



# WSBA

## COURT RULES & PROCEDURES COMMITTEE

### Agenda

October 21, 2013  
9:30 a.m. to 1:00 p.m.  
Washington State Bar Association  
1325 Fourth Avenue – Sixth Floor  
Seattle, Washington 98101

1. **Call to Order/Preliminary Matters**
  - Greeting/Introductions
  - Meeting dates (*pp. 2*)
  - Reimbursement Policy (*pp. 3-4*)
  - Updated roster (*pp. 5-9*)
  - Approval of Minutes (see Minutes June 17, 2013, *pp. 10-15*)
2. **Old Business**
  - BOG decisions on FY 2013 Committee recommendations
3. **Subcommittee Assignments**
  - Subcommittee Assignments (*pp. 16*)
4. **Other Business/Good of the Order**
5. **Adjourn into Subcommittee meetings**

#### **FUTURE MAIN COMMITTEE MEETING SCHEDULE**

November 18, 2013  
December – No Meeting  
January 27, 2014  
February 24, 2014  
March 17, 2014  
April 21, 2014  
May 19, 2014  
June 16, 2014  
July 21, 2014  
August 18, 2014  
September 15, 2014



WSBA

COURT RULES & PROCEDURES COMMITTEE

## 2013 - 2014 Court Rules & Procedures Committee Meeting Schedule

October 21, 2013  
November 18, 2013  
December – No Meeting  
January 27, 2014  
February 24, 2014  
March 17, 2014  
April 21, 2014  
May 19, 2014  
June 16, 2014  
July 21, 2014  
August 18, 2014  
September 15, 2014

We anticipate canceling at least one of the summer meetings, but please keep the dates on your calendar for now.

All meetings are at the WSBA offices, 1325 – 4<sup>th</sup> Avenue, Suite 600, Seattle, from 9:30 a.m. to 1:00 p.m. To participate by telephone conference call:

*Dial 1-866-577-9294; dial the entry code when prompted: 55419#  
[Once you enter the code, you will hear a “beep” and a voice will ask you to state your name]*

Meeting materials will only be distributed electronically. Please bring your laptop, or hard copies of meeting materials, to each meeting.

The WSBA has a small number of laptops available for member use during meetings, but they must be reserved in advance with Sherry Mehr (206-733-5941; [sherrym@wsba.org](mailto:sherrym@wsba.org))



## 2012 – 2013 EXPENSE REPORT

*See reverse side for WSBA Expense Policy. Please fill out clearly and completely. Reimbursement checks will be payable only to the person incurring the expense, as documented by receipts. Original, signed expense reports must be submitted within 60 days of incurring the expense but in no event later than 30 days after the WSBA fiscal year end (September 30). To expedite reimbursement, mail this form directly to your staff liaison at:*

**Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle WA 98101-2539.**

<input type="checkbox"/> <b>WSBA Employee</b>  <input type="checkbox"/> <b>WSBA Board/Committee/ Council/Task Force/Panel/ Section/CLE</b>  <b>Staff Liaison:</b>	<b>Make check payable to (print):</b>  <b>Address:</b>  <input type="checkbox"/> <b>Check if new address</b>  <b>E-mail (only used if questions about this request):</b> _____ <b>Phone:</b> _____  <b>By my <u>signature</u> below, I represent that these expenses comply with the WSBA Expense Policy and have not been reimbursed by any other source:</b> _____ <b>Bar #:</b> _____ <b>Date:</b> _____
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### EXPENSE REIMBURSEMENT REQUEST *(original, detailed receipts required)*

Meeting Date(s):				
<b>Event:</b> →				<b>Category Totals</b>
<b>Meeting Location:</b>				
<b>Transportation</b>	Auto Mileage Total (\$ 0.565/mi )	miles	miles	miles
	Ground Trans, Parking, Tolls <i>(Receipt required if over \$25)</i>			
	Airfare (coach/economy only)			
<b>Meals</b>	Breakfast (up to \$12)			
	Lunch (up to \$18)			
	Dinner (up to \$36)			
<b>Lodging</b> (up to \$150/night; \$180/night in Seattle + tax)				
<b>Other Expenses (itemize):</b>				
<b>Totals</b>				

