



WSBA

LOCAL RULES TASK FORCE

Supplemental Meeting Materials for January 10, 2008 Meeting

- Mike Cooper's List of Good & Bad Local Rules for Rural Counties [pp. 9 – 10]
- Blaine Gibson's List of Good & Bad Local Rules for Medium Sized Counties [pp. 11 – 14].
- David Kenworthy's List of Good & Bad Local Rules for Pierce County [pp. 15 – 16].

MIKE COOPER'S LIST OF GOOD & BAD LOCAL RULES FOR RURAL COUNTIES

Counties included:

Adams, Chelan, Clallam, Douglas, Ferry, Pend Oreille, Stevens, Grant, Grays Harbor, Hells Canyon Circuit (Asotin, Columbia & Garfield), Island/San Juan, Jefferson, Kittitas, Klickitat/Skamania, Lewis, Lincoln, Mason, Okanogan, Pacific/Wahkiakum, Walla Walla, Whatcom & Whitman

Good Rules

Adams County

LR 9. Pertaining to Jury Instructions.

Note: Clallam (LR 51(c)), Kittitas (LR 8), Klickitat/Skamania (LR 8(iv)), Lincoln (LR 11), Pacific/Wahkiakum (LR 5A), Whatcom (LR 51) have similar rules. Note specifically Wahkiakum requires a floppy disk be submitted as well of proposed instructions.

Chelan County

LR 7(b)(1). Pertaining to Reapplication of Motions before a different judge on same facts.

Note: Grays Harbor, Lewis and Whatcom have similar rules.

LR 59. Motion for Reconsideration

Note: Clallam (LR 59(e)), Douglas (LR 59), Hells Canyon Circuit (LR 18), Kittitas (LR 59), and Walla Walla (LR 14) have similar rules.

Bad Rules

Chelan County

LR 37(f). Imposes potential sanctions on failure to complete discovery and goes beyond CR 37.

Note: Douglas has a similar rule.

LR 52. Requires proposed findings in judge trials before the trial commences and prescribes times certain for presentation of findings after the conclusion of the trial. This rule goes beyond the scope of the authority of CR 52.

Note: Douglas has the same rule. Note also Hells Canyon Circuit (LR 17), Island/San Juan (LR 52), Jefferson (LR 52), Walla Walla (LR 13) and Whatcom (LR 54) all place time requirements for presentation of findings, conclusions and judgment/order/decreed after the conclusion of the trial. Failure to abide could result in the imposition of sanctions and/or the granting of a new trial. These rules go beyond the scope and authority of CR 52.

LR 58. Requires the presentation of the original promissory note when granting a judgment on a promissory note. This goes beyond the authority of CR 58.

Note: Douglas (LR 58) has the same rule.

Grant County

LR 8. Requires a scheduling order be prepared after a mandatory status conference and precludes a trial setting until and unless all dates of the scheduling order have been complied with and the issues pertaining to the scheduling order have been met and/or resolved. This is a best effort at micro-management and creates more work than it saves.

Jefferson County

LR 12.1. Requires a party wishing to assert the protection of the federal bankruptcy laws to file a copy of the bankruptcy court notice of commencement of case, serve it on all parties, and provide a copy to the assigned judge and to keep the court informed as to the status of the bankruptcy case. While nice, CR 12 does not require and grants no authority to the court to impose such a requirement. Obviously, a bankruptcy precludes the court from assuming jurisdiction over a case in most circumstances.

Blaine Gibson's List of Good and Bad Local Rules

For Medium Sized Counties

Counties included:

Benton/Franklin	Kitsap	Spokane
Clark	Skagit	Thurston
Cowlitz	Snohomish	Yakima

Good Rules

Snohomish County

SCLCR 7. Pleadings Allowed; Form of Motions

(b) Motions and Other Papers. (1) How Made. (A) Reapplication on Same Facts. Except as stated below, when a motion has been ruled upon in whole or in part, the same motion may not be later presented to another judge. If the prior ruling was made without prejudice or when the prior motion has been granted conditionally, and the condition has not been met, any subsequent motion may be presented as set forth below. Reapplication shall be made in the same manner as a motion to reconsider.

NOTE: Benton/Franklin, Clark, Cowlitz, and Kitsap have similar rules

SCLCR 11. Signing of Pleadings

(a) Address of Party Appearing Pro Se. A party appearing pro se shall state on a notice of appearance, pleadings, and other documents filed by such party, his/her mailing address, street address, and telephone number where service of process and other papers may be made upon him/her. A party appearing pro se shall advise the court and other parties by written notice of any changes of address and/or telephone number.

(b) Notice of Rule Requirements. When a party physically appears in court, pursuant to process served upon him/her, but without an attorney and without filing a written pleading or other paper, the clerk shall deliver a printed Notice of Appearance form containing the substance of subsection (a) of this rule and approved by the court. This notice shall be completed by the party pro se and filed.

NOTE: Cowlitz and Thurston have similar rules

SCLCR 41. Dismissal of Actions

(g) Request for Inactive Case Status.

