

### [Draft] LOCAL RULES TASK FORCE

## **Meeting Agenda**

January 10, 2008
Noon to 3:00pm
Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101

- 1. Call to Order/Preliminary Matters (12:00 noon)
  - Approval of Minutes of October 11, 2007 meeting [pp. 2 4]
- 2. **Discussion** 
  - Judges Group [see supplemental meeting materials]
  - Lawyer's Group [see supplemental excel spreadsheet]
  - Clerk & Court Administrator's Group [pp. 5 6]
- 3. New Business/Good of the Order
- 4. Future meeting schedule
- 5. Adjourn



# Meeting Minutes [draft] October 11, 2007

Co-Chair Lish Whitson called the meeting to order at 12:10 p.m.

Members present: Jean Cotton (by phone), Judge Michael Cooper (by phone), Judge Blaine Gibson, Colleen Harrington, Lisa Hayden, Judge David Kenworthy, Ron Miles, Barbara Miner, Salvador Mungia, Gail Nunn, Steven Scott, Marc Silverman, and Judge Mary Yu. Members excused: Justice Johnson and Jeffrey Tilden. Also attending: Bob Welden (WSBA General Counsel), Judge Paris Kallas (King County Superior Court Local Rules Committee Chair), Meghan Eagan (Judge Yu's legal extern), Jan Michels (Ex Officio), Nan Sullins (AOC Liaison) and Anna Schmidt (WSBA Paralegal).

#### Call to Order/Preliminary Matters

Mr. Whitson introduced the two new members of the Task Force, Judge Kenworthy and Ron Miles. Mr. Whitson directed the members to look at the charter, which outlines the charge of the task force.

<u>Approval of Minutes</u>: Judge Yu requested that, on the first page of the minutes, in paragraph four, the second line be amended to "Judge Yu, speaking as the SCJA Civil Rules and Procedures Committee Chair..." The amended minutes were approved unanimously.

#### Subcommittee Reports

Mr. Whitson reported that the subcommittee chairs or their delegates met by conference phone on Monday. They decided that each subcommittee would give a short report of their analysis so far.

Mr. Whitson suggested that the Family Law Subcommittee consider grouping all current Civil Rules into the Superior Court Special Proceedings rules. The Subcommittee would determine how the special rules would be numbered. Mr. Whitson asked the subcommittee to determine a timeline for this project. Discussion ensued regarding whether small county courts would take exception to this type of arrangement. Judge Cooper opined that most small county courts would find such an arrangement acceptable. Ms. Cotton suggested the Subcommittee begin with a sampling of small counties' local rules, which they would bring to the larger committee, to first determine whether such an

effort is worthwhile. Mr. Whitson asked the subcommittee to decide on their own how to proceed with this project and then report back their decision to the Committee. Ms. Hayden requested that Gail Nunn take over her position as chair of the Family Law Subcommittee. Ms. Nunn consented.

Mr. Silverman presented the analysis for the Large Counties Subcommittee. The Subcommittee as a whole liked the notion of requiring case schedules statewide, although they appreciated that some small counties might be opposed to such a rule. In addition, the Large Counties Subcommittee found a lot of confusion and inconsistency in the placement of certain local rules and unnecessary duplication of rules. Subcommittee Chair Steve Scott directed the Committee to look at the Subcommittee's Report from the last meeting. He opined that the Committee should ask whether a specific rule belongs in the local rules, whether its placement is appropriate, and whether it creates a "trap for the unwary?"