#### For WSBA Use Only

Submitted by: _____					
Date: _____					
Approved by: _____		Date: _____		Rush approval: _____	
Date: _____					
Account Name	Account #	Dept.	Job Code	Bar #	Amount
Vendor # _____			Date Rec'd in AP _____		Total: _____

## WSBA EXPENSE POLICY

**General principle:** WSBA depends upon and values the time and talent of its employees and volunteers. WSBA will reimburse necessary out-of-pocket expenses as set forth below. As a steward of member funds, WSBA will not reimburse expenses that are reimbursed from another source. Except as otherwise provided by WSBA Fiscal Policy, WSBA will not reimburse expenses incurred by spouses, domestic partners or guests.

**WSBA Boards, Committees, Councils, Task Forces, Panels please note:** In light of reduced 2013 license fee revenue,

1. Volunteers and committees are asked to develop and share cost-saving measures.
2. Virtual meetings are encouraged whenever feasible to accomplish the committee's work.
3. *For face-to-face meetings, WSBA will reimburse (a) committee chairs for their travel expenses, and (b) non-chair members (i) for meetings scheduled for 3 hours or more, or (ii) for travel 50 miles or more one way.*

**Transportation:** If travel is necessary, please be economical. WSBA will reimburse the lesser of coach-economy air fare or auto mileage. If you choose to drive, WSBA will not reimburse for lodging en route, and may only reimburse you for the lesser cost of coach-economy airfare. Reimbursement for out-of-state committee travel is limited to the approximate cost of in-state travel (the cost of traveling from the nearest Washington border).

1. **Auto Mileage** will be reimbursed at the rate of \$0.565 per mile. *Carpooling is encouraged.*
2. **Rental Cars/Other** may be used only when necessary and economical compared to other modes of local transportation/if local transportation is nonexistent. Rental charges should be net of any discounts and will be limited to the rental cost of compact or standard-size cars. Reimbursement for any other method of travel (e.g., train) will be reimbursed for the cost of the most economical method of travel. *Detailed receipts are required.*
3. **Ground transportation, parking, tolls:** If travel is by air, please park economically. WSBA will reimburse longer term airport parking at the lower of actual parking costs or an airport shuttle to/from your home. *Parking receipts, which should be provided regardless of amount, are mandatory for all parking expenses greater than \$25. If a receipt is not available, up to \$75 may be paid if the Expense Affidavit Form (see below) is completed.*
4. **Airfare:** WSBA will only reimburse coach/economy-class air fares. Book in advance to obtain lowest possible fares. WSBA reserves the right not to fully reimburse for last-minute fares. WSBA will not reimburse for use of frequent flyer coupons or air miles. *Detailed receipts are required (must include name of passenger, date of flight, and departure and destination locations). Credit card statements are not acceptable.*

**Lodging:** When an overnight stay is necessary (contact your Staff Liaison in advance with any questions), WSBA will reimburse hotel/motel accommodations up to \$150 per night (\$180 in Seattle) plus applicable taxes. Ask your Staff Liaison about WSBA preferred rates at area hotels. WSBA will not reimburse incidental charges (e.g. entertainment, personal phone calls, etc.). *Lodging will not be reimbursed without a detailed receipt (including name/location of hotel, guest name(s), date(s) of stay, and breakdown of charges for lodging, meals, telephone and incidentals).*

