



WSBA

LOCAL RULES TASK FORCE

Meeting Agenda

February 17, 2010

Noon to 2:00pm

Washington State Bar Association

1325 Fourth Avenue – Suite 600

Seattle, Washington 98101

1. **Call to Order/Preliminary Matters** (12:00 noon)
 - Approval of the September 23, 2009 meeting minutes [pp. 2 - 3]

2. **Discussion** – Comments regarding the Statewide Family Law Rules Recommendations
 - The SCJA Letter (December 1, 2009) stating their position [pp. 4 - 6]
 - Letter from LRTF Co-Chair Lish Whitson to Judge Fleck (January 7, 2010) [pp. 7 - 9]
 - The SCJA Letter (January 12, 2010) responding to the January 2010 letter from Mr. Whitson [pp. 10 - 15]
 - Litigation Section Letter (February 1, 2010) [pp. 16 - 17]
 - Letter from Supreme Court Rules Committee Chair and co-Chair of the LRTF Justice Johnson and SCJA President Judge Tari Eitzen regarding collaboration (February 9, 2010) [pp. 18 – 19]

3. **New Business/Good of the Order**

4. **Next Meeting Date**

5. **Adjourn**

To attend this meeting via phone conference, dial the toll free access number:
1-888-346-3659. At the prompt, dial the entry code: 52822#



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes September 23, 2009

Co-Chair Lish Whitson called the meeting to order at 12:20pm.

Members present: Chair Lish Whitson, Judge Mary Yu, Colleen Harrington, Jean Cotton (by phone), Judge Blaine Gibson (by phone), Lisa Hayden (by phone), and Gail Nunn (by phone). Also attending were Elizabeth Turner (WSBA staff liaison) and Anna Schmidt (WSBA Paralegal).

There isn't a quorum; however, the meeting will continue without any voting. There were no comments or changes to the minutes. Due to the lack of a quorum, the minutes will not be approved.

BOG Meeting Minutes - Discussion

Ms. Turner explained that the BOG did vote and agree to submit the family law rules as proposed to the Supreme Court. The Supreme Court will look at the proposed rules at their November meeting.

Ms. Cotton described the BOG as very receptive to the LRTF's ideas. They would like the Supreme Court to issue a timetable and methodology regarding the conformance to the proposed rules. Mr. Whitson thanked everyone, especially the members of the Local Rules Task Force Family Law Subcommittee. Ms. Turner explained that the BOG extended the LRTF Charter through 12/31/2010. Mr. Whitson explained that their hope is that the Supreme Court will have the counties around the state modify their local rules due to the family law rules, thereby decreasing the number of local rules that exist. If the counties state that they need help with conforming their local rules to the GR and CR, Mr. Whitson's hope is that we can help them conform their local rules to the statewide rules.

Judge Yu urged a meeting with the executive committee with the SCJA sooner than later. She is unsure of what position that body will take, and the Supreme Court will pay attention to SCJA. If the SCJA raises any issues, we will be able to deal with them ahead of time rather than be surprised. Judge Gibson agreed with Judge Yu. Mr. Whitson will approach Judge Eitson, who is the president of the SCJA. Judge Yu volunteered to go with Mr. Whitson if he gets an appointment with Judge Eitson. Judge

Yu suggested that the more information they give them, the better and suggested including the proposed rules with the initial contact and asking for a meeting and, ultimately, an early letter of support. She suggested asking to meet with the Board of Trustees rather than the Executive Committee because the Board of Trustees meets monthly.

After the meeting with the SCJA, and after Justice Johnson's group has reviewed the proposed rules, Mr. Whitson would like to have another meeting of this group. Ms. Cotton asked whether this contact with the SCJA is going to be regarding only the Family Law rules or will also include discussion regarding conforming all the local rules.

Judge Yu stated that she feels we should present the whole thing. She suggested that the group be put on the agenda for the Superior Court's Spring Conference. This occurs April 25-28, 2010 in Suncadia (Judge Craighead will more than likely be putting together the educational program for the conference). Judge Yu does not expect the fall conference to be well attended – this is the last Fall Conference as it has been cut out of their budget.

