



WSBA

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes May 25, 2017

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

Members present: Chair Ken Masters, Jeffrey Damasiewicz (by phone), Nick Gellert (by phone), Rebecca Glasgow (by phone), Kim Gunning, Hillary Evans Graber, Caryn Jorgensen, Shannon Kilpatrick (by phone), Jane Morrow, Averil Rothrock, Brad Smith (by phone), Christie Fix (attending for Michael Subit), Judge Rebecca Robertson, Judge Bradley Maxa (by phone),

Members excused from attending: Stephanie Bloomfield, Ruth Gordon, Adam Tabor, Roger Wynne, Judge John Ruhl, Judge Paula McCandlis

Also attending: Sean Michael Davis (BOG Liaison), Kevin Bank (WSBA Assistant General Counsel), Sherry Lindner (WSBA Paralegal), and Shannon Hinchcliffe (AOC Liaison).

Minutes:

The March 30, 2017 minutes were approved by consensus with two minor changes.

General

Chair Ken Masters discussed how the Supreme Court wants more historical and procedural information in GR 9 statements than in the past, including how the proponents of a rule arrived at decision points. To assist the Subcommittees in keeping track of major decision points as they formulate their proposals, Kevin Bank will be sending out to each Subcommittee chair a "Chronology of Decision Points." The point is simply to capture when significant decisions are made so that it will be easier to search for the subcommittee report on that issue if someone wants to do that in the future.

The Chair noted that some Subcommittees may be ready to make decisions and submit final proposals earlier than others. If that happens, the Chair will figure out reallocation of the members in consultation with the subcommittee chairs.

The Chair emphasized the importance of stakeholder input. A list of stakeholders compiled by the WSBA Court Rules and Procedures Committee will be sent to the Subcommittee chairs.

Subcommittee Reports

Initial Case Schedules Subcommittee

The Subcommittee is researching case scheduling rules in other states and studying those rules. Many of these rules are new. The Subcommittee's study shows these have been problems with changing the culture, with acclimating lawyers to the new rules, and with judges being willing to enforce the rules.

The study also shows that terminology is important: Any rule will need to provide details, definitions, or references to other rules to enhance clarity and consistency.

There was discussion among the Task Force members as to the need for consultation among subcommittees as drafting takes place. For instance, if a mediation requirement is proposed by the medication subcommittee, it will need to be included in the initial case schedule.

The Subcommittee will reach out to the judicial associations and Administrative Office of the Courts for feedback and hopes to finalize some proposals by the June meeting.

Individual Judicial Assignments & Pretrial Conferences Subcommittee

The Subcommittee is researching the IJA and pretrial conference rules. The Subcommittee will be working in conjunction with the Initial Case Schedules subcommittee as their work is related.

The Subcommittee asked for input from the Task Force on CR 63 draft language. The Task Force discussed how some counties do not have assigned court rooms and different judges have different assignments. There is resistance to initial judicial assignment in those counties.

The full Task Force discussed draft language proposed by the subcommittee and whether it allows for enough flexibility for smaller counties in Washington.

The Subcommittee will review the feedback received on its proposed IJA rule and will re-draft the rule and bring forth a proposal at the June meeting. It is continuing to work on a pre-trial conference rule as well.

Early Discovery Conferences Subcommittee

The Subcommittee is researching the various state rules based upon Fed.R.Civ.P. 16. The Subcommittee will be reviewing and determining whether language from the Federal Rule and other states' rules should be included in the proposed draft rule for Washington. This Subcommittee will also need to coordinate with the Initial Case Schedules Subcommittee.

Initial Disclosures Subcommittee

The Subcommittee is researching articles about decision points and options for initial disclosures. The Subcommittee has begun a draft chart on how other jurisdictions have addressed these issues. The Subcommittee hopes to have the chart completed by its next meeting.

The Subcommittee is also working on how its proposals might affect current Superior Court Rule 26.

Mediation Subcommittee

The Subcommittee raised the issue of when mediation should be required. The BOG liaison clarified that the BOG specifically favored mediation before discovery is completed rather than after, as recommended by the ECCL.

The Subcommittee is researching articles on dispute resolution, including mandatory mediation programs in other jurisdictions.

The Subcommittee will coordinate with the Initial Case Schedules Subcommittee, Initial Disclosures Subcommittee, and the Cooperation Subcommittee to make sure there are no overlaps and to assure consistency of approach.

The Subcommittee will continue to research when mediation is most useful, as well as the costs and benefits of courts' managing mediation programs.

Cooperation Subcommittee

The Subcommittee is reviewing and researching the draft edits of CR 1 and CR 11 submitted by Nick Gellert.

The Subcommittee is having some difficulties in defining cooperation. For now, it will not seek to define cooperation, but rather to see where the concept of cooperation should be used in the court rules. One issue is how judges can enforce cooperation principles or rules. There was discussion as to whether a proposed rule should require that clients sign a disclosure that they have read and understand any cooperation rule or principles. The Subcommittee will continue to research these issues and work on its CR 1 proposal.

The Chair emphasized that the focus should be on drafting rules that help change the culture.

The Subcommittee will reach out to the other subcommittees to make sure there are no overlaps with the other subcommittees.

There being no further business, the meeting was adjourned at 11:30 a.m.