



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes January 10, 2008

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

Members present: Judge Michael E. Cooper (by telephone), Judge Blaine G. Gibson (by telephone), Randolph Gordon, Colleen A. Harrington, David M. Kenworthy, Barbara Miner, Narda D. Pierce, Marc L. Silverman, Jeffrey I Tilden, and Judge Mary I Yu (by telephone). Also present were Peter J. Karademos (BOG Liaison), Salvador A. Mungia (BOG Liaison), Bob Welden (WSBA General Counsel), Elizabeth Turner (WSBA Staff Liaison), and Anna Schmidt (WSBA Paralegal).

Approval of Minutes/Preliminary Matters: The minutes were approved as submitted by consensus. The Chair introduced Elizabeth Turner, the new WSBA Staff Liaison.

Group Reports

Judge Cooper reported for the Judges Group. King County Superior Court is undertaking their own review of their local rules. Judge Cooper's group concluded that good local rules fill in gaps between the State's court rules and the courts, whereas bad rules tend to exceed the scope of the state's court rules or repeat them. Examples of good rules include those pertaining to the format of jury instructions and Motions for Reconsideration. Examples of bad rules include those that impose sanctions on failure to complete discovery and any of those that go beyond the scope of the state court rule. Judge Cooper opined that model rules for all courts to use should probably be developed and the bulk of the local rules he reviewed tend to be unnecessary repetitions.

Colleen Harrington reported for the Lawyers Group. They had used the schematic format developed by the large-size county subcommittee in their review (which is an excel spreadsheet with a legend). They put a check in the spreadsheet if a county had a local rule that corresponded to the state court rule. Next to the check, they put a number one if there was a question of whether the rule is necessary, a number two if the rule contained a time or confirmation requirement – a potential trap for the unwary, etc. They felt that local rules of the greatest concern included those that contain a time or confirmation requirement (which often differ between counties) and those local rules that go beyond the scope of the state court rule.

The inconsistencies in these local rules could result in a loss of substantive rights for clients. Mr. Gordon opined that we go through the rules and develop model local rules, which counties can choose to adopt or not. The local rules would then be consistent in every county. These rules could be the “best practices” across all counties. Mr. Gordon also opined that local rules involving formatting requirements are also a concern because an individual’s substantive rights shouldn’t be affected by these types of administrative regulations. Mr. Silverman questioned whether the Task Force should also look at the local counties’ Mandatory Arbitration Rules (MAR’s) as all counties contain extensive local rules that are substantive. Lish will ask the BOG at their next meeting whether or not the Task Force should take on the MAR’s. Ms. Pierce reported that 90% of the rules are correctly placed, but the rest are not. Thus, if you haven’t previously worked in that county, you must read all of the local rules from top to bottom in order not to miss anything.

Barb Miner reported for the Clerks and Court Administrators group. Their group crafted an email, which they sent to Superior Court Administrators and County Clerks around the state asking what they thought of the local court rules. They received more general answers about local court rules, including that local county rules are out of date, numerous, and inconsistent. Others answered that the local rules were integral to their jobs and used as training tools, guides, etc. The subcommittee specifically found a need to examine, clean-up and update the current local rules in many counties and questioned whether it would be helpful to have some type of guidelines or screening mechanism for those creating the rules. Ms. Miner opined that local rules are sometimes developed to address legislative changes. Discussion ensued on whether it was appropriate to create local rules to instruct people on how to deal with new processes resulting from legislation or other types of emergent events. Judge Kenworthy suggested creating a new category of rule: Legislative Supplements or Pronouncements.

New Business: The Chair discussed the next step in the process: to put together a coherent report that people outside the Task Force can understand. Between now and the next meeting, the Chair will work with at least three other people to put together a single source of information, which will include both a graph and a narrative report. The report would incorporate all the member’s differing perspectives. Mr. Gordon suggested including an introduction regarding what the local rules are intended to address.

The Chair asked each of the judges to tell the group when a local rule is appropriate. Judge Cooper opined that local rules are meant to supplement the Civil Rules in order to meet local culture and practice. However, most local rules are unnecessary. Judge Yu concurred with this opinion, stating that local rules are meant to assist a practitioner to navigate through the local court system. She questioned how we would be able to make all the local rules the same if the local courts don’t operate in the same way (that is, if we don’t have a uniform system). Judge Gibson found that the local rules tend to be a reaction to a specific case or event. With regard to making the rules uniform, Judge Gibson was concerned over who would decide what the best practice was for every county. The Chair reiterated that the Task Force report should express all the differing views and would then be vetted to outside groups.

In response to a question regarding the standardization of local rules, the Chair explained that there will be a different schematic for the family law rules. He will call Gail Nunn and remind her that the Task Force needs an interim report at the next meeting.

The following individuals will assist in writing the Task Force report:

- Blaine Gibson (Judges group)
- Marc Silverman, Jeffrey Tilden, and Randy Gordon (Lawyers group)
- Barb Miner will check with her group to find a volunteer (Court Administrators & Clerks group)

Judge Gibson will try to fit the work product of the Judge's group into the schematic used by the Lawyers group. Mr. Gordon will write a preamble discussing the philosophical differences that exist in the group and forward it to the following individuals to edit:

- Narda Pierce
- Barb Miner
- Judge Yu
- Judge Gibson

The Task Force will discuss who to disseminate the report to at the next meeting.

Future Meeting Schedule: The Chair discussed the need to create a meeting schedule for upcoming meetings. At this point, the best day to schedule a meeting is on Monday. A tentative meeting schedule will be sent out to all the Task Force members.

Meeting adjourned at 2:00pm