



WSBA

LOCAL RULES TASK FORCE

Meeting Agenda

October 29, 2008

Noon to 3:00pm

NOTE LOCATION FOR THIS MEETING WILL BE AT:

**The Office of Lish Whitson PLLC
800 Fifth Avenue Plaza,
Suite 4000 [Fortieth Floor]
Seattle, WA 98104-3179**

1. **Call to Order/Preliminary Matters** (12:00 noon)
 - Approval of the September 17, 2008 meeting minutes [pp. 2 - 5]
2. **Discussion**
 - Discussion of the Local Rules Task Force Report Draft 3 [pp. 6 - 28]
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 17, 2008

Co-Chair Lish Whitson called the meeting to order at 12:08pm.

Members present: Justice Charles W. Johnson (Co-Chair), Jean A. Cotton, Judge Blaine Gibson, Colleen A. Harrington (by telephone), Lisa Hayden (by telephone), Ron E. Miles, Gail B. Nunn, Narda D. Pierce (by telephone), Judge Jean A. Rietschel (by telephone), Marc L. Silverman, Jeffrey I. Tilden, and Judge Mary I. Yu. Also attending: Peter J. Karademos (BOG Liaison), Salvador A. Mungia (BOG Liaison), Bob Welden (WSBA General Counsel), Jan Michels (Ex Officio Priore Suo), Nan Sullins (Supreme Court Liaison), Elizabeth Turner (WSBA Staff Counsel), and Anna Schmidt (WSBA Paralegal).

Call to Order/Preliminary Matters: Ms. Sullins and Mr. Mungia noted a few corrections to the minutes. The meeting minutes of July 9, 2008, were approved by consensus as corrected.

Discussion of Local Rules Oversight: Ms. Michels drafted a discussion memo regarding oversight, edited by Ms. Sullins and Mr. Welden. The memo begins by stating that, under CR 1 and CR 83, local Superior Courts are allowed to make and amend local rules consistent with the Supreme Court Rules. The purpose of oversight is to keep the local rules from migrating too much away from the state rules. Oversight could also result in the development of expertise in the area of local rules. The memo lists the different groups who have interest in the local rules and lists several possible models for oversight, although the Supreme Court ultimately has authority for the oversight. Ms. Cotton opined that the DMCJA would not be happy if the SCJA had oversight of their local rules; the Task Force decided to remove Option D (Supreme Court delegated oversight authority to SCJA) as well as Option C (Board of Judicial Administration oversight).

Justice Johnson reported a lukewarm reception at the Supreme Court regarding the Task Force's work; the Chief believes that improvements to the local rules have already begun. So far, the Court has not seen copies of the Local Rules Task Force Reports, only a first draft of the Preamble. Justice Johnson suggested that an easy solution might be writing a letter to all those who submit local rules stating that there's a problem with consistency and then having those who create the rules solve the issue themselves. Ms. Sullins reported that, under provision b in GR 7, courts may informally submit a copy of their local rules to her [the Administrative Office of the Courts] for comments as to the rules conformity in number and format to the Official Rules of Court, and she will look them over and provide guidance in the form of suggestions. This occurs very rarely – perhaps seven times per year.

Judge Rietschel questioned whether the Task Force would focus on Municipal and District Courts' local rules and Mr. Whitson explained that they will be considered based on whether the Task Force has the time and the authority given to them by the BOG.

Discussion ensued regarding the knowledge of those submitting the rules, the need for an entity or individual with specific expertise to review submissions, and past proposals of where to nest such an entity or individual (sixteen years ago, the proposal was to nest oversight with the Best Practices Committee of the SCJA). Mr. Silverman suggested that someone other than the judges creating the rules should vet them. The members discussed different possible options. Mr. Silverman opined that the WSBA Court Rules & Procedures Committee might be uniquely positioned to do this because that group is composed of judges, lawyers, and representatives of special interest groups. Judge Gibson opined that, once the rules have been cleaned up, it may only require one person to review new rules for a few hours a week and then make suggestions to the persons submitting the rule. He suggested something similar to the WSBA ethics hotline. Ms. Hayden suggested that having more than one person reviewing the rules may be a better idea because different minds can arrive at different conclusions. Discussion turned toward creating a procedure where comments can be considered regarding newly proposed local rules and a procedure where local rules can be challenged. Judge Gibson clarified that the role of any group performing oversight would be to clean up the rule language and warn of unintended consequences, not to prevent a local rule from existing. Members discussed whether the entity performing oversight should act in the role of gatekeeper in order to eliminate rules that are unacceptable.

Justice Johnson broke the issue down to two problems: The structure of the local rules, such as consistency in the numbering, and the substance of the local rules. He felt the first problem would be easier to solve through a letter to the proponent – that is, allowing the proponents to solve their own issues of consistency. The second issue is much more difficult and would probably be best solved by proposing a set of model rules. He opined that an oversight committee should be created, made up of those individuals most active in every part of their own county, and charged with reviewing their rules and finding a solution. Ms. Nunn pointed out that they have already reviewed all the local rules for family law, and new rules have already been adopted since they did their research. Discussion ensued regarding the idea of a contracted lawyer visiting each county and making suggestions regarding changes to their local rules. Ms. Hayden asked whether this was an expense the Bar Association would take on and Mr. Mungia replied that it would be money well spent if it followed a certain model. Mr. Mungia pointed out that the big question is how to prevent future rules from migrating too far from the state rules. The discussion continued regarding getting permission from the BOG to extend the life of the Local Rules Task Force in order to continue the clean-up process and possibly expand the Task Force's role. Mr. Mungia reminded the group that their current role is to put forth recommendations. Justice Johnson suggested that he will try to get feedback from his colleagues to bring back to the group.

