

Meeting Minutes October 18, 2010

Ken Masters called the meeting to order at 9:33 am.

Members present: Peter Banks, Lincoln Beauregard, Roy Brewer, David Bufalini, Steven Buzzard, Mario Cava, Paul Crisalli, Thomas Cunnane (by phone), Rebecca Engrav, Beth Fraser, Shawn Larsen-Bright, Jeannie Mucklestone, Binh Nguyen (by phone), Shannon Ragonesi, Christopher Rao, Rachel Reynolds (by phone), Aaron Rocke, Karl Sloan (by phone), Derek Smith, Ann Summers, and Dave Trieweiler. Also attending were Hon. Kevin Korsmo (Court of Appeals liaison, by phone), Hon. Blaine Gibson (Superior Court liaison), Don Horowitz (ATJ Technology Subcommittee, by phone), Nikole Hecklinger (SCRAP), Mike Wampold (Litigation Section, by phone), Nan Sullins (AOC Liaison), Marc Silverman (BOG Liaison, by phone), Elizabeth Turner (Assistant General Counsel), and Anna Schmidt (Paralegal).

Welcome/Introductions:

The Chair welcomed and introduced the judicial liaisons and WSBA staff. He asked each member to introduce him or herself.

The Chair explained the rule making process to the committee [pp. 8 – 9 of the Welcome Packet], and that this year's cycle includes the ER's and IRLJ's. There are separate subcommittees for these two sets of rules. Anything that comes up that is not in the cycle will go to Subcommittee X. There is also the ESI Subcommittee, which will continue working with the ATJ Technology Subcommittee on the proposed electronic discovery rules.

The Chair explained that the majority of the work is done in Subcommittee, and later brought to the larger Committee to vote on or for recommendations regarding how to proceed. The Committee makes recommendations to the BOG, who then determines what to send to the Supreme Court. The Supreme Court ultimately decides which rules get published for comment and adopted. Any member, including those belonging to the Court Rules Committee, can comment on a published rule in their individual capacity. Sometimes, issues raised during the comment period are brought back to the Court Rules Committee for the Committee to further comment on.

Ms. Turner explained that the Committee also works with outside groups. She is both the WSBA liaison and counsel for the Committee. She encouraged Subcommittees to work with outside groups and get as much vetting and agreement as possible on rules they're working on. She noted that it's often not possible to reach total consensus with all stakeholders on proposed rule changes, but it's essential that everyone's concerns are heard and addressed.

The Chair explained that all meetings are open to the public. He encouraged the members to let us know if there's an interested group or person who should know about a specific suggested rule change. This outreach is called vetting and, along with scrubbing, is one of the two main jobs of the Committee. Scrubbing is getting the rule to say exactly what the proponent intends it to mean. Vetting is reaching out to interest groups and people regarding the proposed rule change and obtaining their input. The Committee needs to give the BOG, and the Supreme Court, as much information as possible regarding the rule.

The Chair explained that each Subcommittee Chair runs his or her own meetings. In the larger Committee, we use Robert's Rules of Order. The Chair encouraged all the members to look up Robert's Rules of Order and stated that he will assist Committee members in understanding how the Rules of Order work during the meeting. He encouraged each member, in stating their opinion to the larger Committee, to gather their thoughts because they may only have one chance to speak and need to make it count.

A fundamental assumption of this Committee is that a current rule shouldn't be changed if a problem doesn't actually exist. Mr. Rao gave an example of this from last year where the Court Reporters asked the Committee to put together a rule regarding their regulation, which the Committee did not feel was within their authority to do.

Ms. Turner directed the Committee to the meeting dates [p.1 of the Welcome Packet], which are also available on the Committee webpage, and reimbursement forms. The Chair pointed to an example of a GR 9 [p. 29 of the Supplemental Materials]. He explained that the Subcommittee's job is to work on the language and get a proposed rule into this form.

<u>Minutes</u>: Ms. Engrav had a few corrections regarding the Subcommittee X section. The minutes were approved by consensus subject to the changes suggested by Ms. Engrav.

BOG Action on Last Season's Recommendations: Subcommittee Chairs Neil Wachter (Criminal Rules) and Rebecca Engrav (Subcommittee X) went before the BOG at its September meeting, and the BOG approved most of the Committee's suggestions. The BOG added in one word on MAR 6.2 ("properly"). The BOG approved the criminal rules as submitted. Ms. Turner explained that pages 10 – 13 of the materials consist of comments made by the Committee on the comments received by the court. The Supplemental Materials contain proposed new CrR 4.11 (Recording Witness Interviews) and suggested amendments to the MAR's as submitted to the Court. The Supreme Court will decide the next step – whether to publish a rule for comment, adopt it, or do

nothing at all. The Chair pointed out that CrR 4.11 is an example of how long it can take for a rule to be passed. This suggested rule amendment was originally introduced in 2002, and has since been significantly changed after a lot of vetting.

Ms. Turner explained that sometimes the subcommittee members do not come to an agreement on rules, or a committee vote is close; when that happens, the Chair informs the BOG about the lack of agreement.

Mr. Trieweiler asked Ms. Sullins to explain the timeline once a rule gets sent to the Supreme Court. Ms. Sullins explained that proposed rules are received by the Court in October and generally reviewed in November, sent to the December en banc, and published for comment between January and April. Ms. Turner suggested all members become familiar with the Washington Courts' Court Rules website.

The Chair encouraged all members to read the materials prior to the meeting. He explained that all members are equally responsible for being aware of what's going on in the other Subcommittees. He reported that the ESI rules have been around for a long time. The BOG expressed displeasure with these rules. The ATJ technology subcommittee requested to work with this group to create rules that the BOG might agree on. When/if the rules are sent to the BOG again we anticipate that we won't be sending an entire set of rules to the BOG at one time. CR 34 (guiding parties on the production of electronic documents) will probably be the first rule amendment that we're sending to the BOG.

Mr. Rocke stated that it's convenient that we're looking at the ER rules this year. He suggested looking at certain ER and ESI rules simultaneously in conjunction with the federal rules. Ms. Turner noted that the Court adopted our proposed ER 502, which went into effect September 1 of this year.

<u>Subcommittees</u>: The Chair requested that the subcommittees meet after the full committee meeting is adjourned.

Meeting Adjourned at 10:30 am.