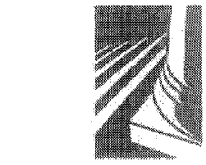

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

BOARD MEETING

FRIDAY, March 13, 2015

AOC SEATAC OFFICE
SEATAC, WASHINGTON

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION
SCHEDULE OF BOARD MEETINGS

2014-2015

DATE	TIME	MEETING LOCATION
Friday, July 11, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Aug. 8, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Sunday, Sept 21, 2014	9:00 – 12:00 noon	2014 Annual Judicial Conference, Spokane, WA
Friday, Nov. 14, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Dec. 12, 2014	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Jan. 9, 2015	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, Feb. 13, 2015	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, March 13, 2015	12:30 – 3:30 p.m.	AOC SeaTac Office Center
Friday, April 10, 2015	12:30 – 3:30 p.m.	AOC SeaTac Office Center
May 8 & 9, 2015	May 8 12:00-5:00 p.m. May 9 9:00-1:00 p.m.	Enzian Inn, Leavenworth
June 7-10, 2015	TBD	Skamania Lodge, Stevenson, WA

AOC Staff: Sharon Harvey

(AOC Conference Room Reserved)

Updated: December 16, 2014

WASHINGTON COURTS

DMCJA BOARD MEETING
FRIDAY, MARCH 13, 2015
12:30 P.M. – 3:30 P.M.
AOC SEATAC OFFICE
SEATAC, WA

PRESIDENT JUDGE DAVID STEINER

AGENDA	TAB
Call to Order	
General Business A. Minutes - February 13, 2015 B. Treasurer's Report – *Judge Ahlf* C. Special Fund Report – *Judge Marinella* D. JISC Project Update – Judges Rosen and Heller E. Standing Committee Reports 1. Legislative Committee – *Judge Meyer* a. 2015 Session Update b. Meeting Minutes for October 10, 2014 F. Trial Court Advocacy Board (TCAB) Update – *Judge Steiner* G. JIS Report – *Ms. Cullinane*	1
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	
Action A. Court Security Rule Amendment	2
Discussion A. WSBA Escalating Cost of Civil Litigation Task Force Seeking Comments B. CLJ-CMS Court User Work Group Replacement 1. CUWG Applicants and Expressions of Interest 2. CLJ-CMS CUWG Charter C. SCJA/DMCJA Meeting with the Washington Supreme Court D. Recall Petitions Against CLJ Judges	3

Information A. Nominating Committee Report – 2015 Slate for Election	4
Other Business A. Next Meeting: Friday, April 10, 2015, 12:30 p.m. – 3:30 p.m., AOC SeaTac Office	
Adjourn	

WASHINGTON COURTS

DMCJA Board of Governors Meeting
Friday, February 13, 2015, 12:30 p.m. – 3:30 p.m.
AOC SeaTac Office

MEETING MINUTES

Members Present:
Chair, Judge David Steiner
Judge Ahlf
Judge Burrowes
Judge Gehlsen
Judge Jahns
Judge Marinella
Judge Meyer
Commissioner Noonan
Judge Olwell
Judge Ringus (non-voting)
Judge Robertson
Judge Smith
Judge Staab
Judge Svaren

Members Absent:
Judge Garrow (non-voting)
Judge Jasprica (non-voting)
Judge Lambo (non-voting)

Guests
Shirley L. Bluhm, Esq., WSAJ
Judge Harold Clarke III
Ms. Deena Kaelin
Judge Steve Rosen

AOC Staff:
Ms. Vicky Cullinane
Ms. Sharon R. Harvey
Mr. Dirk Marler

Judge David Steiner, District and Municipal Court Judges' Association (DMCJA) President, noted a quorum was present and called the DMCJA Board of Governors (Board) meeting to order at 12:32 PM. All attendees were asked to introduce themselves.

GENERAL BUSINESS

A. Minutes

The Board motioned, seconded, and passed a vote (M/S/P) to approve the December 12, 2014 Board Meeting Minutes, which contain amendments by Judge Heller. M/S/P to approve the Board Meeting Minutes dated January 9, 2015.

B. Treasurer's Report

M/S/P to approve the Treasurer's Report. Judge Ahlf informed the Board that he added the DMCJA/SCJA Sentencing Alternatives as a new line item to the DMCJA 2014-2015 Budget. The Board did not have to vote for the addition.

C. Special Fund Report

M/S/P to approve the Special Fund Report. Judge Marinella reported a balance of forty seven thousand five hundred sixty three dollars and twenty five cents ($47, 563.25), which reflects the Special Fund amount after a check in the amount of one thousand dollars ($1000) was paid to Melanie Stewart, Esq., DMCJA Lobbyist.

D. Standing Committee Reports

1. Legislative Committee

Judge Meyer informed of the status of DMCJA proposed bills and bills of interest during the 2015 Legislative Session. First, he spoke of DMCJA proposed House Bill (HB) 1328, which would increase the district court jurisdictional limit from seventy-five thousand dollars ($75,000) to one hundred thousand dollars ($100,000). This bill and its companion, Senate Bill (SB) 5125, were co-opted under HB 1248 to include mandatory arbitration, which caused the DMCJA bills to stall. Ms. Stewart, DMCJA Lobbyist, spoke with SB 5125 sponsor, Senator Mike Padden, regarding the DMCJA sole interest to increase the jurisdiction limit, which caused the bill to pass through the Senate Committee. Further, DMCJA proposed SB 5126 regarding employment security department subpoenas is dead in the water because it would violate federal law. DMCJA proposed HB 2097 regarding the authority for courts of limited jurisdiction (CLJ) to charge jury fees has now been sponsored.

Second, Judge Meyer reported on the status of bills of interest to the DMCJA, which include HB 1061, which adds an additional judge for Skagit County District Court, HB 1305, which relates to the establishment of Therapeutic Courts, HB 1028, which requires cities and counties to provide security for their courts, HB 1390, which relates to legal financial obligations (LFO), HB 1276, which relates to impaired driving, HB 1282, which relates to driving while license suspended for failure to pay child support, HB 1943, which relates to electronic home monitoring (EHM), and Senate Bills 5980 and 5982, which relate to judges' retirement plans. Regarding HB 1061, the bill passed through the House Committee. Judge Finkle testified before the Legislature for HB 1305 and its companion bill, SB 5107, passed through the Senate Committee. Further, Judge Meyer informed that it was a victory to receive a hearing on the court security bill, HB 1028, for which Judge Gehlsen testified before the Legislature. Judge Meyer further reported that the Public Disclosure Commission (PDC) Bill, HB 1397, exempts judges from providing their home addresses, which the newspaper lobbyist opposed. The bill passed unanimously out of the House Committee. Judge Meyer then reported that the EHM bills, HB 1943 and SB 5766, provide both public and private EHM. The DMCJA, via its Executive Legislative Committee, opposes HB 1943 because aspects of the bill ruin judicial discretion. The DMCJA, however, supports SB 5766, which lays out standards and parameters for EHM. Judge Meyer also informed that LFO bills, HB 1390 and its companion SB 5713, have had movement in the Legislature. Representative Roger Goodman has taken on the issue, which includes indigency standards at sentencing. Judge Meyer attended meetings with Superior Court Judge Steve Warning to help craft legislation that would relieve the burden of LFOs. Judge Meyer further reported that Judge Glenn Phillips has participated in a Work Group regarding HB 1276, which concerns impaired driving. House Bill 1282 provides for driving while license is suspended for the failure to pay child support. The DMCJA prevented add-ons for infractions regarding bills of interest. Judge Meyer then reported that SB 5980 and SB 5982, which relate to judges' retirement plans, were introduced on the date of the Board meeting. Judge Meyer recommended that the DMCJA coordinate with the Board for Judicial Administration (BJA) and oppose these retirement bills. Lobbying services for retirement issues is funded by the DMCJA Special Fund. Judge Meyer also informed that the DMCJA Legislative Committee will host its annual Reception on Friday, February 20, 2015.

2. Rules Committee

Judge Robertson reported that she has drafted a letter for Judge Steiner to sign regarding Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 2.1, which was provided to the Board. Judge Robertson further informed that she attended a Washington State Bar Association (WSBA) meeting in which Criminal Rule (CR) 26 regarding Discovery was discussed. Judge Robertson noted that the DMCJA has supported it in the past. The Washington Association of Prosecuting Attorneys (WAPA) also supports the Rule. Additionally, there is interest to change Evidence Rule (ER) 1101, which relates to juveniles in the commitment process. Judge Robertson further informed that there is a new proposal for judicial evaluations that would be statewide.

Trial Court Advocacy Board (TCAB)
Judge Steiner reported that the TCAB met and discussed their logo, which is not too suggestive of the trial courts. Further, the TCAB motto is in the Celtic language and translated to mean, "No strength without unity." The TCAB discussed how to advocate for better court budgets and how to get legislative interest by starting conversations with the notion that judges are interested in improving the courts and would like legislators' suggestions. This approach is set to start in the summer. Judge Marinella informed that the TCAB is getting the trial court associations' legislative committee chairs and lobbyists together to discuss how to best advocate for the courts. Judge Robertson reported that the Court Security Rule has been drafted with some amendments. The revised draft of the Court Security Rule contains non-substantive revisions and will be placed as an action item on the March 2015 DMCJA Board agenda.

JIS Report
Ms. Cullinane reported that members of the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) Court User Work Group (CUWG) have been working hard and are about to embark on the future state of the CLJ-CMS Project. The project will not be able to continue in the next biennium without funding, therefore, for those judges interested in speaking with their local legislators about the project, Ms. Cullinane offered a template for letters to send to legislators, and a one-page information sheet that judges may provide to legislators. Ms. Cullinane further reported that it's easier and faster to get on the vehicle related violations (VRV) system, and using it saves manual input for courts with red light or speeding cameras, or other automated parking systems. There are no courts waiting in line to get on VRV, so judges should consider getting on it, and spread the word to their colleagues. Ms. Cullinane also reported that it's now possible for courts to receive copies of their etickets to feed into their document management systems. It may take a little longer to get onto that system than it does to get on VRV. She further reported on the AOC destruction of records project, which will start destroying electronic records in a couple of months, beginning with pilot courts, and then moving court-by-court alphabetically. She clarified that this part of the project will only destroy infractions. It is the next phase of the project that will destroy certain non-conviction records. Ms. Cullinane responded to a concern regarding recent instances of Judicial Access Browser System (JABS) being unavailable. She explained that those were not JABS outages, they were due to the entire intergovernmental network (IGN) being down. She explained that if judges have another way of accessing the internet, they can use the JABS link to access JABS when the IGN is down. Mr. Marler informed that when this happens, the Washington Supreme Court, AOC, and other state agencies also do not have internet access. Judge Rosen suggested the DMCJA President provide the entire DMCJA membership with a link to route to when JABS is down.

LIAISON REPORTS

SCJA – Judge Harold Clarke, Superior Court Judges' Association (SCJA) Representative, informed that Judge G. Scott Marinella is the new DMCJA Representative to the SCJA. Judge Clarke further reported that the SCJA has proposed a pay raise of four point two percent (4.2%) to the Salary Commission, which is to be prospective only. Judge Clarke further informed that no bill regarding judges' pensions has been introduced but a bill is expected, and, could be introduced at the end of the 2015 Legislative Session. Judge Clarke further reported on a financial bill, which may get caught up in a rush during Session. There is a push for a salary increase for all state employees. Judge Clarke further mentioned that on March 7, 2015, the Diversity Judicial Institute will host a boot camp regarding how to run for or become appointed to the bench. Judge Clarke further reported that the County Clerks sponsored a bill regarding courthouse facilitators for guardianships, which would be a county-by-county bill. The SCJA will not support any bill that increases mandatory fees. Judge Clarke reported that the SCJA discussed HB 1248, which not only increases the District Court jurisdictional limit but also includes mandatory arbitration, and informed that the SCJA has some concern that any jurisdictional increase bill would be tied to mandatory arbitration, which the SCJA would not support. The SCJA, however, does support an increase in the district court jurisdictional limit from seventy five thousand dollars ($75,000) to one hundred thousand dollars ($100,000).

AOC – Mr. Dirk Marler, Administrative Office of the Courts (AOC) Representative, reported that several courts in Washington State and around the country have reported various types of scams. The Court Management Council, which will partner with the National Center for State Courts, is working on posters and communications to improve public awareness. Mr. Marler also encouraged judges to contact the AOC if they receive suspicious access to court records, GR 31, requests.

BJA – Judge Ringus, Board for Judicial Administration (BJA) Representative, reported that on Thursday, February 19, 2015, the BJA will co-host a reception for Legislators. The BJA will discuss approved GR 31.1 forms at its next meeting. The BJA is also looking at appellate judicial evaluations and whether they should recommend judicial evaluations. Judge Ringus further mentioned the BJA legislative agenda regarding Washington Counties and issues relating to both district courts and superior courts.

WSAJ – Ms. Bluhm represented the Washington State Association for Justice (WSAJ) at the Board meeting.

MCA – Ms. Deena Kaelin, Misdemeanant Corrections Association (MCA) Representative, informed that the MCA grant request has been withdrawn because proper protocol had not been followed. Ms. Kaelin further reported on MCA functions, such as membership dues, frequency of Board meetings, the long-term commitment of the Vice-President, nomination committees, training, and legislation.

ACTION

DMCJA Conference Registration Fee Payment for Members in Good Standing
M/S/P to pay up to two hundred forty dollars ($240) of the 2015 DMCJA Spring Conference registration fee for members in good standing.

Request for Project Support from Committee to Address Racial Minority Juror Participation
M/S/P to send out surveys and encourage courts to participate in a project to address racial minority jury participation.

DISCUSSION

A. DMCJA Conference Registration Fee Payment for Members in Good Standing
M/S/P to make this an action item. Judge Steiner informed that the Board has an annual vote regarding whether to pay the Spring Conference registration fee for DMCJA members in good standing. Judge Svaren provided that the fund balance had grown in recent years and, therefore, it was suggested to use the money to pay registration fees for DMCJA members in good standing.

B. Supreme Court Annual Meeting Request with DMCJA
The Board discussed Chief Justice Barbara Madsen's request for a joint meeting with the SCJA and the DMCJA. The Board agreed to accept the invitation. Judge Steiner will provide more information and arrange the meeting. The Board agreed to have the meeting on the same date as regular Board meetings.

C. Request for Project Support from Committee to Address Racial Minority Juror Participation
M/S/P to make this an action item. Judge Rosen requested the Board support a survey project that would address the racial disproportionality of Washington State juries. The Board informed Judge Rosen that the following CLJs draw from the same jury pool as superior courts: (1) Spokane, (2) Benton, (3) Thurston, (4) Yakima, and (5) Pierce. Survey forms are similar to U.S. Census forms.

D. Misdemeanant Corrections Association Grant Request
Ms. Kaelin informed that the grant request has been withdrawn.

E. Recall Petitions Against CLJ Judges

Judge Jahns informed that a demand was presented to a Kitsap County Auditor for a recall election of a Kitsap County Judge. The issue involves whether a 1912 constitutional law is effective in light of the 1980 constitutional enactment of the Commission on Judicial Conduct (CJC). The Board decided to watch the issue and to make it a discussion item for the March 2015 Board meeting.

F. Electronic Law Enforcement Interface for Acquisition of Search Warrants (ELIAS) Warrant Project Update

The Board determined that DMCJA Representatives on the Washington Traffic Safety Commission eWarrants Initiative Work Group (Work Group) may continue to participate with the Work Group because a DMCJA letter sent to Detective Leyba only stated that the Board will offer no comments regarding the ELIAS Project Charter.

INFORMATION

Judge Steiner provided an update on the health status of his son and Mr. Doug Haake, former AOC staff for the DMCJA. The Board then discussed the logistics of the 2015 Board Retreat at the Enzian Inn and Spring Conference at the Skamania Lodge. More details for both events will be provided in the coming months.

ADJOURNED at 2:40 pm.

