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CONFERENCE OF CIRCUIT JUDGES
COMMITTEE ON COMPLEX LITIGATION

NOTES FROM JANUARY 11, 2022
MEDICAL MALPRACTICE WORKGROUP MEETING

Time: 4:00 pm - 5:30 pm

Place: Virtual (Zoom)

Attendees:

Judge Beckstead, Chair, Medical Malpractice Work Group
Judge Wallace, Chair, Committee on Complex Litigation
Judge Ensor
Hon. Charlene Notarcola
Hon. Anne SanGiovanni
Mairi Maguire, Esq.
Michael Nakamura, Esq.

Staff:

Linda Fallowfield, Esq.

Next Work Group Meeting March 15, 2022 4:00-5:30 pm, via zoom.

Judge Beckstead opened the meeting by asking the Complex Litigation Coordinator to give an update from the Conference of Circuit Judges (CCJ) Meeting in November 2021. In that meeting the Chair of the Committee on Complex Litigation presented the Medical Malpractice (MEDMAL) Workgroup recommendation that for medical malpractice litigation, trial dates be set at the start of litigation as opposed to later in the litigation. The Complex Litigation Coordinator reported that the CCJ did not comment or provide any feedback to the recommendation.

Judge Beckstead noted that the issue of setting trial dates up front is intertwined with that of case time standards in that if trial dates are not set up front, the parties tend to seek continuances more often which could have a negative impact on the case time standards. Judge Beckstead also noted that the arbitration process has not been utilized and if it had, more discovery would be completed at an earlier phase which could facilitate meeting case time standards. Judge Beckstead then posed the question to Judge Wallace: what is the role or mission of the MEDMAL WG?

Judge Wallace said that the WG was set up to facilitate input from the Bar that would address inefficiencies in the litigation process and suggest best practices. He said that healthcare arbitration is a statutory creation and beyond the purview of the Judiciary. However, if the Committee on Complex Litigation can pass along any Bar's recommendations that would improve the process to the CCJ or the Judicial Council in the hopes that it will reach the decisionmaker, then the Committee should do so. Judge Wallace also indicated that case time standards are beyond the scope of the Judiciary but if the Committee can highlight issues with the case time standards and get them to the decisionmaker then it should also do so.

A robust discussion the ensued about the MEDMAL case time standards of 18 months and whether the majority of the MEDMAL cases can be met in that timeframe. A WG member stated that there is a category of cases (approximately 10%) which involve multiple witnesses and experts that cannot be handled within 18 months. Judge Wallace noted that judges can always extend the time frames for a case, but this would run the risk of having a case reported as exceeding the case time standards. Judge Wallace also noted that some jurisdictions set the trial dates ahead of the case time standards and will grant continuances as needed. Judge Beckstead added that while some jurisdictions are sticklers about meeting case time standards, jurisdictions also recognize that there are a percentage of cases that will not meet the case time standards and will grant continuances accordingly.

Judge Beckstead then asked what can we do to maximize efficiencies so that the case time standards can be met? A discussion ensued about modifying the agreed upon scheduling orders with a member of the WG noting that the parties can submit motions modifying the dates in the scheduling order, but the parties must be judicious in doing so because once a scheduling order has been modified it is difficult to modify it again. Another member of the WG noted that most motions do not disturb the trial date but concern discovery issues which prompted another member to note when discovery dates are changed but not trial dates, it impacts the defense more because the defense does not get the same time to prepare as the plaintiffs. Judge Ensor then stated that it seems like the WG keeps coming back to the same idea: that it would be best if the attorneys can set the trial date up front and work backwards. The WG members agreed that the P.G. County and Baltimore County models are best. Both models set the trial date up front and allow the attorneys to set interim dates.

One member of the WG worked out the following 18-month schedule:

January 1 – Complaint filed
February 1 – Answer filed
May 1 – Discovery Fact Finding
June 1 – Experts Named
August 1 – Defense Experts Named
September 1 – Plaintiff Rebuttal Experts
February 1 – Discovery Cutoff
March 1 – Dispositive Motions
April 15 – Daubert Hearings
May 1-15 – Voir Dire/Pre-Trial
June 1-15 – Pre-Trial Conference
July 1 – Trial

Judge Beckstead asked if the Plaintiff and Defense Bar members of the WG could agree on a timeline after another member of the WG noted issues with the timeline. Judge Ensor stated that

she didn't think you could come up with a one size fits all timeline and that attorneys should know their case up front and know how many experts that may need up front to facilitate setting a good scheduling order.

Judge Beckstead noted that there appeared to be consensus that the P.G. County model for scheduling orders should be followed and suggested that the WG make the following (more specific) recommendation to the CCJ:

“After an answer is filed, the case should be scheduled and a trial date set either by 1) a proposed scheduling order agreed upon by both parties, or 2) attending a scheduling hearing.

Action Items for the WG Members:

1. Submit agenda items for upcoming meetings a week before so Judge Beckstead can prepare.

Action Items for Staff:

- 1) Place on the agenda for the January 20, 2022 Committee on Complex Litigation meeting the following WG recommendation:

“After an answer is filed, trial date(s) shall be set and a scheduling order shall be entered by 1) filing a proposed scheduling order agreed upon by all parties, or 2) attendance at a scheduling hearing. Under either option, the trial dates and any hearing dates will be arrived at in coordination with the appropriate Court Assignment/Calendar.”