



# WSBA

## COURT RULES & PROCEDURES COMMITTEE

### Meeting Agenda

October 15, 2012  
9:30 a.m. to 1:00 p.m.  
Washington State Bar Association  
1325 Fourth Avenue – Sixth Floor  
Seattle, Washington 98101

1. **Call to Order/Preliminary Matters**
  - Greeting/Introductions
  - Meeting dates (*pp. 2-3*)
  - Reimbursement policy (*pp. 4-6*)
  - Updated roster (*pp. 7-11*)
  - Approval of Minutes (see Minutes of June 18, 2012, *pp. 12-15*)
  
2. **Old Business**
  - BOG decisions on FY 2012 Committee recommendations
  
3. **New Business/Subcommittee Assignments**  
(See Subcommittee Assignments) (*pp. 16*)
  - Rules of Appellate Procedure Subcommittee (RAP) (see Ann Summers' report, *pp. 17-23*)
  - Rules for Appeal of Decisions of Courts Limited Jurisdiction Subcommittee (RALJ)
  - Electronic Discovery Subcommittee (ESI)
  - Subcommittee X
  
4. **Other Business/Good of the Order**
  
5. **Adjourn**



WSBA

COURT RULES & PROCEDURES COMMITTEE

## 2012 - 2013 Court Rules & Procedures Committee Meeting Schedule

October 15, 2012  
November 12, 2012 (conference call only, no in-person meeting)  
December – No Meeting  
January 14, 2013  
February 25, 2013  
March 18, 2013  
April 15, 2013  
May 20, 2013  
June 17, 2013  
July 15, 2013  
August 19, 2013  
September 16, 2013

We anticipate canceling at least one of the summer meetings, but please keep the dates on your calendar for now.

Except for the November meeting (which will be by conference call), all meetings are at the WSBA offices, 1325 – 4<sup>th</sup> Avenue, Suite 600, Seattle, from 9:30 a.m. to 1:00 p.m. To participate by telephone conference call:

*Dial access number: 1-866-577-9294; dial the entry code when prompted: 55419# [Once you enter the code, you will hear a “beep” and a voice will ask you to state your name]*

Meeting materials will only be distributed electronically. Please bring your laptop, or hard copies of meeting materials, to each meeting.

The WSBA has a small number of laptops available for member use during meetings, but they must be reserved in advance with Sherry Mehr (206-733-5941; [sherrym@wsba.org](mailto:sherrym@wsba.org))





# WSBA

TO: Members of WSBA Boards, Committees, Councils and Task Forces  
CC: Board of Governor and Staff Liaisons; WSBA Executive Management Team  
FROM: Ann Holmes, Chief Operations Officer  
RE: FY2013 Volunteer Travel Policy  
DATE: October 1, 2012

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The Board of Governors examined a number of cost-saving proposals in response to the membership referendum leading to a reduction in 2013 annual license fees from \$450 to \$325. In recognition of the importance of your contributions, as well as diversity and geographic inclusion on boards, committees, councils and task forces, the Board was determined to facilitate your WSBA service by continuing to support volunteer travel.

In consideration of: (1) the value that WSBA places on volunteers, (2) the value of your time, (3) our goal to promote diversity and inclusion, (4) our continuing need to reduce costs, and (5) the staff time involved in administering alternative travel reimbursement methods, the Board of Governors adopted the following policy changes for FY2013:

- 1. Board, Committee, Council and Task Force Travel Reimbursement Parameters.**
  - a. For Chairs of boards, committees, councils and task forces: *no change* to existing Policy.
  - b. For Non-Chair members: WSBA will reimburse travel expenses (i) *for meetings scheduled for 3 hours or more*, OR (ii) *for travel 50 miles or more one way*.
- 2. Expanded Capacity and Support for Virtual Meeting Participation.** WSBA will supplement current in-house videoconferencing capacity with cost-effective hosted virtual meeting services in order to accommodate and encourage greater use of member participation in meetings via computer and telephone as well as meetings conducted entirely via computer and telephone.
- 3. Board, Committee, Council and Task Force Engagement.** During FY2013, all standing board, committee, council and task force members will be encouraged to develop and share cost saving measures for potential wider application in FY2014.

Thank you for your service and your assistance. We believe that these policy changes will help make more effective use of your time in service to WSBA. An updated expense report form reflecting these changes is attached and is available on the WSBA website.



## 2012 – 2013 Committee Volunteer Expense Report

*See reverse side for WSBA Volunteer Expense Policy. Please fill out clearly and completely. Original, signed expense reports must be submitted within **60 days** of incurring the expense but in no event later than 30 days after the WSBA fiscal year end (September 30). To expedite reimbursement, mail this form directly to your staff liaison at:*

**Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle WA 98101-2539.**

### VOLUNTEER INFORMATION

<b>WSBA Board/Committee/Council/ Task Force/Panel:</b>	<b>Make check payable to:</b>		
	<b>Address:</b>		
<b>Staff Liaison:</b>	<input type="checkbox"/> Check if new address		
	<b>E-mail</b> (only used if questions about this request):	<b>Phone:</b>	
	<b>Name</b> (print):	<b>Bar #:</b>	
	<b>Signature:</b>	<b>Date:</b>	

