WASHINGTON
COURTS

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

BOARD MEETING

FRIDAY, MARCH 14, 2014

AOC SEATAC OFFICE
SEATAC, WASHINGTON

WASHINGTON COURTS

DMCJA BOARD MEETING
FRIDAY, MARCH 14, 2014
12:30 P.M. – 3:30 P.M.
AOC SEATAC OFFICE
SEATAC, WA

PRESIDENT JUDGE DAVID SVAREN
AGENDA

	TAB
Call to Order	
Minutes – February 14, 2014 **Treasurer's Report** – *Judge Marinella* **Special Fund Report** – *Judge Svaren*	1
Standing Committee Reports A. Legislative Committee – *Judge Meyer* B. Reserves Committee – *Judge Alicea-Galvan* C. Education Committee – *Judge Burrowes* 1) DMCJA Spring Program	2
JIS Status Update – *Vicky Cullinane, AOC*	
Action A. Nominating Committee - Slate of Candidates for 2014-2015 Year B. Bylaws Committee - Executive Session Language	3
Discussion A. Trail Court Advocacy Board (TCAB) – *Judge Svaren* B. BJA Recommendations for Committees Review – *Judge Svaren* C. Rules Committee – *Judge Garrow* 1) Proposed WSBA RALJ Amendments 2) Proposed Amendments to CrR 8.10 and CrRLJ 8.13	4
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	

Information A. Judicial Needs Estimate Workgroup– *Judge Jahns, Judge Burrowes, Judge Logan* B. Update on Public Record Request – *Judge Svaren* C. Legislative Committee meeting minutes D. Rules Committee meeting minutes	**5**
Other Business A. New Court Association Coordinator for DMCJA B. Next meeting April 11, 2014, SeaTac, Washington	
Adjourn	

DMCJA Board of Governors Meeting

Friday, February 14, 2013, 12:30 p.m. – 3:30 p.m.
AOC SeaTac Office

MEETING MINUTES

Members:
Chair, Judge Svaren
Judge Alicea-Galvan
Judge Allen
Judge Burrowes
Judge Derr
~~Judge Garrow (non-voting)~~
Judge Jahns
~~Judge Jasprica (non-voting)~~
Judge Lambo (non-voting)
Judge Logan
Judge Marinella
Judge Meyer
~~Judge Olwell~~
Judge Ringus (non-voting)
Judge Robertson
Commissioner Smiley
~~Judge Smith~~
~~Judge Steiner~~

Guests:
Ms. Aimee Vance, DMCMA
Deena Kaeling, MCA
Judge Steve Rosen
Judge Kimberly Walden

AOC Staff:
Ms. J Krebs
Ms. Vicky Cullinane
Ms. Michelle Pardee
Mr. Dirk Marler

President Svaren called the meeting to order at 12:31 p.m. and noted there was a quorum present.

ASSOCIATION BUSINESS

Minutes
M/S/P to approve January 10, 2014, minutes. Unanimous vote.

Treasurer's Report
M/S/P to approve the Treasurer's Report. Unanimous vote.

Special Fund Report
Judge Svaren reported that there were no changes to the Special Fund and that at the Board Retreat there will be a discussion on alternative banking options for this fund to make it easier for the custodian of the fund to have access and transfer to the new custodian when time.

Standing Committee Reports

Technology Committee
Judge Walden reported on the most recent meeting where the discussion was about reprioritizing the ITG requests so that the new case management request would be moved to

the number one priority. The recommendation of the Technology committee to the Board of Governors was to request that ITG 102 be reprioritized to number one and that ITG 027 Expanded Seattle Muni case Data Transfer be withdrawn. The committee's recommendation also included waiting to work on ITG 102 while the courts and AOC look into the feasibility of a data exchange compared to a new case management system.

Judge Logan asked why the Technology Committee found it necessary to consider reprioritizing the TIG requests. Judge Walden responded that it was a result of the AOC, DMCJA, and DMCMA summit on moving forward with a new case management system.

Ms. Cullinane gave a recap of the AOC, DMCJA, and DMCMA summit and as a result of that summit, the Presidents of DMCJA and DMCMA would work with AOC to have judges contact legislators about not taking money out of the JIS fund and to determine if DMCJA would want to make ITG 102 for new case management system its number one priority so that it AOC would be able to start work on that over the current number one ITG priority for the Expanded Seattle Muni Case Data Transfer.

M/S/P to move to action the consideration of the Technology Committee's recommendation to reprioritize the ITG requests. Unanimous vote.

There was discussion from Judge Rosen that while a new case management system should be prioritized as number one, no work should be done to move forward until a statewide system is compared to a data exchange model. Also looking a systems that interface with the other departments of cities and counties, such as prosecutors, probation, and law enforcement, would be the most beneficial.

Judge Alicea-Galvan stated that any new system must work for all the CLJ courts and serve all the citizens in this state. It should not be a system that is catered to specific courts. Right now we do not know what a new system is capable of doing because the process hasn't started yet.

Judge Derr stated that a new statewide system is needed to replace DISCIS. If courts do not choose to use the statewide system, AOC and the state should not have to pay for that court's costs of interfacing with a new statewide case management system. There should be a court rule that sets out what the minimal information requirements are so that courts not on the statewide system know what is required to be delivered. It is time to spend some money to start down the road to find out what is available in a new statewide case managements system. It should not be delayed any longer.

Ms. Vance agreed that need to move forward now with the first steps of gathering requirements and looking at what options are available to courts for the statewide case management system.

Judge Marinella stated that small and large courts need to work as a team to get a system that provides information sharing in the interest of public safety and while larger courts may have money to get systems they prefer, there are many smaller courts with less money and resources and need AOC to implement a statewide case management system. During the first phase of gathering info, the option of data exchange can be considered along with a new case management system.

Judge Alicea-Galvan stated that the time to start moving forward for a new statewide case management system for all courts is now. Also start setting the standards for minimum

information requirements that courts not on the statewide systems must provide and need universal information sharing throughout all courts.

M/S/P to request that JISC make ITG 102 DMCJA's number one priority and withdraw ITG 027 Seattle data exchange. Unanimous vote.

Legislative Committee
Judge Meyer reviewed the Positions Taken report and updates on bills of interest to DMCJA. Also the Executive Board approved $1,000 for the DMCJA's lobbyist for work done on the Retirement bill.

M/S/P to allow up to $5,000 as needed for any further payments to the DMCJA's lobbyist for work done on the Retirement bill. Unanimous vote.

Nominating Committee
Judge Derr reported that the committee has only one more position that it is looking for a candidate for and hope to have that soon. The recommendations from the committee will be up for action at the March Board meeting to be sent to the membership at the Spring Conference.

System Improvement Committee
Judge Allen reported that this committee is submitting its report of recommendations to the Board and Candice Bock, Association of Washington Cities (AWC) and Brian Enslow, Washington State Association of Counties (WSAC), did not participate in the recommendations. The recommendations of this committee will be discussed at the Board Retreat and up for action at the April 26, 2014, Board meeting following the Board Retreat.

JIS Status Update
Ms. Cullinane reported that work continues on a new way to log in to JABS and it will require 2 pieces of information, RACF ID and password. For judges with multiple courts, they will be able to log in once and then choose from a list of the courts they are involved with. Ms. Cullinane handed out a one page flyer that can be used when talking to legislators about why money should not be taken from the JIS fund.

Discussion

A. *CLJ CMS Summit Meeting– Judge Svaren*
Information on this meeting was given during the Technology Committee report and discussion.

B. *Trail Court Advocacy Board – Judge Svaren*
Judge Svaren reported that this Board will meeting after BJA meetings since most of the members will already be at the BJA meetings. The draft charter was reviewed. There was discussion that this Board should not have committees under it as its main focus is advocacy and it is not the intent for this Board to displace either Judges' associations or BJA. Ms. Vance said DMCMA will be sending a letter to request that it be members of TCAB. There was discussion that is should be set out that DMCJA or SCJA may not necessarily support same topic/issues but are still able to pursue that topic/issue independently. There should be a coordination with BJA on funding and on

the last page of the draft charter, #3 on funds passed through AOC should be removed. There was a question on if TCAB and the BJA committee for Trial Court Funding Operations Committee would join together. Right now BJA has not decided if Trial Court Funding Operations Committee will continue. There is a meeting on February 21, 2014, where changes to the draft charter will be discussed.

C. Proposed DMCJA By-Law Amendment– *J Krebs, AOC*
The proposed amendment will be up for action at the March Board meeting to be sent to the membership at the Spring Conference.

D. Records Retention- Financial Records archived by AOC – *Judge Svaren*
The AOC retention schedule for DMCJA's financial records is 6 years and no objections or concerns were raised with AOC destroying those records after 6 years.

E. Trial Court Request Ideas to Suggest to the BJA Trial Court Funding Operations Committee – Judge Alicea-Galvan
Judge Alicea-Galvan is on the BJA Trial Court Funding Operations Committee and any Board members with ideas for this committee to pursue to email her as soon as possible. Some topics of interest were case management system, interpreters, and security.

F. 2014 Spring Conference Registration or Incidental Fees – *Judge Svaren & Judge Marinella* (possible action)
M/S/P to move to action. Unanimous vote.
M/S/P to pay for the incidental fee, estimated at $205, for the 2014 Spring Conference from next year's budget. Unanimous vote.

G. Board Retreat – April 25 & 26, Willows Lodge, Woodinville – *Judge Alicea-Galvan*
Judge Alicea-Galvan discussed the dates and location for the Board Retreat.

Action

A. Amendment to 2013-2014 Board Meeting Schedule due to April 25-26, 2014, Board Retreat – *Judge Svaren*

M/S/P to amend the 2013-2014 Board Meeting schedule to have a Board Retreat on April 25-26, 2014, with the Board meeting on April 26, 2014, following the Board Retreat and to cancel the May Board meeting.

B. Special Fund Money Allocation for Lobbying on Retirement Legislation- Judge Meyer

This was discussed during the Legislative Committee report and M/S/P to allow up to $5,000 as needed for any further payments to the DMCJA's lobbyist for work done on the Retirement bill.

LIAISON REPORTS

DMCMA- Ms. Vance reported that in 2015 they are looking to have a joint conference with Oregon State Court Administrators.

MCA – Ms. Kaeling reported that they are finishing the DUI Supervision manual and there is money through Washington Traffic Safety Commission for probation units to use for portable breath tests or pretrial interlock requirement and 24/7 programs. Contact Ms. Kaeling for info on how to get funds.

SCJA – No liaison present.

WSBA – No liaison present.

WSAJ – No liaison present.

AOC – Mr. Marler reported that the legislative session and new case management system are keeping AOC busy. Although King County Superior Court said it will not be using the new case management system, work is continuing for all the other superior courts that will be using the new system.

BJA - Judge Ringus reported that at the next BJA meeting there will be Budget focused.

Information

A. Update on Public Record Request – *Judge* Svaren *(possible action)*
M/S/P to move to action. Unanimous vote. M/S/P to have DMCJA's attorney discuss possible settlement options.

B. Rules Committee Meeting Minutes
No discussion

Other Business

A. ***Judicial College***

Judge Jahns reported that the January 30, 2014, reception jointly sponsored by DMCJA & SCJA during Judicial College went well.

B. **Judicial Needs Estimate Workgroup**

Judge Burrowes reported that this workgroup is still meeting.

Meeting Adjourned at 3:10 p.m.

WASHINGTON COURTS

District and Municipal Court Judges' Association

March 5, 2014

To: President Svaren, DMCJA Officers; DMCJA Board of Governors:
From: G. Scott Marinella, DMCJA Treasurer
Subject: Monthly Treasurer's Report for March, 2014

Dear President Svaren, Officers and Members of the DMCJA Board of Governors,

The following is a summary of the total DMCJA accounts, expenditures and deposits, a well as an update regarding the finances of our association.

ACCOUNTS

US Bank Platinum Business Money Market Account
Fund Balance - $100,369.41, as of January 31, 2014.

Bank of America Accounts
Investment Account - $224,804.24, as of February 28, 2014.
Checking Account - $13,647.95, as of February 28, 2014.

Total for all Accounts: $313,228.88

EXPENDITURES

Total 2013/2014 adopted budget:	$228,900.00
Total expenditures to date (2-4-2014):	$ 53,287.74
Total remaining budget as of March 5, 2014:	$175,612.26

DEPOSITS

Total deposits 2013/2014: $140,704.16

DMCJA 2013-2014 Budget

	ITEM COMMITTEE	Beginning Balance	Total Costs	Ending Balance
1	Access to Justice Liaison	$500.00		$500.00
2	Audit	$2,000.00		$2,000.00
3	Bar Association Liaison	$5,000.00		$5,000.00
4	Board Meeting Expense	$30,000.00	$15,375.02	$14,624.98
5	Bookeeping Expense	$3,000.00	$2,225.00	$775.00
6	Bylaws Committee	$250.00		$250.00
7	Conference Committee	$3,500.00		$3,500.00
8	Conference Incidental Fees For Members Spring Conference 2013	$40,000.00		$40,000.00
9	Diversity Committee	$2,000.00	$792.01	$1,207.99
10	DMCMA Education	$5,000.00		$5,000.00
11	DMCMA Liaison	$500.00		$500.00
12	DOL Liaison Committee	$500.00	$50.82	$449.18
13	Education Committee**	$8,500.00	$882.76	$7,617.24
14	Educational Grants	$5,000.00	$830.44	$4,169.56
15	Judicial Assistance Committee	$10,000.00	$7,359.34	$2,640.66
16	Legislative Committee	$6,000.00	$1,642.79	$4,357.21
17	Legislative Pro-Tem	$2,500.00	$688.38	$1,811.62
18	Lobbyist Expenses	$1,000.00		$1,000.00
19	Lobbyist Contract	$55,000.00	$12,000.00	$43,000.00
20	Long-Range Planning Committee	$1,500.00	$441.82	$1,058.18
21	MCA Liaison	$1,500.00	$596.31	$903.69
22	National Leadership Grants	$3,000.00	$3,000.00	$0.00
23	Nominating Committee	$400.00		$400.00
24	President Expense	$7,500.00	$1,218.24	$6,281.76
25	Reserves Committee	$250.00		$250.00
26	Rules Committee	$1,000.00	$77.49	$922.51
27	Rural Courts Committee	$0.00	Not Funded	$0.00
28	Salary and Benefits Committee	$0.00	***Not Funded	$0.00
29	SCJA Board Liaison	$1,000.00	$97.30	$902.70
30	Technology Committee	$5,000.00	$96.10	$4,903.90
31	Therapeutic Courts	$2,500.00	$532.06	$1,967.94
32	Treasurer Expense and Bonds	$1,000.00		$1,000.00
33	Judicial Community Outreach	$3,000.00	$3,000.00	$0.00
34	Uniform Infraction Committee	$1,000.00		$1,000.00
35	Systems Improvement Committee	$5,000.00	$145.04	$4,854.96
36	Professional Services	$15,000.00	$2,236.82	$12,763.18
	TOTAL	**$228,900.00**	**$53,287.74**	**$175,612.26**
37	**TOTAL DEPOSITS MADE**	**$140,704.16**		
38	**CREDIT CARD**	**$0.00**		
	***funding will come from special funds			

DEPOSITS MADE					
Date	Chk. #	Item Committee	Debit	Deposit	Balance
					$0.00
7/11/2013	DEP	Deposit - JASP		$5,000.00	$5,000.00
8/16/2013	7171	Deposit - 2013 Dues Judge Kevin A. McCann		$750.00	$5,750.00
9/24/2013	DEP	Deposit - 2013 Dues Adams County - Tyson Hill		$375.00	$6,125.00
11/19/2013	DEP	Credit Card overpayment refund		$506.16	$6,631.16
12/3/2013	DEP	Deposit - Dues Paid		$824.00	$7,455.16
12/12/2013	DEP	Deposit - Dues Paid		$9,825.00	$17,280.16
12/16/2013	DEP	Deposit Dues Paid		$22,161.00	$39,441.16
12/19/2013	DEP	Deposit Dues Paid		$6,075.00	$45,516.16
12/27/2013	DEP	Deposit Dues Paid		$18,261.00	$63,777.16
1/2/2013	DEP	Deposit Dues Paid		$4,500.00	$68,277.16
1/15/2014	DEP	Deposit Dues Paid		$8,624.00	$76,901.16
1/23/2014	DEP	Deposit Dues Paid		$24,147.00	$101,048.16
1/28/2014	DEP	Deposit Dues Paid		$4,499.00	$105,547.16
1/31/2014	DEP	Deposit Dues Paid		$7,023.00	$112,570.16
2/6/2014	DEP	Deposit Dues Paid		$13,287.00	$125,857.16
2/12/2014	DEP	Deposit Dues Paid		$12,312.00	$138,169.16
2/20/2014	DEP	Deposit Dues Paid		$1,498.00	$139,667.16
3/5/2014	DEP	Deposit Dues Paid		$1,037.00	$140,704.16
		TOTAL DUES PAID	$134,073.00		
		TOTAL DEPOSITS MADE	$140,704.16		

CREDIT CARD BALANCE						
Date	Chk. #	Line Item#	Item Committee	Payment	Charge	Balance
			July Statement Amount			$1,285.58
7/19/2013	OL		Payment made by Steiner Online	$1,285.58		$0.00
8/2/2013	6990	4, 15, 24	Made CC payment by GSM	$1,285.58		-$1,285.58
7/31/2013	Chrg	16	EIG DOTSTER - Shannon flowers		$17.49	-$1,268.09
8/9/2013	Chrg	4	The Deli		$28.06	-$1,240.03
10/16/2013	Chrg	24	Macy's East #376 - present		$181.78	-$1,058.25
10/16/2013	Chrg	15	Hotel and Food - see CC Stmnt 10-11-13		$390.65	-$667.60
9/30/2013	Credit	N/A	Easy Savings Credit	$12.76		-$680.36
10/1/2013	Chrg	15	WSBA.ORG - JASP CLE Credit App.		$35.00	-$645.36
11/5/2013	Credit	N/A	Easy Savings Credit	$5.80		-$651.16
11/1/2013	Chrg	4	Radisson		$145.00	-$506.16
11/11/2013	Credit	N/A	Credit Balance Refund		$506.16	$0.00
2/20/2014	chrg	4	Hotel - See CC Stmnt.2-11-14		$167.48	$167.48
2/20/2014	7302	15	Payment - chk. 7302	$167.48		$0.00

Bank of America

P.O. Box 15284
Wilmington, DE 19850

AI 0 353 394 271 010932 #801 AV 0.381

DMCJA SPECIAL FUND
C/O DAVID A SVAREN
PO BOX 340
MOUNT VERNON, WA 98273-0340

Customer service information

1.888.BUSINESS (1.888.287.4637)

bankofamerica.com

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

Your combined statement

for February 01, 2014 to February 28, 2014

Your deposit accounts	Account/plan number	Ending balance	Details on
Business Interest Checking	[redacted]	$6,365.40	Page 3
Business Investment Account		$42,174.67	Page 5
Total balance		**$48,540.07**	

Bank of America

Your checking account

Account number [redacted]

Your Business Interest Checking

DMCJA SPECIAL FUND

Account summary

Beginning balance on February 1, 2014	$6,365.36
Deposits and other credits	0.05
Withdrawals and other debits	-0.01
Checks	-0.00
Service fees	-0.00
Ending balance on February 28, 2014	**$6,365.40**

# of deposits/credits: 1

# of withdrawals/debits: 1

# of days in cycle: 28

Average ledger balance: $6,365.36

Annual Percentage Yield Earned this statement period: 0.01%.
Interest Paid Year To Date: $0.10.
Federal Withholding This Period: $0.00

The quarterly business credit card bonus reward for customers enrolled in the Business Platinum Privileges program will be discontinued as of July 1, 2014. If you are enrolled in Business Platinum Privileges and have a business credit card, your last quarterly bonus will be for the quarter ending on June 30, 2014. This change will not impact any other existing business card rewards programs you may have. If you have questions about this change, or if we can help in any way, please call the number on the front of your statement.

