



WSBA

LOCAL RULES TASK FORCE

Meeting Agenda - Telephonic Meeting

September 12, 2011

12:00 to 2:00pm

Washington State Bar Association

1325 Fourth Avenue – Suite 600

Seattle, Washington 98101

1. Call to Order/Preliminary Matters (12:00pm)

- Approval of the June 7, 2011 meeting minutes [see minutes, pp. 2 -6];

2. Old Business

- Update on the Family Law Rules
- Updates from volunteers working with counties [see attached schedule, pp. 8-10]

3. New Business/Good of the Order

- Where do we go from here?

4. Adjourn

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1-888-346-3659. At the prompt, dial the entry code: 52822#



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes

June 7, 2011

Co-Chair Lish Whitson called the meeting to order at 12:39am.

Members present: Attending were Lish Whitson, Jean Cotton (by phone), Judge Blaine Gibson (by phone), Donald Horowitz, Retired Judge Paris Kallas, Peter Karademos (by phone), Ron Miles (by phone), Judge Kimberley Prochnau, Julie Rattray, Kevin Stock (by phone), and Jeffrey Tilden. Also attending were Mark Silverman (BOG Liaison), Jane Morrow (WSBA Litigation Section), Nan Sullins, Elizabeth Turner (WSBA staff liaison) and Anna Schmidt (WSBA Paralegal).

Old Business

Minutes were postponed until later in the meeting due to lack of a quorum.

The Chair reported that he, Judge Gibson, and Justice Johnson spoke at the SCJA Conference. At the conference, number of judges from different counties requested assistance to review their local rules [see p. 160].

Suggestions for Assisting County Courts

The Chair directed Task Force members' attention to Jean Cotton, who had written suggestions [p. 161] regarding working with the counties. Ms. Cotton suggests beginning by taking the Task Force spreadsheet that was developed in 2007 and eliminating all information, except information pertaining to that particular county. She suggests then requesting from the county their local rules in a word document, in order to type comments directly onto the document. After reviewing all of their rules, Ms. Cotton would follow it up by sitting down with someone from the county and offering suggestions. Ms. Cotton has not yet had any negative experiences using this method. Her only issues were the differences regarding family law rules and situations where a local rule could fit under several different state rules. Regarding the latter issue, she just tried to be very honest that the where to place the rule may be a judgment call. Ms. Cotton stated the first question she asked when looking at a local rule is: do you need this local rule or is it already in the state rule?

Discussion ensued regarding local rules that are difficult to place. Judge Kallas stated that, in King county, they used a lot of cross-referencing. Mr. Whitson suggested identifying local civil rules where there is a consensus that the local rule is superior and

should be adopted statewide. Mr. Horowitz suggested volunteers teaming up with other volunteer when assisting these county judges in reviewing their rules.

Assigning Volunteers

Ms. Turner asked Chair Whitson if he would like us to designate a lead for each county, to which Mr. Whitson agreed. Discussion ensued regarding the importance of having a Task Force member volunteering, or someone from the WSBA, who would also be the lead. Mr. Silverman suggested asking a governor from Benton county. Mr. Whitson requested that he ask the governor to assist. Mr. Silverman stated that he would check with that governor. Ms. Turner stated that she will be giving the lead the contact information.

| County | Lead Volunteer | Other Volunteers |
|-------------------------------------|---|--|
| Benton County | <i>Mr. Silverman will request assistance from that county's WSBA Governor</i> | Norma Rodriguez (Litigation Section) |
| Island County | <i>Mr. Silverman will request assistance from that county's WSBA Governor</i> | Leif Johnson (Litigation Section) |
| Kittitas County | Judge Cooper | Jon Ferguson |
| Lincoln County | Ron Miles | Bill Schroeder |
| Pacific/Wahkiakum Counties | Jean Cotton | |
| Pierce County | Don Horowitz and Jane Morrow | <i>Mr. Silverman will ask Pat Palace to assist</i> |
| Snohomish County | Ret. Judge Kallas | Gail Nunn |
| Stevens/Ferry/Pend Oreille Counties | Ron Miles | Bill Schroeder, Peter Karademos |
| Thurston County | Jean Cotton (completed) | |
| Whitman County | Ron Miles | Colleen Harrington |
| Spokane County | Ron Miles | |

Judge Prochnau suggested keeping her and Jean Cotton in the loop for Pierce and Snohomish Counties. Ms. Cotton sent out to everyone the Task Force members' 2007 excel spreadsheet of all the counties local rules.