### EXPENSE REIMBURSEMENT REQUEST\*

	Meeting Date(s):				
	<b>Event:</b> →				<b>Category Totals</b>
	<b>Meeting Location:</b>				
		miles	miles	miles	
<b>Transportation</b>	Auto Mileage Total (\$ 0.555/mi )	\$	\$	\$	\$
	Ground Trans, Parking, Tolls <i>(Receipt required if over \$25)</i>	\$	\$	\$	\$
	Airfare (coach/economy only)	\$	\$	\$	\$
<b>Meals</b>	Breakfast (up to \$12)	\$	\$	\$	\$
	Lunch (up to \$18)	\$	\$	\$	\$
	Dinner (up to \$36)	\$	\$	\$	\$
	<b>Lodging</b> (up to \$150/night; \$180/night in Seattle + tax)	\$	\$	\$	\$
	<b>Other Expenses (itemize):</b>	\$	\$	\$	\$
		\$	\$	\$	\$
	<b>Totals</b>	\$	\$	\$	\$

\* Original, detailed receipts required.

For WSBA Use Only				
Submitted by:		Date:		
Approved by:		Date:	Rush Approval:	
Account Name	Account #	Dept.	Job Code	Amount
				\$
				\$
Vendor #		Date Rec'd in AP		Total: \$

### VOLUNTEER EXPENSE POLICY

**General principle:** WSBA depends upon and values the time and talent of volunteers. As a steward of member funds, WSBA will reimburse necessary out-of-pocket expenses as set forth below. WSBA will not reimburse expenses that are reimbursed from another source, or those incurred by spouses, domestic partners or guests.

**FY2013:** In light of reduced 2013 license fee revenue:

1. Volunteers and committees are asked to develop and share cost-saving measures.
2. Virtual meetings are encouraged whenever feasible to accomplish the committee's work.
3. *For face-to-face meetings, WSBA will reimburse (a) committee chairs for their travel expenses, and (b) non-chair members (i) for meetings scheduled for 3 hours or more, or (ii) for travel 50 miles or more one way.*

**Transportation:** If travel is necessary, please be economical. WSBA will reimburse the lesser of coach-economy air fare or auto mileage. If you choose to drive, WSBA will not reimburse for lodging en route, and may only reimburse you for the lesser cost of coach-economy airfare. Reimbursement for out-of-state committee travel is limited to the approximate cost of in-state travel (the cost of traveling from the nearest Washington border).

1. **Auto Mileage:** will be reimbursed at the rate of \$0.555 per mile. *Carpooling is encouraged.*
2. **Rental Cars/Other:** may be used only when necessary and economical compared to other modes of local transportation or if local transportation is nonexistent. Rental charges should be net of any discounts and will be limited to the rental cost of compact or standard-size cars. Reimbursement for any other method of travel (e.g., train) will be reimbursed for the cost of the most economical method of travel. *Detailed receipts are required.*
3. **Ground transportation, parking, tolls:** If travel is by air, please park economically. WSBA will reimburse longer term airport parking at the lower of actual parking costs or an airport shuttle to/from your home. *Parking receipts, which should be provided regardless of amount, are mandatory for all parking expenses greater than \$25. If a receipt is not available, up to \$75 of ground transportation, parking and tolls expenses may be paid if the Expense Affidavit Form (see below) is completed.*
4. **Airfare:** WSBA will only reimburse coach/economy-class air fares. Book in advance to obtain lowest possible fares. WSBA reserves the right not to fully reimburse for last-minute fares. WSBA will not reimburse for use of frequent flyer coupons or air miles. *Detailed receipts are required (must include name of passenger, date of flight, and departure and destination locations). Credit card statements are not acceptable.*

**Lodging:** When an overnight stay is necessary (contact your Staff Liaison in advance with any questions), WSBA will reimburse hotel/motel accommodations up to \$150 per night (\$180 in Seattle) plus comparable taxes. Ask your Staff Liaison about WSBA preferred rates at area hotels. WSBA will not reimburse incidental charges (e.g. entertainment, personal phone calls, etc.). *Lodging will not be reimbursed without a detailed receipt (including name/location of hotel, guest name(s), date(s) of stay, and breakdown of charges for lodging, meals, telephone and incidentals).*

**Meals:** Receipts are required. WSBA will reimburse meal expenses (including gratuity) up to \$12 for breakfast, \$18 for lunch and \$36 for dinner. In the event of lost receipts, WSBA will reimburse the lower of these rates or the federal per diem rate for the location in which the meal expense was incurred (see [www.gsa.gov](http://www.gsa.gov)). All-day travelers may reallocate per-meal allowances (e.g., spend more on lunch; less on dinner). *Alcohol will not be reimbursed and must be segregated from meal expense. Identify all individuals included in a meal reimbursement request.*

**Other expenses:** You are encouraged to absorb incidental costs; however, WSBA will reimburse necessary out-of-pocket office expenses with receipts (actual copying charges up to 15 cents a page; faxes up to 25 cents a page, with a \$5 maximum). WSBA will not reimburse standard office services (e.g., voice mail, telephone connections), personnel costs or professional services.

