



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Meeting Minutes June 15, 2009

Committee Chair Roger Wynne called the meeting to order at 9:35 am.

Members present: Aaron Adee, Timothy Ashcraft (by phone), Manish Borde (by phone), Thomas G. Crowell, Anthony J. DiTommaso, Jr. (by phone), Rebecca Engrav, Hillary Evans (by phone), Boris Gaviria (by phone), John J. Juhl (by phone), James H. Kaufman (by phone), Horace Lee (by phone), Ken Masters, Barbara McInville (by phone), Todd L. Nunn, Rebecca C. Robertson, Karl F. Sloan (by phone), Nancy L. Talner (by phone), and Neil R. Wachter (by phone). Also attending were Judge Blaine Gibson (by phone), Nan Sullins (AOC Liaison), Makaliki Aholowaa (an associate of Rebecca Engrav), Elizabeth Turner (WSBA Liaison), and Anna Schmidt (WSBA Paralegal). Excused were Carrie L. Bashaw, Steven R. Buzzard, Dianna Caley, Dana Ferestein, James F. Gooding, Howard Goodfriend, Todd W. Howard, Suchi Sharma, and Lisa Williams.

Ms. Engrav introduced her guest, Makaliki Aholowaa. The Chair asked if everyone has a copy of MAR 6.4 (the supplemental materials), which will be added to the agenda at the end of the meeting.

Minutes: Mr. Wynne pointed out that, on page 7, on the third line "he" should be changed to "the." The minutes, with that minor change, were approved by consensus.

Chair's Report: Marc Silverman, a non-member participant with our committee, will be on the BOG beginning this September. The Chair and Ms. Turner are currently putting together their report for the BOG, including proposals from the Committee. Mr. Wynne invited anyone who was interested to attend that BOG meeting, which will be held July 24 and 25 at the Tulalip Casino & Resort.

RAP Subcommittee: Subcommittee chair Ken Masters presented the subcommittee's suggested amendments to RAP 5.2, and noted that one small change had been made at the request of Chair Wynne (a "which" to "that" in the third line of the rule). The goal of the proposed amendment is to eliminate what has been for a long time a "trap for the unwary." The subcommittee's motion to approve is approved by consensus.

ESI Subcommittee: Subcommittee chair Todd Nunn moved that the committee approve a language tweak to CR 26(f) [see p. 423]. This change to the proposed amendment previously approved by the committee is intended to capture situations where a pro se party might propose a discovery plan. Mr. Masters seconded the motion. The motion was approved by consensus.

Subcommittee X: While assisting in the preparation of the GR 9 sheets, subcommittee chair Rebecca Engrav realized that MAR 6.4 did not contain headings. Ms. Engrav submitted a revised version of the previously approved amendment, with headings, a minor change to 6.4(c) from the word “subsection” to “section,” and a changed title to “Costs and Attorney Fees.” Ms. Engrav moved to accept her proposed changes, which was seconded by Mr. Crowell. Mr. Masters asked if this rule has gone before the BOG. Ms. Turner stated that it has not.

Judge Gibson questioned whether the original title, referring to witness fees, should stay the same as there is a subsection still referring to witness fees. Ms. Engrav explained that the title should perhaps be changed to “costs and fees.” Discussion ensued about whether to keep the title to a generic “costs and fees.” Ms. Talner felt that specifying attorney’s fees would add clarity. Mr. Adee thought it might be better to keep it broad. Ms. Engrav accepted the friendly amendment to change the title to “Fees and Costs”. Mr. Wynne questioned whether the language in subsection (d) should then also be broadened to “fees.” Mr. Crowell felt it should be left at “fees” to include expert fees. Mr. Masters suggested taking out the word “other” in subsection (d) when discussing costs because you don’t want to include costs as a type of fee. Mr. Crowell explained why we would want to leave it at just fees and costs (instead of narrowing it to attorney fees and witness costs). Court Rules and statutes decide what fees and costs individuals will receive and changing this rule won’t broaden that.

Ms. Engrav clarified that the motion on the table is to change the title to read “costs and attorney fees.” Judge Gibson opined that statutes show a distinction between “costs and disbursements,” although the term “disbursement” is not used as much. Mr. Kaufman moved to table the motion. There was no second so Mr. Kaufman’s motion was dropped. Ms. Engrav moved to strike the first sentence through “proceedings” and add “Any award of costs and attorney fees shall...” Mr. Kaufman seconded Ms. Engrav’s motion. Mr. Adee had an alternate wording for (d), “Any award under this rule...” and then continued on with “shall be payable...” Ms. Engrav did not feel it would be as consistent as the language she proposed, and did not accept Mr. Adee’s friendly amendment. Judge Gibson opined that we need to remember that when this rule began, arbitrators never decided costs and attorney fees (only judges made those decisions). He thinks that is why this rule was written this way. Judge Gibson suggested going with Rebecca’s language or striking subsection (d) altogether but supported Rebecca’s language and the current motion. Ms. Engrav’s motion was approved by consensus.

Mr. Wynne announced that this is his last meeting as Chair, as well as the last meeting of the season. He thanked the veterans who have been on the committee. Mr. Wynne stated that the president elect will be making the appointment of the new Chair.

Mr. Wynne adjourned the meeting at 10:21am

Prepared by:

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With the assistance of Anna Schmidt (WSBA Paralegal)