

Court Rules and Procedures Committee

Meeting
AGENDA

March 19, 2018
9:30 a.m. – 12:30 p.m.

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

Call to Order/ Preliminary Matters

- Approval of Minutes:
 - February 12, 2018 **(pp. 1-2)**

Subcommittee Reports

1. Criminal Rules (CrR)
 - Subcommittee Chair Ann Summers **(pp. 3-4)**
2. Criminal Rules for Court of Limited Jurisdiction (CrRLJ)
 - Subcommittee Chair Jefferson Coulter **(pp. 5)**
3. Subcommittee X
 - Subcommittee Chair Rike Connelly **(pp. 6)**

Other Business/Good of the Order

Adjourn

Next meeting is scheduled for April 16, 2018



Telephonic Meeting
February 12, 2018 Minutes

Members Present: Chair Shannon Kilpatrick, Cindy Alexander, Sara Beigh, Olga Blotnis, Claire Carden, Jody Cloutier, Rike Connelly, Stephanie Dikeakos, Shelby Lemmel, Richard Greene, Geoffrey Grindeland, D. Jack Guthrie, Karen Horowitz, John Ledford, Alison Markette, Tim Moran, Ashton Rezayat, Elizabeth Rene, Ann Summers, Jon Zimmerman, Judge Blaine Gibson, Judge Kevin Korsmo, and Judge Rebecca Robertson.

Members Excused or Not Attending: Jefferson Coulter, Caryn Jorgensen, Jerry Moberg, and Dalynne Singleton.

Also Attending: Kevin Bank (WSBA Assistant General Counsel), Shannon Hinchcliffe (AOC Liaison), Brian Tollefson (BOG Liaison), Sherry Lindner (WSBA paralegal), Eileen Farley, and Emily Gause.

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

May 15, 2017 and the November 13, 2017 minutes were approved by consensus. July 24, 2017 minutes were approved by consensus with minor changes.

Subcommittee Reports

Criminal Rules (CrR)

Chair Ann Summers reported that the subcommittee has reviewed the criminal rules and is half way through to submitting its final recommendations to the full Committee.

Criminal Rules for Limited Jurisdiction (CrRLJ)

Chair Kilpatrick reported that the CrRLJ subcommittee chair is Jefferson Coulter. The CrRLJ subcommittee will focus its review on how any changes proposed by the CrR subcommittee affect the CrRLJs. The subcommittee will be meeting in the next few weeks.

Subcommittee X

Chair Rike Connelly reported that the subcommittee has received a rule proposal from Aaron Rocke and will review Civil Rule (CR) 30 – Deposition Upon Oral Examination. The subcommittee will hold a conference call on February 14 to discuss this proposal further.

The Committee was reminded that the BOG materials deadline for submitting proposed amendments to the BOG is July 11, 2018. All proposals need to be ready for the Committee to vote on by the June 18 meeting, if possible. Subcommittees were encouraged to be thorough

and err on the side of more engagement with stakeholders, rather less engagement just to meet the deadline.

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

DRAFT



Court Rules and Procedures Committee CrR Subcommittee Report March 7, 2018

Subcommittee: The CrR subcommittee is conducting a general review of the CrR.

Members attending the March subcommittee meeting were: Jefferson Coulter, James Smith, Judge Korsmo, John Ledford, Claire Carden, Jack Guthrie, Sara Beigh and Ann Summers. Others attending were Eileen Farley, Ben Carr, Kent Underwood and Greg Link.

Issues being worked on:

We discussed the following rules and potential amendments.

CrR 3.4 Presence of Defendant

(b) -The subcommittee agreed that the term “corporation” in the rule should be amended to “legal entity other than natural persons” to be more inclusive of legal entities that are not corporations.

For reference, see RCW 9A.08.030 regarding corporate criminal liability.

-The subcommittee decided not to propose changes to the rule regarding who can appear on behalf of the corporation. The rule currently allows the corporation’s lawyer to appear on behalf of the corporation where presence is required.

(c) -The subcommittee is concerned that the present rule allows courts to issue bench warrants for failure to pay LFOs without a hearing to determine whether the failure is willful. However, the subcommittee agrees that the any language preserve the ability to issue a bench warrant for a defendant’s *failure to appear* at a show cause hearing regarding the failure to pay LFOs. Feedback from the Council on Public Defense and the Washington State Association of County Clerks was considered and discussed. Jefferson Coulter and Claire Carden will work together on a proposal to bring to the subcommittee. They will also consult the recently-passed LFO reform bill, HB 1783.