Ms. Harrington asked where we were with respect to funding. The family law section offered \$2,000 (but is struggling right now with their budget) and Ms. Harrington is going to talk to the litigation section regarding \$2,500. Mr. Whitson spoke to both the Association for Justice and the WTDL representatives. Discussion ensued regarding the difficulties different groups are currently having financially. Ms. Turner suggested that if we don't get the response we want initially, we can always try to ask them again for the money later.

The meeting was adjourned at 12:40 pm.



WASHINGTON
COURTS

Superior Court Judges' Association

December 1, 2009

Tari S. Eitzen, President (09-10)
Spokane County Superior Court
1116 W Broadway Ave
Spokane, WA 99260-0350
(509) 477-4704 FAX: (509) 477-4396

Stephen Warning, President-Elect (09-10)
Cowlitz County Superior Court
312 SW 1st Ave, 2nd Fl
Kelso, WA 98626-1739
(360) 577-3085

Richard F. McDermott, Immed. Past Pres. (09-10)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9115 FAX: (206) 205-2585

John O. Linde, Secretary (09-10)
San Juan County Superior Court
350 Court St, #7
Friday Harbor, WA 98250-7901
(360) 378-2399 FAX: (360) 249-6381

Chris Washington, Treasurer (09-10)
King County Superior Court
516 Third Avenue, Room C-203
Seattle, WA 98104-2361
(206) 296-9111 FAX: (206) 296-0986

Patricia Clark, District One Trustee (09-12)
King County Superior Court
516 Third Ave, Room C-203
Seattle, WA 98104-2361
(206) 296-9190 FAX: (206) 296-0986

Brian Gain, District One Trustee (07-10)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9170 FAX: (206) 205-2585

Russell Hartman, District Two Trustee (08-11)
Kitsap County Superior Court
614 Division St, MS 24
Port Orchard, WA 98366-4683
(360) 337-7140 Fax: (360) 337-4673

Larry McKeeman, District Three Trustee (09-12)
Snohomish County Superior Courts
3000 Rockefeller Ave, MS 502
Everett, WA 98201-4046
(425) 388-3435 FAX: (425) 388-3498

Christine Pomeroy, District Four Trustee (09-12)
Thurston County Superior Court
2000 Lakeridge Dr SW, Bldg 2
Olympia, WA 98502
(360) 709-3232 FAX: (360) 754-4060

Craig Matheson, District Five Trustee (08-11)
Benton County Superior Court
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336-2359
(509) 736-3071 FAX: (509) 736-3057

Gregory D. Sypolt, District Six Trustee (07-10)
Spokane County Superior Court
1116 W Broadway Avenue
Spokane, WA 99260-0350
(509) 477-6373 FAX: (509) 477-5790

Honorable Charles W. Johnson
Washington State Supreme Court
415 12th Ave SW
PO Box 40929
Olympia, WA 98504-0929

Mr. Lish Whitson
Attorney at Law
800 5th Ave Ste 4000
Seattle, WA 98104-3180

RE: LOCAL RULES TASK FORCE RECOMMENDATIONS
RE: FAMILY LAW RULES

Dear Justice Johnson and Mr. Whitson:

Thank you for the invitation to comment on the Local Rules Task Force's recommendations regarding family law court rules. The Superior Court Judges' Association (SCJA) appreciates the amount of time and energy that the dedicated members of the Task Force expended in creating its recommendations.

The SCJA fully supports the recommendation that all courts' local rules follow a consistent numbering protocol. Aligning the rules in this way will allow for easier maintenance and comparison of rules across jurisdictions.

The SCJA also supports the recommendation that courts be required to regularly and vigorously review local rules. Such a practice would ensure that local rules contain only truly necessary and viable rules that assure access to justice in our superior courts. Archaic and improper court rules will be eliminated, and remaining court rules would be amended to assure their usefulness.

The SCJA cannot support, however, statewide mandatory court rules for family law as set forth in the Task Force's report. Our objections to them are set forth below and are grounded largely in access to justice principles.