*The WSBA has an Accommodation Fund available to all members with disabilities to support accessibility and ensure reasonable accommodation to their participation in WSBA services, programs, and events, including sign language interpretation, sound enhancement, or personal companions. To request an accommodation, contact your Staff Liaison.*

### EXPENSE AFFIDAVIT FORM

*Up to \$75 may be reimbursed in the absence of a receipt (cannot be used for airfare, rental cars, lodging or meals)*

Under penalty of perjury, I hereby certify that I incurred the cost of :

Date of Purchase:

Name of Vendor:

Item Description:

Amount Paid: \$ \_\_\_\_\_ Was sales tax paid on the purchase?  Yes  No

Brief Description of why there is no receipt or a copy is being used: \_\_\_\_\_

Signature of Purchaser: \_\_\_\_\_

Date: \_\_\_\_\_



Washington State Bar Association

**COURT RULES AND PROCEDURES COMMITTEE**  
**2012-2013 ROSTER**  
(Updated October 5, 2012)

NAME/ADDRESS	E-MAIL	TELEPHONE
<b>Hillary J. Evans, Chair</b> Civil Division Snohomish County Prosecutor's Office 504 3000 Rockefeller Ave Everett, WA 98201-4046 <i>Term Ends: 09/30/2013</i>	hillary.evans@co.snohomish.wa.us	(425) 388-7365
<b>Walter E. Barton (Gene Barton)</b> Karr Tuttle Campbell 1201 3rd Ave Ste 2900 Seattle, WA 98101-3284 <i>Term Ends: 09/30/2014</i>	gbarton@karrtuttle.com	(206) 224-8030
<b>Katharine Bond</b> Attorney Advisor, ODAR 2413 Pacific Ave, Ste 200 Tacoma, WA 98402 <i>Term Ends: 09/30/2013</i>	katharinebond@gmail.com	(206) 349-8839
<b>Roy Brewer</b> 27215 Pacific Hwy S # B Federal Way, WA 98003-2407 <i>Term Ends: 09/30/2013</i>	royb@roythelawyer.com	(206) 240-3194
<b>Daniel Brown</b> Williams Kastner 601 Union St Ste 4100 Seattle, WA 98101-1368 <i>Term Ends: 09/30/2013</i>	dbrown@williamskastner.com	(206) 628-6600
<b>Dean Chuang</b> Crary Clark & Domanico PS 9417 E Trent Ave Spokane Valley, WA 99206-4285 <i>Term Ends: 09/30/2014</i>	dchuang@ccdlaw.com	(509) 926-4900

NAME/ADDRESS	E-MAIL	TELEPHONE
<b>Leslie Clark</b> Short Cressman & Burgess, PLLC 999 3rd Ave Ste 3000 Seattle, WA 98104-4088  <i>Term Ends: 09/30/2013</i>	lclark@scblaw.com	(206) 682-3333
<b>Paul Crisalli</b> Washington Court of Appeals, Division II 950 Broadway Ste 300 Tacoma, WA 98402-4454  <i>Term Ends: 09/30/2014</i>	paul.crisalli@gmail.com	(206) 819-6367
<b>Anne M. Cruser</b> Clark County Prosecuting Attorney PO Box 5000 Vancouver, WA 98666-5000  <i>Term Ends: 09/30/2014</i>	Anne.cruser@Clark.wa.gov	(360) 397-2261
<b>Maureen M. Cyr</b> Washington Appellate Project 1511 3rd Ave Ste 701 Seattle, WA 98101-3635  <i>Term Ends: 09/30/2014</i>	maureen@washapp.org	(206) 587-2711
<b>Anthony DiTommaso, Jr.</b> 23 S Wenatchee Ave Ste 201 Wenatchee, WA 98801-2274  <i>Term Ends: 09/30/2013</i>	tony@ditommasolaw.net	(509) 665-8776
<b>Eric W. Eisenberg</b> Lewis City Prosecuting Attorney's Office 345 W Main St Fl 2 Chehalis, WA 98532-4802  <i>Term Ends: 09/30/2014</i>	eric.eisenberg@lewiscountywa.gov	(360) 740-1240
<b>Sean J. Flynn</b> Office of Public Defense PO Box 40975 Olympia, WA 98504-0001  <i>Term Ends: 09/30/2013</i>	sean.flynn@opd.wa.gov	(360) 586-3164 Ext. 104

