ExSC_053G_2016

From: Dave Ringle [mailto:d.ringle@ieee.org]
Sent: Friday, June 10, 2016 1:01 PM
To: PSA Department
Cc: Anne Caldas; Patricia Griffin
Subject: Fwd: Proposed Revisions to ANSI Appeals Procedures: Public comments due by July 25, 2016

Dear PSA,

Thank you for the opportunity to provide comments on the proposed updates to the ANSI appeal procedures.

The following comments are my personal comments.

a) In the Response clauses (11.3 for the Appeals Board, 7.3 for the BSR, and 17.3 for the ExSC):
There is text that states "No supplemental filing prior to the forthcoming hearing shall be permitted...."
Since this text was included in the Response clause, it could be interpreted as only applying to the respondent.
I hope that is not the case.
It should apply to both the appellant and to the respondent.
Perhaps that was the intent.
If so, it should be made more clear within the text.
Consider breaking out that concept into it's own paragraph.
Consider amending the text along the lines of "No supplemental filing by either the appellant or the respondent prior to the hearing shall be permitted...."

b) For the Appeals Board, a possible disconnect between 11.2 and 13:
11.2 discusses the Appeals Board initial review and the possibly that a hearing will not be scheduled due to a lack of a prima facie case being established.
13 discusses possible reconsideration of an 'Appeals Board hearing decision'.
I interpret 'Appeals Board hearing decision' to mean a decision from the Appeals Board after an actual hearing (with appellants and respondents able to attend/participate) occurred.
Others might interpret 'Appeals Board hearing decision' to include Appeals Board decisions to not hold a hearing due to lack of establishment of a prima facie case.
Consider adding text to 11.2 that states that if the Appeals Board determines that an appeal is dismissed due to lack of establishment of a prima facie case, that the appeal opportunities within ANSI have been exhausted.
Consider adding clarifying text to 13 to make it very clear that an 'Appeals Board hearing decision' only applies to a hearing (as per 11.5).

c) For the Appeals Board, the option of amici:
11.4 discusses the possibility of amicus filings.
I am strongly opposed to this concept.
I understand that amici are supposed to provide assistance to the appellate body.
I am concerned that the amicus process will be used to simply espouse personal/corporate positions on a topic without actually providing any benefit to the appellate body.
My main concern is that a person/entity posing as an amicus will provide information that it hopes will aid a particular party to the appeal but the party to the appeal may feel differently about the amicus input.
Some operational issues - would amicus filings be made available to the appellant and the respondent in advance of a hearing? Would appellant and/or respondent be provided an opportunity to clarify or counter statements made in an amicus filing? [If not, the amicus statements could be given undue weight, as statements could be taken at face value.] Would an amicus filer be allowed to attend an appeal hearing? [If so, then the system could be gamed to allow entry into any appeal hearing. Simply file an amicus position (such as a re-statement of an obvious concept or applicable ANSI procedure) and then gain free access to the appeal hearing.]
The concept of the amicus filing is unnecessary, as the option to be a Party Supporter is sufficient to allow a person to provide their commentary. If neither the appellant nor the respondent wishes to accept a filing as a Party Supporter document it could indicate that the appellant/respondent does not want that person's assistance or, maybe, that it is a truly neutral amicus statement. I doubt that there will by many truly neutral amicus statements. Regardless, I have faith in the Appeals Board (guided by ANSI legal counsel) that a proper decision can be reached without reliance on amicus statements. In addition, as noted above, there are operational questions.
Please delete the proposed provisions that would allow amicus filings.

Thank you for considering my comments.

Regards,
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