- **Access to justice is impeded by the creation of another set of rules and their complicated, legalese style of writing.** The rules as proposed contravene the Access to Justice Board's commitment to rules and instructions being drafted in "Plain English." With statewide family law rules, parties and attorneys will now have four sets of rules to consult: state civil rules, state family law rules, local civil rules, and local family law rules.
- **Courthouse facilitators rely on written rules that must be clear, easy to follow, and complete.** Adding another layer of rules interferes with the facilitators' ability to assist pro se litigants.
- **Statewide rules are not the best option to establish procedures and protocols for family law cases.** Family law relies heavily on motions practice, which in turn is heavily influenced by local procedures and practice. Fashioning model family rules that are clearly written and provide clear guidance to the public and attorneys would serve the ends of access to justice better than statewide rules that must be augmented by local rules.
- **The state rules do not take into account the principles of the Family and Juvenile Court Improvement Plan, supported by SCJA and created by the legislature.** The Family and Juvenile Court Improvement Plan (FJCIP) is developing new procedures and practices tailored to the efficient operation of family and juvenile courts. The state family law rules do not reference FJCIP, or the best practices upon which it was founded, in any form.
- **Reserved rules, such as FLCR 54-80, are unnecessary and needlessly complicate the rules.** The suggested numbering system can still be followed in model family law rules, but rules that have no relevance to family law cases, such as jury rules, should be eliminated entirely, and not reserved.
- **Local courts, not the Supreme Court, have both the constitutional mandate and expertise for local rule making.** Assisting local jurisdictions to create a better local rules product is the preferred approach. The Local Rules Task Force Report suggests the creation of model local rules. Each jurisdiction should create local rules task force comprised of local practitioners, commissioners, judges and courthouse facilitators. The Report provides valuable suggestions for the model rules. AOC should be enlisted to provide support to local courts in revising their local rules. Neither Option A nor Option B as outlined in the Report give due deference to the expertise of local courts and local practitioners in revising local rule practice.

The SCJA cannot support the adoption of statewide mandatory family law rules and will formally object to them upon their publication by the Supreme Court.

Justice Johnson and Mr. Whitson
December 1, 2009
Page 3

I would be happy to discuss this matter with you, and would hope to do so before the suggested rules are published.

Very truly yours,

Tari S. Eitzen
President Judge

cc: Family and Juvenile Law Committee

N:\Staff Directories\Jlskr\SCJA FJLC\Court Rules\Family Law Rules\Eitzen to Johnson Whitson re Family Law Rules Dec 1 2009.doc

January 7, 2010

Hon. Deborah Fleck
Judge, King County Superior Court
Maleng Regional Justice Center
401 Fourth Avenue North, Room 2D
Kent, WA 98032

RE: Family Law Civil Rules

Dear Judge Fleck:

Jean Cotton, Elizabeth Turner and I truly appreciated the opportunity to speak with Judges Yu, van Doorninck, Prochnau and you on Monday, January 4, 2010. Thank you for providing your summary of our meeting.

We understand that the four of you were under some constraint when you met with us. This was as a result of the prior vote by the leadership of the Superior Court Judges Association in opposition to statewide Family Law Civil Rules presently under consideration by the Supreme Court. Following that vote by the SCJA leadership, we had received a letter from Judge Eitzen basically memorializing the position taken by the SCJA leadership in opposition to statewide rules, but with no explanation as to why there was opposition to any particular proposed rule.

We all agreed that the proliferation of local rules poses an access to justice problem for pro se litigants and lawyers who practice in more than one county. This is not a lawyer vs. judge issue. We agreed that it is an access to justice issue that is properly of concern to both the bench and the bar.

Instead of focusing our conversation on the rather illogical conclusions found on page two of Judge Eitzen's letter, you asked us to focus on the first page of the letter where there is support for superior courts around the state to comply with existing rules concerning consistent numbering of local rules and support for courts to periodically review and revise their local rules.

We fully agree with what you and Judge Yu have written regarding "the promulgation of local rules [making] it difficult for those practicing in various counties and that a uniform numbering system would be of great assistance [and] that every court should undertake a review of their local rules and that there exists an opportunity for mutual cooperation between the SCJA and the WSBA on this undertaking." Such a sea change will be welcomed by all concerned citizens, but it really does not achieve anything that the superior courts are not already obligated to do pursuant to existing court rules.

As you have seen from the Task Force's compellation of all the local civil rules around the state, the family law rules are just part of the statewide problem with local rules. There are problems not only with numbering, there are also formatting problems, commingling problems, problems with out of date rules, problems with repetition of state rules and rules inconsistent with state rules. However, the local family law rules are a significant part of the problem. If all family law rules were uniformly in one section of the rules, we have estimated that alone would greatly reduce the number of local rules that are floating around all through various local rules.