District and Municipal Court Judges' Association

March 9, 2015

To: President Steiner; DMCJA Officers; DMCJA Board of Governors
From: Scott Ahlf, DMCJA Treasurer
Subject: Monthly Treasurer's Report for September/October 2014

Dear President Steiner, Officers and Members of the DMCJA Board of Governors:

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

ACCOUNTS

US Bank Platinum Business Money Market Account
Fund Balance - $100,520.01, as of January 31, 2015

Bank of America Accounts:
Investment Account - $97,547.83, as of February 28, 2015
Checking Account - $95,285.55, as of February 28,, 2015

EXPENDITURES

Total 2014/2015 adopted budget:	$246,900.00
Total expenditures to date (01-06-15):	$110,474.06
Total remaining budget as of Jan. 6, 2015:	$133,925.94

DEPOSITS

Total deposits 2014/2015:	$124,172.00

DMCJA 2014-2015 Budget

ITEM COMMITTEE	Beginning Balance	Total Costs	Ending Balance
Access to Justice Liaison	$500.00	$0.00	$500.00
Audit	$2,000.00	$0.00	$2,000.00
Bar Association Liaison	$5,000.00	$0.00	$5,000.00
Board Meeting Expense	$30,000.00	$13,728.25	$16,271.75
Bookeeping Expense	$3,000.00	$1,750.00	$1,250.00
Bylaws Committee	$250.00	$0.00	$250.00
Conference Committee	$3,500.00	$0.00	$3,500.00
Conference Incidental Fees For Members Spring Conference 2014	$40,000.00	$36,285.00	$3,715.00
Diversity Committee	$2,000.00	$1,027.09	$972.91
DMCMA Education	$0.00	$0.00	$0.00
DMCMA Liaison	$500.00	$0.00	$500.00
DOL Liaison Committee	$500.00	$70.43	$429.57
Education Committee**	$21,000.00	$13,203.98	$7,796.02
Educational Grants	$5,000.00	$1,000.00	$4,000.00
Judicial Assistance Committee*	$10,000.00	$6,133.45	$3,866.55
Legislative Committee	$6,000.00	$1,347.07	$4,652.93
Legislative Pro-Tem	$2,500.00	$408.09	$2,091.91
Lobbyist Expenses	$1,000.00	$224.00	$776.00
Lobbyist Contract	$55,000.00	$18,000.00	$37,000.00
Long-Range Planning Committee	$1,500.00	$0.00	$1,500.00
MCA Liaison	$1,500.00	$764.33	$735.67
National Leadership Grants	$5,000.00	$4,000.00	$1,000.00
Nominating Committee	$400.00	$0.00	$400.00
President Expense	$7,500.00	$1,528.39	$5,971.61
Reserves Committee	$250.00	$0.00	$250.00
Rules Committee	$1,000.00	$22.49	$977.51
Salary and Benefits Committee	$2,500.00	$0.00	$2,500.00
SCJA Board Liaison	$1,000.00	$0.00	$1,000.00
Technology/CMS Committee	$7,500.00	$0.00	$7,500.00
Therapeutic Courts	$2,500.00	$0.00	$2,500.00
Treasurer Expense and Bonds	$1,000.00	$10.00	$990.00
Trial Court Advocacy Board	$5,000.00	$0.00	$5,000.00
Judicial Community Outreach	$4,000.00	$3,100.00	$900.00
Uniform Infraction Committee	$1,000.00	$0.00	$1,000.00
Professional Services	$15,000.00	$7,871.49	$7,128.51
DMCJA/SCJA Sentencing Alternatives	$2,500.00	$2,500.00	$0.00
TOTAL	**$246,900.00**	**$110,474.06**	**$133,925.94**
TOTAL DEPOSITS MADE	**$124,172.00**		
CREDIT CARD (balance owing)	**$0.00**		

District & Municipal Court Judges/Comms/Magis
2015 Members in Good Standing
5/1/2015 deadline

red=payment received after May 1

	LastFirstMiddle		Gen. Dues	Gen. Dues Pd	Spec Fund	
		Pos.	Paid Amount	Good Stand	N/A for 2015	
1	Ahlf, Scott K.	Judge	$750.00	1	1	2
2	Allen, Sandra L.	Judge	$187.00	1	1	2
3	Andersen, Bradley	Judge	$187.00	1	1	2
4	Anderson, Marcine S.	Judge	$750.00	1	1	2
5	Andrew, Stewart R.	Judge	$750.00	1	1	2
6	Arb, Susan C.	Judge	$187.00	1	1	2
7	Baker, Jeff	Judge	$375.00	1	1	2
8	Ball, Dennis	Comm	$600.00	1	1	2
9	Barlow, Brian D.	Comm	$600.00	1	1	2
10	Bates, Christopher	Judge	$187.00	1	1	2
11	Bathum, Richard	Judge	$750.00	1	1	2
12	Beall, Andrea L.	Judge	$750.00	1	1	2
13	Bejarano, Elizabeth M.	Judge	$375.00	1	1	2
14	Bender, Johanna	Judge	$750.00	1	1	2
15	Bennett, Roger A.	Judge	$187.00	1	1	2
16	Bisagna, Donald J.	Comm	$300.00	1	1	2
17	Blauvelt, Arthur A. III	Judge	$187.00	1	1	2
18	Blinn, Grant	Judge	$750.00	1	1	2
19	Bobbink, Michael	Judge			1	1
20	Bonner, Fred	Judge			1	1
21	Bradley, Clair	Judge	$750.00	1	1	2
22	Brown, Thomas D.	Judge	$375.00	1	1	2
23	Brueher, Gary J.	Judge	$375.00	1	1	2
24	Buckley, Brett	Judge	$750.00	1	1	2
25	Bui, Tam T.	Judge	$750.00	1	1	2
26	Burrowes, Joseph M.	Judge	$750.00	1	1	2
27	Butler, Katharine A.	Judge	$750.00	1	1	2
28	Buttorff, Karla E.	Judge	$750.00	1	1	2
29	Buzzard, James M.B.	Judge	$187.00	1	1	2
30	Buzzard, R.W.	Judge	$750.00	1	1	2
31	Buzzard, Steven R.	Judge	$187.00	1	1	2
32	Caniglia, Gerald	Comm	$600.00	1	1	2
33	Castelda, Anthony	Judge			1	1
34	Chapman, Arthur R.	Judge	$750.00	1	1	2
35	Chow, Mark C.	Judge	$750.00	1	1	2
36	Christie, David M.	Judge	$750.00	1	1	2
37	Chung, Robert E.	Magis	$600.00	1	1	2
38	Clough, Steve M.	Judge	$750.00	1	1	2
39	Coburn, Linda W.Y.	Judge	$750.00	1	1	2
40	Connolly Walker, Patricia	Judge	$750.00	1	1	2
41	Cooper, Terri K.	Comm			1	1
42	Copland, Thomas A.	Judge	$750.00	1	1	2
43	Crowell, Chancey C.	Judge	$375.00	1	1	2
44	Curry, John F.	Judge	$187.00	1	1	2
45	Dacca, Franklin L.	Judge	$750.00	1	1	2
46	Dane, Melanie	Judge	$187.00	1	1	2
47	Decker, Tarrell	Judge	$375.00	1	1	2
48	Delaurenti, II, Charles J.	Judge	$750.00	1	1	2
49	Delaney, Howard F.	Comm	$150.00	1	1	2
50	Derr, Sara B.	Judge	$750.00	1	1	2

	LastFirstMiddle	Pos.	Gen. Dues Paid Amount	Gen. Dues Pd Good Stand	Spec Fund N/A for 2015	
51	Devilla, Francis	Magis	$600.00	1	1	2
52	Dixon, Martin M.	Comm	$300.00	1	1	2
53	Docter, James N.	Judge	$750.00	1	1	2
54	Doherty, John H.	Judge	$375.00	1	1	2
55	Donohue, Karen	Judge	$750.00	1	1	2
56	Druffel, Bill	Judge	$187.00	1	1	2
57	Dunn, Michael A.	Judge			1	1
58	Ebenger, David	Judge	$187.00	1	1	2
59	Eide, D. Mark	Judge	$750.00	1	1	2
60	Eilmes, Kevin G.	Comm	$600.00	1	1	2
61	Eisenberg, Adam	Magis	$300.00	1	1	2
62	Elich, Matthew S.	Judge	$750.00	1	1	2
63	Ellington, Thomas M.	Judge	$187.00	1	1	2
64	Ellis, Darrel R.	Judge	$375.00	1	1	2
65	Eng, Park	Magis	$600.00	1	1	2
66	Engel, Donald	Judge	$750.00	1	1	2
67	Fair, Douglas J.	Judge	$750.00	1	1	2
68	Fassbender, Jennifer	Judge	$187.00	1	1	2
69	Faubion, William J.	Judge	$375.00	1	1	2
70	Faul, Bronson	Judge	$375.00	1	1	2
71	Finkle, Michael J.	Judge	$750.00	1	1	2
72	Fitterer, Richard C.	Judge	$750.00	1	1	2
73	Fore, Roy S.	Judge	$750.00	1	1	2
74	Fraser, Beth	Judge	$750.00	1	1	2
75	Freedman, Larry	Comm	$150.00	1	1	2
76	Garrison, Douglas K.	Judge	$187.00	1	1	2
77	Garrow, Janet E.	Judge	$750.00	1	1	2
78	Gehlsen, Michelle K.	Judge	$375.00	1	1	2
79	Gilbert, Warren M.	Judge	$750.00	1	1	2
80	Gillings, Fred L.	Judge	$750.00	1	1	2
81	Goddard, Dianne E.	Comm	$600.00	1	1	2
82	Goelz, Douglas E.	Judge	$375.00	1	1	2
83	Goodwin, Jeffrey D.	Judge	$750.00	1	1	2
84	Grant, David	Judge	$750.00	1	1	2
85	Grant, Joshua F.	Judge	$750.00	1	1	2
86	Green, Nathaniel	Judge	$750.00	1	1	2
87	Gregory, Willie J.	Judge	$750.00	1	1	2
88	Hagensen, John P.	Judge	$750.00	1	1	2
89	Hamilton, Robert W.	Judge			1	1
90	Hansen, Randall L.	Comm	$300.00	1	1	2
91	Hansen, Rick L.	Judge	$375.00	1	1	2
92	Harmon, Nancy A.	Judge	$750.00	1	1	2
93	Harn, Corinna D.	Judge	$750.00	1	1	2
94	Harper, Anne C.	Judge	$750.00	1	1	2
95	Hart, John H.	Judge	$187.00	1	1	2
96	Hatch, David S.	Judge	$187.00	1	1	2
97	Hawkins, W. H.	Judge	$750.00	1	1	2
98	Hayes, Debra R.	Judge	$750.00	1	1	2
99	Hedine, Kristian E.	Judge	$750.00	1	1	2
100	Heller, James R.	Judge	$750.00	1	1	2
101	Henke, Drew Ann	Judge	$750.00	1	1	2
102	Henry, John R.	Judge	$375.00	1	1	2
103	Heslop, Ronald D.	Judge	$750.00	1	1	2
104	Hightower, Judith	Judge	$750.00	1	1	2
105	Hill, Tyson R.	Judge	$750.00	1	1	2
106	Hille, Adalia A.	Judge	$375.00	1	1	2
107	Hitchcock, Kathleen E.	Judge	$187.00	1	1	2

	LastFirstMiddle	Pos.	Gen. Dues Paid Amount	Gen. Dues Pd Good Stand	Spec Fund N/A for 2015	
108	Holman, Stephen J.	Judge	$750.00	1	1	2
109	Howard, Anthony E.	Judge	$750.00	1	1	2
110	Hurson, James E.	Judge	$750.00	1	1	2
111	Hyde, Stephen J.	Judge	$187.00	1	1	2
112	Imler, Kyle L.	Judge	$187.00	1	1	2
113	Ingvalson, Robert J.	Judge	$750.00	1	1	2
114	Jahns, Jeff	Judge	$750.00	1	1	2
115	Jasprica, Judy Rae	Judge	$750.00	1	1	2
116	Jenkins, Timothy A.	Judge	$375.00	1	1	2
117	Jorgensen, Karli K.	Judge	$750.00	1	1	2
118	Jurado, Terry L.	Judge	$750.00	1	1	2
119	Kathren, Daniel F.	Judge	$750.00	1	1	2
120	Kato, Eileen A.	Judge	$750.00	1	1	2
121	Kaino, Kris	Judge	$187.00	1	1	2
122	Kipling, Linda B.	Comm	$600.00	1	1	2
123	Knowlton, John O.	Judge	$375.00	1	1	2
124	Kondo, C. Kimi	Judge	$750.00	1	1	2
125	Koss, David	Judge	$750.00	1	1	2
126	Ladenburg, David B.	Judge	$750.00	1	1	2
127	Lambo, Michael J.	Judge	$750.00	1	1	2
128	Landes, Jill	Judge	$750.00	1	1	2
129	Langsdorf, Sonya L.	Judge	$750.00	1	1	2
130	Larson, David A.	Judge	$750.00	1	1	2
131	Leland, Richard M.	Judge	$750.00	1	1	2
132	Leo, Rick	Comm	$600.00	1	1	2
133	Leone, Lisa	Magis	$600.00	1	1	2
134	Lev, Debra A.	Judge	$750.00	1	1	2
135	Lewis, Terrance G.	Judge	$187.00	1	1	2
136	Lineberry, Jeanette A.	Judge	$750.00	1	1	2
137	Logan, Mary C.	Judge	$750.00	1	1	2
138	Luken, Terri	Magis	$600.00	1	1	2
139	Lutes, Ray D.	Judge	$750.00	1	1	2
140	Lyon, Patricia L.	Judge	$750.00	1	1	2
141	Maher, Dennis P.	Judge			1	1
142	Mahoney, Susan L	Judge	$750.00	1	1	2
143	Mano, Jr., Joseph M.	Judge	$187.00	1	1	2
144	Marinella, G. Scott	Judge	$375.00	1	1	2
145	Markley, Marlynn	Comm			1	1
146	Marshall, Ronald S.	Judge	$750.00	1	1	2
147	Maurer, Aimee	Judge	$750.00	1	1	2
148	Maxwell, John E.	Judge	$187.00	1	1	2
149	McBeth, Dale A.	Judge	$375.00	1	1	2
150	McCann, Kevin A.	Judge	$750.00	1	1	2
151	McCauley, Judith L.	Judge	$750.00	1	1	2
152	McCulloch, Sara L.	Judge	$375.00	1	1	2
153	McKenna, Edward	Judge	$750.00	1	1	2
154	Meadows, Victoria C.	Judge	$750.00	1	1	2
155	Mendoza, Debbie	Judge	$187.00	1	1	2
156	Meyer, David	Judge	$750.00	1	1	2
157	Meyer, Samuel G.	Judge	$750.00	1	1	2
158	Meyer, Thomas L.	Judge	$187.00	1	1	2
159	Michels, Steven L.	Judge	$375.00	1	1	2
160	Miller, John A.	Judge	$187.00	1	1	2
161	Moore, Stephen E.	Judge	$750.00	1	1	2
162	Nault, Peter L.	Judge	$750.00	1	1	2
163	Noonan, Susan	Comm	$750.00	1	1	2
164	Odell, Timothy B.	Judge	$750.00	1	1	2

	LastFirstMiddle		Gen. Dues	Gen. Dues Pd	Spec Fund	
		Pos.	Paid Amount	Good Stand	N/A for 2015	
165	Olbrechts, Kristen	Judge	$750.00	1	1	2
166	Olson, John R.	Comm	$150.00	1	1	2
167	Olwell, Kelley C.	Judge	$750.00	1	1	2
168	O'Toole, Lisa	Judge	$750.00	1	1	2
169	Osler, Kelli E.	Judge	$750.00	1	1	2
170	Paja, Marilyn G.	Judge	$750.00	1	1	2
171	Parcher, Kristen L.	Comm	$300.00	1	1	2
172	Parise, Anthony	Comm	$600.00	1	1	2
173	Penoyar, Elizabeth	Judge	$375.00	1	1	2
174	Petersen, David L.	Judge	$375.00	1	1	2
175	Peterson, Vance W.	Judge	$750.00	1	1	2
176	Phillips, Glenn M.	Judge	$750.00	1	1	2
177	Porter, Rick L.	Judge	$750.00	1	1	2
178	Portnoy, Linda S.	Judge	$375.00	1	1	2
179	Putka, Edward J.	Judge	$750.00	1	1	2
180	Reynier, Jr., Ronald	Judge	$375.00	1	1	2
181	Ringus, Kevin G.	Judge	$750.00	1	1	2
182	Roach, Jerry	Judge	$750.00	1	1	2
183	Robertson, Rebecca C.	Judge	$750.00	1	1	2
184	Robinson, Douglas B.	Judge	$750.00	1	1	2
185	Rochon, L. Stephen	Judge	$187.00	1	1	2
186	Roewe, Michael P.	Comm	$150.00	1	1	2
187	Rosen, Steven	Judge	$750.00	1	1	2
188	Ross, Margaret Vail	Judge	$750.00	1	1	2
189	Roy, Kevin M.	Judge	$750.00	1	1	2
190	Rozzano, Mara	Judge	$187.00	1	1	2
191	Sage, C Scott	Judge	$187.00	1	1	2
192	Samuelson, Wade S.	Judge	$750.00	1	1	2
193	Sanderson, Brian K.	Judge	$750.00	1	1	2
194	Schreiber, Vernon L.	Judge	$750.00	1	1	2
195	Schweppe, Alfred G.	Judge	$750.00	1	1	2
196	Seaman, Shane	Comm	$150.00	1	1	2
197	Seitz, Vicki M.	Judge	$750.00	1	1	2
198	Shadid, Damon G.	Judge	$750.00	1	1	2
199	Shah, Ketu	Judge	$750.00	1	1	2
200	Short, Charles D.	Judge	$750.00	1	1	2
201	Smiley, Pete	Comm	$600.00	1	1	2
202	Smith, Douglas J.	Judge	$750.00	1	1	2
203	Smith, Heidi E.	Judge	$750.00	1	1	2
204	Smith, Linford C.	Comm			1	1
205	Solan, Susan	Judge	$375.00	1	1	2
206	Staab, Tracy	Judge	$750.00	1	1	2
207	Steele, George A.	Judge	$375.00	1	1	2
208	Steiner, David A.	Judge	$750.00	1	1	2
209	Stephenson, Elizabeth D.	Judge	$750.00	1	1	2
210	Stewart, Kevin D.	Comm	$600.00	1	1	2
211	Stewart, N. Scott	Judge	$375.00	1	1	2
212	Stewart, Wayne	Judge	$375.00	1	1	2
213	Stewart, William J.	Judge	$187.00	1	1	2
214	Stiles, Brian L.	Judge	$187.00	1	1	2
215	Sussman, Claire	Judge	$750.00	1	1	2
216	Svaren, David A.	Judge	$750.00	1	1	2
217	Swanger, James P.	Judge	$750.00	1	1	2
218	Szambelan, Michelle	Judge	$750.00	1	1	2
219	Tanner, Terry M.	Judge	$750.00	1	1	2
220	Tedrick, Marjorie	Judge	$187.00	1	1	2
221	Tolman, Jeff	Judge	$375.00	1	1	2

