



# WSBA

## COURT RULES AND PROCEDURES COMMITTEE

### Meeting Minutes January 14, 2013

Committee Chair Hillary Evans called the meeting to order at 9:33 a.m.

Members present: Chair Hillary Evans, Katharine Bond, Dean Chuang (by phone), Paul Crisalli, Anne M. Cruser (by phone), Maureen M. Cyr, Tony DiTommaso, Jr., Elizabeth A. Fraser (by phone), David M. Iseminger, Kailin James, Dale Johnson (by phone), Shannon Kilpatrick, Roger A. Leishman, Nicole McGrath, Bryan Page (by phone), Shannon Ragonesi, Ann Summers, Karen Denise Wilson (by phone) and Judge Blaine Gibson.

Members excused from attending: Gene Barton, Roy Brewer, Leslie Clark, Eric W. Eisenberg, Sean J. Flynn, Shawn Larsen-Bright, Jeannie Mucklestone, Kathleen Nelson, Judge Kevin Korsmo, Judge Rebecca Robertson and Ken Masters (BOG Liaison).

Members who did not respond to meeting notice or attend meeting: David Stevens and Daniel Brown.

Non-Members/Guests present: Shane Carew (by phone), Nikole Hecklinger, Trisha McArdle, Jean McElroy (WSBA General Counsel/Chief Regulatory Counsel) and Brian Rowe (ATJ Technology Subcommittee Chair).

Also attending: Nan Sullins (AOC Liaison), Elizabeth Turner (WSBA Assistant General Counsel—Staff Liaison), and Sherry Mehr (WSBA Paralegal).

### **Minutes:**

The October 2012 Minutes were approved by consensus with no changes or corrections.

### **Old Business:**

There was no old business to discuss. Ms Turner reminded everyone that if their term is expiring this year they would receive an email about reapplying. The deadline is normally in early March but has not yet been determined.

## **Subcommittee Reports:**

*RALJ Subcommittee:* Ms. Fraser reported that the subcommittee held their first meeting and discussed two rules. RALJ 11.7, Application of Other Court Rules. Ms. Fraser explained that RALJ 11.7 needs to be clarified and possibly amended to incorporate some or all of the RAPs. RALJ 5.4, Loss or Damage of Electronic Record, also needs to be clarified. Ms. Fraser stated that the input of stakeholders will be helpful and asked for ideas about potential stakeholders to contact in addition to those already on the list. The next RALJ subcommittee meeting will be on January 15, 2013.

*ESI Subcommittee:* Mr. Larsen-Bright was unexpectedly unable to attend the meeting but forwarded his report to Ms. Turner, who read the following:

*We [ESI] have had monthly subcommittee calls since the first full committee meeting. We have re-reviewed and re-confirmed our subcommittee's support for the modest change previously proposed to CR 33 (making clear that you can respond to interrogatories by reference to electronically stored information as well as "documents"). We are currently in the process of re-reviewing the proposed edits to CR 26 previously put forward. In addition, I have been in touch with Don Horowitz on behalf of the ATJ and we will be continuing to work together on proposed rule changes over the next few months. We have not provided them with anything concrete yet but I will be talking to Don again in February after the next subcommittee meeting. Our hope is that we can work cooperatively with ATJ and come to a consensus on CR 26 over the next few months (or at least find some specific disagreements that we can bring back to the full committee). We will take their input on CR 33 as well but at this point do not expect any significant issues with that edit.*

*Suggested Uniform Collaborative Law Act Rules (UCLA Rules):* Ms. Turner explained that the UCLA Rules were brought forward to the BOG by WSBA Legislative Liaison Kathryn Leathers, and the BOG referred the draft rules to the Court Rules and Procedures Committee to be scrubbed and vetted. The Chair has formed a subcommittee and if anyone is interested in participating please let her know. Ms. Turner said the UCLA Rules could possibly tie into a legislative proposal that hasn't been submitted yet, and the subcommittee will invite all known and anticipated stakeholders to participate in the process.

*Suggested Amendment to JuCR 9.3:* Ms. Turner reported that in mid December the Supreme Court Rules Committee has asked the Court Rules and Procedures to review and comment on a proposed amendment to JuCR 9.3 submitted by the Northwest Defenders' Association. The original deadline was February 22, 2013, but the WSBA requested for an extension of the deadline and the new deadline will be April 26, 2013. Ms. Turner explained that the Court Rules and Procedures Committee must have the

scrubbing and vetting done by February 25, so that the BOG may review and discuss it at their March 8 meeting, with the vote to be at the April 26 BOG meeting. This matter was given to Subcommittee X.

Ms. Turner further explained that the February 25<sup>th</sup> Committee meeting will be very busy and urged all members to participate so that we may have a quorum.

Mr. Leishman inquired whether the new Attorney General will take the same position as the position expressed in the draft response from the AG's office that was included in the meeting materials. Ms. McArdle explained that the AG letter was brought forward through the chain of command and does not anticipate any change on their position. She also noted that there are currently 5 cases pending in the Court of Appeals that relate to the issues raised by this proposed rule change. The AG's office will submit additional documentation to Subcommittee X, which will be circulated to the subcommittee distribution list so everyone has the opportunity to participate in the review process.

*Rules of Appellate Procedure Subcommittee (RAP):* Ms. Summers reported that the RAP had three meetings since the last Committee meeting and is about  $\frac{3}{4}$  of the way through the proposed changes to the Personal Restraint Petition rules. The subcommittee is also working on non-PRP Rules. Ms. Summers explained that everything will be scrubbed and vetted by the May 20 meeting, that the subcommittee has done a lot of groundwork and is working well as a group and with the stakeholders. Ms. Turner and the Chair thanked Ms. Summers and her subcommittee for their written reports and noted that the Committee really appreciates having the written updates.

*JuCR 9.3:* Discussion returned to JuCR 9.3 when Ms. Ragonesi asked Ms. McArdle if there is anything for the Subcommittee X to consider in regards to the JuCR 9.3. Ms. McArdle said the rule appears to arise from a particular practice in King County and the proposed rule would create a conflict with GR 15, which is a concern raised in the letter. The AG's office is concerned that if JuCR 9.3 is amended, there will be informal practices and the prosecution can be blindsided at or during trial. It is also a cost issue for the state and county budgets; as of right now, the court orders the County to pay for defense experts and with JuCR 9.3 amended, Department of Social and Health Services (DSHS) could be required to pay for the services. Mr. DiTommaso Jr. inquired if cases are in the Appeals Court, would it be better to wait until then; this is something that the subcommittee will be discussing. The subcommittee will also be discussing issues regarding potential disclosure of client/party information, and needed protections. Effort will be made to contact CASA and GAL stakeholders so they can participate in the subcommittee's process as well, and Judge Gibson will obtain the name(s) of persons in the SCJA who are involved in the Juvenile Court subcommittee. Ms. Turner expressed that we must scrub and vet and it is a great opportunity for Court Rules and Procedures for their input.

There being no further business to come before the Committee, the meeting adjourned at 10:00 a.m.