There seems to have been a disconnect in our discussion. We do not believe that working on local civil rules with superior courts around the state is the same as or a condition precedent to implementing statewide Family Law Civil Rules. We look forward to working with judges in the various counties who ask for our help in reviewing and editing their local rules. One idea that was floated at our meeting would be for the Supreme Court to state that, as of a date certain, all then existing local rules would be abolished and new rules, with greater uniformity statewide, would be submitted for review and approval. We would be happy to help in that process in any way we can.

However, we want to be clear that such an effort is separate and distinct from implementation of statewide Family Law Civil Rules. As we explained, for there to be any change regarding the proposed Family Law Civil Rules, it will need to be vetted by the WSBA Local Rules Task Force, which includes a Supreme Court justice, three Superior Court judges, a District Court judge, Court Clerks and practicing lawyers from around the state. There may then have to be a referral to the WSBA Rules Committee if, for example, we agreed to add rules from the Civil Rules to the FLCR for the convenience of pro se litigants. The Rules Committee is also composed of judicial, legal and lay stake holders from around the state. It would then be referred to the WSBA BOG, whose meetings are often attended by superior court judges, district court judges and clerks. Finally, it would need to be reviewed and, if appropriate, published for comment by the Supreme Court.

When we receive the results of your discussion with the leadership of the SCJA, and if they have approved a work group to begin working on model local rules, we will urge the WSBA Board of Governors to cooperate in that effort. What we cannot do is commit to waiting for the SCJA to "review the potential for state family law rules."

We welcome constructive ideas regarding specific Family Law Civil Rules now before the Supreme Court. However, in light of the strong rejection by your leadership of even the concept of statewide family law rules, we are not in a position to recommend a stay in the implementation of the proposed rules.

Again, we want to thank you for meeting with us and we hope there will be many more meetings in the future to discuss uniform rules, both local and statewide. We are anxious to work with any county that believes we would be of help in reviewing and editing their existing local rules. We would also welcome working with county judges and the SCJA

in the drafting of any new local rules and working on the staffing required for smooth implementation of any changes.

Sincerely,

Lish Whitson, Co-Chair, WSBA Task Force on Local Rules

cc. Judge Kimberley Prochnau
Judge Kitty-Ann van Doorninck
Judge Mary I. Yu
Jean A. Cotton
Elizabeth A. Turner
Justice Charles W. Johnson, Co-Chair, WSBA Task Force on Local Rules



WASHINGTON
COURTS

Superior Court Judges' Association

Tari S. Eitzen, *President* (09-10)
Spokane County Superior Court
1116 W Broadway Ave
Spokane, WA 99260-0350
(509) 477-4704 FAX: (509) 477-4396

Stephen Warning, *President-Elect* (09-10)
Cowlitz County Superior Court
312 SW 1st Ave, 2nd Fl
Kelso, WA 98626-1739
(360) 577-3085

Richard F. McDermott, *Immed. Past Pres.* (09-10)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9115 FAX: (206) 205-2585

John O. Linde, *Secretary* (09-10)
San Juan County Superior Court
350 Court St, #7
Friday Harbor, WA 98250-7901
(360) 378-2399 FAX: (360) 249-6381

Chris Washington, *Treasurer* (09-10)
King County Superior Court
516 Third Avenue, Room C-203
Seattle, WA 98104-2361
(206) 296-9111 FAX: (206) 296-0986

Patricia Clark, *District One Trustee* (09-12)
King County Superior Court
516 Third Ave, Room C-203
Seattle, WA 98104-2361
(206) 296-9190 FAX: (206) 296-0986

Brian Gain, *District One Trustee* (07-10)
King County Superior Court, Maleng Justice Center
401 4th Avenue N, Room 2D
Kent, WA 98032-4429
(206) 296-9170 FAX: (206) 205-2585

Russell Hartman, *District Two Trustee* (08-11)
Kitsap County Superior Court
614 Division St, MS 24
Port Orchard, WA 98366-4683
(360) 337-7140 Fax: (360) 337-4673

Larry McKeeman, *District Three Trustee* (09-12)
Snohomish County Superior Courts
3000 Rockefeller Ave, MS 502
Everett, WA 98201-4046
(425) 388-3435 FAX: (425) 388-3498