	LastFirstMiddle	Pos.	Gen. Dues Paid Amount	Gen. Dues Pd Good Stand	Spec Fund N/A for 2015	
222	Towers, Lorrie C.	Judge	$750.00	1	1	2
223	Tripp, Gregory J.	Judge	$750.00	1	1	2
224	Tripp, Wendy	Comm	$150.00	1	1	2
225	Tucker, Donna K.	Judge	$750.00	1	1	2
226	Turner, Michael S.	Judge	$187.00	1	1	2
227	Tveit, Gina	Judge			1	1
228	Van De Veer, Philip J.	Judge	$375.00	1	1	2
229	Van Slyck, Laura	Judge	$750.00	1	1	2
230	Verhey, Elizabeth	Judge	$750.00	1	1	2
231	Walden, Kimberly A.	Judge	$375.00	1	1	2
232	Whitener-Moberg, Janis	Judge	$750.00	1	1	2
233	Wilcox, Kalo	Judge	$750.00	1	1	2
234	Williams, Matthew	Judge	$750.00	1	1	2
235	Wilson, Donna	Judge	$750.00	1	1	2
236	Witteman, Jeffrey M.	Comm	$600.00	1	1	2
237	Wohl, Paul	Comm	$600.00	1	1	2
238	Woodard, Susan J.	Judge	$750.00	1	1	2
239	Wyninger, Karen S.	Comm	$300.00	1	1	2
240	Zimmerman, Darvin J.	Judge	$750.00	1	1	2
			$132,508.00	230	240	

% who have NOT paid regular dues	4.17%	
% in good standing in 2015	95.83%	Note: special fund dues not assessed in 2014
% in good standing in 2014	97.47%	Note: special fund dues not assessed in 2014
% in good standing in 2013	97.93%	Note: special fund dues not assessed in 2013
% in good standing in 2012	96.64%	Note: special fund dues not assessed in 2012
% in good standing in 2011	98.32%	Note: special fund dues not assessed in 2011
% in good standing in 2010	85.19%	
% in good standing in 2009	84.81%	
% in good standing in 2008	72.03%	
% in good standing in 2007	71.06%	
% in good standing in 2006	87.77%	
% in good standing in 2005	78.30%	
% in good standing in 2004	69.87%	

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ACCT# [redacted] DA STAT D N HISTORY INQUIRY 03/05/15 11:44 2 OF 2 SIDP

Date	TCD	Amount	Balance	Teller	STAT	MOD	DESCRIPTION
01 02/28/15	INT	3.65	47,566.90	080		0080	
	ENDING BAL		47,566.90				

Washington Federal
306 E. Main Street
Dayton, WA 99328

DMCJA Legislative Committee Meeting

Friday, October 10, 2014
9:30 a.m. to 12:00 p.m.
SeaTac, Washington

MEETING MINUTES

Members Present:
Chair, Judge Samuel G. Meyer
Judge Michelle Gehlsen
Judge Corinna Harn
Judge David Larson
Judge Glenn Phillips
Judge Ketu Shah
Judge Shelley Szambelan

AOC Staff:
Ms. Sharon Harvey
Ms. J Benway

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

Members Absent:
Judge Brett Buckley
Judge D. Mark Eide
Judge Douglas J. Fair
Judge Janet Garrow
Judge Susan Mahoney
Judge Marilyn G. Paja
Judge Donna Tucker

Judge Meyer called the meeting to order at 9:33 a.m.

The Committee discussed the following items:

1. General Business

Judge Meyer noted that Judge Brown had been appointed to the Superior Court bench and would no longer serve on the DMCJA Legislative Committee. Judge Brown's years of service on the Committee are greatly appreciated.

It was motioned, seconded and passed to approve the minutes of the Committee's August 8, 2014 meeting.

It was motioned, seconded and passed to approve the minutes of the Committee's September 12, 2014 meeting.

2. DMCJA Potential Legislative Proposals for 2015

A. Automated Traffic Safety Cameras

Judge Shah stated that under current law, rental car companies can avoid liability for tickets issued through automated traffic safety cameras by providing the court with contact information

for the driver. See RCW 46.63.170(3). If the driver fails to respond, the default notice is automatically sent to the registered owner, the car company, unless this is recognized and the driver's information manually entered. This creates work for court clerks and these cases often remain in limbo in the system. The Committee agreed that it would be helpful to have a legislative change but potentially difficult to achieve given the lobbying interests of car rental companies. Melanie Stewart stated that she could contact the lobbyists for the car rental companies to begin a conversation regarding the issue. In the meantime, the issue could be brought to the attention of city and county representatives, as it is a potential cost and revenue issue for local governments.

B. CLJ Fees

Judge Buckley provided a memo with recommendations regarding legislative changes to allow courts of limited jurisdiction to impose the same fees as superior courts. It was motioned, seconded and passed to forward the recommendation to the DMCJA Board.

C. Courthouse Security

The Committee reviewed draft General Rule 35, pertaining to court security, that has been presented for comment by the Joint Trial Court Security Committee. Judge Meyer noted that it had been discussed during the DMCJA Board meeting at the Fall Conference. Committee members noted some concern that requiring security measures through a court rule could be perceived as an unfunded mandate by local governments. Judge Gehlsen stated the she would express that concern to the DMCJA Board during discussion of the matter.

D. Definition of Mental Health Deferred Prosecution

The Committee noted that other groups may be seeking greater clarity with regard to mental health deferred prosecutions.

E. District Court Civil Jurisdiction Monetary Limits

Judge Eide provided a report regarding a proposal to raise the civil jurisdictional limit of courts of limited jurisdiction from $75,000 to $125,000. Judge Eide stated that a King County Bar Association committee that is reviewing the matter plans to recommend that the jurisdictional limit be raised to $100,000, in part to correspond with common monetary limits in auto insurance policies. It was motioned, seconded and passed to recommend that RCW 3.66.020 be amended to raise the jurisdictional limit to $100,000 for each claim of each claimant. This recommendation will be forwarded to the DMCJA Board.

F. Electronic Home Monitoring

Judge Meyer stated that Senator Padden had held a work session of the Senate Law & Justice Committee in Spokane to discuss electronic home monitoring, which Judge Szambelan and Ms.

Stewart had attended. It appears that a legislative proposal to address the matter will likely come forward. The Committee supports the establishment of electronic home monitoring standards and will monitor any legislation in that regard.

G. Employment Security Department Subpoenas

It was motioned, seconded and passed to present the information that Judge Paja had provided to the DMCJA Board.

3. Proposed Legislation for Committee Review

A. Hunting Under the Influence

The Committee previously determined it had no comment on the proposed legislation.

B. Ignition Interlock Device Circumvention

Judge Phillips will raise this issue with the Impaired Driving Workgroup, of which he is a part.

C. Parks Discover Pass Fine Split

The Committee had previously determined to support a proposal that provided that 25% of the fines from Discover Pass violations stay with the local jurisdiction, rather than 100% of the money going to the state.

D. Criminal Justice Treatment Account

The Committee had No Position on this proposal.

E. Financial Reporting – RCW 42.17A.710 Amendment

The Committee had No Position on this proposal.

F. Inmate Wage Provision

The Committee agreed that the provision to repay legal financial obligations should not be restricted to those imposed by superior courts. J Benway will raise this issue with agency staff.

G. Payment in Lieu of Taxes Program

The Committee had No Position on this proposal.

H. Tax Court of Appeals

The Committee had No Position on this proposal.

4. Other Business and Next Meeting Date

Judge Meyer stated that the next Committee meeting, scheduled for Friday, November 7, would be cancelled as it was before the next DMCJA Board meeting.

The next Committee meeting is scheduled for Friday, December 5, 2014 from 8:00 a.m. to 9:00 a.m. via teleconference.

The meeting was adjourned at 10:30 a.m.

PROPOSED GENERAL RULE 35

Trial Court Security

Preamble – General Rule 35 relates to trial court security. The rule establishes an organizational structure by which trial court jurisdictions, city or county, create a professional environment that acknowledges the physical risks associated with administering justice for citizens who are often distressed. The structure outlined below will position trial courts to advocate for enhanced trial court security. The court rule is proposed by the Trial Court Security Committee and supported by trial court judges and administrator associations.

A) Incident Reports

A record of all threats and security incidents shall be made on the AOC Threat/Incident Report Form. The Form shall be submitted to the AOC within one week of the event, and shall be kept on file by the court administrator. Such records shall be made contemporaneously with the security incident or as soon thereafter as possible, but in no event later than 48 hours after the incident.

"Incident" is defined as a threat to or assault against the court or court community, including court personnel, litigants, attorneys, witnesses, jurors or others using the courthouse. It also includes any event or threatening situation that disrupts the court or compromises the safety of the court or the court community.

B) Court Security Committee

It is recommended that each trial court form a Court Security Committee. The Court Security Committee's purpose is to coordinate the adoption of general court security policies and make recommendations regarding security protocols, policies, and procedures necessary to protect the public, court personnel and users, and court facilities in the event of an emergency. The Court Security Committee should adopt a Court Security Plan and thereafter revise the Plan as may be necessary. The Presiding Judge for each court should convene a Court Security Committee meeting and invite representatives from the following:

1) Judiciary
2) Court Clerical Staff
3) Prosecuting Authority's Office
4) Public Defender's Office
5) Executive Branch
6) Law Enforcement
7) Any existing Court Security Unit
8) Facilities/Maintenance Department
9) Any other agency of government housed in the same building

10) Any other person the presiding judge deems appropriate

C) Court Security Plan

It is recommended that each Court Security Committee create a Court Security Plan for each courthouse location. Every Court Security Plan should endeavor to meet or exceed the minimum standards contained in the most current Minimum Security Standards Resolution (MSSR) adopted by the Trial Court Advocacy Board. Should the Court Security Plan fail to meet the MSSR, the security plan should state why the minimum standards were not met. If a Court Security Plan is adopted, the Court Administrator shall keep the Plan on file and accessible to all court employees. Any Court Security Plan should be in writing and address the following security concerns:

1) Routine security operations, including security screening for persons entering the court, secure storage of weapons not permitted in the courthouse, parking, landscaping, interior and exterior lighting, interior and exterior doors, intrusion and detection alarms, window security, protocol for building access for first responders, and provision of building floor plans for first responders

2) Written or oral threats or declarations of intent to inflict pain or injury upon court employees or others involved in the court system

3) Physical layout of court facility and escape routes

4) Threats – in court or by other means (telephone, email, website, etc.)

5) Bomb threat

6) Hostage situation

7) Weapons in the court facility

8) Active shooter

9) Escaped prisoner

10) High risk trial plan

11) Routine security operations

12) Techniques in remaining calm and avoiding panic during a stressful or potentially dangerous incident

13) Threat and security incident response techniques – including how to defuse potentially dangerous situations

14) Personal safety techniques in and around the court facility

15) Irate and abusive individuals

16) Threats made away from the court facility

D) Security Drills

It is recommended that each court hold security drills as determined by the Court Security Committee. Drills should include all court personnel, prosecutors, defense attorneys, police, law enforcement, and

other regular court users as deemed necessary by the presiding judge. Drills should include practice responses for all security incidents identified in the security plan.

Comment

Adequate courthouse security is fundamental to the administration of justice in our courts. Every citizen must feel safe to bring an action in a court; to respond to a summons to a court, or to view the proceedings in a court. While many jurisdictions have instituted adequate security precautions in their courts, this rule is intended to foster adequate courthouse security in all Washington courts.

This rule does not require that a court meet the MSSR, rather the rule requests that each Court Security Committee (CSC) document why the standards cannot be met. This rule further requests that if the Court Security Plan itself does not meet the MSSR, the Plan should state the reasons the CSC has not met the MSSR. If the CSC security plan would meet the MSSR but the security plan is not implemented, for instance, for lack of funding, then the Court Security Plan should document the reason or reasons for lack of implementation.

This rule also provides a way for courts to document their security lapses and needs. The AOC provides an online incident report portal that automatically populates a statewide security incident log. The rule requires trial courts to submit incident reports for statewide collection.

WSBA TASK FORCE ON ESCALATING COST OF CIVIL LITIGATION

CHARTER

In 2007, the American Bar Association released a report titled "Pulse of the Legal Profession," reporting on a nation-wide survey of 800 lawyers on what they thought about their lives, their careers and the state of the profession. 80% of those surveyed responded that civil litigation costs have become prohibitive.

In 2009, the WSBA surveyed its members and received 2,309 responses. 75% of those responding "agreed" (39%) or "strongly agreed" (36%) that the cost of litigation has become prohibitive in recent years.

The Task Force on Escalating Cost of Civil Litigation shall:

- Assess the current cost of civil litigation in Washington State Courts and make recommendations on controlling those costs. "Costs" shall include attorney time, as well as out-of-pocket expenses advanced for the purpose of litigation. The Task Force will focus on the types of litigation that are typically filed in the Superior and District Courts of Washington.
- In determining its recommendation, the Task Force shall survey neighboring and similarly situated states to compare the cost of litigation in Washington and review reports and recommendations from other organizations such as the Institute for the Advancement of the American Legal System, the American College of Trial Lawyers, the Public Law Research Institute.

Membership:

The Task Force will include the following:

- 10 WSBA members, at least two of which practice in the federal courts
- 1 member who is also licensed and practices in Oregon
- One judge from each level of court (limited jurisdiction, superior and appellate)
- One representative from the Clerks' Association

The Task Force shall seek input from affected lawyers, judges, and other entities while developing any recommendations. The Task Force shall report back to the Board of Governors every six months regarding its progress, and shall attempt to complete its charter within 18-24 months of formation of the Task Force.

Harvey, Sharon

From: Russ Aoki <russ@aokilaw.com>
Sent: Tuesday, February 17, 2015 2:10 PM
To: Anderson, Marcine
Cc: Isham Reavis; Jerrika Wikstrom
Subject: WSBA Escalating Cost of Civil Litigation Task Force Seeking Comments
Attachments: WSBA ECCL Task Force Charter.pdf; ECCL Draft Report (comment).pdf

Dear Judge Anderson

We ask for District and Municipal Court Judges Association's review and input to the attached ***draft*** report of the Task Force on the Escalating Cost of Civil Litigation. The draft report sets out proposed recommendations that will affect our courts, which is why we would appreciate hearing from DMCJA. Once all comments are collected and reviewed, the Task Force will finalize its report and submit it to the WSBA Board of Governors.

As a brief background for DMCJA, the Washington State Bar Association's Task Force on the Escalating Cost of Civil Litigation was formed in 2011. Attached is a copy of our Charter for you to pass on which explains the work we have been asked to address.

Since 2011, the WSBA Task Force has been studying the cost of civil litigation in our state courts. We received input from lawyers and judges from around the state, and researched how other jurisdictions in the country are approaching this same problem. In 2013, we surveyed bar members from litigation-related WSBA sections, minority bar associations, the Washington State Association for Justice, and the Washington Defense Trial Lawyers. The enclosed report details much of this work. Based on our research, the results of our survey, and our study and deliberations, we are proposing changes to the way we litigate in the district and superior courts in civil cases.

Please submit comments to the Task Force at ECCL@wsba.org by April 10, 2015.

Thank you and DMCJA for helping improve civil litigation in the State of Washington.

Russ Aoki,
Task Force Chair

AOKI LAW PLLC
720 Olive Way, Suite 1525 | Seattle WA 98101
Phone 206 624-1900 | Fax 206 442-4396 | Direct 206 204-6740
www.aokilaw.com

WSBA

Task Force *on the* Escalating Costs of Civil Litigation

Final Report ***to the*** **Board of Governors**

February 11, 2015

Send comments to: ECCL@wsba.org

Per Section IX(B)(3)(d) of the Bylaws of the Washington State Bar Association, this draft report does not represent a view or action of the Bar unless approved by a vote of the Board of Governors.

