

**Court Rules and Procedures Committee**

AGENDA

February 11, 2019  
(Telephonic Meeting)  
9:30 a.m. – 11:00 a.m.

Conference Call: 1-866-577-9294, Code: 55419#

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**Call to Order/ Preliminary Matters**

- Approval of Minutes:
  - January 14, 2019 **(pp. 2-3)**

**Subcommittee Reports**

1. Subcommittee X
  - Subcommittee Chair Tony DiTommaso **(pg. 4-9)**
2. Evidence Rules (ER)
  - Subcommittee Chair Kirk Miller **(Oral Report)**
3. Infraction Rules for Court of Limited Jurisdiction (IRLJ)
  - Subcommittee Chair Jon Zimmerman **(Oral Report)**
4. Mandatory Arbitration Rules (MAR)
  - Subcommittee Chair Stephanie Dikeakos **(Oral Report)**

**Other Business/Good of the Order**

**Adjourn**

*Next meeting is scheduled for March 18, 2019*



Meeting Minutes  
January 14, 2019

Members Present:

Chair Jefferson Coulter, Mimy Bailey, Claire Carden (by phone), Rike Connelly (by phone), Stephanie Dikeakos, Tony DiTommaso, Bertha Fitzer, Geoff Grindeland (by phone), Karen Horowitz (by phone), Sarah Lee, Alison Markette (by phone), Tim Moran, Isham Reavis, Ashton Rezayat (by phone), Rachel Rogers (by phone), Dalynne Singleton (by phone), Ann Summers (by phone), Brian Zuanich, Judge Blaine Gibson, and Judge Kevin Korsmo.

Members Excused:

Olga Blotnis, Jody Cloutier, D. Jack Guthrie, John Ledford, Kirk Miller, Rooein Roshandel, James Smith, Jon Zimmerman, and Judge Jeffrey Goodwin.

Also Attending:

Nicole Gustine (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), Brian Tollefson (BOG Liaison), Michael Chait (WDTL), Dr. Robin Nussbaum (WSBA Inclusion & Equity Specialist), and Sherry Lindner (WSBA Paralegal).

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Chair Jefferson Coulter called the meeting to order at 9:30 a.m.

The Committee had a Diversity in Decision-Making training with Dr. Robin Nussbaum.

Evidence Rule (ER) Subcommittee

Chair Coulter reported subcommittee chair Kirk Miller will reach out to the subcommittee within the next week to schedule their first meeting.

**ER 413 – Immigration Status**

In 2017, the Committee was tasked (by the proponent) to only review the proposal for language only, and the Subcommittee reported to the Committee that it could not accomplish a proper review of language without also looking at the substantive content. The Subcommittee informed the proponent of this and the proponent withdrew their request and submitted their proposed recommendation to the Court.

The new ER 413 was adopted effective September 1, 2018.

Judge Gibson expressed some concerns about the wording of the newly adopted ER 413 and asked if the Subcommittee may review the rule and correct the drafting problems.

Chair Coulter will ask the ER Subcommittee to review ER 413 and determine whether changes are appropriate.

#### Infraction Rules for Court of Limited Jurisdiction (IRLJ) Subcommittee

Subcommittee member Tim Moran reported on behalf of the chair Jon Zimmerman that the subcommittee held a telephonic meeting on January 9, 2019, and divvied up the rules amongst the members.

Chair Zimmerman has reached out to AOC and DMCJA for feedback on what possible rule(s) the subcommittee should review.

#### Subcommittee X

Subcommittee Chair DiTommaso reported to the Committee on GR 30(3) that was submitted by Jody Cloutier due to certain courts not accepting documents with a client's digital signature. The Subcommittee reviewed and discussed RCW 19.34.020 which defines a digital signature which includes an electronic signature. Upon further discussion, the Subcommittee voted that no action should be taken on this proposal because the rule itself already authorizes the filing of electronic documents with digital non-attorneys signature. A suggestion was made in the Subcommittee that perhaps AOC should send out a friendly reminder of the rule to all counties that non-attorney signatures can be filed electronically.

Chair DiTommaso also reported on CrR 8.2 and CrRLJ 8.2 which are carry-over from last year's committee. The proposed amendment to CrR 8.2 would allow motions for reconsideration and that such motion needed to be considered within 30 days, as in CR 59. The Subcommittee will have a final draft ready for next month's meeting to vote on.

#### MAR Subcommittee

Subcommittee Chair Dikeakos reported to the Committee that the proposed amendments submitted to the Committee are ready to be voted on. The Subcommittee has incorporated the Committee's changes and the stakeholder's feedback.

The Committee voted unanimously in favor of adopting the Subcommittee's recommendations.

The Committee discussed whether the proposed amendments to MAR 7.2 (which was not voted on) should be reviewed by Subcommittee X or handled by MAR Subcommittee. It was decided that the MAR Subcommittee was the appropriate place to review the proposed amendments to MAR 7.2. Chair Dikeakos and MAR Subcommittee will review this matter.

