



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes February 17, 2010

Co-Chair Lish Whitson called the meeting to order at 12:05pm.

Members present: Co-Chairs Lish Whitson and Justice Charles W. Johnson, Jean A. Cotton, Judge Blaine G. Gibson (by phone), Colleen A. Harrington (by phone), Lisa Hayden, (by phone), Peter J. Karademos (by phone), Ron E. Miles (by phone), Judge Jean A. Rietschel (by phone), and Judge Mary I. Yu. Also attending were Marc Silverman (BOG Liaison), Don Horowitz, Jane Morrow (WSBA Litigation Section), Carol Johnston (WSAJ), Jennifer Summerville (Northwest Justice Project), Elizabeth Turner (WSBA staff liaison) and Anna Schmidt (WSBA Paralegal).

The minutes were moved to the end of the agenda since not enough members had arrived at the beginning of the meeting for a quorum.

Discussion – Comments regarding the Statewide Family Law Rules Recommendations

Mr. Whitson asked Judge Gibson if he had had a chance to talk to anyone in SCJA leadership. Judge Gibson replied that he had not yet had an opportunity.

Mr. Whitson asked for a recap from the Family Law Subcommittee. Subcommittee member Peter Karademos stated that, in the last three years, he has had a lot of communications with Spokane judges and lawyers, as well as with the local bar associations regarding the subcommittee's work. Certain judges had made representations that they were generally in favor of this. They met with SCJA family law judges (including Commissioners Grovdahl, Ressa, etc.) in November, and were surprised that many of whom acted as if they'd not heard of the subcommittee's work.

Ms. Cotton explained that the Family Law Executive Committee has had a standing meeting every November with the SCJA Family Law Judges and that they updated them and gave them drafts of the proposed Family Law Civil Rules at each meeting. Mr. Karademos opined that, given the SCJA's reaction, the subcommittee wasted three years working on the proposed rules. He doesn't feel they've made much progress toward making changes. And now they're talking about model rules, which would only

give 39 counties the opportunity to enact 39 different versions of those rules (as opposed to statewide family law rules).

Justice Johnson disagreed, stating we now have a commitment from the SCJA. The SCJA appears to be more receptive to the Task Force's work. Justice Johnson stated that we need the SCJA "at the table" both politically and as a matter of process. The SCJA does appear to agree with the concept of unification and model rules, which is different from their past policy. Justice Johnson has spoken to Chief Justice Barbara Madsen regarding this. The SCJA's opposition to a proposed, published rule would normally result in the Supreme Court Rules Committee pulling the rule.

Mr. Silverman asked whether the controversy with the SCJA is over just the proposed Family Law Civil Rules, or is it lumped together with the other work completed by the Task Force on the civil rules. He questioned whether the Task Force would have greater success by separately attempting to work with the SCJA on the Civil Rules, and later revisiting the question of the family law rules. Mr. Whitson stated that the Task Force agreed to work simultaneously with both local family law rules and civil rules but that the family law rules are scattered more widely than other rules and consolidating them would largely cut down on the number of local rules. Ms. Hayden stated that it is significant that the SCJA supports uniform numbering of local rules and that this could lead into discussion of other issues.

Ms. Cotton continued her report: The Subcommittee has kept the SCJA in the loop on their work from day one. In November 2009, members of the Subcommittee did a presentation to the SCJA. They then received letters from individual judges that seemed very much in opposition from previous letters received. Jean Cotton, Lish Whitson and Elizabeth Turner met with Judges Deborah Fleck, Kitty-Ann van Doorninck, Kim Prochnau and Mary Yu in the Kent Regional Justice Center to go over what had happened. Ms. Cotton believes a communication gap exists between the judges with regard to the Subcommittee's intent and how much they were going to simplify the local rules. A great deal of work had been done by some of the local judges to assist pro se litigants, which they then made into local rules. Subcommittee members explained that they do not oppose assisting local judges with working on their local rules, but that doesn't mean they want to withdraw the subcommittee's work product.

