



# WSBA

## LOCAL RULES TASK FORCE

### Meeting Minutes September 17, 2008

Co-Chair Lish Whitson called the meeting to order at 12:08pm.

Members present: Justice Charles W. Johnson (Co-Chair), Jean A. Cotton, Judge Blaine Gibson, Colleen A. Harrington (by telephone), Lisa Hayden (by telephone), Ron E. Miles, Gail B. Nunn, Narda D. Pierce (by telephone), Judge Jean A. Rietschel (by telephone), Marc L. Silverman, Jeffrey I. Tilden, and Judge Mary I. Yu. Also attending: Peter J. Karademos (BOG Liaison), Salvador A. Mungia (BOG Liaison), Bob Welden (WSBA General Counsel), Jan Michels (Ex Officio Priore Suo), Nan Sullins (Supreme Court Liaison), Elizabeth Turner (WSBA Staff Counsel), and Anna Schmidt (WSBA Paralegal).

Call to Order/Preliminary Matters: Ms. Sullins and Mr. Mungia noted a few corrections to the minutes. The meeting minutes of July 9, 2008, were approved by consensus as corrected.

Discussion of Local Rules Oversight: Ms. Michels drafted a discussion memo regarding oversight, edited by Ms. Sullins and Mr. Welden. The memo begins by stating that, under CR 1 and CR 83, local Superior Courts are allowed to make and amend local rules consistent with the Supreme Court Rules. The purpose of oversight is to keep the local rules from migrating too much away from the state rules. Oversight could also result in the development of expertise in the area of local rules. The memo lists the different groups who have interest in the local rules and lists several possible models for oversight, although the Supreme Court ultimately has authority for the oversight. Ms. Cotton opined that the DMCJA would not be happy if the SCJA had oversight of their local rules; the Task Force decided to remove Option D (Supreme Court delegated oversight authority to SCJA) as well as Option C (Board of Judicial Administration oversight).

Justice Johnson reported a lukewarm reception at the Supreme Court regarding the Task Force's work; the Chief believes that improvements to the local rules have already begun. So far, the Court has not seen copies of the Local Rules Task Force Reports, only a first draft of the Preamble. Justice Johnson suggested that an easy solution might be writing a letter to all those who submit local rules stating that there's a problem with consistency and then having those who create the rules solve the issue themselves. Ms. Sullins reported that, under provision b in GR 7, courts may informally submit a copy of their local rules to her [the Administrative Office of the Courts] for comments as to the rules conformity in number and format to the Official Rules of Court, and she will look them over and provide guidance in the form of suggestions. This occurs very rarely – perhaps seven times per year.

Judge Rietschel questioned whether the Task Force would focus on Municipal and District Courts' local rules and Mr. Whitson explained that they will be considered based on whether the Task Force has the time and the authority given to them by the BOG.

Discussion ensued regarding the knowledge of those submitting the rules, the need for an entity or individual with specific expertise to review submissions, and past proposals of where to nest such an entity or individual (sixteen years ago, the proposal was to nest oversight with the Best Practices Committee of the SCJA). Mr. Silverman suggested that someone other than the judges creating the rules should vet them. The members discussed different possible options. Mr. Silverman opined that the WSBA Court Rules & Procedures Committee might be uniquely positioned to do this because that group is composed of judges, lawyers, and representatives of special interest groups. Judge Gibson opined that, once the rules have been cleaned up, it may only require one person to review new rules for a few hours a week and then make suggestions to the persons submitting the rule. He suggested something similar to the WSBA ethics hotline. Ms. Hayden suggested that having more than one person reviewing the rules may be a better idea because different minds can arrive at different conclusions. Discussion turned toward creating a procedure where comments can be considered regarding newly proposed local rules and a procedure where local rules can be challenged. Judge Gibson clarified that the role of any group performing oversight would be to clean up the rule language and warn of unintended consequences, not to prevent a local rule from existing. Members discussed whether the entity performing oversight should act in the role of gatekeeper in order to eliminate rules that are unacceptable.

Justice Johnson broke the issue down to two problems: The structure of the local rules, such as consistency in the numbering, and the substance of the local rules. He felt the first problem would be easier to solve through a letter to the proponent – that is, allowing the proponents to solve their own issues of consistency. The second issue is much more difficult and would probably be best solved by proposing a set of model rules. He opined that an oversight committee should be created, made up of those individuals most active in every part of their own county, and charged with reviewing their rules and finding a solution. Ms. Nunn pointed out that they have already reviewed all the local rules for family law, and new rules have already been adopted since they did their research. Discussion ensued regarding the idea of a contracted lawyer visiting each county and making suggestions regarding changes to their local rules. Ms. Hayden asked whether this was an expense the Bar Association would take on and Mr. Mungia replied that it would be money well spent if it followed a certain model. Mr. Mungia pointed out that the big question is how to prevent future rules from migrating too far from the state rules. The discussion continued regarding getting permission from the BOG to extend the life of the Local Rules Task Force in order to continue the clean-up process and possibly expand the Task Force's role. Mr. Mungia reminded the group that their current role is to put forth recommendations. Justice Johnson suggested that he will try to get feedback from his colleagues to bring back to the group.

Family Law Subcommittee Report: Mr. Karademos, Ms. Cotton, and Ms. Nunn presented the Family Law Subcommittee's report. Ms. Nunn reported that, as Task Force members go through the report, they'll see notes of issues that the Subcommittee could not resolve. The report is not all-inclusive and counties can go back and insert more under particular rules. Ms. Nunn pointed out that the Family Law rules affect a large populous because of the high divorce rate and because of the large number of pro se litigants. When questioned which areas may be the most controversial, Ms. Hayden opined that page limitation may be an issue as well as the issue of the courts ability to force litigants to go to a facilitator or mediation. Ms. Hayden explained that this process decreases the court's workload, but can be hard on litigants and create a delay in the matter. Judge Gibson noted that some counties cannot afford to provide free facilitators. Discussion ensued regarding vetting the report and getting feedback from counties on whether local rules exist that absolutely don't fit anywhere in the current template.

New Business: Discussion ensued whether an interim report should be sent to the BOG. Mr. Whitson stated that the last interim report he presented to the BOG was in December. Ms.

Michels suggested including revisions to their charter with the report. Mr. Mungia suggested making the report the final report. Mr. Whitson suggested that Justice Johnson provide him with a letter to be read at the BOG meeting stating that past attempts have failed due to lack of follow-up. Ms. Michels, Ms. Turner, Mr. Whitson and Judge Gibson will work together to integrate the following pieces into a final version:

- Mr. Gordon's Preamble (along with the memo drafted by Jan)
- Judge Gibson's report
- the Family Law Subcommittee reports

They will attempt to include the all county spreadsheet and any preliminary reports if possible. Ms. Hayden suggested that they put in a disclaimer since local rules change so fast that the research may not be reasonably up-to-date. Mr. Whitson announced that a final version will be put together and sent to all the members prior to being sent to the BOG. The goal will be to have the final report on the BOG's December agenda.

Next Meeting Date: The Chairs suggested having the next Local Rules Task Force meeting on October 22, 2008 [that meeting date has since been rescheduled to October 29, 2008].

Meeting adjourned at 2:12 pm.