(1) How Made. In civil cases where a point of stability has been reached such that there will be no need for further litigation, but where it may not be in the interests of the parties or of justice to dismiss the case, any party may file a motion requesting that the case be removed from the active pending caseload of the court to an inactive status.

(2) Form and Scheduling of Motion. Such motion for inactive case status shall be set on the civil motions calendar of the court commissioner and shall be made pursuant to

SCLCR 7.

(3) Placement in Inactive Case Status. Placement in an inactive case status under this rule shall be by order of the court. A case in an inactive case status shall not be subject to notice of clerk's dismissal. Every five years following placement in inactive case status, the clerk will notify all parties that unless requested otherwise by the parties, the court will order the case to be removed from inactive status. A motion for extension of the inactive status shall be made in the same manner as set forth for the initial motion for inactive status pursuant to SCLCR 7.

(4) Removal from Inactive Case Status. A case placed in inactive case status under this rule may not be removed from this status except upon order of the court or upon notice by the parties that the case has been disposed. Any party may file a motion requesting that a case be removed from inactive status. Such motion shall be set on the civil motions calendar of the court commissioner.

SCLCR 56. Summary Judgment

(c) Motion and Proceedings. (1) Procedure. (A) (i) [Requires working copies of briefs and exhibits to be delivered to judge well prior to hearing]

Benton/Franklin Counties

LCR 59. New Trial, Reconsideration, and Amendment of Judgments

(e) Hearing on Motion. (1) Motions for New Trial, Reconsideration, or Judgment NOV. Motions for New Trial, reconsideration, or for judgment NOV shall be submitted without oral argument unless the Court orders otherwise as hereinafter provided. The motion shall be served and filed as provided in CR 59(b). At the time of filing the motion, the moving party shall serve and file a statement of points and authorities and deliver a copy of the motion, supporting documents and memorandum to the trial judge. The trial judge may (1) deny the motion, (2) call for a written response from the opposing party, or (3) call for oral argument.

NOTE: Yakima County has a similar rule

Clark County

Rule 47. Jurors

(a) Examination of Jurors. (1) Voir Dire. The trial judge may examine the prospective jurors touching their qualifications to act as fair and impartial jurors in the case before him, and counsel shall advise the court in advance of the names of witnesses then intended to be called for this purpose. Thereafter, the trial judge shall allow the respective parties to ask the jurors such supplementary questions as may be deemed proper and necessary by the trial judge. The voir dire examination of prospective jurors shall, as nearly as possible, be limited to those matters having a reasonably direct bearing on prejudice, and shall not be used by counsel:

(A) as a means of arguing or trying their cases, or

(B) as an effort to indoctrinate, visit with or establish rapport with jurors, or

(C) for the purpose of questioning concerning anticipated instructions of the court or theories of law, or

(D) for the purpose of asking the jurors what kind of verdict they might return under any

circumstance. Personal questions should be asked collectively of the entire panel whenever possible.

(2) Juror questionnaires may not be removed from or viewed outside the office of the Superior Court Administrator or the courtrooms of the Superior or District Courts without the express approval of the trial judge

Note: Yakima has a similar rule

Cowlitz County

CCLCR 43. Taking of Testimony

(k) Marking Exhibits. In all contested matters counsel shall in advance of trial, where practical, cause all exhibits to be marked by the clerk for identification, except such exhibits which are intended only for impeachment purposes.

(1) Documentary Exhibits. In any case where documentary exhibits will be used during trial in examination of witnesses and reference to the contents thereof is necessary to understand the issues, counsel should provide extra copies for use of opposing counsel and the court.

Kitsap County

KCLCR 51. Instructions to Jury and Deliberation

(b) Submission. (1) Filing. Instructions shall be served and filed by 9:00 a.m. of the first day of trial.

(2) Assembling and Distribution. Jury instructions shall be assembled and distributed as follows:

(A) One set to trial judge to be unnumbered without citations.

(B) One set numbered and with supporting citations to each of the following:

1) Clerk for file

2) Judge for work copy

3) Counsel for each opposing party.

(C) One set containing unnumbered instructions without citations submitted electronically on floppy disk, CD, or by email attachment (to address provided by trial judge). The jury instructions should be in Word, WordPerfect, or ASCII format.

(D) Jury instructions shall comply with the following formatting requirements:

1) Formatted for 8-1/2 x 11" paper.

2) One-inch margins on all sides, except for verdict form, which should have a three-inch top margin on the first page.

3) Set for double spacing.

4) Arial font, 14-point size.

(d) Published Instructions. (1) Citations. Washington Pattern Jury Instructions are to be cited. On the copy of proposed jury instructions delivered to the trial court, the clerk, and opposing counsel, those Washington Pattern Jury Instructions proposed shall be so identified by WPI number. If the WPI is changed or modified in any way (except for the selection of alternate WPI wording), the citation shall include the word "modified". Modifications shall be identified on the numbered sets.

NOTE: Most counties have a similar local rule that is more specific than CR 51 regarding jury instructions.

