



WSBA

COURT RULES & PROCEDURES COMMITTEE

Telephonic Meeting

Agenda

January 27, 2014
9:30 a.m. to 10:30 a.m.
Washington State Bar Association
1325 Fourth Avenue – Sixth Floor
Seattle, Washington 98101

1. **Call to Order/Preliminary Matters**
 - Approval of Minutes (See Minutes of October 21, 2013, pp. 18-20)
2. **Old Business**
3. **New Business/Subcommittee Reports**
 - CrR and CrRLJ Subcommittee: Ann Summers (pp. 21-22)
4. **Other Business/Good of the Order**
5. **Adjourn**

FUTURE MAIN COMMITTEE MEETING SCHEDULE

February 24, 2014
March 17, 2014
April 21, 2014
May 19, 2014
June 16, 2014
July 21, 2014
August 18, 2014
September 15, 2014

All meetings are at 9:30 a.m. at WSBA offices.



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Meeting Minutes October 21, 2013

Committee Chair Hillary Evans Graber called the meeting to order at 9:30 a.m.

Members present: Chair Hillary Evans Graber, Gene Barton, Katharine Bond, Paul Crisalli (by phone), Tony DiTommaso, Eric Eisenberg (by telephone), Sean Flynn (by telephone), David Iseminger, Kailin James, James Kaufman (by telephone), Shannon Kilpatrick, Del Kolde, Roger Leishman, Rick Leo, Raphael Nwokike, Shannon Ragonesi (by telephone), Jeremy Rogers, Michael Scott, Ann Summers, Shashi Vijay, Kevin Korsmo (by telephone), Blaine Gibson, and Rebecca Robertson.

Members excused from attending: Kenneth Henrikson, Andrew Huff, Shawn Larsen-Bright, and Nan Sullins (AOC Liaison).

Members who did not respond to meeting notice or attend meeting: David Stevens, Dean Chuang, and Darcie Houck. Anne Crusier responded to the meeting notice but did not attend.

Also attending: Ken Masters (BOG Liaison), Elizabeth Turner (WSBA Assistant General Counsel—Staff Liaison), and Sherry Mehr (WSBA Paralegal).

Non-Members/Guests present: Diane Meyers (Attorney at Graham & Dunn) (by phone), and Don Horowitz (by phone).

Welcome/Introductions:

The Chair welcomed the Committee and asked each member to introduce him or herself.

Mr. Horowitz asked whether the Committee will discuss Rule 26 and the Chair stated ESI chair Shawn Larsen-Bright was not present and the ESI subcommittee was not scheduled to report. Mr. Horowitz thanked the Committee and left the meeting at 9:50 a.m.

The Chair explained that the rules up for review in this year's cycle are the Superior Court Criminal Rules (CrR) and Criminal Rules for Court of Limited Jurisdiction (CrRLJ) (subcommittee chaired by Ms. Summers). Other subcommittees are Electronically Stored Information (ESI) (chaired by Mr. Larsen-Bright), and Subcommittee X (chaired by Mr. Barton). The Chair explained that the majority of the work is done in the subcommittees and attendance at those meetings is crucial. The Chair requested Committee members to please respond to the meeting notice RSVP so that the Chair knows how many people will attend and if there will be a quorum.

The Chair explained that materials are only distributed electronically, and requested that people read the materials before the meetings so that the Committee may have everyone's informed input. Exact language of rules is a critical focus. Historical materials are available on the Committee's website.

The Chair explained the rulemaking process to the Committee and stated that getting the input of other members and stakeholders is very important to vetting and scrubbing a rule. The Chair then discussed the Committee's timeline and deadlines in order for the Board of Governors to get materials to the Supreme Court by their annual deadline. She said the Committee and subcommittees need to be active in seeking input and responses from the Stakeholders. This process will polish the language of the rules, making sure the language is good and the intention is clear.

Ms. Turner explained that the BOG and the Supreme Court know that when this Committee brings forth rules, the rules have thoroughly been vetted and scrubbed. Nan Sullins is this Committee's liaison for the Supreme Court and she is an invaluable help.

Mr. Masters expressed that the BOG really does appreciate the work of this Committee. This Committee is one of the hardest working committees. The BOG really respects and trusts this committee. Mr. Masters further explained that he always encourages his fellow governors and others to think about and have discussions about the rules brought forth. This Committee does a phenomenal work and it is much appreciated.

Mr. Barton opined that if anyone would like to revise a rule, this Committee is the place. He stated that he had the opportunity to suggest a rule revision and to rewrite the language while on this Committee and had the Supreme Court adopt and amend the rule. The Chair iterated that this Committee's goal is to bring comprehensive rule changes, if needed. The Chair encouraged the members to review a GR 9.