Deposits and other credits

Date	Description	Amount
02/28/14	Interest Earned	0.05
Total deposits and other credits		**$0.05**

Your Business Investment Account

DMCJA SPECIAL FUND

Account summary

Beginning balance on February 1, 2014	$42,174.20
Deposits and other credits	0.65
Withdrawals and other debits	-0.18
Service fees	-0.00
Ending balance on February 28, 2014	**$42,174.67**

# of deposits/credits: 1

# of withdrawals/debits: 1

# of days in cycle: 28

Average ledger balance: $42,174.21

Average collected balance: $42,174.21

Annual Percentage Yield Earned this statement period: 0.02%.
Interest Paid Year To Date: $1.37.
Federal Withholding This Period: $0.00

The quarterly business credit card bonus reward for customers enrolled in the Business Platinum Privileges program will be discontinued as of July 1, 2014. If you are enrolled in Business Platinum Privileges and have a business credit card, your last quarterly bonus will be for the quarter ending on June 30, 2014. This change will not impact any other existing business card rewards programs you may have. If you have questions about this change, or if we can help in any way, please call the number on the front of your statement.

Deposits and other credits

Date	Description	Amount
02/28/14	Interest Earned	0.65
Total deposits and other credits		**$0.65**

Withdrawals and other debits

Date	Description	Amount
02/28/14	Federal Withholding	-0.18
Total withdrawals and other debits		**-$0.18**

Daily ledger balances

Date	Balance ($)	Date	Balance($)
02/01	42,174.20	02/28	42,174.67

To help you BALANCE YOUR CHECKING ACCOUNT, visit bankofamerica.com/statementbalance or the Statements and Documents tab in Online Banking for a printable version of the How to Balance Your Account Worksheet.

DMCJA Spring Program

History
During the September DMCJA Education Committee meeting, Judge Joseph Burrowes suggested the theme of DUIs since there will not be DUI regionals this year. Judge Burrowes presented a list of areas from the DMCJA curriculum that the DMCJA have not covered over the past several years. The education committee directed Judge Burrowes to develop a proposed DMCJA Education program.

Judge Burrowes met with Judicial Branch Educators Ms. Judith M. Anderson and Ms Stephanie Judson on October 11, 2013 to review the curriculum, several e-mails from education members and other judicial officers and develop the following DMCJA Spring Program content.

OBJECTIVES
The objective of the DMCJA Spring Program is to develop content related to DUI issues in various areas of the law that impact District and Municipal Court Judges whether you are in a rural court or urban court. Suggested theme ***"DUI's are Everywhere...Now What?"*** The areas of education are:

- Ethics/Wellness and those darn DUIs
- Choice Sessions:
  - Trial Management
  - Jury Selection – Batson Issues
- Legislative Update.
- DUI related Search and Seizure issues
- Judgments and Sentencing issues and DUIs
- DOL update
- Evidence including Post McNeely

The development of all programs will provide the participant tips and techniques they can utilize back at their courts and useful materials such as checklists or bencards.

A more detailed description and suggested content on the next page and a tentative schema is attached.

The committee elected to not send out Requests for Program Proposals but rather drew content from the curriculum. The committee solicited suggestions on "hot" topics and issues for each of the program content areas via e-mail on the DMCJA listserv that outlined the program.

Education committee has written up the goal of each program, determined subject areas to be covered during the time allotted, identified most faculty, assigned committee members to educators who will work faculty on session content.

Spring Agenda

"DUI is Everywhere....Now What?"

Sunday, June 8, 2014 - 1:00 - 4:30 (3 hours)

Ethics and Wellness and those darn DUIs
Faculty to be determined...

Judicial officers deal with DUIs everyday and often have heavy and long dockets. This program will focus on the ethical considerations of conditions of release and post-conviction probation issues, e.g. alcohol monitoring. What if you don't do this, what are the implications? The program would also address "fatigue" and "burnout" when dealing with multiple DUIs and all the drama they can bring. How does a judicial officer continue to provide fair and impartial rulings?

Monday, June 9, 2014

Plenary: Trial Management 8:30 - 10:00 (1.5 hours)
New faculty to be determined...

This session will focus on constitutionalists at trial in DUI cases. Solid information and practical tips on how to deal with issues that arise.

Plenary: Jury Selection 10:30 - 12:00 p.m. (1.5 hours)
Justice Gonzalez and *Defense Attorney*

What about Batson challenges, jury selection and fairness, challenges for cause. What are the rural court issues, what are the urban courts issues and what resources are available?

Plenary: Legislative Update 1:00 - 3:15 p.m. (2 hours)
Judge Meyer and Judge Phillips

A review what the Legislature did last year regarding DUIs which were not covered last year and a review of 2014 legislative changes.

Tuesday, June 10, 2014

Plenary: Search and Seizure and DUIs. 8:30 - 12:00 (3 hours)
Judge Burrowes and Judge Williams

This session will focus on Search Warrants, SFTS, Breath Tests, and 403 Issues. Checklists and benchcards will be developed.

Plenary: Pretrial Management 2:45 – 3:45 (1 hour)
Judge Portnoy

How do you approach 24/7: Ignition interlock within 24 hours of being picked up on DUI yet there's no charge filed? What is your authority prior to charges being filed? What are other judges doing?

Plenary: Judgments and Sentencing 4:00 -5:00 (1 hour)
Judge Jasprica and Judge Ross

What are some of the DUI issues within judgments and sentencing? Areas such as how to cover fines and costs, treatment, Interlock and Probation. Judicial philosophies will be integrated within and scenarios will provide an interactive session.

Wednesday, June 11, 2014

Plenary – DOL Update 8:30 – 10:00 (1.5 hours)
Ms. Carla Weaver

DOL updates.

Plenary – Evidence 10:15 – 12:30 (1.75 hours)
Mr. Karl Tegland

Evidentiary updates and post McNeely issues related to DUI.

2014 DMCJA Election Worksheet

Position	Current Member	Nominee	Court	Req. Attribute	PT muni	PT dist	Full T muni	Full T dist	Magis/ Comm	East/ West	Small/ Large
Past Pres.	Sara Derr							X		W	Large
		David Svaren	Skagit D					X		E	Large
President	David Svaren							X		W	Large
		V. Alicea-Galvan	Des Moines M				X			W	Small
Pres. Elect	V. Alicea-Galvan						X			W	Small
		David Steiner	KCDC, East					X		W	Large
Vice Pres.	David Steiner		KCDC, East					X		W	Large
		G. S. Marinella	Columbia D			X				E	Small
Sec/Treas.	G. S. Marinella		Columbia D			X				E	Small
		Scott Ahlf	Olympia M				X			W	Small
Bd Pos 5	Mary Logan		Spokane M	Muni			X			E	Large
		Tracy Staab	Spokane M	Muni			X			E	Large
		Karli Jorgensen	Kent M	Muni			X			W	Small
Bd Pos 6	Sandra Allen		Ruston/Milton	PT Muni	X					W	Small
		Jennifer Fassbender	Airway Heights	PT Muni	X					E	Small
		Michelle Gehlsen	Bothell M	PT Muni	X					W	Small
				PT Muni	X						
Bd Pos 7	Pete Smiley		Bellingham M	Commis					X	W	Small
		Susan Noonan	KCDC	Commis					X	W	Large
		Linford Smith	Skagit D	Commis					X	W	Large
Bd Pos 1	Jeffrey Jahns	N/A	Kitsap D	FT Dist				X		W	Large
Bd Pos 2	Samuel Meyer	N/A	Thurston D	FT Dist				X		W	Large
Bd Pos 3	Heidi Smith	N/A	Okanogan D	PT Dist		X				E	Small
Bd Pos 4	Reb. Robertson	N/A	Federal Way	Muni			X			W	Small
Bd Pos 8	Kelley Olwell	N/A	Yakima M	Open			X			E	Large
Bd Pos 9	J. Burrowes	N/A	Benton D	Open				X		E	Large

= remaining on the Board

Small Court = 2 or less judicial officers

n:\programs & organizations\dmcja\committees\nominating\2014 position grid - as of 1-22-2014.docx

Amendment re Executive Session – A new Section 4, Art. VII is proposed to address executive sessions. The revised Article VII would read as follows (new language is underlined):

ARTICLE VI - Meetings and Quorum

Section 1. Association Meetings:

The Association shall meet annually in the state of Washington at a date, time and place to be determined by the Board of Governors. This meeting shall be known as the Annual Meeting and will be held at Spring Conference. An additional membership meeting will be held in conjunction with the Washington Judicial Conference. Written notice of the Annual Meeting shall be sent to all members in good standing by the Secretary-Treasurer at least 30 days in advance.

Section 2. Special Meetings:

The President with the consent of a majority of the Board of Governors may call a special meeting, provided that written notice of the date, time and place, and business to be brought before the special meeting shall be sent to all members of the Association.

Section 3. Quorum:

A quorum for the Annual Meeting of the Association shall be one-sixth of the active membership. A quorum for the special meeting shall be one-fourth of the active membership.

Section 4. Executive Session:

(a) Upon a majority vote, the Board of Governors may call an executive session to discuss matters involving security, appointment to open positions, potential litigation or other matters deemed confidential. A motion to enter executive session shall set forth the general purpose of the executive session, which shall be included in the general minutes.

(b) No active member of the Association present at a Board of Governors' meeting shall be excluded from attending an executive session.

(c) Administrative Office of the Courts staff may be present during an executive session at the discretion of the President or Board member acting on the President's behalf.

Trial Courts Advocacy Board

February 21, 2014

Present: Judge Snyder, Judge Svaren, Judge Derr, Judge Ramsdell

Staff: Callie Dietz, Dirk Marler, Michelle Pardee (via phone), Janet Skreen and Regina McDougall

Introduction

The meeting was called to order, introductions made, and reviewed agenda.

General Business

The adopted meeting schedule is included in the packets. Initially when the BJA standing committee planning groups were formed, there was a possibility that those meetings would conflict with TCAB. The 3 representatives from TCAB who are obligated to participate on BJA committees reported no immediate conflicts so the adopted schedule remains unchanged. If there are conflicts, the TCAB schedule will be adjusted, but the next meeting date remains March 21, 2014.

There are no edits needed to the meeting summary from January.

The presidents of SCJA/Judge Snyder and DMCJA/Judge Svaren both reported that they update the association boards on the progress of TCAB structure and charter development. The SCJA did not have feedback on the charter, but DMCJA does (outlined below). The SCJA has the charter on for action at their meeting on March 1, 2014.

Charter

The group discussed proposed charter edits from the DMCJA and AOC and reached consensus on proposed changes. The DMCMA requested active involvement in the TCAB, not on an as-requested basis. Their request is to be non-voting members. All agree so the charter will be amended and invitations for 1 representative from each administrator association sent. The DMCJA also considered the expectation that TCAB be involved in decisions related to funding distribution and allocation of pass-through money. Dirk address this concern at the DMCJA meeting and explained why this function might be more relevant in future years. Discussed the advantages and disadvantages of adding membership from other organizations. At this time, it does not seem necessary. If that changes, the TCAB voting members will consider adding members as appropriate. The authority and structure of TCAB in no way limits the activities and committee structure of the trial court associations. In fact, no additional committees will be created by TCAB, but if committee level expertise is need the association committees will be enlisted. The charter will make that clear. Further edits include quorum, majority vote, and process to amend

the charter. There were other minor adjustments made to clarify the purpose, scope, authority, and expectations of TCAB.

Once the charter is adopted by the SCJA and DMJCA, TCAB will finalize a communication plan to inform interested stakeholder groups: membership groups, at the SCJA and DMCJA business meetings, Courts of Appeal and Supreme Court.

Current Projects

The group did not review the research referral and response protocol but will include on agenda for next month.

There has not been formal movement on the research request initiated from Cowlitz County to evaluate mandates as they relate to superior court operations. The request was referred to the Board for Judicial Administration (BJA) from the Center for Court Research's (WSCCR) Advisory Committee. While the request was written on behalf of Cowlitz County alone, TCAB is interested in broader implications of this project statewide. Callie provided an update on a recent call with Judge Warning to discuss scoping the request (one county or statewide) and what organization is prepared to do the work. Callie contacted the National Center for State Courts (NCSC) who is interested in making this kind of statewide inventory a model that can be used in other states. If the work plan begins with legal analysis, the NCSC is not best suited to conduct the review. Callie suggested the request be refined in the work plan to include three phases:

1. Legal analysis (statute, constitution and rules)
2. Survey to court administration on court operations
3. Identify resources necessary to meet the mandates

Judge Warning is receptive to adjusting his initial request and was hoping to have some feedback by the fall. The NCSC suggested a SJI grant (up to $55,000) and the application is due by May 1st and the earliest funding would be available is July 1st. The project lacks and organizational sponsor or lead, and TCAB could be considered that entity. That means being responsible for writing the grant, monitoring work on the project, and refining the scope of work as the phases are completed. The DMCJA representatives were supportive of the overall project idea which might create a blueprint for conducting a similar project for CLJs. If that can ultimately be accomplished for superior courts and CLJs, TCAB will have a foundational understanding of statewide mandates on trials courts and potentially an inventory of the court operations that exist to meet the mandates. Lastly, there will be a list of other programs that were created to meet a workload demand that falls outside a mandate.

The next steps are for Callie to talk with the Chief Justice Madsen about removing the research request from BJA consideration, as well as Dr. McCurley about WSCCR involvement. She will also determine next steps with NCSC and the possible grant.

The joint committee on court security is populated with 4 judges (2 from SCJA and 2 from DMCJA) and 2 administrators (1 AWSCA and 1 DMCMA) and will request one additional representative from WAJCA. Judge Svaren is drafting the overview and scope for the committee. Once that is done and underlying documentation related to security is gathered, a meeting will be scheduled. This group will report back to their association boards and TCAB.

Next Steps

Send re-drafted charter to trial court associations for edit and/or approval

Contact administrator associations and ask for 3 additional non-voting representatives

Contact WAJCA and request a representative for the Joint Security Workgroup – awaiting summary of scope for committee

Trial Court Advocacy Board (TCAB)

Charter

Updated February 2014

Purpose

The Trial Court Advocacy Board (TCAB) will coordinate issues and referrals made by the trial court associations. Uniquely identifying the TCAB as an advocacy body on behalf of trial courts enhances statewide awareness of trial court issues involving court policy, staffing, and budget. TCAB will advance the trial courts' mission and create governance for judges and administrators to tailor their efforts for statewide advocacy related to local court operations. By creating TCAB, the trial courts commit to work together on issues and projects uniquely identified as related to trial court operations without duplication or miscommunication. Through TCAB, trial court operational issues will be identified, staffed, detailed, vetted through stakeholders, and poised to advance changes to policy, programs, legislative, best practices, or funding requests.

Scope

Governance of TCAB will be through a management structure at the direction of the trial court judges' associations. A unified message on behalf of the trial courts will enhance opportunities to address issues, promote solutions, and educate stakeholders about trial court operations. TCAB is dedicated to work on issues and problems in an effort to develop comprehensive, workable and research based solutions. The general areas of concentration include budget, legislative coordination, policy and project planning based on research.

