

# **Local Rules Task Force: Conclusions and Recommendations Regarding Local Civil Rules and Family Law Rules**

**Co-Chairs: Honorable Justice Charles W. Johnson and Lish Whitson**

**Presented to WSBA Board of Governors  
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## **I. Executive Summary.**

**A. The Task Force.** The Local Rules Task Force was created to: (1) review the purpose and function of local rules; (2) determine the effect of local rules on courts, litigants and lawyers; and (3) suggest possible means to mitigate any detrimental effects of local rules. The Task Force worked for 18 months to complete this charge.

**B. Concerns.** Anecdotal information and complaints from lawyers raise concerns about local rules varying substantially from county to county, both in terms of content and numbering. The sheer volume of local rules, combined with commingling and lack of uniformity, are causing problems for litigants by making the rules more difficult to understand and follow, creating traps for the unwary and increasing the cost of litigation. There is currently no mechanism for assuring the uniformity of the local rules or for the systematic approval, review, or elimination of local rules from county to county.

The civil trial lawyers on the task force, representing a significant number of trial lawyers statewide, were virtually unanimous in their view that there was no need for local rules. A substantial majority of trial practitioners disfavor any local rules beyond those narrowly tailored to docket management.

**C. Findings.** The Task Force's review of the local rules of all counties revealed the following problems:

- **Improper Numbering** – The numbering of local rules does not track with the Civil Rules.
- **Commingling** – Local rules governing civil, family law, criminal, and juvenile cases are mixed together.
- **Unnecessary Repetition of State Court Rules** – Local rules repeat state civil rules or statutes.
- **Outdated** – Some local rules are outdated, referencing obsolete technology, procedures, etc.
- **Formatting Requirements** – Local rules differ with regard to the format of pleadings, forms, page limitations, and brief requirements, some with procedurally significant impacts.

- **Confirmation Requirements** – Rules differ respecting confirmation of hearings.
- **Inconsistent with State Rules** – Local rules appear to contradict the statewide rules.
- **Case Management Philosophy** – Courts differ in their philosophies regarding management of civil cases, ranging from “micromanagement” of case schedules to no specific case management rules.
- **Good Rules** – A few local rules embody good and sound practice and should be considered for adoption on a statewide basis.
- **No Periodic Review** – There is no system for regular or routine review of local rules as to necessity, currency, or conformity with current Civil Rules and legislation.
- **Oversight Needed** – There is no mechanism for statewide oversight of local rules to assure they follow either CR 83 and the findings and recommendations of this Task Force.

#### **D. Recommendations.**

1. The Supreme Court should direct that each county’s Superior Court review and “clean up” its current local rules.
2. The local courts should be assisted with this clean-up effort.
3. During this “clean-up” phase, a moratorium on the promulgation of new local rules should be imposed.
4. A new, uniform set of separate statewide Family Law Rules should be promulgated.
5. Local rule oversight should be implemented by the Supreme Court, which should include a program for the systematic review, revision, and retirement of local rules, including a clear delegation of responsibility for performance of these functions.
6. The charter of the Task Force should be extended and revised to assure ongoing attention to the implementation of the proposed recommendations.

7. Consideration should be given to expanding the Task Force charter in terms of scope and time, to include addressing local rules other than civil and family law rules, possible drafting of statewide “local” rules, and oversight and implementation of the initial charter and subsequent expansions, if deemed necessary.
  8. Outreach to Superior Court bench should continue.
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## **II. Introduction.**

**A. History of Local Rules Task Force Charter.** In the early 1990s there was one significant effort to address the proliferation of local court rules and their effect on the administration of justice. Former Chief Justice Keith M. Callow proposed abrogating the authority of individual courts to adopt local court rules, urging all courts to operate under uniform local court rules statewide. The committee formed as a result of this effort (the Local Rules Coordinating Committee co-chaired by Justice Charles W. Johnson) drafted a set of uniform model local court rules. The committee's final report, including the model court rules, was presented to the Supreme Court but the model local court rules were not adopted by any of the state Superior Courts.

In 2006, a coalition of eight Washington State Bar Association sections asked the WSBA Court Rules and Procedures Committee to consider the impact of the proliferation of local rules on litigants and their counsel. The coalition recommended abolishment of all local rules with the exception of those rules governing docket management. The Court Rules and Procedures Committee suggested to the Board of Governors that a special task force be convened to evaluate this issue. In the fall of 2006 the WSBA created and chartered the Local Rules Task Force (“the Task Force”) and by early winter 2007 appointed its co-chairs and members.