Family Law Subcommittee Report: Mr. Karademos, Ms. Cotton, and Ms. Nunn presented the Family Law Subcommittee's report. Ms. Nunn reported that, as Task Force members go through the report, they'll see notes of issues that the Subcommittee could not resolve. The report is not all-inclusive and counties can go back and insert more under particular rules. Ms. Nunn pointed out that the Family Law rules affect a large populous because of the high divorce rate and because of the large number of pro se litigants. When questioned which areas may be the most controversial, Ms. Hayden opined that page limitation may be an issue as well as the issue of the courts ability to force litigants to go to a facilitator or mediation. Ms. Hayden explained that this process decreases the court's workload, but can be hard on litigants and create a delay in the matter. Judge Gibson noted that some counties cannot afford to provide free facilitators. Discussion ensued regarding vetting the report and getting feedback from counties on whether local rules exist that absolutely don't fit anywhere in the current template.

New Business: Discussion ensued whether an interim report should be sent to the BOG. Mr. Whitson stated that the last interim report he presented to the BOG was in December. Ms.

Michels suggested including revisions to their charter with the report. Mr. Mungia suggested making the report the final report. Mr. Whitson suggested that Justice Johnson provide him with a letter to be read at the BOG meeting stating that past attempts have failed due to lack of follow-up. Ms. Michels, Ms. Turner, Mr. Whitson and Judge Gibson will work together to integrate the following pieces into a final version:

- Mr. Gordon's Preamble (along with the memo drafted by Jan)
- Judge Gibson's report
- the Family Law Subcommittee reports

They will attempt to include the all county spreadsheet and any preliminary reports if possible. Ms. Hayden suggested that they put in a disclaimer since local rules change so fast that the research may not be reasonably up-to-date. Mr. Whitson announced that a final version will be put together and sent to all the members prior to being sent to the BOG. The goal will be to have the final report on the BOG's December agenda.

Next Meeting Date: The Chairs suggested having the next Local Rules Task Force meeting on October 22, 2008 [that meeting date has since been rescheduled to October 29, 2008].

Meeting adjourned at 2:12 pm.

DRAFT #3A (October 2, 2008)

Local Rules Task Force Final Report

**Co-Chairs: Honorable Justice Charles W. Johnson and Attorney Lish
Whitson**

**Presented to WSBA Board of Governors
December 5, 2008**

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Executive Summary

The Local Rules Task Force was created to review the purpose and function of local rules; the impact of local rules on courts, litigants (both pro se and represented) and the trial bar; and possible means to mitigate the detrimental effects of the ever-increasing number of local rules. The Task Force worked for 18 months to complete this charge. This final report presents the consensus reached concerning the problems with the proliferation of local rules, specific findings, and recommendations to assure that the findings have solutions and are implemented.

NOTE FROM ELIZABETH: The pink highlighted areas below were added by Jan. I believe they should be deleted; I am concerned that people will stop reading beyond this point, or won't read as closely as they would otherwise.

Findings

Improper Numbering

Superior Courts are allowed to adopt local rules under CR 83 but virtually no county has fully followed the State Court Rule format. This makes it extremely difficult for litigants and attorneys to find the rules that may apply to their cases.

Commingling

The local rules of many counties mix together rules governing civil, domestic, criminal, and juvenile cases. This mixing increases the difficulty litigants have locating the rules that apply to their particular case.

Unnecessary/ Repetitive of State rules

Many counties have local rules that merely repeat civil rules or statutes. Local rules should be minimized by limiting them to matters not addressed by statute or the civil rules

Outdated

Many counties have local rules that are outdated (in terms of technology, procedures, etc.). This increases the difficulty litigants have in complying with rules applicable to their particular case.

Formatting Requirements, Page Limits, etc.

Different counties have different rules regarding the format of specific pleadings, including use of certain forms and page limitations, and brief requirements. This variance among counties causes confusion for multi-county practitioners. More importantly, some local rules provide penalties for failure to follow formatting requirements, creating serious potential traps for the unwary.

Confirmation Requirements

Some counties require confirmation of certain types of hearings. Failure to confirm a hearing can result in the hearing being stricken. The lack of uniformity creates confusion for multi-county practitioners, and traps for the unwary.

Inconsistent with State Rules

Some counties have adopted local rules that appear to contradict the statewide rules, in violation of CR 83.

Micromanagement

Courts differ in their philosophies regarding management of civil cases. A number of courts have detailed case management local rules that set schedules for every stage of a civil case, set discovery deadlines, and require one or more pre-trial hearings. Other courts have no case management rules, leaving it to counsel to decide whether to request any type of scheduling order. Regardless of whether one feels case management rules are a good idea, litigants are faced with different rules in different counties.

Good Rules

In the course of examining the local rules of all counties, the judicial members of the Task Force identified a few local rules they thought were good ideas. Such rules should be considered for adoption as state rules.

Family Law Rules

Family law requirements are often buried among the civil rules. They can be difficult to locate and follow. Statewide Family Law Rules are needed.

Periodic Baseline Review

There is no current requirement for a review of local rules for necessity, currency and conformity with current Court Rule and legislation.

Oversight Needed

There must be a mechanism for statewide oversight of local rules to assure they follow the findings and recommendations of the Task Force.

[Comments to drafting committee: Depending on where and how Blaine recommends we deal with the need for stop-gap rules before the Supreme Court acts, this could also be a finding.]

