



WSBA

LOCAL RULES TASK FORCE

Meeting Minutes July 11, 2007

Co-Chair Lish Whitson called the meeting to order at 12:10 p.m.

Members present: Jean Cotton (by phone), Judge Blaine Gibson, Colleen Harrington, Lisa Hayden, Barbara Miner, Gail Nunn, Marc Silverman, and Judge Mary Yu. Members absent: Justice Charles Johnson, Judge Michael Cooper, Randy Gordon, Jo Jackson, Judge Robert McSeveney, Narda Pierce, Steve Scott, and Jeff Tilden. Also attending: Peter Karademos (BOG Liaison), Douglas Ende (WSBA staff liaison), Nan Sullins (AOC Liaison) and Anna Schmidt (WSBA Paralegal).

Preliminary Matters: Mr. Whitson appointed a Small County Subcommittee and requested that Judge Gibson serve as the chair. The subcommittee will consist of Judge Yu, Judge McSeveney, Judge Cooper, and Jo Jackson. Discussion turned to the appropriate formatting of subcommittee reports. Mr. Whitson referred the Task Force to the meeting materials, which include draft reports submitted by the Large County Subcommittee and the Medium County Subcommittee. The merits of narrative summaries and excel spreadsheets were evaluated, and Mr. Whitson praised the work of both subcommittees.

Judge Gibson noted that there are a number of issues inherent in each subcommittee inquiry, and inquired whether these issues could be evaluated and reported on separately: (1) does the local rule numbering system conform to that of the state rules; (2) do individual local rules contradict the state rules in substance; (3) are individual local rules “traps for the unwary.” Mr. Whitson encouraged each subcommittee to find the best way to present its materials, but cautioned the subcommittees to be mindful of the importance of consistent formatting. The Task Force reached consensus that each subcommittee will adapt its data to a format conducive to its presentation, but ultimately each subcommittees will have to conform its data to a consistent format for presentation in the final report of the Task Force.

Mr. Whitson emphasized the desire for transparency during the work of the Task Force and again reminded the members that if additional participation is needed at the subcommittee level, the subcommittees should seek out appropriate individuals. Judge Yu, speaking as the SCJA president, reported that the superior court judges recognize the problem being addressed by the Task Force and have a genuine desire to make it easier for lawyers to practice law.

Mr. Whitson reported that Phil Talmadge has resigned from the Task Force due to a busy schedule and that a replacement member will be appointed if necessary.

Possible dates for the next meeting were discussed, and a tentative date of October 9, 2007, was selected. Ms. Schmidt will check on conference room and member availability for that date.*

Subcommittee Reports: In the absence of Subcommittee Chair Narda Pierce, Ms. Harrington referred the Task Force to the preliminary report of the Medium County Subcommittee, and noted that the subcommittee was surprised to discover the morass of local rules in these counties.

In the absence of Subcommittee Chair Steve Scott, Mr. Silverman presented the preliminary report of the Large County Subcommittee. The Subcommittee chose to use a code/legend format in combination with a narrative presentation, which might later be combined with the template format used by the Medium County Subcommittee. Mr. Silverman noted that the Subcommittee's plan is to remove the actual text of the local rules from the narrative. Mr. Silverman further noted that the subcommittee members agreed that the idea of a case schedule is a good one and should be considered for statewide adoption. Discussion and debate ensued about whether rule concepts that work for large counties should necessarily become standard practice across the state, and it was pointed out that not every county has the budget to implement an idea that works for a large county. Judge Yu opined that each county is entitled to a degree of local culture and control, but it would still be useful to have uniform model rules available for use by any county as a local option. Mr. Whitson observed that if implementation of a Task Force recommendation involves budgetary and resource issues, a solution may be to seek legislative participation. Ms. Miner explained that King County cannot afford not to have case schedules, and noted that there is a statewide computer system that should be available in January 2008 to assist the courts with caseload management. Ms. Miner pointed out that Jan Michels and Judge Armstrong are both experts in the area of caseload management and could assist the Task Force on that issue.

On behalf of the Family Law Subcommittee, Ms. Cotton and Ms. Hayden asked if the subcommittee should focus on the Civil Rules exclusively or should also include the Mandatory Arbitration Rules, Special Proceedings Rules, GAL rules, and General Rules, as those rules sets often include specific local variants applicable in family law proceedings. Mr. Whitson noted that, in general, the Task Force will not address rules other than the Civil Rules, but the family law subcommittee may choose to address important MAR, SPR, or GR variants on a case by case basis, particularly where such a variant might be a trap for the unwary. The subcommittee should differentiate between

* Reporter's Note: The next meeting of the Task Force was subsequently scheduled for October 11, 2007, from noon to 3:00 p.m.

those which are consistent in all counties with those which are different, and report on whether the differentiation is good or not.

Approval of Minutes: Ms. Hayden requested that her first name always appear as “Lisa” in the minutes. The minutes were approved as submitted by consensus.

Good of the Order: Judge Gibson raised the issue of existing CR 83 and suggested that a mechanism may be needed for enforcing its requirement that local rules be not inconsistent with the state rules. He observed that the only enforcement mechanism at this time is a party’s appeal challenging application of a local rule. Mr. Whitson noted that there is no support at the Supreme Court for “policing” adoption of local rules, but another available solution is informally working with local courts to point out problems and inconsistencies and assist them in clarifying rules as needed. Ms. Hayden and Judge Gibson both added that inconsistency is not always a bad thing. Judge Gibson noted that when King County elected to impose limits on interrogatories, the WSBA Court Rules and Procedures Committee recommended taking no statewide action in order to give local jurisdictions a chance to experiment with the idea and see if it would work. Judge Yu pointed out that the local rules issue is just a small part of a larger question that ought to be discussed as to whether Washington should adopt a uniform court system. Discussion and debate ensued about whether local rules have proliferated unnecessarily. Some present opined that local rules are adopted merely for the convenience of judges and court administrators without appropriate input from practicing lawyers or the existence of other checks and balances. Others opined that local rules are adopted, in consultation with local bar members, as a rational response to the needs of individual courts with differing resource limitations. Mr. Whitson reminded the Task Force that it is assigned the job to evaluate potential ways to simplify local rules for practitioners while respecting the administrative need for local control and autonomy.

The meeting was adjourned at 1:30 p.m.

Minutes prepared by:

Douglas Ende, Staff Counsel to LRTF
Anna Schmidt, WSBA Paralegal