The Task Force consists of representatives of various stakeholders concerned with the proper promulgation, amendment, and application of the local rules of Superior Courts, including court administrators, judges, and lawyer-practitioners. The practitioner group has been augmented by representatives of the family law bar, whose procedures have given rise to a distinct body of rules. Practitioners include members of the trial bar from both the public and private sectors. Jurists include both current and former members of the bench. The Task Force is co-chaired by Supreme Court Justice Charles W. Johnson and attorney Lish Whitson.

**B. Charter.** The Task Force was created to review the purpose and function of local rules; the impact of local rules on courts, litigants (both pro se and represented) and the trial bar; and possible means to mitigate the detrimental effects of the ever-increasing number of local rules. The Task Force was charged with reviewing the model local rules and practices in other states with non-unified court systems to develop recommendations on possible improvements or modifications to Washington’s local rulemaking process and authorizations, in addition to looking at the work product of the earlier efforts in this state to stem the proliferation of local rules. In discharging its mission under this Charter, the Task Force was mindful of the directive in Rule 1 of the Superior Court Civil Rules that the court rules “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”

**C. Legal Authority Underlying Creation of Local Rules.**

State Constitutional Authority Art. IV, §24 [Rules for Superior Courts] of the Washington State Constitution provides:

The judges of the superior courts shall, from time to time, establish *uniform rules* for the government of the superior courts. (Emphasis added)

Case Authority. Court interpretation of the foregoing Constitutional provision in *State v. Superior Court for King County*, 148 Wash. 1, 267 P. 770 (1928) supports the conclusion that the purpose of this provision:

. . . is to insure *uniform rules* of minute procedure and should be construed, *not as grant of power to make broad and general rules, but as a limitation upon courts, requiring that customary rules having to do with minutiae of court government should be uniform in character*, so that attorney and client are not hampered by finding petty rules in each court differing according to the views of the particular judge who presides over the tribunal. (Emphasis added)

Statutory Authority. RCW 2.04.190 [Rules of pleading, practice and procedure generally] provides:

*The supreme court shall have the power to prescribe from time to time the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rules the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior*

*courts, and district courts of the state. In prescribing such rules the Supreme Court shall have regard to the simplification of the system of pleadings, practice and procedure in said courts to promote the speedy determination of litigation on the merits. (Emphasis added)*

Court Rule Authority. Civil Rule 83 provides:

Each court by action of a majority of the judges may from time to time make and amend local rules governing its practice *not inconsistent with these rules*. Local rules shall be numbered and indexed in a manner consistent with the numbering and index system for the Civil Rules. (Emphasis added)

Court Authority. The courts also have an inherent authority to manage the flow of cases and to assure timely resolution of disputes.

County Clerks Authority under RCW 2.32.050, "Clerks Duties". Clerks' practices are governed by statute and parallel the Court's authority to govern case flow and administrative practices. Clerks have the authority to set administrative practices regarding financial transactions, filing procedures, and required clerk's action documents.

**D. Concerns.** Anecdotal information and complaints from lawyers raised the following concerns about local rules:

- Local rules vary from county to county, both in terms of content and numbering.
- Local rules are often created in reaction to specific incidents. They commonly persist long after their usefulness, without being reviewed or repealed.
- Often, civil, criminal, and family law rules are commingled in a single set of local rules.
- The sheer number of local rules, combined with commingling and lack of uniformity, cause problems for litigants by making the rules more difficult to understand and follow, creating traps for the unwary.
- The burden and cost placed upon counsel and litigants required to comply with different local rules in each county increases the cost of litigation, which has the effect of reducing access to equal justice.

- In some counties, failure to follow local rules can result in the loss of substantive rights.
- Some local rules, rather than being purely procedural in nature, contain matters of substantive law.
- Some counties include statewide rules, statutes, and even case law in their local rules.
- There is currently no mechanism for assuring the uniformity of the local rules or for the systematic approval, review, or elimination of local rules from county to county.
- Clerks and Administrators differ in their opinions of the utility of their local rules.

