

CIVIL LITIGATION RULES DRAFTING TASK FORCE

Meeting Minutes
January 25, 2018

Members Present:

Chair Ken Masters, Jeffrey Damasiewicz (by phone), Nick Gellert, Rebecca Glasgow, Ruth Gordon (by phone), Kim Gunning (by phone), Hillary Evans Graber, Caryn Jorgensen (by phone), Shannon Kilpatrick, Jane Morrow, Averil Rothrock, Michael Subit, Roger Wynne, Judge John Ruhl, Judge Brad Maxa (by phone), Judge Paula McCandlis and Judge Aimee Maurer (by phone).

Members Excused or Not Attending:

Stephanie Bloomfield, Hozafa Cassubhai, Brad Smith, and Judge Rebecca Robertson.

Also Attending:

Kevin Bank (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), Dan Bridges (BOG Liaison), Marty Wyckoff (Attorney General's Office), and Sherry Lindner (WSBA Paralegal)

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

Minutes

The November 30, 2017 minutes were approved by consensus.

Subcommittee Reports

Cooperation

Chair Jane Morrow reported that the subcommittee has continued to discuss whether to define "cooperation" in the CR or elsewhere. The subcommittee has found that framing a definition that is neither too narrow nor too broad is challenging, and is not sure that a definition would be useful.

The Task Force discussed the definition issue. There was support for providing a definition either in the CR or in the GR statement. The Task Force reviewed and discussed some of the definitions already proposed. The subcommittee will continue to work on a workable definition.

The Task Force then provided feedback on the subcommittee's most recent CR 1 draft. The subcommittee will consider the input.

Initial Disclosures

Chair Rebecca Glasgow reported that the subcommittee has completed its multi-state survey and is now in the process of fine-tuning its draft proposals.

The Task Force provided input on stylistic issues. There was also discussion as to whether the initial disclosure requirement to provide a description and computation of damages would replace the statement of damages that parties can now request. Some Task Force members expressed the view that the initial disclosure of damages would be a welcome and more effective replacement for the statement process.

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

Individual Judicial Assignments/Pre-trial Conferences

Chair Hillary Evans Graber reported that the subcommittee is ready to disseminate CR 77 to stakeholders. Upon further discussion, the Task Force recommended tabling dissemination until after a few more tweaks to the draft proposal. Task Force members suggested that when the rule is ready to be disseminated, it should be accompanied by an explanatory paragraph of the contents and why input is being sought. A Task Force member asked whether all the Task Force proposals should be disseminated at once, or piece-meal as drafts are completed. Chair Masters stated each subcommittee should disseminate to stakeholders when it is ready and not wait until all the subcommittees have completed their drafts.

Hillary Evans Graber presented the latest draft of the pre-trial conference rule. The Task Force provided input on the use of the term “parties” in the draft and whether that term should include counsel for a party. The subcommittee will consider the input.

Initial Case Schedules

Chair Roger Wynne reported that in the latest draft, the subcommittee removed the “exception list” from the case schedule requirement as it believed the list was becoming unwieldy and an exception list may be better suited to local rules. Task Force members weighed in on the proposal to remove the list. Several members, including Ruth Gordon, noted that a specific list of exceptions could be helpful to court clerks and provide uniformity statewide. After receiving the input, the subcommittee said they would revisit their proposal and submit a new draft at the next meeting.

The Task Force then provided input on other miscellaneous provisions in the subcommittee’s latest draft.

Early Discovery Conferences

Chair Judge Ruhl reported that the subcommittee discussed a possible Initial Discovery Conference rule for District Courts, as the BOG has instructed the Task Force to draft a rule for both the Superior Courts and District Courts. He expressed the view that the subcommittee has insufficient knowledge and experience to be able to determine whether and how CRLJ 26 should be amended to incorporate an initial discovery conference requirement. The subcommittee recommended that it may be helpful to reach out to one or more long-serving District Court Judges or experienced District Court civil practitioners for assistance with rule drafting.

Chair Masters explained that he will not be seeking to add more members to the Task Force at this late juncture, that there are already two DMCJA representatives on the Task Force, and that the incoming Chair of the DMCJA is on our Task Force, so when we vet proposals to them we can rest assured we will get plenty of feedback/ input from them. They are of course welcome to participate in the process now and throughout the drafting/ vetting processes.

The Task Force discussed how to obtain more input in District Court rule drafting and rule vetting. Some ideas discussed included: (1) reaching out to highly experienced District Court Judges to serve as liaisons to particular subcommittees; (2) contacting the District and Municipal Court Judges Association as soon as possible for input on particular issues; (3) contacting practitioners who have large District Court civil case loads to help vet proposals.

Mediation

Chair Averil Rothrock reported that the subcommittee has reached out to some stakeholders informally and received positive feedback. The subcommittee will continue to work with the Early Discovery subcommittee, Initial Disclosures subcommittee, and the Initial Case Schedules subcommittee on timing of mediation.

The meeting adjourned at 1:45 p.m.