



# WSBA

## COURT RULES AND PROCEDURES COMMITTEE

### Meeting Minutes June 18, 2012

Committee Chair Ken Masters called the meeting to order at 9:40 a.m.

Members present: Chair Ken Masters, Katharine Bond (by phone), Steve Buzzard (by phone), Mario Cava, Leslie Clark, Paul Crisalli (by phone), Rebecca Engrav, Hillary Evans, Elizabeth Fraser (by phone), Dale Johnson (by phone), Nicole McGrath (by phone), Jeannie Mucklestone (by phone), Bryan Page (by phone), Shannon Ragonesi (by phone), Aaron Rocke, Derek Smith (by phone), Ann Summers (by phone), Judge Kevin Korsmo (by phone), Judge Blaine Gibson, Judge Rebecca Robertson.

Members excused from attending: Lincoln Beauregard, Roy Brewer, Anthony DiTommaso, Jr., Justo Gonzalez, Paul Henderson, Shannon Kilpatrick, Shawn Larsen-Bright, Kathleen Nelson, and Karl Sloan.

Members who did not respond to meeting notice: Peter Banks, Daniel Brown.

Also attending: Marc Silverman (BOG Liaison – by phone), Nan Sullins (AOC Liaison), Elizabeth Turner (Assistant General Counsel), and Sherry Mehr (WSBA Paralegal).

Non-Members/Guests present: Glenn MacGilvra; Shane Carew.

### **Minutes**

After a quorum was achieved, the May 21, 2012, meeting minutes were approved by consensus.

### **Chair's Report**

*Old Business:* The Chair reported the Supreme Court adopted WSBA's version of CrR 4.6 effective September 1, 2012 and entered orders on various other courts rules. The Court also ordered the Revised Family Law Civil Rules proposed by the Local Rules Task Force published for comment, with a comment period ending April 30, 2013, and passed new APR 28 (the Limited License Legal Technician Rule ("LLLT")) effective September 1, 2012.

## **Subcommittee Reports**

### *CR/CRLJ Subcommittee:*

- CR 4.1 (Process – Domestic Relations Actions), Ms. Engrav stated that the subcommittee has been reviewing a proposal submitted by a member to help alleviate what he believes to be ambiguity and confusion caused by the current rule, which does not comport with case law. Mr. McGilvra, the amendment proponent, presented his views to the Committee. The Chair stated acting on proposed amendments to CR 4.1 would be inappropriate until the Supreme Court decides what to do with the Revised Family Law Civil Rules and the BOG will not do anything with this proposal until Supreme Court has dealt with the FLCR. Mr. MacGilvra proposed not to do anything with this rule for right now rather than reject it outright.

It was moved, seconded, and unanimously carried to table the proposed amendment to CR 4.1 indefinitely. Mr. McGilvra stated that when the matter is brought back for review, he would like to have the opportunity to present his proposal with comments because the proposed Revised FLCR mirrors the current language of CR 4.1. Ms. Turner stated that the best way for him to get his proposal before the Court is for him to comment on the Revised FLCR when they are published for comment, that the Court reviews all the comments and will oftentimes ask a proponent to respond to the comments received.

- CR 71 –Discussion next turned to the proposal the subcommittee has received which would allow attorneys to send Notices of Intent to Withdraw with “delivery confirmation” instead of by certified mail, return receipt requested. The Subcommittee recommends against this proposal. Discussion included concerns that using “delivery confirmation” would not provide any ability to confirm that the client was the person who actually received the Notice. After discussion, it was moved, seconded, and passed 12-1 (Rocke opposed) to not recommend amendment of CR 71.
- CR/CRLJ 6 – Time Computation: Ms. Engrav presented the subcommittee’s report and stated the current rule is ambiguous regarding counting forward v. counting backwards. The subcommittee reviewed the federal rule and believes that the federal rule is not the best solution. The subcommittee has drafted some language in an effort to address the “counting backwards” issue but is not bringing it forward for a vote at this time because they would like to do more vetting and continue to work on the language. The Chair suggested circulating draft language that people could actually comment on. Judge Gibson opined that judges do not care about how the time is actually computed but rather are concerned with whether a process will cause more hearings to be scheduled or cause more disputes about rule interpretation. Mr. Silverman urged the subcommittee to communicate with Lish Whitson and Justice Johnson from the Local Rules Task Force and to use the task force’s work, and the input of

practitioners, to move towards state-wide uniformity on this issue. Judge Gibson agrees the LRTF should be consulted but wants to make sure that this issue is resolved by a state-wide rule, rather than by local rules. It was suggested that it might work best to have one sentence explaining counting forward and one sentence explaining counting backwards.