Summary of Recommendations

1. The Supreme Court should direct that each court review its current local rules to assure that they eliminate the problems pointed out in the findings. During this clean-up phase, the local courts should be assisted with this effort and a moratorium for promulgation of new local rules be imposed.
2. A new, separate, set of State-wide Family Law Rules should be promulgated.
3. Local Rule oversight should be implemented.
4. The Local Rules Task Force' charter should be extended and revised to assure ongoing attention to the implementation of the proposed remedies.
5. Judicial Outreach should continue.

Conclusion

The Task Force recognizes that with the submission of this report, their work under the 2006 charter has been completed. However work remains in order to assure that the remedies are implemented and that an oversight function assures simplicity and clarity among local rules.

Local Rules Task Force Final Report

1. History of Local Rules Task Force Charter. In the early 1990s there was one significant effort to address the proliferation of local court rules and their effect on the administration of justice. Former Chief Justice Keith M. Callow proposed abrogating the authority of individual courts to adopt local court rules, urging all courts to operate under uniform local court rules statewide. The committee formed as a result of this effort (the Local Rules Coordinating Committee co-chaired by Justice Charles W. Johnson) drafted a set of uniform model local court rules. The committee's final report, including the model court

rules, was presented to the Supreme Court but the model local court rules were not adopted by any of the state Superior Courts.

In 2006, a coalition of eight Washington State Bar Association sections asked the WSBA Court Rules and Procedures Committee to consider the impact of the proliferation of local rules. The coalition recommended abolishment of all local rules with the exception of those rules governing docket management. The Court Rules and Procedures Committee suggested to the Board of Governors that a special task force be convened to evaluate this issue. In the fall of 2006 the WSBA created and chartered the Local Rules Task Force (“the Task Force”) and by early winter 2007 appointed its co-chairs and members.

The Task Force consists of representatives of various stakeholders in the proper promulgation, amendment, and application of the Local Rules of Superior Court, including court administrators, judges, and lawyer-practitioners. The practitioner group has been augmented by representatives of the family law bar, whose procedures have given rise to a distinct body of rules. Practitioners include members of the trial bar, in both the public and private sectors. Jurists include both current and former members of the bench. The Task Force is co-chaired by attorney Lish Whitson and Supreme Court Justice Charles W. Johnson.

2. Charter. The Task Force was created to review the purpose and function of local rules; the impact of local rules on courts, litigants (both pro se and represented) and the trial bar; and possible means to mitigate the detrimental effects of the ever-increasing number of local rules. The Task Force was charged with reviewing the model local rules and practices in other states with non-unified court systems to develop recommendations on possible improvements or modifications to Washington’s local rulemaking process and authorizations, in addition to looking at the work product of the earlier efforts in this state to stem the proliferation of local rules. In discharging its mission under this Charter, the Task Force was mindful of the directive in Rule 1 of the Superior Court Civil Rules that the court rules “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”

3. Underlying Legal Authority With Respect To Creation of the Local Rules.

State Constitutional Authority Art. IV, §24 [Rules for Superior Courts] of the Washington State Constitution provides:

The judges of the superior courts shall, from time to time, establish *uniform rules* for the government of the superior courts. (emphasis added)

Case Authority. Court interpretation of the foregoing Constitutional provision in *State v. Superior Court for King County*, 148 Wash. 1, 267 P. 770 (1928) supports the conclusion that the purpose of this provision:

. . . is to insure *uniform rules* of minute procedure and should be construed, *not as grant of power to make broad and general rules, but as a limitation upon courts, requiring that customary rules having to do with minutiae of court government should be uniform in character*, so that attorney and client are not hampered by finding petty rules in each court differing according to the views of the particular judge who presides over the tribunal. (emphasis added)

Statutory Authority. RCW 2.04.190 [Rules of pleading, practice and procedure generally] provides:

The supreme court shall have the power to prescribe from time to time the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rules the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the Supreme Court shall have regard to the simplification of the system of pleadings, practice and procedure in said courts to promote the speedy determination of litigation on the merits. (emphasis added)

Court Rule Authority. Civil Rule 83 provides:

Each court by action of a majority of the judges may from time to time make and amend local rules governing its practice *not inconsistent with these rules*. Local rules shall be numbered and indexed in a manner consistent with the numbering and index system for the Civil Rules. (emphasis added)

Court Authority. The courts also have an inherent authority to manage the flow of cases and to assure timely resolution of disputes.

County Clerks Authority under RCW 2.32.050, "Clerks Duties". Clerks' practices are governed by statute and parallel the Court's authority to govern case flow and administrative practices. Clerks have the authority to set administrative practices regarding financial transactions, filing procedures, and required clerk's action documents.

4. Proper Use of the Local Rules. NOTE FROM ELIZABETH: THIS IS THE OLD LANGUAGE THAT WAS DELETED BY BLAINE, INCLUDED FOR YOUR REFERENCE: A fundamental tenet of our judicial system is to serve the citizenry and further prompt fair adjudication of claims and the administration of justice. The Task Force recognizes that only the Supreme Court creates rules in response to new or changed legislation; Local Rules are intended to assist litigants with compliance with the Civil Rules of Superior Court and to document for litigants case flow practices and court's administrative procedures. Addition to or modification of such local rules should be widely circulated, infrequent and primarily in response to changes in the Civil Rules and the law.

It follows from the foregoing that Local Rules should not repeat the Civil Rules and are not to be created as "emergency" rules to address specific gaps in legislative or Supreme Court guidance or in reaction to individual circumstances. Local rules should be precluded from affecting substantive law or from introducing jeopardy to the unwary.

