

**Draft Minutes
Civil Commission
Subcommittee on Discovery
March 7, 2012
5:00pm**

The Discovery Subcommittee met on Wednesday, March 7, 2012 at the offices of Pullman & Comley, LLC in Bridgeport, CT.

Those in attendance: Attorney Charles DeLuca, (Chair), Attorney Michael Dorney, Attorney Kevin Murphy, Attorney Jonathan Orleans and Attorney Richard Roberts (by telephone).

The meeting was called to order at 5:00 p.m.

Attorney DeLuca began the meeting by handing out the Report of the Civil Commission Subcommittee on Discovery that had been submitted to the Civil Commission at a meeting on April 19, 2010. At that time, the subcommittee had proposed a rule that would provide for the appointment of special masters in discovery disputes. The rule originally applied only to electronic discovery, but at Judge Hiller's suggestion, the subcommittee expanded the rule to apply to any civil discovery. After discussion, the commission tabled the proposal for further research and revisions.

Section 25-32B of the Family Rules became effective January 1, 2012, and that rule provides for the appointment of special masters in discovery disputes in family cases. Attorney DeLuca suggested that the subcommittee revisit its prior proposed rule on special masters at this time.

Attorney Roberts asked why the commission did not approve the proposal in 2010. Attorney Dorney said the commission expressed some concern at the potential for the court to impose costs on people who had not voluntarily submitted their discovery dispute to a special master. Attorney DeLuca suggested that if that potential expense to litigants is now acceptable in family matters, it should not be a problem in civil matters. He also pointed out that discovery motions are virtually not appealable and a closer look at the special masters might benefit parties and remove a burden from the judges as well. Discussion ensued as to the inherent authority of judges to order the use of special masters, the burden on the court to decide complicated and involved discovery disputes, suggested additions to the language to clarify when special masters could be appointed, and the inclusion of possible appeal mechanisms. The subcommittee talked about the original draft that the subcommittee had submitted in 2010, the Practice Book rule (Sec. 25-32B), and a revised version of the proposed rule, which contains language that is more detailed on the subject of allocation of costs and the delineation of the special master's duties.

Attorney DeLuca pointed out that the proposed versions of the rule are much more detailed than the existing family rule. Discussion leaned toward drafting a version for civil that mirrored the provisions of the newly effective family rule on special masters, and include in the commentary the language regarding the parameters of the special master's duties, the appropriate allocation of costs and fees.

The consensus was to bring all three versions of the proposed rule to the Commission together with the suggestion that the commission proposed the simple rule, mirroring the family rule, and add appropriate commentary.

Attorney DeLuca then raised the issue of definitions and instructions that are included with discovery requests. Frequently, the definitions and instructions from an opposing party impose obligations on the other party beyond the practice book requirements. Apparently, this situation is occurring more often. Some attorneys object to all instructions and definitions; others object in general and then point out some of the more egregious instances in the other party's definitions and instructions. Attorney Dorney brought copies of Local Rule 26, which has definitions. As a general example, he brought Form 201 of the Connecticut Practice Book Appendix of Forms, which contains a definition of the word "you." He pointed out that in federal practice, the full text of Rule 26 is deemed incorporated in discovery requests, but it does not preclude the addition of interrogatories tied in to the specific subject matter of the case. Attorney DeLuca pointed out that 13-1 already contains definitions, such as party, representative and statement. The group discussed how best to accomplish this, including adding definitions to Sec. 13-1; the need for developing instructions as well as definitions; and permitting parties to vary those instructions or definitions only by going to the Court.

The subcommittee decided to present the general proposal to the Civil Commission on Monday for discussion. Members of the subcommittee will pull out some instructions and definitions to demonstrate that the abuse of definitions and instructions in discovery documents is actually a problem.

Also, the consensus of the group was that it would be helpful to do a draft that would be based on the federal rules and would include definitions and a privilege log. Attorney Orleans volunteered to draft a proposal for the subcommittee's review and discussion.

The meeting adjourned at 5:45 p.m.