**E. Proper Use of the Local Rules.** Local rules are intended to establish administrative procedures which allow courts to make the most efficient use of their staff, judicial time, and physical resources to deal with their particular case loads. However, there are a number of constraints on local rules. They must be drafted to secure a just determination of every action (CR 1), numbered consistently with the statewide rules (CR 83), and not conflict with statutes, statewide rules, or case law. They should not create traps for the unwary. They also should not merely repeat statutory law or statewide rules. In short, local rules must avoid creating more problems than they solve.

### **III. Findings Underlying Task Force Recommendations.**

The Task Force has initially focused its efforts on civil and family law local rules. Most Superior Courts have local rules governing family law, but there are no corresponding statewide rules. For this reason, a separate subcommittee was formed to review all family law local rules and to make suggestions for how those rules might be simplified and made more uniform. Meanwhile, other subcommittees reviewed all the Superior Court local civil rules.

The subcommittees on local civil rules identified several recurring problems which they believe are an impediment to access to justice and developed recommendations for the mitigation of these problems. By citing examples, the Task Force does not intend to offend or to be unduly critical of any Superior Court. In fact, every Superior Court in the state had at least some local rule that could prove problematic. A spreadsheet compilation of all the problems with the local rules of all Superior Courts is attached to this report. In generating this report the Task Force used the 2007 version of the *Washington Court Rules - Local* published by Thomson - West. However, it is important to note that there have been additional changes in many counties' local rules since publication of

the 2007 court rules, and there are probably even more new local rules under consideration around the state as you read this report.

## **A. Local Civil Rules: Review and Recommendations**

**1. Improper Numbering.** Superior Courts are allowed to adopt local rules pursuant to CR 83, which states:

CR 83(a). Local Rules of Court

(a) *Adoption.* Each court by action of a majority of the judges may from time to time make and amend local rules governing its practice not *inconsistent with these rules*. Local rules shall be numbered and indexed in a manner consistent with the numbering and index system for the Civil Rules. (Emphasis added)

Virtually no county has fully followed the state Civil Rule format. This makes it extremely difficult for litigants and attorneys to find the rules that may apply to their cases.

Examples: Adams, Asotin, Columbia, Garfield, Grant, Okanogan, Pacific, Wahkiakum, and Walla Walla Counties, are among the counties that have local court rule numbering systems which are completely unrelated to the numbering system for the Civil Rules. Other counties have numbering systems that only partially match up with the Civil Rules.

**2. Commingling.** The local rules of many counties mix together rules governing civil, domestic, criminal, and juvenile cases. This commingling increases the difficulty litigants have locating the rules that apply to their particular case.

Examples: Asotin, Columbia, Garfield, Grant, and Okanogan Counties, and possibly others, have a single set of local Superior Court Rules that govern civil, criminal, and juvenile cases.

**3. Unnecessary/Repetitive of State rules or statutes.** Many counties have local rules that merely repeat civil rules or statutes. Whether such rules should be eliminated poses a policy question that perhaps is best addressed by the Supreme Court. Should local rules be minimized by limiting them to matters not addressed by statute or the civil rules, or should local rules include all relevant information so as to assist pro se parties who might not be aware of the applicable statutes and statewide rules?

Example 1: Grant County LR 5(a)

Civil Cases. A pretrial conference may be conducted in civil cases in the manner, and for the purposes, set forth in CR 16.

Comment: Since this language merely cross-references CR 16, is it necessary?

Example 2: Chelan County LR 7(b)(C)

Notes for Motion Calendar; Time for Filing. Any party desiring to bring any motion prior to trial, other than a motion for summary judgment, must file with the clerk and serve all parties and the Judge assigned to hear the motion or the Presiding Judge at least five (5) court days before the date fixed for such hearing.

Comment: This language merely duplicates what is already contained in CR 6(d).

**4. Outdated.** Other counties have local rules that are outdated, referencing obsolete technology, procedures, etc. This increases the difficulty litigants have in complying with rules applicable to their particular case.

Examples:

Local Rule 10 in both King and Pierce Counties advert to use of “onion skin” paper or “carbon copies” when general requirements of legibility and ability to be scanned would suffice. Local Rule 10 in Snohomish County has been completely repealed, suggesting that such specific and outdated formatting requirements may not be needed.

**5. Formatting Requirements, Page Limits, etc.** Different counties have different rules regarding the format of specific pleadings, including use of certain forms and page limitations. Some also have requirements for bench copies of briefs, while others do not. This variance among counties may cause some confusion for multi-county practitioners. More importantly, some local rules provide penalties for failure to follow formatting requirements, creating serious potential traps for the unwary.

