - A. Prescreening jurors –Judge Abrams reported that the group’s three subcommittees had developed questionnaires for general use, for use by judges in connection with scheduling issues, and a third more specific questionnaire. Judge Abrams plans to use this material to create a menu of choices so that the judges can select from the options available to develop their own script for the process of prescreening jurors. The subcommittee will review the material once again before it is brought back to the Civil Commission in the fall.
 - B. Discovery – Atty. Yelenak reported on the progress of the Subcommittee on Discovery was asked to look into a number of outstanding issues.
 1. A proposal to add to the standard set of interrogatories a question regarding any prior permanent disability rating for injuries similar to those alleged in the complaint: Currently Form 202 Interrogatory #20 asks several sub-questions but does not specifically ask about or for a disability rating unlike Interrogatory #22, which asks for this type of information for any other injuries. The consensus of the subcommittee was that there was no issue here, since the accompanying request for production seeks all reports and records of all doctors relating to treatment of injuries, diseases or defects identified in Interrogatory #20. The subcommittee recommended against adding an additional interrogatory. Atty. Roberts pointed out that there is a discrepancy in the time period covered by Interrogatory #20 (similar injuries – within ten years) and Interrogatory #22 (any body part not listed in other interrogatories – no time limit). After discussion, the decision was that no change was necessary since most of these types of issues are handled at deposition. The Civil Commission unanimously agreed to accept the recommendation of the subcommittee and make no addition to the standard interrogatories.

2. Six proposed interrogatories regarding Medicare liens that the subcommittee had developed: Discussion ensued and several suggestions for revisions were made: including incorporating these questions as part of the standard interrogatories; making the time period thirty-six months rather than six months; and adding language to describe the bills more specifically as “...any bills for treatment for injuries sustained in the alleged incident.” Judge Abrams moved to add the six questions as amended to the standard interrogatories (Form 202). Judge Bellis seconded the motion. Further discussion ensued, and the language to be added was further amended to read: “...any bills for treatment of any injuries allegedly sustained as a result of the incident alleged in the complaint.” Atty. Sweeney then moved to add the six questions as amended as a single question with subparts to the existing standard interrogatories. Judge Bellis seconded the motion. Discussion again ensued on the thirty-six month time period. After discussion, the motion was unanimously approved and unanimously approved allowing Judge Lager to forward the proposal as modified to the Rules Committee.

3. Proposed additions to both the plaintiff’s and defendant’s standard interrogatories and requests to production regarding use of any mobile communication device within thirty minutes of the time of the incident or preceding the time of the incident as indicated in the police report: Extensive discussion ensued on the proposal including the need to clarify that information was being sought about use of the mobile communication device while operating the motor vehicle; what would be an appropriate and not overly intrusive period of time; that the information sought is limited to the time and duration of the phone calls, texts or emails, not the recipient or originator’s identity; whether hands free and blue tooth use should be excluded; limit the cell phones involved to one that the respondent was using as opposed to any cell phone within their possession, custody or control; expanding the records sought to include Facebook, checking the weather, tweeting, (i.e., using the mobile communication device or using any mobile communication for any activity, including but not limited to....); whether putting these question in the standard interrogatories impede the ability to obtain other records, such as records of hands free or blue tooth use; the importance of including these questions and accelerating the debate over using the records; and the potential delay obtaining cell phone records could cause. After discussion, the subcommittee was asked to provide further clarification and address the concerns that were raised by the commission in its discussions. The consensus of the commission was that including interrogatories and production on this topic in the standard interrogatories would be helpful.

