

Minutes
CIVIL COMMISSION - Discovery Subcommittee
Thursday, May 7, 2015
4:00 p.m.

Those attending: Atty. William Yelenak (chair), Atty. David Cooney (by telephone); Atty. Michael Dorney (by telephone); Atty. Rosemarie Paine (by telephone) and Atty. Rick Roberts.

1. Welcome and call to order – Atty. Yelenak called the meeting to order at 4:05 p.m. and welcomed the subcommittee members.
2. Discussion and Prioritization of Tasks – The subcommittee decided to discuss the tasks and then split the tasks up among the members. The discussion on each of the tasks is listed below.
 - a. The current standard discovery for plaintiffs requires the disclosure of any prior disability rating for injuries other than those complained of in the complaint. The subcommittee has been asked to consider the addition of questions on any prior permanency/disability rating for injuries similar to those identified in the complaint. Atty. Yelenak will look at this issue to see what, if anything, should be added to the existing standard interrogatories.
 - b. The current standard discovery does not include questions regarding Medicare. The subcommittee has been asked to consider the addition of questions related to Medicare payments/liens. – Atty. Roberts provided the subcommittee with a sample of the interrogatories that his office uses. His supplemental questions include questions on the Medicare super lien information, and Medicaid and SSI. Discussion included the reasons why parties need this information; the status of liens for Medicare Advantage claims, and whether the questions on Medicaid and SSI were needed. The group seemed to feel that the SSI and Medicaid might be beyond the scope of standard interrogatories. Atty. Roberts agreed to look at all of this and put something together for the next meeting.
 - c. The current standard discovery does not include questions regarding cell phone use, although these kinds of questions are frequently asked as part of supplemental discovery. These types of questions arose from a discussion in the Workgroup on Civil Rules and Statutes, which asked the Subcommittee to consider the addition to current standard discovery of a question regarding “the use of a cell phone at the time of the accident or within the five minutes preceding the accident.” If a defendant answered in the affirmative, the party could then be asked to provide an authorization or copies of the cell phone records. The subcommittee discussed this proposal. Two items were of concern: (1) the reluctance of people to provide full access to their cell phone records, including the identity of the people to whom they are speaking; and (2) the need to limit the time period. After discussion, the consensus of the group was that the interrogatories/production request would ask if the respondent had been on the cell phone at the time of or within thirty minutes prior to the accident or within thirty minutes of the time indicated in the police report. If the answer is in the affirmative, the respondent would be asked to provide a redacted version of the cell phone records. The records would be redacted to exclude the telephone numbers to or from which the calls were made. Staff will draft and circulate proposed discovery to add to the existing standard discovery for motor vehicle cases.
 - d. The subcommittee also intends to look at clarifying that videotapes (for example, in a slip and fall case) are discoverable. Atty. Paine suggested that the standard interrogatories

should clarify that videos that depict the incident or the scene should be disclosed as part of the standard interrogatories since some question about what is covered by the existing standard discovery in this area exists. Atty. Roberts said that the standard interrogatories do not technically apply to a videotape of the accident or the scene. Also, he raised a question about photographs a person might have taken a week after the incident or accident. Are those pictures to be handed over? Atty. Dorney mentioned the potential impact of the exceptions under the FOIA, such as those that tend to reveal security measures in public buildings or things that are not in a public area. Atty. Cooney said that if the video picked up the accident, it would be discoverable. Attorneys Cooney, Paine and Roberts will draft language for the subcommittee's review at the next meeting.

- e. The subcommittee was also asked to consider the development of some standard interrogatories on the loss of consortium. The group agreed that these might be helpful, and they also agreed that loss of consortium frequently is a claim in medical malpractice claims as well. The subcommittee discussed the possibility of developing standard supplemental interrogatories on loss of consortium that could be used in any type of case. Atty. Roberts suggested questions like "have the chores/activities/sex life changed? If so, how?" Atty. Yelenak suggested that the proposed additional interrogatories might better if they were not too specific in order to avoid leaving something out. He also suggested that most of these kinds of claims are resolved through depositions. Atty. Roberts and Atty. Yelenak will work on some proposed standardized interrogatories to present to the group.

Note: The Committee on Discovery and Expedited Litigation is looking at the development of standard medical malpractice discovery, and staff will talk with the chair of that Committee about turning the task over to this subcommittee.

- f. The subcommittee was also asked to look into developing standardized requests for production of the records of primary care physicians, which can and frequently do contain information on issues totally unrelated to the issues in a case. These requests are increasingly part of discovery, and developing some standard and targeted requests would be helpful to protect the privacy of plaintiffs. After discussion, that included the reasons why someone would want to obtain primary care records and the privacy implications of providing these records, Atty. Yelenak said he would contact Atty. Ralph Monaco, who had raised this issue at the Civil Commission, in order to get a better idea of his concerns. He will report back to the subcommittee.
 - g. The subcommittee has also been asked to look into the simplification of the process on out-of-state depositions. Atty. Charles DeLuca will be responsible for this task. Staff will provide him with materials gathered by the Workgroup on Civil Rules and Statutes.
3. Next meeting – The subcommittee will meet by telephone conference on May 26, 2015 at 4:30 p.m. Information on participating by telephone will be provided by email prior to the meeting.

Subcommittee members are asked to send any drafts to alice.mastrony@jud.ct.gov so that they can be circulated to the group in advance of the meeting. If the group is in agreement on the drafts, the meeting could be canceled.