CrR 4.10 Material Witness

The subcommittee decided not to propose changes.

CrR 6.12 Witnesses

The subcommittee decided not to propose changes.

CrR 7.8 Relief from Judgment or Order

The subcommittee decided not to propose changes, because, although the current language is confusing, there was no consensus that a change would result in system efficiencies.

CrR 8.2 Motions

There was a consensus among the majority of subcommittee members that there should be a rule addressing motions for reconsideration to ensure consistency across courts, given the conflicting case law as to whether motions for reconsideration are allowed. However, we were unable to reach agreement on language and where the provision should be placed. Sara Beigh and Ann Summers will work together on a proposal to bring to the subcommittee.

CrR 2.3(e) Search warrants – Motion for return of property.

There is some concern among subcommittee members that there are substantial differences between CrR 2.3(e) and CrRLJ 2.3(e) regarding where a motion for return of property is filed, what the basis for return may be, and whether the law enforcement agency receives notice of the motion. Given that district courts and superior courts have concurrent authority to issue search warrants pursuant to RCW 2.20.030 and 10.79.035 (enacted in 2014) for any offense alleged to have occurred in the county, it seems the two rules should be parallel to each other. The subcommittee has requested that the CrRLJ subcommittee, headed by Jefferson Coulter, look at the issue. The CrR subcommittee will wait to see what the CrRLJ proposes.

We discussed the need to distribute any proposed amendments to stakeholders by April 1 to allow a sufficient period to receive feedback.

Recommendations:

We are proposing clarifying amendments to CrR 1.3, 3.4, and 4.4.

TO: CrRLJ Subcommittee members

FROM: Jefferson Coulter, CrRLJ Subcommittee chair

RE: Summary of March 6 subcommittee meeting

DATE: March 9, 2018

Members attending the March subcommittee meeting were:
 Clair Carden, Jefferson Coulter, Karen Horowitz, Timothy Moran, Ashton T. Rezayat,
 and Jon Zimmerman.

Guests in attendance were:
 Eileen Farley, Council for Public Defense

We discussed the following.

Rules have been assigned to the members as follows:

All	1.1 – 1.8	
Claire Carden	2.1 – 2.5	
Richard Green	3.1 – 3.6	
Karen Horowitz	4.1 – 4.5	
Lisa Donaldson	4.6 – 4.10	
Ashton T. Rezayat	5.1 – 6.1.2	
Jerry Moberg	6.1.3 – 6.6	
Caryn Jorgensen	6.7 – 6.11	
Jefferson Coulter	7.1 – 7.8	
Timothy M. Moran	6.12 – 6.16	
Elizabeth M. Rene	8.1 – 8.6	
Jon Zimmerman	8.7 – 9.3	
Judge Rebeca Robertson	Input on all	Judicial Liaison

The subcommittee members agreed to review their assigned rules and report back to the subcommittee as a whole before March 28, 2018.

The next subcommittee meeting will be on March 28, 2018 at 12:00 pm. The subcommittee will discuss any proposed changes and attempt to reach consensus before reporting out any recommendations to the Committee.

We discussed the need to distribute any proposed amendments to stakeholders by April 1 to allow a sufficient period to receive feedback.

TO: WSBA Rules Committee

FROM: Subcommittee X (Rike Connelly, Chair)

RE: Summary of February 14, 2018 Meeting

ATTENDANCE: The following committee members were able to attend:

- The Hon. Blaine Gibson
- Stephanie Dikeakos
- Geoff Grindeland
- Jody Cloutier
- Cindy Alexander
- Rike Connelly
- Guest: Aaron Rocke, practitioner

MEETING: Under discussion was a rule proposal submitted by civil litigator, Mr. Rocke, regarding changes to Civil Rule 30: Depositions Upon Oral Examination. His proposed changes focus on updating the language of the rule to reflect the use of digital media to store video from depositions (rather than the rule's reference to "video tape").

The benefits of this rule change were discussed. Judge Gibson raised the concern about the security of any digital media and the protection of such media from tampering and interference. The proposal includes language that would require the certificate submitted by the videographer to certify measures taken to preserve the recording. A discussion followed.

The committee also discussed the formatting of the rules.

The plan is to follow up with established videography businesses in Washington for input and a court reporter association.

* * *