ExSC_053A_2016

From: Dina Kallay [mailto:dina.kallay@ericsson.com]
Sent: Monday, July 25, 2016 5:34 PM
To: PSA Department
Subject: Proposed Changes to the Operating Procedures of the ANSI AB, BSR and ExSC [please acknowledge receipt]

Dear Ms. Caldas and ANSI staff:

I am writing in re to the June 10, 2016 Standards Action Notice on proposed changes to the Operating Procedures of ANSI's Appeals Board (AB), Board of Standards Review (BSR), and Executive Standards Council (ExSC).

Having recently had an opportunity to engage with both the ExSC and the AB, I offer the following comments on the proposed changes. For ease of reference, I open every comment with a snip of the proposed change.

1/ **Timing on Filing fees**

Proposed change as circulated:

The appeal shall be submitted to the secretary of the Appeals Board along with the required filing fee. The filing fee may be waived or reduced only upon sufficient evidence

The problem with this text:

My experience is that today's companies prefer to pay fees directly via an electronic wire of the money. For multiple reasons (control, check can get lost etc.) They do not cut check and give them to employees to use.

When a fee is wired, it's impossible to time the wire to take exactly when an appeal is filed.

Hence, just like you've updated the text re recognize modern practices of electronic filings, it would be good to update this text which shows up in multiple places in the Procedures (search for the prhase "along with" and you'll find them all)

Proposed solution:

Whereever this text appears in the Operating Procedures, change it to (red text is new): "The appeal shall me submitted…. along with the required fee or following the remittance of same.

2/ Limiting Pleadings Length

Proposed changes as circulated

In muliple places the proposal is to severly limit the length of pleadings, e.g.:

The brief appeal ~~notice and~~ statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

The brief appeal statement (exclusive of exhibits) shall not be more than 30 pages, double-spaced, 12 point font or larger.

13 Reconsideration

Any party to ~~such~~ an appeal may request reconsideration of an Appeals Board hearing decision by sending a written request ~~in writing~~, not to exceed 10 pages in length, double-spaced, 12 point font or larger, to the secretary of the Appeals Board within ten ~~(10)~~ working days after

The problem with these proposals:

In complex scenarios, they can severly limit the appllants ability to describe their case, and thus effectively devoid the appeal process of much of its meaning

Proposed solution:

Do not adopt these changes. To the extent adopted – **double** this newly imposed length limit (e.g. from 30 to 60 pages, from 10 to 20 pages) **and** build in much required flexibility by adding text allowing dicretion to the Secretary of the relevant group to grant an extenstion, such as "The Secretary of the ExSC/BSR/AB shall have discretion to extend this limitation."

3/ Letters of Support (Section 11.4)

Proposed change as circulated

11.4 Letters of support by non-parties to the appeal

If the Appeals Board ~~or, if the chairperson is unavailable, by the secretary~~determines that a prima facie case has been established and a hearing will be held, two types of letters of support will be accepted within the fifteen-working-day response period established per 11.3 Response:

- Amicus Curiae: A person or organization that is not a party to the appeal and who has not been solicited by any of the parties may request permission from the Appeals Board Secretary to offer information in the form of an "amicus letter" that bears on the appeal to assist the Appeals Board. The request for permission to file an amicus letter may not exceed one single-space page in length, should state the name and affiliation of the requestor, the requestor's interest in the appeal, the reason why the requestor believes an amicus letter is desirable and why the requestor believes the matters it intends to assert are relevant to the disposition of the appeal.

- ~~A hearing on~~Party Supporter: A person or organization that is not a party to the appeal may submit a letter of support for a position taken by the appellant or respondent to the appeal by contacting that party and requesting that such a letter be included in that party's formal appeals brief or response.

Such amicus curiae (if permitted) or party-supporting letters shall be clearly marked as such, may not include new evidence, may not exceed three single-space pages in length and may address procedural issues only. Letters not meeting the requirements of this section will not be accepted without the approval of the Appeals Board Chair. Submitters of such letters do not

The problem with the proposal:

There are multiple problems with this newly proposed text:

· A three page limitation is too short for writing anyting effective.

· The limitation of support letters to "procedural issues only" devoids the whole concpet of much of its meaning. Appeals are often substantive – why shoule letters of support/amicus curiae be limited to procedural issues?

· The strict distinction between Amuicus Curieae and party support is also unclear, and can allow for an aribtrary denail of the former which is only
by permission"

· Denying the possibiity of a letter of support to the statement of appeal itself, and rather allowing only after a prima facie case is found to have been established, is a wrong

premise. The letters of support can and should be evaluated when the relevant body is examining whetherh a prima facie case was made.

Proposed Solution

Instead of this new long text block for section 11.4 , inser the following text:

“11.4 Letters of support

Letters of support for an appeal may be submitted along with the statement of appeal.”

Thank you for your consideration of these comments to what appears to be a very extensive overhaul of the Opreating Procedures. I would appreciate if you could confirm their receipt.

Dina Kallay

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