



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes

July 9, 2008

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

Members present: Justice Charles W. Johnson (Co-Chair), Jean A. Cotton (by phone), Judge Blaine Gibson, Colleen Harrington, Lisa Hayden (by phone), Ron E. Miles (by phone), Barbara Miner, Hon. Stephen G. Scott, Marc L. Silverman, Jeffrey I. Tilden, Judge Mary I Yu (by phone). Excused were Judge Michael E. Cooper, Randolph I. Gordon, David M. Kenworthy, Gail B. Nunn, Narda D. Pierce, and Judge Jean Rietschel. Also attending were Peter Karademos (BOG Liaison), Salvador Mungia (BOG Liaison), Jan Michels (Ex Officio Priore Suo), Elizabeth Turner (WSBA staff liaison), Nan Sullins (AOC Liaison) and Anna Schmidt (WSBA Paralegal).

Call to Order/Preliminary Matters: The minutes of April 7, 2008 were approved as submitted by consensus. Mr. Whitson reminded the members that all materials produced by the Task Force are available on the WSBA website on the Local Rules Task Force page and that members should feel free to refer anyone to that website for information.

Family Law Rules Subcommittee Interim Report: Mr. Karademos reported that the Family Law Rules Subcommittee still has a lot of work to do on the report. In their draft report, they are trying to cite the local family law rules in correlation with the state rules, and make as many of the local rules as general and statewide as possible while still allowing the counties to make some changes. When a rule doesn't have a correlating state rule, the group created their own number for that rule. They would like the local courts to use their numbering system if they create new local rules in order to make it easy for practitioners to locate rules in counties where they don't normally practice. Ms. Cotton opined that the numbering system is very important and just putting the rules in a sensible, uniform order will make a huge difference. Other members agreed with this opinion. Mr. Karademos encouraged the other Task Force members

to contribute ideas for incorporating local rules into the numbering system. The Family Law Rules Subcommittee will attempt to have a final draft of their report ready in thirty days.

Draft Preamble to the Local Rules Task Force Report: Ms. Hayden requested that Gail Nunn be named as the chair for the Family Law Rules Subcommittee as Ms. Nunn has taken on a large amount of the workload. Mr. Whitson asked if anyone wanted to edit the re-draft of the third paragraph. Barbara Miner will be providing the correct cite for the "Clerk's" statute.

Draft Report: Mr. Whitson thanked Judge Gibson for his effort in writing the draft report and suggested adding the work product of the three subcommittees to the report (specifically, the excel worksheet of all the counties rules). Mr. Tilden will email to Elizabeth his work product. Mr. Silverman commented that Judge Gibson's draft was very charitable and suggested that the report say that virtually no county has been successful at keeping the numbering consistent with the state civil rules [top of page 2 of the report]. Judge Gibson explained that he was trying very hard not to offend any particular county. Discussion ensued regarding the civil rule requiring that local rules be consistent with state rules, whether to strengthen the language of the report, and whether or not to add examples.

Discussion ensued regarding how the report will be presented and how to strengthen the language without inviting resistance. Mr. Whitson suggested presenting a draft of the report at the Fall Judicial Conference. Task Force members discussed whether there would be time on the Fall Conference agenda and whether that is best venue is for introducing the report. Judge Johnson suggested a Superior Court Judges Association business meeting might be a better venue. Mr. Mungia suggested also having the report ready for the September BOG meeting and, instead of requesting BOG approval, ask for comments at that point. Judge Gibson opined that the best way to bring the report to the attention of judges would be from other judges. Judge Yu agreed and suggested that Justice Johnson, herself and other judges start looking for a venue to approach this subject matter. Justice Johnson opined that having a single place where all the rules are published and a consistent numbering system would be the most productive thing to put forth. He opined that the report should focus in part on how the inconsistency in the local rules is a detriment to access to justice. Discussion ensued regarding publicizing the need for consistency at the local level as well as the need for a mandatory directive from the Supreme Court stating that local rules will be reviewed and must be consistent. Justice Johnson suggested speaking with Judge McDermott, who is in charge of the SCJA Business meetings, about the best time and venue to circulating the Task Force report.