Example 1: Benton and Franklin Counties LCR 5

Requires bench copies of all briefs, declarations, affidavits, and other supporting written documentation pertaining to trials, summary judgment motions, and any other motions (including domestic relations), to be

delivered to the Court Administrator not later than two court days prior to the scheduled hearing.

Example 2: King County LR 7

Requires motions to be combined in one document with the supporting memorandum, imposes page limits, and sets formatting standards.

**6. Confirmation Requirements.** Some counties require confirmation of certain types of hearings. Failure to confirm a hearing can result in the hearing being stricken. The lack of uniformity among the counties regarding confirmation requirement creates confusion for multi-county practitioners, and is a trap for the unwary.

Example 1: Clallam County LCR 77(k)(5)

Requires all motions on the civil calendar to be confirmed with the Court Administrator by noon of the second day before the motion is to be heard. If the matter is not confirmed, the court has discretion whether or not to hear the motion.

Example 2: Grays Harbor LRC 7(b)(5)(D)

Any matter noted on the Monday afternoon docket will be stricken from the calendar unless the Court Administrator is notified in person or by telephone that the matter is to be continued to a date certain or that it is ready to be heard as scheduled. The matter must be confirmed no sooner than the Tuesday before the hearing and no later than noon on the Thursday prior to the hearing.

Example 3: Snohomish County LR 40(d)(1)

Each attorney of record or party pro se in a case set for trial is required to jointly or separately confirm, no sooner than 12 noon of the first court day of the week and no later than 12 noon of the last court day of the week two weeks prior to the trial date, in such written or electronic form as approved by the court. The court may strike the trial date and may impose sanctions and/or terms against the parties or counsel for failure to so confirm.

**7. Inconsistent with State Rules.** Some counties have adopted local rules that may contradict the statewide rules, in violation of CR 83. In most cases, whether a specific local rule does contradict a statewide rule may be debatable. Local rules that contradict statewide rules create potential traps for attorneys.

Example 1: Ferry, Pend Oreille, and Stevens Counties LR 6

Requires motion papers be filed within six court days before the hearing and responsive papers to be filed two days before the hearing. Pierce County has a similar rule (PCLR 7).

Comment: CR 6 requires motions be submitted five days before a hearing and responses to be filed one day before the hearing.

Example 2: King County LR 26(d)

Limits the number of depositions, interrogatories, and requests for production parties may use absent a stipulation or court order.

Comment: The statewide discovery rules do not contain any limitations on the number of depositions, interrogatories, and requests for production parties may use, although they do provide for protection orders in certain circumstances. Query whether a local rule can establish such limits in light of CR 83.

Example 3: Chelan and Douglas Counties LR 37(f)

Requires discovery responses to be completed 35 days before trial and exposes litigants to potential sanctions on failure to do so.

Example 4: Jefferson County LR 12.1

Requires a party wishing to assert the protection of the federal bankruptcy laws to file a copy of the bankruptcy court notice of commencement of case, serve it on all parties, and provide a copy to the assigned judge and to keep the court informed as to the status of the bankruptcy case.

Comment: CR 12 does not require such filing and grants no authority to the court to impose such a requirement. Obviously, a bankruptcy precludes the court from assuming jurisdiction over a case in most circumstances.

**8. Case Management.** Courts differ in their philosophies regarding management of civil cases. A number of courts have detailed case management local rules that set schedules for every stage of a civil case, set discovery deadlines, and require one or more pre-trial hearings. Other courts have no case management rules, leaving it to counsel to decide whether to request any type of scheduling order. Regardless of whether one feels that case management rules are a good idea, litigants are faced with different rules in different counties.

Example 1: Benton and Franklin Counties LCR 4

Requires the party who files the initial pleading to serve a case schedule on all other parties. The case schedule specifies exactly how much time is allowed between 18 separate stages of the litigation. At least two, and possibly three, hearings are required before trial.

Example 2: Pierce County PCLR 1

Requires the party who files the initial pleading to serve a case schedule on all other parties. The case schedule specifies 15 pre-trial stages of the litigation, including two, and possibly three, pre-trial hearings. The plaintiff must request that the case be given a “track” assignment of expedited, standard, or complex. The track assignment determines the amount of discovery allowed absent court order and the length of time between pre-trial stages. The rule authorizes the court to impose sanctions on the parties or attorneys for failure to comply with the case schedule.