Judge Kallas reported that the King County Local Rules Subcommittee is currently looking at their own local rules to remove anything duplicative or unnecessary. She opined there are reasons for some differentiation, some of which includes better access to justice for pro se litigants. Discussion ensued regarding the appropriateness of using local rules to increase a pro se litigant's understanding of the rules. Ms. Michels reported that the 1994 Local Rules Coordinating Committee was clear that local rules should not be substantive. Mr. Welden pointed out that many people nowadays look at the local rules electronically and look for specific rules through word searches, which argues for consistent terminology. Discussion ensued regarding an enforcement mechanism to prevent the creation of local rules that are substantive. Judge Yu opined that the local courts should submit proposed local rules to the Supreme Court for review. Judge Gibson suggested a process in which the Supreme Court reviews a local rule only if a complaint has been filed. Ms. Cotton suggested that local rules be put out for comment (currently, King County's local rules require that proposed rules are put out for comment).

Ms. Harrington presented the analysis of the Medium Counties Subcommittee. She first explained that the litigation section had been at the forefront of bringing this task force together by writing a letter to the BOG requesting that all local rules, except those dealing with case or docket management, be abolished. Ms. Harrington reported that the Medium Counties Subcommittee found similar problems as reported by the Large Counties Subcommittee: improper placement or numbering, noncompliance with the CR 83, and lack of uniformity. Discussion ensued regarding whether one could clearly differentiate between local rules falling under the category of case or docket management and those that do not.

Judge Gibson presented the analysis of the Small Counties Subcommittee. The Subcommittee found the same problems as the other subcommittees: numbering systems and rules don't always correlate with the Civil Rules or are inappropriately placed. Judge Gibson opined that one has to read through the entire set of a county's local rules to find all those that apply to a case.

#### **Assignments**

Mr. Whitson requested that the members re-shuffle into the following three groups: Court Administrators and Clerks (Barbara Miner – point person), Lawyers (Colleen Harrington – point person), and Judges (Judge Cooper – point person). Each group will review the work products from the Large, Medium, and Small Counties Subcommittees and reason what is good, bad, and indifferent about the information therein. Each group will try to find common threads of issues that can be resolved.

#### Next Meeting Date

A tentative meeting date has been set for December 6, 2007.

The Task Force meeting adjourned at 1:15pm.

## Report to the WSBA Local Rules Task Force

Submitted by: Court Administrators and Clerks Subcommittee (Administrative Perspective)

January 7, 2007

The court administrators and clerks subcommittee solicited input about local rules and the task of this subcommittee from Superior Court Administrators and County Clerks around the state. The task of the committee as assigned by the Task Force is the following:

Each group will review the work products from the Large, Medium, and Small Counties Subcommittees and reason what is good, bad, and indifferent about the information therein. Each group will try to find common threads of issues that can be resolved.

#### **FINDINGS**

Somewhat surprisingly, several clerks and administrators reported that their own rules were useless to them and out of date. Others reported that their rules are an integral part of their work and that they or their staff refer customers to rules many times a day. Clerks and court administrators on the whole perceive rules as a way to shine a light on what will help those who have actions in the court conduct their court business according to standard procedures and requirements. Most clerks and administrators feel no sense of ownership for the rules. This finding led the subcommittee to a fundamental question: "Whose rules are they?"

Some courts follow a rigorous rule development process already; these development cycles for local rules may already includes many of the recommended steps: many internal meetings and a judicial approval process; a review and comment time period with the local bar association; and another set of local internal meetings and further judicial approvals. Rules are sent to the Supreme Court by July 1 and effective September 1. Any new processes or reviews would ideally not add burdens or months to the process.

Specific sub-committee's findings are as follows:

- 1. There is a strong need to examine, clean-up, and update the current local rules in many counties.
  - Many counties need uniformity and consistency as to local rule numbering and to match rule order and numbering with state court rules.
  - Clearly some courts developed local rules and LR numbering without attention to the importance of linking to state court rule conventions and numbering.
  - Many local rules have been superceded by changes in state court rules or legislation, or are no longer relevant to local practices. (e.g. the practice changed, everyone knows the new practice locally but no rule update occurred).
  - Local rules seem to have developed in response to problems but without an overall mission of codifying local practices for use by pro se's or court users from other counties.
  - An overall review and modification of local rules would require staff time which most courts do not have available, and most will likely need assistance to do a review and clean-up.