There being no further business, the meeting was adjourned at 11:15 a.m.

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February 1, 2019

Jefferson Coulter  
[Jeffersonc@nwjustice.org](mailto:Jeffersonc@nwjustice.org)

Re: *Subcommittee X Report*

Dear Jefferson:

With this letter you should be receiving my report from the Subcommittee X meeting of January 31, with proposed rule changes.

Sincerely,

LAW OFFICE OF TONY DITOMMASO, P.S.



Tony DiTommaso  
Attorney at Law

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Enclosure

# Court Rules and Procedures Committee

## Subcommittee X Report

January 31, 2019

**Subcommittee:** Subcommittee X is tasked with considering proposed rule changes outside the scope of the evidence rules and infraction rules being considered in this year's cycle.

Subcommittee members attending the January 31 meeting were: Jack Guthrie, John Ledford, Brian Zuanich and Judge Blaine Gibson.

### **Issue being worked on:**

Included with this report is a GR 9 coversheet with proposed new language to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2.

This proposed rule change is a carryover from last year's committee.

As is noted in the coversheet, there is inconsistency in court decisions regarding whether a motion for reconsideration is authorized in criminal matters.

Motions for reconsideration are filed in criminal matters and the consensus from last year's committee was that a rule explicitly authorizing a motion for reconsideration was needed. The issue was what the language should be and the placement of the rule.

During the subcommittee's discussions it was agreed that rule 8.2 entitled "motions" is the appropriate rule to insert the express authorization for a motion for reconsideration.

The subcommittee also believes that reference to the actual civil rule for reconsideration, CR 59(b) is the simplest and most direct way to address concerns about applicable procedures pertaining to the motion for reconsideration. You will note that the present Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2 already make reference to applicable civil rules for other types of motions.

Although concern was expressed by stakeholders and some subcommittee members over the last two meetings, about the ten (10) day rule for filing the motion for reconsideration, the subcommittee is not aware of any issues in the civil arena regarding the ten (10) day requirement in CR 59(b) and did not believe that it would become an issue in the criminal arena.

The subcommittee over the last two meetings did not believe that including the language authorizing the court to extend the ten (10) days in its discretion was appropriate considering that there are other criminal rules available if ten (10) days have elapsed (Criminal Rules 7.4, 7.5 and 7.8) and CR 59(b) does not have such a provision.

After short discussion on January 31, 2019, it was unanimously agreed that the proposed new language to Superior Court Criminal Rule 8.2 and District Court Criminal Rule 8.2 be presented to the full committee for approval.

**GR 9 COVER SHEET**  
**Suggested Amendment**  
**SUPERIOR COURT CRIMINAL RULES (CrR)**  
**Rule 8.2      MOTIONS**

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**A. Proponent:** Washington State Bar Association Rules Committee, CrR Subcommittee

**B. Spokespersons:** Jefferson Coulter, Committee Chairman

**C. Purpose:**

There is currently a conflict in the case law as to whether the criminal rules allow a motion for reconsideration. State v. Batsell, 198 Wn.App. 1066, unpublished (issued May 2, 2017), illustrates that there is some confusion as to whether a motion for reconsideration is allowed under the criminal rules. The Batsell court noted that State v. Gonzalez, 110 Wn.2d 738, 744, 757 P.2d 925 (1988), noted that civil rules are instructive as to matters of procedure on which the criminal rules are silent. However, State v. Keller, 32 Wn.App. 135, 647 P.2d 35 (1982), held that CR 59 did not apply in criminal cases. In contrast, as the Batsell court noted, “at least two reported decisions in criminal appeals have involved motions for reconsideration without questioning CR 59’s application in criminal cases.” (citing State v. Englund, 186 Wn.App. 444, 459, 345 P.3d 859, review denied, 183 Wn.2d 1011, 352 P.3d 188 (2015); State v. Chaussee, 77 Wn.App. 803, 806-07, 895 P.2d 414 (1995)).

This confusion results in inconsistency across courts. It also presents a problem when a party in a criminal case wishes to move for discretionary review, as the time for filing a notice of discretionary review runs from the entry of an order deciding a timely motion for reconsideration pursuant to RAP 5.2(b).

The district court criminal rules do not have an express provision for motions for reconsideration. To be consistent with the superior court rule it is also recommended that District Court Criminal Rule 8.2 also be amended.

**D. Hearing:** A hearing is not recommended.

**E. Expedited Consideration:** Expedited consideration is not requested.

**F. Supporting Material:** Suggested rule amendments.

**SUPERIOR COURT CRIMINAL RULES (CrR)**  
**Rule 8.2 MOTIONS**

Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases. A motion for reconsideration shall be governed by CR 59(b).



**DISTRICT COURT CRIMINAL RULES (CrRLJ)**  
**Rule 8.2 MOTIONS**

Rules 3.5 and 3.6 and CRLJ 7(b) shall govern motions in criminal cases. A motion for reconsideration shall be governed by CRLJ 59(b).