WASHINGTON STATE
BAR ASSOCIATION

Court Rules and Procedures Committee

AGENDA

June 8, 2020
9:30 AM – 1:00 PM

Zoom Toll-Free Call Numbers: 833-548-0282
877-853-5247
888-788-0099
833-548-0276

Meeting ID: 950-7032-0903

Call to Order/Preliminary Matters

- Approval of Minutes
  - May 11, 2020

- Subcommittee Reports
  - Mandatory Arbitration Rules (MAR) Subcommittee
  - Civil Rules for Superior Courts (CR) Subcommittee
  - Civil Rules for Courts of Limited Jurisdiction (CRLJ) Subcommittee
    i. CRLJ 17, 56, and 60
  - Subcommittee X
    i. ER 413

- Response to Letter from President Rajeev Majumdar and Interim Executive Director Terra Nevitt

- Recruitment for FY 2021

- Other Business for the Good of the Order

Adjourn

The next meeting is scheduled for July 13, 2020.

WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Meeting Minutes
May 11, 2020

Members Present: Chair Jefferson Coulter, Kristin Ballinger, Claire Carden, Jody Cloutier, Stephanie Dikeakos, Tony DiTommaso, Brian Esler, Duffy Graham, Richard Greene, Karen Horowitz, John Ledford, Kirk Miller, Isham Reavis, Ashton Rezayat, James Smith, Ann Summers, Emory Wogenstahl, Jon Zimmerman, and Brian Zuanich.

Members Excused: Rike Connelly, Sarah Lee, Alison Markette, Tim Moran, Rachael Rogers, Rooein Roshandel, and Jeff Sbaih.

Also Attending: Judge Blaine Gibson, Shannon Hinchcliffe (AOC Liaison), Brian Tollefson (BOG Liaison), Nicole Gustine (WSBA Assistant General Counsel), and Kyla Jones (WSBA Paralegal).

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

Approval of Minutes
The November 18, 2019, minutes were approved by consensus.

Subcommittee Reports

- MAR Subcommittee

The MAR Subcommittee had nothing to report.

- CR Subcommittee

The CR Subcommittee is in need of a new Subcommittee Chair. Interested members will contact Chair Coulter.

- CRLJ Subcommittee

The CRLJ Subcommittee will report on their recommendations at the next Committee meeting.

- Subcommittee X

Subcommittee X will review Evidence Rule 413.

Quorum
The Committee discussed past meetings where quorum was not able to be met. Kyla Jones will send out a poll to survey members' availability prior to the meeting date in order to accommodate schedules.

Letter from President Rajeev Majumdar and Interim Executive Director Terra Nevitt
Chair Coulter will draft a letter for the Committee's review in response to President Majumdar and Interim Executive Director Nevitt's letter regarding the role of the Committee.

Other Business/Good of the Order
There being no further business, the meeting adjourned at 10:05 a.m.

WASHINGTON STATE
BAR ASSOCIATION
Court Rules and Procedures Committee

Civil Rules for Courts of Limited Jurisdiction (CRLJ) Subcommittee Report
June 4, 2020

Subcommittee:
Karen Horowitz, Tim Moran, Brian Zuanich, Claire Carden

Issues Being Worked On:
The CRLJ subcommittee has reviewed all CRLJs. We have met and discussed potential rule changes. We reached consensus on the attached three recommendations.

We have not reached consensus on four proposed rule changes. Due to the limitations of this particular rule cycle, the proponents of those changes will be asking Subcommittee X to review those proposals.

Recommendation:
The CRLJ subcommittee is recommending adopting changes to CRLJ 17, 56, and 60. Attached are GR 9 coversheets for these proposed changes.