Yakima County

LCR 59. Motions for Reconsideration

(e) Hearing on Motion. (3) Nature of Hearing. Any motion for reconsideration not heard within thirty (30) days of the written decision shall be deemed denied unless otherwise ordered by the court. The judge to whom the motion for reconsideration is made shall determine whether the motion shall be heard on oral arguments or submitted on the briefs. It will be presumed that there will be no oral argument unless requested by the judge.

Bad Rules

Benton/Franklin County

LCR 16. Pre-Trial Procedure

This rule is quite lengthy, so it is not reproduced here. In short, all civil cases are assigned a case schedule when they are filed. The schedule requires the parties to prepare a position statement. The parties and attorneys are then required to attend a "settlement conference." If the case does not settle, the parties and attorneys have to come back for a second "pre-trial conference," after which the parties must jointly prepare a "Trial Management Report."

Most cases do not need this degree of micro-management, so this type of rule creates more work than it saves.

First, the good news, there aren't many. And they seem generally relevant and useful. But there are some clinkers including switching from an independent numbering and lettering format to a format directly tied to particular CR's and back again, or to no lettering format at all. PCLR 1 through 7 are numbered independently from the Rules; then they jump to PCLR 10 to align it with its counterpart Rule, a numbering scheme followed by the remainder of the PCLR's. Certain of the PCLR's are laid out against counterpart specific sections to the point where they seem to be an addendum to the Rule, not a local rule as such.

The local civil rules essentially, in **PCLR 1, Case Schedule**, divide the universe of non-criminal cases into those generally subject to the provisions of the local rules and those that are not. The major driver of those cases subject to the local rules is the imposition of a Case Schedule and Track Assignment and its impact on the progress of a case. Cases are sorted into 3 categories: Expedited, Standard, and Complex; plus Dissolutions as a 4th schedule and track. This is useful case management.

PCLR 2, Confirmation of Service, adds, for cases under Case Schedules, certain requirements to the general provisions of CR 4 and 5.

PCLR 3, Pretrial and Settlement Procedure, expands upon CR 16, again, only for those cases under Case Schedules.

PCLR 4, Confirmation of Joinder and Status Conference, expands on some of the time factors set out in CR 18 - 21, for cases under Case Schedules.

PCLR 5, Disclosure of Possible Lay and Expert Witnesses, in Case Schedule cases, has no counterpart in the Rules.

PCLR 6, Time, only refers parties to 3 other rules and seems of marginal usefulness.

PCLR 7, Motions, goes into considerable detail, using language not found in CR 6 (d) and CR 7, to describe time lines. The use of the term "six court days" differs from the Rules and is potentially confusing. The local rule does develop times for 'responses' which is not within the Rules and seems useful information.

PCLR 10, Form of Pleading, represents a change in the style of numbering and formatting the rules by tying it specifically to CR 10 (e) and adding sub subsection (7) and subsections (f) thru (h) as though these elaborating local sections were part of CR 10. This is confusing.

PCLR 11, Signing of Pleadings, adds to CR 11 by requiring Pro Se's to provide address and telephone information for service and also provides for the mechanics of changing addresses of parties or of counsel. Both useful features.

PCLR 15, Amended and Supplemental Pleadings, also returns to the CR counterpart format by creating a subsection (e) which deals with the same issue as CR 15 (e) but in slightly different language and seems unnecessary.

PCLR 26, Depositions and Discovery, alerts practitioners to the time factors for different types of cases as delineated in PCLR 1, Case Schedules. This is a good place for such a warning.

PCLR 38, Jury Trial, also alerts practitioners to the significantly earlier difference in time for a jury demand under PCLR 1 vice CR 38. Also a good place for a warning.

PCLR 40, Assignments of Cases to Departments, seems extraordinarily complex as it adds to CR 40 terms, or alters CR 40 terms, to fit into cases under PCLR 1 Case Schedules.

PCLR 45, Subpoena of Expert Witness, expands upon the provisions of CR 45 by imposing certain requirements for parties calling an expert witness.

PCLR 51, Jury Instructions.

PCLR 51 (a) merely duplicates CR 51 (a) and tells practitioners nothing not in the Rule.

PCLR 51 (b)(1) tells practitioners to double space their draft instructions and use a paper clip to hold the originals together. It is a counterpart to CR 51 (c). This is tedious micromanaging.

PCLR 51 (b)(2) does clarify certain aspects of CR 51 (c) and is useful.

PCLR 54, Judgments - Support and Maintenance, would be more useful if it were in the PCLSPR section 94 series where related matters are found.

PCLR 56, Motions for Summary Judgment, reverts also to formatting itself off the counterpart rule, CR 56, and its subsections. It does make provisions for striking a motion and for the use of deposition testimony by proper use of an affidavit. Both are useful clarifying features.

PCLR 65, Temporary Restraining Orders, has 3 unidentified paragraphs, unlike all the other local rules. The second paragraph mistakenly refers to a "preliminary injunction," not a TRO.

PCLR 83, Local Rules Committee, is a housekeeping counterpart to CR 83 but it makes reference to a non-existent subsection - CR 83 (c).

PCLR 86, Effective Date of Rules, is the counterpart of CR 86 and may be useful for historical purposes.