NAME/ADDRESS	E-MAIL	TELEPHONE
<b>Elizabeth A. Fraser</b> Office of Public Defense M/S 209 3000 Rockefeller Ave Everett, WA 98201-4046 <i>Term Ends: 09/30/2013</i>	elizabeth.fraser@snoco.org	(425) 388-3032
<b>David M. Iseminger</b> PO Box 40124 Olympia, WA 98504-0124 <i>Term Ends: 09/30/2014</i>	DavidI@atg.wa.gov	(360) 753-2769
<b>Kailin James</b> Kailin james, Attorney At Law PO Box 712 Bellingham, WA 98227 <i>Term Ends: 09/30/2014</i>	kailinj@hotmail.com	
<b>Dale Johnson</b> GordonDerr LLP 2025 1st Ave Ste 500 Seattle, WA 98121-3140 <i>Term Ends: 09/30/2013</i>	djohnson@GordonDerr.com	(206) 382-9540
<b>Shannon Kilpatrick</b> Richard B. Kilpatrick P.S. 1750 112th Ave NE Ste D155 Bellevue, WA 98004-3727 <i>Term Ends: 09/30/2013</i>	shannon@triallawyersnw.com	(425) 453-8161 EXT 103
<b>Shawn Larsen-Bright</b> Dorsey Whitney LLP 701 5th Ave Ste 6100 Seattle, WA 98104-7043 <i>Term Ends: 09/30/2014</i>	larsen.bright.shawn@dorsey.com	(206) 903-2417
<b>Roger A. Leishman</b> Davis Wright Tremaine LLP 1201 3rd Ave Ste 2200 Seattle, WA 98101-3045 <i>Term Ends: 09/30/2014</i>	rogerleishman@dwt.com	(206) 757-8083
<b>Nicole Mcgrath</b> Teamchild 2731 Wetmore Ave Ste 410 Everett, WA 98201-3581 <i>Term Ends: 09/30/2013</i>	nicole.mcgrath@teamchild.org	(425) 293-0657

NAME/ADDRESS	E-MAIL	TELEPHONE
<b>Jeannie Mucklestone</b> PO Box 565 Medina, WA 98039-0565  <i>Term Ends: 09/30/2013</i>	jeannie@mucklestone.com	(206) 623-3343
<b>Kathleen Nelson</b> 3046 39 <sup>th</sup> Ave. SW Seattle, WA 98116  <i>Term Ends: 09/30/2013</i>	kathleenkeen@yahoo.com	(206)-354-4120
<b>Bryan Page</b> 1700 D St Bellingham, WA 98225-3101  <i>Term Ends: 09/30/2013</i>	bpage@zenderthurston.com	(360) 647-1500
<b>Shannon Ragonesi</b> Keating Bucklin & McCormack 800 5th Ave Ste 4141 Seattle, WA 98104-3175  <i>Term Ends: 09/30/2014</i>	sragonesi@kbmlawyers.com	(206) 623-8861
<b>David Stevens</b> 3011 Swetzer Rd Loomis, CA 95650-9516  <i>Term Ends: 09/30/2014</i>	David_Stevens@davidstevens.org	(509) 869-4547
<b>Ann Summers</b> King County Prosecutor's Office 516 3rd Ave Ste W554 Seattle, WA 98104-2362  <i>Term Ends: 09/30/2014</i>	ann.summers@kingcounty.gov	(206) 296-9449
<b>Karen D. Wilson</b> Skagit County Public Defender 121 W Broadway Mount Vernon, WA 98273-4335  <i>Term Ends: 09/30/2014</i>	karendw@co.skagit.wa.us	(360) 336-9405

### **Judicial Liaisons**

<b>Kevin Korsmo</b> The Court of Appeals, Division 3 500 N Cedar St Spokane, WA 99201-1905  <i>Term Ends: 07/01/2013</i>	kevin.korsmo@courts.wa.gov	(509) 456-4032
<b>Blaine Gibson</b> Yakima County Superior Court 128 N 2nd St Yakima, WA 98901-2639  <i>Term Ends: 11/2013</i>	blaine.gibson@co.yakima.wa.us	(509) 574-2698
<b>Rebecca Robertson</b> 33325 8th Ave S Federal Way, WA 98003-6325  <i>Term Ends: 11/2013</i>	Rebecca.robertson@cityoffederalway.com	(253) 835-3000

### **Staff/BOG Liaisons**

<b>Elizabeth Turner</b> Washington State Bar Association 1325 Fourth Avenue – Ste 600 Seattle WA 98101-2539	elizabetht@wsba.org	(206) 239-2109
<b>Nan Sullins, AOC Liaison</b> Administrative Office of the Courts 415 12 <sup>th</sup> St W POB 41174 Olympia WA 98504-1174	Nan.Sullins@courts.wa.gov	(360) 357-2124
<b>Kenneth W. Masters, BOG Liaison</b> Masters Law Group 241 Madison Ave. N Bainbridge Island, WA 98110-1811	ken@appeal-law.com	(206) 780-5033



# WSBA

## COURT RULES AND PROCEDURES COMMITTEE

### Meeting Minutes June 18, 2012

Committee Chair Ken Masters called the meeting to order at 9:40 a.m.

Members present: Chair Ken Masters, Katharine Bond (by phone), Steve Buzzard (by phone), Mario Cava, Leslie Clark, Paul Crisalli (by phone), Rebecca Engrav, Hillary Evans, Elizabeth Fraser (by phone), Dale Johnson (by phone), Nicole McGrath (by phone), Jeannie Mucklestone (by phone), Bryan Page (by phone), Shannon Ragonesi (by phone), Aaron Rocke, Derek Smith (by phone), Ann Summers (by phone), Judge Kevin Korsmo (by phone), Judge Blaine Gibson, Judge Rebecca Robertson.