GR 9 COVER SHEET
Suggested Amendment
CRLJ 60 – RELIEF FROM JUDGMENT OR ORDER

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Separate the last two sentences of CRLJ 60(b)(11) from (b)(11). Those two sentences apply to all of CR 60(b) not just (b)(11). They should be clearly separated.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT
Rule 60. RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RALJ 4.1(b).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment. ~~The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.~~

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished—Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

GR 9 COVER SHEET
Suggested Amendment
CRLJ 56 – SUMMARY JUDGMENT

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: To make the rule read consistently change "he" to "the party." This makes the rule consistent with CR 56 and the remainder of CRLJ 56. It also allows easier understanding.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT
Rule 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 15 days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law, and other documentation not later than three days before the hearing. The moving party may file and serve any rebuttal documents not later than the day prior to the hearing. Summary judgment motions shall be heard more than 14 days before the date set for trial unless leave of the court is granted to allow otherwise. The judgment sought shall be rendered forthwith if the pleadings, answers to interrogatories, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that ~~he~~ the party cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Rulings by Court. In granting or denying the motion for summary judgment, the court shall designate the documents and other evidence considered in its rulings.

[Adopted effective September 1, 1984; September 1, 2016.]

GR 9 COVER SHEET
Suggested Amendment
CRLJ 17 – PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

A. Proponent: WSBA Court Rules and Procedures Committee
B. Spokesperson: Claire Carden, CRLJ Subcommittee Chair, WSBA Court Rules and Procedures Committee
C. Purpose: Change all references to "insane persons" to "incompetent persons." This makes the rule consistent with the language of CR 17. It also modernizes the language of the rule.
D. Hearing: The proponent does not believe that a public hearing is necessary.
E. Expedited Consideration: The proponent does not believe there is a need for expedited consideration.

SUGGESTED AMENDMENT
Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or ~~Incompetent~~ Incapacitated Persons.

(1) When an infant is a party he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint a guardian ad litem. The guardian shall be appointed:

(i) when the infant is plaintiff, upon the application of the infant, if he be of the age of 14 years, or if under the age, upon the application of a relative or friend of the infant;

(ii) when the infant is defendant, upon the application of the infant, if he be of the age of 14 years, and applies within the time he is to appear; if he be under the age of 14, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

(2) When an ~~insane~~ incapacitated person is a party to an action he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed:

(i) when the ~~insane~~ incapacitated person is plaintiff, upon the application of a relative or friend of the ~~insane~~ incapacitated person;

(ii) when the ~~insane~~ incapacitated person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within the time he is to appear. If no such application be made within the time above limited, application may be made by any party to the action.

Law Office of Tony DiTommaso, P.S.

Morris Building

Tony DiTommaso
tony@ditommasolaw.net

23 S. Wenatchee Avenue, Ste. 201
Wenatchee, Washington 98801
(509)665-8776 / Fax (509)665-0397

Kambra Mellergaard
kambra@ditommasolaw.net

June 2, 2020

Kyla Jones

kylaj@wsba.org

Re: *Subcommittee X*

Dear Kyla:

With this letter you should be receiving Subcommittee X's report for consideration at the June 8 meeting. I will not be able to be present at the meeting but Isham Reavis has agreed to speak on Subcommitee X's behalf when that agenda item is called.

Sincerely,

LAW OFFICE OF TONY DITOMMASO, P.S.

Tony DiTommaso
Attorney at Law

TD:ss

Enclosure

Court Rules and Procedures Committee

Subcommittee X Report

June 2, 2020

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 May 27 meeting were: Tony DiTommaso, Judge Blaine Gibson, James Smith, John Ledford and Isham Reavis.

Issue being worked on:

Proposed amendments to ER 413.

The proposed amendments to ER 413 is a carryover from the ER committee of 2019 I believe.

With this report is a proposed GR 9 coversheet and proposed changes to present ER 413 which was last amended in 2018.

The first proposed amendment to ER 413 can be found in ER 413(a)(5). The committee agreed that the present language of ER 413(a)(5) did not make logical sense the way it was written. The way it was written appeared to favor exclusion of evidence that would result in a violation of a defendant's constitutional rights. The amendment makes it clear that the opposite is true, i.e., the court should not exclude evidence if exclusion would violate a defendant's constitutional rights.

