



# WSBA

## COURT RULES AND PROCEDURES COMMITTEE

### Meeting Minutes

May 20, 2013

Committee Chair Hillary Evans Graber called the meeting to order at 9:40 a.m.

Members present: Chair Hillary Evans Graber, Roy Brewer (by phone), Dean Chuang (by phone), Anne M Cruser (by phone), Anthony DiTommaso Jr., Eric W. Eisenberg (by phone), Sean J. Flynn (by phone), Kailin James, Shannon Kilpatrick (by phone), Shawn Larsen-Bright, Roger A. Leishman, Nicole McGrath, Jeanie Mucklestone (by phone), Shannon Ragonesi (by phone), Ann Summers, Karen Denise Wilson (by phone), Judge Kevin Korsmo (by phone), Judge Blaine Gibson and Judge Rebecca Robertson.

Members excused from attending: Gene Barton, Leslie Clark, Paul Crisalli, Maureen M. Cyr (hiatus), David M. Iseminger, Dale Johnson, Kathleen Nelson, and Bryan Page.

Members who did not respond to meeting notice or attend meeting: Katharine Bond, Daniel Brown, Elizabeth A. Fraser, and David Stevens.

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

### Minutes

The April 15, 2013 meeting minutes were approved by consensus, with a few minor changes requested by Shawn Larsen-Bright and Kailin James.

### Old Business

There was no old business to discuss.

### New Business

*RALJ Subcommittee:* Subcommittee Chair Kailin James reported that the Subcommittee had a lack of turn out at their last meeting; the Subcommittee's next meeting is next week and she is hoping for a better turn out. The Subcommittee anticipates bringing one or two items in for a vote at the June meeting.

*Subcommittee X:* Mr. DiTommaso Jr. reported that the Subcommittee is reviewing GR 30, at the request of the Court, and some proposed amendments suggested by King County which relate to electronic filing and electronic service. The Subcommittee is also considering related proposed amendments to CR 5. Mr. DiTommaso Jr. explained that the process and the idea are simple but the language is more complicated, and the Subcommittee plans on having language for the Committee at the June meeting.

*RAP Subcommittee:* Subcommittee Chair Ann Summers gave some background to the Subcommittee's proposals. Many of the proposed rule amendments relate to Personal Restraint Petitions (PRPs).

Ms. Summers first reported on the proposed rule amendments suggested by the Court of Appeals, and presented the Subcommittee's proposed response to the BOG on those proposals. Ms. Summers informed the Committee that the Subcommittee made a couple of new changes to RAP 5.3(h) to address the time for seeking cross-review when a notice has been amended. The Subcommittee did not reach a consensus to support the substance of Rule 10.3 and Rule 18.1. The Subcommittee believes that Rule 10.10 is too restrictive and does not support it.

Judge Korsmo stated he is fine with all the proposed revisions and has no issue with Rule 18.1 not being supported. Judge Korsmo explained that Rule 18.1 was intended to be helpful for the counsel. Furthermore, Judge Korsmo expressed that the Court of Appeals will continue to advocate for its proposed changes to RAP 10.10(a) and (c) despite not receiving the Subcommittee's support. Judge Korsmo explained that the proposed Rule 10.10 is meant for cases that are on direct appeal. Mr. Leishman opined that the Subcommittee might have missed the point – direct appeal. Mr. Masters suggested that RAP 10.10 should be revisited and brought forth at another time. The Subcommittee revised its proposed response by taking out RAP 10.10, which will be revisited by the Subcommittee. After further discussion, the Subcommittee's revised response was unanimously approved for submission to the BOG.

The Committee next approved the following proposed rule amendments by consensus for submission to the BOG: RAP 5.3, 10.3 and 18.5.

The Committee then turned to the Personal Restraint Petition (PRP) rules. Ms. Summers explained that most of the pro se petitioners are in prison and are challenging their sentences, confinement, medicine, time served and convictions. The Washington Criminal Defense Lawyers (WACDL) brought the PRP rules to the table and the RAP subcommittee formed an Ad Hoc committee to review the PRP rules. The Washington Association of Prosecuting Attorneys (WAPA) made a counter proposal to WACDL PRP rules. Ms. Summers reported that mostly everyone in the Subcommittee agreed on the general principles: (1) the rules need to be as clear as possible; (2) the rules should reflect current practice; and (3) the rules should comply with the statutes that are in effect. Ms. Summers explained that the primary area of disagreement with WACDL is on discovery.

Judge Korsmo expressed that the Court of Appeals rules committee will not address these changes until the Committee has voted on the proposed amendments.

The proposed PRP amendments were discussed as follows:

- RAPs 16.3: pulled for further work by the Subcommittee.
- RAP 16.4: discussed, no further amendments were made to the proposed text.
- RAP 16.5: pulled for further work by the Subcommittee.
- RAP 16.7: The Committee made some changes to RAP 16.7(a)(3) “...contained in the files of ~~the superior court or the Court of Appeals~~ a trial or appellate court, the petitions should...” The Committee discussed the issues about the proposed rule change and discovery and how it will affect the process, and discussion regarding the “good cause” requirement.
- RAP 16.8: pulled for further work by the Subcommittee.
- RAP 16.8A: pulled for further work by the Subcommittee.
- RAP 16.9: pulled for further work by the Subcommittee.
- RAP 16.11: discussed, no further amendments were made to the proposed text.
- RAP 16.12: There was discussion regarding the “good cause” language. It was moved, seconded, and carried 9-1 to sever RAP 16.12 from the package for a separate vote.
- RAP 16.13: The Committee made some changes to RAP 16.13 “...the record is prepared, ~~except that~~ The record....”
- RAP 16.15 and 17.2: pulled for further consideration by the Subcommittee.

After discussion was completed, the proposed amendments to PRP RAPs 16.4, 16.7, 16.11, and 16.13 were unanimously approved for submission to the BOG. It was then moved, seconded, and carried 9-1 to approve the proposed amendment to RAP 16.12 for submission to the BOG. At the June meeting the Committee will consider the remaining proposed amendments and proposed amendments to RAPs 10.2 and 10.10.

*ESI Subcommittee:* Subcommittee Chair Shawn Larsen-Bright reported that the subcommittee has no updates

*Other new business:* Ms. Turner informed the Committee that before any items are brought forth to the BOG, the Committee needs to review and vote on everything at the June and July meeting. Ms. Turner and the Chair will report to the BOG and if the BOG has items that need to be addressed then the Committee will have a meeting in August; if not, the August meeting will be cancelled.

Mr. Masters thanked the Committee on behalf of the BOG and thanked the RAP for all their hard work and it is much appreciated.

Ms. Turner thanked the Committee and reminded everyone that the next meeting is on June 17, 2013.

The Chair thanked everyone for participating, and the meeting adjourned at 11:55 a.m.