**Meals:** Receipts are required. WSBA will reimburse meal expenses (including gratuity) up to \$12 for breakfast, \$18 for lunch and \$36 for dinner. In the event of lost receipts, WSBA will reimburse the lower of these rates or the federal per diem rate for the location in which the meal expense was incurred (see [www.gsa.gov](http://www.gsa.gov)). All-day travelers may reallocate per-meal allowances (e.g., spend more on lunch; less on dinner). *Alcohol will not be reimbursed and must be segregated from meal expense. Identify all individuals included in a meal reimbursement request.*

**Other expenses:** You are encouraged to absorb incidental costs; however, WSBA will reimburse necessary out-of-pocket office expenses with receipts (actual copying charges up to 15 cents a page; faxes up to 25 cents a page, with a \$5 maximum). WSBA will not reimburse standard office services (e.g., voice mail, telephone connections), personnel costs or professional services.

*The WSBA has an Accommodation Fund available to all members with disabilities to support accessibility and ensure reasonable accommodation for their participation in WSBA services, programs, and events, including sign language interpretation, sound enhancement, or personal companions. To request an accommodation, contact your Staff Liaison.*

## EXPENSE AFFIDAVIT FORM

*Up to \$75 may be reimbursed in the absence of a receipt (cannot be used for airfare, rental cars, lodging or meals)*

Under penalty of perjury, I hereby certify that I incurred the cost of :

Date of Purchase:

Name of Vendor:

Item Description:

Amount Paid: \$ \_\_\_\_\_ Was sales tax paid on the purchase?  Yes  No

Brief Description of why there is no receipt or a copy is being used: \_\_\_\_\_

Signature of Purchaser: \_\_\_\_\_

Date: \_\_\_\_\_



## Washington State Bar Association

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### COURT RULES AND PROCEDURES COMMITTEE 2013-2014 ROSTER (Updated October 9, 2013)

NAME/ADDRESS	E-MAIL	TELEPHONE
<b>Hillary J. Evans Graber, Chair</b> Civil Division Snohomish County Prosecutor's Office 504 3000 Rockefeller Ave Everett, WA 98201-4046  <i>Term Ends: 09/30/2015</i>	hillary.graber@snoco.org	(425) 388-7365
<b>Walter E. Barton (Gene Barton)</b> Karr Tuttle Campbell 701 5th Ave Ste 3300 Seattle, WA 98104-7055  <i>Term Ends: 09/30/2014</i>	gbarton@karrtuttle.com	(206) 224-8030
<b>Katharine Bond</b> Attorney Advisor, ODAR 2413 Pacific Ave, Ste 200 Tacoma, WA 98402  <i>Term Ends: 09/30/2015</i>	katharinebond@gmail.com	(206) 349-8839
<b>Shane Carew</b> 5450 California Ave SW Ste 101 Seattle, WA 98136-1577  <i>Term Ends: 09/30/2014</i>	shane@carewlaw.com	(206) 587-0590
<b>Dean Chuang</b> Crary Clark & Domanico PS 9417 E Trent Ave Spokane Valley, WA 99206-4285  <i>Term Ends: 09/30/2014</i>	dchuang@ccdlaw.com	(509) 926-4900
<b>Paul Crisalli</b> WA Attorney General's Office 800 Fifth Ave Ste 2000 Seattle, WA 98104-3188  <i>Term Ends: 09/30/2014</i>	paul.crisalli@atg.wa.gov	(206) 384-3822