Task Force Membership

Chair	Russell M. Aoki	
WSBA Members	Lincoln C. Beauregard	Don L. Jacobs
	Breean L. Beggs	Jerry R. McNaul
	Cynthia F. Buhr	Gail B. Nunn
	Eric C. de los Santos	Todd L. Nunn
	Jessica L. Goldman	Amit D. Ranade
	William D. Hyslop	
Judiciary Members	The Hon. Marcine Anderson	
	The Hon. Ronald E. Cox	
	The Hon. Richard F. McDermott, Jr.	
	The Hon. Debra L. Stephens	
Clerk's Association	Kevin Stock	
Assisting Non-Member	Isham M. Reavis	
Research Student	Martina Wong	
BOG Liaisons	Marc L. Silverman	
	Ken Masters	
WSBA Staff Liaison	Jeanne Marie Clavere	
WSBA Staff Support	Darlene Neumann	

Subcommittees

Alternative Dispute Resolution Subcommittee

Chair	Jerry R. McNaul	
Task Force Members	Lincoln C. Beauregard	Cynthia F. Buhr
Other Members	Alan Alhadeff	Rina M. Goodman
	The Hon. Robert H. Alsdorf (retired)	
	Gregg L. Bertram	David J. Lenci
Assisting Non-Member	Andre Chevalier	

Discovery Subcommittee

Chair	Todd L. Nunn	
Task Force Members	The Hon. Marcine Anderson	
	Russell M. Aoki	William D. Hyslop
	Breean L. Beggs	Don Jacobs
	The Hon. Debra L. Stephens	
Other Members	J.M. Bouffard	Endel Kolde
	Thomas Breen	Luke LaRiviere
	Michael R. Caryl	Gregory D. Lucas
	Jean Cotton	Adam Rosenberg
	Larry G. Johnson	Milton G. Rowland
	Leslie S. Johnson	M. Edward Taylor
	Miquette Karnan	Kinnon W. Williams

District Court Subcommittee

Chair	The Hon. Marcine Anderson	
Other Members	The Hon. Alicia H. Nakata	The Hon. Donna Wilson
	Linda M. Gallagher	Vonda M. Sargent

Pleadings and Motion Practice Subcommittee

Chair	Eric C. de los Santos	
Task Force Members	The Hon. Ronald E. Cox	Jessica L. Goldman
Non-Task Force Members	Melissa Anderson	Andrea Smith
	David Black, Jr.	Chrystina Solum
	Katherine Cameron	Steven Winterbauer
	Leslie Hagin	

Survey Subcommittee

Chair	Eric C. de los Santos	
Members	Russell M. Aoki	Milton G. Rowland
	Breean L. Beggs	

Trial Procedure Subcommittee

Co-Chairs	The Hon. Richard F. McDermott, Jr.	
	Gail B. Nunn	
Task Force Members	Amit D. Ranade	Kevin Stock
Non-Task Force Members	Thomas Fain	Jeffrey Tilden
	Kathleen Garvin	Lish Whitson
	Simeon Osborn	

Introduction

The price of a lawsuit is high and growing higher. How costly, and the history and rate of growth, are difficult to measure directly, but lawyers—the individuals best positioned to witness the trend and effect of civil litigation costs—overwhelmingly report a problem. In a nationwide survey of 800 lawyers, the American Bar Association found 80 percent reported that civil litigation costs have become prohibitive.[1] Focusing only on members of its litigation section, a second ABA survey found that 81 percent of approximately 3,300 respondents believe that litigation is too expensive, and 89 percent believe litigation costs are disproportional for small cases.[2] The WSBA surveyed its members in 2009, receiving 2,309 responses. Seventy-five percent of those responding *agreed* (39 percent) or *strongly agreed* (36 percent) that the cost of litigation has grown prohibitive.

In response, in April 2011 the WSBA Board of Governors chartered this Task Force on the Escalating Costs of Civil Litigation. The charter instructed the Task Force to:

- Assess the current cost of civil litigation in Washington State Courts and make recommendations on controlling those costs. "Costs" shall include attorney time as well as out-of-pocket expenses advanced for the purpose of litigation. The Task Force will focus on the types of litigation that are typically filed in the Superior and District Courts of Washington.
- In determining its recommendation, the Task Force shall survey neighboring and similarly situated states to compare the cost of litigation in Washington and review reports and recommendations from other organizations such as the Institute for the Advancement of the American Legal System, the American College of Trial Lawyers, the Public Law Research Institute.

Confronting escalating civil litigation costs also addresses access to justice. If litigation costs grow increasingly prohibitive, more individuals with meritorious claims will be unable to pay the price necessary to vindicate their rights, and more defendants will be forced to abandon valid defenses because of the costs for asserting them. Reining in civil litigation costs means increasing access to the civil justice system for all.

The Task Force has held regular meetings since July 2011, three times requesting that its initial charter be extended. It organized itself into six subcommittees, which also

[1] Stephanie Francis Ward, *Pulse of the Legal Profession*, 93 A.B.A. J. 30, 31 (Oct. 2007).

[2] ABA Section of Litigation Member Survey on Civil Practice: Full Report 2 (2009).

worked separately to address specific aspects of civil litigation. It heard presentations from WSBA Executive Director Paula Littlewood on the state of the legal profession; then-King County Superior Court Presiding Judge Richard McDermott on proposals to change the civil judicial system in King County; Jeff Hall, then-State Court Administrator, Administrative Office of the Courts, on statistics and trends examined by the AOC; U.S. District Court Judge James Robart on civil litigation and rules in the federal courts; and Task Force member Don Jacobs, a former president of the Oregon Trial Lawyers Association, on the expedited civil trial system in Oregon. Individual subcommittees sought extensive input from members of the bar and bench.

The Task Force reviewed literature from around the country, including other states' and federal courts' responses to rising civil litigation costs; case studies by the Institute for the Advancement of the American Legal System (IAALS) and the American College of Trial Lawyers (ACTL); and a nationwide litigation cost survey conducted by the National Center for State Courts (NCSC).

In accordance with its charge to seek input from affected lawyers, judges, and other entities, the Task Force also conducted its own survey of WSBA members involved in, or affected by, civil litigation. Over 500 bar members participated, most who reported themselves as experienced litigators. The respondents echoed the concerns found by previous surveys, identified specific factors contributing to runaway litigation costs, and expressed support for proposals aimed at curbing those costs. Preliminary versions of this report were circulated to litigation-related WSBA sections, minority bar associations and civil litigation associations the Washington State Association for Justice (WSAJ) and Washington Defense Trial Lawyers (WDTL) for comment, and the input received is reflected in the final report.

Based on this data and the work of the individual subcommittees, the Task Force has developed a set of recommendations. These recommendations seek to speed case resolutions—inside or out of the courtroom—while preserving the legal system's ability to reach just results. The centerpiece of the Task Force's recommendations is a system of early case schedules and discovery limits, assigned based on a case's size or complexity, counterbalanced by mandatory initial disclosures. Other recommendations address e-discovery, alternative dispute resolution, and judicial case management.

These recommendations come with a significant caveat: they do not specifically take up family law issues. During its fact-finding, the Task Force came to the conclusion that family law and its distinct constellation of concerns were beyond the Task Force's ability to fully consider without unreasonably extending its charter. Therefore, the Task Force's recommendations only reach family law to the extent they affect all other areas of civil litigation.

Executive Summary

The Task Force initially organized itself into four subcommittees to explore different aspects of civil litigation. These four—the Alternative Dispute Resolution Subcommittee, the Discovery Subcommittee, the Pleadings and Motion Practice Subcommittee, and the Trial Procedure Committee—worked independently, and each generated a final report. The Task Force also created two additional subcommittees: the Survey Subcommittee, which developed and implemented the Task Force Survey of WSBA members; and the District Court Subcommittee, which considered the applicability and impact of proposed recommendations on the district courts. With input from the Survey and District Court Subcommittees, the Task Force as a whole considered the recommendations in these subcommittee reports in making its final recommendations.

1. Initial case schedule and judicial assignment

The best way to control the length of litigation is setting a schedule at the outset. Upon filing, all cases will be issued a schedule setting out a trial date and other litigation deadlines.

The Task Force concluded that active judicial case management—including a willingness to enforce discovery rules—is indispensable in controlling litigation costs. Ideally, at the outset a single judge should be assigned to handle all discovery disputes and pretrial issues in a case. Recognizing this may not prove practical in the superior courts of some counties, the Task Force recommends amending the rules to describe such judicial assignment as a preferred practice.

2. Two-tier litigation

Litigation is not one-size-fits-all. A case's length, the breadth of discovery, and the scope of trial should be proportional to its needs. Two litigation tiers would be created in superior court: cases in Tier 1 would proceed along a 12-month case schedule and be subject to presumptive limits on discovery, and Tier 2 cases would have 18 months to trial and more extensive discovery than permitted in Tier 1.

Tier 2 would be reserved for cases presenting complex legal or factual issues, involving significant stakes, or marked by other factors indicating likely complexity. Upon filing, all cases would default to Tier 1, with option to move to Tier 2 for good cause shown.

3. Mandatory disclosures and early discovery conference

In both superior court litigation tiers and in district court, case schedules would require an early discovery conference among the parties. Parties would be also required to make initial disclosures, expert witness material disclosures, and pretrial disclosures patterned on the federal rules of civil litigation. These recommendations are designed to promptly engage all parties in the discovery process and provide early access to necessary information. The Task Force considers these recommendations a necessary

counterbalance to the new discovery limits and shorter case schedules also being recommended.

4. Proportionality and cooperation

Lowering litigation costs depends on keeping the costs of cases proportional to their needs, and on ensuring cooperation between attorneys as much as possible within our adversarial legal system. Proportionality and cooperation principles will be explicitly reflected in the rules.

5. E-discovery

Washington has already incorporated parts of the federal rules regarding e-discovery into CR 26 and CR 34. CR 26 and CR 37 will be amended to incorporate most of the remaining federal e-discovery rules. CRLJ 26 will be amended to follow the changes in CR 26.

Additionally, the Task Force recommends a state-wide e-discovery protocol for both superior and district courts. This will take the form of a model agreement and proposed order on e-discovery to be used on a case-by-case basis.

6. Motions practice

The Task Force recommends non-dispositive motions in superior and district court cases be decided on their pleadings, without oral argument. The court may permit oral argument on party request.

7. Pretrial conference

The current civil rules permit, but do not require, a pretrial conference aimed at focusing issues and laying out a framework for managing trial. In both superior and district court, the Task Force recommends requiring a pretrial meeting between the parties to reach agreement on trial management issues. The parties would then submit a joint report to the court, which would issue a pretrial order. For cases where a pretrial meeting does not occur or would be inappropriate, the current discretionary hearing will remain available.

8. District court

Most civil litigation occurs in superior court, but district court offers a potentially quicker and less expensive alternative for some cases. Many of the Task Force's recommendations apply to district court as well as superior court. In addition, the Task Force recommends increasing the district court jurisdictional limit from $75,000 to $100,000, extending jurisdiction to unlawful detainer proceedings, and issuing a case schedule in civil cases upon filing. District court cases would follow a 6-month schedule from filing to trial.

9. Alternative dispute resolution

The Task Force considered mediation, settlement conferences, private arbitration, and mandatory arbitration.

Mediation or settlement conferences often occur on the eve of trial, after the parties have incurred the bulk of litigation costs. The Task Force recommends mediation in the early stages of a case, well before completing discovery. Because different litigation types have different issues and timelines, the WSBA Sections should develop guidelines for what early mediation means in their respective practice areas.

The Task Force also recommends mandatory mediation in superior court cases no later than 60 days after party depositions (or 60 days before trial, if sooner). If one or more party wishes to forego mediation, the party or parties would have to file a statement following the early discovery conference that the case is not suited to mediation. The court could waive the mediation requirement for good cause based on such statements.

The Task Force also recommends promulgating a set of suggested mediation practices for parties to consider, including conducting mediation as a series of short meetings and pre-session contact between mediator, counsel, and client.

Most arbitration takes the form of a private contractual process. Though the Task Force makes no recommendation that would directly affect private arbitration, it recommends promulgating a series of best practices for parties and arbitrators.

The Task Force makes no recommendation regarding the rules for mandatory arbitration in superior court.

Material Considered by the Task Force

The Task Force gathered information from two main sources: literature, including reports from other states and the federal courts, studies, and law review articles; and the Task Force's survey of WSBA members involved in, or affected by, civil litigation.

The Task Force also considered final reports created by its ADR, Discovery, Pleadings and Motion Practice, and Trial Procedure Subcommittees. Beyond the information considered by the Task Force as a whole, the subcommittees researched and considered other literature. Two subcommittees conducted a series of in-person interviews: the Pleadings and Motion Practice Subcommittee spoke with judges from across the state, and the ADR Subcommittee with spoke attorneys and mediators. The subcommittees summarize these additional information sources in their separate reports.

Finally, the Task Force considered feedback from the stakeholders whose input was sought in the survey—litigation-related WSBA sections, the minority bar associations, the WSAJ, and the WDTL. The Task Force provided these stakeholders with a preliminary version of this report, and asked for comments. This final report reflects the sections' input.

1. **Subcommittee material**
    1. ADR Subcommittee Report: Mediation, July 2014
    2. ADR Subcommittee Report: Arbitration, July 2014
    3. Discovery Subcommittee Report, August 27, 2014
    4. District Court Subcommittee Report, December 31, 2014
    5. Pleadings and Motion Practice Subcommittee Report, January 17, 2014
    6. Trial Procedure Subcommittee, Escalating Cost of Civil Litigation Task Force Subcommittee Report, August 2014
    7. Alan Alhadeff, Revised Memorandum re Proposed Rules for Mandatory Mediation, December 23, 2014
2. **Literature**
    a. ***Court material***
        1. Order Relating to the Civil Justice Reform Task Force, Authorizing Expedited Civil Litigation Track Pilot Project, and Adopting Amendments to the Rules of Civil Procedure and the General Rules of Practice, Nos. ADM10-8051, ADM09-8009, ADM04-8001 (Minn. May 8, 2013)
        2. Model Agreement Regarding Discovery of Electronically Stored Information and Proposed Order (W.D. Wash. Dec. 13, 2012)

3. Standing Order, In re Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York, No. M10-468 (S.D.N.Y. Nov. 1, 2011)
4. Order Establishing the Managing Panel of the Oregon Complex Litigation Court and Appointing Members to the Panel, Chief Justice Order No. 10-067 (Or. Dec. 2, 2010)
5. Order Establishing the Oregon Complex Litigation Court and Adopting New UTCR 23.010, 23.020, 23.030, 23.050, and 23.060 Out-of-Cycle, Chief Justice Order No. 10-066 (Or. Dec. 2, 2010)
6. Order of Out-of-Cycle Adoption of New UTCR 5.150, UTCR Form 5.150.1a, and UTCR Form 5.150.1b, Chief Justice Order No. 10-025 (Or. May 6, 2010)
7. Model Civil Case Schedule Order (Spokane Cty. Sup. Ct. 2002)
8. Federal Rules of Civil Procedure 16 (2007)
9. Federal Rules of Civil Procedure 26 (2010)
10. Federal Rules of Civil Procedure 26 (1993)
11. Federal Rules of Civil Procedure 33 (2007)
12. Local Rules, Eastern District of Washington LCR 7 (2013)
13. Local Rules, Western District of Washington LCR 7 (2014)
14. Washington Rule of Professional Conduct RPC 1.3 (2006)
15. Washington Rule of Professional Conduct RPC 3.1 (2006)
16. Washington Rule of Professional Conduct RPC 3.2 (2006)
17. King County Local Rules CR 4 (2013)
18. King County Local Rules CR 7 (2013)
19. Pierce County Local Rules PCLR 3 (2014)
20. Spokane County Local Rules LAR 0.4.1 (2000)
21. Oregon Uniform Trial Court Rule UTCR 5.150 (2014)
22. Oregon Uniform Trial Court Rule UTCR 23.010 (2014)
23. Oregon Uniform Trial Court Rule UTCR 23.020 (2014)
24. Oregon Uniform Trial Court Rule UTCR 23.030 (2014)
25. Oregon Uniform Trial Court Rule UTCR 23.050 (2014)
26. Oregon Uniform Trial Court Rule UTCR 23.060 (2014)
27. Oregon Court Fee Schedule (2011)

28. Rules of the Superior Court of New Hampshire Applicable in Civil Actions Rule 26, Depositions (2013)
29. Utah Rules of Civil Procedure URCP 26 (2012)
30. 2011 Oregon Court Fee Schedule

b. Reports, studies, and surveys

31. ABA Section of Litigation, Special Committee, Civil Procedure in the 21st Century: Some Proposals (2010)
32. ABA Section of Litigation, Member Survey on Civil Practice: Detailed Report (2009)
33. Paula L. Hannaford-Agor, NCSC, Estimating the Cost of Civil Litigation (2013)
34. Paula L. Hannaford-Agor, NCSC, Short, Summary & Expedited: The Evolution of Civil Jury Trials (2012)
35. IAALS & ACTL Task Force on Discovery and Civil Justice, A Return To Trials: Implementing Effective Short, Summary, and Expedited Civil Action Programs (2012)
36. Marc Galanter & Angela Frozena, Pound Civil Justice Inst.: 2011 Forum for State Appellate Court Judges, The Continuing Decline Of Civil Trials In American Courts (2011)
37. IAALS, Civil Case Processing in the Oregon Courts: An Analysis of Multnomah County (2010)
38. IAALS, Civil Case Processing in the Federal District Courts (2009)
39. IAALS, Civil Litigation Survey of Chief Legal Officers and General Counsel Belonging to the Association of Corporate Counsel (2010)
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41. IAALS & ACTL Task Force on Discovery and Civil Justice, 21st Century Civil Justice System: A Roadmap for Reform: Pilot Project Rules (2009)
42. IAALS & ACTL Task Force on Discovery and Civil Justice, 21st Century Civil Justice System: A Roadmap for Reform: Civil Caseflow Management Guidelines (2009)
43. Reforming the Iowa Civil Justice System , Report of the Iowa Civil Justice Reform Task Force (2012)

