

Court Rules and Procedures Committee

AGENDA

May 20, 2019
(Telephonic Meeting)
9:30 a.m. – 11:00 a.m.

Conference Call: 1-866-577-9294, Code: 55419#

Call to Order/ Preliminary Matters

- Approval of Minutes:
 - April 15, 2019 (pp. 2-3)

Subcommittee Reports

1. Subcommittee X
 - Subcommittee Chair Tony DiTommaso (pp. 4-16)
2. Mandatory Arbitration Rules (MAR)
 - Subcommittee Chair Stephanie Dikeakos (Oral Report)
3. Evidence Rules (ER)
 - Subcommittee Chair Kirk Miller (Oral Report)

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for June 17, 2019



TELEPHONIC MEETING

Meeting Minutes

April 15, 2019

Members Present:

Chair Jefferson Coulter, Mimy Bailey, Claire Carden, Rike Connelly, Stephanie Dikeakos, Tony DiTommaso, Bertha Fitzer, Richard Greene, Geoff Grindeland, Karen Horowitz, John Ledford, Kirk Miller, Tim Moran, Ashton Rezayat, Rachel Rogers, Rooein Roshandel, Ann Summers, Jon Zimmerman, and Brian Zuanich.

Members Excused:

Olga Blotnis, D. Jack Guthrie, Joyce Heritage, Sarah Lee, Alison Markette, Isham Reavis, Dalynne Singleton, James Smith, and Brian Tollefson (BOG Liaison).

Also Attending:

Judge Blaine Gibson (SCJA Liaison), Judge Jeffrey Goodwin (DMCJA Liaison), Judge Bradley Maxa (COA Rules Committee Chair), Shannon Hinchcliffe (AOC Liaison), Alison Sonntag (Kitsap County Chief Deputy Clerk), Lisa Amatangel (WSBA Associate Director Litigation and Internal Operations), and Sherry Lindner (WSBA Paralegal).

Chair Jefferson Coulter called the meeting to order at 9:30 a.m.

March 18, 2019, minutes were approved by consensus.

Infraction Rules for Court of Limited Jurisdiction (IRLJ) Subcommittee

Subcommittee Chair Jon Zimmerman report on IRLJ 1.2, 2.1, and 2.2.

The Committee discussed IRLJ 1.2, and that there seems to be some confusion with the proposed language, “Date of the Notice of Infraction,” and suggested that the subcommittee review the proposal further before the Committee votes on the proposed amendment.

Motion was made and seconded to table IRLJ 1.2 for further review.

The Committee discussed and voted on IRLJ 2.1.

Motion was made and seconded. Motion passed by consensus.

The Committee discussed IRLJ 2.2 and recommended to the subcommittee not to remove “service, and filing” from the rule. The Committee suggested that the removal of the language

may cause confusion and that the subcommittee should take the proposal back and further vet the rule.

Motion was made and seconded to table IRLJ 2.2 for further review.

SUBCOMMITTEE X

Subcommittee Chair Tony DiTommaso reports that CrR 8.2 and CrRLJ 8.2 are with stakeholders and will be ready for the Committee to vote on at the May 20 meeting.

There being no further business, the meeting was adjourned.

DRAFT

Law Office of Tony DiTommaso, P.S.

Tony DiTommaso
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Kambra Mellergaard
kambra@ditommasolaw.net

May 14, 2019

Sherry Linder

sherryl@wsba.org

Re: *Subcommittee X*

Dear Sherry:

With this letter you should be receiving my report regarding the subcommittee meeting held May 9 and for the entire committee to consider at the May 20 telephonic meeting.

Sincerely,

LAW OFFICE OF TONY DITOMMASO, P.S.



Tony DiTommaso
Attorney at Law

TD:st

Enclosure

Court Rules and Procedures Committee

Subcommittee X Report

May 14, 2019

Subcommittee: Subcommittee X is tasked with considering proposed rule changes outside the scope of the evidence rules and infraction rules being considered in this year's cycle.

Subcommittee members attending the May 9 meeting were: Tony DiTommaso and John Ledford.

Issue being worked on:

Included with this report is a GR 9 coversheet with proposed new language to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2.

This proposed rule change is a carryover from last year's committee.

As is noted in the coversheet, there is inconsistency in court decisions regarding whether a motion for reconsideration is authorized in criminal matters.

Subsequent to the subcommittee's last meeting of January 31, 2019 the subcommittee received comments from WAPA (Pam Loginski, staff attorney) and two assistant city attorneys from the City of Longview in opposition to the change to the district court rule.

WAPA recommended a different format regarding the proposed changes to Rule 8.2 and the subcommittee was in agreement with those changes.