NAME/ADDRESS	E-MAIL	TELEPHONE
<p><b>Anne M. Cruser</b>  Clark County Prosecuting Attorney  PO Box 5000  Vancouver, WA 98666-5000</p> <p><i>Term Ends: 09/30/2014</i></p>	<p>Anne.cruser@Clark.wa.gov</p>	<p>(360) 397-2261</p>
<p><b>Anthony DiTommaso, Jr.</b>  23 S Wenatchee Ave Ste 201  Wenatchee, WA 98801-2274</p> <p><i>Term Ends: 09/30/2015</i></p>	<p>tony@ditommasolaw.net</p>	<p>(509) 665-8776</p>
<p><b>Eric W. Eisenberg</b>  Lewis City Prosecuting Attorney's  Office  345 W Main St Fl 2  Chehalis, WA 98532-4802</p> <p><i>Term Ends: 09/30/2014</i></p>	<p>eric.eisenberg@lewiscountywa.gov</p>	<p>(360) 740-1240</p>
<p><b>Sean J. Flynn</b>  WA House of Representatives  PO Box 40600  Olympia, WA 98504-0600</p> <p><i>Term Ends: 09/30/2015</i></p>	<p>Sean.Flynn@leg.wa.gov</p>	<p>(360) 786-7124</p>
<p><b>Kenneth P. Henrikson</b>  The Defender Association  810 3<sup>rd</sup> Ave Ste 800  Seattle, WA 98104-1695</p> <p><i>Term Ends: 09/30/2015</i></p>	<p>henrikson@prodigy.net</p>	<p>(206) 447-3900</p>
<p><b>Darcie L. Houck</b>  Fredericks Peebles &amp; Morgan LLP  2020 L St Ste 250  Sacramento, CA 95811-4270</p> <p><i>Term Ends: 09/30/2015</i></p>	<p>dhouck@ndnlaw.com</p>	<p>(916) 441-2700</p>
<p><b>Andrew C. Huff</b>  Law Offices of Andrew C Huff  800 Fifth Ave Ste 4100  Seattle, WA 98104-3100</p> <p><i>Term Ends: 09/30/2015</i></p>	<p>andrewhuff@ahufflaw.com</p>	<p>(206) 729-3477</p>
<p><b>David M. Iseminger</b>  PO Box 40124  Olympia, WA 98504-0124</p> <p><i>Term Ends: 09/30/2014</i></p>	<p>DavidI@atg.wa.gov</p>	<p>(360) 753-2769</p>

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<b>Kailin James</b> Kailin James, Attorney At Law PO Box 712 Bellingham, WA 98227  <i>Term Ends: 09/30/2014</i>	kailinj@hotmail.com	(360) 922-7929
<b>James H. Kaufman</b> 1100 W Mallon Ave Spokane, WA 99260-2043  <i>Term Ends: 09/30/2015</i>	jkaufman@spokanecounty.org	(509) 477-5764
<b>Shannon Kilpatrick</b> Kilpatrick Law Group, PC 1750 112 <sup>th</sup> Ave NE Ste D155 Bellevue, WA 98004-3727  <i>Term Ends: 09/30/2015</i>	shannon@triallawyersnw.com	(425) 453-8161 EXT 103
<b>Endel Kolde</b> King County Prosecutor's Office 500 4th Ave Ste 900 Seattle, WA 98104-2316  <i>Term Ends: 09/30/2014</i>	endel.kolde@kingcounty.gov	(206) 296-8820
<b>Shawn Larsen-Bright</b> Dorsey Whitney LLP 701 5 <sup>th</sup> Ave Ste 6100 Seattle, WA 98104-7043  <i>Term Ends: 09/30/2014</i>	larsen.bright.shawn@dorsey.com	(206) 903-2417
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<b>Enrico S. Leo</b> The Leo Law Office 18920 Bothell Way NE Ste 208 Bothell, WA 98011-1981  <i>Term Ends: 09/30/2015</i>	rick@leolawoffice.com	(425) 481-2600
<b>Raphael I. Nwokike</b> Law Offices of Raphael Nwokike PS 30640 Pacific Hwy S Ste E3 Federal Way, WA 98003-4889  <i>Term Ends: 09/30/2015</i>	rnwokike@yahoo.com	(253) 839-4324

