

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes
October 26, 2017

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

Members present: Chair Ken Masters, Stephanie Bloomfield, Jeffrey Damasiewicz (by phone), Nick Gellert, Rebecca Glasgow, Kim Gunning (by phone), Caryn Jorgensen (by phone), Shannon Kilpatrick, Jane Morrow, Averil Rothrock, Brad Smith (by phone), Michael Subit, Roger Wynne, Judge Rebecca Robertson, Judge Paula McCandlis, and Judge Brad Maxa (by phone).

Members/Liaisons excused from attending or not attending: Ruth Gordon, Hillary Evans Graber, Judge John Ruhl, Shannon Hinchcliffe (AOC Liaison), and Dan Bridges (BOG Liaison).

Also attending: Kevin Bank (WSBA Assistant General Counsel), Sherry Lindner (WSBA Paralegal), and Rachel Konkler (WSBA Legal Assistant).

Minutes:

The September 28, 2017 minutes were tabled until the November 30 meeting.

Subcommittee Reports

Individual Judicial Assignments/Pre-trial Conferences Subcommittee

Michael Subit reported on CR 16 Pretrial Procedure and Formulating Issues, specifically if certain kinds of cases should be excluded from the requirement of a pre-trial conference, and whether the excluded categories of cases should be the same as listed in the proposed Initial Case Schedule rule. There was discussion as to whether the deadline for filing a pre-trial report should be included in the initial case schedule rule or in the pre-trial conference rule (CR 16). There was also discussion as to whether the rule should require “lead” counsel for the parties to appear at the pre-trial conference.

In the coming weeks, the subcommittee will reviewing the initial case schedule exclusions and working with the Initial Case Schedule subcommittee to review these issues.

Initial Case Schedules

Chair Roger Wynne reported on the latest draft of the subcommittee’s proposal. A number of issues were discussed including: (1) timing of the filing of the discovery plan; (2) whether the time period of the case schedule should be limited to one year; (3) the procedure for seeking to modify the case schedule; and (4) how the excluded cases should be grouped in the rule. The

subcommittee is seeking input from court clerks and judges regarding how the excluded matters should be listed, as they are likely to have a major role in deciding which cases should be exempted.

Early Discovery Conferences

Brad Smith reported that the subcommittee is in the final stages of presenting a draft rule to the Task Force. The Subcommittee will schedule a meeting with the Initial Case Schedule Subcommittee to determine when initial discovery conferences should occur.

The Subcommittee will also reach out to the Mediation Subcommittee to coordinate with them on the timing of the early discovery conference.

Discussion ensued as to whether the rule should use the term “cooperation” in addition to or instead of “good faith”, and as to whether those two concepts are the same. The subcommittee will consult with the Cooperation Subcommittee to assure that the language used across rules is consistent.

The subcommittee will also discuss further whether the rule should address situations where the parties are not able to agree on a discovery plan.

Initial Disclosures

Chair Rebecca Glasgow reported on feedback received from Colorado and Arizona, which have approached the issue of initial disclosures differently. Colorado has used the federal rule as a basis for its rule, and has had positive results. Arizona’s experience is less comparable to Washington’s because of differences in local civil practice. There was discussion as to whether the rules should specify the sanctions available for parties who do not comply.

The subcommittee will continue to seek input from other states and hone its drafting.

Mediation

Chair Rothrock reported on the subcommittee’s draft. The subcommittee has begun reaching out to stakeholders. There was discussion regarding several issues, including (1) whether a settlement conference with a Judge would satisfy the mediation requirement; (2) how specific the rule should be about the mediation procedure; and (3) who should be required to attend the mediation in cases where liability has been admitted.

Cooperation

Chair Jane Marrow reported that the subcommittee is continuing to hone its proposed amendments to CR 1 and CR 11. The Task Force discussed the use of attorney vs. counsel in the draft. The Task Force agreed the term attorney is more appropriate.

The subcommittee will continue to work to draft language to incorporate into CR 26 and/or CR 37 that will specifically link the failure to cooperate to the imposition of sanctions.

The subcommittee is continuing to reach out to stakeholders for feedback and comments.

Meeting adjourned at 12:35 p.m.