

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes

March 29, 2018

Members Present:

Chair Ken Masters, Stephanie Bloomfield (by phone), Hozaifa Cassubhai, Jeffrey Damasiewicz (by phone), Rebecca Glasgow, Ruth Gordon (by phone), Kim Gunning, Hillary Evans Graber (by phone), Caryn Jorgensen, Shannon Kilpatrick, Averil Rothrock, Michael Subit, Judge John Ruhl, Judge Paula McCandlis, and Judge Brad Maxa (by phone).

Members Excused or Not Attending:

Nick Gellert, Jane Morrow, Brad Smith, Roger Wynne, Judge Rebecca Robertson, and 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 February 22, 2018, minutes were approved by consensus.

Subcommittee Reports

Mediation

Chair Averil Rothrock reported that the subcommittee had solicited informal feedback on its draft rule earlier this year, and that the comments and suggestions received had been very helpful. In general, the feedback was positive to the concept of early mediation, although some comments stated that the requirement could increase the cost of litigation, particularly if parties participate in bad faith. Others commented that requiring mediation at a later stage would be preferable. The subcommittee's latest draft addresses several concerns raised by the comments, including: (a) adding language allowing the parties to request a 60-day extension of the mediation date (set by the case schedule) to allow for limited discovery; (b) requiring courts to establish a fee schedule for mediators to avoid disparities in mediator fees; (c) adding "participation in bad faith" to the section on sanctions for failure to comply.

Ms. Rothrock indicated that she would be submitting the current draft to stakeholders in the coming week.

Initial Disclosures

Chair Rebecca Glasgow reported that the suggested amendments to CR 26 are ready to be distributed to stakeholders. Judge McCandlis reported on a proposed amendment to CRLJ 26 to incorporate an abbreviated version of the initial disclosures in the CR 26 draft. The two proposed rules will be distributed to stakeholders jointly.

Early Discovery Conferences

Chair Judge Ruhl reported that the subcommittee, with the input of Judge Maurer, has drafted an early discovery conference provision to be added to CRLJ 26, which does not currently address the issue of discovery conferences in courts of limited jurisdiction. Judge Ruhl said that the draft is a work in progress and invited comment from the Task Force. After some discussion, Judge Ruhl indicated that the subcommittee and Judge Maurer will consult and partially redraft. The subcommittee plans to distribute the proposed amendments requiring early discovery conferences in CR 26 and CRLJ 26 together.

Individual Judicial Assignments and Pretrial Conferences

Chair Hillary Evans Graber reported that CR 77 has been distributed to stakeholders and that some comments have been received. The subcommittee will be reviewing the comments. Most of comments received so far are in favor of the proposed amendment.

The subcommittee is in the process of finalizing its proposed amendments to CR 16 (pre-trial conferences). It will distribute that proposal to stakeholders shortly.

Initial Case Schedule

Caryn Jorgensen reported that the subcommittee has made some refinements to its prior draft. It is still working on the list of exemptions to the case schedule requirement. The new draft recommends that the rule be made CR 3.1. The subcommittee is also proposing an amendment to CR 26(b)(5) to clarify what information will need to be disclosed with the expert disclosures required by the initial case schedule.

The Task Force discussed again the timing of the expert disclosures. Some members favored simultaneous disclosures while others favor the “three part” disclosure with plaintiff disclosing first. The subcommittee members stated that they would continue to discuss the issue.

The subcommittee will finalize its proposals and distribute them to stakeholders for feedback shortly.

Cooperation

Judge Maxa reported that the subcommittee decided not to define the term “cooperation” in its proposal after considering the prior input and discussions of the Task Force on this issue. The proposed amendments to CR 1, 11, 26 and 37 are ready to be distributed for comment. The subcommittee has not yet drafted amendments to the CRLJs to incorporate the principle of cooperation but will do so before distribution to stakeholders.

General Matters

Chair Masters reminded members that all proposed rules must be finalized and ready for distribution to stakeholders by early April to allow sufficient time for stakeholder comments by late May. Sherry will make comments available on BOX so that everyone can access them. The Task Force will have an additional meeting on June 28, 2018 to discuss final versions of the proposed rules and memoranda for submission to the BOG for its July 27-28 meeting. Final versions of the proposed amendments must be ready by the June 28 meeting.

The meeting adjourned at 12:52 p.m.