No additional committees will be created by TCAB, but if projects require additional subject matter expertise, the committees of the associations (SCJA or DMCJA) can be involved at the request of the Board. The TCAB structure will not limit projects and activities of the trial court associations.

TCAB will advocate for adequate and stable state funding for statewide trial court purposes (programs, projects, staff, research capacity, etc.). The funding focus is to propose new funding requests, not supplant already dedicated funding to the judicial branch.

Membership

TCAB voting members will be equally populated by judicial officers representing the leadership of both the Superior Court Judges' Association (SCJA) and the District and Municipal Court Judges' Association (DMCJA). The associations' president, incoming president, and immediate past president will constitute the six voting members of the

Board. A quorum is 2/3rds of the membership or four judges. To pass, a motion must receive a majority vote of the membership, two judges from each association.

The chair of TCAB will rotate between trial court levels and be an assignment of the immediate past presidents. For 2014-2015, the SCJA immediate past president will be chair. In June of 2015, the DMCJA past president will chair TCAB. The chair's term expires in June of each year.

TCAB also consists of non-voting representatives from the following court administrator associations: (1) Association of Washington Superior Court Administrators, (1) District and Municipal Court Management Association, and (1) Washington Association of Juvenile Court Administrators. The administrator associations are a critical source for projects that will benefit from their court process expertise. The Board intends to maximize the areas of trial court focus by incorporating the work of the administrator associations.

Expectations

TCAB membership includes leaders from both judges' trial court associations. TCAB members will report to Association boards on projects and assignments.

AOC will provide resources, such as staffing, to support TCAB as agreed upon between TCAB and AOC.

A meeting schedule will be drafted and shared annually at the associations' Long Range Planning Retreats. The meeting schedule will generally be every other month with the ability to adjust the schedule as needed and agreed upon.

Below is a summary of expectations for TCAB:

1. Advocate legislative requests on behalf of the trial courts and their associations. It may also be an advocacy source for court administrators and managers at the various trial court levels.
2. Identify potential areas that require support and forward them to the appropriate body to propose trial court funding.
3. Participate in discussions and decisions regarding the distribution and allocation of funds passed through AOC specifically for trial court operations or support whenever such funds are allocated by the legislature or received through grants or other sources.
4. Consider issues, problems or projects from trial court judges or administrators associations. These assignments will be staffed and returned to the Board for further direction.

The board members will review the charter annually in June of each year. The charter may also be reviewed and amended at any meeting if at least two members are present from each court level association SCJA or DMCJA.

Budget

TCAB-related expenses, such as travel reimbursement, will be paid by the judges' associations. If there are other related expenses, the presidents of each judges' association have the authority to approve.

Judge Charles Snyder, SCJA

Judge David Svaren, DMCJA

Judge Jeff Ramsdell, SCJA

Judge Veronica Alicea-Galvan, DMCJA

Judge Blaine Gibson, SCJA

Judge Sarah Derr, DMCJA

Callie Dietz, AOC

Trial Court Advocacy Board

Membership Contact List

Judge Snyder Chair	SCJA – Current President	360-738-2457	csnyder@co.whatcom.wa.us
Judge David Svaren	DMCJA – Current President	360-336-9319	dsvaren@co.skagit.wa.us
Judge Veronica Alicea-Galvan	DMCJA – Incoming President	206-878-4597	Valicea-galvan@desmoineswa.gov
Judge David Steiner	DMCJA – Vice President	206-	David. steiner@kingcounty.gov
Judge Sara Derr	DMCJA – Immediate Past President	509-477-2959	sderr@spokanecounty.org
Judge Michael Downes	SCJA – Board member and planning	425-388-3075	Michael.downes@snoco.org
Judge Blaine Gibson	SCJA – Immediate Past President	509-574-2710	Blaine.gibson@co.yakima.wa.us
Judge Jeff Ramsdell	SCJA – Incoming President	206-477-1379	Jeffrey.ramsdell@kingcounty.gov
Staff:			
Regina McDougall	TCAB primary staff	360-705-5337	Regina.mcdougall@courts.wa.gov
Janet Skreen	SCJA primary staff	360-705-5252	Janet.skreen@courts.wa.gov
Michelle Pardee	DMCJA primary staff	370-705-5233	Michelle.pardee@courts.wa.gov
Jennifer Creighton	Office of the Trial Courts manager	360-705-5310	Jennifer.creighton@courts.wa.gov

*the immediate past president will serve as chair, and that will rotate between SCJA and DMCJA, with the SCJA going first from April 2014-April 2015

*Membership is updated at each Associations' Spring Conference each year

TRIAL COURT ADVOCACY BOARD
SUPERIOR COURT JUDGES' ASSOCIATION
DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

MEETING SCHEDULE
2014

MEETING DATE	TIME	LOCATION
February 21, 2014	12:00 – 3:00	AOC SeaTac Office SeaTac Office Center 18000 International Blvd. S. Suite 1106 – small conf room
March 21, 2014	12:00 – 3:00	AOC SeaTac Office SeaTac Office Center 18000 International Blvd. S. Suite 1106 – small conf room
May 16, 2014	12:00 – 3:00	AOC SeaTac Office SeaTac Office Center 18000 International Blvd. S. Suite 1106 – small conf room
July 18, 2014	12:00 – 3:00	AOC SeaTac Office SeaTac Office Center 18000 International Blvd. S. Suite 1106 – small conf room
September 19, 2014	12:00 – 3:00	AOC SeaTac Office SeaTac Office Center 18000 International Blvd. S. Suite 1106 – small conf room

** PHONE ACCESS WILL BE AVAILABLE

Updated 2/28/14

March 3, 2014

Honorable David Svaren, President
District and Municipal Court Judges' Association
Skagit County District Court
PO Box 340
Mount Vernon, WA 98273-0340

Dear Judge Svaren:

In 2012, the Board for Judicial Administration (BJA) held a retreat to discuss issues of governance and allocation of Administrative Office of the Courts (AOC) resources dedicated to supporting boards, commissions, committees, task forces, and workgroups. The BJA agreed to divide these issues between two workgroups. The BJA recently adopted recommendations made from the workgroup charged with looking at all judicial branch committees and identifying opportunities to improve efficiency and effectiveness by merging or restructuring some groups. The workgroup reviewed 205 committees of associations, boards and commissions. Although the BJA realizes that examining the efficiency and relevance of any committee is actually the responsibility of that organization and its own related committees, the BJA is undertaking the job of examining each of its own BJA committees and workgroups and is asking that every association, board or commission do the same.

This workgroup recommended, and the BJA adopted the following:

- Every BJA authorized entity shall review and assess their current committee structure and align their committees with the proposed standard for creating, managing, and reviewing committees.
- All committees will adopt a charter containing the following information: Committee title; authorization (court rule, court order, bylaw, statute or other); charge or purpose; AOC staff support required; policy area; other branch committees addressing the same topic; other branch committees to partner with; committee type: standing, subcommittee, workgroup; committee membership; term limit; duration/review date; budget; reporting requirements (i.e., quarterly to the BJA, the authorizing organization and/or other entities addressing same topic); and expected deliverables or recommendations.
- Create and adopt a standard for committees that would include an agreement on the following items: 1) committee types; 2) committee duration limit to two years unless specifically extended after review; 3) commitment to periodic review, including a reporting requirement on activities, decisions, and initiatives; 4) formal request for AOC staff support and resources.

The BJA is currently re-examining and chartering our standing committees pursuant to this recommendation. We anticipate that the body will examine other committees, workgroups and task forces which were previously created by the BJA and determine whether they should continue in their current form or be incorporated into a standing committee.

The workgroup also focused on how the AOC uses its staff and resources, recognizing the need to prioritize requests for resources so the core work of the judicial branch can be done effectively. The demand for staff support and proliferation of committees and workgroups often create a strain on resources and result in limited support.

Recognizing the limited AOC staff and resources, the BJA requests that all judicial branch entities which operate committees under their authority using AOC staff or resources discuss and consider implementing the proposed chartering and committee standards. We hope these discussions will help define the core mission of the committees and possibly result in the merging or elimination of duplicative committees which require judicial and AOC resources.

If your organization has recently done work like this we encourage you to share the results. The BJA is interested in creating a central repository for charter documents so they are centrally located and can be accessible to others. This repository could function as a resource for all the judicial branch entities and staff and would facilitate collaboration and information sharing. If your organization has not done work like this recently, we urge you to adopt the recommendations of the BJA workgroup as outlined earlier in this letter. Staff will follow-up in June to determine whether you have any finalized documents that you can share.

If you would like a template for the committee charter, please contact Beth Flynn at beth.flynn@courts.wa.gov or (360) 357-2121.

If you have any questions regarding this request, please contact Shannon Hinchcliffe at shannon.hinchcliffe@courts.wa.gov or (360) 705-5226.

Thank you for your consideration of this information.

Sincerely,

Barbara Madsen, Chair
Board for Judicial Administration

Kevin Ringus, Member Chair
Board for Judicial Administration

cc: Ms. Michelle Pardee

TO: DMCJA Rules Committee

FROM: Judge Janet Garrow

SUBJECT: Proposed WSBA RALJ Amendments

DATE: February 25, 2014

The Washington State Bar Association (WSBA) has proposed amendments for the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). The following is a summary of the proposed amendments and proposed recommendations on each.

1. RALJ 2.2 What May be Appealed

   The proposal is to adopt the language contained in the Rules of Appellate Procedure (RAP) 2.5(a) which provides that the appellate court may refuse to review any claim of error which was not raised in the trial court. The proposed language is nearly identical to RAP 2.5.

   Recommendation: No objection to proposed amendment.

2. RALJ 5.4 An amendment to clarify the scope of when a new trial is required when an electronic record is lost or damaged.

   The current rules provides that in the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. The proposed amendment seeks to limit when a new hearing or trial is required.

   Because the issue on review may relate to a pretrial motion and that electronic record may not be lost or damaged, it seems to make sense that an appellant should not be automatically entitled to a new trial. For example, if the issue related to a pretrial motion, the Superior Court could easily review the record of the motion hearing and determine whether an error was made. If so, the remedy may then be a new trial.

Recommendation:
There is some concern with the proposed language of the amendment. The existing first sentence of the rule clearly provides that the remedy is a new trial. Therefore it seems that the second sentence of the rule, the proposed amendment, should begin with a modifier which allow a remedy other than a new trial, and should reference a damaged record. For example:

However, if the lost or damaged record pertains to a material or significant pretrial matter, the appellant shall only be entitled to a new hearing on the matter for which the record was lost or destroyed.

The third sentence of the rule, the proposed amendment, could be simplified and clarified as to when the trial court will be required to rehear a motion or trial. For example:

Unless the appellant demonstrates that a pretrial matter or trial was materially affected by a lost or damaged electronic record, a trial court will not be required to rehear a pretrial matter or trial for which an electronic record is available for appellate review.

3. RALJ 11.7(e) Application of Other Court Rules – Rules of Appellate Procedure

The proposed amendment would incorporate other RAP to the RALJ for criminal cases when not in conflict with the purpose or intent of the RALJ and when application is practicable. RAP 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7 (submission if improper brief and RAP 108 additional authorities).

Recommendation: No objection to proposed amendment.

GR 9 COVER SHEET
Suggested Change

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION
RALJ 2.2 – What May be Appealed
(Codifying scope of appeal)

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: The Rules of Appellate Procedure state, "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a). Formally codifying this rule for appeals from Courts of Limited Jurisdiction would aid pro se litigants in understanding the scope of appealable issues. As the Court stated in *State v. Naillieux*, 158 Wn. App. 630, 638, 241 P.3d 1280 (2010):

Our function is to review the validity of claimed errors by a trial judge who presided over a trial. That function assumes that counsel preserve the error by objecting to something the trial judge did or did not do. We do not, and should not, be in the business of retrying these cases. It is a wasteful use of judicial resources. Id. at 344, 835 P.2d 251; *State v. Bashaw*, 169 Wn.2d 133, 146, 234 P.3d 195 (2010); *State v. Labanowski*, 117 Wn.2d 405, 420, 816 P.2d 26 (1991). And it encourages skilled counsel to save claims of constitutional error for appeal so a defendant can get a new trial and second chance at a not guilty verdict if the first trial does not end in his favor. *Lynn*, 67 Wash.App. at 343, 835 P.2d 251.

Therefore, adding the exact language from RAP 2.5(a) to RALJ 2.2 would be consistent with existing case law.

SUGGESTED AMENDMENT

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)

RULE 2.2 – WHAT MAY BE APPEALED

(a) - (c) [No change]

(d) Errors Raised for First Time on Appeal. The superior court may refuse to review any claim of error that was not raised in the court of limited jurisdiction. However, a party may raise the following claimed errors for the first time on appeal: (1) lack of jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party may present a ground for affirming a decision of a court of limited jurisdiction that was not presented to that court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error that was not raised by the party in the court of limited jurisdiction if another party on the same side of the case raised the claim of error in that court.

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

GR 9 COVER SHEET
Suggested Rule Change

RALJ 5.4
Application of Other Court Rules – Rules of Appellate Procedure

PURPOSE: The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to clarify the scope of a "new trial" mandated in the event of a lost electronic record.

All proceedings in courts of limited jurisdiction are preserved through an electronic record. Unfortunately, these records are occasionally lost or destroyed through computer or microphone malfunction. RALJ 5.4 provides that the remedy for a lost electronic record is "a new trial." The purpose of this suggested change is to clarify the meaning of a "new trial" when the lost or damaged electronic record pertains to a pretrial hearing, not a trial.

When a lost or damaged record pertains to the trial, RALJ 5.4's remedy is logical and easily applied on remand. However, if the lost or damaged record pertains to a pretrial hearing, the remedy is more complicated and difficult to apply. Courts of limited jurisdiction need guidance on this issue.

For example, if the lost electronic record pertains to a pretrial CrRLJ 3.5 hearing, rather than a trial, then what is the scope of the "new trial" on remand? In this situation, RALJ 5.4's remedy is ambiguous. Obviously, the appellant should be entitled to relitigate the CrRLJ 3.5 hearing for which the record was lost or destroyed. However, RALJ 5.4 does not specify that the appellant is entitled to relitigate the CrRLJ 3.5 hearing; it specifies that the appellant is entitled to "a new trial."

Assuming that "a new trial" allows the appellant to relitigate pretrial matters for which the record was lost or destroyed, it is still unclear whether the appellant is entitled to relitigate pretrial matters for which the electronic record survived.

Take, for example, a case in which a CrRLJ 3.6 suppression hearing was held on a different date than a CrRLJ 3.5 hearing. If the record of the CrRLJ 3.6 suppression hearing survived but the record of the CrRLJ 3.5 hearing was destroyed, should the appellant be entitled to relitigate both the CrRLJ 3.5 hearing and the CrRLJ 3.6 suppression hearing? Because RALJ 5.4 protects an appellant's right to obtain appellate review, and the appellant can obtain appellate review of any hearing for which the electronic hearing survived, the trial court should not be required to relitigate a hearing with a viable record that remains subject to appellate review. In that situation, relitigation of all pretrial matters is a waste of the court's limited resources and an unnecessary windfall to the appellant.

However, there are circumstances in which the lost record from one pretrial hearing may affect the proceedings in a subsequent pretrial hearing. For example, if the testimony at a CrRLJ 3.5 hearing affected the court's ruling at a subsequent CrRLJ 3.6 hearing, then the hearings are materially related and the appellant should be entitled to relitigate both hearings.

Finally, there is also a question as to whether the appellant should receive a new trial when the record of a pretrial hearing is lost but the record of the trial survived. If the relitigation of the lost pretrial hearing would not affect the trial, there is no reason to hold a new trial. The trial record is still subject to review on appeal. A new trial should be held only if relitigation of a pretrial matter affects the evidence at trial.

The remedy provided by RALJ 5.4 lacks specificity. In its current form, the rule presumes that pretrial matters and trial are heard at the same time, such that any loss of an electronic record necessarily implies the loss of a trial record. In practice, however, courts of limited jurisdiction hold numerous pretrial hearings prior to trial. Some of those pretrial hearings affect trial, and some do not.

The proposed amendment to RALJ 5.4 clarifies that the remedy for a lost or damaged record of a pretrial hearing is relitigation of the pretrial hearing for which the electronic record was lost or destroyed. The trial court need not relitigate a pretrial hearing or trial for which the electronic record survived, unless the appellant can demonstrate that a pretrial hearing or trial was materially affected by the lost electronic record.

RALJ 5.4 LOSS OR DAMAGE OF ELECTRONIC RECORD

In the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. If the lost record pertains to material or significant pretrial matter, the appellant shall be entitled to a new hearing on the matter for which the record was lost or destroyed. The trial court of limited jurisdiction will not relitigate a pretrial matter or a trial for which there is an electronic record subject to appellate review, unless the appellant demonstrates a court determines that the pretrial matter or the trial was materially affected by the lost electronic record. In lieu of a new trial, the parties may stipulate to a nonelectronic record as provided in rule 6.1(b). The court of limited jurisdiction shall have the authority to determine whether or not significant or material portions of the electronic record have been lost or damaged, subject to review by the superior court upon motion.

GR 9 COVER SHEET
Suggested Rule Change

RALJ 11.7(e)
Application of Other Court Rules – Rules of Appellate Procedure

PURPOSE: The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to expressly allow the application of appropriate Rules of Appellate Procedure in appeals from courts of limited jurisdiction.