Members excused from attending: Lincoln Beauregard, Roy Brewer, Anthony DiTommaso, Jr., Justo Gonzalez, Paul Henderson, Shannon Kilpatrick, Shawn Larsen-Bright, Kathleen Nelson, and Karl Sloan.

Members who did not respond to meeting notice: Peter Banks, Daniel Brown.

Also attending: Marc Silverman (BOG Liaison – by phone), Nan Sullins (AOC Liaison), Elizabeth Turner (Assistant General Counsel), and Sherry Mehr (WSBA Paralegal).

Non-Members/Guests present: Glenn MacGilvra; Shane Carew.

### **Minutes**

After a quorum was achieved, the May 21, 2012, meeting minutes were approved by consensus.

### **Chair's Report**

*Old Business:* The Chair reported the Supreme Court adopted WSBA's version of CrR 4.6 effective September 1, 2012 and entered orders on various other courts rules. The Court also ordered the Revised Family Law Civil Rules proposed by the Local Rules Task Force published for comment, with a comment period ending April 30, 2013, and passed new APR 28 (the Limited License Legal Technician Rule ("LLLT")) effective September 1, 2012.

## **Subcommittee Reports**

### *CR/CRLJ Subcommittee:*

- CR 4.1 (Process – Domestic Relations Actions), Ms. Engrav stated that the subcommittee has been reviewing a proposal submitted by a member to help alleviate what he believes to be ambiguity and confusion caused by the current rule, which does not comport with case law. Mr. McGilvra, the amendment proponent, presented his views to the Committee. The Chair stated acting on proposed amendments to CR 4.1 would be inappropriate until the Supreme Court decides what to do with the Revised Family Law Civil Rules and the BOG will not do anything with this proposal until Supreme Court has dealt with the FLCR. Mr. MacGilvra proposed not to do anything with this rule for right now rather than reject it outright.

It was moved, seconded, and unanimously carried to table the proposed amendment to CR 4.1 indefinitely. Mr. McGilvra stated that when the matter is brought back for review, he would like to have the opportunity to present his proposal with comments because the proposed Revised FLCR mirrors the current language of CR 4.1. Ms. Turner stated that the best way for him to get his proposal before the Court is for him to comment on the Revised FLCR when they are published for comment, that the Court reviews all the comments and will oftentimes ask a proponent to respond to the comments received.

- CR 71 –Discussion next turned to the proposal the subcommittee has received which would allow attorneys to send Notices of Intent to Withdraw with “delivery confirmation” instead of by certified mail, return receipt requested. The Subcommittee recommends against this proposal. Discussion included concerns that using “delivery confirmation” would not provide any ability to confirm that the client was the person who actually received the Notice. After discussion, it was moved, seconded, and passed 12-1 (Rocke opposed) to not recommend amendment of CR 71.
- CR/CRLJ 6 – Time Computation: Ms. Engrav presented the subcommittee’s report and stated the current rule is ambiguous regarding counting forward v. counting backwards. The subcommittee reviewed the federal rule and believes that the federal rule is not the best solution. The subcommittee has drafted some language in an effort to address the “counting backwards” issue but is not bringing it forward for a vote at this time because they would like to do more vetting and continue to work on the language. The Chair suggested circulating draft language that people could actually comment on. Judge Gibson opined that judges do not care about how the time is actually computed but rather are concerned with whether a process will cause more hearings to be scheduled or cause more disputes about rule interpretation. Mr. Silverman urged the subcommittee to communicate with Lish Whitson and Justice Johnson from the Local Rules Task Force and to use the task force’s work, and the input of

practitioners, to move towards state-wide uniformity on this issue. Judge Gibson agrees the LRTF should be consulted but wants to make sure that this issue is resolved by a state-wide rule, rather than by local rules. It was suggested that it might work best to have one sentence explaining counting forward and one sentence explaining counting backwards.

Discussion then turned to the concept of “days are days.” Ms. Engrav reported that last year when she requested input on the concept generally it didn’t get a lot of traction but that based on additional feedback received this year she believes the subcommittee should revisit this issue. There was discussion about whether the “counting backwards” language was inextricably intertwined with the “days are days” concept, and the Chair opined that while they are of course related they are not so tied together that you could not deal with one and not the other. Discussion continued about whether the subcommittee should draft language or again ask for input on the general concept; the members generally felt that although there could be a great deal of work involved because more than just Rule 6 would need to be amended that feedback would be most productive if people had actual drafts to review, rather than just an abstract concept. Judge Gibson opined that if, for example, we determine that 7-day increments in time periods work best then we should draft it that way, and not be as concerned with what either the federal courts or local courts have done. Ms. Turner urges that this committee be pro-active in bringing forth any proposed new language rather than deferring, which could result in other groups with less experience in rule-writing doing the drafting.

- CRLJ 65 – Ms. Engrav reported that the DMCJA is working on the proposal to amend CRLJ 65 to reflect the constitutional amendments allowing for injunctions at the district court level, that the DMCJA meets in July, and that she anticipates returning with this proposal at a future meeting.
- CR 5 – Ms. Engrav reported that the subcommittee has extensively worked on the issue raised by Mr. Brewer and has come to the conclusion that previously proposed approaches just won’t work. Based on feedback from practitioners, the subcommittee now thinks that it may be most appropriate to develop a proposal for service by e-mail. It was moved, seconded, and unanimously carried to not move forward on the proposal as originally received but to continue to work on possible e-mail or electronic service possibilities.

