

**Draft Minutes
CIVIL COMMISSION
Discovery Subcommittee
Tuesday, September 1, 2015
4:00 p.m.**

Those attending: Atty. David Cooney; Atty. Charles DeLuca; Atty. Rosemarie Paine; Atty. Richard Roberts; and Atty. William Yelenak.

1. Welcome and Approval of Minutes – Minutes approved.
2. Revised Drafts for review:
 - a. Standard discovery regarding cell phone use and records – The group discussed the length of time, which had been reduced to ten minutes from thirty minutes, and agreed that ten minutes seemed reasonable. Atty. DeLuca asked about the availability of the information that the discovery is requesting. For example, do cell phone bills provide the time and duration of individual calls? He also asked about the accuracy of the time shown on the bills. Also, he raised the question about a cell phone used for work vs. a personal cell phone. Atty. Roberts asked about whether information or the texts themselves are part of the records.

Atty. Yelenak pointed out that responding parties can either provide an authorization or can obtain and redact the cell phone records themselves, which should address the privacy concerns.

Atty. Paine suggested that between now and the meeting of the Civil Commission, the group talk to a state's attorney to get a sense of what a cell phone provider typically has in connection with cell phone records. She agreed to take on this task and report back.

Atty. Yelenak then suggested a way to address the question about the language excluding hands free or blue tooth calls. He suggested that the intent behind the questions is to find out if the driver was looking at the road or at a device. The interrogatory could simply ask about the use of any mobile device that required the driver to look away from the road. After discussion, the language was changed to eliminate any reference to hands free or blue tooth and to ask about the use of any mobile device that required you to look at the device.

The group next discussed the language in the proposal about the time of the call. After discussion, the group decided to change the language to "within ten minutes of the time of the incident as indicated in the police report, or if there is no police report, then within ten minutes of the incident."

- b. Standard discovery regarding loss of consortium – Two concerns raised at the Civil Commission meeting were about whether the language should include civil unions and whether the existing Interrogatory #19, asking about counseling with a counselor, religious counselor, psychologist, psychiatrist or social worker without any time limitation was too broad and too intrusive.

Atty. Yelenak pointed out that these are standard interrogatories, and suggested limiting it to marriage counseling only. Anything else could be addressed at the deposition. After discussion, the question was rephrased as follows: Have you or your spouse within five years of the accident or incident had any marriage counseling or counseling regarding your relationship?

Atty. Cooney will look into whether a partner in a civil union can claim a loss of consortium.

3. Update regarding out-of-state depositions – Atty. DeLuca is working on this, and the subcommittee will report that it will have something for the next Civil Commission meeting.
4. Uninsured/Underinsure Motorist Interrogatories/Production Requests – Atty. Cooney had shared interrogatories and requests for production that his firm uses in these types of cases. He noted that he would add the surveillance interrogatory and production request from the existing standard interrogatories. The subcommittee then discussed whether these proposed interrogatories were in addition to the existing standard interrogatories or in place of them. These interrogatories are intended to be in place of the existing ones in order to incorporate interrogatories that are relevant to an uninsured/underinsured motorist claim, which is contractual in nature.

Atty. Yelenak proposed adding a question asking about all documents and records in your possession or control created prior to the litigation concerning the policy with the plaintiff. Atty. Roberts believes that the question is too broad, may or may not be relevant, and could involve material that is privileged, and he does not believe it should be part of standard discovery. A lengthy discussion ensued, including what the aim of the question is; if it is relevant if the defendant acknowledges that exhaustion has occurred; whether it is a question better left to custom discovery. Atty. Yelenak suggested limiting the question to “any documents that the insurance company has regarding exhaustion in this case.” Atty. Roberts suggested he would consider a more narrow question.

Atty. Roberts suggested that the defendant would want to ask questions of the plaintiff as well, including questions on exhaustion or remedies, information on the employment of the other driver; whether any claim was made against the other employer, etc. He agreed to draft some interrogatories for the subcommittee to consider.

The subcommittee will continue the discussion once Atty. Roberts has prepared some proposed defendant’s discovery for uninsured/underinsured motorist cases. The proposal on standard discovery for these cases will not be presented at the September 21, 2015 meeting of the Civil Commission. Whoever reports out for the subcommittee can indicate that the subcommittee is working on the discovery. Atty. Cooney will present the subcommittee’s plans on this item.

5. Next Meeting – The next meeting will be September 10, 2015 at 3:00 p.m.