The purpose of this suggested change is to clarify that the enumerated Rules of Appellate Procedure supplement the Rules for Appeal of Decisions of Courts of Limited Jurisdiction when these rules do not conflict and when application is practicable. Currently, common appellate procedures permitted by the Rules of Appellate Procedure are not expressly incorporated under the RALJ.

Specifically, the RALJ do not provide a mechanism for moving to strike a brief that fails to comply with Title 7. Compare RAP 10.7. The RALJ do not provide a standard for consolidating cases on appeal. Compare RAP 3.3. The RALJ do not define the scope of issues that may be raised for the first time on review, nor do they define the scope of review for a case that has returned to the appellate court following remand. Compare RAP 2.5. The RALJ do not expressly permit a statement of additional authorities. Compare RAP 10.8. The RALJ do not give the court of limited jurisdiction the authority to settle the record. Compare RAP 7.2

The RALJ allow a respondent to seek cross-review of a decision of the court of limited jurisdiction. RALJ 2.1(a). However, unlike the Rules of Appellate Procedure, the RALJ do not specify the scope of cross-review. Compare RAP 2.4(a).

The RALJ provide a streamlined procedure for appeals from courts of limited jurisdiction. However, in the aforementioned circumstances, the RALJ procedure would benefit from limited application of the more clearly defined Rules of Appellate Procedure.

RALJ 11.7 APPLICATION OF OTHER COURT RULES

(a) Civil Rules. The following Superior Court Civil Rules are applicable to appellate proceedings in civil cases in the superior court when not in conflict with the purpose or intent of these rules and when application is practicable: CR 1 (scope of rules), CR 2A (stipulations), CR 6 (time), CR 7(b) (form of motions), CR 11 (signing of pleadings), CR 25 (substitution of parties), CR 40(a)(2) (notice of issues of law), CR 42 (consolidation; separate trials), CR 46 (exceptions unnecessary), CR 54(a) (judgments and orders), CR 60 (relief from judgment or order), CR 71 (withdrawal by attorney), CR 77 (superior courts and judicial officers), CR 78 (clerks), CR 79 (books and records kept by the clerk), CR 80 (court reporters), and CR 83 (local rules of superior court).

(b) Criminal Rules. The following Superior Court Criminal Rules are applicable to appellate proceedings in criminal cases in the superior court when not in conflict with the purpose or intent of these rules and when application is practicable: CrR 1.1 (scope), CrR 1.2 (purpose and construction), CrR 1.4 (prosecuting attorney definition), CrR 3.1 (right to and assignment of counsel), CrR 7.1 (sentencing), CrR 7.2 (presentence investigation), CrR 8.1 (time), CrR 8.2 (motions), CrR 8.5 (calendars), CrR 8.6 (exceptions unnecessary), CrR 8.7 (objections), and CrR 8.8 (discharge).

(c) Civil Rules for Courts of Limited Jurisdiction. The following Civil Rules for Courts of Limited Jurisdiction are applicable to appellate proceedings in civil cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: CRLJ 5 (service and filing), CRLJ 6 (time), CRLJ 7(b) (motions), CRLJ 8 (general rules of pleading), CRLJ 10 (form of pleadings), CRLJ 11 (verification and

signing of pleadings), CRLJ 25 (substitution of parties), CRLJ 40(b) (disqualification of judge), and CRLJ 60 (relief from judgment or order).

(d) Criminal Rules for Courts of Limited Jurisdiction. The following Criminal Rules for Courts of Limited Jurisdiction are applicable to appellate proceedings in criminal cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: CrRLJ 1.7 (local court rules--availability), CrRLJ 1.5 (style and form), CrRLJ 3.1 (right to and assignment of lawyer), CrRLJ 8.9 (disqualification of judge), CrRLJ 8.9(c) (disqualification of judge--transfer), CrRLJ 7.8(a) (clerical mistakes), CrRLJ 8.1 (time), and CrRLJ 8.2 (motions). (Editorial Note: Effective September 1, 1987, Justice Court Criminal Rules (JCrR) were retitled Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). Effective September 1, 1989, Justice Court Civil Rules (JCR) were retitled Civil Rules for Courts of Limited Jurisdiction (CRLJ).)

<<+++>> **(e) Rules of Appellate Procedure.** The following Rules of Appellate Procedure are applicable to appellate proceedings in criminal cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: RAP 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7 (submission of improper brief), RAP 10.8 (additional authorities). <<+++>>

TO: DMCJA Board

FROM: DMCJA Rules Committee

SUBJECT: Proposed Amendments CrR 8.10 and CrRLJ 8.13

DATE: February 26, 2014

The Washington Association of Criminal Defense Lawyer (WACDL) has proposed two new rule amendments related to a lawyer's or law enforcement officer's contact with jurors after a jury has been discharged.

Proposed CrR 8.10:

> After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

Proposed CrRLJ 8.13:

> After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

The purpose of the proposed new rules is to avoid the risk of prejudice to the jury system by prohibiting post-trial disclosure of excluded evidence to jurors.

The proponents argue that such disclosures cause the jurors to question their verdict, to feel distrust for the system, and to resent the defense for withholding information. WACDL believes jurors who are called to serve on future cases will question whether they are being similarly deprived of information, thereby decreasing their willingness to limit consideration of evidence as the juror's oath requires.

WACDL states that there are presently no clear rules governing this type of contact and that the current rules are inadequate. **RPC 3.5(c)(3)** prohibits a lawyer from communicating with a juror or prospective juror after discharge of the jury if: 1) the communication is prohibited by law or court order; 2) the juror has made known to the lawyer a desire not to communicate; or 3) the communication involves misrepresentation, coercion, duress or harassment. **RPC 8.4(d)** prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Two informal ethics opinions issued in 1986 and 2006 had concluded that disclosure of excluded

evidence may be prejudicial to the administration of justice and thereby violate RPC 8.4(d). (Advisory Opinions 1030 & 2133). In 2010, however, these opinions were withdrawn by Advisory Opinion 2204 which concluded that lawyers may discuss the case, including excluded evidence, as long as they are careful to do so in a manner that does not violate RPC 3.5(c)(communication involving misrepresentation, coercion, duress or harassment) or RPC 8.4(d)(conduct prejudicial to the administration of justice). In reaching its conclusion, the committee stated, "Although there are arguments in favor of a policy of strict nondisclosure, such a rule seems more appropriately addressed by way of a court rule."

Several defense attorneys submitted declarations regarding specific examples of cases in which jurors were told of excluded evidence after trial and the perceived effect such disclosures had on those jurors.

DMCJA Rules Committee Comments and Recommendation

The Committee discussed the proposed rules at its November and some members expressed concerns about the apparent breath of the rules, restraint on free speech and constitutional requirements for open access to court records and proceedings. Judge Nancy Harmon agreed to review the proposal and coordinate the committee's comments. The Committee was advised that a subcommittee of the WSBA Rules Committee had recently reviewed the proposed rules and is not support the proposed rules due to concerns related to free speech and the requirement for open courts.

The Rules Committee discussed the proposed amendments again at its February meeting, and with one exception, the committee does not support the proposed amendments. The proposed rules present issues regarding restraint of speech after a case has concluded. There are also issues regarding whether such rules would violate other Washington constitutional provisions requiring that the business of the court be conducted in the open. If a case has concluded and the jurors have completed their service it seems inconsistent with the constitutional provisions for open access to court records and proceedings to restrict information that is available to the general public. The proposed rules casts a large net and do not allow for exceptions. A party concerned about post-trial communications with jurors may request the trial court craft a specific order to address concerns associated with the case. RPC 3.5 (c) would govern the lawyer's compliance with such order.

WACDL Washington Association of Criminal Defense Lawyers

Douglas R. Hyldahl
President

Teresa Mathis
Executive Director

October 15, 2013

Chief Justice Barbara Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Dear Chief Justice Madsen,

Trust in the fairness of our criminal trial system is founded on juries considering only those facts that are properly admitted into evidence. This trust is undermined by the post-trial disclosure to jurors of facts that were excluded by the trial court judge. Unfortunately, this practice occurs with some regularity throughout the state, and is not presently addressed by court rule or by RPC. These disclosures occur in a small but significant number of cases. They are especially harmful when jurors are subject to call on another jury in the same period of jury service. They serve no legitimate purpose, and as the attached declarations show, introduce potentially great prejudice in future trials. WACDL respectfully requests that the Court implement the attached proposed rule to limit such disclosures.

Prior attempts to address post-trial communications with jurors relied on Rules of Professional Conduct 3.5(c)(3) and 8.4(d) for guidance. For instance, Informal Ethics Opinions 1030 and 2133 relied on these rules to prohibit disclosures of excluded material either during or after trial, respectively. The Committee reasoned that such disclosures could prejudice the system by casting the verdict into doubt, causing jurors in future trials to be less willing to rely solely on admitted evidence in reaching a verdict. Advisory Opinion 2204 (2010) withdrew Opinions 1030 and 2133. The Committee noted, however, that "[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule." Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures. Given the manner in which post-trial disclosures undermine jurors' confidence in our system of justice, and the lack of any legitimate purpose or utility, a clear rule limiting such contact is necessary.

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WACDL Member Joe Campagna will be the spokesperson required by General Rule 9. Please let him know if you would like any additional information or are unable to open the attachments. He can be reached by email at campagna@sgb-law.com or by phone at (206) 622-8000.

Sincerely,

Doug Hyldahl
WACDL President

Joe Campagna
Co-Chair, WACDL Talking to Juries Task Force

GR 9 COVER SHEET

A. Name of Proponent. The Washington Association of Criminal Defense Lawyers (WACDL) requests this rule change.

B. Spokesperson. Joseph A. Campagna, on behalf of WACDL, will serve as spokesperson for the proposed rule.

C. Purpose.

1. Post-trial disclosure of excluded evidence creates a high risk of prejudice to the jury system.

Post-trial disclosure to jurors of excluded evidence undermines confidence in the fairness of our trial system and prejudices the administration of justice. It suggests to jurors in the present case that they were deprived of important information in reaching their verdict. It implies that if they had received fuller information, they might have reached a different verdict. As a result, it may cause jurors to question in future trials whether they are being similarly deprived, and may decrease the willingness to limit consideration of evidence as the juror's oath requires. There are no legitimate countervailing reasons for the disclosures. There are also presently no clear rules governing this sort of contact. As a result, the proposed rule is necessary.

The attached declarations demonstrate several recent examples of prejudicial post-trial disclosures. The declarations provided represent only a small sample of reported disclosures of which WACDL is aware. They are intended to illustrate, not to exhaustively document, the problem. As the supporting materials demonstrate, disclosures harmful to the trial process have occurred in municipal, district, and superior courts throughout Washington. The perceived effects of these disclosures included leaving the jurors visibly upset, and causing them to resent the defense for withholding information, to feel that they are never told the full truth, to wonder whether they can trust the system, and even to question their decision to acquit. These sort of reactions, from jurors who may be called again in future service, are significantly damaging to a fair trial process.

2. Prior attempts to address the problem have met with limited success.

Prior attempts to address this problem have not been adequate. The Rules of Professional Conduct currently prohibit post-discharge contact with jurors that "involves misrepresentation, coercion, duress or harassment." RPC 3.5(c)(3). The Rules also prohibit "conduct that is prejudicial to the administration of justice." RPC 8.4(d). Informal Ethics Opinion 1030 (1986) concluded that under RPC 8.4(d), "it is improper for a lawyer to disclose information to the jurors which is inadmissible because it is prejudicial," where the juror was subject to call on another jury in the same period of jury service. Informal Ethics Opinion 2133 (2006) extended this reasoning to disclosures post-jury service. The Committee reasoned that:

> Disclosure to discharged jurors of evidence that was excluded by the trial court may have a prejudicial effect on the system of justice by suggesting the juror was deprived of reliable evidence casting the juror's verdict in doubt. This, in turn, may make jurors less willing to rely on the evidence admitted by the trial court in future trials and may decrease the willingness to limit consideration of evidence in a future case as the juror's oath requires.

In 2006, relying on Informal Opinion 2133, the Seattle City Attorney's Office and several public defender agencies directed their attorneys to refrain from commenting on or disclosing matters that are not part of the evidentiary record. The directive adopted Opinion 2133's conclusion that the disclosure of excluded evidence tended to undermine a jury's confidence in their verdict, and was consequently prejudicial to the administration of justice.

Opinion 2133 was short lived. In 2010, Advisory Opinion 2204 withdrew Opinions 1030 and 2133, concluding that, because jurors are presumed to follow the court's instructions, post-trial disclosure of excluded evidence should not constitute a per se violation of RPC 8.4(d). The Committee noted, however, that "[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule." Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures.

3. The proposed rule addresses the risk of prejudice with minimally restrictive limits on post-trial contact.

The proposed rule places appropriate and reasonable limits on post-trial disclosures. First, as shown by the attached supporting documents, and as discussed in Opinion 2133, the potential prejudice is high. Second, there are no legitimate countervailing interests to balance against the potential prejudice. There are generally two legitimate reasons to have post-trial contact with jurors—to determine whether the verdict may be subject to legal challenge and to obtain informal feedback and evaluation on the lawyer's performance. *See, e.g.*, ABA Standards for Criminal Justice, Prosecution Function and Defense Function, (3d Ed. 1993), Prosecution Function Standard 3-5.4(c) and Defense Function Standard 4-7.3(c). Post-trial disclosures of excluded information serve neither of these purposes. Finally, the restrictions on disclosures are minimal. The proposed rule does not limit post-trial contact entirely, as many federal courts do. For instance, Western District of Washington Local Civil Rule 47(d) and Local Criminal Rule 31(f) both prohibit any post-trial contact with jurors without prior leave of the court, except in criminal cases with a hung jury. The proposed rule does not limit contact to this degree, but rather continues to permit contact with former jurors for all appropriate reasons and without first obtaining judicial approval.

D. Hearing. The proponents request a public hearing on this matter. Changes to rules affecting the jury trial process implicate fundamental constitutional rights and are the appropriate subject of public hearing and comment.

E. Expedited consideration. WACDL does not request expedited consideration of the proposed rule.

[PROPOSED] CrR 8.10

POST-TRIAL CONTACT WITH JURORS

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

[PROPOSED] CrRLJ 8.13

POST-TRIAL CONTACT WITH JURORS

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

Declaration of Counsel

I, Bruce Finlay, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- I tried a second-strike child molestation case in Thurston County Superior Court.
- The jury was not allowed to hear about the defendant's prior conviction for child molestation.
- After a not guilty verdict, the judge ordered the parties to remain in the courtroom, and then he went to the jury room.
- The judge then left and the attorneys were allowed to talk to the jury. I learned from the jurors that the judge had told them that the defendant had a prior conviction for child molestation. Several of the female jurors were hysterical and crying.
- My impression was that the jurors were left with the feeling that they are never told the full truth and they wonder whether they can trust the system.

10-9-13 Shelton, WA
Date and Place

Bruce Finlay, WSBA #18799

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DAVID
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1111 3rd Avenue
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DECLARATION OF COUNSEL

I, David Hammerstad, swear that the following is true and accurate to the best of my knowledge and belief, subject to penalty of perjury under the laws of the State of Washington.

- In the Fall of 2006 I represented a client charged with Child Molestation in the First Degree in King County Superior Court (Regional Justice Center). A mistrial was declared after the jury deadlocked, 11-1 in favor of acquittal. After the verdict a supervisor from the prosecutor's office, standing in for the trial prosecutor, told the jury that the defendant was a Registered Sex Offender, a fact which was excluded from evidence at trial after a Motion in Limine was granted by the trial court.
- In the Spring of 2007 I represented a client charged with three felony charges (2 counts of Felony Violation of a No-Contact Order and 1 count of Telephone Harassment). After the defendant was acquitted on two of the three counts and the jury deadlocked 8-4 in favor of acquittal on the third count, the trial prosecutor informed the jury that the defendant was facing additional charges against the same alleged victim, a fact with was excluded from evidence at trial after a Motion in Limine was granted by the trial court.

10/8/13 Seattle, WA
Date & Place

David Hammerstad WSBA #34255

Fred Rice

From: aaron kiviat <aaron@kiviatlaw.com>
Sent: Wednesday, October 09, 2013 11:47 AM
To: fred.rice@wacdl.org
Subject: Excluded Evidence Reveal to Jurors

I, Aaron Kiviat, hereby declare under penalty of perjury of the State of Washington, as follows:

On August 21, 2013 through August 23, 2013 I was in trial in front of the Honorable Judge Eide in the King County District Court - Burien Division. (State of Washington vs. Jessica Murray, 2Z0670590).

The trial was a DUI that had a breath test reading of .24/.26 with an accident. The prosecutor had stipulated pretrial to not introduce the breath test reading at trial as the arresting officer had neglected to ask the defendant to remove her mouth jewelry (a tongue stud and several lip piercings) prior to the testing.

At motions in limine, I was also able to exclude the testimony of the driver of the vehicle that was allegedly struck by the defendant, as the prosecutor had not given sufficient notice of their intent to call him as a witness.

After 10 minutes of deliberation the jury acquitted.

After releasing the jury, we asked to speak with them in the hall if they chose to do so. Both the trial deputy prosecutor and I spoke with the jury. They hugged my client and were almost apologetic that she had to go through this process. The trial deputy made no mention of any excluded evidence and simply asked about how he had done.

As we were rapping up and saying our goodbyes, the trial deputy's supervisor approached the jury and introduced herself and asked if she could have a word with them. I was already on my way out the door, so I left.

The next day I wrote the supervisor an email asking if she had disclosed the breath test results to the jury. She responded that "I did speak with them regarding the BAC and the states witness to give perspective on how (the trial deputy) framed the case."