44. Report of the Judicial Conference Committee on Rules of Practice and Procedure to the Chief Justice of the United States and Members of the Judicial Conference of the United States (September 2014)

45. Judicial Council of California, Administrative Office of the Courts, Evaluation of the Early Mediation Pilot Programs (2004)

46. NCSC, Civil Justice Initiative, New Hampshire: Impact of the Proportional Discovery/Automatic Disclosure (PAD) Pilot Rules (2013)

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48. Than N. Luu, PLRI, Reducing the Cost of Civil Litigation: What Are the Costs of Litigation? (1995)

49. Recommendations of the Minnesota Supreme Court Civil Justice Reform Task Force, Final Report (2011)

50. Javad Mostofizadeh, PLRI, Reducing the Cost of Civil Litigation: Using New Technology (1995)

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57. Shelly M. Damore, *The Fast Track: Oregon's Expedited Civil Jury Trial Program*, Or. Ass'n of Def. Counsel, Summer 2010, at 8

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61. Paul W. Grimm & David S. Yellin, *A Pragmatic Approach to Discovery Reform: How Small Changes can Make a Big Difference in Civil Discovery*, 64 S.C. L. Rev. 494 (2013)

62. James S. Kakalik, *Analyzing Discovery Management Policies: Rand Sheds New Light on the Civil Justice Reform Act Evaluation Data*, 37 No. 2 Judge's J. 22, 25 (1998)

63. Rebecca L. Kourlis & Brittany K.T. Kauffman, *The American Civil Justice System: From Recommendations to Reform in the 21st Century*, 61 U. Kan. L. Rev. 877, 891 (2013)

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85. Letter from Rebecca L. Kourlis, Exec. Dir., IAALS, & Paul C. Saunders, Chairman, ACTL, to Paula Littlewood, Exec. Dir. WSBA (Nov. 3, 2009)

86. Lord Peter Goldsmith QC, Remarks at Midyear Meeting of the Conference of Chief Justices (Jan. 31, 2011) Theodore N. Mirvis, Slide Presentation at the Midyear Meeting of the Conference of Chief Justices (Jan. 31, 2011)

87. William T. Robinson III, Pres. ABA, Remarks at the Midyear Meeting of the Conference of Chief Justices (Jan. 29, 2011)

3. Survey

The Task Force also conducted a survey of WSBA members most likely to be involved in civil litigation, or affected by its rising costs. The ECCL survey was sent to members of the WSBA's Litigation, Family Law, Business Law, Corporate Counsel, Labor & Employment, Solo & Small Practice, Indian Law, Administrative Law, Civil Rights, Creditor Debtor Rights, and Health Law Sections; to members of the State Minority Bar Associations; and to members of the WSAJ and the WDTL.

Five hundred and twenty-one attorneys took the survey. Not all survey-takers responded to each question. As such, percentages in this summary are relative to the number of responses to a particular question instead of total respondents.

a. Demographics and practice

The overwhelming majority of survey respondents are experienced attorneys and dedicated litigators. The largest block of respondents, 25.9 percent, have practiced in Washington State for more than 30 years. Practitioners of between 21 and 30 years comprise another 19.6 percent of respondents.

Nearly all (94.0 percent) include litigation as part of their practice,[3] with litigation comprising seven-tenths or more of the practice of a majority (54.3 percent), and comprising more than nine-tenths the practice of a full third (33.5 percent) of respondents. A majority (58.3 percent) has practiced litigation for 16 years or more, and 26.8 percent are veteran litigators of more than 30 years.

Most (89.6 percent) respondents litigate in Washington. Of those also practicing in other jurisdictions, Oregon practitioners ranked the highest with 23 responses, followed by California (14 responses), and Idaho (10 responses). State superior court is the most common forum with most respondents (79.9 percent) reporting over half of their litigation occurred there. Over half of them (55.7 percent) conduct more than three-quarters of their litigation in superior court. Only 13.8 percent conduct the majority of their litigation in federal court, and 5.1 percent in state district court. Survey responses were made in 24 of Washington's 39 counties. Most respondents (56.6 percent) practice in King County; the next most-reported seats of practice are Pierce County (9.2 percent) and Clark County (5.4 percent).

[3] For purposes of the survey, "litigation" meant all stages of civil litigation from filing of a complaint to trial or settlement.

A slight majority of respondents (51.2 percent) reported that they represent plaintiffs or petitioners a majority of the time. For 33.6 percent of respondents, plaintiffs and petitioners comprised three-quarters or more of their clientele. On the defense side, 1 in 4 respondents (24.8 percent) reported that defendants represented three-quarters or more of their clientele. Most respondents (55.9 percent) have never represented indigent clients.

Nearly half (42.2 percent) of respondents' practices were at least one-quarter personal injury, wrongful death, or medical malpractice. The other top responses were family law (25.2 percent), business law (19.0 percent), and labor and employment (16.0 percent).

b. Costs of litigation

Survey respondents agreed that there are several solutions for lowering the costs of civil litigation without limiting the ability to effectively and justly resolve disputes. Of the proposed ideas, mandating good-faith mediation within 60 days of party depositions garnered the highest degree of support—its weighted average was 3.62 on a scale of 1 to 5. An average over 3 indicates agreement. The next-highest rated proposals were a standard list of discovery questions that must be answered by each party early in the litigation (3.55) and restrictions on the number or length of depositions with option to obtain more by court leave (3.48). All the specific proposals presented in the survey garnered general approval, with each averaging a 3.32 or higher.

One hundred and fifty-eight respondents commented individually and provided additional ideas. Common suggestions were higher sanctions or better enforcement of existing rules (23 responses), and limiting expert witness fees or medical costs (17 responses). Interestingly, 17 respondents preferred no additional or even fewer restrictions.

The survey also asked respondents to identify the primary forces driving litigation costs. Attorney fees were identified most often, by over half (54.0 percent) of respondents. Other top factors identified were representation by larger firms (45.0 percent), overly broad discovery requests (43.5 percent), expert witness fees (43.5 percent), and unequal bargaining positions of the parties (42.8 percent). Additional factors identified in narrative responses include the insurance industry and defense lawyers (19 responses each), attorneys drawing out cases for their own compensation (19 responses), and discovery abuse (10 responses).

c. Discovery

Asked to rate the effectiveness of discovery tools, respondents identified depositions as the most useful by far, and requests for admissions the least. On a scale of 1 to 5, with 1 being the least effective and 5 being the most, respondents on average assigned depositions a 3.92 rating, requests to produce a 3.49, and subpoenas duces tecum a 3.28. The remaining discovery tools were rated between *effective* and *slightly effective*.

Almost all respondents (95.0 percent) reported that they strive to keep discovery costs proportionate to the stakes in litigation. The most common methods include: limiting the number of depositions or records custodians (41 responses), limiting the scope of discovery to the most effective means (37 responses), and cooperating with opposing counsel or entering into informal discovery arrangements (35 responses).

Over half of the survey respondents (56.0 percent) reported no difference between jurisdictions regarding the costs or effectiveness of discovery practices. Thirty-seven respondents find discovery more effective in jurisdictions with case schedules and discovery limits. Twenty-four respondents called out federal courts as being less costly because of discovery limits and attentiveness to discovery abuse. Thirteen praised Oregon courts as less costly on account of their limited discovery and lack of expert depositions.

Of note is that most survey respondents (57.4 percent) would decline certain cases because of discovery-related costs. Of these respondents, 32 would turn down medical malpractice or negligence cases due to discovery costs; 23 would turn down cases with too many witnesses or experts; and 22 would turn down cases based on the ratio of discovery costs to recovery potential.

Respondents strongly agreed with the statement that parties are willing to invest more into litigating a case if the stakes are high by assigning the statement an average 4.29 on a scale of 1 to 5, with 1 indicating a strong disagreement and 5 indicating strong agreement. Any values over 3 would indicate agreement. They also agreed that parties "dig in" and litigate every little thing when a lot of money is involved (3.79 average), that existing discovery rules are not being enforced (3.68), and that discovery costs induce settlements (3.44). When cases settle due to discovery costs, 70.0 percent of survey respondents think that justice is not served.

Two-hundred and fifty-five respondents provided narrative responses and volunteered ideas for curbing discovery abuse. The most common ideas underline the perceived need for court involvement. In fact, 138 responses called for more sanctions or greater enforcement of existing rules.

The survey asked respondents to identify common discovery abuses they have experienced. Most respondents report having experienced blanket objections to discovery requests (72.7 percent), failures to produce responsive documents (67.6 percent), and excessive or burdensome interrogatories (64.5 percent). A slim majority (51.3 percent) report excessive or burdensome production requests. The other 11 forms of abuse were commonly experienced by less than a third of respondents.

d. Electronically stored information

ESI does not dominate the litigation practices of survey respondents. Though most respondents (72.7 percent) deal with ESI in their practice, a majority of those (54.3 percent) do so without the assistance of third-party vendors for services such as

creating databases or making ESI searchable.[4] A clear majority (77.8 percent) report that managing and reviewing ESI comprises one-fifth or less of their litigation costs; in total 96.8 percent reported ESI as one-half or less of their litigation costs.

As noted, respondents rated ESI an only slightly effective discovery tool, assigning it a rating of 2.70 out of 5. On the other hand, respondents report less discovery abuses involving ESI than other discovery abuses. Of the respondents, 20.9 percent had experienced excessive or burdensome ESI requests, and only 10.6 percent had experienced excessive ESI productions—the least and third-least frequent forms of discovery abuse reported, as discussed.

When asked about primary forces driving litigation costs, only 17.1 percent of respondents identified ESI discovery requests as one of the factors, and only 11.5 percent identified ESI discovery disputes.

[4] The survey did not query respondents on their understanding of, or familiarity with, ESI. Though a slight majority of respondents reported managing ESI in-house, the survey did not distinguish between those who operate in-house discovery databases from those who merely scan and save paper documents.

Recommendations

Many of the Task Force's recommendations will involve changes to the Civil Rules. Should the Board of Governors approve these recommendations, the Task Force contemplates the Court Rules and Procedures Committee would then review them for drafting and finalization. If approved by the Board of Governors, the proposed rules will be forwarded to the Supreme Court for consideration and public comment.

1. Initial case schedules

a. Current practice

The superior courts of King County, Pierce County, and Spokane County issue schedules in all civil cases; courts in some other counties do not.

b. Recommendation

The Task Force recommends a case schedule be issued upon filing a civil case in either superior court or district court. All superior court cases will initially be set on a 12-month schedule, but may seek to move to an 18-month schedule as described below in the recommendation regarding litigation tiers. Cases filed in district court will receive a 6-month schedule at filing.

Case schedules will include deadlines for initial disclosures, joinder of parties, fact witness disclosure, expert witness disclosure, mandatory mediation, discovery cutoff, pretrial disclosures, and a trial date. A deadline for moving the court to change the assigned tier or to make other adjustments to discovery limitations will also be stated in the case schedule.

Beyond the total time allowed, the courts of individual counties will have discretion to craft their own case schedules. Counties may also exempt certain categories of civil actions from schedules entirely, for example:

- Change of name;
- Adoption;
- Domestic violence protection order under Chapter 26.50 RCW;
- Anti-harassment protection order under Chapter 10.14 RCW;
- Unlawful detainer;
- Appeal from courts of limited jurisdiction;
- Foreign judgment;
- Abstract of transcript of judgment;
- Writ petition;
- Civil commitment;

- Proceedings under Title 11 RCW (probate and trust law);
- Proceedings under Title 13 RCW (juvenile courts and juvenile offenders);
- Proceedings under Chapter 10.77 RCW (criminally insane); and
- Proceedings under Chapter 70.96A RCW (chemical dependency).

c. Reasons

Case schedules are necessary to organize cases and keep parties moving toward resolution. A schedule is the backbone of case management, and is necessary to organize cases, impose a time frame on case resolution, impose deadlines to keep cases moving toward resolution, and implement cost-reduction methods.[5] Deadlines—including a certain trial date—prompt parties to efficiently evaluate and prepare cases, leading to resolution at trial or through negotiation.[6] There is empirical evidence that supports the use of early case management as a method of reducing litigation costs, especially when combined with setting a trial schedule early.[7] The automatic case schedule implements both of these methods.[8]

[5] IAALS & ACTL Task Force on Discovery, 21st Century Civil Justice System: A Roadmap for Reform: Pilot Project Rules 8 (2009) ("Early and ongoing control of case progress has been identified as one of the core features common to those courts that successfully manage the pace of litigation. Active court control, which includes scheduling, setting and adhering to deadlines, and imposing sanctions for failure to comply with deadlines, can ensure that each scheduled event causes the next scheduled event to occur, thereby ensuring that every case has no unreasonable interruption in its procedural progress."); Rebecca L. Kourlis & Brittany K.T. Kauffman, *The American Civil Justice System: From Recommendations to Reform in the 21st Century*, 61 U. Kan. L. Rev. 877, 891 (2013) ("[F]irm trial dates, enforced timelines, streamlined motions practice, and judicial availability are other tools that are being used to move the process along and reduce the time and cost burden on litigants.").

[6] *See* IAALS & ACTL Task Force on Discovery, Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System 20 (2009) ("There can be significant benefits to setting a trial date early in the case. For example, the sooner a case gets to trial, the more the claims tend to narrow, the more the evidence is streamlined and the more efficient the process becomes. Without a firm trial date, cases tend to drift and discovery takes on a life of its own. In addition, we believe that setting realistic but firm trial dates facilitates the settlement of cases that should be settled, so long as the court is vigilant to ensure that the parties are behaving responsibly. In addition, it will facilitate the trials of cases that should be tried.").

[7] James S. Kakalik, *Analyzing Discovery Management Policies: Rand Sheds New Light on the Civil Justice Reform Act Evaluation Data*, 37 No. 2 Judge's J. 22, 25 (1998) ("In the main evaluation report, we found that early case management predicted significantly reduced time to disposition;

In the Task Force's survey, respondents who practice in multiple jurisdictions found that jurisdictions issuing schedules in all cases, such as the federal courts, were less costly litigation forums. The Pleadings and Motions Practice Subcommittee also found support for universal case schedules from interviewing members of the state judiciary. Judges that the subcommittee interviewed viewed case schedules as an easy-to-implement and effective tool for controlling litigation cost.

The Task Force recommends allowing counties leeway to exempt certain cases from schedules because many civil actions fall outside the heartland of civil litigation to which the schedule recommendation is addressed. King, Pierce, and Spokane County, which issue civil case schedules, each make categorical exemptions for certain types of civil actions. The exemptions carved out by these counties represent practical experience that the Task Force believes should be preserved.

2. Judicial assignment

a. Current practice

In some counties, cases are assigned to a single judge at the outset of the case. In many counties, they are not.

b. Recommendation

The Task Force recommends adding the following language to the civil rules on judicial assignment:

A judge shall be assigned to each a case upon filing. The assigned judge shall conduct all proceedings in the case unless the court determines it is impracticable to do so.

coupling early management with setting a trial schedule early predicted significant further time reductions."); IAALS, Civil Case Processing in the Federal District Courts 84 (2009) ("[F]aster disposition times tend to be strongly correlated with setting a trial date early in the litigation, filing motion for leave to conduct additional discovery as soon as possible after the Rule 16 conference ..., and filing motion on disputed discovery, motions to dismiss and motions for summary judgment as soon as practicable in the life of the litigation.").

[8] Implementation of mandatory discovery planning is necessary to get the full benefit of early case schedules and trial setting, and vice versa. Kakalik, *Analyzing Discovery Management Policies*, *supra* note 7, at 25 ("We estimate that early management with a mandatory discovery management planning policy is associated with a 104-day reduction when a trial schedule is set early, and with about an 85 day reduction for early management with a mandatory planning policy but without setting a trial schedule early. The estimated effect for early management with neither mandatory planning nor setting a trial schedule early is much smaller-only about twenty-nine days.").

c. Reasons

Court involvement in management during key stages of the case, including during the discovery phase, is necessary for any of the recommended cost reduction methods to be implemented (proportionality, litigation tiers, court conferences to determine variation from discovery limits).[9] Many respondents to the Task Force's survey complained that judges' failure to enforce existing rules contributed significantly to driving up those costs. A judge responsible for overseeing a case from start to finish would be more familiar with the parties and issues, more able to efficiently resolve discovery disputes, and more willing to curb discovery abuse. This method has been endorsed and adopted by other states after studies or pilot projects.[10]

The Task Force ultimately decided against requiring judicial assignment. Many counties have only a few judges handling civil cases; denying those counties the flexibility to share the work associated with those cases as needed would be an administrative burden. The proposed language preserves this flexibility while making clear that assignment to a single judge for the life of a case is the strongly preferred option.