Mr. Whitson thanked all the volunteers and suggested they talk to those they know at the courts in counties that have still not yet requested assistance. Mr. Horowitz suggested that if there is a question or need for assistance that pertains to technology, to please contact him or Mike Katell (ATJ Technology Subcommittee).

Ms. Morrow suggested it would be helpful to put together a timeline. Discussion ensued regarding realistic deadlines. Judge Kallas suggested that, by the beginning of September and after Labor Day, volunteers will have scheduled a meeting with the Court contact and will have reviewed the local rules of the county where they're volunteering. Ms. Turner requested that, in order to report to the BOG about their

progress, volunteers let her know by September 7, 2011 where they're at. Mr. Silverman asked whether they could just give an oral update. Ms. Turner stated the official position is to have something of writing. Judge Kallas suggested putting together a simple report of who volunteered and the date of the appointment they've set up with the county contact. Ms. Morrow suggested putting together a thank you email, a grid, and who the contact person is to go out to each volunteer, which Ms. Turner agreed to do. Judge Gibson volunteered to assist in Kittitas County if Judge Cooper is unable to assist.

Discussion ensued regarding contacting counties that have not yet requested assistance. There are 15 counties that have contacted us; 24 counties that have not. Mr. Miles spoke with Judge Cozza (Spokane County), who has a subcommittee reviewing their local rules. Ms. Morrow suggested each Task Force member contacting the presiding judge in their county. Judge Kallas suggested sending out letters to presiding judges offering assistance and listing the counties who've requested assistance so far. Judge Kallas offered to work with Jean Cotton and put together a letter.

Minutes

Judge Prochnau moved to adopt the April 26, 2011 minutes, and Mr. Horowitz seconded the motion. The minutes passed with all in favor.

New Business

Proposed FLCR Rules

Mr. Karademos reported on the Family Law Civil Rules (FLCR) workgroup, who met with volunteers from the Superior Court Judges Association (SCJA) to produce the Statewide FLCR draft. At the spring conference, the FLCR Subcommittee met with the SCJA Juvenile Family Law Subcommittee, who objected to their draft rules on several reasons. Mr. Karademos doesn't find a great deal of merit in the objections. At this point, they do not have consensus with the work group. The FLCR Subcommittee sent out a report giving the different issues they've considered and the different options they've discussed [See supplemental materials]. Mr. Karademos stated that he would prefer to wait and see if they get a consensus from the judges on any of the options before asking Task Force members to vote on an option to send to Board of Governors. Ms. Cotton agreed and suggested waiting a month to see whether they will have a consensus. Mr. Whitson asked if, of the five options, whether there is a preference of the work group. Ms. Cotton said they are recommending the second proposal, but they would like to hear from others their preference.

Judge Prochnau believes the length of the proposal is the reason it received a chilly response. Judge Prochnau stated that this particular subcommittee only just looked at the draft right before the conference because they didn't get the materials out to them timely. She believes the group was simply opposed to the length and isn't optimistic that the formatting will be approved by the SCJA. Mr. Whitson asked how this length compares with the current rules that one must go through when looking at family law rules. Judge Prochnau stated that that is the argument for it, but the argument against it

is that practitioners who may only occasionally practice law will have to learn 150 pages of new rules, and that they don't know what is different about these new rules from what existed before.