--
Regards,

Aaron Kiviat
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AFFIDAVIT

I, Albert A. Rinaldi, Jr. declare under the penalty of perjury according to the laws of the State of Washington that this declaration is true and correct.

I recently had a Jury trial in Seattle District Court before Judge Joanna Bender. My client was Andrew Chrisman who was charged with Driving While Under the Influence of Intoxicants in State of Washington vs. Chrisman #2Z0626726. The State was represented by Rule 9 Chris Fyall. The arresting was Trooper M. Ledesma.

At the start of the trial the State indicated that it would not introduce any evidence of the speed of the Defendant's vehicle because the radar technician who was requested by the Defense was unavailable.

The Jury returned a verdict of Not Guilty on August 13, 2013. Judge Bender released the Jury and indicated that members of the Jury could speak to both or either counsel if they wanted to do so.

Both counsel went into the Jury room where all the Jurors remained to speak with us. This is often done in Jury trials in which I have participated. Trooper Ledesma came into the Jury room as well. I initially objected because it did not seem appropriate to have the arresting officer there because it may well have had an effect on the Juror's ability to speak freely. The Trooper insisted on remaining in the Jury room. He engaged is conversations with the Jurors and some of them appeared to be irritated with his questions. At one point a Juror simply said that he did not like the fact that the Trooper slowed his vehicle down by using his gears instead of applying his brakes when it was nightime and the Defendant was behind the Trooper. (The Trooper had testified that he wanted to see the reaction of the Defendant.) Further the Trooper told the Jury that he had obtained a radar reading on the Defendant's vehicle, which was not presented to the Jury.

I do not know if any of these Jurors were called to serve again as Jurors. I believe that these Jurors would have been tainted by the discussion with the Trooper. I further believe it is inappropriate to tell the Jury of evidence that was not admissible in a trial.

Submitted under the penalty of Perjury according to the Laws of the State of Washington.

Dated this 14 day of October 2013 Albert A Rinaldi

Place signed Seattle, wa Signture

Declaration of Counsel

I, Maria Fernanda Torres, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- In 2004, I defended a client in Seattle Municipal Court. The court had excluded evidence of a prior DUI conviction, which was then revealed by the prosecutor to the jurors after an acquittal. The impact on the jurors was obvious; their reaction seemed to signal they questioned their decision to acquit immediately.

- In 2006, I defended a client in Seattle Municipal Court. The court had excluded my client's prior theft conviction. My client was acquitted. Knowing that prosecutor would want to tell the jurors about it, I raised it with the judge and asked that the prosecutor not be allowed to tell the jurors about the excluded conviction. The prosecutor was unable to articulate a specific reason why sharing this information with the jurors was necessary or important, other than a vague "they should know." The judge denied my request, noting, in part, that the jurors were done with their service. Here, I did not get a sense of what impact this information had on the jurors.

- Following my experience in 2006, I submitted a request to the Rules of Professional Conduct Committee at the Washington State Bar Association, and the response was informal opinion 2133. Previously, there was informal opinion 1030 only, which was specific to jurors who were not done with their service.

- Opinion 2133 addressed the concerns I had, particularly in the DUI case, which is that the jurors would be tainted for all *future* service.

- I believe Advisory Opinions 2133 and 1030 have both since been withdrawn.

Seattle, WA
Date and Place

Maria Fernanda Torres, WSBA #34587

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SARAH J. PEREZ, ESQ.

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DECLARATION OF ROBERT PEREZ

I, Robert Perez, hereby declare:

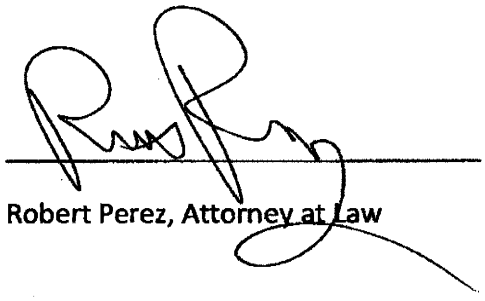
1. I am over the age of eighteen years. I have personal knowledge of the facts set forth in this declaration, except as to those matters stated on information or belief and as to those matters, I do believe them to be true.
2. In November 2010 a mistrial was declared in the Rape trial titled State v. Matthew Torre, Snohomish County Case No. 09-1-00769-6. The mistrial was declared by Snohomish County Superior Court Judge Downes. The jury hung 8-4 in favor of the defense.
3. Mr. Torre had a previous conviction in the State of Maine for a related sex offense. In pretrial motions, Judge Downes had ruled any reference to that conviction inadmissible at trial.
4. After the jury was discharged, I personally spoke with members of the jury. During this conversation, an attorney from the Snohomish County prosecutor's office and the Snohomish County detective assigned to the case were both present.
5. In response to a juror's question as to why the case had even been prosecuted, the Detective told the jury that Mr. Torre had "a prior". Before the prosecutor had a chance to speak up, I informed the jury that it would be inappropriate for either counsel to discuss certain topics, in an attempt to discreetly caution the prosecutor not to further taint this future jury pool.
6. The prosecutor stated to the jury several times that he would not comment on past incidents but that "this was a righteous prosecution". He repeated that phrase several times to nodding jurors in an obvious allusion to the Detective's assertion.
7. It was evident during this conversation that the government wanted to give the jurors information about Mr. Torre's past that would support their position that this was a "righteous prosecution" based on the revelation by law enforcement. I believe that

several of the jurors present were incensed to learn that they might have voted Not Guilty for a man who had prior history.

8. After the case was set for re-trial, the government dismissed the case, ending any further issues or need to litigate over the actions of the State. But it was clear to me that the jurors in the case left feeling upset and I believe they resented the defense for "withholding" information from them. I believe that the next time these citizens are called for jury duty, they will be certain that evidence is being withheld from them and they will likely resent the defense because of this.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Bellevue, Washington October 8, 2013



Robert Perez, Attorney at Law

ABA Standards for Criminal Justice
Prosecution Function and
Defense Function
Third Edition

Library of Congress Catalog Card No. 93-17567
ISBN 0-89707-850-0

The commentary contained herein does not necessarily represent the official position of the ABA. Only the text of the black-letter standards has been formally approved by the ABA House of Delegates as official policy. The commentary, although unofficial, serves as a useful explanation of the black-letter standards.

Project of the
American Bar Association
Criminal Justice Standards Committee
Criminal Justice Section
1800 M Street, NW
Washington, D.C. 20036
202/331-2260

Printed in the United States of America

ABA Standards for Criminal Justice Prosecution Function and Defense Function Third Edition

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Defense Function Black-Letter Standards approved
ABA House of Delegates
February 1991
Commentary completed
July 1992
Prosecution Function Black-Letter Standards approved
ABA House of Delegates
February 1992
Commentary completed
July 1993

problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, the prosecutor should be careful to conduct any investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, the prosecutor should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

Use of Voir Dire

The process of voir dire examination of prospective jurors by lawyers is often needlessly time consuming and is frequently used to influence the jury in its view of the case. In those jurisdictions that retain the practice of permitting the prosecutor to conduct the questioning of jurors, the responsibility must rest with the prosecutor, supervised by the court, to limit questions to those that are designed to lay a basis for the lawyer's challenges. The observation that the voir dire may be used to influence the jury in its view of the case is rejected as an improper use of the right of reasonable inquiry to ensure a fair and impartial jury.

The use of the voir dire to inject inadmissible evidence into the case is a substantial abuse of the process. Treatment of legal points in the course of voir dire examination should be strictly confined to those inquiries bearing on possible bias in relation to the issues of the case.

Standard 3-5.4 Relations With Jury

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly,

if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

History of Standard

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case" which appeared in the previous edition after the word "jurors" in the first sentence and deleting the word "improper" which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that the prosecutor should not talk on any subject to people he or she knows are jurors before or during the trial.

Section (b) is unchanged. Section (c) has been revised stylistically and the last sentence is new to this edition.

Related Standards

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)
ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)
ABA Standard for Criminal Justice 4-7.3 (3d ed. 1993)
ABA Standard for Criminal Justice 15-4.7 (2d ed. 1980)
NDAA National Prosecution Standard 87.4 (2d ed. 1991)

Commentary

Communication with Jurors Before or During Trial

Discussing the case privately with a juror before verdict is a gross impropriety and may also be criminal conduct.[1] Moreover, it is improper for a prosecutor knowingly to engage in *any* conversation with a jury member, however innocent in purpose or trivial in content, since the mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence.[2] The prosecutor's legitimate communication must be with the jury as an

1. *See, e.g.*, Gold v. United States, 352 U.S. 985 (1957); State v. Socolofsky, 666 P.2d 725 (Kan. 1983).

2. *Cf.* Smith v. Phillips, 455 U.S. 209 (1982).

entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

Attitude Toward Jury

The prosecutor should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. The prosecutor should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as "your honor," the jury's symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, "ladies and gentlemen of the jury" or "members of the jury."

Posttrial interrogation

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither the prosecutor nor defense counsel should discuss a case with jurors after trial in a way that is critical of the verdict.[3] Where prevailing law permits such inquiries, the prosecutor may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the prosecutor must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethics codes so permit, for the prosecutor to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

Standard 3-5.5 Opening Statement

The prosecutor's opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence

3. *See also* Standard 3-5.10.

Related Standards

ABA Model Code of Professional Responsibility DR 7-106(C)(1), (2); DR 7-108(E) (1969)
ABA Model Rules of Professional Conduct 3.4(e); 3.5(a), (b); 4.4 (1983)
ABA Standards for Criminal Justice 3-5.3 (3d ed. 1993)
ABA Standards for Criminal Justice 15-2.4 (2d ed. 1980)

Commentary

Preparation for Jury Selection

The selection of a jury is an important phase of the trial and requires the alert attention of the lawyer. As elsewhere in the trial, in the selection of the jury the advocate's decisions must be made under time pressure. They can be made wisely only if the lawyer has prepared adequately before trial.

Pretrial Investigation of Jurors

Pretrial investigation of jurors may permit a more informed exercise of challenges than reliance solely upon voir dire affords. The practice of conducting out-of-court investigations of jurors presents serious problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, counsel should be careful to conduct investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, counsel should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

Standard 4-7.3 Relations With Jury

(a) Defense counsel should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during the trial. Defense counsel should avoid the reality or appearance of any such communications.

(b) Defense counsel should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, defense counsel should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If defense counsel believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

History of Standard

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case," which appeared in the previous edition after the word "jurors" in the first sentence, and deleting the word "improper," which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that counsel should not talk on any subject to people he or she knows are jurors before or during the trial.

Sections (b) and (c) have been revised stylistically.

Related Standards

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)

ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)

ABA Standards for Criminal Justice 3-5.4 (3d ed. 1993)

ABA Standards for Criminal Justice 15-4.7 (2d ed. 1980)

Commentary

Communication with Jurors Before or During Trial

Discussing the case privately with a juror before verdict is a gross impropriety, and may also be criminal conduct.[1] Moreover, it is improper for counsel knowingly to engage in *any* conversation with a jury member, however innocent in purpose or trivial in content, since the

1. *See also* ABA Model Rule of Professional Conduct 3.4(e); ABA Model Code of Professional Responsibility DR 7-106(C)(1).

mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence. Defense counsel's legitimate communication must be with the jury as an entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

Attitude Toward Jury

Counsel should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. Counsel should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as "your honor," the jury's symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, "ladies and gentlemen of the jury" or "members of the jury."

Posttrial interrogation

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither defense counsel nor the prosecutor should discuss a case with jurors after trial in a way that is critical of the verdict. Where prevailing law permits such inquiries, a lawyer may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the lawyer must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethical codes so permit, for counsel to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

Standard 4-7.4 Opening Statement

Defense counsel's opening statement should be confined to a statement of the issues in the case and the evidence defense counsel believes in good faith will be available and admissible. Defense counsel should not allude to any evidence unless there is a good faith

DMCJA Legislative Committee Meeting

FRIDAY, DECEMBER 6, 2013
CONFERENCE CALL
1-888-757-2790, PIN 436042#
8:00 A.M. TO 9:00 A.M.

MEETING MINUTES

Members:
Chair, Judge Samuel G. Meyer
~~Judge Scott K. Ahlf~~
~~Judge Stephen Brown~~
~~Judge Brett Buckley~~
~~Judge D. Mark Eide~~
Judge Douglas J. Fair
Judge Michelle Gehlsen
~~Judge Corinna Harn~~
~~Judge David Larson~~
~~Judge Susan Mahoney~~
~~Judge Marilyn G. Paja~~
Judge Glenn Phillips
~~Judge Heidi E. Smith~~
~~Judge David A. Steiner~~
Judge Shelley Szambelan

Guests:
Ms. Linda Baker, DMCMA
~~Ms. Kathy Seymour, DMCMA~~
~~Ms. Melanie Stewart~~

AOC Staff:
Ms. J Krebs

CALL TO ORDER
Judge Meyer called the meeting to order and led introductions.

CURRENTLY ASSIGNED FOR REVIEW

A. **Misdemeanor jury fees**

Judge Meyer reported that he had presented the DMCJA Board with draft statutory language that would allow district and municipal courts to impose jury fees on a defendant convicted of a misdemeanor. The proposal was intended to mirror the current legislative authority for superior courts to impose a fee when a defendant is convicted of a misdemeanor by a jury. The Board requested modifications that would cause the law to be different than for superior courts. Judge Meyer recommended that the Committee not amend the proposal. The Committee agreed.

B. **Therapeutic Courts proposal**

Judge Finkle requested that the DMCJA support the proposal from the Therapeutic Courts Workgroup; the draft bill would likely be sponsored by Senator Padden. The Committee was supportive of the Workgroup proposal.

C. **Search warrant/magistrate legislation**

The Washington Association of Prosecuting Attorneys is proposing legislation that would expand the role of magistrates in approving search warrants. Judge Phillips expressed concern

that allowing search warrant information to be transmitted via electronic means could potentially open judges' personal computers to public records requests if they were used for this activity. Other than that, Committee members expressed no concerns about the proposal.

D. **Criminal conviction fee**

Local jurisdictions are concerned about increased public defense costs as a result of new Supreme Court rules governing caseload standards for public defenders. A potential source of revenue would be to increase the criminal conviction fee from $43 to $55, the original proposed fee amount. Proponents of the proposal will present the concept to the DMCJA Board at the December meeting. The Committee reiterated its general disfavor of user fees, but would likely not recommend opposing the bill.

E. **Impaired Driving Workgroup Report**

Judge Phillips, a member of the Impaired Driving Workgroup, noted that the Report differed from ones in the past as it does not make specific legislative proposals. One potential proposal is a constitutional amendment that would allow for random sobriety checkpoints.

OTHER BUSINESS

A. Judge Fair expressed concern about a statutory inconsistency that requires 18 to twenty year-olds to spend a day in jail for marijuana possession, although possession of small amounts is legal for adults. Judge Meyer will raise the issue with Melanie Stewart.

B. The Legislative Executive Committee will begin meeting weekly by phone on Mondays at 8:00 a.m. beginning January 13.

Meeting Adjourned at 8:40 a.m.

Next Meeting: Friday, February 21 from 10:30 a.m. to 1:15 p.m., Temple of Justice, Olympia.

DMCJA Legislative Committee Meeting

Friday, October 11, 2013 (9:30 a.m. – Noon)
SeaTac AOC Office

MEETING MINUTES

Members:
Chair, Judge Samuel G. Meyer
Judge Scott K. Ahlf
Judge Stephen Brown
~~Judge Brett Buckley~~
~~Judge D. Mark Eide~~
Judge Douglas J. Fair
Judge Michelle Gehlsen
Judge Corinna Harn
Judge David Larson
Judge Susan Mahoney
~~Judge Marilyn G. Paja~~
Judge Glenn Phillips
~~Judge Heidi E. Smith~~
~~Judge David A. Steiner~~
Judge Shelley Szambelan

Guests:
~~Ms. Linda Baker, DMCMA~~
Ms. Kathy Seymour, DMCMA
~~Ms. Melanie Stewart~~

AOC Staff:
Ms. Shannon Hinchcliffe
Ms. J Krebs

CALL TO ORDER
Judge Meyer called the meeting to order and led introductions.

DMCJA LEGISLATIVE PROPOSALS FOR 2013

A. **Review RCW 9.96.060 – vacation of misdemeanor when a temporary, but not permanent, DV order has been issued subsequent to the original conviction**

The Committee would like to see if there is a stakeholder that would be interested in bringing this issue forward. Judge Fair will draft letter for Judge Meyer to present to groups such as WAPA, WACDL or an anti-domestic violence group.

B. **Review of removal of a municipal court judge by an executive or legislative branch prior to expiration of his or her four-year term**

Judge Larson discussed this issue with Judge Ringus, Co-Chair of the BJA, as it is an issue of judicial independence that affects the branch as a whole. Judge Larson will revise the memo he previously presented to more strongly reflect the issue of parity between municipal and district courts and to remove references to specific cities. It was motioned, seconded and passed for Judge Meyer to present the revised memo to the DMCJA Board at the next meeting.

C. **Misdemeanor jury fees**

Judge Meyer presented draft statutory language that would allow district and municipal courts to impose jury fees on a defendant convicted of a misdemeanor. It was noted that in addition to amending RCW 10.01.160, new chapters would need to be added to Chap. 3.66 RCW (district courts), Chap. 3.50 RCW (municipal courts) and Chap. 35.20 RCW (large-city courts). It was motioned, seconded and passed for Judge Meyer to present his draft proposal at the next DMCJA Board meeting.

