



WSBA

ESCALATING COST OF CIVIL LITIGATION TASK FORCE

MEETING MINUTES

April 9, 2014

The Escalating Cost of Civil Litigation Task Force met at 2 p.m. on April 9, 2014 at the WSBA Offices.

Present were Russ Aoki (Chair), Breean Beggs, William Hyslop, Don Jacobs (phone), Ken Masters (BOG Liaison), Jerry McNaul, and Todd Nunn. Excused were Judge Ronald Cox, Eric de los Santos, Judge Richard McDermott, Gail Nunn, and Justice Debra Stephens. Absent were Judge Marcine Anderson, Lincoln Beauregard, Cynthia Buhr, Jessica Goldman, Amit Ranade, and Kevin Stock.

Also in attendance were Jeanne Marie Clavere (Staff Liaison), Isham Reavis of Aoki Law, Leslie Hagin of McNaul Ebel Nawrot & Helgren, and Darlene Neumann, paralegal.

I. Minutes

The minutes of February 12, 2014 were adopted.

II. BOG Report

Chair Russ Aoki reported on the presentation and update given to the Board of Governors (BOG) in March. The BOG approved the Task Force's request for an extension of the charter to December 2014.

III. Discovery Subcommittee

Subcommittee Chair Todd Nunn commented the subcommittee report circulated in the meeting materials was a rough draft and not yet complete; however, it represented the subcommittee's main thinking regarding certain practices that would lead to reduced litigation costs. The subcommittee's report recommended several court rule changes affecting the structure of litigation and limits on discovery. No rule changes were proposed to family law, matters filed in District Court or the MAR. The subcommittee proposed a two-tier litigation track for civil cases below \$300,000 and above. Parties

could petition the court to opt out of an assigned track or request modification of the limits. Mr. Nunn indicated the issue with assigning a track based on solely on case value at filing which may change after subsequent disclosures by the parties, still must be resolved. The subcommittee also recommended cases be assigned to a single judge at the outset and given a case schedule. Additional recommended practices were mandatory CR 26(f) conferences, mandatory early judicial conferences, and mandatory initial disclosures, pre-trial disclosures, and expert disclosures. Many of the subcommittee's recommendations parallel existing practices within the federal courts. The subcommittee also suggested narrowing the scope of discovery to address proportionality under CR 26(b)(1) by amending the rule to limit so-called "fishing expeditions". Other proposals included limits on deposition hours, interrogatories, requests for production and requests for admission, expert discovery, and amendments to the eDiscovery rule. The subcommittee pointed out a report from the U.S. 7th Circuit supported the positive effects of these practices.

The Chair raised whether the Task Force ought to consider adding a third track for family law. Discussion followed on the previous efforts by the Local Rules Task Force to amend the family law rules which were rejected by the Supreme Court. Some members opined that addressing family law may be beyond the scope of the Task Force charter. Members suggested the Task Force report include an acknowledgement of the issue and clarify that the proposed rule changes do not apply to family law.

Discussion followed on including draft rules to accompany the Task Force report and soliciting feedback from ATJ and Sections before presenting the rule amendments to the BOG. Ken Masters noted the WSBA Court Rules and Procedures Committee might be consulted as well since they are the WSBA entity directly involved in vetting and scrubbing court rules.

III. Pleadings and Practice Subcommittee

Leslie Hagin presented the Subcommittee's report for Chair Eric de los Santos who was unable to attend. Based on extensive interview research the subcommittee concluded the most important tool to help reduce civil litigation costs and improve case flow is to implement a basic case scheduling order with set deadlines. The subcommittee also recommended assigning a judge at the outset of the case which would cause earlier court intervention to deal with discovery disputes and other issues. Ms. Hagin noted King, Pierce, and Spokane Counties and the federal courts have been using this model for some time. The subcommittee recommended a rule be applied uniformly across all Superior Court jurisdictions and room for adjustments be allowed if the basic parameters are set. There was less support reported among smaller courts for automatic assignment of judges because of their limited resources. The subcommittee

also felt that CR 26(f) conferences were unnecessary, although some smaller courts found them to be of value.

The subcommittee's draft report has been circulated among some stakeholders and Ms. Hagin reported there appeared to be little opposition to the proposals overall. A few smaller courts were already experimenting with the ideas identified by the subcommittee. Several smaller courts also expressed reluctance over the proposals because of concerns it would place burdensome requirements on them or affect their culture. However once the proposals were explained in detail, those courts saw the potential of lower workloads due to reduced motion practice resulting from a scheduling order. A new software program is also being developed to easily generate case schedules and is expected to be implemented statewide. Other recommendations included presumptive limits on discovery and lay down requirements. The subcommittee emphasized the need to get early input from the courts on the proposed recommendations.

Discussion followed on holding CR 26 conferences and the corresponding increase in costs to clients versus the benefit of the conferences to force lawyers to engage early in the process to resolve potential issues with the court's involvement.

The Task Force discussed the District Court with its \$75,000 limit and limits on injunctive relief and small claims court amounts, and whether to make recommendations there as well. Statistics shared by Judge Marcine Anderson showed a 23% increase in District Court cases over the last year; although it was not known what types of cases comprised that number. Members also acknowledged little information exists about the effectiveness of costs in District Court.

IV. ADR Subcommittee

Subcommittee Chair Jerry McNaul commented the arbitration portion of the report is nearly finished and they are awaiting additional analysis for the mediation component. He explained the subcommittee previously worked with the WSBA ADR Committee and a 3L student interviewed several mediators as part of their research. Following the high favorable response to the ECCL Survey regarding mandatory mediation 60 days after completion of discovery by the parties, the subcommittee conducted additional interviews with lawyers in certain practice areas. The subcommittee expects to have a completed report to the Task Force by the next meeting in May.

V. Trial Procedures Subcommittee

No one from the subcommittee was present to report. Item tabled to the next meeting.

VI. Follow-up Work

The Task Force discussed the review process for the upcoming subcommittee reports. The reports will be reviewed by the Task Force as a whole. Following comments from members, the reports may undergo further refinement. Once they are completely finalized, the reports will be distilled into an overall, draft interim report representing the comprehensive work of the Task Force and its subcommittees. The Task Force discussed distributing the draft interim report to select groups, including the District & Municipal Court Judges Association, prior to its presentation to the BOG. Several members suggested the Task Force inform the BOG of its decision to circulate an interim draft report in advance to solicit input from stakeholders to avoid any confusion pertaining to its action.

VII. Adjournment

The meeting adjourned at 4:05 p.m. The next meeting of the ECCL Task Force will be May 7, 2014.