NOTE FROM ELIZABETH: THIS IS THE NEW LANGUAGE SUGGESTED BY BLAINE: Local rules are intended to establish administrative procedures which allow courts to make the most efficient use of their staff, judicial time, and physical resources to deal with their particular case loads. However, there are a number of constraints on local rules. They must be drafted to secure a just determination of every action, as required by CR 1. CR 83 requires the numbering system of local rules to be consistent with the statewide rules. Local rules must not conflict with statutes, statewide rules, or case law. They should not create traps for the unwary. They should also not merely repeat statutory law or statewide rules. In short, local rules must avoid creating more problems than they solve.

5. The Consensus of the Task Force. The Task Force has systematically reviewed the local rules of all thirty-nine counties. A specific, rule-by-rule analysis was helpful in summarizing the consensus (or majority viewpoints when full consensus was not attained) reached by the Task Force.

- The promulgation of local rules in each county was undertaken, for the most part, without reference to the rules promulgated by other counties and was apparently based upon local practices. Accordingly, there is little or no consistent, institutional concern accorded the burdens on litigants and lawyers created by the promulgation of local rules that vary from county to county;
- The evolution of various local customs and variation in administrative resources and burdens county to county, has, in fact, led to the development of local rules that vary, sometimes significantly, from county to county;

- The utility of local rules varies widely from county to county, with some clerks and court administrators reporting that their rules were “useless” and others reporting that they were an integral and helpful part of their work;
- The local rules are not uniform as mandated by the Washington State Constitution;
- The local rules, in many cases, are only tenuously related to the Civil Rules and are, in some jurisdictions, not numbered in a manner consistent with the Civil Rules as mandated by CR 83;
- The proliferation of an expanding body of non-uniform local rules in each of Washington’s thirty-nine counties has posed a special challenge to those appearing before courts in those jurisdictions, both *pro se* litigants and lawyers alike;
- Of primary concern to litigants and lawyers is the promulgation of local rules that pose “traps for the unwary,” particularly circumstances where time deadlines and formatting requirements unique to a given jurisdiction threaten litigants with the loss of substantive rights;
- Of secondary importance to litigants and lawyers is the increased burden and cost placed upon counsel and litigants required to comply with different Local Rules in each county;
- A special family law subcommittee found that a number of family law related local rules, rather than being purely procedural in nature, contained matters of substantive law or--even worse--were substantive with no corresponding authority in law;
- Local rules have historically been promulgated in response to a variety of perceived needs: changes in legislation, easing the burden upon courthouse staff of repeated explanation of procedures to *pro se* litigants, response to specific procedural abuses, clarifying application of the Civil Rules, and assuring uniform format and procedures in order to facilitate the adjudication of claims by judges. The different rationales justifying creation of local rules have increased the number of rules and led to increased variation from county to county;
- **NOTE FROM ELIZABETH: BLAINE WOULD DELETE THESE POINTS:** Increased proliferation of rules and variation from county to county can become self-defeating by rendering compliance more difficult, costly, and, hence, less frequent;

- The processes by which local rules are promulgated and reviewed is inconsistent and tends towards a uni-directional character whereby rules are promulgated, but seldom reviewed, and still less often, eliminated. The consequence is that many Local Rules appear to have been created in reaction to specific, infrequent issues, persist long after their usefulness, and are seldom retired. In short, there are too many Local Rules and their proliferation and variation undermines their utility and burdens compliance;
- **NOTE FROM ELIZABETH: BLAINE WOULD ADD THIS POINT:** Local rules are often created in reaction to specific incidents. They commonly persist long after their usefulness, and are seldom retired. The sheer number and volume of rules, along with differences from county to county, can render compliance more difficult and costly, and, possibly, less frequent. In short, there are too many local rules, and their proliferation and variation undermines their utility and burdens compliance.
- Some courts repeat, in local rules, civil rule and statutory requirements, especially in the family law areas in an attempt to have all authorities in one place for pro se litigants;
- There is currently no body responsible for assuring the uniformity of the local rules or for the systematic approval, review, or elimination of local rules from county to county;
- **NOTE FROM ELIZABETH: THESE POINTS WERE ADDED BY JAN:** There is often cross-over between family law rules and civil rules, both at the state and local levels, because family law cases are also civil law cases. This forces the family law practitioner and/or pro se litigant to be cognizant of the local rules that are clearly identified as family law local rules and to also research the state Civil Rules to find those that may or may not apply;
- There are specific topic areas of interest to family law practitioners and litigants with no counterpart in the Civil Rules;
- There is no requirement or habit for periodic baseline review of existing rules for currency, changed rule of legislation, and necessity.

The Findings Underlying The Recommendations of the Task Force

The Task Force initially focused its efforts on civil and family law rules. Most Superior Courts have local rules governing family law, but there are no corresponding statewide rules. For this reason, a separate subcommittee was formed to review all family law local rules and to make suggestions for how those rules might be simplified and made more uniform. Meanwhile, other subcommittees reviewed all the Superior Court local civil rules.

The subcommittees on local civil rules identified several recurring problems which they believe are an impediment to access to justice and developed recommendations for the mitigation of these problems. By citing examples, the Task Force does not intend to offend or to be unduly critical of any Superior Court. In fact, every Superior Court in the state had at least some problems with its local rules. A spreadsheet compilation of all the problems with the local rules of all Superior Courts is attached to this report. In generating this report the Task Force used the 2007 version of the *Washington Court Rules - Local* published by Thompson * West. However, it is important to note that there have been additional changes in many counties' local rules since publication of the 2007 court rules.

