

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes
November 30, 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), Rebecca Glasgow (by phone), Hillary Evans Graber, Caryn Jorgensen (by phone), Shannon Kilpatrick (by phone), Jane Morrow, Michael Subit, Roger Wynne, Judge John Ruhl, Judge Brad Maxa (by phone), Judge Aimee Maurer and Dan Bridges.

Members/Liaisons excused from attending or not attending: Hozaiifa Cassubhai, Nick Gellert, Ruth Gordon, Kim Gunning, Averil Rothrock, Brad Smith, Judge Paula McCandlis, Hillary Evans Graber, and Shannon Hinchcliffe (AOC Liaison).

Also attending: Kevin Bank (WSBA Assistant General Counsel)

Minutes:

The September 28, 2017 and October 26, 2017 minutes were approved.

Subcommittee Reports

Cooperation

Jane Morrow reported that the subcommittee is reaching out to stakeholders to vet some of its proposals. Some of the feedback they have been getting is that: (1) cooperation needs to be defined; (2) the possibility of sanctions for failing to cooperate could lead to more pre-trial skirmishes/disputes. The Task Force discussed the benefits and costs of including a definition of cooperation, and if there were to be a definition, if the definition should be in the CRs or in the GR 9 statement. The subcommittee will continue to consider this issue.

The Task Force then suggested some edits to the subcommittee's draft amendments to CR 26 and 37.

Initial Disclosures

Jeff Damasiewicz reported and sought feedback on (1) how and where to address the issue of initial disclosures for parties who join an ongoing case after the initial disclosure deadline; and (2) whether parties should be required to produce copies of documents vs. descriptions of the documents. The Task Force discussed both issues. Most members favored production of copies vs. descriptions as it gives a better sense of the volume of evidence in a case.

There was also discussion about the draft language concerning the duty to supplement the initial disclosures. Some members felt that the duty to supplement as outlined in the current draft is too limited, and needs to be strengthened.

The subcommittee will consider the input and report back at the next meeting.

Individual Judicial Assignments/Pre-trial Conferences Subcommittee

Chair Hillary Graber reported that the subcommittee is working on an email to send out to stakeholders for input on its proposed amendments to CR 16 mandating a pre-trial conference and report. The Task Force suggested some edits to the draft.

There was discussion regarding whether pro se litigants would be covered by the rule. Judge Ruhl and others commented that pro se litigants are treated the same as litigants with counsel in court, and that the rule should apply to parties, whether represented or not.

The subcommittee will do some re-drafting and prepare to send the draft to stakeholders.

Initial Case Schedules

Chair Roger Wynne reported on the latest draft of the subcommittee's proposal. There was continued discussion regarding the provision requiring that dispositive motions be filed 75 days before trial. There was a suggestion that 60 days may be better given that the discovery cutoff is 90 days prior to trial. There was further discussion as to whether the proposed amendment to CR 56(c) provides sufficient clarification that dispositive motions must be filed in conformance with the pre-trial case schedule and CR 56.

The Task Force discussed whether the rebuttal expert disclosure is too close in time to the discovery deadline (120 days prior to trial for rebuttal expert disclosure and 90 days for discovery cutoff). There was continued debate as to whether expert disclosures should be staggered (as in the subcommittee's proposal) or simultaneous. Caryn Jorgensen noted that the "majority rule" was for staggered disclosures, with the rationale being that the party carrying the burden should disclose first.

The subcommittee will consider the input and submit a redraft at the next meeting.

Early Discovery Conferences

The subcommittee did not have a new draft to present at this meeting, but will report back at the next meeting.

Judge Ruhl inquired if there are any constraints on seeking input on proposals that are clearly still in the draft phase. Ken Masters stated that it is fine to obtain input at any phase as long as it is made clear that the proposal on which input is being sought is a draft. He noted that Task Force meetings are public.

Mediation

There was no report from the mediation subcommittee

Meeting adjourned at approximately 1pm.