

**CIVIL LITIGATION RULES DRAFTING TASK FORCE**

Meeting Minutes

May 31, 2018

Members Present:

Chair Ken Masters, Stephanie Bloomfield ( by phone), Jeffrey Damasiewicz (by phone), Nick Gellert, Rebecca Glasgow, Kim Gunning, Hillary Evans Graber, Caryn Jorgensen, Jane Morrow, Averil Rothrock, Michael Subit, Roger Wynne, Judge Rebecca Robertson, Judge Paula McCandlis, and Judge Bradly Maxa.

Members Excused:

Ruth Gordon, Shannon Kilpatrick, Brad Smith, Judge John Ruhl, Judge Aimee Maurer, and Shannon Hinchcliffe (AOC Liaison).

Also Attending:

Nicole Gustine WSBA Staff Liaison, Sherry Lindner WSBA Paralegal, and Dan Bridges (BOG Liaison).

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

Chair Masters introduced Nicole Gustine as the new staff liaison to the Task Force.

The Task Force discussed and voted on the following rules:

**Civil Rule 1 (Proposed by Cooperation)**

The Task Force discussed the possibility of striking “reasonably” from the proposal.

Motion was made and seconded.

Upon further discussion, the Task Force voted 5 to 9 opposing to strike “reasonably” from all cooperation rules.

Motion was made to keep the rule as proposed. Motion passed unanimously.

**New Civil Rule 3.1 (Proposed by Initial Case Schedule)**

Roger Wynne reported that upon reviewing all comments received from stakeholders, the subcommittee added additional exemptions to the list.

Motion was made to recommend the rule as written. Motion passed unanimously.

**Civil Rule 11 (Proposed by Cooperation)**

The Task Force recommended a friendly amendment by adding the following to CR 11,

(c) "... Any motion seeking sanctions under this subsection shall include ~~a~~ the moving party's certification that the conference requirements of this rule have been met, ~~or~~ that the moving party attempted in good faith to meet the conference requirements of this rule.

Motion to adopt the new language carries 12 to 2.

Motion was made to recommend the proposal with the friendly changes.

Motion passed unanimously.

**Civil Rule 16 (Proposed by Individual Judicial Assignment and Pretrial Conferences)**

Motion was made to recommend the proposal as written.

Motion passed unanimously.

**New Rule: Early Mandatory Mediation Requirement (Proposed by Mediation)**

The Task Force proposed the following friendly amendments:

- (Page 20 of May 31 Meeting Materials) Change Judges to Judicial Officers;
- (Page 20 of May 31 Meeting Materials, Subsection (c)) Strike "deny relief or;"
- (Page 22 of May 31 Meeting Materials, Subsection (h)) Strike "refusal to participate in mediation or" and add, "The Court,... for failure to comply...."
- (Page 22 of May 31 Meeting Materials, Subsection (h)) Add "Any motion ... met, ~~or~~ that the moving party attempted in good faith to meet the conference requirements of this rule.

Motion was made to recommend the proposal with the friendly changes.

Motion passed unanimously.

**Recommended ADR Practices**

Motion was made to recommend the proposal as written, with the caveat that it is not part of the Civil Rules.

Motion passed with 12 in favor, 1 opposed, and 1 abstention.

Location of the Rule

The Task Force discussed that the best location of this new rule would be under Title 6 Trials, after CR 53.4.

Motion was made to recommend the new proposal as Civil Rule 53.5.

Motion passed with 9 in favor, 3 opposed, and 1 abstention.

Civil Rule 26 (Proposed by Cooperation)

The Task Force recommended a friendly amendment to strike “the court expects” and change “to” to “shall” and it was accepted.

(a) Consistent with the general obligation to cooperate set forth in CR 1, ~~the court expects~~ the parties and their counsel ~~to~~ shall....

Motion was made and passed unanimously.

Civil Rule 26 (Proposed by Initial Disclosures)

**CR 26(b)(4)**

The Task Force discussed possibly striking (b)(4) out of the rule.

Motion was made and seconded to strike subsection (b)(4) out of the rule.

Motion passed with 7 in favor and 6 opposed.

**CR 26(b)(1)(A)**

The Task Force recommended a friendly amendment to add “; excluding retained experts or any witness to be used solely for impeachment;” after “... party’s claims or defenses” and it was accepted.

**CR 26(b)(1)(B)**

Motion was made and seconded to add the following sentence to the rule:

(B) A copy of each document and other relevant evidence supporting the disclosing party’s claims or defenses, ~~unless the use would be solely for impeachment~~ unless the use would be solely for impeachment ....

Motion passed with 7 in favor and 4 opposed.

**CR 26(b)(1)(E) and CR 26(b)(1)(F)**

Motion was made to add the language of CR 26(b)(2)(i) to subsection E, and strike "... ~~the agreement and~~..." to subsection F.

Motion failed 2 to 9.

The meeting adjourned at 1:30 p.m. due to lack of quorum. Chair Masters scheduled another meeting for June 7 so that the Task Force may reconvene and vote on the remaining rule proposals.