ER 413(b)(1) references the correct civil rule (59(h)) to use when making a post-trial motion for the court to consider immigration status. There are only two factual circumstances where this motion would be applicable, first where a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings or where a party was awarded reinstatement to employment. The Subcommittee agreed that these issues would only be applicable should a civil defendant lose a lawsuit brought against them and the motion technically seeks to amend the judgment against them which is why the reference to CR 59(h) or CRLJ 59(h) is made.

After much discussion the Subcommittee voted unanimously to submit for consideration by the full committee adoption of the proposed amendment to ER 413 pursuant to the GR 9 coversheet and ER 413 proposal included with this report.

GR 9 Cover Sheet

Proposal to Amend ER 413

Concerning Evidence of Immigration Status

Submitted by the Washington State Bar Association
Committee on Court Rules and Procedures
Chair: Jefferson Coulter

1. Purpose

ER 413 was adopted in September 2018 for the purpose of making evidence of immigration status inadmissible except for limited circumstances described in the rule. The rule was proposed in a joint submission of Columbia Legal Services, Northwest Immigrant Rights Project, Legal Voice, and the Washington Association of Prosecuting Attorneys. The proposed amendment would make corrections to the language of the current rule to conform it to the intent of the current rule's original proponents.

The proposed amendment makes two changes; one to subsection (a)(5), and one to subsection (b)(1).

Subsection (a)(5)

Subsection (a) applies to criminal cases. In the original GR 9 coversheet, the rule's proponents wrote (emphasis added to the description of the purpose of subsection (a)(5)):

> Subsection (a) provides that immigration status is inadmissible unless (1) status is an essential fact to prove an element of a criminal offense or to defend against the alleged offense or (2) to show bias or prejudice of a witness for impeachment. The subsections of (a) set forth the procedures for using immigration status: (1) a written pretrial motion that includes an offer of proof (2) an affidavit supporting the offer of proof (3) a court hearing outside the presence of the jury if the offer of proof is sufficient (4) admissibility of immigration status to show bias or prejudice if the evidence is reliable and relevant and the probative value of the evidence outweighs the prejudice from immigration status. This procedure is similar to that adopted in RCW 9A.44.020 (3).
>
> *Subsection (a)(5) clarifies that subsection (a) shall not be construed to prohibit cross-examination regarding immigration status if doing so would violate a criminal defendant's constitutional rights.* There is a similar provision in Fed. R. of Evid. 412(b)(1)(C).

As stated, subsection (a)(5) was thus intended to clarify that ER 413 does not exclude evidence in a criminal case if the *exclusion* of evidence would result in a constitutional violation. But the current language in subsection (a)(5) does not clearly effectuate this intent. Instead, it provides that ER 413 does not exclude "evidence that would result in a violation of a defendant's constitutional rights," which can be read as providing that ER 413 does not prohibit evidence when the *evidence itself* would lead to a constitutional violation, instead of its exclusion. The proposed amendment would revise subsection (a)(5) to confirm to the intent stated by the original rule's proponents.

Subsection (b)(1)

Subsection (b) applies to civil cases. The original GR 9 coversheet describes it as follows (emphasis added to the description of the purpose of subsection (b)(1)):

> Subsection (b) provides that in a civil proceeding, immigration status evidence of a party or witness shall not be admissible except where immigration status is an element of a party's cause of action or where another exception to the general rule applies.
>
> *Subsection (b)(l) sets forth two limited circumstances where evidence of immigration status would be handled through a CR 59(h) motion. The proposed rule balances the concerns of prejudice against immigrants highlighted by the Supreme Court with the legitimate need of a defendant, in limited cases, to raise status issues where reinstatement or future lost wages are sought.*

As stated, the intent of subsection (b) was to make evidence of immigration status generally inadmissible in civil cases, except for Rule 59(h) motions raising specified circumstances having to do with wage loss or employment claims. But current subsection (b)(1) is not cabined to Rule 59(h) motions. Instead, it applies to any posttrial motion involving the described circumstance. This substantially expands the scope of the "limited" exception. For example, "posttrial motions" include motions under Rule 60, which may be filed a year or more after judgment. In contrast, Rule 59(h) motions must be brought within ten days after entry of judgment. The proposed amendment would restrict the admissibility of immigration status evidence to. Rule 59(h) motions. The proposed amendment would clarify the exception applies to motions brought under CRLJ 59(h) as well as CR 59(h).