The objections from the City of Longview assistant city attorneys were twofold: 1) the rule would give a party "another bite at the apple" and 2) would result in "judge shopping".

The committee discussed this opposition at the meeting on March 29, 2019 and believes that the issue of judge shopping is a non-issue as a motion for reconsideration, in everyone's experience on the subcommittee is always put in front of the judge who made the decision the party seeks reconsideration of. We are not aware of any judge considering a motion for reconsideration of a decision of a different judge.

Regarding the issue of a "another bite at the apple", that is quite a common argument on a motion for reconsideration but it is not an appropriate argument because there also needs to be a basis for filing the motion for reconsideration. So the subcommittee did not believe that was a valid argument against the proposed rule.

Based upon comments made at the full committee meeting, the subcommittee also believes that adding additional references regarding the procedure to use on a motion for reconsideration from CR 59 and CRLJ 59 were appropriate to address the procedural issues.

Although at the subcommittee meeting of March 29 it was unanimously agreed that the proposed new language to the superior court rule be presented to the full committee for discussion and approval, the time frame for additional comments had not run out. No additional comments were received between the March 29 meeting and the May 9 meeting.

The subcommittee recommends that the proposed changes to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2 be presented to the full committee for a vote.

The GR 9 coversheet and proposed rule amendments are included with this report.

GR 9 COVER SHEET
Suggested Amendment
SUPERIOR COURT CRIMINAL RULES (CrR)
Rule 8.2 MOTIONS

A. Proponent: Washington State Bar Association Rules Committee, CrR Subcommittee

B. Spokesperson: Jefferson Coulter, Rules Committee Chairperson

C. Purpose:

There is currently a conflict in the case law as to whether the criminal rules allow a motion for reconsideration. State v. Batsell, 198 Wn.App. 1066, unpublished (issued May 2, 2017), illustrates that there is some confusion as to whether a motion for reconsideration is allowed under the criminal rules. The Batsell court noted that State v. Gonzalez, 110 Wn.2d 738, 744, 757 P.2d 925 (1988), noted that civil rules are instructive as to matters of procedure on which the criminal rules are silent. However, State v. Keller, 32 Wn.App. 135, 647 P.2d 35 (1982), held that CR 59 did not apply in criminal cases. In contrast, as the Batsell court noted, “at least two reported decisions in criminal appeals have involved motions for reconsideration without questioning CR 59’s application in criminal cases.” (citing State v. Englund, 186 Wn.App. 444, 459, 345 P.3d 859, review denied, 183 Wn.2d 1011, 352, P.3d 188 (2015); State v. Chaussee, 77 Wn.App. 803, 806-07, 895 P.2d 414 (1995)).

This confusion results in inconsistency across courts. It also presents a problem when a party in a criminal case wishes to move for discretionary review, as the time for filing a notice of discretionary review runs from the entry of an order deciding a timely motion for reconsideration pursuant to RAP 5.2(b).

The district court criminal rules do not have an express provision for motions for reconsideration. To be consistent with the superior court rule it is also recommended that District Court Criminal Rule 8.2 also be amended.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Material: Suggested rule amendments.

SUPERIOR COURT CRIMINAL RULES (CrR)

Rule 8.2 MOTIONS

- (a) Rules 3.5 (confession) and 3.6 (suppression) and CR 7(b) shall govern motions in criminal cases.
- (b) A motion for reconsideration shall be governed by CR 59(b), (e) and (j).

DISTRICT COURT CRIMINAL RULES (CrRLJ)

Rule 8.2 MOTIONS

- (a) Rules 3.5 (confession) and 3.6 (suppression) and CRLJ 7(b) shall govern motions in criminal cases.
- (b) A motion for reconsideration shall be governed by CRLJ 59(b), (e) and (j).

From: [Heidi Thompson](#)
To: [WSBA CourtRules](#)
Subject: CrRlj 8.2
Date: Thursday, February 28, 2019 3:47:17 PM

Hello,

I am a municipal prosecutor in a high volume court. I would like to voice my opposition to the CrRLJ 8.2 rule change. I believe that motions for reconsideration should be specifically disallowed at the district and municipal court level.

My office has had experience with these motions for reconsideration. It's simply a chance for a free bite at the apple and an incentive for judge shopping. High volume Offices, such as mine, also do not have the resources to continually re-fight the same motion over and over to different judges.

It is my position that reviews should be taken up as a post-conviction RALJ appeal.

