

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes
September 27, 2017

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

Members present: Chair Ken Masters, Jeffrey Damasiewicz (by phone), Rebecca Glasgow (by phone), Hillary Evans Graber (by phone), Caryn Jorgensen, Jane Morrow (by phone) Averil Rothrock, Brad Smith (by phone), Michael Subit, Roger Wynne, Judge John Ruhl, Judge Brad Maxa (by phone).

Members/Liaisons excused from attending or not attending: Stephanie Bloomfield, Nick Gellert, Ruth Gordon, Kim Gunning, Shannon Kilpatrick, Brad Smith, Judge Rebecca Robertson, Judge Paula McCandlis, Shannon Hinchcliffe (AOC Liaison), Dan Bridges (BOG Liaison)

Also attending: Kevin Bank (WSBA Assistant General Counsel)

Minutes:

The June 29, 2017 minutes were approved by consensus with minor typographical changes.

Subcommittee Reports

Individual Judicial Assignments Subcommittee

Chair Graber circulated the subcommittee's latest draft of a proposed rule regarding individual judicial assignment. Discussion ensued as to where the proposed rule should be placed in the Civil Rules (CR). Possible options discussed were CR 63, CR 3 and CR 77 (which has several reserved sections). The subcommittee will do further research as to the most logical placement.

Some members voiced concerns that the draft rule does not mandate initial judicial assignment, while others noted that court administrators will likely resist a mandate. It was suggested that stakeholders be asked specifically for input on a mandatory vs. non-mandatory rule during the vetting process.

Chair Graber will send out the rule draft for vetting by stakeholders.

Initial Case Schedules

Chair Roger Wynne reported that the subcommittee is still discussing how many steps to include in the case schedule so as to include the crucial elements but not make it too long and cumbersome. There was discussion as to the timing of specific items in the current draft, including dispositive motions and expert witness disclosures.

Chair Wynne asked for input regarding a definition for the “good cause” a party must show in a motion to modify the case schedule. There was discussion as to whether a requirement that a party show “due diligence” in meeting the schedule before seeking a modification is the appropriate standard.

There was in depth discussion as to whether the rule should specifically address complex cases and if/how they should be handled. The subcommittee will consider this issue further and whether/how the rule should address complex cases.

The members also discussed the list of exceptions, which some members commented was very lengthy. The subcommittee will explore whether the exceptions could be “grouped” into broader categories.

Early Discovery Conferences

Chair Judge John Ruhl stated that the subcommittee hopes to have a draft rule to present to the Task Force for discussion in October. When the BOG adopted the ECCL recommendation for early discovery conferences, it adopted it for both Superior and District Courts. The Task Force discussed whether a District Court Judge could be added to the Task Force at this stage. It was agreed that Judge Ruhl could initiate discussions with interested District Court Judges, but it will be up to the BOG whether to appoint a new member to the Task Force.

The Task Force then discussed whether certain cases should be exempted from a requirement for early discovery conferences, and whether the list would be the same as for initial case schedules. The subcommittee will continue to work on this issue.

Initial Disclosures

The subcommittee is continuing to work on a draft rule and is trying to reach out to litigators in Colorado, Arizona and Alaska to ascertain how initial disclosure rules are working in those states. Judge Ruhl mentioned a local rule requiring initial disclosures in family law cases, which he offered to provide to the subcommittee.

Mediation

Chair Rothrock circulated a draft rule for discussion and input. There was discussion regarding the timing of required mediation, and how the timing would affect the initial case schedule. There was also discussion as to whether the rule should specifically address situations when the parties cannot afford to pay a mediator.

Finally, the Task Force discussed whether the ECCL recommendation the BOG adopted regarding mandatory mediation precluded other forms of alternative dispute resolution. It was confirmed that the recommendation does not preclude other forms of alternative dispute resolution. Judge Maxa suggested that judge-administered settlement conferences should be

considered as one of the alternative ADR methods that could meet the requirement (although Judges currently have little available time to conduct them).

The subcommittee will discuss adding a provision regarding other forms of ADR to the proposed rule and continue to fine-tune the proposal.

Cooperation

Judge Maxa outlined the subcommittee's proposal, which involves suggested amendments to CR 1 and CR 11 to incorporate the principle of "reasonable cooperation." There was a discussion as to whether "reasonable cooperation" should be defined in the CR or elsewhere. Chair Ken Masters suggested that a good place for a definition, and perhaps also an explanation as to which aspects of litigation will be subject to the requirement that the parties reasonably cooperate, would be the GR 9 statement submitted with the proposed amendments.