Ms. Cotton stated some judges she spoke with did not share the opinion of the SCJA leadership, but these judges have also done a lot of work on their local rules and they don't want to lose control over their local rules. She stated that Task Force members who are supposed to represent certain groups, just like the judges on the Task Force, are not really spokespersons for those groups. This communication gap needs to be corrected on both sides. Ms. Summerville asked what type of power does the SCJA or this Task Force have to enforce change.

Judge Yu stated that this isn't new territory, especially for the SCJA. She hopes the Task Force keeps looking forward. Judge Yu stated the Task Force hit a major stumbling block, but believes the SCJA must be involved and has already made a

commitment to keep working on this issue. She had asked the SCJA to wait to do anything until after the Local Rules Task Force met. She remains optimistic. She stated that she only represents of herself (not of SCJA or King County), and only on civil rules (as opposed to family law), and she told Mr. Whitson as much when she first joined the Task Force. She doesn't have authority to speak on behalf of or bind SCJA to anything.

Mr. Karademos believes the Task Force should look at the difference between a model rule and a uniform rule. He opined that we need an understanding of that in order to move forward. Mr. Whitson disagreed stating the Task Force should be trying to find a way to reduce disparate rules and not get side tracked with the question of the difference between model rules or uniform rules.

Justice Johnson responded to Ms. Summerville's question stating that he is not sure the SCJA can prevent local judges from adopting their own local rules or would necessarily want that power. The SCJA would rather reach a consensus with local judges regarding this issue. Justice Johnson answered Mr. Silverman's question stating that now the Task Force has a more finite product in the proposed Family Law Civil Rules. If the SCJA doesn't buy into this concept, the SCJA is on the hook now to give us reasons why. The SCJA cannot claim that they were excluded from the process. The Task Force needs the SCJA's approval in order to ensure success.

Mr. Silverman asked whether the Task Force should move forward on a similar track as the Family Law subcommittee by putting together a set of model Civil Rules. Justice Johnson stated we first need someone appointed to the Task Force who can speak on behalf of the SCJA. Judge Yu stated that, while the proposed Family Law Civil Rules promulgates something, the Civil Rules is where the Task Force was going to get rid of those local rules that aren't consistent with the state rules. Those are two very different tasks.

Justice Johnson stated that some of the practices are consistent across county lines. If there is a consistency, then put those rules in the statewide court rules. But it's important to identify where consistencies exist. Ms. Cotton explained that the Family Law Subcommittee is a guinea pig – but there is one thing that is across the board the same: members of the Task Force volunteered to assist the local courts in helping the counties. The question is whether the Task Force has an invitation to come to the table to assist them.

Mr. Whitson asked whether the Supreme Court could enforce a moratorium on creation of local rules while the Task Force is completing their working. Judge Yu believes the February 9, 2010 letter from Justice Johnson and Judge Eitzen communicates that, and this letter was sent to every Superior Court judge. Justice Johnson concurred. He stated that he recently heard that the King County Bar Association Local Rules group was in the process of submitting a large number of local rules, and asked them to stop. This same scenario has occurred with the Pierce County Local Rules group. It's important for members of this Task Force to get the word out to these types of groups to

stop. Judge Yu stated that the SCJA gave a directive to every local judge asking them to please stop working on local rules.

Mr. Whitson explained that Judges Yu and Gibson were chosen because they are knowledgeable regarding rules, they represent large counties and medium size counties, and were from the west and east sides, respectively, of the state. Ms. Hayden stated that it would be important to include more commissioners and individuals who work with local rules. Ms. Turner stated that if the Task Force invited commissioners instead of judges, judges would feel slighted and there would be political fall out. Mr. Whitson reminded the group that Mr. Karademos and Ms. Cotton, current Task Force members, both act as court commissioners.