Suggested Amendments to CrR 4.7 and CrRLJ 4.7 submitted to the Court by Adam P. Karp: Due to the time constraints posed by upcoming year end and the Court’s time deadline, Ms. Turner did an opinion memo and recommended that the Committee either recommend to the BOG that it take no position or actually oppose the proposed amendment. She noted that the SCJA had written in opposition to the proposed amendment, and Judge Robertson stated that the DMCJA was opposed as well. After

discussion, it was moved, seconded and passed 12-1 (Rocke opposed) to recommend that the BOG oppose the suggested amendment.

*PRP Rules Committee:*

- PRP Rules Ad-Hoc Subcommittee: Ms. Summers explained their June meeting was canceled and that the subcommittee will meet again next month. The Chair explained that the Supreme Court has agreed to let the committee work with the PRP rules when the RAPS are in cycle next year.

*ESI Subcommittee:*

- ESI Subcommittee Report: CR 34 – Electronic Stored Information; The Chair reported that he attended the ATJ Conference last week and that he and Don Horowitz presented CR 34 to the ATJ Board, and specifically asked them (a) to opine on whether we should add “format and formats” to the rule as requested by the ATJ Technology subcommittee; and (b) to approve the proposed rule. The ATJ Board members unanimously expressed their agreement with the CR 34 proposal in general, and also agreed with this Committee’s recommendation **not** to add “format and formats”; ATJ Chair Kirsten Barron suggested that the ATJ’s Plain Language/Pro Se” Committee also review the “format and formats” issue, and the ATJ Board delegated its decision on the “format and formats” issue to that committee. Mr. Horowitz, on behalf of ATJ Tech, agreed that this procedure was appropriate. The Chair received an e-mail from ATJ Manager Joan Fairbanks just this morning, stating that the ATJ subcommittee agreed with our Committee’s recommendation not to add “format and formats.” Ms. Fairbanks, as well as Ms. Barron, have also confirmed that the ATJ Board approves our CR 34 proposal. Since the Committee had previously approved the language presented to ATJ, it does not need to vote again, and we will add CR 34 to the annual presentation to the BOG in July.

*Subcommittee X (no report)*

*MAR Subcommittee (no report)*

There being no further business to come before the Committee, Chair Masters thanked Committee members for their hard work during the year, that it had been an honor to chair the Committee for the past three years, and that he looked forward to working with the Committee during his upcoming term on the Board of Governors.

The meeting adjourned at 11:25 a.m.

## Court Rules & Procedures 2012-2013 Subcommittees

### Rules of Appellate Procedure (RAP) Subcommittee

Ann Summers (Chair)  
Maureen Cyr  
Roger Leishman  
Paul Crisalli  
Kevin Korsmo  
Anne Cruser  
Dave Iseminger  
Sean Flynn  
Ken Masters (ex officio)

### Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) Subcommittee

Beth Fraser (Chair)  
Rebecca Robertson  
Katharine Bond  
Eric Eisenberg  
Dean Chuang  
Kailin James  
David Stevens  
Nicole McGrath  
Jeannie Mucklestone

### Subcommittee X

Gene Barton (Chair)  
Tony DiTommaso  
Shannon Ragonesi  
Blaine Gibson  
Shannon Kilpatrick  
Leslie Clark  
Karen Wilson

### Electronically Stored Information (ESI) Subcommittee

Shawn Larsen-Bright (Chair)  
Bryan Page  
Dale Johnson  
Roy Brewer  
Daniel Brown  
Kathleen Nelson



3 August 2012

**MEMORANDUM**

TO: Hilary Evans

FROM: Ann Summers

SUBJECT: Review of the ad hoc subcommittee for proposed PRP rule changes, December 2011 to July 2012

The purpose of this memo is to review the work of the ad hoc subcommittee for proposed PRP rule changes that was convened by the 2011-2012 Rules Committee.

The subcommittee was convened to review amendments to the PRP rules, RAP 16.3 through 16.27, proposed by the Washington Association of Criminal Defense Lawyers (WACDL). The WACDL proposal contained proposed amendments to 11 rules. The Washington Association of Prosecuting Attorneys (WAPA) submitted a response, which agreed with some suggested changes, opposed others, and proposed additional changes. The subcommittee members were Ann Summers, Eric Broman, Howard Goodfriend, Jim Whisman and Seth Fine. The subcommittee sought input from a number of stakeholders, including the Washington Defenders Association, the Attorney General's Office, private counsel who work with DOC inmates, Columbia Legal Services, the Innocence Project and the Superior Court Judges Association. Members of WACDL attended the subcommittee meetings, as well as other interested parties such as Jackie McMurtrie of The Innocence Project, Judge Kevin Korsmo of the Court of Appeals, and Samuel Rutherford, a former inmate and current paralegal who is knowledgeable about the PRP process as well as the federal habeas process.