2. Procedure

Because the proposed amendments are technical fixes to conform ER 413 to its stated purpose, the WSBA Court Rules and Procedure Committee does not believe a further hearing is necessary. However, it will defer to the Supreme Court if a hearing would be useful to clarify the proposal. The Committee does not believe expedited consideration of this proposal is necessary.

ER 413
IMMIGRATION STATUS

(a) **Criminal Cases; Evidence Generally Inadmissible.** In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence ~~that would result in the violation of~~ if the exclusion of that evidence would violate a defendant's constitutional rights.

(b) **Civil Cases; Evidence Generally Inadmissible.** Except as provided in subsection (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

(1) **Post trial Proceedings.** Evidence of immigration status may be submitted to the court through a post trial motion made under CR 59(h) or CRLJ 59(h):

(A) where a party who is subject to a final order of removal in immigration proceedings was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) **Procedure to review evidence.** Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

WASHINGTON STATE
BAR ASSOCIATION

MEMORANDUM

To: President Rajeev Majumdar
Interim Executive Director Terra Nevitt

From: Chair Jefferson Coulter, WSBA Court Rules & Procedures Committee
Governor Brian Tollefson, Liaison to WSBA Court Rules & Procedures Committee

Date: May 11, 2020

Re: Role of the Court Rules and Procedures Committee

February 19, 2020, request from President Majumdar and Interim Executive Director Nevitt to consider the purposes of GR 9, the role articulated for WSBA, and make a recommendation to the Board of Governors as to what additional activities WSBA may want to engage in to help support achieving the purposes of GR 9.

Discussion and Background

General Rule 9 identifies as responsibilities for WSBA:

- Section (f) Consideration of Suggested Rule by Supreme Court. This section provides that the Court shall forward each suggested rule (except those deemed to be "without merit") to WSBA and provide a deadline by which WSBA may comment in advance of the Court's threshold decision whether to reject, adopt a technical change without comment, or order the rule published for comment.

- Section (g) Publication for Comment. This section charges WSBA with publishing proposed rules on its website and in the Washington State Bar News.

The Court Rules and Procedures Committee serves a vital role in the functioning of the legal system in Washington. Under GR 9, the committee meets regularly to review rules according to the schedule laid out by the Supreme Court. A key strength of the committee is its diversity of members and interests. The Committee gives careful attention to the recruitment of WSBA members who represent a diversity of people, geographies, practice areas, and points of view. Although the reasons for serving are as diverse as the committee, each member volunteers to serve out of a sincere interest in improving the operation of Washington courts.

The committee as a whole meets monthly. Its subcommittees—determined by the rules under review—meet as often as necessary between each monthly meeting to discuss suggestions and proposals, draft revisions, and vet proposals made by various interest groups and stakeholders. Decision-making is deliberative and consensus based. Through this collaboration, proposals are refined, vetted to ensure they comply with evolving case law and statutory enactments, and harmonized with existing statutes and rules to reduce confusion and eliminate unnecessary ambiguity.

The committee is aware that recently an increasing number of rules have been proposed directly to the Supreme Court. We make the following recommendations to the BOG to ensure that these competing rules—sometimes conflicting—receive the broadest level of comment, consideration, and input:

1. Request that the Supreme Court forward all meritorious suggested rules to WSBA in in accordance with GR 9(f).

2. Invite one justice of the Supreme Court or an appointed liaison to attend Committee meetings to improve communication between the court and the committee.

3. Charge the Committee with the duty of responding to suggested rules proposed directly to the Supreme Court.

We believe these simple procedures and practices will improve the quality of rules and their certainty. They also would ensure a thorough review of a proposal to determine if it is truly warranted given existing rules, in the best interests of the public, and with an eye on improving access to justice in Washington.

Kind Regards,

Jefferson Coulter Brian Tollefson