Discussion ensued, and members suggested either labeling the new rules, of which Mr. Karademos stated there is only about eight or nine, or creating a preface page stating that all the rules following are similar to the Civil Rules and listing those that are different. Judge Prochnau stated that there was also an issue regarding a rule that sets a longer time period for motions (which is unpopular with smaller jurisdictions). Mr. Silverman opined that a user-friendly set of rules is more important than the length, and opined that there is a lot of emphasis in the ATJ community regarding "plain language forms."

Ms. Rattray stated was concerned that putting out an entirely new set of Civil Rules may be overwhelming to Pro Se parties. She also felt that there is some pretty confusing language in the current rules. She questioned why the fourth option isn't an option. Mr. Whitson stated that, at earlier meetings, they had decided that having a lot of local rules is not friendly to Pro Se parties. When the Task Force reviewed the Civil Rules, they determined that the Family Law Rules were all over the place, and that that is not good for Pro Se or new practitioners. Ms. Cotton stated that when the Task Force began, they decided family law is a unique form of practice. Many civil rules do not apply to family law matters. After years of discussion, they decided a stand-alone set of rules would be best. Since many of the rules are duplicates of the Civil Rules, an experience practitioner won't have many problems and, for new practitioners, they need to only look in one place for rules that have to do with Family Law. Mr. Horowitz opined that having all the rules in one place should be easier for pro se parties.

Next Local Rules Task Force Meeting and Timelinds

Mr. Whitson suggested that, by the end of summer, the FLCR workgroup hopes to know whether there is consensus on an option. Discussion ensued regarding when to schedule the next Task Force meeting. Mr. Silverman suggested bringing the FLCR proposal before the BOG in October. Ms. Cotton questioned whether we could put information in the BOG book for informational purposes only. Mr. Silverman said that was possible to place it in the BOG book for informational reading only. Judge Prochnau asked whether it would be better to outline the five options in case the SCJA doesn't approve of the current format? Mr. Silverman opined that one proposal is better and Mr. Whitson seconded that opinion. Judge Prochnau stated that the SCJA trustees will ultimately vote on it, although the opinion of the Juvenile Family Law subcommittee is important. Task Force members agreed that they would like a consensus with the SCJA.

Ms. Turner reminded members that the BOG approved draft rules, which were sent to the Supreme Court and published. The Supreme Court sent the draft rules back because of the opinion of the SCJA. The BOG may choose to stay with their original recommendation. Judge Prochnau suggested they get the SCJA to identify what

formatting proposals they can live with, if not necessarily approve. Mr. Horowitz and Mr. Silverman pointed out the importance of having the support of the ATJ.

Mr. Whitson asked Judge Prochnau the process that will occur. Judge Prochnau isn't sure when the next Family Law Committee meets, but she can give an overview to the SCJA trustees. They will probably request her to go to the next Juvenile Family Law Subcommittee meeting to discuss the proposal with them. However, she will go to the trustees at their next meeting.

The next meeting date will be sent to everyone.

Financial Concerns in County Courts

Mr. Whitson sent out to Task Force members copies of emails he received from Doug Robertson, of Whatcom County, expressing concerns regarding their financial situation. Some counties have attempted to raise revenue by creating local rules that add new fees. This is for informational purposes only, and Mr. Whitson is asking if members can bring back their ideas regarding how to address these concerns. Ms. Cotton stated that her county is one of those smaller counties (Grays Harbor) and she questioned whether SCJA has had any discussions, where they exchange ideas about how to address these financial concerns. Judge Prochnau stated that there is no formal process to exchange ideas, although the judges may be doing this informally. Mr. Silverman questioned whether there is legislation governing what fees can be charged. Discussion ensued. Ms. Morrow suggested the Task Force contact Whatcom county and offer assistance. Mr. Whitson agreed to contact them now and make the offer. Mr. Horowitz suggested that the next ATJ Chair, Kirsten Baron, may be helpful in this area. He suggested that Mr. Whitson copy him and he will forward this information to Ms. Baron.