**9. Good Rules.** In the course of examining the local rules of all counties, the judicial members of the Task Force identified a few local rules they thought were good ideas. Such rules should be considered for adoption as state rules.

Example 1: Snohomish County SCLCR 7(b)(1)(A)

Prohibits a party from presenting a motion to a judge when the same motion has previously been ruled upon by another judge, unless the prior ruling was made without prejudice.

Example 2: Cowlitz County Local Rule 11

Requires a pro se party to file a notice of appearance that includes his/her mailing address, street address, and telephone number where service of process and other papers may be made. It also requires a pro se party to advise the court and other parties by written notice of any changes of address and/or telephone number.

Example 3: Thurston County LCR 11(c)

When a pro se party physically appears in court without filing a written pleading or other paper, the clerk shall cause to be filed a special notice containing the mailing address, street address, and telephone number where service of process and other papers may be made.

Example 4: Yakima County Local Rule 59

Any motion for reconsideration not heard within 30 days of the written decision is deemed denied unless otherwise ordered by the court. The judge to whom the motion is assigned first determines whether the motion is to be heard on oral argument or on briefs. Oral argument is not allowed unless requested by the court.

Recommendations respecting the Local Rules are included in Overall Task Force Recommendations in Section 5 below.

## **B. Family Law Rules: Review and Recommendations.**

As noted above, there is often cross-over between family law rules and civil rules at both the state and local levels, because family law cases are also civil law cases. This forces family law practitioners and pro se litigants to not only be cognizant of local rules that are clearly identified as family law local rules, but also of local civil rules containing provisions applicable to family law cases. In addition, both practitioners and pro se litigants must also keep in mind state Civil Rules in order to find all the rules that may apply to their family law case.

All local rules were separately reviewed as they related to family law matters, again using rules as they existed in 2007. The Task Force adopted findings and recommendations with respect to specific topic areas of importance to family law, recommendations for the organization of new family law local rules, and a set of recommended statewide Family Law Rules (FLR) (detailed in the appendix). There are also some noteworthy concerns regarding local rules with varying page limits, and the practice of some courts to make court services both mandatory and with required service fees.

In addition to identifying civil rules that include specific mention of family law matters, there are also specific topic areas of interest to family law practitioners and litigants with no counterpart in the Civil Rules.

A review of Family Law Rules found many of the same problems documented above in the Civil Rules review, such as:

- little or no correlation between the numbering of local rules to the numbering of state Civil Rules;
- alpha identifier for local rules varied widely from county to county ( LCR versus LFLCR, LR, SPR, LSPR, and so forth);
- little or no correlation between the topics contained in local rules and corresponding state Civil Rules;
- local rules containing restatements of state Civil Rules, rules that are outdated or inconsistent with state Civil Rules, and rules that micromanage litigants;
- repetition of statutes, other rules, and case law.

In addition, the family law subcommittee found that a number of family law related local rules, rather than being purely procedural in nature, contained matters of substantive law or--even worse--were substantive with no corresponding authority in law.

### **Recommendations:**

**1. Create a Separate Category of State Civil Rules to be known as Family Law Rules (FLR).** To implement this recommendation, the family law subcommittee suggests the following steps be taken by the Supreme Court:

- a. Amend existing Civil Rules by removing all family law specific rules from the Civil Rules.
- b. Adopt this subcommittee's recommendation to establish a proposed set of statewide rules to be known as Family Law Rules (FLR). Where possible, these will be numbered consistent with the Civil Rules. For those topics not covered by existing Civil Rules, the FLRs will continue the numbering process sequentially thereafter. See Attachment A.
- c. Identify existing local rules that will no longer be necessary or that are substantive in nature or otherwise inconsistent with either existing Civil Rules or the new FLRs. These local rules should be immediately revoked.
- d. Direct each county to undergo an intensive review of its local rules and to submit, by a date certain (perhaps six to nine months out), a set of new local rules, if needed, that:
  - 1) are not duplicative of either Civil Rules or FLRs;
  - 2) are numbered consistently with the CRs or FLRs;
  - 3) are designated in every county in the same manner; i.e. as LFLR (Local Family Law Rules);
  - 4) are not substantive in nature; and
  - 5) are not outdated.
- e. At the end of the submission deadline described in 1.d. above, direct that all existing local rules will expire and be replaced by new local rules that are consistent with the new protocols described herein and that have been approved thereafter.
- f. Enforce and augment General Rule 7, Local Rules – Filing and Effective Date, by establishing a position within the Supreme Court

that is both responsible for reviewing local rules for compliance and authorized to reject local rules that do not meet the established criteria for approval.