The subcommittee met six times, and was able to discuss the various proposed changes to RAP 16.3, 16.4, 16.5, 16.7, 16.8 and 16.9, and to reach a consensus among the attendees as to these changes. The subcommittee did not have time to discuss and reach any consensus as to the various proposed changes to rules RAP 16.11, 16.12, 16.13, 16.26 or 16.27.

Set forth below are the amendments to RAP 16.3, 16.4, 16.5, 16.7, 16.8 and 16.9 that the subcommittee agreed to recommend to the Rules Committee as a whole:

## RULE 16.3 PERSONAL RESTRAINT PETITION--GENERALLY

**(a) Habeas Corpus and Postconviction Relief. Single Procedure for Relief from Restraint.** Rules 16.3 through 16.15 and rules 16.24 through 16.27 establish a single procedure for original proceedings in the appellate court to obtain relief formerly available by a petition for writ of habeas corpus or by an application for post-conviction relief from restraint.

**(b) Former Procedure Superseded.** The procedure established by rules 16.3 through 16.15 and rules 16.24 through 16.27 for a personal restraint petition supersedes the appellate procedure formerly available for a petition for writ of habeas corpus and for an application for post-conviction relief, unless one of these rules specifically indicates to the contrary. These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court.

**(c) Original Appellate Court Jurisdiction.** The Supreme Court and the Court of Appeals have original concurrent jurisdiction in personal restraint petition proceedings in which the death penalty has not been decreed. The Supreme Court will ordinarily exercise its jurisdiction by transferring the petition to the Court of Appeals. The Supreme Court has exclusive original jurisdiction in personal restraint proceedings in which the petitioner is under a sentence of death.

### Comment

These rules do not supersede and do not apply to habeas corpus proceedings initiated in the superior court pursuant to RCW 7.36.040.

*The subcommittee agreed that the above amendments would make the rule simpler and more intelligible to pro se litigants. The subcommittee also agreed that the reference to former procedures was no longer necessary, as those procedures have been superseded for several decades.*

#### **RULE 16.4 PERSONAL RESTRAINT PETITION—GROUNDS FOR REMEDY**

**(a) Generally.** Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a “restraint” as defined in section (b) and the petitioner’s restraint is unlawful for one or more of the reasons defined in section (c).

**(b) Restraint.** A petitioner is under a “restraint” if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

**(c) Unlawful Nature of Restraint.** The restraint must be unlawful for one more of the following reasons:

(1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or a civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(7) Other grounds exist to challenge the legality of the restraint of petitioner.

**(d) Restrictions.** The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 ~~or 10.73.100 and 10.73.130~~. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

*The subcommittee agreed the reference to RCW 10.73.130 is no longer necessary, as that statute was enacted to clarify that RCW 10.73.090 and 10.73.100 only apply to petitions filed after July 23, 1990.*

## RAP 16.5 PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF

### (a) Court of Appeals.

(1) A personal restraint petition ~~should~~ may be filed with the Court of Appeals.

(2) If a petition falls within one of the categories specified in subdivision (b)(1), the Court of Appeals may transfer the petition to the Supreme Court.

### (b) Supreme Court.

(1) ~~If a personal restraint petition is filed in the Supreme Court, the Supreme Court will ordinarily transfer the petition to the Court of Appeals.~~ A personal restraint petition should be filed with the Supreme Court only in the following types of cases:

(i) A case in which the Court of Appeals lacks jurisdiction under RCW 10.73.140.

(ii) A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(iii) A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(iv) A case in which the death penalty has been decreed.

(2) The petition should include or be accompanied by a statement explaining the grounds for filing the case in the Supreme Court.

(3) If the Supreme Court determines that the case does not fall within one of the categories specified in this rule, the Supreme Court will ordinarily transfer the petition to the Court of Appeals

~~(2)~~ (4) If a petition is not transferred to the Court of Appeals, or has been transferred from the Court of Appeals to the Supreme Court, the determinations ordinarily made by the "Chief Judge" under rules 16.11 and 16.13 may be made by a commissioner.

*The subcommittee agreed that the above amendments would provide clearer guidance to litigants regarding where to file a PRP based on existing statutes and court rules, thus avoiding unnecessary delays in consideration of petitions that occur when a petition must to be transferred from the Court of Appeals to the Supreme Court, or vice versa.*

**RAP 16.7 PERSONAL RESTRAINT PETITION—FORM OF PETITION**

**(a) Generally.** Under the titles indicated, the petition should set forth:

(1) *Status of Petitioner.* The restraint on petitioner; the place where petitioner is held in custody, if confined; the judgment, sentence, or other order or authority upon which petitioners restraint is based, identified by date of entry, court, and cause number; any appeals taken from that judgment, sentence or order; and a statement of each other petition or collateral attack as that term is defined in RCW 10.73.090, whether filed in federal court or state court, filed with regard to the same allegedly unlawful restraint, identified by the date filed, the court, the disposition made by the court, and the date of disposition.

(2) *Grounds for Relief.* A statement of (i) the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, ~~(ii) why other remedies are inadequate,~~ and (iii) why the petitioners restraint is unlawful for one or more of the reasons specified in rule 16.4(c). Legal argument and authorities may be included in the petition, or submitted in a separate brief as provided in rule 16.10(a).