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<b>Shannon Ragonesi</b> Keating Bucklin & McCormack 800 5 <sup>th</sup> Ave Ste 4141 Seattle, WA 98104-3175 <i>Term Ends: 09/30/2014</i>	sragonesi@kbmlawyers.com	(206) 623-8861
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<b>Michael R. Scott</b> 1221 2nd Ave Ste 500 Seattle, WA 98101-2925 <i>Term Ends: 09/30/2015</i>	mrs@hcmp.com	(206) 623-1745
<b>David Stevens</b> 3011 Swetzer Rd Loomis, CA 95650-9516 <i>Term Ends: 09/30/2014</i>	David_Stevens@davidstevens.org	(509) 869-4547
<b>Ann Summers</b> King County Prosecutor's Office 516 3rd Ave Ste W554 Seattle, WA 98104-2362 <i>Term Ends: 09/30/2014</i>	ann.summers@kingcounty.gov	(206) 296-9449
<b>Shashi Vijay</b> VJ Law Firm PLLC 22525 SE 64th Pl Ste 249 Issaquah, WA 98027-5387 <i>Term Ends: 09/30/2015</i>	shashi@vjlawfirm.com	(425) 557-4305



## Judicial Liaisons

<b>Kevin Korsmo</b> The Court of Appeals, Division 3 500 N Cedar St Spokane, WA 99201-1905  <i>Term Ends: 06/30/2016</i>	kevin.korsmo@courts.wa.gov	(509) 456-4032
<b>Blaine Gibson</b> Yakima County Superior Court 128 N 2nd St Yakima, WA 98901-2639  <i>Term Ends: 11/2013</i>	blaine.gibson@co.yakima.wa.us	(509) 574-2698
<b>Rebecca Robertson</b> Federal Way Municipal Court 33325 8th Ave S Federal Way, WA 98003-6325  <i>Term Ends: 09/2015</i>	Rebecca.robertson@cityoffederalway.com	(253) 835-3000

## Staff/BOG Liaisons

<b>Elizabeth Turner</b> Washington State Bar Association 1325 Fourth Avenue – Ste 600 Seattle WA 98101-2539	elizabetht@wsba.org	(206) 239-2109
<b>Nan Sullins, AOC Liaison</b> Administrative Office of the Courts 415 12 <sup>th</sup> St W POB 41174 Olympia WA 98504-1174	Nan.Sullins@courts.wa.gov	(360) 357-2124
<b>Kenneth W. Masters, BOG Liaison</b> Masters Law Group 241 Madison Ave. N Bainbridge Island, WA 98110-1811	ken@appeal-law.com	(206) 780-5033



# WSBA

## COURT RULES AND PROCEDURES COMMITTEE

### Meeting Minutes

June 17, 2013

Committee Chair Hillary Evans Graber called the meeting to order at 9:37 a.m.

Members present: Chair Hillary Evans Graber, Katharine Bond, Dean Chuang (by phone), Paul Crisalli (by phone), Anne M Cruser (by phone), Anthony DiTommaso Jr., Eric W. Eisenberg (by phone), Sean J. Flynn (by phone), David M. Iseminger, Kailin James, Shannon Kilpatrick, Shawn Larsen-Bright, Roger A. Leishman, Nicole McGrath, Jeannie Mucklestone (by phone), Bryan Page (by phone), Shannon Ragonesi (by phone), David Stevens (by phone), Ann Summers, Judge Kevin Korsmo (by phone), and Judge Rebecca Robertson.

Members excused from attending: Gene Barton, Roy Brewer, Leslie Clark, Maureen M. Cyr (hiatus), Elizabeth A. Fraser, Dale Johnson, Kathleen Nelson, Karen Denise Wilson and Judge Blaine Gibson.

Members who did not respond to meeting notice or attend meeting: Daniel Brown.

Non-Members/Guests present: Don Horowitz (by phone), and Nancy Talner (Attorney at ACLU).

Also attending: Ken Masters (BOG Liaison), Elizabeth Turner (WSBA Assistant General Counsel – Staff Liaison) and Sherry Mehr (WSBA Paralegal).

### Minutes

The May 20, 2013 meeting minutes were approved by consensus, with two corrections.