Christine Pomeroy, *District Four Trustee* (09-12)
Thurston County Superior Court
2000 Lakeridge Dr SW, Bldg 2
Olympia, WA 98502
(360) 709-3232 FAX: (360) 754-4060

Craig Matheson, *District Five Trustee* (08-11)
Benton County Superior Court
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336-2359
(509) 736-3071 FAX: (509) 736-3057

Gregory D. Sypolt, *District Six Trustee* (07-10)
Spokane County Superior Court
1116 W Broadway Avenue
Spokane, WA 99260-0350
(509) 477-6373 FAX: (509) 477-5790

January 12, 2010

Lish Whitson, Attorney at Law
WSBA Task Force on Local Rules
800 5th Avenue Plaza
Seattle, WA 98104

Dear Mr. Whitson:

As President of the Superior Court Judges' Association (SCJA), I am writing to respond to your letter to Judge Fleck regarding the proposed state family law rules.

As you know from my letter to you and Justice Johnson dated December 1, 2009, the SCJA supports the proposal to have uniform numbering of all local rules, including those relating to family law cases as well as development of model family law rules. We also confirmed our support of a requirement that the superior courts vigorously and regularly review ALL local rules. However, by recommendation of our Family and Juvenile Law Committee, and unanimous vote of the Board of Trustees, the SCJA does not support the proposed statewide family law rules that are currently pending before the Supreme Court.

As you know, the SCJA was not involved in the process of developing far-reaching statewide rules that directly affect some of the most important work we do as judges, and we have significant concerns about the rules proposed. This conflict in position between the WSBA and the SCJA is unfortunate but we firmly believe it can be resolved by working together.

I understand that you, Ms. Cotton and Ms. Turner met at your request with Judges Yu, Fleck, van Doorninck and Prochnau to discuss the SCJA's position with respect to these proposed family law rules. The seven of you agreed that you would advocate to your respective organizations that these proposed statewide rules be held in abeyance while a joint Work Group developed model local rules in family law on a timeline. The agreement also provided that the courts would review their local family law rules, if any, and at a minimum, revise them to be consistent in numbering with the model rules. Secondly, after the model rules were developed, the Work Group would consider the potential for statewide family law rules. Finally, the seven of you agreed that any court could seek and receive assistance from the WSBA.

Mr. Lish Whitson
January 12, 2010
Page 2

I am pleased to report that the SCJA Board unanimously agreed on Saturday, January 9, 2010, to proceed in this fashion. The document of your agreement reached on Monday, January 4, 2010, is attached, typed from Judge Fleck's handwritten version prepared at the meeting. Your letter of January 8, 2010 to Judge Fleck, which was not copied to me as the President of the SCJA, takes a different approach. I hope you will reconsider that position.

Although we have previously outlined some of our specific concerns regarding the proposed mandatory family law rules as drafted, I will quickly review some of these concerns:

The legislature and courts have recognized the special duty Superior Courts have to protect the best interests of children and families. However, unlike criminal or juvenile law, the parents have no right to counsel at public expense and many parents are unable to afford representation. Some studies have estimated as many as 60% or more of family law litigants are without counsel.

In recent years, the courts and the Bar have worked together to supplement the limited free legal assistance available to families of modest means with assistance such as family law facilitators, instructions and forms. Superior Courts have become conversant with the numerous barriers posed to self-represented litigants, including the fact that many read at a sixth grade level or less in English or may not even be fluent in English.

Given the number of self-represented litigants in family law, we should use this opportunity to consider what rule-making approach will best promote access to justice. For example, "plain language" principles should be used in rule-drafting: rules that are clear and direct and do not require the litigant to study multiple layers of rules in order to determine the correct procedure.¹ The current proposal uses traditional but overly technical language² and cross-

¹ "Richard Zorza, "Court Leadership and Self-Represented Litigants," National Center for State Courts (2008) states: "Forms and information written in legalese are intimidating and confusing for the Self-Represented Litigant, and the result is wasted time, frustrated staff, and a denial of access...Plain language (also called Plain English) is communication your audience can understand the first time they read or hear it.