3. Two-tier litigation

a. Current Practice

Statewide, Washington makes few categorical distinctions between cases based on size or complexity. Mandatory arbitration, applicable to claims under $50,000, is one such distinction. Another is the district court system, open only to claims under $75,000. Pierce County assigns different case schedules based on a case's subject matter or likely complexity.

b. Recommendation

The Task Force recommends adopting a two-tier litigation system (sometimes referred to as multi-track litigation) in superior court cases, which would determine a case's

[9] Kourlis & Kauffman, *From Recommendations to Reform in the 21st Century, supra* note 5, at 891 ("Judicial caseflow management has been recognized as another essential element in moving a case fairly, efficiently, and economically through the process. Early judicial involvement in every case, by a single judge assigned to the case from start to finish, is more efficient."); IAALS & ACTL, *Final Report, supra* note 6, at 18 ("A single judicial officer should be assigned to each case at the beginning of a lawsuit and should stay with the case through its termination.").

[10] *E.g.* Reforming the Iowa Civil Justice System, Report of the Iowa Civil Justice Reform Task Force 30 (2012) ("One judge assigned to each case for the life of the matter will enhance judicial management, promote consistency and adherence to deadlines, and reduce discovery excesses.").

presumptive case schedule and discovery limits based on the tier to which a case is assigned.

Initial assignment to Tier 1

All cases default to Tier 1 on filing, and the Task Force anticipates most cases will remain in that tier. Cases involving large monetary claims, important non-monetary stakes, or complex factual or legal issues may be reassigned to Tier 2.

Reassignment to Tier 2

A court may reassign a Tier 1 case to Tier 2 for good cause, either on its own motion or at the request of one or more parties. The court will determine whether the case presents complex or important issues such that Tier 2's more expansive schedule, discovery, and trial procedures are warranted, looking to the following factors:

- Monetary claims by any party exceeding $300,000;
- Evidence of likely factual complexity, such as more than 12 likely witnesses, or the need to conduct substantial investigation outside the State of Washington;
- Complex or novel legal issues;
- Claims involving important rights, or issues of widespread significance;
- Commonly complex case types such as medical or professional malpractice, product liability, or class action cases; and
- Other indicia of likely complexity as determined by the court.

The case schedule will set out a deadline to seek reassignment, shortly after the early discovery conference.[11] After this deadline, a party may only move for tier reassignment if there is good cause for the delay.

The following model case schedule sets out example deadlines for a Tier 1 case:

Event/deadline	*Date (weeks from trial)*
Filing	52
Early discovery conference	48
Initial disclosures	46
Application for reassignment to Tier 2	46
Joinder of parties	30

[11] Another Task Force recommendation, discussed below.

Fact witness disclosures	22
Expert witness disclosures	13
Rebuttal expert witness disclosures	9
Mandatory mediation	8
Discovery cutoff	7
Pretrial disclosures	4
Trial	0

Any change to the case schedule in either tier must be approved by the court.

Tier assignment does not limit award

If monetary value is the basis for assigning a case to Tier 1 or Tier 2, it does not limit a party's potential recovery. Even in a Tier 1 case a jury could award more than $300,000.

Arbitration and district court

Parties with claims of $50,000 or less are still subject to mandatory arbitration; those with claims of $75,000 or less can continue to file in district court.

c. Reasons

Proportionality is an important tool in litigation costs. Many jurisdictions, including the federal courts, have or are adopting proportionality as an explicit limit on discovery. Ninety-five percent of the respondents to the Task Force's survey strive to keep discovery costs proportionate to litigation stakes. Litigating low-stakes cases, however valued, should cost less than litigating high-stakes cases.

Multi-tier litigation applies a measure of proportionality from a case's outset. The IAALS recommends moving away from "one size fits all" litigation rules. Courts in the Southern District of New York,[12] Minnesota,[13] Oregon,[14] Utah,[15] and Washington's Pierce County[16]

[12] Standing Order, In re Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York, No. M10-468 (S.D.N.Y. Nov. 1, 2011).

[13] Order Relating to the Civil Justice Reform Task Force, Authorizing Expedited Civil Litigation Track Pilot Project, and Adopting Amendments to the Rules of Civil Procedure and the General Rules of Practice, Nos. ADM10-8051, ADM09-8009, ADM04-8001 (Minn. May 8, 2013).

[14] Order Establishing the Oregon Complex Litigation Court and Adopting New UTCR 23.010, 23.020, 23.030, 23.050, and 23.060 Out-of-Cycle, No. 10-066 (Or. Dec. 2, 2010).

[15] Utah R. Civ. Pro. URCP 26(c)(5).

[16] Pierce Cnty. Local R. PCLR 3(h).

have experimented with, or adopted, multi-tier litigation. Respondents to the Task Force's survey generally supported the idea, with 53.8 percent agreeing or strongly agreeing that a multi-track litigation system would be effective in lowering litigation costs without substantially limiting the ability to justly resolve disputes.

The general format of the tier system is closely modeled on the amended Utah Rules of Civil Procedure Rule 26(c)(5). The specific discovery limits in each tier were decided by the Task Force based on the available evidence, study, and the Task Force members' own professional experience.

The Task Force considered basing tier assignment on pleadings. Instead, it decided to have Tier 1 be the initial default for all cases to ensure parties would not simply claim the stakes qualified for the more expansive Tier 2 in most cases. The lesson of Oregon's expedited civil trial system, an underused option that allows parties to opt into a shortened litigation track by agreement, suggests at least one party will favor a longer case track in almost all cases.[17]

The Task Force considered basing tier assignment on information supplied during initial disclosures, with no tier assignment until those disclosures had been made. It decided on presumptive Tier 1 assignment both because this establishes a default preference for the shorter (and therefore presumably less expensive) litigation track, and also because it would avoid the necessity of requiring a case-assignment hearing for parties comfortable with remaining in Tier 1. This will result in less administrative burden on the courts.

4. Mandatory discovery conference

a. Current practice

Under the current CR 26(f), one party may seek to frame a discovery plan with the other party, and if that party refuses to cooperate, the party seeking to frame the plan can make a motion to the court to hold a discovery conference.

[17] *See* Paula L. Hannaford-Agor, NCSC, Short, Summary & Expedited: The Evolution of Civil Jury Trials 60–61 (2012) ("The major disappointment expressed by the Multnomah County trial bench concerning the ECJT program was the unexpectedly slow start for an expedited designation. ... Several of the attorneys mentioned that they had asked the opposing counsel in a number of cases about filing an expedited designation motion before they found one willing to go forward.").

b. Recommendation

The Task Force recommends requiring a mandatory early discovery conference with a list of topics to be discussed in both superior court and district court cases. The parties to meet as soon as practicable to discuss the following subjects:

- Whether (if in superior court) the case should be assigned to Tier 2 instead of the default Tier 1;
- Whether the case is suitable for mediation or arbitration, and when early mediation might occur;
- What changes should be made in the timing, form, or requirement for initial disclosures, including when they will be made;
- Subjects on which discovery may be needed, when completed, and whether conducted in phases or focused on particular issues;
- Any issues about disclosure or discovery of electronically stored information, including the form of production;
- Any issues about claims of privilege or work product, whether there is any agreement for the procedure for raising these issues, and whether the court should enter an order under ER 502;
- What changes should be made in the limitation on discovery, and what other limitations should be imposed. For cases seeking reassignment to Tier 2, the parties are encouraged to submit an agreed discovery plan setting out discovery limits appropriate for the case, or submit proposals for the court to decide if no agreement is reached;
- Whether time limits are appropriate for the conduct of trial, including potential time limits on voir dire, opening and closing statements, and each party's presentation of its case, including rebuttal evidence but excluding pretrial motions; and
- Any other order that the court should issue under CR 26(c) or other rule, including whether a special master should be appointed to deal with any aspects of discovery, including electronic discovery.

Following the conference, the parties will submit a joint status report to the court regarding those topics discussed.

c. Reasons

Rule 26(f) conferences have been successful in federal court in avoiding later discovery disputes and thereby lowering the cost of litigation.[18] The mandatory early conference benefits the parties by making them think about discovery issues early in the litigation and attempt to reach agreement about those issues. If the parties cannot agree, they at least flag them for the court in the early stages of the case. Other states are endorsing and adopting these conferences.[19]

The Task Force also believed requiring the parties to consider how trial might be conducted at the early stages would be valuable. Limits on the conduct of trial would make trials less expensive and therefore more available. If the parties can agree on a trial time schedule from the outset, it would keep attorneys and litigants focused on getting their evidence before the court, avoided repetition, and limiting the number of witnesses with repetitive testimony. This not only decreases the length and expense of trial itself, but should also streamline trial preparation. And even if the parties fail to reach an agreement, confronting the potential time and costs of trial early on may produce earlier resolutions in cases that would eventually settle anyway.

The Task Force considered requiring a judicial conference after submission of the parties' joint status report, similar to the scheduling conference required under Federal Rule of Civil Procedure 16(b). The Task Force decided against this practice because it would impose an additional burden on the courts and parties, and because the automatically issued case schedule would obviate the need for a scheduling conference in many Tier 1 cases.

[18] Kakalik, *Analyzing Discovery Management Policies*, *supra* note 7, at 25 ("We estimate that early management with a mandatory discovery management planning policy is associated with a 104-day reduction when a trial schedule is set early, and with about an 85 day reduction for early management with a mandatory planning policy but without setting a trial schedule early Emery G. Lee & Kenneth J. Withers, *Survey of United States Magistrate Judges on the Effectiveness of the 2006 Amendments to the Federal Rules of Civil Procedure*, 11 Sedona Conf. J. 201, 202 (2010) ("It is safe to say that the amendments to Rules 26(f) and 16(b), which prompt the parties and the court to pay 'early attention' to potential e-discovery issues, are rated as the most effective amendments by the judges answering the survey."); IAALS & ACTL, *Final Report*, *supra* note 6, at 21 ("Parties should be required to confer early and often about discovery and, especially in complex cases, to make periodic reports of those conferences to the court.").

[19] NCSC, Civil Justice Initiative, New Hampshire: Impact of the Proportional Discovery/Automatic Disclosure (PAD) Pilot Rules 3 (2013) ("The requirement to meet and confer regarding case structuring[] is expected to reduce the number of in-court case structuring conferences.").

5. Mandatory disclosures

a. Current practice

There is currently no statewide provision for mandatory initial disclosures, expert-witness disclosures, or pretrial disclosures. Some county local rules provide for deadlines for certain fact witness disclosures.

b. Recommendation

The Task Force recommends requiring initial disclosures, expert-witness disclosures, and pretrial disclosures in both superior court and district court cases. These disclosures are patterned on those found in Federal Rule of Civil Procedure 26(a). The timing and subject matter of disclosures may be varied by party stipulation or court order.

Those categories of civil actions a county exempts from receiving an initial case schedule, as discussed above,[20] are also exempt from initial disclosure requirements.

Initial disclosures

Initial disclosures, or "laydown" discovery, will be required in advance of formal discovery. Parties will be required to make these disclosures as soon as practicable, in advance of receiving any discovery requests, but in any case no later the deadline set out in the case schedule. The following information must be disclosed:

- The name and contact information for each individual likely to have discoverable information, and the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- A copy, or a description by category, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
- A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under CR 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based;
- For inspection and copying as under CR 34 or CRLJ 26(b)(3)(A), any insurance agreement under which an insurance business may be liable to satisfy all or part

[20] *See supra* page 18.

of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Initial disclosures must be based on information reasonably available to a party. Delay based on the need to fully investigate, or another party's failure to disclose, is not excused. The rule should explicitly provide for sanctions for failing to make timely initial disclosures.

Later-appearing parties must make initial disclosures within 30 days of being served or joined.

Expert witness disclosures

Expert disclosures consistent with the federal rules should be required. The timing of the disclosures will be staggered. The party bearing the burden of proof on an issue discloses their expert and expert material first, by the deadline set out in the case schedule. The party or parties without the burden must disclose experts and expert material within 30 days of the first party's disclosure.

A party would disclose the following information (whether in a report or otherwise) if an expert witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony:

- A complete statement of all opinions the witness will express and the basis and reasons for them;
- The facts or data considered by the witness in forming them;
- Any exhibits that will be used to summarize or support them;
- The witness's qualifications, including a list of all publications authored in the previous 10 years;
- A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- A statement of the compensation to be paid for the study and testimony in the case.

Pretrial disclosures

Pretrial disclosures should be required, by the deadline set out in the case schedule. Disclosures must include:

- The name and, if not previously provided, contact information of each witness, separately identifying those the party expects to present and those it may call if the need arises;
- The designation of those witnesses whose testimony the party expect to present by deposition and a transcript of the pertinent parts of the deposition; and

- An identification of each document or other exhibit, including summaries of other evidence, separately identifying those items the party expects to offer and those it may offer if the need arises.

c. Reasons

Mandatory disclosures make available categories of information required to prepare almost every case without resort to discovery. This will allow parties to focus discovery on case-specific facts, and reduce discovery and trial preparation costs. Respondents to the Task Force's survey supported a standard list of questions that parties must answer in every case, with 34.0 percent agreeing and 25.8 percent strongly agreeing this approach would lower litigation cost without impairing just resolutions.

Initial disclosures

Requiring parties to automatically provide certain basic information will mean less discovery has to be conducted and therefore lower costs. Mandatory disclosures are combined with limitations on other methods of discovery to lower costs. The Task Force believes that the requirement of mandatory disclosures will offset the limitation on interrogatories and requests for production that are proposed.[21] It should be noted that there is mixed evidence and opinion regarding the efficacy of mandatory disclosures as a means of lowering litigation costs.[22] But it should be further noted that disclosures are

[21] Douglas C. Rennie, *The End of Interrogatories: Why* Twombly *and* Iqbal *Should Finally Stop Rule 33 Abuse*, 15 Lewis & Clark L. Rev. 191, 259 (2011) ("Mandatory disclosures have already taken over many of the functions of interrogatories."); Phillip J. Favro & Derek P. Pullan, *New Utah Rule 26: A Blueprint for Proportionality Under the Federal Rules of Civil Procedure*, 2012 Mich. St. L. Rev. 933, 972 (2012) (discussing Utah's expansion of initial disclosure obligations, stating "[t]his change was especially important to achieve proportionality, [as] [d]iscovery tends to be more focused and thus more cost effective when parties know more about the case earlier."); Amy Luria & John E. Clabby, *An Expense Out of Control: Rule 33 Interrogatories After the Advent of Initial Disclosures and Two Proposals for Change*, 9 Chap. L. Rev. 29, 44 (2005) ("[I]n contrast to interrogatories, mandatory initial disclosures increase the efficiency of litigation.").

[22] *Compare* Kakalik, *Analyzing Discovery Management Policies*, *supra* note 7, at 26 ("Our data and analyses do not strongly support the policy of mandatory early disclosure as a means of significantly reducing lawyer work hours, and thereby reducing the costs of litigation, or as a means of reducing time to disposition Special Comm. of the ABA Section of Litigation, Civil Procedure in the 21st Century: Some Proposals 9–10 (2010) (proposing eliminating "the current requirement that the parties' disclosures include documents" stating that only 33 percent of ABA Section of Litigation members surveyed believed that initial disclosures reduce discovery and only 26 believe that they save client money, and that "[t]he Committee members, like the ABA Survey respondents, believe that most initial disclosure is not useful"); Report of the Special Committee

criticized for doing too little as well as too much, and while there are critics that propose eliminating disclosure, there are also critics that propose expanding disclosure (for example by making document production mandatory rather than just document identification).[23] Ultimately, the Federal Advisory Committee on Civil Rules heard all of the evidence, criticism, and proposals regarding modifications to the initial disclosure rules but left initial disclosures unchanged in its fairly significant recent changes to the Federal Rules of Civil Procedure,[24] and the federal, or similar, approach to initial disclosure has been endorsed and adopted by state task forces and pilot projects.[25]

on Discovery and Case Management in Federal Litigation of the New York State Bar Association 73 (June 23, 2012) (collecting evidence that initial disclosures do not increase efficiency and recommending that the federal rules be amended to remove the document disclosure provisions); *with* Thomas E. Willging, Donna Stienstra, John Shapard & Deab Miletich, *An Empirical Study of Discovery and Disclosure Practice Under the 1993 Federal Rule Amendments*, 39 B.C. L. Rev. 525, 527 (1998) ("In general, initial disclosure appears to be having its intended effects ... [w]e found a statistically significant difference in the disposition time of cases with disclosure compared to cases without disclosure [and] [h]olding all variables constant, those with disclosure terminated more quickly."). *See also* Emily C. Gainor, Note, *Initial Disclosures and Discovery Reform in the Wake of Plausible Pleading Standards*, 52 B.C. L. Rev. 1441, 1464–68 (2011) (contrasting proponents' arguments that initial disclosures "foster exchange of discoverable information early," "serve as tools to compel information sharing," "advances litigation efficiency objectives," in contrast to critics arguments that they do "not foster efficient discovery," "foster over discovery," and "do not fit comfortably in an adversarial system.").

[23] IAALS & ACTL, *Final Report*, *supra* note 6, at 7 (proposing automatic production in initial disclosure, not just identification of documents that the party will use).

[24] Report of the Advisory Committee on Civil Rules (May 8, 2013).

