

Court Rules and Procedures Committee

Telephonic Meeting
AGENDA

February 12, 2018
9:30 a.m. – 11:30 a.m.

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

Call to Order/ Preliminary Matters

- Approval of Minutes:
 - May 15, 2017, July 24, 2017, and November 13, 2017 **(pp.1-6)**

Subcommittee Assignments

1. Criminal Rules (CrR)
 - Subcommittee Chair Ann Summers **(pp.7-9)**
2. Criminal Rules for Court of Limited Jurisdiction (CrRLJ)
 - Subcommittee Chair Jefferson Coulter
3. Subcommittee X
 - Subcommittee Chair Rike Connelly

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for March 19, 2018



Meeting Minutes
November 13, 2017

Members Present: Chair Shannon Kilpatrick, Ralph Anderson (phone), Sara Beigh (phone), Olga Blotnis, Jody Cloutier (phone), Rike Connelly, Jefferson Coulter (phone), Stephanie Dikeakos, Shelby Lemmel, Richard Greene, D. Jack Guthrie (phone), Karen Horowitz (phone), Caryn Jorgensen (phone), Judith Lonquist, Alison Markette (phone), Timothy Moran, Ashton Rezayat (phone), Elizabeth Rene (phone), Ann Summers, Jon Zimmerman (phone), Judge Blain Gibson (phone), Judge Kevin Korsmo (phone), and Judge Rebecca Robertson.

Members Excused: Cindy Alexander, John Ledford, Jerry Moberg, Dalynne Singleton, and James Smith.

Also Attending: Kevin Bank (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), Brian Tollefson (BOG Liaison), and Sherry Lindner (WSBA Paralegal).

Chair Shannon Kilpatrick called the meeting to order at 9:30 a.m.

Welcome and Introductions

The Chair welcomed the Committee and asked each member to introduce him or herself.

The Chair explained that the rules up for review in this year's cycle are the Superior Court Criminal Rules (CrR) (subcommittee chaired by Ann Summers), the Superior Court Criminal Rules for Court of Limited Jurisdiction (CrRLJ) (TBD), and the Subcommittee X (subcommittee chaired by Rika Connelly).

The Chair explained that the majority of the work is done in the subcommittees and attendance at those meetings is crucial. It is also very important that subcommittees reach out to stakeholders and interested parties or receive feedback and input. Subcommittee meetings are open to the public.

The Chair discussed the rule making process and stated that getting the input of other members and stakeholders is very crucial to vetting and scrubbing a rule. The Chair further discussed the Committee's timeline and deadlines in order for the Board of Governors to get materials to the Supreme Court by their annual deadline.

The Chair requested Committee members to please respond to the meeting notices RSVP so that the Chair knows how many people will attend and if there will be a quorum.

The Chair further explained that members should read the materials before the meetings so that the Committee may have everyone's informed input. Exact language of rules is a critical focus.

Mr. Bank discussed that WSBA is subject to public disclosure requirements that are similar but not identical to those governing state agencies. Communications of the Committee, including emails on which WSBA staff is copied, are subject to disclosure if a records request is made. The Committee does not have executive session and all Committee meetings (including subcommittee meetings) are open to the public. Mr. Bank also stated he would provide a template "Report" for subcommittee chairs to complete on a monthly basis so that all members of the Committee are kept apprised of each subcommittee's work and progress.

Ms. Lindner explained the reimbursement policy – parking and mileage will be reimbursed. The WSBA will reimburse the cheapest method of travel and asked members to be considerate if they need hotel accommodations. Ms. Lindner also stated that if it is easier to attend meetings by telephone to please do so.

Chair Kilpatrick thanked everyone and is looking forward to a very productive year.

The next meeting is scheduled for January 8, 2018.

There being no further business, the meeting was adjourned at 10:10 a.m.



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Telephonic Meeting Minutes July 24, 2017

Committee Chair Shannon Kilpatrick called the meeting to order at 9:30 a.m.

Members present: Chair Shannon Kilpatrick, Cynthia Alexander, Rike Connelly, Jefferson Coulter, Lisa Marie Donaldson, Sean Flynn, Shelby Lemmel, Jay Gairson, Caryn Jorgensen, Jacqueline Justice, Jim Kaufman, Judith Lonquist, Kevin March, Alison Markette, Raphael Nwokike, Elizabeth Rene, Dan Samas, Dalynne Singleton, Tracy Williams, John Ledford (Alternate), Judge Blain Gibson, and Judge Kevin Korsmo.