- Is it plain? It is if your audience can:
- Find what they need
- Understand what they find
- Use what they find to meet their needs"

² See, Suggested New FLCR 7(e) Page Limits. (1) Issues to be decided solely on the Pleadings.

references to State Civil Rules, some of which have no application to family law.³ Because the current proposal would mandate uniform state family law rules but incorporates the State Civil Rules by reference, and, of course, cannot account for differences in local motions practice occasioned by issues such as population size,⁴ the current proposal of mandatory rules would require litigants to look at minimum of four different sets of rules: the State Civil Rules, Local Civil Rules, the proposed State Family Law Rules and the Local Family Law Rules.

A model set of rules would allow Superior Courts to pick from a smorgasbord of options and to supplement the model rules with those rules needed to account for local variations as well as those rules intended to encourage local innovation and wise use of local resources.⁵ The rules for each county could then be in one place easily accessible to self-represented litigants and lawyers, as well as family law facilitators striving to provide accurate information but too busy to provide individualized oral instructions. A uniform set of numbering and headings, with perhaps a commentary or captioning protocol, would allow attorneys who practice in more than one jurisdiction to quickly ascertain variations in practice. ⁶

Washington is fortunate in its history of collegiality and cooperation between the bench and bar to the benefit of the public we serve. The SCJA seeks to maintain that level of mutual respect. As I mentioned above, the agreement reached on January 4, 2010, as set forth in the enclosure herein, has been approved by the SCJA Board and we look forward to a continuation of the collegial working relationship the court has enjoyed with the bar.

³ See, Suggested New FLCR, Page 11 "Rule 47 Jurors {Reserved see CR 47.}"


⁴ For example, a one judge county may not need a detailed rule on where to schedule a motion because all motions are heard one morning per week before that judge. King County's size and population, however, requires it to run six or more courtrooms in two different courts five days per week. Litigants would be hopelessly confused if King County was not able to set forth a detailed rule telling them which motions are heard on which calendars and how to get their papers to the right place.

⁵ One set of mandatory rules with little or no room for local variation would hamper experimentation with ideas designed at helping families such as alternative dispute resolution and early trial resolution.

⁶ The fact that Skamania's local rules may differ from Whatcom or that the "Local Rules Book" is lengthy is of little consequence to most self-represented litigants who will only have one case in one county and to those family law attorneys who practice in only one or two adjoining counties. It is far more important that each county's rules be clear, easily located and well laid-out. A uniform system of numbering could incorporate a captioning or commentary protocol for identifying which rules adopted by a county are "Model" rules and which are specific to that county. Multi-county practitioners could then quickly scan the rules to ascertain which procedures are uniform and which are unique to that particular county.

Mr. Lish Whitson
January 12, 2010
Page 4

Sincerely,



Tari S. Eitzen
President, Superior Court Judges Association

Enclosures

Cc: Chief Justice Barbara A. Madsen
Associate Chief Justice Charles W. Johnson, Co-Chair, WSBA Task Force on Local Rules
Justice Richard B. Sanders
Justice Tom Chambers
Justice Susan Owens
Justice Mary E. Fairhurst
Justice Debra L. Stephens
Judge Deborah Fleck
Judge Kimberly Prochnau
Judge Kitty-Ann van Doorninck
Judge Mary Yu
Sal Mungia, President WSBA
Paula Littlewood, Executive Director WSBA
Jean A. Cotton
Elizabeth A. Turner
Peter Karademos
Lori Haskell

Notes from 1/4/10 meeting

SCJA members: Judges van Doorninck, Yu, Prochnau and Fleck

WSBA Local Rules Task Force Members: Lish Whitson, Jean Cotton and Elizabeth Turner

We confirmed today that both the WSBA and the SCJA value the collaborative working relationship between the bar and the judiciary. We agree that the promulgation of local rules has made it difficult for those practicing in various counties and that a uniform numbering system would be of great assistance. We also agreed that every court should undertake a review of their local rules and that there exists an opportunity for mutual cooperation between SCJA and the WSBA on this undertaking.

At the present time, there is a conflict between the position of the state bar and the SCJA regarding WSBA's proposal to create a new set of state civil rules relating to family law cases. To attempt to resolve the differences between the SCJA and WSBA on this issue, we agreed in principle to the proposal below, with the understanding that the proposal will need to be presented to the WSBA Board of Governors and the SCJA Board of Trustees.