(3) *Citations to Court Documents.* If some of the evidence supporting the factual allegations is contained in the files of the superior court or the Court of Appeals, the petitioner should identify the documents needed for review and the case numbers under which they can be found. The appellate court may order that any court documents identified for review be transferred or transmitted to the court. If material evidence supporting or rebutting the petitioner's claims is not available to a party because it is in the possession of others, the party may file a motion for discovery. The procedures and standards of RAP 16.26 (discovery in capital cases) apply, except that the motion may not be filed before the petition has been filed. If the petitioner is indigent, the court may order the appointment of counsel for the limited purpose of pursuing specified discovery, unless prohibited by RCW 10.73.150.

(4) *Statement of Finances.* If petitioner is unable to pay the filing fee or fees of counsel, a request should be included for waiver of the filing fee and for the appointment of counsel at public expense. The request should be supported by a statement of petitioner's total assets and liabilities.

(4) (5) *Request for Relief.* The relief petitioner wants.

~~(5) (6) Oath. If a notary is available,~~ The petition must be signed by the petitioner or his attorney and verified substantially as follows under penalty of perjury. The verification may be in the following form:

~~After first being duly sworn, on oath, I depose and say: I declare under penalty of perjury under the laws of the State of Washington that I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true~~

or

~~After first being duly sworn, on oath, I depose and say: I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.~~

~~[Signature]~~

~~Signed this \_\_\_\_\_ [date] at \_\_\_\_\_ [place].~~

~~Subscribed and sworn to before me this \_\_\_\_\_ [date].~~

~~Notary Public in and for the State of Washington, residing at \_\_\_\_\_.~~

~~If a notary is not available, the petition must be subscribed by the petitioner or his attorney substantially as follows:~~

~~I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.~~

~~Dated this \_\_\_\_\_ [date].~~

~~[Signature]~~

~~If a notary is available and a petition is filed that is not verified, the appellate court will return the petition for verified signature and advise the petitioner's custodian to make a notary available verification.~~

~~(6) (7) Verification.~~ In all cases where the restraint is the result of a criminal proceeding and the petition is prepared by the petitioner's attorney, the petitioner must file with the court no later than

30 days after the petition was received by the court a document that substantially complies with the following form:

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this \_\_\_\_ [date]\_\_\_\_\_.

\_\_\_\_\_  
[Signature]

If the petitioner has been declared incompetent, the verification may be filed by the guardian ad litem. If a petition has been filed to determine competency, the verification procedure shall be tolled until competency is determined.

**(b) Standard Form.** The clerk of the appellate court will make the standard form of petition available to persons who are confined in state institutions and to others who may request the form.

**(c) Length of Petition.** The petition should not exceed 50 pages.

*The subcommittee agreed that requiring petitioners to state why other remedies are inadequate was an unnecessary and unhelpful requirement.*

*The subcommittee agreed that it would be helpful to litigants to give the appellate the power to order transmittal of specified court documents. The subcommittee also agreed that granting the appellate court the power to order specified limited discovery could obviate the need for expensive and time-consuming reference hearings.*

*The subcommittee also agreed that requiring notarization was an unnecessary burden on incarcerated inmates.*

## RAP 16.8 PERSONAL RESTRAINT PETITION – FILING AND SERVICE

**(a) Filing Fee.** A personal restraint petition will be filed by the clerk of the appellate court only if the statutory filing fee is paid, unless the appellate court determines that the petitioner is unable to pay the filing fee. The statute requiring payment of a fee for filing a petition for writ of habeas corpus is controlling.

**(b) Filing in Court of Appeals.** A personal restraint petition filed in the Court of Appeals must be filed in the division which includes the superior court entering the decision on the basis of which petitioner is held in custody or, if petitioner is not being held in custody on the basis of a decision, in the division in which the petitioner is located.

**(c) Deficient Petitions.** If the clerk of the appellate court determines that a petition submitted is in a form that does not conform with this rule or with rule 16.7, the petition should be filed and the clerk will direct the petitioner to correct the deficiency within 60 days.

**(d) Service of Petition.** If petitioner's restraint is imposed by the state or local government, the clerk of the appellate court will reproduce a copy of the petition and serve the petition on the officer or agency under a duty to respond to the petition. If petitioner's restraint is imposed by a person or agency other than the state or local government, the petitioner must prepare and serve a copy of the petition on the proper respondent.

**(e) Amendment of Petition.** The appellate court may allow a petition to be amended. All amendments raising new grounds are subject to the time limitation provided in RCW 10.73.090 and 10.73.100.

*The subcommittee agreed that a petition that is timely filed, but contains some formal deficiency, should not be ultimately dismissed as untimely so long as the deficiency is corrected within 60 days as ordered by the court.*

*The subcommittee agreed that the insertion of subsection (e) would provide helpful guidance to litigants, and is intended to incorporate the holding of In re Bonds, 165 Wn.2d 135 (2008), that the appellate court has the general authority to accept amendments to a petition, but that new grounds raised for the first time in an amended petition that is filed outside the one-year time bar do not relate back to the original petition, and will be time-barred unless they fall within an exception the time bar.*