Members excused from attending: Matthew Albrecht, Ralph Anderson, Sara Beigh, Theresa DeMonte, Karen Horowitz, Jerry Moberg, Shashi Vijay, Ashton Rezayat (Alternate), and Judge Rebecca Robertson.

Members who did not respond/attend meeting: Kenneth Gorton, and Kevin Sullivan.

Also attending: Kevin Bank (WSBA Assistant General Counsel), Sherry Lindner (WSBA Paralegal), William Pickett (BOG Liaison), Shannon Hinchcliffe (AOC Liaison), and Luis Beltran (WSBA Intern).

Minutes:

The May 15, 2017 minutes were tabled and will be reviewed at its next meeting. The June 19, 2017 passed unanimously with one minor edit.

New Business:

MAR Subcommittee: Subcommittee Chair Caryn Jorgensen reported to the Committee that the subcommittee researched and reviewed each county's arbitration compensation caps, researched the authority that caps compensation, and reviewed existing MAR rules.

Pursuant to RCW 7.06.040, arbitrators are paid the same amount as a judge pro tempore in the County in which the arbitration occurs. Each county sets its own pay scale for its judges pro tempore. The statute is silent as to caps on arbitrator pay. RCW 2.08.180 governs compensation for pro tempore judges.

The Subcommittee deems a state-wide Civil Rule regarding arbitrator compensation impractical given the existing variability among the Superior Courts across the State and the lack of

information regarding the potential budgetary effects a state-wide rule would have on the individual Superior Courts.

The Subcommittee recommends that the issue of caps and variability of arbitrator pay be referred back to the Board of Governors for determination if a legislative solution should be pursued.

The Committee voted unanimously to adopt the Subcommittee's recommendation.

There being no further business, the meeting was adjourned at 9:50 a.m.

DRAFT



WSBA

COURT RULES AND PROCEDURES COMMITTEE

Meeting Minutes May 15, 2017

Committee Chair Shannon Kilpatrick called the meeting to order at 9:30 a.m.

Members present: Chair Shannon Kilpatrick, Cynthia Alexander (by phone), Matthew Albrecht (by phone), Ralph Anderson (by phone), Sara Beigh (by phone), Ulrike Connelly, Jefferson Coulter (by phone), Lisa Marie Donaldson (by phone), Sean Flynn (by phone), Shelby Lemmel (by phone), Jay Gairson (by phone), Caryn Jorgensen (by phone), Karen Horowitz (by phone), Jacqueline Justice (by phone), Jim Kaufman (by phone), Judith Lonquist, Kevin March, Alison Markette, Elizabeth Rene (by phone), Dan Samas (by phone), Dalynne Singleton (by phone), Shashi Vijay (by phone), Tracy Williams (by phone), Jon Ledford (Alternate) (by phone), Judge Blaine Gibson, Judge Rebecca Robertson, and Judge Kevin Korsmo (by phone).

Members excused from attending: Theresa DeMonte, Kenneth Gorton, Ashton Rezayat (Alternate), Shannon Hinchcliffe (AOC), and William Picket (BOG Liaison).

Members who did not respond/attend meeting: Jerry Moberg, Raphael Nwokike, and Kevin Sullivan.

Also attending: Julie Shankland (WSBA Assistant General Counsel), Sherry Lindner (WSBA Paralegal), and Reed Speir.

Minutes:

The February 13, 2017 minutes were approved by consensus.

Old Business:

IRLJ 3.3: Last year, the Committee adopted the recommendation of the IRLJ Subcommittee to make changes to IRLJ 3.3. The Committee voted on the proposed rule change and sent it to the BOG for its vote. The BOG had one minor change to suggest, change the last sentence from "...or these court rules," to "...or the court rules." The change is designated to eliminate any ambiguity about whether local rules are considered part of "...these court rules."

The Committee discussed the new proposed language and voted unanimously to approve the BOG's proposed language.

New Business:

RAP Subcommittee: Subcommittee Chair Kevin March reported that the subcommittee is continuing to review RAP 2.5. RAP 2.5 has been controversial with the stakeholders and the subcommittee is hoping to bring a proposed recommendation to the full Committee at the June meeting. The subcommittee is also reviewing RAP 18.6 and has been collecting feedbacks from stakeholders. The subcommittee is hoping to vote on the proposed recommendation at its next meeting and bring forth their proposal to the full Committee at the June meeting.

MAR Subcommittee: Subcommittee Chair Caryn Jorgensen reported that the subcommittee has completed its data gathering on the compensation caps for the arbitrator services. The Subcommittee will review the information and will formulate their proposed recommendations. The Subcommittee is hoping to bring forth their proposal to the full Committee at the July meeting.