Discussion then turned to the concept of “days are days.” Ms. Engrav reported that last year when she requested input on the concept generally it didn’t get a lot of traction but that based on additional feedback received this year she believes the subcommittee should revisit this issue. There was discussion about whether the “counting backwards” language was inextricably intertwined with the “days are days” concept, and the Chair opined that while they are of course related they are not so tied together that you could not deal with one and not the other. Discussion continued about whether the subcommittee should draft language or again ask for input on the general concept; the members generally felt that although there could be a great deal of work involved because more than just Rule 6 would need to be amended that feedback would be most productive if people had actual drafts to review, rather than just an abstract concept. Judge Gibson opined that if, for example, we determine that 7-day increments in time periods work best then we should draft it that way, and not be as concerned with what either the federal courts or local courts have done. Ms. Turner urges that this committee be pro-active in bringing forth any proposed new language rather than deferring, which could result in other groups with less experience in rule-writing doing the drafting.

- CRLJ 65 – Ms. Engrav reported that the DMCJA is working on the proposal to amend CRLJ 65 to reflect the constitutional amendments allowing for injunctions at the district court level, that the DMCJA meets in July, and that she anticipates returning with this proposal at a future meeting.
- CR 5 – Ms. Engrav reported that the subcommittee has extensively worked on the issue raised by Mr. Brewer and has come to the conclusion that previously proposed approaches just won’t work. Based on feedback from practitioners, the subcommittee now thinks that it may be most appropriate to develop a proposal for service by e-mail. It was moved, seconded, and unanimously carried to not move forward on the proposal as originally received but to continue to work on possible e-mail or electronic service possibilities.

Suggested Amendments to CrR 4.7 and CrRLJ 4.7 submitted to the Court by Adam P. Karp: Due to the time constraints posed by upcoming year end and the Court’s time deadline, Ms. Turner did an opinion memo and recommended that the Committee either recommend to the BOG that it take no position or actually oppose the proposed amendment. She noted that the SCJA had written in opposition to the proposed amendment, and Judge Robertson stated that the DMCJA was opposed as well. After

discussion, it was moved, seconded and passed 12-1 (Rocke opposed) to recommend that the BOG oppose the suggested amendment.

*PRP Rules Committee:*

- PRP Rules Ad-Hoc Subcommittee: Ms. Summers explained their June meeting was canceled and that the subcommittee will meet again next month. The Chair explained that the Supreme Court has agreed to let the committee work with the PRP rules when the RAPS are in cycle next year.

*ESI Subcommittee:*

- ESI Subcommittee Report: CR 34 – Electronic Stored Information; The Chair reported that he attended the ATJ Conference last week and that he and Don Horowitz presented CR 34 to the ATJ Board, and specifically asked them (a) to opine on whether we should add “format and formats” to the rule as requested by the ATJ Technology subcommittee; and (b) to approve the proposed rule. The ATJ Board members unanimously expressed their agreement with the CR 34 proposal in general, and also agreed with this Committee’s recommendation *not* to add “format and formats”; ATJ Chair Kirsten Barron suggested that the ATJ’s Plain Language/Pro Se” Committee also review the “format and formats” issue, and the ATJ Board delegated its decision on the “format and formats” issue to that committee. Mr. Horowitz, on behalf of ATJ Tech, agreed that this procedure was appropriate. The Chair received an e-mail from ATJ Manager Joan Fairbanks just this morning, stating that the ATJ subcommittee agreed with our Committee’s recommendation not to add “format and formats.” Ms. Fairbanks, as well as Ms. Barron, have also confirmed that the ATJ Board approves our CR 34 proposal. Since the Committee had previously approved the language presented to ATJ, it does not need to vote again, and we will add CR 34 to the annual presentation to the BOG in July.

*Subcommittee X (no report)*

*MAR Subcommittee (no report)*

There being no further business to come before the Committee, Chair Masters thanked Committee members for their hard work during the year, that it had been an honor to chair the Committee for the past three years, and that he looked forward to working with the Committee during his upcoming term on the Board of Governors.

The meeting adjourned at 11:25 a.m.