Local Civil Rules

Improper Numbering

Superior Courts are allowed to adopt local rules pursuant to CR 83, which states:

CR 83(a). Local Rules of Court

(a) *Adoption.* Each court by action of a majority of the judges may from time to time make and amend local rules governing its practice not *inconsistent with these rules*. Local rules shall be numbered and indexed in a manner consistent with the numbering and index system for the Civil Rules. (emphasis added)

Virtually no county has fully followed the State Court Rule format. This makes it extremely difficult for litigants and attorneys to find the rules that may apply to their cases.

Examples: Adams, Asotin, Columbia, Garfield, Grant, Okanogan, Pacific, Wahkiakum, and Walla Walla Counties, among others, have local court rule numbering systems which are completely unrelated to the numbering system for the Civil Rules. Other counties have numbering systems that only partially match up with the Civil Rules.

Commingling

The local rules of many counties mix together rules governing civil, domestic, criminal, and juvenile cases. This mixing increases the difficulty litigants have

locating the rules that apply to their particular case, and ties in with the improper numbering discussed above.

County local rules use various alpha identifiers for local rules varied widely from county to county(LCR versus LFLCR, LR, SPR, LSPR, and so forth)
[Could use an example here]

Examples: Asotin, Columbia, Garfield, Grant, and Okanogan Counties, and possibly others, have a single set of local Superior Court Rules that govern civil, criminal, and juvenile cases.

Unnecessary/ Repetitive of State rules

Many counties have local rules that merely repeat civil rules or statutes. Whether such rules should be eliminated poses a policy question that perhaps is best addressed by the Supreme Court. Should local rules be minimized by limiting them to matters not addressed by statute or the civil rules, or should local rules include all relevant information so as to assist pro se parties who might not be aware of the applicable statutes and statewide rules?

Example 1: Grant County LR 5(a)

Civil Cases. A pretrial conference may be conducted in civil cases in the manner, and for the purposes, set forth in CR 16.

Comment: Since this language merely cross-references CR 16, it is not necessary.

Example 2: Chelan County LR 7(b)(C)

Notes for Motion Calendar; Time for Filing. Any party desiring to bring any motion prior to trial, other than a motion for summary judgment, must file with the clerk and serve all parties and the Judge assigned to hear the motion or the Presiding Judge at least five (5) court days before the date fixed for such hearing.

Comment: This language merely duplicates what is already contained in CR 6(d).

Outdated

Other counties have local rules that are outdated (in terms of technology, procedures, etc.). This increases the difficulty litigants have in complying with rules applicable to their particular case.

NEED EXAMPLES HERE (NONE IN FIRST INTERIM REPORT)

Formatting Requirements, Page Limits, etc.

Different counties have different rules regarding the format of specific pleadings, including use of certain forms and page limitations. Some also have requirements for bench copies of briefs, while others do not. This variance among counties may cause some confusion for multi-county practitioners. More importantly, some local rules provide penalties for failure to follow formatting requirements, creating serious potential traps for the unwary.

Example 1: Benton and Franklin Counties LCR 5

Requires bench copies of all briefs, declarations, affidavits, and other supporting written documentation pertaining to trials, summary judgment motions, and any other motions (including domestic relations), to be delivered to the Court Administrator not later than two court days prior to the scheduled hearing.

Example 2: King County LR 7

Requires motions to be combined in one document with the supporting memorandum, sets formatting standards, and imposes page limits.

Confirmation Requirements

Some counties require confirmation of certain types of hearings. Failure to confirm a hearing can result in the hearing being stricken. The lack of uniformity among the counties regarding confirmation requirements creates confusion for multi-county practitioners, and traps for the unwary.

Example 1: Clallam County LCR 77(k)(5)

Requires all motions on the civil calendar to be confirmed with the Court Administrator by noon of the second day before the motion is to be heard. If the matter is not confirmed, the court has discretion whether or not to hear the motion.

Example 2: Grays Harbor LRC 7(b)(5)(D)

Any matter noted on the Monday afternoon docket will be stricken from the calendar unless the Court Administrator is notified in person or by telephone that the matter is to be continued to a date certain or that it is ready to be heard as scheduled. The matter must be confirmed no sooner than the Tuesday before the hearing and no later than noon on the Thursday prior to the hearing.

Inconsistent with State Rules

Some counties have adopted local rules that may contradict the statewide rules, in violation of CR 83. In most cases, whether a specific local rule does contradict

a statewide rule may be debatable. Local rules that contradict statewide rules create potential traps for attorneys.

NOTE FROM ELIZABETH: :THIS WAS ADDED BY JAN: Some local rules concerning family law matters have little or no correlation between the topics contained in local rules to the corresponding state civil rules. In addition, a number of family law related local rules, rather than being purely procedural in nature, contained matters of substantive law or, worse, were substantive with no corresponding authority in law.

[should add an example of family law rules which exceed authority]

Example 1: Ferry, Pend Oreille, and Stevens Counties LR 6

Requires motion papers be filed within six court days before the hearing and responsive papers to be filed two days before the hearing. Pierce County has a similar rule (PCLR 7).

Comment: CR 6 requires motions be submitted five days before a hearing and responses to be filed one day before the hearing.

Example 2: King County LR 26(d)

Limits the number of depositions, interrogatories, and requests for production parties may use absent a stipulation or court order.