D. **Discover pass fee allocations**

Judge Brown presented draft language to amend the current processing system for Discover Pass parking violations, which requires all fees to be remitted to the state, with no amount going to the local courts that process these tickets. Melanie Stewart has set a meeting with Judge Brown and a representative from the Washington State Association of Counties to discuss possible legislative ways to address the situation; ideally, the counties will take the lead. Judge Brown will report back at the next Committee meeting. It was motioned, seconded and passed to support a proposal to improve the current Discover Pass situation.

E. **Review the need of legislation to limit public access to CLJ misdemeanant probation files**

Judge Mahoney presented a memo regarding the possibility of proposing legislation to keep certain probation files confidential if CLJ court rules are amended to render them public. For a variety of reasons described in the memo, such a proposal would likely be unsuccessful and potentially problematic to propose. It was motioned, seconded and passed to not pursue this proposal. However, the Committee recognizes the need for awareness of this issue and Judge Meyer will report on the subject at the next DMCJA Board meeting.

F. **Modification of RCW 50.13.070 concerning subpoenas to the Department of Employment Security**

Although the Committee agreed that the current law is onerous in requiring a judge, rather than an attorney, to sign subpoenas to the Employment Security Department (ESD), there was insufficient support for a legislative fix. Judge Meyer contacted Columbia Legal Services regarding a potential proposal and they expressed some concern. It was motioned, seconded and passed not to move forward with this proposal. Judge Meyer will report on this matter at the next DMCJA Board meeting.

G. **Therapeutic Courts proposal**

The Therapeutic Courts Committee has provided draft language for new legislation to address therapeutic courts. It was provided for Committee member's information.

OTHER BUSINESS

The next Committee meeting, scheduled for November 1, may be cancelled.

Judge Meyer will attend a Legislative Session Communication meeting on Friday, October 18 on behalf of the DMCJA Legislative Committee. He will report about that meeting at the next Committee meeting.

Meeting Adjourned at 10:40 a.m.

Next Meeting: Friday, November 1, 8:00 – 9:00 a.m. via teleconference.

WASHINGTON COURTS

DMCJA Rules Committee

Wednesday, January 15, 2014 (12:00 p.m. – 1:00 p.m.)
Via Teleconference

MEETING MINUTES

Members:
Chair, Judge Garrow
~~Vice Chair, Judge Dacca~~
Judge Buttorff
Judge S. Buzzard
Judge Fraser
Judge Grant
~~Judge Harmon~~
~~Judge Robertson~~
~~Judge Steiner~~
Judge Szambelan
~~Ms. Linda Hagert, DMCMA Liaison~~

AOC Staff:
Ms. J Krebs

Judge Garrow called the meeting to order at 12:04 p.m.

The Committee discussed the following items:

1. **December 2013 meeting minutes**

The December 2013 Rules Committee meeting minutes were reviewed, but an insufficient number of Committee members had been in attendance to establish a quorum to approve the minutes. The minutes will be provided to the DMCJA Board for informational purposes.

2. **Proposed amendments to RALJ 2.2, 5.4 & 11.7, published by the Supreme Court**

Judge Garrow reviewed the proposed RALJ amendments. The one with the potential for greatest impact on courts of limited jurisdiction (CLJs) is RALJ 5.4, which addresses the effect of lost or damaged electronic transcripts from CLJs for appeal purposes. The current remedy if a transcript has significant deficiencies is to require a new trial. This proposal would only require re-trying the particular hearing or proceeding that lacks a record. Judge Garrow stated that the way the amendment is wording creates a potential ambiguity. The Committee was supportive of the concept but concerned about the language. Judge Garrow will bring a memo back to the Committee that addresses the issue and provides a recommendation.

3. **Amendments to CrRLJ 8.13 regarding communications with jurors, proposed by WACDL**

Judge Harmon agreed to review this proposal, which regards post-trial communication between attorneys and jurors, but was unavailable for this meeting. The Committee discussed the proposal, including whether the information seeking to be restricted would be publicly available and whether attorneys would be restricted from disclosure by other ethical rules. Judge Fraser

agreed to investigate whether the Washington State Bar Association had considered or commented on the proposal.

4. Search Warrant project – information only

Judge Garrow provided information regarding an electronic warrant ("eWarrant") project initiated by the Washington State Traffic Commission, which creates a web page for law enforcement officers to request search warrants from judicial officers. Judge Garrow will contact Judge Svaren to see if any DMCJA Board or Committee members would be interested in reviewing the prototype.

5. Other Business and Next Meeting Date

As Judge Garrow is out of town the week of February 17, the next Committee meeting is scheduled for Wednesday, February 26, 2014 at noon.

There being no further business, the meeting was adjourned.

WASHINGTON COURTS

DMCJA BOARD MEETING
FRIDAY, MARCH 14, 2014
12:30 P.M. – 3:30 P.M.
AOC SEATAC OFFICE
SEATAC, WA

SUPPLEMENTAL A G E N D A	TAB
Call to Order	
Minutes – February 14, 2014 Treasurer's Report – *Judge Marinella* ***A. DMCJA's Corporate Status*** Special Fund Report – *Judge Svaren*	
Standing Committee Reports A. Legislative Committee – *Judge Meyer* B. Reserves Committee – *Judge Alicea-Galvan* C. Education Committee – *Judge Burrowes* 1) DMCJA Spring Program	
JIS Status Update – *Vicky Cullinane, AOC*	
Action A. Nominating Committee - Slate of Candidates for 2014-2015 Year B. Bylaws Committee - Executive Session Language	
Discussion ***A. Trail Court Advocacy Board (TCAB) – Judge Svaren*** B. BJA Recommendations for Committees Review – *Judge Svaren* ***C. Rules Committee – Judge Garrow*** 1) Proposed WSBA RALJ Amendments 2) Proposed Amendments to CrR 8.10 and CrRLJ 8.13	 ***X*** ***X***
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	

Information A. Judicial Needs Estimate Workgroup– *Judge Jahns, Judge Burrowes, Judge Logan* B. Update on Public Record Request – *Judge Svaren* C. Legislative Committee Meeting Minutes D. Rules Committee Meeting Minutes ***E. Updated 2013-2014 Board Meeting Schedule***	***X***
Other Business A. New Court Association Coordinator for DMCJA B. Next meeting April 11, 2014, SeaTac, Washington	
Adjourn	

Trial Court Advocacy Board (TCAB)

Charter

Updated February 2014

Purpose

The Trial Court Advocacy Board (TCAB) will coordinate issues and referrals made by the trial court associations. Uniquely identifying the TCAB as an advocacy body on behalf of trial courts enhances statewide awareness of trial court issues involving court policy, staffing, and budget. TCAB will advance the trial courts' mission and create governance for judges and administrators to tailor their efforts for statewide advocacy related to local court operations. By creating TCAB, the trial courts commit to work together on issues and projects uniquely identified as related to trial court operations without duplication or miscommunication. Through TCAB, trial court operational issues will be identified, staffed, detailed, vetted through stakeholders, and poised to advance changes to policy, programs, legislative, best practices, or funding requests.

Scope

Governance of TCAB will be through a management structure at the direction of the trial court judges' associations. A unified message on behalf of the trial courts will enhance opportunities to address issues, promote solutions, and educate stakeholders about trial court operations. TCAB is dedicated to work on issues and problems in an effort to develop comprehensive, workable and research based solutions. The general areas of concentration include budget, legislative coordination, policy and project planning based on research.

No additional committees will be created by TCAB, but if projects require additional subject matter expertise, the committees of the associations (SCJA or DMCJA) can be involved at the request of the Board. The TCAB structure will not limit projects and activities of the trial court associations.

TCAB will advocate for adequate and stable state funding for statewide trial court purposes (programs, projects, staff, research capacity, etc.). The funding focus is to propose new funding requests, not supplant already dedicated funding to the judicial branch.

Membership

TCAB voting members will be equally populated by judicial officers representing the leadership of both the Superior Court Judges' Association (SCJA) and the District and Municipal Court Judges' Association (DMCJA). The associations' president, incoming president, and immediate past president will constitute the six voting members of the

Board. A quorum is 2/3rds of the membership or four judges. To pass, a motion must receive a majority vote of the membership, two judges from each association.

The chair of TCAB will rotate between trial court levels and be an assignment of the immediate past presidents. For 2014-2015, the SCJA immediate past president will be chair. In June of 2015, the DMCJA past president will chair TCAB. The chair's term expires in June of each year.

TCAB also consists of non-voting representatives from the following court administrator associations: (1) Association of Washington Superior Court Administrators, (1) District and Municipal Court Management Association, and (1) Washington Association of Juvenile Court Administrators. The administrator associations are a critical source for projects that will benefit from their court process expertise. The Board intends to maximize the areas of trial court focus by incorporating the work of the administrator associations.

Expectations

TCAB membership includes leaders from both judges' trial court associations. TCAB members will report to Association boards on projects and assignments.

AOC will provide resources, such as staffing, to support TCAB as agreed upon between TCAB and AOC.

A meeting schedule will be drafted and shared annually at the associations' Long Range Planning Retreats. The meeting schedule will generally be every other month with the ability to adjust the schedule as needed and agreed upon.

Below is a summary of expectations for TCAB:

1. Advocate legislative requests on behalf of the trial courts and their associations. It may also be an advocacy source for court administrators and managers at the various trial court levels.
2. Identify potential areas that require support and forward them to the appropriate body to propose trial court funding.
3. Participate in discussions and decisions regarding the distribution and allocation of funds passed through AOC specifically for trial court operations or support whenever such funds are allocated by the legislature or received through grants or other sources.
4. Consider issues, problems or projects from trial court judges or administrators associations. These assignments will be staffed and returned to the Board for further direction.

The board members will review the charter annually in June of each year. The charter may also be reviewed and amended at any meeting if at least two members are present from each court level association SCJA or DMCJA.

Budget

TCAB-related expenses, such as travel reimbursement, will be paid by the judges' associations. If there are other related expenses, the presidents of each judges' association have the authority to approve.

Judge Charles Snyder, SCJA	**Judge David Svaren, DMCJA**
Judge Jeff Ramsdell, SCJA	**Judge Veronica Alicea-Galvan, DMCJA**
Judge Blaine Gibson, SCJA	**Judge Sarah Derr, DMCJA**
Callie Dietz, AOC	

KING COUNTY DISTRICT COURT
East Division – Redmond Courthouse

Judge Janet E. Garrow
Janet.Garow@kingcounty.gov
206-477-2103

8601 – 160th Avenue NE
Redmond, WA 98052

Kathy Orozco, Court Manager
Redmond Courthouse
206-477-3200

TO: DMCJA Board

FROM: DMCJA Rules Committee

SUBJECT: Proposed WSBA RALJ Amendments

DATE: February 26, 2014

The Washington State Bar Association (WSBA) has proposed amendments for the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). The following is a summary of the proposed amendments and the DMCJA Rules Committee's proposed recommendations on each.

1. **RALJ 2.2 What May be Appealed**

The proposal is to adopt the language contained in the Rules of Appellate Procedure (RAP) 2.5(a) which provides that the appellate court may refuse to review any claim of error which was not raised in the trial court. The proposed language is nearly identical to RAP 2.5.

Recommendation: No objection to proposed amendment.

2. **RALJ 5.4 An amendment to clarify the scope of when a new trial is required when an electronic record is lost or damaged.**

The current rules provides that in the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. The proposed amendment seeks to limit when a new hearing or trial is required.

Because the issue on review may relate to a pretrial motion and that electronic record may not be lost or damaged, it seems to make sense that an appellant should not be automatically entitled to a new trial. For example, if the issue related to a pretrial motion, the Superior Court could easily review the record of the motion hearing and determine whether an error was made. If so, the remedy may then be a new trial.

Recommendation:
There is some concern with the proposed language of the amendment. The existing first sentence of the rule clearly provides that the remedy is a new trial. Therefore it seems that the second sentence of the rule, the proposed amendment, should begin with a modifier which allow a remedy other than a new trial, and should reference a damaged record. For example:

However, if the lost or damaged record pertains to a material or significant pretrial matter, the appellant shall only be entitled to a new hearing on the matter for which the record was lost or destroyed.

The third sentence of the rule, the proposed amendment, could be simplified and clarified as to when the trial court will be required to rehear a motion or trial. For example:

Unless the appellant demonstrates that a pretrial matter or trial was materially affected by a lost or damaged electronic record, a trial court will not be required to rehear a pretrial matter or trial for which an electronic record is available for appellate review.

3. RALJ 11.7(e) Application of Other Court Rules – Rules of Appellate Procedure

The proposed amendment would incorporate other RAP to the RALJ for criminal cases when not in conflict with the purpose or intent of the RALJ and when application is practicable. RAP 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7 (submission if improper brief and RAP 108 additional authorities).

Recommendation: No objection to propose

GR 9 COVER SHEET
Suggested Change

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION
RALJ 2.2 – What May be Appealed
(Codifying scope of appeal)

Submitted by the Board of Governors of the Washington State Bar Association

Purpose: The Rules of Appellate Procedure state, "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a). Formally codifying this rule for appeals from Courts of Limited Jurisdiction would aid pro se litigants in understanding the scope of appealable issues. As the Court stated in *State v. Naillieux*, 158 Wn. App. 630, 638, 241 P.3d 1280 (2010):

Our function is to review the validity of claimed errors by a trial judge who presided over a trial. That function assumes that counsel preserve the error by objecting to something the trial judge did or did not do. We do not, and should not, be in the business of retrying these cases. It is a wasteful use of judicial resources. Id. at 344, 835 P.2d 251; *State v. Bashaw*, 169 Wn.2d 133, 146, 234 P.3d 195 (2010); *State v. Labanowski*, 117 Wn.2d 405, 420, 816 P.2d 26 (1991). And it encourages skilled counsel to save claims of constitutional error for appeal so a defendant can get a new trial and second chance at a not guilty verdict if the first trial does not end in his favor. *Lynn*, 67 Wash.App. at 343, 835 P.2d 251.

Therefore, adding the exact language from RAP 2.5(a) to RALJ 2.2 would be consistent with existing case law.

SUGGESTED AMENDMENT

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)

RULE 2.2 – WHAT MAY BE APPEALED

(a) - (c) [No change]

(d) Errors Raised for First Time on Appeal. The superior court may refuse to review any claim of error that was not raised in the court of limited jurisdiction. However, a party may raise the following claimed errors for the first time on appeal: (1) lack of jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party may present a ground for affirming a decision of a court of limited jurisdiction that was not presented to that court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error that was not raised by the party in the court of limited jurisdiction if another party on the same side of the case raised the claim of error in that court.

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

GR 9 COVER SHEET
Suggested Rule Change

RALJ 5.4
Application of Other Court Rules – Rules of Appellate Procedure

PURPOSE: The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to clarify the scope of a "new trial" mandated in the event of a lost electronic record.

All proceedings in courts of limited jurisdiction are preserved through an electronic record. Unfortunately, these records are occasionally lost or destroyed through computer or microphone malfunction. RALJ 5.4 provides that the remedy for a lost electronic record is "a new trial." The purpose of this suggested change is to clarify the meaning of a "new trial" when the lost or damaged electronic record pertains to a pretrial hearing, not a trial.

When a lost or damaged record pertains to the trial, RALJ 5.4's remedy is logical and easily applied on remand. However, if the lost or damaged record pertains to a pretrial hearing, the remedy is more complicated and difficult to apply. Courts of limited jurisdiction need guidance on this issue.

For example, if the lost electronic record pertains to a pretrial CrRLJ 3.5 hearing, rather than a trial, then what is the scope of the "new trial" on remand? In this situation, RALJ 5.4's remedy is ambiguous. Obviously, the appellant should be entitled to relitigate the CrRLJ 3.5 hearing for which the record was lost or destroyed. However, RALJ 5.4 does not specify that the appellant is entitled to relitigate the CrRLJ 3.5 hearing; it specifies that the appellant is entitled to "a new trial."

Assuming that "a new trial" allows the appellant to relitigate pretrial matters for which the record was lost or destroyed, it is still unclear whether the appellant is entitled to relitigate pretrial matters for which the electronic record survived.

Take, for example, a case in which a CrRLJ 3.6 suppression hearing was held on a different date than a CrRLJ 3.5 hearing. If the record of the CrRLJ 3.6 suppression hearing survived but the record of the CrRLJ 3.5 hearing was destroyed, should the appellant be entitled to relitigate both the CrRLJ 3.5 hearing and the CrRLJ 3.6 suppression hearing? Because RALJ 5.4 protects an appellant's right to obtain appellate review, and the appellant can obtain appellate review of any hearing for which the electronic hearing survived, the trial court should not be required to relitigate a hearing with a viable record that remains subject to appellate review. In that situation, relitigation of all pretrial matters is a waste of the court's limited resources and an unnecessary windfall to the appellant.

However, there are circumstances in which the lost record from one pretrial hearing may affect the proceedings in a subsequent pretrial hearing. For example, if the testimony at a CrRLJ 3.5 hearing affected the court's ruling at a subsequent CrRLJ 3.6 hearing, then the hearings are materially related and the appellant should be entitled to relitigate both hearings.

Finally, there is also a question as to whether the appellant should receive a new trial when the record of a pretrial hearing is lost but the record of the trial survived. If the relitigation of the lost pretrial hearing would not affect the trial, there is no reason to hold a new trial. The trial record is still subject to review on appeal. A new trial should be held only if relitigation of a pretrial matter affects the evidence at trial.