4. The development of some standard interrogatories on videotapes or photographs or cell phone videos capturing an incident or accident or capturing the condition of the premises, for example: Currently, surveillance videos are discoverable, but it is not clear whether other video or photographic material must be disclosed. Discussion ensued, including whether this interrogatory and associated production request should be incorporated into all the standard forms; if any time frame should be included; whether any specific exception for privileged material should be included; and the availability of a motion for protective order in response to the standard interrogatories and requests for production. Judge Lager then moved that the standard form interrogatories and production (201, 202, 203, 204, 205 and 206) be amended to provide for (1) the identification of any person who has recordings by film, photograph, videotape, audiotape, or any other digital or electronic means of the accident (add as #18 in Form 201 and as # 36 in Form 202)

or the incident or condition of the premises (add as # 12 in Form 203) and (2) the production of copies of each and every item identified in response to the appropriately-numbered interrogatory, adding the production request as # 14 in Form 205 and as #7 in Form #206. Judge Bright seconded the motion. The motion passed unanimously. Judge Lager then moved that the commission allow her to forward the proposal to the Rules Committee in the proper format. Upon second by Judge Taylor, the motion was passed unanimously.

5. Proposed standard interrogatories on loss of consortium that Atty. Yelenak and Atty. Roberts developed based upon interrogatory questions collected from several sources: Discussion ensued, including whether the questions should be limited to children of the current marriage, if the questions should only inquire as to help provided by someone who was being compensated, whether the questions on discussions about dissolution or separation should be more limited in scope, whether loss of consortium questions also apply to civil unions; whether these questions are more appropriate as deposition questions; and if the questions are too invasive as interrogatories. After discussion, the following revisions to the proposed draft were suggested:

- Question #4 – Describe the nature of your loss of consortium claim.
- Question #9: Subsequent to the accident, did anyone other than your spouse or partner perform the services usually performed by your spouse or partner in and around the home?
- Question #11 and 12 – eliminate from the revised draft
- Question #13: Have you or your spouse instituted legal proceedings seeking a divorce or separation? If so, when?
- Questions #15 – eliminate from revised draft

Atty. Silver then expressed concern over question #19, which asks about counseling or treatment by a range of mental health or other counselors concerning the marriage or relationship. Discussion included the potential breach of confidentiality, the invasive nature of the question, potential for discouraging people from going for marriage counseling, limiting the question to a certain period – 1, 3 or 5 years; using the language of the privilege statutes, or limiting the question to marriage counseling only. After discussion, the subcommittee will make the proposed revisions and work on revising question #19 to address the concerns expressed by the committee. The subcommittee will provide the revisions at the Commission's next meeting.

6. Atty. Yelenak mentioned that Atty. DeLuca was looking at the process for obtaining out-of-state depositions.

7. Judge Bellis brought up a concern about whether the standard interrogatories apply to uninsured and underinsured motorist carriers. After discussion, Judge Lager proposed the development of a small set of plaintiff's interrogatories for uninsured and underinsured motorist cases. The subcommittee will add this item to their task list and report back at the next Commission meeting.

4. Workgroup on Civil Rules and Statutes – (a) Judge Berger first discussed a proposal to amend Section 11-1. That section currently requires a motion for extension of time to plead, respond to

written discovery, object to written discovery or respond to requests for admissions state the date through which the moving party is seeking the extension. The proposal makes this section applicable to any motion for extension of time filed not just to motions filed regarding the specific categories of motions listed. Upon motion by Judge Taylor, and seconded by Judge Bright, the committee voted unanimously to submit the rule change to the Rules Committee.

(b) Judge Berger then presented a proposed revision to Section 24-21, regarding cases transferred from small claims to the regular docket. A question has arisen as to how pleading deadlines should be computed, since small claims matters do not have a return date. The proposal adds subsection (c) which states that pleadings are to advance within thirty days from the date of transfer, and then advance in accordance with Section 10-8. Upon motion by Judge Abrams and seconded by Atty. Sweeney, the committee voted unanimously to submit the rule change to the Rules Committee.

(c) The next proposal is to amend certain sections on discovery requests to extend the time for response to sixty days instead of thirty and eliminate the request to extend time to respond. Discussion ensued, including the propriety of blanket or general objections to all interrogatories or production requests or raising the same objection to every interrogatory; issue of one party filing serial motions for extension of time; and the potential impact of individual calendaring on the timing of discovery and objections.