Comment: The statewide discovery rules do not contain any limitations on the number of depositions, interrogatories, and requests for production parties may use, although they do provide for protection orders in certain circumstances. Query whether a local rule can establish such limits in light of CR 83.

Example 3: Chelan and Douglas Counties LR 37(f)

Requires discovery responses to be completed 35 days before trial and exposes litigants to potential sanctions on failure to do so.

Example 4: Jefferson County LR 12.1

Requires a party wishing to assert the protection of the federal bankruptcy laws to file a copy of the bankruptcy court notice of commencement of case, serve it on all parties, and provide a copy to the assigned judge and to keep the court informed as to the status of the bankruptcy case.

Comment: CR 12 does not require such filing and grants no authority to the court to impose such a requirement. Obviously, a

bankruptcy precludes the court from assuming jurisdiction over a case in most circumstances.

Micromanagement

Courts differ in their philosophies regarding management of civil cases. A number of courts have detailed case management local rules that set schedules for every stage of a civil case, set discovery deadlines, and require one or more pre-trial hearings. Other courts have no case management rules, leaving it to counsel to decide whether to request any type of scheduling order. Regardless of whether one feels case management rules are a good idea, litigants are faced with different rules in different counties.

Example 1: Benton and Franklin Counties LCR 4

Requires the party who files the initial pleading to serve a case schedule on all other parties. The case schedule specifies exactly how much time is allowed between 18 separate stages of the litigation. At least two, and possibly three, hearings are required before trial.

Example 2: Pierce County PCLR 1

Requires the party who files the initial pleading to serve a case schedule on all other parties. The case schedule specifies 15 pre-trial stages of the litigation, including two, and possibly three, pre-trial hearings. The plaintiff must request that the case be given a “track” assignment of expedited, standard, or complex. The track assignment determines the amount of discovery allowed absent court order and the length of time between pre-trial stages. The rule authorizes the court to impose sanctions on the parties or attorneys for failure to comply with the case schedule.

Good Rules

In the course of examining the local rules of all counties, the judicial members of the Task Force identified a few local rules they thought were good ideas. Such rules should be considered for adoption as state rules.

Example 1: Snohomish County SCLCR 7(b)(1)(A)

Prohibits a party from presenting a motion to a judge when the same motion has already been ruled on by a different judge, unless the prior ruling was made without prejudice.

Example 2: Cowlitz County Local Rule 11

Requires a pro se party to file a notice of appearance that includes his/her mailing address, street address, and telephone number where service of process and other papers may be made. It also requires a pro se party to advise the court and other parties by written notice of any changes of address and/or telephone number.

Example 3: Thurston County LCR 11(c)

When a pro se party physically appears in court without filing a written pleading or other paper, the clerk shall cause to be filed a special notice containing the mailing address, street address, and telephone number where service of process and other papers may be made.

Example 4: Yakima County Local Rule 59

Any motion for reconsideration not heard within 30 days of the written decision is deemed denied unless otherwise ordered by the court. The judge to whom the motion is assigned first determines whether the motion is to be heard on oral argument or on briefs. Oral argument is not allowed unless requested by the court.

Recommendations:

- 1. The Supreme Court should direct that each court review its current local civil rules to assure that they eliminate the problems discussed above. During this clean-up phase, the local courts should be assisted with this effort.**
- 2. The Court should set realistic and achievable deadlines for implementation.**
- 3. The Court should direct a moratorium on new Local Rules except for emergencies (and “emergencies” should be narrowly defined.)**
- 4. Local Rule oversight should be implemented to assure compliance with the findings of the Task Force.**
- 5. Judicial Outreach should continue.**

Family Law Rules and Recommendations

There is often cross-over between family law rules and civil rules, both at the state and local levels, because family law cases are also civil law cases. This

forces the family law practitioner and/or pro se litigant to be cognizant of the local rules that are clearly identified as family law local rules and to also research the state Civil Rules to find those that may or may not apply.

All local rules were separately reviewed as they related to Family Law matters, again using rules as they existed in 2007. The Task Force adopted findings and recommendations with respect to specific topic areas of importance to family law, recommendations for the organization of new family law local rules, and a set of recommended statewide Family Law Rules (FLR)(detailed in the appendix). There are also some noteworthy concerns with varying page limits, and the practice of some courts to make court services both mandatory and with service fees.

In addition to identifying civil rules that include specific mention of family law matters there are also specific topic areas, of interest to family law practitioners and litigants, with no counterpart in the Civil Rules.

A review of Family Law Rules found many of the same problems documented in the Civil Rules review, such as:

- little or no correlation between the numbering of local rules to the numbering of state Civil Rules;
- alpha identifier for local rules varied widely from county to county(LCR versus LFLCR, LR, SPR, LSPR, and so forth);
- little or no correlation between the topics contained in local rules and corresponding state Civil Rules;
- restatements of state Civil Rules, outdated or inconsistent with state Civil Rules, or efforts to micromanage litigants.

In addition, the family law subcommittee found that a number of family law related local rules, rather than being purely procedural in nature, contained matters of substantive law or--even worse--were substantive with no corresponding authority in law.

Recommendations:

1. Create a Separate Category of State Civil Rules to be known as Family Law Rules (FLR).

To implement this recommendation, the family law subcommittee suggests the following steps be taken by the Supreme Court:

- a. Amend existing Civil Rules by removing all family law specific rules from the Civil Rules.