The remedy provided by RALJ 5.4 lacks specificity. In its current form, the rule presumes that pretrial matters and trial are heard at the same time, such that any loss of an electronic record necessarily implies the loss of a trial record. In practice, however, courts of limited jurisdiction hold numerous pretrial hearings prior to trial. Some of those pretrial hearings affect trial, and some do not.

The proposed amendment to RALJ 5.4 clarifies that the remedy for a lost or damaged record of a pretrial hearing is relitigation of the pretrial hearing for which the electronic record was lost or destroyed. The trial court need not relitigate a pretrial hearing or trial for which the electronic record survived, unless the appellant can demonstrate that a pretrial hearing or trial was materially affected by the lost electronic record.

RALJ 5.4 LOSS OR DAMAGE OF ELECTRONIC RECORD

In the event of loss or damage of the electronic record, or any significant or material portion thereof, the appellant, upon motion to the superior court, shall be entitled to a new trial, but only if the loss or damage of the record is not attributable to the appellant's malfeasance. If the lost record pertains to material or significant pretrial matter, the appellant shall be entitled to a new hearing on the matter for which the record was lost or destroyed. The trial court of limited jurisdiction will not relitigate a pretrial matter or a trial for which there is an electronic record subject to appellate review, unless the appellant demonstrates a court determines that the pretrial matter or the trial was materially affected by the lost electronic record. In lieu of a new trial, the parties may stipulate to a nonelectronic record as provided in rule 6.1(b). The court of limited jurisdiction shall have the authority to determine whether or not significant or material portions of the electronic record have been lost or damaged, subject to review by the superior court upon motion.

GR 9 COVER SHEET
Suggested Rule Change

RALJ 11.7(e)
Application of Other Court Rules – Rules of Appellate Procedure

PURPOSE: The Office of the King County Prosecuting Attorney is suggesting a change to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ), to expressly allow the application of appropriate Rules of Appellate Procedure in appeals from courts of limited jurisdiction.

The purpose of this suggested change is to clarify that the enumerated Rules of Appellate Procedure supplement the Rules for Appeal of Decisions of Courts of Limited Jurisdiction when these rules do not conflict and when application is practicable. Currently, common appellate procedures permitted by the Rules of Appellate Procedure are not expressly incorporated under the RALJ.

Specifically, the RALJ do not provide a mechanism for moving to strike a brief that fails to comply with Title 7. Compare RAP 10.7. The RALJ do not provide a standard for consolidating cases on appeal. Compare RAP 3.3. The RALJ do not define the scope of issues that may be raised for the first time on review, nor do they define the scope of review for a case that has returned to the appellate court following remand. Compare RAP 2.5. The RALJ do not expressly permit a statement of additional authorities. Compare RAP 10.8. The RALJ do not give the court of limited jurisdiction the authority to settle the record. Compare RAP 7.2

The RALJ allow a respondent to seek cross-review of a decision of the court of limited jurisdiction. RALJ 2.1(a). However, unlike the Rules of Appellate Procedure, the RALJ do not specify the scope of cross-review. Compare RAP 2.4(a).

The RALJ provide a streamlined procedure for appeals from courts of limited jurisdiction. However, in the aforementioned circumstances, the RALJ procedure would benefit from limited application of the more clearly defined Rules of Appellate Procedure.

RALJ 11.7 APPLICATION OF OTHER COURT RULES

(a) Civil Rules. The following Superior Court Civil Rules are applicable to appellate proceedings in civil cases in the superior court when not in conflict with the purpose or intent of these rules and when application is practicable: CR 1 (scope of rules), CR 2A (stipulations), CR 6 (time), CR 7(b) (form of motions), CR 11 (signing of pleadings), CR 25 (substitution of parties), CR 40(a)(2) (notice of issues of law), CR 42 (consolidation; separate trials), CR 46 (exceptions unnecessary), CR 54(a) (judgments and orders), CR 60 (relief from judgment or order), CR 71 (withdrawal by attorney), CR 77 (superior courts and judicial officers), CR 78 (clerks), CR 79 (books and records kept by the clerk), CR 80 (court reporters), and CR 83 (local rules of superior court).

(b) Criminal Rules. The following Superior Court Criminal Rules are applicable to appellate proceedings in criminal cases in the superior court when not in conflict with the purpose or intent of these rules and when application is practicable: CrR 1.1 (scope), CrR 1.2 (purpose and construction), CrR 1.4 (prosecuting attorney definition), CrR 3.1 (right to and assignment of counsel), CrR 7.1 (sentencing), CrR 7.2 (presentence investigation), CrR 8.1 (time), CrR 8.2 (motions), CrR 8.5 (calendars), CrR 8.6 (exceptions unnecessary), CrR 8.7 (objections), and CrR 8.8 (discharge).

(c) Civil Rules for Courts of Limited Jurisdiction. The following Civil Rules for Courts of Limited Jurisdiction are applicable to appellate proceedings in civil cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: CRLJ 5 (service and filing), CRLJ 6 (time), CRLJ 7(b) (motions), CRLJ 8 (general rules of pleading), CRLJ 10 (form of pleadings), CRLJ 11 (verification and

signing of pleadings), CRLJ 25 (substitution of parties), CRLJ 40(b) (disqualification of judge), and CRLJ 60 (relief from judgment or order).

(d) Criminal Rules for Courts of Limited Jurisdiction. The following Criminal Rules for Courts of Limited Jurisdiction are applicable to appellate proceedings in criminal cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: CrRLJ 1.7 (local court rules--availability), CrRLJ 1.5 (style and form), CrRLJ 3.1 (right to and assignment of lawyer), CrRLJ 8.9 (disqualification of judge), CrRLJ 8.9(c) (disqualification of judge--transfer), CrRLJ 7.8(a) (clerical mistakes), CrRLJ 8.1 (time), and CrRLJ 8.2 (motions). (Editorial Note: Effective September 1, 1987, Justice Court Criminal Rules (JCrR) were retitled Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). Effective September 1, 1989, Justice Court Civil Rules (JCR) were retitled Civil Rules for Courts of Limited Jurisdiction (CRLJ).)

<<+++>> **(e) Rules of Appellate Procedure.** The following Rules of Appellate Procedure are applicable to appellate proceedings in criminal cases in the court of limited jurisdiction when not in conflict with the purpose or intent of these rules and when application is practicable: RAP 2.4(a) (scope of review), RAP 2.5 (circumstances which may affect the scope of review), RAP 3.3 (consolidation of cases), RAP 7.2(b) (authority of trial court to settle the record), RAP 10.7 (submission of improper brief), RAP 10.8 (additional authorities). <<+++>>

TO: DMCJA Board

FROM: DMCJA Rules Committee

SUBJECT: Proposed Amendments CrR 8.10 and CrRLJ 8.13

DATE: February 26, 2014

The Washington Association of Criminal Defense Lawyer (WACDL) has proposed two new rule amendments related to a lawyer's or law enforcement officer's contact with jurors after a jury has been discharged.

Proposed CrR 8.10:

> After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

Proposed CrRLJ 8.13:

> After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

The purpose of the proposed new rules is to avoid the risk of prejudice to the jury system by prohibiting post-trial disclosure of excluded evidence to jurors.

The proponents argue that such disclosures cause the jurors to question their verdict, to feel distrust for the system, and to resent the defense for withholding information. WACDL believes jurors who are called to serve on future cases will question whether they are being similarly deprived of information, thereby decreasing their willingness to limit consideration of evidence as the juror's oath requires.

WACDL states that there are presently no clear rules governing this type of contact and that the current rules are inadequate. **RPC 3.5(c)(3)** prohibits a lawyer from communicating with a juror or prospective juror after discharge of the jury if: 1) the communication is prohibited by law or court order; 2) the juror has made known to the lawyer a desire not to communicate; or 3) the communication involves misrepresentation, coercion, duress or harassment. **RPC 8.4(d)** prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Two informal ethics opinions issued in 1986 and 2006 had concluded that disclosure of excluded

evidence may be prejudicial to the administration of justice and thereby violate RPC 8.4(d). (Advisory Opinions 1030 & 2133). In 2010, however, these opinions were withdrawn by Advisory Opinion 2204 which concluded that lawyers may discuss the case, including excluded evidence, as long as they are careful to do so in a manner that does not violate RPC 3.5(c)(communication involving misrepresentation, coercion, duress or harassment) or RPC 8.4(d)(conduct prejudicial to the administration of justice). In reaching its conclusion, the committee stated, "Although there are arguments in favor of a policy of strict nondisclosure, such a rule seems more appropriately addressed by way of a court rule."

Several defense attorneys submitted declarations regarding specific examples of cases in which jurors were told of excluded evidence after trial and the perceived effect such disclosures had on those jurors.

DMCJA Rules Committee Comments and Recommendation

The Committee discussed the proposed rules at its November and some members expressed concerns about the apparent breath of the rules, restraint on free speech and constitutional requirements for open access to court records and proceedings. Judge Nancy Harmon agreed to review the proposal and coordinate the committee's comments. The Committee was advised that a subcommittee of the WSBA Rules Committee had recently reviewed the proposed rules and is not support the proposed rules due to concerns related to free speech and the requirement for open courts.

The Rules Committee discussed the proposed amendments again at its February meeting, and with one exception, the committee does not support the proposed amendments. The proposed rules present issues regarding restraint of speech after a case has concluded. There are also issues regarding whether such rules would violate other Washington constitutional provisions requiring that the business of the court be conducted in the open. If a case has concluded and the jurors have completed their service it seems inconsistent with the constitutional provisions for open access to court records and proceedings to restrict information that is available to the general public. The proposed rules casts a large net and do not allow for exceptions. A party concerned about post-trial communications with jurors may request the trial court craft a specific order to address concerns associated with the case. RPC 3.5 (c) would govern the lawyer's compliance with such order.

WACDL Washington Association of Criminal Defense Lawyers

Douglas R. Hyldahl
President

Teresa Mathis
Executive Director

October 15, 2013

Chief Justice Barbara Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Dear Chief Justice Madsen,

Trust in the fairness of our criminal trial system is founded on juries considering only those facts that are properly admitted into evidence. This trust is undermined by the post-trial disclosure to jurors of facts that were excluded by the trial court judge. Unfortunately, this practice occurs with some regularity throughout the state, and is not presently addressed by court rule or by RPC. These disclosures occur in a small but significant number of cases. They are especially harmful when jurors are subject to call on another jury in the same period of jury service. They serve no legitimate purpose, and as the attached declarations show, introduce potentially great prejudice in future trials. WACDL respectfully requests that the Court implement the attached proposed rule to limit such disclosures.

Prior attempts to address post-trial communications with jurors relied on Rules of Professional Conduct 3.5(c)(3) and 8.4(d) for guidance. For instance, Informal Ethics Opinions 1030 and 2133 relied on these rules to prohibit disclosures of excluded material either during or after trial, respectively. The Committee reasoned that such disclosures could prejudice the system by casting the verdict into doubt, causing jurors in future trials to be less willing to rely solely on admitted evidence in reaching a verdict. Advisory Opinion 2204 (2010) withdrew Opinions 1030 and 2133. The Committee noted, however, that "[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule." Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures. Given the manner in which post-trial disclosures undermine jurors' confidence in our system of justice, and the lack of any legitimate purpose or utility, a clear rule limiting such contact is necessary.

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WACDL Member Joe Campagna will be the spokesperson required by General Rule 9. Please let him know if you would like any additional information or are unable to open the attachments. He can be reached by email at campagna@sgb-law.com or by phone at (206) 622-8000.

Sincerely,

Doug Hyldahl
WACDL President

Joe Campagna
Co-Chair, WACDL Talking to Juries Task Force

GR 9 COVER SHEET

A. Name of Proponent. The Washington Association of Criminal Defense Lawyers (WACDL) requests this rule change.

B. Spokesperson. Joseph A. Campagna, on behalf of WACDL, will serve as spokesperson for the proposed rule.

C. Purpose.

1. Post-trial disclosure of excluded evidence creates a high risk of prejudice to the jury system.

Post-trial disclosure to jurors of excluded evidence undermines confidence in the fairness of our trial system and prejudices the administration of justice. It suggests to jurors in the present case that they were deprived of important information in reaching their verdict. It implies that if they had received fuller information, they might have reached a different verdict. As a result, it may cause jurors to question in future trials whether they are being similarly deprived, and may decrease the willingness to limit consideration of evidence as the juror's oath requires. There are no legitimate countervailing reasons for the disclosures. There are also presently no clear rules governing this sort of contact. As a result, the proposed rule is necessary.

The attached declarations demonstrate several recent examples of prejudicial post-trial disclosures. The declarations provided represent only a small sample of reported disclosures of which WACDL is aware. They are intended to illustrate, not to exhaustively document, the problem. As the supporting materials demonstrate, disclosures harmful to the trial process have occurred in municipal, district, and superior courts throughout Washington. The perceived effects of these disclosures included leaving the jurors visibly upset, and causing them to resent the defense for withholding information, to feel that they are never told the full truth, to wonder whether they can trust the system, and even to question their decision to acquit. These sort of reactions, from jurors who may be called again in future service, are significantly damaging to a fair trial process.

2. Prior attempts to address the problem have met with limited success.

Prior attempts to address this problem have not been adequate. The Rules of Professional Conduct currently prohibit post-discharge contact with jurors that "involves misrepresentation, coercion, duress or harassment." RPC 3.5(c)(3). The Rules also prohibit "conduct that is prejudicial to the administration of justice." RPC 8.4(d). Informal Ethics Opinion 1030 (1986) concluded that under RPC 8.4(d), "it is improper for a lawyer to disclose information to the jurors which is inadmissible because it is prejudicial," where the juror was subject to call on another jury in the same period of jury service. Informal Ethics Opinion 2133 (2006) extended this reasoning to disclosures post-jury service. The Committee reasoned that:

> Disclosure to discharged jurors of evidence that was excluded by the trial court may have a prejudicial effect on the system of justice by suggesting the juror was deprived of reliable evidence casting the juror's verdict in doubt. This, in turn, may make jurors less willing to rely on the evidence admitted by the trial court in future trials and may decrease the willingness to limit consideration of evidence in a future case as the juror's oath requires.

In 2006, relying on Informal Opinion 2133, the Seattle City Attorney's Office and several public defender agencies directed their attorneys to refrain from commenting on or disclosing matters that are not part of the evidentiary record. The directive adopted Opinion 2133's conclusion that the disclosure of excluded evidence tended to undermine a jury's confidence in their verdict, and was consequently prejudicial to the administration of justice.

Opinion 2133 was short lived. In 2010, Advisory Opinion 2204 withdrew Opinions 1030 and 2133, concluding that, because jurors are presumed to follow the court's instructions, post-trial disclosure of excluded evidence should not constitute a per se violation of RPC 8.4(d). The Committee noted, however, that "[a]lthough there are arguments in favor of a policy of strict non-disclosure, such a rule seems more appropriately addressed by way of a court rule." Presently, lacking any guiding rule, trial courts have been reluctant to grant motions in limine limiting post-trial disclosures.

3. The proposed rule addresses the risk of prejudice with minimally restrictive limits on post-trial contact.

The proposed rule places appropriate and reasonable limits on post-trial disclosures. First, as shown by the attached supporting documents, and as discussed in Opinion 2133, the potential prejudice is high. Second, there are no legitimate countervailing interests to balance against the potential prejudice. There are generally two legitimate reasons to have post-trial contact with jurors—to determine whether the verdict may be subject to legal challenge and to obtain informal feedback and evaluation on the lawyer's performance. *See, e.g.*, ABA Standards for Criminal Justice, Prosecution Function and Defense Function, (3d Ed. 1993), Prosecution Function Standard 3-5.4(c) and Defense Function Standard 4-7.3(c). Post-trial disclosures of excluded information serve neither of these purposes. Finally, the restrictions on disclosures are minimal. The proposed rule does not limit post-trial contact entirely, as many federal courts do. For instance, Western District of Washington Local Civil Rule 47(d) and Local Criminal Rule 31(f) both prohibit any post-trial contact with jurors without prior leave of the court, except in criminal cases with a hung jury. The proposed rule does not limit contact to this degree, but rather continues to permit contact with former jurors for all appropriate reasons and without first obtaining judicial approval.

D. Hearing. The proponents request a public hearing on this matter. Changes to rules affecting the jury trial process implicate fundamental constitutional rights and are the appropriate subject of public hearing and comment.

E. Expedited consideration. WACDL does not request expedited consideration of the proposed rule.

[PROPOSED] CrR 8.10

POST-TRIAL CONTACT WITH JURORS

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

[PROPOSED] CrRLJ 8.13

POST-TRIAL CONTACT WITH JURORS

After a jury has been discharged, after a verdict has been returned, or after a mistrial has been declared, a lawyer who participated in the trial, a representative from that lawyer's office, or a law enforcement officer who participated in the trial shall not communicate to the jury information that was suppressed or excluded pursuant to a ruling by the judge in the case.

Declaration of Counsel

I, Bruce Finlay, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- I tried a second-strike child molestation case in Thurston County Superior Court.
- The jury was not allowed to hear about the defendant's prior conviction for child molestation.
- After a not guilty verdict, the judge ordered the parties to remain in the courtroom, and then he went to the jury room.
- The judge then left and the attorneys were allowed to talk to the jury. I learned from the jurors that the judge had told them that the defendant had a prior conviction for child molestation. Several of the female jurors were hysterical and crying.
- My impression was that the jurors were left with the feeling that they are never told the full truth and they wonder whether they can trust the system.