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- 2. It would be highly advantageous to have guidelines and a suggested process for what constitutes an appropriate Local Rule.
  - Local courts would benefit from a published process to follow that should include a "threshold test" to take the proposed rule through, before adoption.
  - A suggested guideline on the Superior Court local rule process development might dictate inclusion of the County Clerk in the process.
  - A suggested guideline might ask that each court appoint a local rules 'czar' who will be the contact to the state and the local screening authority; training for these local 'czars' could be part of the guidelines and development process.
  - Broader publication of proposed local rules (at a minimum to surrounding counties) would assure more uniformity and consistency in local rules.
- 3. A screening mechanism for new local rules will help ensure the problems will not reoccur. Screening could better assure the following:
  - Local rules are not repetitive of legislation or state court rule;
  - Local rules are not in conflict with legislation or Supreme Court rules;
  - That there is no fee-setting in local rules, or other matters buried in local rules that are more correctly handled in either local or state legislation;
  - That a LR does not impose on substantive matters that can jeopardize a case; and
  - That LRs do not present opportunities for forum-shopping.

**NOTE**: An ongoing screening mechanism may not be welcomed by all courts and may be difficult to enforce. A middle ground may be a one-time review for each court, along with a process for inquiries or complaints about rules adopted locally that may violate the provisions on local rules.

- 4. There needs to be some allowance for rules or perhaps the development of something different than a rule to publicize local practices such as local court case scheduling, financial management, and calendar information.
  - Perhaps a new state court rule could authorize an administrative order model and a process for publicizing local information such as payment types allowed, practices for sealing documents, or exhibit management.
  - Many clerks felt that without strong authority behind such requirements, attorneys would be likely to challenge the clerk's authority.
- 5. There is a lack of consistent purpose and ownership behind local rules. Some local rules repeat state law and rules in order to help the inexperienced and pro ses have all the information they need in one place. Other courts use local rules to solve caseflow and scheduling problems without describing overall court requirements. Still other courts use their rules more like narrative instructions.
  - Many clerks and court administrators don't have a strong feeling of ownership for local rules, with certain exceptions, and have no vested interest in keeping them current and usable.
  - There is no agreed purpose in the use of local rules across courts.

- 6. The state and local court rules processes are out of sync, time wise, with the state legislative process. Though legislation may dictate that processes be developed, the state court rules process is too formal and time intensive to always meet the needs for the locals in these situations.
  - There is a need to assure that state court rules are timely enough so that local courts do not need temporary local rules.

#### RECOMMENDATIONS

#### Recommendation 1:

There needs to be a statewide coordinating entity. This entity needs to be a quick-response, low overhead state-wide entity either at the Supreme Court or delegated under Supreme Court authority to help local courts clean and update their existing rules, and to help review new proposed rules for appropriateness, numbering, and consistency with Supreme Court Rule numbering.

#### Recommendation 2:

There needs to be stated guidelines for what are allowable local rules, required review timelines and processes, currency, consistency, and numbering conventions.

#### Recommendation 3:

Each court should appoint a rules 'czar' or entity whose function should be to oversee the local rule development process under the new stated guidelines. This function should include the county clerk for Superior Court rule-making.

#### Recommendation 4:

To respond to fears from the administrators and clerks that any process developed by the LRTF will only take into account processes in big courts, the needs of the majority of the courts, 1-4 judge courts, must be considered in any LRTF recommendations.

#### CONCLUSION

The subcommittee endorses the need to review and fix local rules where they are outmoded, inconsistent with other authorities, not numbered to follow state court rule format or transgress into substantive law. Clerks and court administrators recognize the problems pointed out by the court-size committees and agree that solutions are needed. Local courts need assistance in cleaning up existing local rules and developing proposed rules within newly developed and stated guidelines.