**2. Set Realistic and Achievable Deadlines for Implementation.** It should take no longer than eighteen months for counties to revamp and submit for implementation their new local rules, drafted to meet the new protocols described herein. In the meantime, there should be a moratorium on new Local Rules except for emergencies (and “emergencies” should be narrowly defined by the Supreme Court).

**3. Periodically Review Local Family Law Rules for Compliance.** Establish a small, manageable subcommittee, appointed by the WSBA Board of Governors, to review family law rules at least once every five years, beginning in 2014, to assure ongoing compliance with the directives established through the adoption of these recommendations. Membership on this subcommittee should include no more than nine members, consisting of the following: the WSBA BOG liaison to the Family Law Section; a representative from the Supreme Court; a representative from the WSBA Family Law Executive Committee; a representative from the Superior Court Judges; a representative from the Superior Court Clerks; a representative of the Superior Court Administrators; three representatives from counties around the state representing, on the basis of population, a small county court; a medium county court; and a large county court.

### **C. Local Rule Oversight.**

There are currently significant problems with the implementation of Civil Rule 1 and Civil Rule 83. The Task Force has developed recommended fixes to the local rule problems. If the factors that give rise to the creation of local rules were simple, and the recommended fixes were clear and consistently followed, one could argue that the local court rule problem has been solved. However, local courts are complex and experience ever-changing budgets, contingencies, new causes of action, and changing administrative needs. The recommended fixes have room for interpretation. Consistency in application of the Task Force recommendations among 39 courts may be only a theoretical possibility. However, that is not an excuse for doing nothing in the face of this clear problem.

Consistent with the recommendations of the Family Law sub-group, there is a need for oversight of both the structure and substance of all local rules. The purpose of oversight is to assure that all local rules are consistently numbered; follow, but do not repeat case law, statutes, and rules; are devoid of substantive law; fit the purpose stated in CR 1 and CR 83; and are in compliance with the recommendations in this report. The Supreme Court is ultimately responsible for the administration of justice in Washington, yet the mode of this administration and degree of oversight of local rules can take various forms.

## 1. Interested Parties.

a. Supreme Court: The Supreme Court's interest is stated in CR 1 – helping litigants secure just, speedy, and inexpensive determination of every action. The Court must ensure equal access to justice.

b. Superior Courts/SCJA: Local Superior Courts implement the Supreme Court imperative and are motivated to control litigation and administrative costs and procedures through local rules that instruct litigants on how to access their court and how to conduct their litigation in that court. Local courts, which vary by size, needs, and practices, tend to be protective of their authority to develop local rules.

c. Administrative/Clerks: Many courts support their court administrator and/or county clerk with rules regarding administrative practices. Lawyers may be skeptical of the authority of the executive branch (county clerks) to implement policy and clerks' practices that are not developed by the judicial branch.

d. WSBA/Lawyers: Lawyers want consistency, simplicity, uniformity and clarity in dealing with local courts. Many lawyers practice in more than one county and are required to know procedures in multiple courts to ensure compliance with local court rules.

e. Citizens/pro se litigants: This less vocal constituency has a special interest in simplicity and clarity. It is difficult for pro se litigants to understand the cascading authority of law, including case law, statutes, statewide rules, local rules, and local convention in handling their case.

**2. Oversight Considerations.** Supreme Court oversight authority can be direct, through its staff; indirect, through rules and self-enforcing requirements; or delegated to an entity such as the WSBA. In developing a recommendation regarding oversight, the Task Force considered the following factors:

- a. Current oversight of CR 1 is ineffective.
- b. Oversight by imposing rules regulating the creation of local rules would require self enforcement by Superior Courts and does not address questions of consistency among the 39 county courts.
- c. The Supreme Court has delegated many responsibilities to the WSBA for the admission and discipline of lawyers. The WSBA has an existing "Court Rules and Procedures Committee," which is funded and staffed, and whose advisory role to the Supreme Court's Rules Committee could be expanded to encompass local rules.

