

# Meeting Minutes April 25, 2007

Co-Chair Justice Charles W. Johnson called the meeting to order at 10:05 a.m.

Members present: Co-Chair Lish Whitson, Jean Cotton (by phone), Randy Gordon (by phone), Colleen Harrington (by phone), Lisa Hayden, Jo Jackson (by phone), Barbara Miner, Gail Nunn, Narda Pierce, Steve Scott, Marc Silverman, Phil Talmadge (by phone), and Jeff Tilden. Members excused: Judge Blaine Gibson, Judge Robert McSeveney, Judge Mary Yu, and Sal Mungia (BOG Liaison). Also attending: Douglas Ende (WSBA staff liaison), Jan Michels (Ex Officio), Nan Sullins (AOC Liaison) and Anna Schmidt (WSBA Paralegal).

### Call to Order/Preliminary Matters

Justice Johnson introduced himself and Lish Whitson as the chairs of the Task Force, noting that Mr. Whitson will preside over the majority of the Task Force meetings.

# **Discussion**

Justice Johnson reviewed the recent history of efforts to manage or curtail the proliferation of local rules. [See generally April 3, 2007 Letter from Justice Johnson to Lish Whitson, Materials Notebook Tab 4.] He compared the physical magnitude of the 1990 Washington Court Rules (in which local rules were included as appendix) to the 2007 Washington local rules, now published as a 1,663-page separate volume. He adverted to the 1994 report of the Local Rules Coordinating Committee [see Materials, Notebook Tab 5] recommending adoption of a set of model local rules, which met with opposition of the Superior Court Judges Association (SCJA) and were not adopted. A subsequent effort by the Duplicate Rules Committee to coordinate the superior court rules with the district court rules [see Materials, Notebook Tab 6] was also ultimately fruitless. Finally, the Board of Judicial Administration (BJA) supported the creation of a work group to study unification of local rules [see Materials, Notebook Tab 7], but the group was never convened. As a result of these experiences, Justice Johnson has concluded that any changes to Washington's local rulemaking process must come from the "bottom up" (i.e., from affected lawyers and trial-level judges) rather than from the "top down" (i.e., the Supreme Court). Under current law, there are only two formal requirements applicable to local rulemaking: a local rule must be filed in accordance with GR 7, and must, under GR 7(b) and CR 83, conform in numbering system and format to the state rules of general application. This latter requirement is not, however, monitored or enforced.

Justice Johnson noted that Task Force materials binders had been distributed at the meeting and would be mailed to those attending the meeting by phone and those excused.

Co-Chair Lish Whitson introduced himself and asked each member to introduce him or herself and give some background information on why he or she is involved with this Task Force. During the introductions, the following comments were made:

- It would be helpful to see all local rules side by side on a grid or spreadsheet so that Task Force members can compare them directly.
- A great deal of work has been done on this issue previously with little result. Prior to a large investment of time and effort, the Task Force should determine at the outset whether the stakeholders, particularly the superior court judges, are seriously willing to consider addressing the local rules problem.
- At a minimum the Task Force should strive to achieve consistency in the organization of local court rules and clear alignment with the counterpart state court rules of general application.
- Local rules are a very useful internal tool and used by the superior courts to clarify procedures and expedite case management.
- There is a sense of increasing frustration over the proliferation of local rules that are substantive in nature. Arguably, the intent of the laws authorizing local rules is to permit superior courts to govern internal administrative functions. Enactment of rules governing all aspects of the litigation process has gotten out of hand.
- Some local rules like requiring pleadings and papers to be filed on paper of a particular color are unjustifiably burdensome.
- Every local rule enacted imposes a cost on those who need to expend time on learning and complying with them. This increases litigation costs without materially advancing the achievement of just results. It is the client that ultimately pays these costs.

