

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes

April 26, 2018

Members Present:

Chair Ken Masters, Roger Wynne, Jeffrey Damasiewicz (by phone), Nick Gellert, Rebecca Glasgow (by phone), Ruth Gordon (by phone), Hillary Evans Graber (by phone), Caryn Jorgensen (by phone), Shannon Kilpatrick, Jane Morrow, Roger Wynne, Averil Rothrock, Judge John Ruhl, Judge Paula McCandlis (by phone) and Judge Brad Maxa (by phone).

Members Excused or Not Attending:

Brad Smith, Stephanie Bloomfield, Hozaifa Cassubhai, Kim Gunning, Michael Subit, Judge Rebecca Robertson, Judge Aimee Maurer.

Also Attending:

Kevin Bank (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), and Sherry Lindner (WSBA Paralegal).

Chair Ken Masters called the meeting to order at 9:30 a.m.

Minutes

The March 29, 2018 minutes were approved by consensus.

Subcommittee Reports

Initial Case Schedules

Chair Wynne asked whether subcommittee chairs should be responding to comments received from stakeholders. Ms. Lindner noted that she acknowledges receipt of comments when they come in, so there is no need for the Chairs to do that. Task Force Chair Masters stated that subcommittee chairs have discretion to respond to commenters in more detail if they wish.

Chair Wynne requested input on the extent to which the new CRLJ 3.1 (which is still being drafted) should mirror new proposed CR 3.1. There was consensus that uniformity between CRs and CRLJs is always a desirable goal, but given the differences between Superior and District Courts, it is unlikely that the rules will be identical.

Initial Discovery Conferences

The Task Force discussed the subcommittee's proposal in CRLJ 26 that the parties must file a "Joint Status Report" after the initial discovery conference. The subcommittee's proposal included a proposed "Joint Status Report" form. Discussion ensued as to how the form would be provided to the parties. AOC liaison Shannon Hinchcliffe noted that the Court's website has a long list of suggested forms covering a wide range of rules and pleadings. If the form is attached to the rule, it is considered mandatory, and it can only be amended through the rule making process. However, the forms on the website are "pattern forms" that are recommended but not required.

Chair Masters noted that a recommended form would be helpful for both the CRs and CRLJs. Some members expressed the view that because most mandatory forms are very specific and precise (i.e., a summons), requiring a particular form in the rule could be too limiting. The subcommittee will discuss the issue further.

Mr. Wynne noted that many of the Task Force's proposed amendments reference the initial case schedule, and that uniform language will be needed. He suggested using a placeholder for now, and will work on a uniform term.

Individual Judicial Assignments and Pretrial Conferences

Chair Hillary Evans Graber reported on comments already received regarding CR 77. Some comments mentioned that the term "judicial officer" would be preferable to "judge." This would encompass Court Commissioners as well as Judges. Judge Ruhl commented that Commissioners handle significant loads and can do almost everything a Judge can do. The subcommittee will consider the input.

The subcommittee has sent out the proposed amendments to CR 16 (pre-trial conferences) for comment.

Initial Disclosures

The subcommittee's proposed amendments have been sent out for comment. There was no further discussion, other than suggestions for grammatical changes.

Cooperation

Chair Jane Morrow stated that the subcommittee's proposed rule amendments have been distributed for comment. No comments have been received but she expects they will receive some later. There was no further discussion, other than suggestions for grammatical changes.

Mediation

The Task Force discussed various provisions in the current proposal. There was discussion as to whether the local county courts should set a fee schedule or fee range for mediators. Kevin Bank and Shannon Kilpatrick noted that the WSBA Court Rules and Procedures Committee had studied the way arbitrators are compensated, and offered to provide that information to the subcommittee.

There was further discussion as to whether a mediator should be allowed to act as an arbitrator in the same matter. Task members noted that there are differing views on this topic. The subcommittee will try to obtain more feedback on this issue.

Judge Ruhl raised the issue of the interplay between the sanctions provision in the proposed rule and the RCW requirement that mediation remain completely confidential. The subcommittee will look into this issue further as well.

General Matters

The Task Force discussed combining the amendments proposed by the different subcommittees to CR 26 into one version. Ms. Lindner will distribute a “combined” CR 26 draft shortly. Mr. Bank and Chair Masters also reminded the Task Force that forwarding memoranda and finalized versions of the rule amendments are due in early July.

The meeting adjourned at 12:30 p.m.