



# WSBA

## LOCAL RULES TASK FORCE

### Meeting Minutes January 9, 2012

Co-Chair Lish Whitson called the meeting to order at 12:06 pm.

**Members present:** Co-Chair Lish Whitson, Co-Chair, Justice Charles Johnson (by phone), Judge Joseph Burrowes (by phone), Jean Cotton (by phone), Judge Gibson (by phone), Colleen Harrington (by phone), Judge Paris Kallas, Peter Karademos, Ron Miles (by phone), Gail Nunn (by phone), Judge Kimberley Prochnau, and Julie Rattray. Also attending were Elizabeth Turner (WSBA staff liaison) and Anna Schmidt (WSBA Paralegal).

### **Meeting Minutes**

The September 12, 2011 meeting minutes were approved by consensus.

### **Old Business**

**Volunteers:** Judge Kallas reported that she and Mr. Tilden visited with the Snohomish County judges and reviewed all of their local civil rules. They gave a spreadsheet to the judges, who were all very receptive and agreed with their comments including a few eliminations of rules that appeared to be repetitive or unnecessary. She will check in with Judge Fair. She and Jane Morrow did the same thing in Pierce County. Pierce County recently did a review and clean-up of their local rules, so their review resulted in very few comments.

Judge Kallas stated that they would like to do a comparison of Pierce, Snohomish, and King Counties' local rules, with the goal of creating some consistency between those three counties where many of the same lawyers may practice. They will recommend where a state rule should perhaps be proposed. Ms. Turner suggested the sooner the Task Force receives proposed rules, the better. She explained the Court Rules Committee's schedule and that they deal only with the statewide rules. Mr. Whitson stated that the litigation section has also offered volunteers, which may be able to help Judge Kallas in her work.

Ms. Cotton reported that she completed Thurston County's review, has reviewed Grays Harbor County's rules, and is currently reviewing Klickitat and Skamania Counties' Rules.

Ron Miles reported that they met with three different courts over the summer last year. Lincoln County has their recommendations; Whitman County's judge met with them; and Judge Baker of Stevens, Ferry and Pend Oreille counties retired at about the time they spoke with her, but will work on the recommendations that they made. All the courts they've been charged with have been notified of their concerns. Mr. Karademos suggested they follow up with Judge Baker. Mr. Miles suggested he meet with her today as she is in his building. Mr. Miles also stated he reviewed rules for Benton/Franklin counties with Pat Austin (Court Administrator) and that they're reviewing suggested changes.

FLCR: Chair Whitson directed the Task Force to the proposed Family Law Civil Rules (FLCRs). Mr. Karademos reported that his subcommittee has been meeting for approximately two years. He stated that Judge Prochnau and Judge Eitzen should be thanked in getting the approval of the SCJA for the proposal and Ms. Cotton should be thanked for doing much of the drafting. The proposed revised rules incorporate several local family law rules the task force should be made statewide, as well as several suggestions from ATJ's subcommittee. The original rules proposed by the task force have not really changed in and of themselves, but per the compromise worked out with SCJA the text of applicable CRs and GRs has been added. The SCJA does not, however, agree with the task force's proposed FLCR 7(e), regarding page limits. Judge Prochnau stated that the SCJA board has voted to support this package with the exception of that rule, which was not approved due to financial considerations.

Ms. Cotton directed the Task Force to a comparison chart in the materials [pp. 173 – 178] that provides a snapshot of substantive versus minor changes to the text of the applicable CRs, to easily identify differences in language from the existing CRs. The chart lays out certain words that the subcommittee remove to make the rules more user friendly and also indicates in the chart where certain rules should be eliminated in the statewide civil rules because they are addressed in the FLCRs. Ms. Cotton had a long conversation with Ken Masters regarding possible problems in the statewide rules that were discovered during this process and has provided him with a list. Also, the subcommittee looked at consistency and how to keep place holders where a rule may exist in the statewide civil rules that won't exist in the FLCRs (such as jury trials, etc). They feel some of things are better addressed by the WSBA Court Rules Committee, but they didn't want anything to be overlooked.

Judge Prochnau stated they also tried to incorporate general rules that are specific to Family Law into the FLCRs in order to avoid making litigants look at a separate set of rules. Ms. Rattray asked if this is the same version as at the last meeting. Judge Prochnau stated that it is not, changes have occurred. Ms. Rattray asked if the ATJ's suggestions were incorporated into these rules. Judge Prochnau stated that some, but not all of their suggestions were incorporated. For example, ATJ's suggestion that the FLCRs use "plain language" is a job for the next committee to work on. Judge Prochnau noted that the Pierce County Bar Association went on record as opposing an

earlier version of these rules. She doesn't know how they would feel about this current draft.