Ms. Turner explained the new reimbursement policy – if you travel more than 50 miles one-way to attend a meeting, you will be reimbursed, and if you don't travel 50 miles, the WSBA will only pay travel expenses if the meeting is scheduled for more than 3 hours. Ms. Turner also said that if it's easier to attend the meetings via phone to please do so. Ms. Turner expressed that this is a very active and important Committee – to the Board of Governors (BOG) and the membership as whole.

(Shashi Vijay and Del Kolde arrived for the meeting at 10:10 a.m.)

Minutes: The June 2013 minutes were approved by consensus with a few minor changes.

Old Business: The Chair discussed last year's session and the RAP subcommittee's tremendous work on at least 15 rules, and thanked Subcommittee Chair Ann Summers. The Chair also thanked RALJ subcommittee Chair Kailin James for jumping in and chairing that subcommittee midway through the committee year. The Chair reported that the BOG passed all the Committee's proposed rule changes and responses, including the proposed responses to the comments on ER 901, without a hitch.

Mr. Barton explained that King County was the only county that had an issue with one rule that was considered last year. Judge Gibson opined that if there is an issue in one county, the entire state rule does not need to be changed, but rather a local rule change would be reasonable.

The Chair thanked everyone for their hard work last year and stated she is looking forward to a great and exciting year. Ms. Turner thanked everyone and expressed that if anyone would like to participate in more than one subcommittee, they are more than welcome to.

Meeting Adjourned into subcommittee meetings at 10:45.

3 January 2014

MEMORANDUM

TO: Hilary Evans-Graber, Rules Committee Chair

FROM: Ann Summers, CrR and CrRLJ Subcommittee Chair

SUBJECT: Summary of January 2, 2014 subcommittee meeting

The subcommittee had two members attending in person, myself and Ken Henrikson, and five members attending by phone, Rick Leo, Jim Kauffman, Tony DiTomasso, Kailin James, and Eric Eisenberg. Judge Korsmo also attended by phone as the Court of Appeals liaison.

The subcommittee first discussed the change proposed by myself to CrRLJ 7.2, that would ensure that all defendants are advised of the right to appeal. All subcommittee members were in favor of the change, and agreed that defendants who plead guilty still retain a limited right to appeal, such as if the sentence imposed is illegal or the plea involuntary. The subcommittee members agreed that CrR 7.2 and CrRLJ 7.2 should be the same in this respect. Eric Eisenberg suggested that a sentence be added, as the second to last sentence in subsection (a), as follows: "If this advisement follows a plea of guilty, the court shall advise the defendant that the right to appeal is limited." This is intended to ensure that the change is not interpreted as intending to expand the right to appeal from a guilty plea, and to ensure that pro se defendants are more fully informed. It was agreed that such a sentence should be added to both CrR 7.2(a) and CrRLJ 7.2(a). These suggested changes will be incorporated into a new proposal to be considered at the next meeting.

The subcommittee next discussed the proposal by WACDL to enact two new rules, CrR 8.10 and CrRLJ 8.13, that would limit attorneys' post-trial contact with jurors, and prohibit them from communicating certain information to the jurors. All members in attendance were opposed to these proposed rules. The members felt that these rules would infringe upon the right to free speech, as well as the right to open courts, by prohibiting the dissemination of information that is of public record. The members felt that citizens who have discharged their duty to serve on a jury are entitled to have the same access to information as the general public after the trial is completed. The members did not support the proposed rules attempt to essentially impose the rules of evidence outside the trial indefinitely. A vote was taken and all seven members of the subcommittee in attendance were unanimously opposed to the two proposed rules.

The subcommittee next addressed the amendments to CrR 2.2, 2.3 and 3.2.1 proposed by the SCJA. The members are all in agreement that these rules

should allow for advances in technology by allowing the transmission of affidavits of probable cause by means such as email, as long as the affidavits meet the oath requirement of the Fourth Amendment. The members discussed what the oath requirement of the Fourth Amendment entails, and would like more input from the District and Municipal Court Judges Association and WAPA as to their views on the proposed changes. The subcommittee chair will request additional input from these two organizations.

Finally, the subcommittee discussed various “housekeeping” changes to the existing rules, such as reference to repealed statutes or rules. In that vein, changes to CrR 6.4 and CrRLJ 6.4 and CrR 7.4(c) will be discussed at the next meeting, as well as any other housekeeping changes that members identify.

The next subcommittee meeting will be Thursday, February 6, at 4:00 on the 5th Floor of the King County Courthouse.