### Old Business

None.

### New Business

*RAP Subcommittee:* Subcommittee Chair Ann Summers reported as follows:

- Additional review of amendments proposed by the Court of Appeals:
  - RAP 10.10: The Subcommittee again reviewed the Court of Appeals' proposed amendments to RAP 10.10 and was unable to come to a consensus on to the

proposed amendments to subparagraph (a): half of the Subcommittee supported the Court of Appeals' proposed amendment with no changes, and the other half supported the proposed amendment but wanted to limit the statement of additional grounds to claims relevant to the decision under review. The Subcommittee agreed with the Court of Appeals' proposed amendments to subparagraph (c).

The Subcommittee noted that if the Court of Appeals was going to change *appellants* to *defendants* in parts of the rule then it must be changed through the entire rule. The Subcommittee also performed some "which doctor" work on this rule. The language in the Subcommittee's proposal reflects those changes.

- RAP 18.13A: The Subcommittee agreed with the Court of Appeals' proposed changes but felt the rule would read better if what the Subcommittee believed to be two superfluous *ands* were removed from paragraph (a). Judge Korsmo explained that the *ands* should not be deleted, because of the structure of the included list. After discussion, the Committee suggested that commas be added as follows: ". . . under RCW 13.36<sub>2</sub> may be. . . ." and ". . . under RCW 13.36<sub>2</sub> shall be. . . ."

After additional discussion, the Committee voted unanimously to approve the Subcommittee's proposed response on RAP 10.10(c) and 18.13A and then separately voted 12-3-1 to approve the Subcommittee's proposed response on RAP 10.10(a).

- The remaining proposed PRP amendments were next discussed, as follows:
  - RAP 16.3: After the discussion at the May meeting, the Subcommittee felt that deleting subsection (b) would confuse the public. After discussion, the Committee voted 15-0-1 to approve the proposed amendment to RAP 16.3.
  - RAP 16.5: The Committee made the following friendly amendments to the Subcommittee's proposal: Existing subparagraph (b)(2), originally proposed by the Subcommittee to be subsumed into new subparagraph (c), is moved and becomes (b)(3). With that revision, the Committee unanimously approved of the Subcommittee's proposed changes.
  - RAP 16.8: The Committee made the following friendly amendments:
    - (a) **Filing Fee.** A personal restraint petition will be filed by the clerk of the appellate court only if the statutory filing fee is paid, unless the appellate court determines that the petitioner is ~~unable to pay the filing fee~~ indigent. The statute ~~requiring~~ governing payment of a fee for filing a petition for writ of habeas corpus is controlling.

In addition, the reference to "16.7.7" in proposed new subparagraph (c) was corrected to "16.7." With those friendly amendments, the Committee voted 14-2 to approve the proposed amendments to RAP 16.8.

- RAP 16.8A: The Committee unanimously voted to approve the Subcommittee's proposed new RAP 16.8A.
- RAP 16.9: The Committee unanimously voted to approve the Subcommittee's proposed amendment to RAP 16.9.
- RAP 10.2: The Committee next turned to RAP 10.2, Time for Filing Briefs. Ms. Summers explained that the Subcommittee had worked closely with WALA but had been unable to agree to WALA's proposed amendments. The Subcommittee included its proposed compromise language, as well as the language originally proposed by WALA, in the meeting materials.

Mr. Masters explained that the Court was not getting amicus briefs in time for them to be taken into consideration when the bench memos are drafted, and that it was problematic for appellate counsel to be forced to respond to amicus briefs during the 30 days before oral argument, when they should be focused on preparing for oral arguments. Ms. Talner stated that it was her understanding that Commissioner Goff supports WALA's proposal and since the current rule is 30 days, it would be clear how long it would be before the oral argument. Ms. Talner opined that the proposed 45 days from acceptance of review is enough time for briefs to be filed. Mr. Leishman opined that the Court wants to receive the response to the amicus briefs and WALA's proposal is more problematic. Mr. Crisalli stated that he prefers the 45-day time frame because the amicus brief is important and not supplemental.

