



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Meeting Minutes October 19, 2009

Committee Chair Ken Masters called the meeting to order at 9:32 am.

Members present: John Brangwin, Roy Brewer, Emily Brubaker, Steven Buzzard, Mario Cava, William Croft (by phone), Thomas Cunnane, Tony DiTommaso, Rebecca Engrav (by phone), Hillary Evans, Paul Henderson (by phone), Anthony Howard, John Juhl, Barbara McInville (by phone), Todd Nunn, Bryan Page (by phone), Rebecca Robertson, Karl Sloan (by phone), Gregory Thatcher, David Trieweiler, and Neil Wachter (by phone). Also attending were Rea Culwell (WAPA, by phone), Jay Gairson (ATJ), Nikole Hecklinger (SCRAP), Judge Kevin Korsmo (Court of Appeals judicial liaison), Kathleen Kyle (Snohomish County Public Defenders Association), Judge Blaine Gibson (SCJA judicial liaison), Bryan Rowe (ATJ), Nan Sullins (AOC Liaison), Elizabeth Turner (WSBA Assistant General Counsel) and Anna Schmidt (WSBA Paralegal).

Chair Ken Masters welcomed new members. He explained that the Committee will proceed under Roberts Rules of Order. His job is to assist everyone in understanding what Robert's Rules of Order are. He introduced Elizabeth Turner and Anna Schmidt. Mr. Masters had each person present introduce themselves to the Committee. Mr. Masters reported that the large number of defenders and prosecutors on the Committee this year was because the Committee was working with the criminal rules this year.

Mr. Masters went over the materials in the welcome packet. He explained that there will usually be food items in the morning and sometimes lunch items if we have a very full agenda and the meeting is expected to go past the noon hour.

Mr. Masters explained the rule making process: the Court Rules Committee makes recommendations to the BOG, who then will make recommendations to the Supreme Court. He also stated that there will be carry-over rules from the previous year and a new proposal that was sent in by Karl Tegland. Stakeholders and any other interested persons may attend the meetings, which are open to the public, and give their input during the meetings. Ms. Turner explained that all materials are available on the Court Rules website and encouraged everyone to visit it and to visit the Washington Courts' website. Mr. Masters reminded everyone that the Committee is now using electronic materials and encouraged everyone to either bring their laptops or let Anna know if you will need to borrow a laptop.

Mr. Nunn (the chair of the ESI subcommittee) had to leave early, but he will send an email to everyone on his subcommittee list. Mr. Masters explained that each member has the other members' contact information. We have a variety of members so that we can have a variety of different opinions. He also explained the scrubbing, vetting, and recommendations process. Each member has the right to express their own opinion separately by commenting when a rule gets to the Supreme Court, but cannot express an opinion on behalf of the Committee or WSBA. Mr. Masters further explained that most of the work (i.e., scrubbing and vetting) is really done in the subcommittees and then brought back to the committee as a whole in the form of a motion. Rule drafting in full committee meetings and straw-man votes are highly discouraged. Mr. Masters works with all of the subcommittee chairs to keep things moving forward. The Chair will only vote to break a tie, but will otherwise remain neutral. He presents the Court Rules recommendations to the BOG.

Ms. Turner explained that the BOG views this committee as possibly the most important of all the committees.

Minutes

The minutes from June 2009 [page 6] meeting were approved, with a few minor changes, by consensus. Mr. Masters explained what "approval by consensus" means and people should not hesitate to raise a question if they don't think something should really be approved by consensus.

Preliminary Matters

Mr. Masters directed everyone to page 8, and explained the RAPs that were brought before the committee last year. The BOG overwhelmingly agreed with the Committee's recommendations. Those RAPs will soon be up on the Court's website for comment.

Mr. Masters went over the carry-overs from last year, beginning with the ESI rules. Mr. Nunn, Mr. Masters and Ms. Turner are going to the BOG meeting in December to receive more direction regarding the BOG's intentions on these rules. The Board is trying to decide whether or not they even want to submit any proposed rules at this time or whether they want to see what changes will occur at the federal level. Mr. Nunn's subcommittee, which has been working on these rules for three years, will continue to work with stakeholders to get more input. Because the Committee has already received more input/suggestions from stakeholders, the ESI Subcommittee will have materials to work on right away and will not be waiting until after the December BOG meeting. (The list of the proposed ESI rules is on page 15).

Subcommittee X will work on the MARs and other items. The Criminal Group (referred to as "Criminals") will work on returned rule CrR 4.8. The Committee had made a recommendation to the BOG to send two versions to the Supreme Court: a "prosecution" version, and a "defense" version. The BOG decided to send only the defense version to the Supreme Court. After receiving many comments from the prosecutors, the Supreme Court sent the proposal back to the Committee.

There were several hold-overs that the Supreme Court requested quick action on that were dealt with by special committee or sent to other groups. Ms. Turner explained that, included in this month's Committee materials, is a copy of the 2008-2009 Chair's report and the materials submitted by the BOG to the Supreme Court. The rules that the BOG previously proposed were published for comment, and the Supreme Court requested that the Court Rules Committee respond quickly to some of the comments. Thus, a special committee met with permission of the BOG. This year, the committee as a whole will be able to meet and respond to the comments.

Mr. Masters stated that if you have comments regarding anything the subcommittees are working on, start by going to the chair of that subcommittee. Mr. Masters pointed to the list of subcommittees (page 68) and stated that they aren't set in stone. He asked that a member just let us know if he or she wasn't placed in a subcommittee where he or she thinks they can do the most good.

The committee broke up into smaller groups to exchange information. Todd Nunn and Rebecca Engrav will send emails to their subcommittee members.

The meeting adjourned at 10:45 am.