- d. Local courts can be hamstrung by the lag time between new legislation and the adoption of statewide court rules.
- e. Oversight that is overly cumbersome or restrictive may give rise to increasing numbers of administrative orders and/or undocumented procedures, which simply avoid the use of the term “rule.”
- f. There is a need for broad circulation of proposed local rules before adoption.
- g. There should be a complaint or challenge process for local rules.
- h. Oversight could be delayed for 1-2 years to allow courts time to review and conform their rules to the Task Force recommendations before authoritative oversight over new rules would begin.
- i. Effective, staffed, oversight by a Supreme Court employee after a review period would likely require ongoing professional support of 2-4 hours a week, .1 FTE.
- j. Identifying an oversight body could add a resource to local courts in forming local rules and could serve to vet ideas and questions and allow local rule expertise to develop while also assisting local courts to engage in periodic review and elimination of outdated or unnecessary local rules.
- k. The developed mechanism should be able to be used to oversee courts of limited jurisdiction and their rules, should that project be authorized by the Board of Governors in the future.
- l. Any oversight function should include a periodic review of all local rules.

### **3. Local Civil Oversight Options Considered Viable by the Task Force.**

#### **Option A**

This option would implement direct oversight by Supreme Court/ AOC Legal Staff working under the courts existing rules committee or other committee. This oversight would include cleaning up existing rules, vetting of new rules, and a process for challenging new or out-of-date rules.

#### *Pro:*

- direct
- simple
- would assure compliance
- mechanisms and precedent exist

*Con:*

- cost
- staffing and overhead
- The Court may not want this level of responsibility for local court rules

### **Option B**

In this option the Supreme Court would delegate oversight authority to the Washington State Bar Association. The WSBA could use an existing entity, or create a new one, composed of all interested constituencies, to assist courts with cleaning up existing rules, vetting new rules, responding to complaints or challenges, and making recommendations to the Supreme Court.

*Pro:*

- The WSBA has an existing Court Rules and Procedures Committee, which includes judges, whose function could include the vetting of proposed local rules.
- There is already precedent for implementing Supreme Court delegated authority in the area of court rules.
- It could move expediently in developing recommended local rules following new legislation or new case law.

*Con:*

- Staff and overhead costs which could affect license fees.
- Current committee structure and functioning would need reconsideration and expansion.

It might also be possible to blend aspects of these two options.

As noted above in the discussion regarding the Family Law Rules, each of the above options could include a time-limited resource to assist courts with the clean up of their existing rules and realistic and achievable deadlines for implementation. It should take no longer than eighteen months for counties to revamp and submit for implementation their new local rules constructed to meet the new protocols described in this report.

## **IV. Overall Task Force Recommendations.**

1. The Supreme Court should direct that each Superior Court review its current local civil rules and eliminate the problems pointed out in Section

- III(A). During this clean-up phase, the local courts should be assisted with this effort.
- a. The Court should set realistic and achievable deadlines for implementation.
  - b. The Court should direct a moratorium on new local rules, except for emergencies (and “emergencies” should be narrowly defined).
2. A new, separate, set of statewide Family Law Rules should be promulgated.
  3. Local Rule oversight should be implemented to assure compliance with the findings of the Task Force.
  4. The Local Rules Task Force’s charter should be extended and revised to assure ongoing attention to the implementation of the proposed remedies.
  5. Outreach to the Superior Court bench should continue.

## **V. Conclusion.**

With the submission of this report and recommendations along with its addendums, the Task Force completes its initial charge as specified in the 2007 Charter (attached in the Appendix). The Task Force has reviewed all local civil rules and has developed recommendations to curb the proliferation of local rules and conform them to CRs 1 and 83 and the Supreme Court’s qualification quoted above in *State v. Superior Court for King County*.

These recommendations now need an implementation strategy. Since the Task Force has developed considerable expertise and momentum, it recommends that the current charter be modified and extended to cover the implementation work spelled out in the report. Most Task Force members are interested in continuing their work. The adoption of the current recommendations by the WSBA will allow the Task Force to continue its work with the Superior Courts and Supreme Court to clean up existing rules, vet new ones and exercise ongoing oversight over both the structure and substance of local rules.