Mr. Whitson proposed that the Task Force take a vote now on the rules that are non-controversial. Mr. Karademos moved to approve the proposed FLCRs and send them to the BOG requesting their approval, with the exception of 7(e). Judge Kallas seconded his motion: All were in favor, and none opposed.

The discussion turned to proposed FLCR 7(e). Mr. Karadmos directed task force members' attention to the two options [see pages 29 and 31]. He explained that family law has temporary hearings to establish temporary orders dealing with such things as child support, payment obligations, etc. These are done on a family law docket and held before a commissioner. In some counties this is done by testimony, and by declarations in others. Regarding the counties where it is done by declaration, the page limits differ greatly from county to county and can be quite minimal (as little as seven pages). This doesn't always give family members a chance to be heard. Mr. Karademos has pro temmed in Spokane County during a time when they didn't have page limitations and believes judges learn to recognize hearsay and other things very quickly. Many counties have strict page limitations due to budgetary restraints. Mr. Karademos believes it's important to give family members access to justice, and is asking the Task Force to adopt option 1, giving each side 25 pages double-spaced to tell their story. Mr. Karademos feels that having adequate page limits could actually reduce the number of court hearings, by giving people the opportunity to have all their issues heard in one hearing as opposed to filing multiple motions.

Judge Prochnau stated that the SCJA is opposed to option 1 due primarily to budgetary reasons. Mr. Karademos' proposal is similar to what King County has now, and is slightly higher than the page limits in Spokane and Pierce Counties. Judge Prochnau stated that declarations are only one document that a judge must read in a temporary hearing; they also have to read medical reports, expert reports, etc. Because of budgetary restraints resulting in fewer commissioners and other similar problems, this could create problems in some counties. Requiring each court to allow a set number of page limits when they don't have the budgetary resources for this is an issue. Thus, the SCJA is opposed to this rule.

Ms. Cotton stated that she comes from a county that has no page limits and wanted to highlight that there is a distinction in the rule between counties that allow oral testimony versus those that don't. The subcommittee believed this rule, of all those in the FLCRs, will receive the greatest number of comments. They are not wedded to 25 pages; Mr. Karademos stated he would be fine with a 20-page limit. He opined it must be a reasonable number of pages for a person to tell their story. Ms. Nunn stated that in Snohomish County, they have a 25-page rule (previously no limits). They think it's a good tool for focusing clients on what the real issues are and she is for this rule. She believes 25 pages is more than adequate for most cases.

Ms. Cotton stated that there are two groups of pro-se litigants: those who are tech savvy and those who do everything by hand. It's hard to say that a hand-written document is

equivalent to a typed document. Without any limits, Ms. Cotton opined that it's hard to reign in some litigants. Ms. Harrington opined that the number of pages is less important than getting the support of the SCJA. Ms. Rattray opined that it's more helpful to tell pro se litigants what the rule says versus directing them to look up a local rule. Judge Kallas stated that the central goal of this project is consistency and uniformity, which will help a lot with the pro se litigants; thus, she would support option one for this very reason.

Ms. Cotton moved to adopt option one and Mr. Karadmos seconded the motion. Mr. Miles made a friendly suggestion to amend the rules to a page limit of 20 pages. Judge Prochnau stated that in King County the petitioner and respondent get a different number of pages because the first five pages by the moving party is used to introduce information about the couple or the situation. Mr. Karademos stated that he would be comfortable with the friendly amendment of the moving party to have 25 and the second party to have 20. Ms. Cotton agreed to the friendly amendment. Motion passed six to three. [Those opposed: Ms. Harrington, Mr. Miles, and Judge Prochnau]. Ms. Cotton moved that they submit that rule with the rest to the BOG. Mr. Karademos seconded, and the motion was approved.

Ms. Turner explained that Lish, Jean and Pete will be at the January BOG meeting in person presenting. It will be on the BOG's agenda in January for the first read [to be read and discussed in depth] and would normally be scheduled to be voted on at the next meeting in March at the earliest. Ms. Turner doesn't believe the WSBA Court Rules Committee have time to comment on the FLCRs by March as this is a large document. Mr. Whitson asked anyone who knows of those who would like to volunteer to review local rules to let him know. Judge Prochnau stated that there are some counties that have been waiting for these rules to go through before proceeding with reviewing their local rules, so it's good that we're moving forward.

The meeting adjourned at 1:07 pm.