Mr. Whitson expressed optimism about the possibility of making a constructive change. He noted that he and Jan Michels, as well as representatives of WSTLA and WDTL, had attended a meeting with the SCJA Civil Law & Rules Committee (chaired by Task Force member Judge Mary Yu; Task Force member Judge Blaine Gibson was also present). There was clear support and enthusiasm expressed for the work of the Task Force. Mr. Whitson noted that the Task Force plans to add a judge from a small county superior court as a member. He also urged members to invite any interested person or group to attend the regular Task Force meetings. He expects the Task Force to meet semi-monthly at first, with meetings scheduled on a more frequent basis as the spring 2009 deadline for reporting to the WSBA Board of Governors approaches.

Ms. Michels explained that the Task Force is chartered and funded by the WSBA Board of Governors, and it is expected that any recommendations will be presented to the Board for approval. Mr. Whitson requested that all members review the contents of the materials in the

binders, in particular the Task Force Charter [Tab 2] and the 1994 Local Rules Coordinating Committee's Final Report [Tab 5]. The Task Force plan of action is to address civil local rules only, leaving criminal rules, mandatory arbitration rules, and the like, for future review and analysis.

A question was raised about how other states have dealt with the local rules issue. Mr. Whitson noted that additional research materials would be provided as the Task Force progressed in its work. Discussion ensued about the meaning of the Charter term "unified court system." Ms. Miner and Ms. Michels explained that a unified court system, also known as a "consolidated court system," is a judiciary that is managed centrally by a state supreme court, unlike Washington's system, in which each tier of the court system is quasi-independent.

## Formation of Subcommittees

Mr. Whitson proposed the creation of three subcommittees convened to prepare comparisons of certain sets of local rules and identify inconsistencies and problems. The subcommittees are these:

Family Law Subcommittee

- Lisa Hayden (Chair)
- Jean Cotton
- Barbara Miner
- Gail Nunn

Medium County Subcommittee (Clark, Kitsap, Yakima, Thurston, Spokane)

- Narda Pierce (Chair)
- Phil Talmadge
- Colleen Harrington

Large County Subcommittee (Snohomish, Pierce, King)

- Steve Scott (Chair)
- Marc Silverman
- Jeff Tilden
- Randy Gordon

Creation of a Small County Subcommittee will be held in abeyance pending the appointment of a judge from a small county to the Task Force.

### Future Meeting Schedule

After discussion of possible meeting times, the next Task Force meeting was scheduled for July 11<sup>th</sup>, from noon to 2:00 p.m. Mr. Whitson asked that subcommittee reports be submitted to Mr. Ende not later than three weeks prior to the date set for the next meeting, i.e., by June 20.

## Good of the Order

Discussion ensued regarding diverse topics including: (1) the importance of securing the cooperation of the Superior Court Judges Association; (2) making distinctions between rules having substantive effect and those involving court administration; (3) focusing particular attention on rules governing computation of time.

The subcommittee chairs agreed to convene a preliminary meeting, to include Mr. Gordon and Mr. Ende, in order to establish a standard format for subcommittee reports. Several members noted that certain local rules – especially in the family law context – have no corresponding state rule of general application. Other members questioned the authority of the courts to enact such nonstandard provisions. Ms. Miner explained that the intent of adopting certain local rules is to provide notice of otherwise unpublished local practices and to ensure transparency.

Ms. Jackson expressed concern about participation as a representative of the Association of Washington State Court Administrators if the Task Force was going to take any position that could be construed as a challenge to the authority of the superior court judges. Mr. Whitson indicated that Ms. Jackson could at any point choose to participate in an advisory capacity rather than as a voting member. Ms. Hayden suggested that the Task Force include a court commissioner, particularly to provide input with regard to family law practice. Mr. Whitson pointed out that Commissioner Kim Prochnau had already expressed interest in the project and should be invited to participate in subcommittee discussions. Mr. Whitson further noted that any of the subcommittees should feel free to solicit the participation of interested individuals on an informal basis.

The meeting was adjourned at 11:50 a.m.

Minutes Prepared by

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