After this group agrees upon the final wording of the proposal, Judge van Doorninck will electronically circulate it to the members of the SCJA FJLC for their feedback this week. We will ask SCJA President Judge Eitzen to provide the proposal and the FJLC feedback to the SCJA Board electronically this week.

Judge Fleck will be present at the SCJA Board meeting on Saturday, January 9th, to present the proposal.

If the SCJA Board agrees with this proposal, the bar leaders present at this meeting will present this proposal to the BOG, with a request that the bar's proposed family law rules be held in abeyance while we jointly pursue the proposal below on an agreed timeline.

Two goals we agreed upon are:

- a) consistent numbering of all local rules, including those relating to family law, across the state
- b) regular, vigorous, required review of local rules relating to family law

Proposal to the SCJA Board:

1. The WSBA and the SCJA should jointly constitute a Work Group to develop model family law local rules, to be completed by August, 2010.

2. Each superior court should review its local rules relating to family law (if any) in light of these model local rules, and should, at a minimum, revise its local rules to be consistent with the Work Group's model numbering system by _____. (This review of local rules relating to family law is a part of the proposed broader review by each court of all of its local rules.)

3. After completion of number 1 above, the WSBA and the SCJA should commit in good faith to have the Work Group review the potential for state family law rules by _____.

4. In order to timely complete this undertaking, any court may request assistance from the WSBA to review and/or revise its local rules and the WSBA will provide such assistance.

OTOROWSKI JOHNSTON DIAMOND & GOLDEN, PLLC

ATTORNEYS AT LAW

CHRISTOPHER L. OTOROWSKI*
CAROL N. JOHNSTON**
MARIA S. DIAMOND
THOMAS R. GOLDEN
JUDY I. MASSONC**
JANE MORROW**

JEROME E. CARBONE, M.D., MEDICAL CONSULTANT
ANNE HOSHIZAKI, MEDICAL RECORDS LIBRARIAN

*ALSO ADMITTED IN COLORADO
** ALSO REGISTERED NURSE

February 1, 2010

VIA U.S. MAIL

Honorable Charles W. Johnson
Washington State Supreme Court
415 12th Ave. SW
P.O. Box 40920
Olympia, WA 98504-0929

RECEIVED
FEB 02 2010

Mr. Lish Whitson
Attorney at Law
800- 5th Avenue Ste. 4000
Seattle, WA 98104-3180

RE: LOCAL RULES TASK FORCE RECOMMENDATIONS

Dear Justice Johnson and Mr. Whitson:

I am writing on behalf of the Washington State Bar Association Litigation Section to express our Executive Committee's most recent thoughts on the Washington State Local Rules and the Local Rules Task Force.

As you know, the Litigation Section was the driving force behind the movement to abolish local rules in our state. The Litigation Section started the movement to seriously address the local rules issue in 2005. While our Executive Committee had doubts that complete abolishment would ever be possible, it was our strong belief that local rules could be significantly eliminated and made consistent throughout our counties.

The work of your task force was monumental and we know from our Litigation Section Task Force Member, Colleen Harrington, that thousands of combined hours were put into efforts to analyze and address the proliferation of local court rules. These efforts are to be commended. After all of the work your Task Force has done, the Litigation Section would like to see positive changes result.

We reviewed with interest the December 1, 2009 letter to you from the Superior Court Judges' Association with regard to the Family Law Rules recommendations. While the Association "supports the recommendation that courts be required to regularly and vigorously review local rules", the Association clearly rejected the Task Force Recommendations re: Family Law Rules. The question arises: How serious are the courts in wanting to do anything about the local rules? Moreover, what has been done since the Local Rule Task Force published its overall

THE ALLIANCE BUILDING • 298 WINSLOW WAY WEST • BAINBRIDGE ISLAND, WASHINGTON 98110
TELEPHONE 206.842.1000 • FAX 206.842.0797 • WEB WWW.MEDILAW.COM

Honorable Charles W. Johnson
Lish Whitson
February 1, 2010
Page 2

recommendations? One only need to look at the 2010 West publication of the Washington local rules to see that not only have the Courts rejected recommendations to seriously reduce local rules, the local rules publication has actually grown.