- b. Adopt this subcommittee’s recommendation to establish our proposed set of statewide rules to be known as Family Law Rules (FLR) that are numbered consistently, where possible, with the Civil Rules and for those topics not covered by existing Civil Rules continue the numbering process sequentially thereafter. See Attachment A.
- c. Identify existing local rules that would no longer be necessary or that are substantive in nature or otherwise inconsistent with either existing Civil Rules and the new FLRs and immediately revoke such rules.
- d. Direct each county to undergo an intensive review of their local rules and to submit, by a date certain (perhaps six to nine months out), a set of new local rules, if needed, that:
 - 1) are not duplicative of either Civil Rules or FLRs,
 - 2) are numbered consistently with the CRs and/or FLCRs,
 - 3) are designated in each and every county in the same manner; i.e. as LFLR (Local Family Law Rules),
 - 4) are not substantive in nature, and
 - 5) are not outdated.
- e. At the end of the submission deadline described in 1.d. above, direct that all existing local rules will expire and be replaced by new local rules that are consistent with the new protocols described herein and that have been approved thereafter.
- f. Enforce and augment General Rule 7, Local Rules – Filing and Effective Date, by establishing a position within the Supreme Court responsible for reviewing local rules for compliance and authorized to reject local rules that do not meet the established criteria for approval.

2. Set Realistic and Achievable Deadlines for Implementation.

It should take no longer than eighteen months for counties to revamp and submit for implementation their new local rules constructed to meet the new protocols described herein. In the meantime there should be a moratorium on new Local Rules except for emergencies (and “emergencies” should be narrowly defined.)

3. Periodically Review Local Family Law Rules for Compliance.

Establish a small, manageable subcommittee of the WSBA Board of Governors to review family law rules at least once every five years beginning in 2015 to assure ongoing compliance with the directives established through the

adoption of these recommendations. Membership on this subcommittee should include no more than nine members, consisting of the following: the WSBA BOG liaison to the Family Law Section; a representative from the Supreme Court; a representative from the WSBA Family Law Executive Committee; a representative from the Superior Court Judges; a representative from the Superior Court Clerks; a representative of the Superior Court Administrators; a representative of rural (small) courts; a representative from medium courts; and a representative from large courts.

NOTE FROM ELIZABETH: JAN DELETED THE ABOVE FAMILY LAW SECTION AND REPLACED IT WITH THE FOLLOWING:

Buried Family Law Rules

Rules governing family law matters are often buried among civil rules or broken out but numbered with no parallel Supreme Court Rule.

Example 1: [needed]

Example 2: [needed]

Periodic Baseline Review

Establish a small, manageable committee composed of all interested parties to review local rules least once every five years beginning in 2015 to assure ongoing compliance with the directives established through the adoption of these recommendations. Membership on this committee should include no more than nine members, consisting of the following: the WSBA BOG liaison to the Family Law Section; a representative from the Supreme Court; a representative from the WSBA Family Law Executive Committee; a representative from the Superior Court Judges; a representative from the Superior Court Clerks; a representative of the Superior Court Administrators; a representative of rural (small) courts; a representative from medium courts; and a representative from large courts.

Local Rule Oversight

There are currently significant problems with the implementation of Civil Rule 1 and Civil Rule 83. The Task Force has developed recommended fixes to the local rule problems. If the factors that give rise to the creation of local rules were simple, and the recommended fixes were clear and consistently followed, one could argue that the local court rule problem has been solved. However, local courts are complex and experience ever-changing budgets, contingencies, new causes of action, and changing administrative needs. The recommended fixes have room for interpretation, and continued consistency in application of the Task Force recommendations among 39 courts may be only a theoretical remedy.

Consistent with the recommendations of the Family Law sub-group, there is a need for oversight of both the structure and substance of all local rules. The purpose of oversight is to assure that all local rules are consistently numbered; that they follow, but do not repeat, case law, statutes, and rules; are devoid of substantive law; fit the purpose stated in CR 1 and CR 83; and that all proposed local rules are in compliance with the recommendations in this report. The Supreme Court is ultimately responsible for the administration of justice in Washington yet the mode of this administration and degree of oversight of local rules can take various forms.

INTERESTED PARTIES

Supreme Court: The Supreme Court's interest is stated in CR 1 – helping litigants secure just, speedy, and inexpensive determination of every action. The court must ensure equal access to justice.

Superior Courts/SCJA: Local Superior Courts implement the Supreme Court imperative and are motivated to control litigation and administrative procedures through local rules that instruct litigants on how to access their court and how to conduct their litigation in that court. Local rules can respond to: 1) issues due to budget constraints; 2) promotion of innovative new court practices; and 3) document requirements that might otherwise remain informal. They may also impose a particular court's procedural preferences. Local courts, which vary by size, needs, and practices, jealously guard their authority to develop local rules.

Administrative/Clerks: Many courts support their court administrator and/or county clerk with rules regarding administrative practices. Lawyers may be skeptical of the authority of the executive branch (county clerks) to implement policy and clerks practices that are not developed by the judicial branch.

WSBA/ Lawyers: Lawyers want consistency, simplicity, uniformity and clarity in dealing with local courts. Many lawyers practice in more than one county and are required to know procedures in multiple courts to ensure compliance with local court rules.

Citizens/ pro se litigants: This less vocalized interest is in simplicity and clarity. It is difficult for pro se litigants to understand the cascading authority of law, including case law, statutes, statewide Rules, local rules, and local convention in handling their case.