The Committee discussed what would happen to WALA's proposal and whether it should be submitted to the BOG. Mr. Masters suggested that both proposals should be submitted to the BOG with a recommendation as to which proposal the Committee is recommending. After further discussion, the Committee approved unanimously to recommend the Subcommittee's proposed amendment to RAP 10.2 to the BOG and to include WALA's proposal in the BOG materials so the BOG can compare the two.

The Committee took a 5-minute break before continuing on to the other agenda items. Various Committee members signed off at various points during the meeting and were not present for the rest of the votes.

*ESI Subcommittee:* Subcommittee Chair Shawn Larsen-Bright reported that the Subcommittee has been working on CR 26. The ATJ Technology Committee proposed substantial revisions to the Subcommittee's current language, and the Subcommittee is far from completing its work on ATJ's proposals. Mr. Larsen-Bright informed the Committee that this item on their agenda will not be completed this year and will be carried over to next year. Mr. Horowitz reported that the ATJ will put materials together.

*Subcommittee X:* Subcommittee Chair Gene Barton was not present, so Tony DiTommaso Jr. reported on behalf of the Subcommittee.

- GR 30(b) and CR 5(b)(7): The Subcommittee reviewed the proposed amendments to GR 30(b)(4) and CR 5(b)(7) that the King County Bar Association submitted to the Court, which the Court forwarded to us for review and comment. The proposed amendments would allow counties that now have a local rule mandating electronic filing to also adopt a local rule to mandate electronic *service*. The proposed amendments will not affect pro se parties. King County and Pierce County have adopted local versions of GR 30(b)(5). Mr. DiTommaso Jr. explained that the Subcommittee felt it would work better if existing GR 30(b)(4) and (5) were consolidated into one subparagraph that addresses both electronic filing and electronic service. Mr. Larsen-Bright opined that he supports the proposed amendments and the changes made.

The Committee made the following friendly amendments to the first sentence of GR 30(b)(4): “. . . and/or electronic service . . .” and to the final sentence of the paragraph: “Electronic filing and/or service should not serve as a barrier to access.” With those friendly amendments, the Committee unanimously approved the revised version of GR 30(b) and a complementary revision to CR (5)(b)(7), at pages 393 & 395 of the materials, for submission to the BOG.

- ER 901: The Committee’s previously proposed amendment to ER 901 was approved by the BOG and published for comment by the Court, and the Court has asked us to respond to the comments received. Mr. DiTommaso Jr. reported that the comments caused Mr. Barton to question the need for the proposed amendment originally proposed by the Committee, but that the Subcommittee had not been able to come to a consensus or formulate a response to the comments, so they were bringing the issue to the main Committee.

The proposed amendment, as published, was originally suggested to the Committee by Karl Tegland, who has apparently changed his mind about the necessity for the proposed amendment. The Committee discussed the authenticity and forgery aspect of ER 901. Mr. Masters opined that the proposed amendment to ER 901 is an illustration of how an e-mail could be authenticated and is not a rule, and if attorneys or the courts do not find it helpful then it is not required to follow the illustration. The Committee’s discussion focused on how e-mails can be determined to be genuine or authentic when it is very easy to forge or spoof e-mails. Mr. DiTommaso Jr. moved to recommend to the BOG that the Committee felt the comments were well taken and that the existing proposed amendment to ER 901 should be pulled; Ms. Kilpatrick seconded that motion. The motion failed 4-8, with 2 abstentions.

Ms. James moved to recommend Mr. Tegland’s proposed fix (page 415 of the materials) for approval by the BOG; Ms. Summers second that motion. Mr. Masters opined that it is a good change. After further discussion, the motion carried unanimously.

