



WSBA

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes June 29, 2017

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

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

Members excused from attending: Ruth Gordon, Judge Bradley Maxa, and Shannon Hinchcliffe (AOC Liaison).

Also attending: Dan Bridges (BOG Liaison), Kevin Bank (WSBA Assistant General Counsel), and Sherry Lindner (WSBA Paralegal).

The Chair welcomed and introduced the new BOG liaison Dan Bridges to the Task Force.

Minutes:

The May 25, 2017 minutes were approved by consensus with one minor change.

Subcommittee Reports

Initial Case Schedules Subcommittee

Subcommittee Chair Roger Wynne reported to the Task Force that the Subcommittee is considering how much detail should be included in an initial case schedule, i.e., should it include just the trial date or should pre-trial event dates also be included?

Judge Ruhl noted that in King County alone, there are multiple different templates for different kinds of cases, and that a “one size fits all” approach can be challenging. He also stated that front-loading of the schedule helps get the parties’ attention early, which saves resources.

The Task Force reacted positively to the concept of including specific deadlines in the initial case schedule.

The Task Force then discussed the issue of whether the parties should be permitted to change the schedule without leave of the Court. There were varying views on this topic. The subcommittee will continue to study how much flexibility should be permitted and how changes should be handled.

Finally, the Task Force discussed whether certain classes of cases should be exempt from initial case schedule requirements, and if so, how such exemptions should be decided upon. A suggestion was made that exemptions should be covered in local rules as different jurisdictions may decide to exempt different classes of cases.

Individual Judicial Assignments & Pretrial Conferences Subcommittee

Subcommittee Chair Hillary Evans Graber presented to the Task Force for first reading proposed language to be added to CR 63. The subcommittee came to the conclusion that the rule would need to take into account that requiring judicial assignment would not be efficient or practicable for those counties where there are only one or two judges working the docket.

Ms. Graber reported that in reaching out to various courts, the subcommittee learned that pre-assignment is not always favored and that judges in many counties strongly oppose a rule requiring pre-assignment, particularly in smaller jurisdictions.

The subcommittee obtained input from the Task Force and will continue to work on draft language.

Early Discovery Conferences Subcommittee

Chair Judge John Ruhl reported that the subcommittee has conducted research and located early discovery conference rules from Arizona, California, Georgia, Idaho, Iowa, Nebraska, Nevada, New Hampshire, New Jersey, Minnesota, Oregon, and Tennessee. It is currently studying best approaches.

In addition, some counties in Washington have some kind of pre-trial scheduling conferences. The subcommittee will continue to research the local rules and will report back at the next meeting.

Initial Disclosures Subcommittee

Subcommittee Chair Rebecca Glasgow reported to the Task Force that the subcommittee has completed their multi-state survey and list of decision points and options.

The Task Force discussed what must be disclosed in the initial disclosures. Different states take different approaches. One of the major issues is whether requirements for initial disclosure should include materials useful and/or supportive to the opposing party. Discussion ensued regarding whether initial disclosures should include a “good faith” standard, as in complex cases, not everything is known initially.

The subcommittee will continue its work and will report back to the Task Force at its next meeting.

Mediation

Subcommittee Chair Averil Rothrock reported to the Task Force that the Subcommittee is working on whether mediation is helpful, specifically, for lawyers working on contingency. Mediation is costly and may take a lot of time. There was discussion as to how mediation would work in practice, given the already challenging workload of courts.

The subcommittee discussed whether a shorter, less prescriptive rule would be better than a more specific, rigid approach. A less rigid rule would be helpful to account for the shifts in the mediation process that can occur when a relationship is created between the parties and the mediator, and real progress starts being made.

The subcommittee has no recommendation at this time and will continue its work.

Cooperation

The subcommittee is currently working on how the concept of cooperation can be incorporated into various existing rules, including CR 1, CR 11, and CR 37. There was a discussion as to whether such language would have any effect in the absence of some kind of enforcement mechanism.

The Subcommittee has no recommendation at this time and will continue its work.

There being no further business, the meeting was adjourned at 12:00 p.m.