Through the Superior Court members of the Task Force there has been considerable judicial outreach, with the goals of: a) advising the judges of the Task Force and its mission; b) inviting local court review of existing local rules; c). lending assistance to local courts in reviewing local rules, calling upon the background work of the Task Force; and, d) exploring future options for local rulemaking and consistency. Continued outreach is essential in implementing the recommendations of the Task Force and should include:

- A. Presentation to the WSBA Board of Governors and approval to move forward.
- B. Presentation of the findings and recommendations to the Supreme Court.
- C. Meeting with Judge McDermott (President of the SCJA) and Judge Tari Eitzen (President-elect of the SCJA): Co-Chairs Justice Johnson and Lish Whitson along with Judges Cooper, Gibson and Yu [shows cross section of judge involvement and seriousness of the Task Force]. The meeting should occur as soon as possible.
- D. Meeting with the SCJA Board of Trustees (same group as above). The meeting should occur as soon as possible.
- E. Presentation at SCJA Spring Conference (April 2009) TBD.

### **Appendices:**

- A. Original Local Rules Task Force Charter
- B. Proposed new Local Rules Task Force Charter
- C. Rule by rule review of the Civil Rules (spreadsheet)
- D. Recommendations for new Family Law rules

**APPENDIX A**  
**Original Task Force Charter**



WSBA

WASHINGTON STATE BAR ASSOCIATION

## **Local Rules Task Force**

### **CHARTER**

#### **Preamble**

In Washington's recent history, there have been two significant efforts to address the proliferation of local court rules and their effect on the administration of justice. In the first effort, former Chief Justice Keith Callow proposed abrogating the authority of individual courts to enact local rules, urging that all courts operate under uniform court rules of statewide applicability. In the second effort, former Justice Philip Talmadge convened a "Model Local Rules" Committee (later chaired by Justice Charles Johnson) to develop a set of local rule drafting standards, with the intent to make local rules as uniform as possible. Neither of these efforts resulted in any change to the local rules system in Washington, although the product of the Model Local Rules Committee is still available and possibly viable as a model.

In 2006 a coalition of eight WSBA sections asked the WSBA Court Rules and Procedures Committee to consider the impact of the proliferation of local rules on lawyers who practice in multiple counties. This coalition recommended abolition of all local rules with the exception of those governing docket management. The Court Rules and Procedures Committee suggested to the Board of Governors that a special task force be convened to evaluate this issue.

#### ***Charter***

The Local Rules Task Force is created to review the purpose and function of local rules, the impact of local rules on courts, litigants (both pro se and represented) and the trial bar, and possible means to mitigate the detrimental effects of the ever-increasing number of local rules on lawyers practicing in multiple courts. The Local Rules Task Force should review the model local rules and practices in other non-unified states to develop recommendations on possible improvements or modifications to Washington's local rulemaking process and authorizations, in addition to looking at the work product of the earlier efforts in this state to stem the proliferation of local rules. In discharging its

mission under this charter, the Task Force shall be mindful of the directive in Rule 1 of the Rules of Civil Procedure that the rules of court “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”

### ***Timeline***

The Task Force should complete its work and bring recommendations to the Board of Governors by spring 2009.

**APPENDIX B**  
**Proposed Extended Charter**



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## **Local Rules Task Force**

### **CHARTER EXTENSION**

**December 2008**

#### **Preamble**

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In early 2007 the WSBA chartered the Local Rule Task Force (LRTF) to review the previous work efforts. The Task Force was charged with reviewing the purpose and function of local rules, including the impact of local rules on courts, litigants (both pro se and represented) and the trial bar, and developing recommendations to mitigate the detrimental effects of the ever-increasing number of local rules on lawyers practicing in multiple courts (including improvements or modifications to Washington's local rulemaking process and authorizations). The Task Force was to complete its work by the Spring of 2009.

The Task Force completed a significant portion of its charge in the Fall of 2008 with its report to the Board of Governors entitled "Conclusions and Recommendations Regarding Local Civil Rules and Family Law Rules." One of the recommendations is that the Task

Force Charter be extended to allow it to pursue the implementation of the report's recommendations and then to complete any additional work assigned to the Task Force by the Board.

### **Extended Charter**

The extended task of the Local Rules Task Force is to develop means to assure the implementation of the Task Force recommendations, including recommendations for rule and procedural changes, and an oversight system.

### **Extended Timeline**

The Task Force should complete its implementation system recommendations by the fall of 2009, which will include working with the Washington State Supreme Court and the Washington Superior Court Judges' Association. If more time is needed to complete the Task Force assignment, it may request more time of the Board.