[25] Iowa Civil Justice Reform Task Force, *Reforming the Iowa Civil Justice System*, *supra* note 10, at 31 ("Many recommendations for case management and discovery limitations presume discovery reforms requiring basic information disclosure in all cases at the outset of litigation without the necessity of discovery requests from a party."); Recommendations of the Minnesota Supreme Court Civil Justice Reform Task Force, Final Report 18 (2011) ("Rule 26(a) of the Federal Rules of Civil Procedure provides for three categories of automatic disclosure: initial disclosures[], expert disclosures[], and trial disclosures[and] [t]he task force reviewed all three categories of changes, and believes there is now enough experience with the operation of automatic disclosure in the federal courts to warrant the adoption of these federal court automatic disclosure requirements in Minnesota."); NCSC, *New Hampshire Pilot Rules*, *supra* note 41, at 3 ("[A]utomatic disclosures[] are expected to [(1)] reduce the time from filing to disposition ... through a reduction in the amount of time expended on ... discovery" and (2) "reduce the number of discovery disputes ... by making most of the previously discoverable information ... routinely available to the parties without need for court intervention.").

The Task Force considered the broader initial disclosures provided for in the 1993 amendments to the federal Rule 26. However, concerns were raised over interpreting the scope of disclosure under this earlier version. The Task Force decided in favor of the initial disclosures in the current federal Rule 26 so Washington courts could take advantage of federal case law interpreting it.

Expert disclosures

Requiring the party offering the expert testimony to disclose certain basic information reduces the amount of discovery the responding party has to conduct, lowering costs.[26] Based on the Task Force member's experience, specifying which party needs to disclose expert material first should also head off discovery disputes over that issue.

Pretrial disclosures

Mandatory pretrial disclosures allow attorneys to focus on the issues and evidence that will actually feature at trial, reducing discovery and trial preparation costs.

6. Proportionality and cooperation

a. Current practice

CR 26(b)(1) provides for discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party ...." Proportionality between the burden or expense of discovery and a case's needs, amount in controversy, the importance of the issues, and the parties' resources is listed in CR 26(b)(1)(C) as a potential limit on discovery. There is no provision expressly requiring the cooperation of parties in the Civil Rules.

b. Recommendation

The Task Force recommends amending the rules to narrow the scope of discovery, specifically incorporating proportionality as a limit, and to require cooperation among the parties as a guiding principle in employing the Civil Rules.

Proportionality

- The scope of discovery will be amended to read that parties may obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense ...."

[26] Willging, *et al., An Empirical Study of Discovery and Disclosure Practice, supra* note 22, at 527 ("Like initial disclosure, expert disclosure appears to be having its intended effect, albeit with an increase in litigation expenses for 27% of the attorneys who used expert disclosure ... [but] slightly more attorneys (31%) reported decreased litigation expenses.").

- The scope of discovery will also be amended to include proportionality as a limit: "... and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

Cooperation

- The scope of the Civil Rules will be amended to specify that the courts and all parties jointly share the responsibility of using the rules to achieve the aspirational ends of the civil justice system: "They [the Civil Rules] shall be construed, administered and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action."
- Discovery sanctions will be amended to include a failure to cooperate during the discovery process: "If the court finds that any party or counsel for any party has willfully impeded the just, speedy, and inexpensive determination of the case during the discovery process, the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the impediment.

c. Reasons

Narrowing the very broad scope of discovery and explicitly requiring the court to impose proportionality and cooperation should reduce the amount of discovery, or at least tie it closely to the amounts and issues at stake in each case, thereby lowering costs overall.[27] It should also reduce the number and severity of discovery disputes, which will lower costs. Proportionality has been effective in federal court,[28] and is a central proposal of

[27] Paul W. Grimm & David S. Yellin, *A Pragmatic Approach to Discovery Reform: How Small Changes can Make a Big Difference in Civil Discovery*, 64 S.C. L. Rev. 495 (2013) ("[N]arrowing the scope of discovery to focus on information that is neither privileged nor protected work product and that is relevant to the actual claims and defenses raised by the pleadings could greatly improve things, at least as long as there is a consensus that the purpose of the discovery rules is to prepare for trial," and "institutionalizing the concept of cooperation during discovery into the rules of procedure—would work hand in glove with the other two recommendation to help trim unnecessary costs and burdens and focus on what facts truly are needed to resolve a particular dispute.").

[28] Lee & Withers, *Survey of United States Magistrate Judges*, *supra* note 18, at 202 ("[M]ore than 6 in 10 of the judges who responded to the survey reported that the proportionality provisions in Rules 26(2)(C) and 26(c) were being invoked and that, when invoked, were effective in limiting the cost and burden of e-discovery.").

most academic studies and state and federal pilot projects.[29] Several states have also endorsed and implemented an explicit proportionality requirement.[30] The Task Force's recommended language is based on similar language recommended by the Judicial Conference Committee on Rules of Practice and Procedure.[31] Like other rule changes, however, an explicit proportionality provision in the rules will only be effective if courts enforce them in a thoughtful way.[32]

[29] Final Report on the Joint Project of the IAALS & ACTL Task Force on Discovery, *supra* note 6, at 7 ("Proportionality should be the most important principle applied to all discovery."); Seventh Cir. Elec. Discovery Pilot Program, Final Report on Phase Two 73–74 (2012) (finding that "Principle 1.03 [proportionality] continues to be well received" and "should be subject to continued testing" based on positive Phase Two survey responses (including 63 percent of judge respondents who "reported that the proportionality standards ... played a significant role in the development of discovery plans for their Pilot Program cases" while 48 percent of judge respondents "reported that the application of the Principles had decreased or greatly decreased the number of discovery disputes brought before the court")); Kourlis & Kauffman, *From Recommendations to Reform in the 21st Century*, *supra* note 5, at 883–34 ("[P]ilot projects have adopted proportionality as a guiding star throughout the case so that litigation remains just, speedy, and inexpensive.").

[30] Favro & Pullan, *New Utah Rule 26*, *supra* note 21, at 970 ("To remedy this problem, Utah redefined the scope of permissible discovery. Today, Utah litigants "may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality." This simple yet profound change has effectively brought proportionality to the forefront of discovery practice."); Iowa Civil Justice Reform Task Force, *Reforming the Iowa Civil Justice System*, *supra* note 10, at 30 ("Discovery should be proportional to the size and nature of the case. Overly broad and irrelevant discovery requests should not be countenanced."); Minnesota Supreme Court Civil Justice Reform Task Force, *Recommendations*, *supra* note 25, at 17 (the task force recommended adopting proportionality rule which "would create a presumption of narrower discovery and require consideration of proportionality in all discovery matters, limiting discovery to the reasonable needs of the case," noting "[t]his recommendation is probably one of the most important recommendations the task force advances.").

[31] Report of the Judicial Conference Committee on Rules of Practice and Procedure to the Chief Justice of the United States and Members of the Judicial Conference of the United States (Sept. 2014), at 30–31. "After considering [2,300] public comments carefully, the Committee remains convinced that transferring the Rule 26(b)(2)(C)(iii) factors to the scope of discovery, with some modifications as described below, will improve the rules governing discovery." *Id.* at 5–6. The Report goes on to discuss the reasons supporting the proposed proportionality language. *Id.* at 6–8.

[32] Scott A. Moss, *Litigation Discovery Cannot Be Optimal but Could Be Better: The Economics of Improving Discovery Timing in a Digital Age*, 58 Duke L.J. 889, 908 (2009) ("[P]roportionality

Similarly, an express cooperation requirement has been tested in federal and state pilot programs (and found to be effective) and implemented by some states.[33] The Task Force's cooperation recommendations both make cooperation an underlying principle of the civil rules, and make cooperation an enforceable requirement during discovery. The Task Force noted that the most recent proposed federal amendments declined to adopt an enforceable cooperation duty, citing to the potential for collateral litigation of conflict with a duty of effective representation. However, Washington's Rules of Professional Conduct require *diligent* rather than *zealous* representation,[34] and in fact explicitly prohibit abuse of legal process[35] or tactical delays.[36] The Task Force considers these requirements entirely consistent with a duty of cooperation.

7. Discovery limits

a. Current practice

Most counties do not limit discovery requests by category.

rules can be criticized equally for allowing opposite errors, both false negatives (failing to detect and halt discovery abuse) and false positives (finding disproportionate some costly discovery that actually is justified by high evidentiary value and case merit). Erroneous pro-plaintiff rulings unjustifiably increase litigation costs and pressure defendants to settle unmeritorious cases; conversely, erroneous pro-defendant rulings deny plaintiffs the ability to press meritorious claims successfully.").

[33] Seventh Cir. Elec. Discovery Pilot Program, *Final Report*, *supra* note 29, at 71–72 (finding that "Principle 1.02 [cooperation] continues to be well received" and "should be subject to continued testing" based on positive Phase Two survey responses); Kourlis & Kauffman, *From Recommendations to Reform in the 21st Century*, *supra* note 5, at 883–84 ("The pilot projects are also a proving ground for the notion of cooperation among and between the parties. Attorneys who have put aside gamesmanship and embraced the concept of cooperation report that it has not undermined the zealous representation of their clients. In fact, it is becoming an essential component of appropriate representation—particularly in the area of electronic discovery—in order to achieve a just, speedy, and inexpensive determination for clients."); *see also* The Sedona Cooperation Proclamation, 10 Sedona Conf. J. 331 (2009 Supp.).

[34] "A lawyer must also act with commitment and dedication to the interests of the client and with diligence in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client." Wash. R. Prof'l Conduct RPC 1.3 cmt. 1.

[35] "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure." Wash. R. Prof'l Conduct RPC 3.1 cmt. 1.

[36] "Dilatory practices bring the administration of justice into disrepute. ... Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose." Wash. R. Prof'l Conduct RPC 3.2 cmt. 1.

b. Recommendation

The Task Force recommends presumptively limiting discovery, with superior court case limits depending on whether a case is assigned to Tier 1 or Tier 2:

Discovery	*Tier 1 limit*	*Tier 2 limit*
Interrogatories, including all discrete subparts	15	25
Requests for production	20	40
Requests for admission	15	25
Total fact deposition hours	20	40
Expert deposition hours per expert	4	4

Parties could vary these limits by stipulation or on a showing of good cause. Agreed changes to discovery limits do not require court approval unless they would affect deadlines in the case schedule. However, courts should not automatically give the presumptive limits greater weight than case-specific party proposals. In Tier 2 cases, the parties are encouraged to submit agreed discovery plans (or individual proposals for the court to decide if there is disagreement) following the Rule 26(f) conference.

In district courts, the number of interrogatories permitted without prior court permission of the court will be the same as in Tier 1—15, including all discrete subparts. District court discovery limits will remain otherwise unchanged.

c. Reasons

Discovery limits tied to case size are a direct, if inexact, means of imposing proportionality. Limits will force parties to be efficient with their use of the available discovery. Less discovery also means fewer discovery disputes and fewer opportunities for discovery abuse. On the Task Force's survey, respondents to practicing in other jurisdictions also noted that those with discovery limits generally involve less litigation cost.

Because limiting discovery may mean constricting litigants' access to information, the Task Force considers mandatory disclosures, discussed below, as a necessary accompaniment to this recommendation.

Interrogatories

"Restrictions on the number of interrogatories with option to obtain more by court leave" were supported by a majority of respondents to the Task Force's survey. Limiting the number of interrogatories should mean less discovery activity. Additionally, there should

be no prejudice to parties' ability to conduct discovery since interrogatories are generally of limited value in discovery,[37] and mandatory initial disclosures will allow parties to be more targeted in their use of interrogatories.[38] There is general support for the proposition that limits on interrogatories will reduce discovery costs and abuse, and empirical evidence that reduction in interrogatories reduces attorney work hours.[39] There are those who argue that interrogatories, or certain types of interrogatories, should be eliminated entirely.[40]

The specific numerical limits on interrogatories in each tier were derived from the federal rules. The current limit under Federal Rule of Civil Procedure 33 is 25 interrogatories, including discrete subparts, and other states are also implementing limitations.[41]

Requests for production

In general, less discovery activity should mean lower costs. Limiting the number of requests for production should mean less discovery activity, and will force parties to be more efficient with the production requests they have available. There should be no prejudice to parties' ability to conduct discovery because mandatory initial disclosures will allow parties to be more targeted in their use of requests for production.

[37] Respondents to the Task Force's survey rated interrogatories, along with requests for admission, as sometimes ineffective and susceptible to abuse.

[38] As discussed in the Advisory Committee Notes to the 1993 amendments to FRCP 33(a) ("Revision of this subdivision limits interrogatory practice. Because Rule 26(a)(1)–(3) requires disclosure of much of the information previously obtained by this form of discovery, there should be less occasion to use it. Experience in over half of the district courts has confirmed that limitations on the number of interrogatories are useful and manageable.").

[39] Kakalik, *Analyzing Discovery Management Policies, supra* note 7, at 27 ("Our analysis lends support to the policy of limiting interrogatories as a way to reduce lawyer work hours and thereby reduce litigation costs.").

[40] Special Comm. of the ABA Section of Litigation, *Civil Procedure in the 21st Century, supra* note 22, at 13 ("No party may propound any contention interrogatory unless all parties agree or by court order."); Rennie, *The End of Interrogatories , supra* note 21, at 263 ("Interrogatory practice does nothing to advance the goals of the Federal Rules of Civil Procedure, and instead, contributes to the popular dissatisfaction with the American justice system both in the legal community and the public at large").

[41] NCSC, *New Hampshire Pilot Rules, supra* note 19, at 2 (limitation of interrogatories to 25 "were put in place in light of the amount for information that parties are now entitled to under [rule changes including initial disclosures], which are expected to greatly reduce the amount of discovery needed to prepare for trial.").

Requests for admission

In general, less discovery activity should mean lower costs. Limiting the number of requests for admission should mean less discovery activity, and will force parties to be more efficient with the admission requests they have available.[42] As noted, respondents to the Task Force's survey considered requests for admission (along with interrogatories) one of the least effective forms of discovery, as well as one susceptible to abuse.

Depositions of fact witnesses

"Restrictions on the number of or length of depositions with option to obtain more by court leave" were supported by a majority of respondents to the Task Force's survey. The Task Force also noted that while respondents overwhelmingly considered depositions *extremely effective* or *very effective* tools for justly resolving disputes, depositions are also the most expensive method of discovery.[43] In general, less discovery activity should mean lower costs. Limiting the number of hours of depositions should mean less discovery activity, and will force parties to be more efficient with the deposition hours they have available.[44] An hour-based limitation (instead of limiting the number of depositions) will provide parties with greater flexibility to take more, shorter depositions or fewer, longer depositions depending on the needs of the case.[45] The number of hours allowed at each tier should be sufficient for most cases. The goal is for parties to be thoughtful and efficient in how they conduct discovery.

[42] Special Comm. of the ABA Section of Litigation, *Civil Procedure in the 21st Century*, *supra* note 22, at 13 ("A party may serve no more than 35 requests for admission, including subparts, under Rule 36 unless all parties agree or by court order.").

[43] Willging, *et al.*, *An Empirical Study of Discovery and Disclosure Practice*, *supra* note 22, at 576 (finding that "depositions accounted for about twice as much expense as any other discovery activity").

[44] IAALS & ACTL, *Final Report*, *supra* note 6, at 10 (suggesting numerical limits such as "only 50 hours of deposition time"); NCSC, *New Hampshire Pilot Rules*, *supra* note 19, at 2 ("PR 4 restricts ... the number of hours of depositions to 20 hours).

[45] The hours limitation is modeled after the Utah Rules of Civil Procedure. The comments to Utah Rule 26(c) state "[d]eposition hours are charged to a side for the time spent asking questions of the witness. In a particular deposition, one side may use two hours while the other side uses only 30 minutes"; *see also* R. of Superior Ct. of N.H. Applicable in Civ. Actions, Rule 26, Depositions ("[A] party may take as many depositions as necessary to adequately prepare a case for trial so long as the combined total of deposition hours does not exceed 20 unless otherwise stipulated by counselor ordered by the court for good cause shown.").

Depositions of experts

In general, less discovery activity should mean lower costs. Limiting the number of depositions for experts, and their length, should mean less discovery activity, and force parties to be more efficient with the expert deposition hours they have available. Given the breadth of the expert disclosures, this number of hours for a deposition of the expert was thought to be sufficient.

8. E-discovery

a. Current practice

The current Washington Court Rules have incorporated federal e-discovery rules in CR 34, and parts of CR 26.

b. Recommendation

Rule changes

The federal rule amendments should be incorporated into the Washington Court Rules: amendments to CR 26 (discussing discovery of inaccessible data) and amendments to CR 37 (regarding sanctions for the deletion of electronically stored information (using the form of the new proposed amendments to the federal rules). Because the Task Force decided against requiring an early judicial conference as in Federal Rule of Civil Procedure 16(b), language in that rule relating to electronically stored information will not be added to CR 16. CRLJ 26 will be amended to follow the changes made to CR 26.