RALJ Subcommittee: Subcommittee Chair Dan Samas reported that the subcommittee has been reviewing RALJ 4.1(b) and the comments received. This proposal was submitted by Reed Speir. The Committee discussed the Court of Limited Jurisdiction's (CLJ) authority when a criminal notice of appeal has been filed. The discussion continued regarding the sentencing and whether the CLJ has the authority to modify the imposed sentence. A friendly amendment was made to change "impact" to "affect" – "... This rule does not ~~impact~~ affect the authority...." Mr. Speir accepted this friendly amendment.

The Committee voted on RALJ 4.1(b) to reject the proposed rule change with 14 opposed and 8 in favor.

The Committee discussed the possible amendments to RALJ 9.2, importing the concept of issuance of the mandate from RAP 12.5. There was broad support for the idea of providing for a mandate when a RALJ appeal has concluded.

The possible amendment also included a reference to a certificate of finality. There was opposition in the Committee to a certificate of finality. It was felt it was not a concept that would be useful in RALJ appeals, would be a significant change in practice, and would be a burden on the court system.

The Committee moved to delete "Issuance of Certificate of Finality" from the proposed title and the entire proposed subsection (e) Certificate of Finality. The proposed subsection (f), (g), (h) would then be relabeled as "(e), (f), (g)."

The Committee voted on RALJ 9.2 and the motion passed unanimously.

Proposed New ER 413: Subcommittee Chair Cindy Alexander reported that the proponent withdrew their request and has submitted their proposed recommendation to the Supreme Court. The subcommittee has completed their task.

There being no further business, the meeting was adjourned at 11:00 a.m.



Court Rules and Procedures Committee CrR Subcommittee Report

February 8, 2018

Subcommittee:

The subcommittee is undertaking a general review of the CrRs.

Issues Being Worked On:

The subcommittee has undertaken a review of rules 1.1 through 3.3 and 4.1 through 4.8 as of this point. We have identified potential amendments to rules 1.3, 2.3, 4.4 and 4.5 that will be discussed further at the next subcommittee meeting. These amendments are intended to be clarifying and do not represent major substantive changes.

At our next meeting we will also discuss rules 3.4 through 3.6 and 5.1 through 8.10. The next meeting is scheduled for March 6 at 3 p.m.

Recommendation:

We have no recommendations to the committee at this time.

MEMO

TO: Shannon Kilpatrick, Rules Committee chair
CrR Subcommittee members

FROM: Ann Summers, CrR Subcommittee chair

RE: December report

DATE: December 7, 2017

The CrR subcommittee had its first meeting on December 6. Members attending were: Sara Beigh, James Smith, Jack Guthrie, Allison Markette and Ann Summers.

Each subcommittee member has been assigned a portion of the CrR to review. We are making sure any cross-references to other rules and statutes are correct, and looking for confusing language that can be clarified. We also reviewed recently case law involving the criminal rules for any problems that have been identified. Based on the review so far, the following rules warrant further discussion:

- 1.3 Effect
Should we clarify confusing language?

- 2.3 Search and Seizure
(e) conflicts with CrRLJ as to where motion for return of property may be filed and provides no notice. See *In re Matter of Search Warrant*, 194 Wn. App. 365

- 4.5 Omnibus Hearing
Omnibus Application form, motion by plaintiff, §11 does not acknowledge constitutional constraints

- 4.6 Depositions
(d) broad language does not recognize constitutional constraints

- 4.7 Discovery
Generally review whether obligations workable and consistent with case law

- 4.8 Subpoena
Subsections regarding issuance track the CR in substance, but not in form

- 4.10 Material Witness
(c) Delete last sentence as unnecessary, and because it fails to acknowledge that deposition cannot substitute for in court testimony?

6.12 Witnesses

Should rule explicitly allow for telephonic testimony, in compelling circumstances, offered by the defense, or by the prosecution with the agreement of the defense, as provided in CR 43? See *State v. Cayetano-Jaimes*, 190 Wn. App. 286

7.8 Relief from Judgment or Order

(c)(2) Should we clarify confusing and language and simplify the trial court inquiry regarding timeliness?

8.2 Motions

Should there be an explicit authorization for and time limit to motions to reconsider, as in CR 59(b)? See *State v. Batsell*, 198 Wn. App. 1066

We also discussed CrR 6.5, regarding the selection of alternate jurors to replace a sitting juror, and the fact that it differs from the procedure outlined in CR 47. However, we felt that changing either rule to be consistent with the other might cause problems and confusion.

The next subcommittee meeting is January 17, at 3 p.m. We hope to complete our initial review of all the rules at that meeting.