10-9-13 Shelton, WA
Date and Place

Bruce Finlay, WSBA #18799

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DAVID HAMMERSTAD

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Seattle, Washington 98101

DECLARATION OF COUNSEL

I, David Hammerstad, swear that the following is true and accurate to the best of my knowledge and belief, subject to penalty of perjury under the laws of the State of Washington.

- In the Fall of 2006 I represented a client charged with Child Molestation in the First Degree in King County Superior Court (Regional Justice Center). A mistrial was declared after the jury deadlocked, 11-1 in favor of acquittal. After the verdict a supervisor from the prosecutor's office, standing in for the trial prosecutor, told the jury that the defendant was a Registered Sex Offender, a fact which was excluded from evidence at trial after a Motion in Limine was granted by the trial court.
- In the Spring of 2007 I represented a client charged with three felony charges (2 counts of Felony Violation of a No-Contact Order and 1 count of Telephone Harassment). After the defendant was acquitted on two of the three counts and the jury deadlocked 8-4 in favor of acquittal on the third count, the trial prosecutor informed the jury that the defendant was facing additional charges against the same alleged victim, a fact with was excluded from evidence at trial after a Motion in Limine was granted by the trial court.

10/8/13 Seattle, WA
Date & Place

David Hammerstad WSBA #34255

Fred Rice

From: aaron kiviat <aaron@kiviatlaw.com>
Sent: Wednesday, October 09, 2013 11:47 AM
To: fred.rice@wacdl.org
Subject: Excluded Evidence Reveal to Jurors

I, Aaron Kiviat, hereby declare under penalty of perjury of the State of Washington, as follows:

On August 21, 2013 through August 23, 2013 I was in trial in front of the Honorable Judge Eide in the King County District Court - Burien Division. (State of Washington vs. Jessica Murray, 2Z0670590).

The trial was a DUI that had a breath test reading of .24/.26 with an accident. The prosecutor had stipulated pretrial to not introduce the breath test reading at trial as the arresting officer had neglected to ask the defendant to remove her mouth jewelry (a tongue stud and several lip piercings) prior to the testing.

At motions in limine, I was also able to exclude the testimony of the driver of the vehicle that was allegedly struck by the defendant, as the prosecutor had not given sufficient notice of their intent to call him as a witness.

After 10 minutes of deliberation the jury acquitted.

After releasing the jury, we asked to speak with them in the hall if they chose to do so. Both the trial deputy prosecutor and I spoke with the jury. They hugged my client and were almost apologetic that she had to go through this process. The trial deputy made no mention of any excluded evidence and simply asked about how he had done.

As we were rapping up and saying our goodbyes, the trial deputy's supervisor approached the jury and introduced herself and asked if she could have a word with them. I was already on my way out the door, so I left.

The next day I wrote the supervisor an email asking if she had disclosed the breath test results to the jury. She responded that "I did speak with them regarding the BAC and the states witness to give perspective on how (the trial deputy) framed the case."

--
Regards,

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AFFIDAVIT

I, Albert A. Rinaldi, Jr. declare under the penalty of perjury according to the laws of the State of Washington that this declaration is true and correct.

I recently had a Jury trial in Seattle District Court before Judge Joanna Bender. My client was Andrew Chrisman who was charged with Driving While Under the Influence of Intoxicants in State of Washington vs. Chrisman #2Z0626726. The State was represented by Rule 9 Chris Fyall. The arresting was Trooper M. Ledesma.

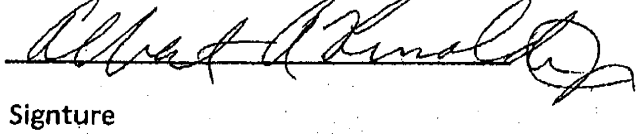
At the start of the trial the State indicated that it would not introduce any evidence of the speed of the Defendant's vehicle because the radar technician who was requested by the Defense was unavailable.

The Jury returned a verdict of Not Guilty on August 13, 2013. Judge Bender released the Jury and indicated that members of the Jury could speak to both or either counsel if they wanted to do so.

Both counsel went into the Jury room where all the Jurors remained to speak with us. This is often done in Jury trials in which I have participated. Trooper Ledesma came into the Jury room as well. I initially objected because it did not seem appropriate to have the arresting officer there because it may well have had an effect on the Juror's ability to speak freely. The Trooper insisted on remaining in the Jury room. He engaged is conversations with the Jurors and some of them appeared to be irritated with his questions. At one point a Juror simply said that he did not like the fact that the Trooper slowed his vehicle down by using his gears instead of applying his brakes when it was nightime and the Defendant was behind the Trooper. (The Trooper had testified that he wanted to see the reaction of the Defendant.) Further the Trooper told the Jury that he had obtained a radar reading on the Defendant's vehicle, which was not presented to the Jury.

I do not know if any of these Jurors were called to serve again as Jurors. I believe that these Jurors would have been tainted by the discussion with the Trooper. I further believe it is inappropriate to tell the Jury of evidence that was not admissible in a trial.

Submitted under the penalty of Perjury according to the Laws of the State of Washington.

Dated this 14 day of October 2013 

Place signed Seattle, WA Signture

Declaration of Counsel

I, Maria Fernanda Torres, swear that the following is true and accurate to the best of my knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

- In 2004, I defended a client in Seattle Municipal Court. The court had excluded evidence of a prior DUI conviction, which was then revealed by the prosecutor to the jurors after an acquittal. The impact on the jurors was obvious; their reaction seemed to signal they questioned their decision to acquit immediately.

- In 2006, I defended a client in Seattle Municipal Court. The court had excluded my client's prior theft conviction. My client was acquitted. Knowing that prosecutor would want to tell the jurors about it, I raised it with the judge and asked that the prosecutor not be allowed to tell the jurors about the excluded conviction. The prosecutor was unable to articulate a specific reason why sharing this information with the jurors was necessary or important, other than a vague "they should know." The judge denied my request, noting, in part, that the jurors were done with their service. Here, I did not get a sense of what impact this information had on the jurors.

- Following my experience in 2006, I submitted a request to the Rules of Professional Conduct Committee at the Washington State Bar Association, and the response was informal opinion 2133. Previously, there was informal opinion 1030 only, which was specific to jurors who were not done with their service.

- Opinion 2133 addressed the concerns I had, particularly in the DUI case, which is that the jurors would be tainted for all *future* service.

- I believe Advisory Opinions 2133 and 1030 have both since been withdrawn.

Seattle, WA
Date and Place

Maria Fernanda Torres, WSBA #34587

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DECLARATION OF ROBERT PEREZ

I, Robert Perez, hereby declare:

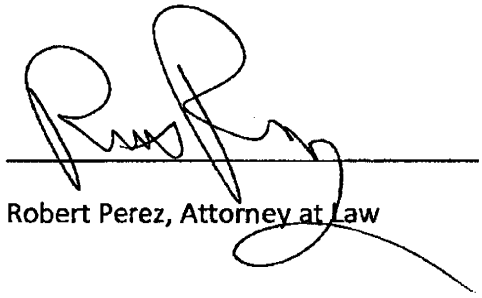
1. I am over the age of eighteen years. I have personal knowledge of the facts set forth in this declaration, except as to those matters stated on information or belief and as to those matters, I do believe them to be true.
2. In November 2010 a mistrial was declared in the Rape trial titled State v. Matthew Torre, Snohomish County Case No. 09-1-00769-6. The mistrial was declared by Snohomish County Superior Court Judge Downes. The jury hung 8-4 in favor of the defense.
3. Mr. Torre had a previous conviction in the State of Maine for a related sex offense. In pretrial motions, Judge Downes had ruled any reference to that conviction inadmissible at trial.
4. After the jury was discharged, I personally spoke with members of the jury. During this conversation, an attorney from the Snohomish County prosecutor's office and the Snohomish County detective assigned to the case were both present.
5. In response to a juror's question as to why the case had even been prosecuted, the Detective told the jury that Mr. Torre had "a prior". Before the prosecutor had a chance to speak up, I informed the jury that it would be inappropriate for either counsel to discuss certain topics, in an attempt to discreetly caution the prosecutor not to further taint this future jury pool.
6. The prosecutor stated to the jury several times that he would not comment on past incidents but that "this was a righteous prosecution". He repeated that phrase several times to nodding jurors in an obvious allusion to the Detective's assertion.
7. It was evident during this conversation that the government wanted to give the jurors information about Mr. Torre's past that would support their position that this was a "righteous prosecution" based on the revelation by law enforcement. I believe that

several of the jurors present were incensed to learn that they might have voted Not Guilty for a man who had prior history.

8. After the case was set for re-trial, the government dismissed the case, ending any further issues or need to litigate over the actions of the State. But it was clear to me that the jurors in the case left feeling upset and I believe they resented the defense for "withholding" information from them. I believe that the next time these citizens are called for jury duty, they will be certain that evidence is being withheld from them and they will likely resent the defense because of this.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Bellevue, Washington October 8, 2013



Robert Perez, Attorney at Law

ABA Standards for Criminal Justice
Prosecution Function and
Defense Function
Third Edition

Library of Congress Catalog Card No. 93-17567
ISBN 0-89707-850-0

The commentary contained herein does not necessarily represent the official position of the ABA. Only the text of the black-letter standards has been formally approved by the ABA House of Delegates as official policy. The commentary, although unofficial, serves as a useful explanation of the black-letter standards.

Project of the
American Bar Association
Criminal Justice Standards Committee
Criminal Justice Section
1800 M Street, NW
Washington, D.C. 20036
202/331-2260

Printed in the United States of America

ABA Standards for Criminal Justice Prosecution Function and Defense Function Third Edition

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Defense Function Black-Letter Standards approved
ABA House of Delegates
February 1991
Commentary completed
July 1992
Prosecution Function Black-Letter Standards approved
ABA House of Delegates
February 1992
Commentary completed
July 1993

problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, the prosecutor should be careful to conduct any investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, the prosecutor should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

Use of Voir Dire

The process of voir dire examination of prospective jurors by lawyers is often needlessly time consuming and is frequently used to influence the jury in its view of the case. In those jurisdictions that retain the practice of permitting the prosecutor to conduct the questioning of jurors, the responsibility must rest with the prosecutor, supervised by the court, to limit questions to those that are designed to lay a basis for the lawyer's challenges. The observation that the voir dire may be used to influence the jury in its view of the case is rejected as an improper use of the right of reasonable inquiry to ensure a fair and impartial jury.

The use of the voir dire to inject inadmissible evidence into the case is a substantial abuse of the process. Treatment of legal points in the course of voir dire examination should be strictly confined to those inquiries bearing on possible bias in relation to the issues of the case.

Standard 3-5.4 Relations With Jury

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly,

if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

History of Standard

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case" which appeared in the previous edition after the word "jurors" in the first sentence and deleting the word "improper" which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that the prosecutor should not talk on any subject to people he or she knows are jurors before or during the trial.

Section (b) is unchanged. Section (c) has been revised stylistically and the last sentence is new to this edition.

Related Standards

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)
ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)
ABA Standard for Criminal Justice 4-7.3 (3d ed. 1993)
ABA Standard for Criminal Justice 15-4.7 (2d ed. 1980)
NDAA National Prosecution Standard 87.4 (2d ed. 1991)

Commentary

Communication with Jurors Before or During Trial

Discussing the case privately with a juror before verdict is a gross impropriety and may also be criminal conduct.[1] Moreover, it is improper for a prosecutor knowingly to engage in *any* conversation with a jury member, however innocent in purpose or trivial in content, since the mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence.[2] The prosecutor's legitimate communication must be with the jury as an

1. *See, e.g.*, Gold v. United States, 352 U.S. 985 (1957); State v. Socolofsky, 666 P.2d 725 (Kan. 1983).
2. *Cf.* Smith v. Phillips, 455 U.S. 209 (1982).

entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

Attitude Toward Jury

The prosecutor should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. The prosecutor should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as "your honor," the jury's symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, "ladies and gentlemen of the jury" or "members of the jury."

Posttrial interrogation

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither the prosecutor nor defense counsel should discuss a case with jurors after trial in a way that is critical of the verdict.[3] Where prevailing law permits such inquiries, the prosecutor may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the prosecutor must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethics codes so permit, for the prosecutor to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

Standard 3-5.5 Opening Statement

The prosecutor's opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence

3. *See also* Standard 3-5.10.

Related Standards

ABA Model Code of Professional Responsibility DR 7-106(C)(1), (2); DR 7-108(E) (1969)
ABA Model Rules of Professional Conduct 3.4(e); 3.5(a), (b); 4.4 (1983)
ABA Standards for Criminal Justice 3-5.3 (3d ed. 1993)
ABA Standards for Criminal Justice 15-2.4 (2d ed. 1980)

Commentary

Preparation for Jury Selection

The selection of a jury is an important phase of the trial and requires the alert attention of the lawyer. As elsewhere in the trial, in the selection of the jury the advocate's decisions must be made under time pressure. They can be made wisely only if the lawyer has prepared adequately before trial.

Pretrial Investigation of Jurors

Pretrial investigation of jurors may permit a more informed exercise of challenges than reliance solely upon voir dire affords. The practice of conducting out-of-court investigations of jurors presents serious problems, however. It may have a tendency to make jury service, already unpopular with many persons, even more onerous because of the fear of invasion of privacy. It may also have the appearance, even if unintended, of an effort to intimidate jurors. To minimize these risks, counsel should be careful to conduct investigations of jurors in a manner that scrupulously avoids invasions of privacy. Except in unusual circumstances of necessity, counsel should limit the inquiry to records already in existence rather than, for example, questioning contemporaneously a potential juror's neighbors.

Standard 4-7.3 Relations With Jury

(a) Defense counsel should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during the trial. Defense counsel should avoid the reality or appearance of any such communications.

(b) Defense counsel should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, defense counsel should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If defense counsel believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

History of Standard

Section (a) has been revised stylistically and by addition of the word "intentionally" to exclude unintentional conversations with jurors. Section (a) has also been revised by deleting the phrase "concerning the case," which appeared in the previous edition after the word "jurors" in the first sentence, and deleting the word "improper," which also appeared in the previous edition before the word "communications" in the second sentence. These deletions reflect the view that counsel should not talk on any subject to people he or she knows are jurors before or during the trial.

Sections (b) and (c) have been revised stylistically.

Related Standards

ABA Model Code of Professional Responsibility DR 7-108(A), (B), (C), (D); EC 7-36 (1969)

ABA Model Rules of Professional Conduct 3.5(a), (b); 4.4 (1983)

ABA Standards for Criminal Justice 3-5.4 (3d ed. 1993)

ABA Standards for Criminal Justice 15-4.7 (2d ed. 1980)

Commentary

Communication with Jurors Before or During Trial

Discussing the case privately with a juror before verdict is a gross impropriety, and may also be criminal conduct.[1] Moreover, it is improper for counsel knowingly to engage in *any* conversation with a jury member, however innocent in purpose or trivial in content, since the

1. *See also* ABA Model Rule of Professional Conduct 3.4(e); ABA Model Code of Professional Responsibility DR 7-106(C)(1).

mere fact that counsel is seen conversing with a juror may raise the question of whether the juror reached the verdict solely on the evidence. Defense counsel's legitimate communication must be with the jury as an entity—not with jurors individually. For obvious reasons, these strictures apply as well to communications with persons summoned for jury duty who may or may not be impaneled as jurors in a particular case.

Attitude Toward Jury

Counsel should avoid undue solicitude for the comfort or convenience of the judge or jury and should avoid any other conduct calculated to gain special or unfair consideration. Counsel should not address jurors individually by name, for example. Just as respect for the position of the judge requires that the judge be addressed formally as "your honor," the jury's symbolic position as representatives of the community in the courtroom requires that a degree of formality be observed in addressing the jury. A typical form of address is, of course, "ladies and gentlemen of the jury" or "members of the jury."

Posttrial interrogation

Since it is vital to the proper functioning of the jury system that jurors not be influenced in their deliberations by fears that they subsequently will be harassed by lawyers or others who wish to learn what transpired in the jury room, neither defense counsel nor the prosecutor should discuss a case with jurors after trial in a way that is critical of the verdict. Where prevailing law permits such inquiries, a lawyer may discuss a case with former jurors for the purpose of ascertaining the existence of juror misconduct. However, the lawyer must carefully avoid any harassment of the jurors in the course of such inquiries. Finally, it is not improper, in states where the law and ethical codes so permit, for counsel to communicate in an informal manner for the purpose of self-education with former jurors who are willing to talk about their jury service.

Standard 4-7.4 Opening Statement

Defense counsel's opening statement should be confined to a statement of the issues in the case and the evidence defense counsel believes in good faith will be available and admissible. Defense counsel should not allude to any evidence unless there is a good faith

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION
SCHEDULE OF BOARD MEETINGS

2013-2014

DATE	TIME	MEETING LOCATION
Friday, Aug. 9, 2013	12:30 – 3:30 p.m.	AOC SeaTac Office Center
September 22, 2013	9:00 – 12:00 noon	2013 Annual Judicial Conference, Wenatchee, WA
Friday, Nov. 15, 2013	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Dec. 13, 2013	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Jan. 10, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Feb. 14, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, March 14, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, April 11, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
April 25 & 26, 2014	April 25 12:00-5:00pm April 26 9:00-1:00pm	Board Retreat Woodinville, WA
May 2014	Canceled	
Sunday, June 8, 2014	9:30 – 12:30 p.m.	Semiahmoo Resort, Blaine WA

AOC Staff: Michelle Pardee

(AOC Conference Room Reserved)

Adopted May 4, 2013
Updated February 14, 2014 (Board Retreat & May meeting info)

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