(d) The final part of the proposed change involves extending the time within which a response to a motion for summary judgment must be filed. Section 17-45 currently states that the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion. Any response must be filed at least five days before the calendar date. This period seems too short, and requests for extension of time are almost always filed. The revision proposes extending the fifteen days to forty-five days, and eliminating the request for extension of time. Judge Bright raised a concern about potential conflicts with Section 11-10, allowing the filing of reply memoranda within fourteen days of the responsive memorandum to which the reply is being made. Concerns about the impact of such a rule on the foreclosure docket and collections cases were expressed. Also some discussion took place about the interaction between scheduling orders that are a part of individual calendaring and deadlines in the rules. Judge Morgan suggested allowing thirty days to respond and an additional ten days for a reply memorandum, and then the motion would be calendared. This proposal will go back to the workgroup for redrafting to address the concerns raised by the commission.

(e) Judge Berger then briefly mentioned the workgroup's ongoing work on Section 10-46 and subsequent section dealing with special defenses. In addition to proposing some revisions to clean up and clarify the language, the group would like to provide a comprehensive list of which defenses must be specially pleaded. Over the summer, the work group will be asking for research to be done on the list provided by Moller & Horton to identify what defenses should be listed in existing Section 10-50. The proposal will be presented to the commission in the fall.

(f) Judge Berger then presented the work group proposal on amending Section 13-14 by adding subsections (5) and (6) to specifically state that the trial judge can strike an offer of compromise, essentially codifying the language of *Yeager v. Alvarez*, 302 Conn. 772 (2011). Discussion ensued about this additional language. Atty. Sterling expressed concern that the language of subsection (6) went well beyond *Yeager* and seemed run counter to the language of the statute. Subsection (6) would permit amending an offer of compromise. If the offer is amended, identifying the date from which interest runs becomes an issue, and the issue of computing interest seems to run counter to the mandatory language of the statute. Several different proposals were made to address the concerns with subsection (6), but ultimately, the commission declined to include that subsection. Judge Bright moved to add the language in subsection (5), which codifies the decision in *Yeager*. Judge Taylor seconded that motion. Judge Lager also moved in conjunction with the motion under consideration that only the last sentence of the draft commentary be retained. Judge Bright seconded that motion. Additional discussion ensued about whether this provision limited the court's ability to fashion a remedy; whether the subsection should say "material" information; and whether this section applies post-judgment or only pre-trial. Judge Bright then made an amended motion to add subsection (5) to Section 13-14 and to add as commentary only the last sentence of the proposed draft. Judge Abrams seconded the motion. The committee voted 23 in favor with Judge Lager abstaining.

(g) Judge Berger then reported that the work group would be working on the prejudgment remedy process over the summer.

5. Individual Calendaring and Civil Reengineering – Judge Lager reported on the implementation of individual calendaring, which will be starting in the judicial districts of Ansonia/Milford, Danbury, Litchfield, Middlesex, Tolland, and Windham on July 6, 2015, and in New Haven later in July. Individual calendaring will begin in the Hartford judicial district in the fall.
6. New Business – Judge Lager reported that the Civil Commission still has a subcommittee on case processing, but it has not been active in many years. A motion to dissolve the subcommittee was made by Atty. Roberts and seconded by Judge Taylor. It was passed unanimously.

Atty. Roberts suggested that the commission discuss jury verdict tracking.

7. Next Meetings – Judge Lager announced that the meeting dates for next year were September 21, 2015, December 7, 2015, March 14, 2016 and June 13, 2016, subject to the various meeting dates of bar organizations. If there is any conflict, please let Judge Lager know.

Upon motion by Atty. Yelenak and second by Atty. Roberts, the meeting adjourned at 4:55 p.m.