Mr. Horowitz noted that there is no ATJ representative and believes this is a mistake. Mr. Whitson stated that the Task Force welcomes ATJ involvement, and directed Mr. Horowitz to talk to WSBA President Sal Mungia regarding an appointment. Mr. Horowitz questioned whether the terms “consistent” and “uniform” were being used interchangeably. He would prefer consistency (versus uniformity) among the local rules. He believes it’s important for the Task Force to discuss the difference between those two words. He opined that having a Supreme Court order, or something authoritative, is the key to getting this to work. Being able to go to someone who is out of compliance, and explaining to them that you want to work with them to make them in compliance, has had positive results with other efforts. He has some recent good history of enforcing change by using the ATJ Technology Principles that the Supreme Court has endorsed by court order, and wonders if something similar would be successful here. The key is that the court must be authoritative.

Mr. Karademos pointed out that, in the proposed Family Law Civil Rules, there are only about eight rules that would apply statewide. The others are all reserved. Their presentation in November 2009 stated that they’re not opposed to local county rules. They just want the counties to clean them up and number them correctly. It was not their intention to impose a lot of family law rules on the counties.

Judge Reischel stated that if local county lawyers got involved with the Task Force and offered to assist the local judges, that that would be very helpful. Mr. Whitson stated that they’ve already gotten authority from the BOG to make that commitment. Ms. Hayden questioned whether there are some counties that would like to work with us as a pilot project. Mr. Whitson stated that Thurston County has already requested help (and is the only one to have responded so far).

In response to being asked whether he’d want to represent the SCJA if asked by them, Judge Gibson responded that we need to ask the SCJA to send us individuals who would actually vote on the proposed rules—in other words, people from the executive level of the SCJA-- to work with the Task Force. Like Judge Yu, Judge Gibson doesn’t speak on behalf of the SCJA or report to them. He feels it would be most helpful to have someone who is a representative of their executive committee.

Justice Johnson proposed a meeting, which would include those heavily invested in the Family Law Subcommittee and SCJA representative, to work through the proposed FLCR rules, provide education as to why these proposed rules were developed, and further discuss how the proposed rules could be improved upon. Mr. Whitson stated it would be helpful to have a timeline. Justice Johnson replied that the SCJA had given them a four to six month deadline. Justice Johnson reminded the Task Force to include the WSBA Court Rules Committee if it decides to make certain rules statewide. Justice Johnson proposed that as some counties have clubs to create new rules (and noted that he purposely chose to use the word “clubs”), perhaps having another club to eliminate rules would be helpful.

Ms. Morrow opined that a motivator is necessary...without some authority, there's no motivation to change. There must be some authoritative force behind it. Ms. Cotton liked the suggestion that Justice Johnson has made. She feels the president elect for SCJA, Steve Borning, might be one of the people to invite to the meeting. Ms. Cotton also reminded the Task Force that in smaller counties there often aren't clubs, or specific groups who create rules. Local Rules in those counties are often drafted by judges, administrators, or even by secretaries. Many counties that would be happy to have help, but without something to get them to prioritize this issue, they won't ask for it.

Mr. Whitson stated the SCJA agrees with us that there are inconsistent numbering and some superfluous rules when compared to the state rules. He asked Justice Johnson what the SCJA was planning to do about it. Justice Johnson stated the SCJA had decided to do nothing until this group, the Task Force, meets. Thus, his idea is to put together a group to meet with representatives of the SCJA. So Justice Johnson's next step is to convene a meeting with SCJA President Tari Eitzen to discuss, identify and resolve specific aspects of the proposed family law rules.

Judge Yu would hope the meeting isn't just about the family law rules. She feels this should be a long-term plan focused on both family and civil rules. Judge Yu opined that another letter from Justice Johnson and Judge Eitzen inviting every county to really review their local rules, would be very helpful. If we put a plan together to assist county by county, it would help. The mandate should be issued at the Spring Conference. When a meeting happens with Judge Eitzen, there should really be a plan to move forward. The group discussed the importance of Justice Johnson being at the meeting (and at the Spring Conference) to emphasize the importance of this issue.