The King County Superior Court Judges are now contemplating numerous newly proposed local rules submitted by the King Count Bar Association Board of Trustees on April 15, 2009. In reviewing the local rules proposed, our Section has doubts that any recommendations by your Local Rules Task Force have been taken seriously or implemented to a point of positively impacting the practice of law and the service to our clients.

The Litigation Section would like to work with the momentum that your Task Force has established to continue addressing the problem of local rule proliferation. While financially we feel it is not wise to simply give money to a yet-unidentified system of education of the courts on the Task Force findings and recommendations, our Section wants to continue to be a part of the change process. One of the ideas that arose during our Executive Committee meeting was designating representatives from the Litigation Section to educate local rules committees or individuals in each county. Our section is large and encompasses regions from all over Washington. We believe that we could work with the Task Force to formulate a plan of meeting the local judges and rules committees to apprise them of the difficulties posed by our current local rules system and to collectively work toward solutions. We would welcome your thoughts at our next Litigation Section Executive Committee meeting on March 5, 2010 at 3:00 p.m., or you may contact me directly and let me know how our Section can be of assistance.

On behalf of the Litigation Section, thank you for your continued efforts in addressing Washington State local rules.

Best regards,



Jane Morrow
WSBA Litigation Section Chair

- c: Sal Mungia, WSBA President
Judge Tari S. Eitzen, President Judge, Superior Court Judges' Association
Judge Paris K. Kallas, Chief Civil Judge, King County Superior Court
Colleen Harrington, Litigation Section Special Rules Member

The Supreme Court
State of Washington

CHARLES W. JOHNSON
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2020
FACSIMILE (360) 357-2103
E-MAIL J.C.JOHNSON@COURTS.WA.GOV

February 9, 2010

Dear Colleagues:

We are writing to suggest a collaborative approach between the Superior Court Judges' Association (SCJA) and the Washington State Bar Association (WSBA) to address the issue of local court rules. Presently, there is a conflict between the position of the state bar and the SCJA regarding WSBA's proposal to create a new set of state level rules relating to family law cases, a proposal arising out of the bar's Local Rules Task Force. We firmly believe that the conflict can be resolved by working together.

The SCJA and the WSBA agree on the fundamentals: The promulgation of local rules has made it difficult for attorneys and non-represented persons who use the courts in various counties. It is critical that there be statewide consistency in local rules and that this be achieved expeditiously.

We jointly propose the following:

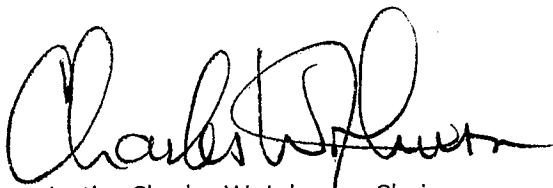
- The WSBA and the SCJA should work together to achieve the shared goal of a set of model local rules, including both family law and general civil rules
- The SCJA should be invited as an organization to join the WSBA Local Rules Task Force to participate in the review of local rules and to develop model civil local rules as well as model family law local rules
- The promulgation of model family law local rules should be undertaken immediately on a parallel track to the ongoing work of the Local Rules Task Force on general civil local rules.
- An immediate goal should be a statewide uniform numbering system for general civil and family law local rules
- Attorneys and judges with particular expertise in family law should be selected by the WSBA and the SCJA to develop the model family law local rules
- Model family law local rules should be drafted by August 2010
- Every superior court judicial district should undertake a review and revision of their local rules based on a statewide numbering system, once developed

The SCJA Board of Trustees is committed to strongly encouraging each Superior Court in the state with local rules to revise those rules consistent with the model rules being developed. To facilitate this effort, we understand that WSBA will assist any court with such review and revision.

As Chair of the Supreme Court Rules Committee and President of the SCJA, we support the efforts and goals outlined above, and each of us stands ready to assist this joint endeavor to improve our legal system. The Supreme Court Rules Committee will take no action on the current set of the proposed state family law rules from the comment period to provide an opportunity to reach consensus on model family law local rules. No comments need be submitted on the published rules. We also wish to take this opportunity to affirm our commitment to continuing a collaborative approach to rule making and to involving as many interested parties as possible.

We ask that you please stop work on any new additional rules until we can develop a more uniform approach to their adoption.

Sincerely,



Justice Charles W. Johnson, Chair
Supreme Court Rules Committee



Judge Carol S. Eitzen, President
Superior Court Judges' Association