OVERSIGHT CONSIDERATIONS

Supreme Court oversight authority can be direct, through its staff; indirect, through rules and self-enforcing requirements; or delegated, such as to the WSBA. In developing a recommendation about oversight, the Task Force considered the following factors:

1. Current oversight of CR 1 is ineffective.
2. Oversight by imposing rules regulating the creation of local rules would require self enforcement by superior courts and does not address questions of consistency among 39 courts.
3. The Supreme Court has delegated many responsibilities to the WSBA for the admission and discipline of lawyers. The WSBA has an existing "Court Rules and Procedures Committee," which is funded and staffed, and whose advisory role to Supreme Court's Rules Committee could be expanded to encompass local rules.
4. Local courts can be hamstrung by the lag time between new legislation and the adoption of statewide court rules.
5. Oversight that is overly cumbersome or restrictive may give rise to increasing numbers of administrative orders and/or undocumented procedures.
6. There is a need for broad circulation of proposed local rules before adoption.
7. There should be a complaint/challenge process for local rules.
8. Oversight could be delayed for 1-2 years to allow courts time to review and conform their rules to the Task Force recommendations before authoritative oversight over new rules would begin.
9. Effective, staffed, oversight after a review period would likely require ongoing professional support of 2-4 hours a week, .1 FTE.
10. Identifying an oversight body could add a resource to local courts in forming local rules and could serve to vet ideas and questions and allow local rule expertise to develop.
11. The developed mechanism should be usable to oversee courts of limited jurisdiction and their rules should that project be authorized by the Board of Governors in the future.
12. Any oversight function should include a periodic baseline review of all local rules.

Local Civil Oversight Options Considered Viable by the Taskforce

Option A

This option would implement direct oversight by Supreme Court/ AOC Legal Staff working under the courts existing rules committee or other committee. This oversight would include cleaning up existing rules, vetting of new rules, and a process for challenging new or out-of-date rules.

Pro:

- direct
- simple
- would assure compliance
- mechanisms and precedent exist

Con:

- cost,
- staffing and overhead
- The Court may not want this level of responsibility for local court rules

Option B

In this option the Supreme Court would delegate oversight authority to the Washington State Bar Association. The WSBA could use an existing entity, or create a new one composed of all interested parties, to assist courts with cleaning up existing rules, vetting new rules, responding to complaints or challenges, and making recommendations to the Supreme Court.

Pro:

- The WSBA has an existing Court Rules and Procedures Committee, which includes judges whose function could include the vetting of proposed local rules.
- There is already precedent for implementing Supreme Court delegated authority in the area of court rules.
- It could move expediently in developing recommended local rules following legislation.

Con:

- Staff and overhead costs which could affect license fees.
- Current committee structure and functioning would need reconsideration and expansion.

It might also be possible to blend aspects of these two options.

As noted above in the discussion regarding the Family Law Rules, each of the above options could include a time-limited resource to assist courts with the clean up of their existing rules and realistic and achievable deadlines for implementation. It should take no longer than eighteen months for counties to revamp and submit for implementation their new local rules constructed to meet the new protocols described in this report.

Overall Task Force Recommendations

1. The Supreme Court should direct that each court review its current local civil rules to assure that they eliminate the problems pointed out in the findings section. During this clean-up phase, the local courts should be assisted with this effort.
 - a. The Court should set realistic and achievable deadlines for Implementation

- b. The Court should direct a moratorium on new local rules except for emergencies (and “emergencies” should be narrowly defined.)
2. A new, separate, set of statewide Family Law Rules should be promulgated.
3. Local Rule oversight should be implemented to assure compliance with the findings of the Task Force.
4. The Local Rules Task Force’s charter should be extended and revised to assure ongoing attention to the implementation of the proposed remedies.
5. Judicial Outreach should continue.

CONCLUSION

With the submission of this report and recommendations along with its addendums, the Task Force completes its charge as specified in the 2007 Charter (attached in the Appendix). The Task Force has reviewed all local rules and has developed recommendations to curb the proliferation of local rules and conform them to CRs 1 and 83 and the Supreme Court’s statement quoted above in *State v. Superior Court for King County*. These recommendations now need an implementation strategy. Since the Task Force has developed considerable expertise and momentum, it recommends that the current charter be modified and extended to cover the implementation work spelled out in the report. Most Task Force members are interested in continuing their work. The adoption of the current recommendations by the WSBA will allow the Task Force to continue its work with the Superior Courts and Supreme Court to clean up existing rules, vet new ones and exercise ongoing oversight over both the structure and substance of local rules.

Through the Superior Court members of the Taskforce, there has been considerable judicial outreach, with the goals of: a) advising the judges of the Taskforce and its mission; b) inviting local court review of existing local rules; c). lending assistance to local courts in reviewing local rules, calling upon the background work of the Task Force; and, d) exploring future options for local rulemaking and consistency. Continued outreach is essential in implementing the recommendations of the Task Force and should include:

- I. Presentation to the WSBA Board of Governors and approval to move forward.
- II. Presentation of the findings and recommendations to the Supreme Court
- III. Meeting with Judge McDermott (President of SCJA) and Judge Tari Eitzen (President-elect of SCJA): Co-Chairs Justice Johnson and Lish

Whitson along with Judges Cooper, Gibson and Yu [shows the cross section of judge involvement and seriousness of the Task Force]. The meeting should occur as soon as possible.

IV. Meeting with the SCJA Board of Trustees (same group as above). The meeting should occur as soon as possible.

V. Presentation at Spring Judicial Conference (April 2009) TBD.

Appendix:

Task Force Roster

Original Local Rules Task Force Charter

Proposed new Local Rules Task Force Charter

Rule by rule review of the Civil Rules (spreadsheet)

Recommendations for new Family Law rules