Justice Johnson stated that chief Justice Barbara Madsen will be supportive. He pointed out that the most recent letter from SCJA President Tari Eitzen shows a huge change from earlier letters. It was suggested that another communication from Justice Johnson reminding local judges of a deadline for submitting explanations for where they are out of compliance with their local rules would be helpful.

Ms. Johnston stated that the Litigation Section had talked about the Local Rules a long time ago. She found that having an “agreed upon process” is a great recommendation. Also, having participation from all the stakeholders is very important.

Ms. Morrow commented that she thought the Supreme Court must approve all of the Local Rules, but they do not currently do so. She questioned whether anyone has oversight. Justice Johnson clarified that the Court doesn't actually approve local rules, they just publish them, and stated that they don't have the resources to review and approve all local rules before they are published. Ms. Turner reminded the group that part of what this task force has been charged with is developing a plan for implementation of its recommendations.

Mr. Whitson summarized what had been decided by the Task Force: Justice Johnson would convene a group which includes Judge Eitzen and those who could address the problems of these proposed Family Law Civil rules. Mr. Whitson then asked for a game plan to streamline working with the civil rules. Judge Yu stated that it's a top-down process: an invitation from Chief Justice Madsen would do this.

Ms. Cotton opined that utilizing the resources of the Spring Conference would be very helpful. Mr. Silverman opined that it would be helpful to identify which counties agree with the Task Force and which counties do not. Judge Yu repeated that a letter from Chief Justice Madsen would assist in getting this to occur – there needs to be a mandate. The directive is really a collaborative invitation to, together, improve our practices. Judge Yu pointed out that they first must pledge some resources. Mr. Whitson stated that no one group will have enough lawyers to fully do this across all counties – the Task Force must recruit volunteers from all the different stakeholder groups. Mr. Horowitz suggested that the law schools could also assist in this effort.

Mr. Whitson summarized: the time frame is April 25-27 (when the Spring Conference occurs at Suncadia Resort). Mr. Whitson stated that Chief Justice Madsen should be asked to send a letter asking local judges to tell us what their current local rules are and why they exist. Discussion ensued regarding getting this subject on the Spring Conference agenda. Justice Johnson also suggested breaking into four groups to look at the Civil Rules. Mr. Silverman reminded him that the Task Force has already done this and has a template (an Excel spreadsheet). The Task Force originally had three subgroups, one that reviewed the large counties local rules, one that reviewed the mid-size counties local rules, and one that reviewed the small sized counties local rules, plus the family law subcommittee. Ms. Cotton suggested that a volunteer from each subgroup be willing to attend the Spring Conference. Judge Yu stated that the bulk of the work would actually occur in the fall, although there will not be a fall conference this year.

Mr. Whitson will need to coordinate with the different litigation entities in the state and see what they're willing to do. If there could be representatives from the litigation entities who are willing to help judges review their local rules, Task Force members could assist those representatives to understand the work the Task Force has already done. Mr. Silverman stated he could easily assist judges in understanding the template that has already been put together.

Ms. Harrington agreed with the idea of identifying attorneys who are willing to help work with individual counties, but she believes we need to do more than just invite them.

Telling the counties who the contact person is and that this person will be contacting them soon is a better idea. Mr. Whitson disagreed pointing out that Chief Justice Madsen's letter must go out right away due to the deadline now in place. Mr. Whitson will be contacting everyone to ask for their input regarding volunteers.

Minutes

The June 2009 minutes were approved by unanimous vote with two minor corrections. The September 2009 minutes were approved by unanimous vote.

New Business

Ms. Harrington had requested [in an email to Assistant General Counsel Elizabeth Turner] if there is a way in which we can do webcasting for those who attend via telephone. Ms. Turner explained to the Task Force that the WSBA is currently doing training to set up broadcasting of meetings via a webcam. She believes this broadcasting of meeting will occur by April 2010, and that we will have the ability for the webcast to be interactive, so those who have webcams on their end will be visible and full participants in the meeting.

The meeting adjourned at 1:45pm