Mr. Katell stated that Angela Hoppel, who attended one of our meetings, finished a project for him that looks at jurisdictions around the state and what each one is doing regarding charging fees for electronic court records. They are all doing something slightly different. The ATJ Technology Subcommittee is compiling the information and would like to share it with this Task Force. Ms. Turner stated that, when they've finished it, to please send it to the Chair and to her. Mr. Stock stated the issue has to do with courts not owning their own programs and use third-party vendors. These are enhanced services and can be revenue generating programs. Discussion ensued regarding efforts to provide access to records. Mr. Stock questioned whether the spreadsheet that was sent out dealt with inconsistent numbering. Ms. Cotton stated it deals with numbering and substantive issues with the rules.

The meeting adjourned at 2:35pm.

COUNTIES REQUESTING ASSISTANCE

Updated 8/25/2011 1:12 PM

| County | Volunteers | Status |
|---|---|-----------------------------------|
| Benton County (05/17/11) Judge Bruce Spanner Bruce.spanner@co.benton.wa.us | Norma Rodriguez (<i>litigation section</i>) [norma@rodriguezlawwa.com] | Marc will talk to Lee Kerr |
| Island County Judge Vickie Churchill vickieC@co.island.wa.us | Leif Johnson (<i>litigation section; current Island Cty Bar pres</i>) [leif@skinnerlaw.net] | Marc will contact Phil Buri |
| Kittitas County Judge Scott Sparks Scott.sparks@co.kittitas.wa.us | Jon Ferguson (<i>litigation section</i>) [ferguson.jonp@gmail.com]; Michael Cooper? | Also Lee Kerr's district |
| Klickitat/Skamania Counties Judge Brian Altman briana@co.klickitat.wa.us altman@co.skamania.wa.us | Deborah Phillips [deborahlaw@phillipsreynier.com]; Eric Einhorn [einhorn.law@gorge.net]; Joy Duggan [smokey1955@embargmail.com]; Julie Vance [Julie@julieavance.com]; Michael FitzSimons [mike@hoodriverlaw.com]; Tom Foley | Marc will contact Loren Etengoff; |

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| | [thomasfoleypc@hotmail.com] (all local bar members, recruited by Jane Morrow) | |
| Lincoln County Judge John Strohmaier jstrohmaier@co.lincoln.wa.us | Ron Miles (lead) [rmiles@spokanecounty.org]; Bill Schroeder (litigation section) [william.schroeder@painehamblen.com] | |
| Pacific/Wahkiakum Counties Judge Michael Sullivan msullivan@co.pacific.wa.us | Jean Cotton | (08/2010 request) |
| Pierce County Judge Elizabeth Martin Supcrtdept16@co.pierce.wa.us | Don Horowitz [don.horowitz@gmail.com]; Paris Kallas [kallas@jdrllc.com]; Jeff Tilden [jtilden@gordontilden.com]; Jane Morrow (litigation section) [jm@medilaw.com] | Cc Kim Prochnau [Kimberley.prochnau@kingcounty.gov] No specifically designated lead since Don's 7/11/11 e-mail |
| Snohomish County Judges Ellen Fair and Michael Downes Ellen.fair@co.snohomish.wa.us Michael.downs@snoco.org | Paris Kallas (lead) [kallas@jdrllc.com]; Jeff Tilden [jtilden@gordontilden.com]; Gail Nunn [gail.nunn@onglaw.com] | Cc Kim Prochnau [Kimberley.prochnau@kingcounty.gov] |
| Stevens/Ferry/Pend Orielle Counties Judge Rebecca Baker ebell@co.stevens.wa.us | Ron Miles (lead) [rmiles@spokanecounty.org]; Pete Karademos [p.karademos@comcast.net]; Bill Schroeder (litigation section) [william.schroeder@painehamblen.com] | |
| Thurston County | Jean Cotton | Completed 03/23/10 e-mail |
| Whitman County | Ron Miles (lead) | |

Judge David Frazier
scjudge@co.whitman.wa.us

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Harrington [Harrington@imsblaw.com]