Best regards,

Heidi Thompson
Assistant City Attorney
City of Longview
Office 360.442.5870
Fax 360.442.5965



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From: [Sean Kelly](#)
To: [WSBA CourtRules](#)
Subject: CrRj 8.2
Date: Thursday, February 28, 2019 3:38:38 PM

Hello,

I operate at the district court level in high volume criminal prosecution. I appreciate you taking the time to hear me out.

I would like to voice my opposition to the rule change. I would actually ask that motions for reconsideration be specifically disallowed at the district court level.

My office has responded to a motion for reconsideration filed in front of my now (retired) judge. It was a chance for a free bite at the apple and judge shopping. On any close case there are judges who may come down on either side. That doesn't make the previous judge wrong, it just replaces the ruling with a fresh one at the same level. Given the volume of cases we deal with, there is an implicit impossibility for my office to fight all but the most egregious motions which we lose.

This would in effect be a free shot for defense with no opportunity to respond for the prosecution. The district court level is the lowest level, and it is the most prone to mistakes. Those mistakes can also go against the prosecution. A close or 50/50 case is like a coin flip. One side shouldn't get to redo it whenever they didn't like the first result.

Reviews should be taken up as a RALJ appeal post-conviction.

Best,
Sean

Sean Kelly | Assistant City Attorney

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From: [Pam Loginsky](#)
To: [Sherry Lindner](#)
Cc: [Russell Brown](#)
Subject: RE: Feedback Requested: WSBA Court Rules and Procedures Committee/ CrR 8.2 and CrRLJ 8.2
Date: Wednesday, March 06, 2019 8:39:18 AM
Attachments: [image001.png](#)

Dear Ms. Lindner:

The members of the Washington Association of Prosecuting Attorneys reviewed both suggested amendments. We concur that the suggested changes would be beneficial. We do, however, ask that the two sentences be set out separately and numbered as motions for reconsideration should be available for motions beyond 3.5 and 3.5.

WAPA's proposed CrR 8.2 amendment would be as follows:

Rule 8.2 Motions

1. Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases.
2. A motion for reconsideration shall be governed by CR 59(b), (e) and (j).

Thank you for reaching out to WAPA.

Sincerely,

Pam Loginsky
Staff Attorney
Washington Association of Prosecuting Attorneys
206 10th Ave. SE
Olympia, WA 98501

E-mail: pamloginsky@waprosecutors.org
Phone (360) 753-2175
Fax (360) 753-3943

From: Sherry Lindner <sherryl@wsba.org>
Sent: Wednesday, February 27, 2019 9:01 AM
Cc: Jefferson Coulter <Jeffersonc@NWJustice.org>; Nicole Gustine <nicoleg@wsba.org>
Subject: Feedback Requested: WSBA Court Rules and Procedures Committee/ CrR 8.2 and CrRLJ 8.2

Greetings,

The Court Rules and Procedures Committee is proposing to amend the Criminal Rules (CrR) 8.2 and the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 8.2. The Committee is reaching out to stakeholders for comments and feedback on its proposals.

Stakeholder input is crucially important in the rulemaking process and assists the Committee

in making an informed decision.

Attached please find a memo and the draft rule proposals.

Please submit your feedback/comments to WSBACourtRules@wsba.org by May 1, 2019.

Thank you,



Sherry Lindner | Paralegal | Office of General Counsel

Washington State Bar Association | T 206-733-5941 | F 206-727-8314 | sherryl@wsba.org

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From: [Korsmo, Kevin](#)
To: [Sherry Lindner](#)
Subject: RE: Feedback Requested: WSBA Court Rules and Procedures Committee/ CrR 8.2 and CrRLJ 8.2
Date: Monday, March 11, 2019 3:59:13 PM
Attachments: [image001.png](#)

The Court of Appeals Rules Committee has considered your request for feedback and unanimously decided we will not be commenting on these proposals.

Kevin Korsmo
Chair, COA Rules Committee

From: Sherry Lindner [mailto:sherryl@wsba.org]
Sent: Wednesday, February 27, 2019 8:56 AM
To: Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>; Siddoway, Laurel <Laurel.Siddoway@courts.wa.gov>; Maxa, Bradley <J_B.Maxa@courts.wa.gov>; Korsmo, Kevin <Kevin.Korsmo@courts.wa.gov>; Judge Gibson <blaine.gibson@co.yakima.wa.us>; gsm.judge@gmail.com; Judge Jeffrey Goodwin <jeffrey.goodwin@snoco.org>
Cc: Jefferson Coulter <Jeffersonc@NWJustice.org>; Nicole Gustine <nicoleg@wsba.org>
Subject: Feedback Requested: WSBA Court Rules and Procedures Committee/ CrR 8.2 and CrRLJ 8.2

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Thank you,



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