*RALJ Subcommittee:* Subcommittee Chair Kailin James reported the following:

- RALJ 11.7 & 5.4: The King County Prosecuting Attorney’s office submitted proposed changes to RALJ 11.7 and 5.4 to the Court, which the Court asked us to review.

- The Subcommittee voted not to recommend the changes proposed by the King County Prosecuting Attorney and developed some edits to the King County Prosecuting Attorney's suggested amendments to RALJ 5.4 which they believe eliminate the need to amend 11.7.
- RALJ 5.4: The Committee discussed the proposed edits suggested by the Subcommittee and made the following friendly amendments to the edits proposed by the Subcommittee [additions are double underlined, deletions are strikethrough]:

. . . The ~~trial~~ court of limited jurisdiction will not relitigate a pretrial matter or a trial for which there is an electronic record subject to appellate review, unless ~~the appellant demonstrates a court determines that the pretrial matter or the trial was materially affected by the lost electronic record.~~ . . .”

- RALJ 2.2: The Committee made the following friendly amendments to the edits proposed by the Subcommittee [additions are double underlined, deletions are strikethrough]:

**(d) Errors Raised for First Time on Review Appeal.** The appellate superior court may refuse to review any claim of error ~~which that~~ was not raised in the ~~trial court~~ court of limited jurisdiction. However, a party may raise the following claimed errors for the first time ~~in the appellate court on appeal~~: (1) lack of ~~trial court~~ jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. ~~A party or the court may raise at any time the question of appellate court jurisdiction.~~ A party may present a ground for affirming a ~~trial court~~ decision of a court of limited jurisdiction ~~which that~~ was not presented to ~~the trial~~ that court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error ~~which that~~ was not raised by the party in the ~~trial court~~ of limited jurisdiction if another party on the same side of the case ~~has raised the claim of error in the trial that court.~~

After discussion of all the proposed amendments, the Committee voted 11-0, with 1 abstention, to recommend the revised proposed amendments to RALJ 5.4 and 2.2 to the BOG for approval, and to recommend that the BOG not support the King County Prosecuting Attorney's proposed amendment to RALJ 11.7.

*Other new business:* Ms. Turner informed the Committee that because every item on the agenda was voted on and the Subcommittees have no further work at this time which must be voted on by the main Committee there will not be a July 15<sup>th</sup> Committee meeting. If the BOG does not send items back to the Committee for further work, the August 19 and September 16 meetings will be cancelled, too. Ms. Turner and the Chair will let the Committee know after the BOG meeting on July 26.

Mr. Masters thanked the Committee, on behalf of the BOG, and thanked everyone for all their hard work, and stated that this Committee's work is very much appreciated by the BOG.

The Chair thanked everyone for all their hard work and the time they spent on Committee and expressed great gratitude for a tremendous year. The meeting adjourned at 1:00 p.m.

# Court Rules & Procedures 2013-2014 Subcommittees

## CrR and CrRLJ (Criminals) Subcommittee (A sub-subcommittee will focus on the CrRLJs)

1. Ann Summers (Chair)
2. Kailin James
3. Tony DiTommaso
4. Rick Leo
5. Eric Eisenberg
6. Kevin Korsmo
7. Jim Kaufman
8. Anne Cruser
9. Kenneth Henrikson
10. Rebecca Robertson
11. Roger Leishman
12. Raphael Nwokike

## Electronically Stored Information (ESI) Subcommittee

1. Shawn Larsen-Bright (Chair)
2. Shane Carew
3. Shashi Vijay
4. Katharine Bond
5. Endel "Del" Kolde
6. Darcie Houck
7. Michael Scott
8. Dean Chuang

## Subcommittee X

1. Gene Barton (Chair)
2. Shannon Kilpatrick
3. Shannon M. Ragonesi
4. Blaine Gibson
5. Paul Crisalli
6. Jeremy Rogers
7. David Iseminger
8. Kenneth Henrikson
9. Sean Flynn
10. Andrew Huff
11. David Stevens