Judge Yu proposed giving a “preview” of the Task Force report at the joint business meeting coming up Tuesday, October 7, 2008. Discussion ensued regarding sending a brief report to each county local rules committee chair and asking for comments. It was pointed out that, in some counties, there are no local rules committees and local rules are usually added ad hoc. Mr. Whitson asked whether it would be constructive to speak with any of Justice Johnson’s colleagues prior to the Fall Judicial Meeting. Justice Johnson didn’t think so; they will meet tomorrow and not again until the end of summer, but he may be able to circulate a modified copy of the preamble and the draft report to his colleagues. Ms. Turner will remove all of the examples out of the draft report this afternoon and email the preamble and report to Justice Johnson. Mr. Whitson asked Task Force members if everyone approved of this plan, and the group agreed that this would be fine.

To address lawyers about the issue, Mr. Silverman proposed explaining what the Task Force is doing at an upcoming WSBA CLE in which he is a presenter. Ms. Harrington stated that she presented a 15-minute piece at a CLE explaining the Task Force’s purpose and used the charter off of the Bar website. Justice Johnson suggested it would be worthwhile to include creating consistency in the processing of cases as an item of discussion. Mr. Miles will speak with his colleagues regarding this.

Judge Gibson explained his process when choosing the examples used in the draft report. He felt that there is more impact when including examples and suggested the report should be illustrative but not exhaustive. The chair suggested, and other members agreed, that the Excel spreadsheet showing all the local rules should be attached to the report. The Task Force discussed adding a caveat to the language that the report contains perceived problems based on the rules in existence at the time it was written.

The discussion turned toward the inclusion of state laws and state civil rules in local rules to assist pro se litigants and questioned the necessity of such rules. Mr. Silverman pointed out that local courts should never need to create their own rules regarding such things as summary judgment. Judge Gibson explained that small counties have completely different problems from those of larger counties and may have a need for slightly differing local rules, for example in the areas of limiting discovery and case scheduling. Mr. Scott opined that local rules should never repeat what is already in the state rules or in the statutes. Members suggested encouraging local courts to produce and hand out small booklets to assist pro se litigants instead of putting civil rules into the local rules. Judge Gibson suggested the report state that

there are two different philosophies amongst counties regarding local rules: one philosophy is to repeat the civil rules in order to assist pro se litigants. Judge Gibson reminded the group that the report is supposed to outline the problems, not necessarily fix them. Ms. Michels suggested including the language “outdated” in the draft report under the paragraph titled “possibly unnecessary,” citing such examples as terms like “onion skin” and rules addressing dress code. Mr. Silverman was concerned that “confirmation requirements” might damage substantive rights. In reply to the question of whether we were at a point to make recommendations in the report, Mr. Whitson suggested that the Task Force come up with a work product only showing the problems for now.

Judge Gibson asked if there was any chance that the Bar could create a committee that would be a reviewing group in the future. Justice Johnson said that they had earlier envisioned that such a group would be part of the Superior Court Judges Association governing subcommittee or anchored in the Best Practices. Judge Gibson opined that lawyers should be a part of the process – such a committee should exist at their level. Justice Johnson suggested we look at the reason why earlier Local Rules groups looked toward judges groups to screen new local rules. Mr. Silverman asked whether creation of such a group at the WSBA would be possible. Mr. Mungia said that it should be possible.

Ms. Michels suggested that she draft a report about various options regarding the creation of a local screening group and give it to Ms. Sullins to look over.

The next meeting: Justice Johnson suggested the Task Force meet again the second week after Labor Day (specifically, on September 17th). Staff will get in touch with members by email.

The meeting adjourned at 2:00pm