Protocol

The courts will promulgate a protocol and proposed order on electronically stored information, consistent with the Model Agreement re: Discovery of Electronically Stored Information used by the federal courts of the Western District of Washington.

c. Reasons

The federal amendments have been relatively successful in lowering litigation costs associated with electronic discovery in federal court.[46] Other jurisdictions (federal and state) implementing protocols similar to the one recommended by the Task Force have reported beneficial results.[47] Other recommendations of the Task Force—case schedules;

[46] Lee & Withers, *Survey of United States Magistrate Judges*, *supra* note 18, at 202 ("The responses [to a survey of magistrate judges] indicate that, by and large, the [e-discovery] rules are working to achieve the 'just, speedy, and inexpensive determination of every action' as dictated by Rule 1 of the Federal [Civil Rules]").

increased judicial management; the Rule 26(f) conference; proportionality—should also improve the course of e-discovery.[48]

9. Motions practice

a. Current practice

In most counties, even the simplest of motions require counsel to appear for oral argument. In King County Superior Court, most non-dispositive motions are decided without oral argument.

b. Recommendation

The Task Force recommends that non-dispositive motions in superior or district court be decided without oral argument. Oral argument will only be permitted in the following instances:

- Motions in superior court for revision of a commissioner's rulings, other than rulings regarding involuntary commitment and Title 13 proceedings (juvenile offenders);
- Motions for temporary restraining orders and preliminary injunctions;
- Family law motions;
- Ex parte and probate motions;
- Motions where court grants a party's request for oral argument.

[47] Iowa Civil Justice Reform Task Force, *Reforming the Iowa Civil Justice System, supra* note 10, at 46 ("The Task Force recommends that the bar, through the Iowa State Bar Association, develop a best practices manual for electronic discovery in civil litigation. This could address the issues of identification, scope, and preservation of electronically stored information likely to be involved in specific types of civil cases."); Thomas Y. Allman, *Local Rules, Standing Orders, and Model Protocols: Where the Rubber Meets the (E-Discovery) Road,* 19 Rich. J.L. & Tech. 8, 38 (2013) ("At least thirty-two districts, however, have acknowledged the discovery of electronically stored information in civil litigation. Of these districts, seven merely make passing reference to e-Discovery in their local rules. Another twelve districts emphasize e-Discovery topics deemed most worthy of attention at Rule 26(f) conferences. Nine districts, as well as others using model orders, have adopted pragmatic solutions that address gaps in the Amendments more aggressively. At least five additional districts have released non-binding guidance for parties on the topic of e-Discovery.").

[48] *See* The Sedona Conference Cooperation Proclamation: Resources for the Judiciary 9 (2014) (Public Comment Version) (making similar recommendations).

c. Reasons

Even brief oral arguments require an attorney to prepare, travel, wait in the court, present argument, and then return back to their office. Oral arguments also consume limited court time that could be dedicated to trial work. These costs can be avoided by allowing some motions to be decided on the pleadings alone. King County Superior Court and the U.S. District Courts of both of Washington's federal districts resolve most non-dispositive motions without requiring oral argument for non-dispositive motions.[49] Not requiring oral argument for all motions will also help make district court a more attractive forum for civil cases.

The Task Force's recommendation is based on King County Superior Court's Local Rule LCR 7(b)(3).

10. Pretrial conference

a. Current practice

The current civil rules do not provide statewide standards for trial management. CR 16 provides that a superior court may, in its discretion, hold a hearing on the conduct of trial. Trial management tends to be on a case-by-case basis, either based on the general practices of the trial court judge, or prompted by party objection.

b. Recommendation

The Task Force recommends the parties in superior court civil cases be required to prepare a joint Trial Management Report, except in cases where a domestic violence protection order or a criminal no-contact order has been entered between parties. The report will include:

- The nature and a brief, non-argumentative summary of the case;
- A list of issues which are not in dispute;
- A list of issues that are in dispute;
- Suggestion by either party for shortening the trial, including time limits for presenting each party's case at trial, and limits on the number of expert witnesses per part or per issue;
- An index of exhibits (excluding rebuttal or impeachment exhibits);
- A list of jury instructions requested by each party; and

[49] *See* King County LCR 7(b)(3); Local Rules W.D. Wash. LCR 7(b)(4); Local Rules E.D. Wash. LCR 7(h)(3)(C).

- A list of names of all lay and expert witnesses excluding rebuttal witnesses.

The discretionary hearing currently available under CR 16 will remain available if the parties cannot reach an agreed report, if one of the parties refuses to cooperate, or if there is a domestic violence protection order or a criminal no-contact order entered between parties. After receiving a trial management report or holding a hearing, the court will enter a Pretrial Order as provided in CR 16.

c. Reasons

Trial may be the single most expensive and time consuming aspect of litigation.[50] Perhaps for this reason, the number of civil jury trials is decreasing.[51] But because having a jury of your peers make a determination of the facts of a case has long been the backbone of the American civil justice system,[52] there will be a loss to our society if this method of resolving disputes between people is lost due to the sheer expense to the parties.[53] It is also an access-to-justice issue—if the common man or woman cannot afford entry to the courtroom, they are denied access to the core of our justice system.

[50] *See* Paula Hannaford-Agor & Nicole L. Waters, NCSC, Estimating the Cost of Civil Litigation 7 (2013) ("For all case types, a trial is the single most time-intensive stage of litigation, encompassing between one-third and one-half of total litigation time in cases that progress all the way through trial.").

[51] "According to state court disposition data collected by NCSC from 2000 to 2009, the percentage of civil jury trials dropped 47.5% across the period to a low 0.5% in 2009." IAALS & ACTL, A Return to Trials: Implementing Effective Short, Summary, and Expedited Civil Action Programs 1 n.1. (2012); *see also* Marc Galanter & Angela Frozena, Pound Civil Justice Inst.: 2011 Forum for State Appellate Court Judges, The Continuing Decline of Civil Trials in American Courts 2 (2011) ("The recent data on civil trials can be summed up in two stories: no news and big news. The no news story is that the trend lines regarding the decline of trials are unchanged. The big news story is that the civil trial seems to be approaching extinction.").

[52] The federal constitution directs that the right to a jury trial shall be preserved, U.S. Const. amend. VII, and our state constitution declares that right "inviolate," Const. art. 1, § 21. *See also Parsons v. Bedford*, 28 U.S. 433, 466 (1830) ("The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into, and secured in every state constitution in the union .... As soon as the [U.S. C]onstitution was adopted, this right was secured by the seventh amendment of the constitution proposed by congress; and which received an assent of the people so general, as to establish its importance as a fundamental guarantee of the rights and liberties of the people.").

[53] "The decline in jury trials has meant fewer cases that have the benefit of citizen input, fewer case precedents, fewer jurors who understand the system, fewer judges and lawyers who can try

Requiring parties to consider limiting the length of trial, the number of witnesses, and focus on the issues actually in dispute, will encourage shorter, less costly, and therefore more available trials. Reducing the number of expert witnesses in particular should decrease costs, both in trial and preparation time. In the Task Force's survey, nearly half of the respondents considered expert witness expenses as a driving force of rising litigation costs, and limiting experts was one of the respondents' most-volunteered solutions.

The Task Force considered imposing presumptive limits on time available to the parties to present their case at trial and on the number of expert witnesses available to each party. However, the Task Force ultimately decided this would take too much away from the court's discretion. Presumptive limits would also not take into account a case's particular facts and needs. Instead, the Task Force decided to require the parties to consider adopting limits voluntarily, subject to the court's approval. This will engage the parties in the task of containing trial cost while preserving judicial discretion and authority to manage the courtroom.

11. District court

a. Current practice

District courts' civil jurisdiction includes damages for injury to individuals or personal property and contract disputes in amounts up to $75,000. CrRLJ 3.3(a)(2) gives precedence to scheduling criminal trials over civil trials, and many district courts also hear criminal motions before civil motions. Aside from criminal cases, many of the cases filed in district court are infractions, collection actions, or domestic violence or anti-harassment protection orders.

b. Recommendation

Many recommendations already discussed affect district court:

- Initial case schedule issued on filing, with a 6-month period from filing to trial, except in categories of cases as determined by individual county[54];
- Mandatory early discovery conference[55];
- Mandatory initial, expert witness, and pretrial disclosures except for categories of cases exempt from initial case schedules[56];

jury cases—and overall, a smudge on the Constitutional promise of access to civil, as well as criminal, jury trials." IAALS & ACTLA, *A Return To Trials, supra* note 51, at 1.

[54] *See supra* pages 16–18.

[55] *See supra* pages 22–25.

- Principles of proportionality and cooperation incorporated into discovery rules[57];
- Number of interrogatories allowed without prior court permission of the changed to 15, including discrete subparts[58];
- Remainder of federal e-discovery rules incorporated into state rules[59]; and
- Non-dispositive motions decided on the pleadings, unless the court permits oral argument.[60]

The Task Force additionally recommends extending the district court's jurisdiction to include claims up to $100,000. District court jurisdiction should also expand to include unlawful detainer proceedings under Chapter 59.12 RCW and anti-harassment protection orders involving real property, so long as the disputes remain within the proposed $100,000 jurisdictional limit.

c. Reasons

District court is sometimes perceived as inhospitable to civil litigation and is an underused civil litigation forum. According to responses to the Task Force's survey, though over half of respondents reported that over 20 percent of their civil litigation cases involved amounts under $50,000—within the district court jurisdictional limit—the overwhelming majority, 85 percent, conducted less than a fifth of their civil litigation in district court.

The Task Force believes district courts can offer an expedited and less costly alternative to superior courts for some cases. Its recommendations will make district court a more viable and affordable forum for civil litigation: case schedules will keep litigation moving and focus attorney efforts; early discovery conferences, mandatory disclosures, and discovery limits will streamline discovery and reduce discovery abuse; eliminating the need for oral argument will greatly reduce the costs of motions practice. Raising the jurisdictional limit will also make district court more attractive to categories of cases such as landlord–tenant disputes, or where defendants carry insurance policies of $100,000.

[56] *See supra* pages 25–29.

[57] *See supra* pages 29–32.

[58] *See supra* page 33.

[59] *See supra* pages 36–36.

[60] *See supra* pages 37–38.

12. Alternative dispute resolution

a. Current practice

Mediation

Litigants who engage in mediation mostly (but not invariably) do so in the form of a "summit conference"—late in the case, after discovery has been completed, sometimes on the eve of trial. To make mediation sessions more productive, mediators regularly engage in pre-session contact with attorneys or parties. District courts in Clallam, King, Pierce, Thurston, and Skagit County require pretrial settlement or mediation conferences.

Private arbitration

Private arbitration is entered into by contract between the parties. Arbitration has increasingly come to resemble full-scale litigation in terms of time and expense. As with civil litigation, much of the cost increase comes from expanding discovery practices.

Mandatory arbitration

The Mandatory Arbitration Act, Chapter 7.06 RCW, and the Mandatory Arbitration Rules make civil cases involving claims of $50,000 or less subject to arbitration.

b. Recommendation

Mediation

The Task Force recommends requiring mediation in superior court cases before completing discovery unless the parties stipulate that mediation would be inappropriate, or one or more parties show good cause. Parties seeking to avoid mediation, or delay mediation until after discovery, will need to file their stipulation or reasons for good cause after holding the Rule 26(f) discovery conference. Unless the court then waives the requirement, the parties will be required to mediate no later than 60 days of completing depositions of the respective parties, or 60 days before the start of trial, whichever is sooner.[61] Unless excused by the court, all parties attending mediation must have in attendance a person with full settlement authority.

The recommended mediation deadline falls earlier than eve-of-trial summit mediation, but even earlier mediation may be possible and beneficial in many cases. The Task Force supports approaching the various WSBA sections about developing standards for the timing of early mediation within their respective practice areas.

The Task Force also recommends promulgating a set of suggested mediation practices:

- Parties should consider engaging in mediation at an earlier stage than required by the rules. Certain types of cases typically require little discovery. Very early mediation can be fruitful in such cases.
- Parties should consider engaging in limited-scope mediation focused on specific issues:
    - Even when there is little possibility of settling all issues in a dispute, or of settling issues before conducting discovery, the parties should consider mediating particular issues that might be resolved.
    - In cases where discovery is likely to be extensive or contentious, the parties should consider mediating the scope and conduct of discovery.
- Parties and mediators should consider varying the format of mediation, depending on the needs of the case and disposition of the parties:
    - Conducting mediation as a series of sessions rather than a one-day event; or

[61] Settlement conferences will continue to be available in all cases, including after the deadline for mandatory mediation has passed.

- Using shuttle-style mediation, in which the mediator meets with the parties individually, to identify areas of potential settlement before the parties' positions are entrenched.

- Mediators should consider pre-session meetings, in person or by phone:
  - With counsel; or
  - With counsel and client.

Private arbitration

The Task Force recommends promulgating a set of suggested arbitration practices:

- The arbitrator should identify the scope of arbitration with input from the parties.
- Parties should consider limiting or eliminating the length and number of depositions and the extent of expert discovery.
- Parties should consider voluntarily narrowing the scope of arbitration at outset. For example, selecting a single arbitrator; conducting focused single-issue arbitration; establishing specific limitations on relief.
- If not already contractually agreed among the parties, arbitrators should consider scheduling planning and coordinating meetings upon selection to set the terms and conditions of the arbitration process.
- The following topics should be addressed in the arbitration contract. If they are not, the arbitrator or panel should address them in early rulings:
  - Whether there is a challenge to arbitration;
  - Whether arbitration should be global, addressing and resolving all issues, or whether its scope should be limited to one or more specific issues;
  - What procedural rules will govern conduct and location of proceedings (for example, AAA, JAMS, JDR, or some other protocol);
  - What limits will be placed on discovery, for example, lay-down discovery or e-discovery rules. Without some discovery limits, there is little difference between arbitration and full-scale litigation;
  - What jurisdiction's substantive law will govern resolution of the dispute;
  - Whether mediation is required either before arbitration or early in arbitration, and if so on what schedule;
  - What interim relief, if any, will be available, whether injunctive or otherwise;
  - Whether to allow expedited electronic exchange of briefs, submittals, and other documents;

- Whether to allow pre-hearing motions for summary judgment or partial summary judgment;
- What timing should be required for the arbitration process: (1) mandate either to conduct or consider early mediation; (2) date(s) to commence and complete discovery; (3) date for final coordinating conference prior to hearing on the merits; (4) date to commence hearing on the merits; (5) duration of the hearing day, and possible imposition of time limits on presentation of evidence and argument; and
- Final award: (1) time limit on the arbitrator or panel between completion of hearing and issuance of award; (2) form of award (basic, reasoned, or detailed findings and conclusions), including a specific statement if the parties do not want a compromise or "split the baby" award; (3) what permanent relief may be granted (legal or equitable); (4) whether to allow award of costs and fees; and (5) whether to allow judicial review.

Mandatory arbitration

The Task Force makes no recommendation as to mandatory arbitration. Mandatory arbitration will continue to be available to parties in superior court civil cases involving claims of $50,000 or less.

c. Reasons

Mediation

Early mediation offers benefits both over litigation and late-stage mediation.[62] When the ADR Subcommittee surveyed Washington State mediators, it found that parties who

[62] Judicial Council of Calif., Admin. Office of the Courts, Evaluation of the Early Mediation Pilot Programs (2004) (finding that, in a 30-month study of five early mediation programs, each program decreased the trial rate, the time to disposition, the litigants' costs, and the courts' workload; while increasing the litigants' satisfaction with the dispute resolution process); Donna Stienstra, Molly Johnson & Patricia Lombard, Fed. Judicial Ctr., Report to the Judicial Conference Committee on Court Administration and Case Management: A Study of the Five Demonstration Programs Established Under the Civil Justice Reform Act of 1990 at 235–36 (1997) (finding that cases in a mandatory early assessment and mediation program reduced the average disposition time by two months and estimated litigation costs by $15,000 per party over cases participating in optional mediation); John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolutions*, 24 Ohio St. J. on Disp. Resol. 81, 101 (2008) ("Time and cost savings are presumably related to the time in the process when parties begin mediation because cases that start mediation late in litigation have less time and money to "save" compared to the normal litigation process.").

engaged in early mediation realized significant savings: costs associated with discovery, trial preparation, and expert witnesses could be largely avoided. Those parties also avoided other negative effects of undergoing litigation—often a stressful and disruptive process—by shortening the time between the emergence of a problem and finding a solution.

Respondents to the Task Force's survey rated depositions as the most effective form of discovery for resolving disputes: 22.1 percent rated it *extremely effective*, and the combined total for *effective*, *very effective*, and *extremely effective* was 92.1 percent. After party depositions, both sides should have enough information to mediate effectively.[63]

The Task Force recommends mediation after party depositions because such depositions can occur before the bulk of other discovery costs have accrued, yet are highly effective at clarifying and resolving factual issues. This should not be viewed as an authoritative definition of early mediation, but rather as a date on which some of the benefits of truly early mediation may still be realized. Because the time at which early mediation will be most fruitful will vary depending on the type of case, the individual WSBA sections will be best positioned to develop guidelines about what early mediation means to their respective members.

Pre-session contact is a growing trend among mediators. More than half the mediators interviewed by the ADR Subcommittee reported that they regularly engaged in such contact, which helps familiarize the mediator with the facts and disputes, focus the attorneys on key issues, and lower barriers to resolution. As a result, the pre-session contact made actual mediation likelier to bring resolution. Breaking mediation into a series of short meetings can likewise increase the effectiveness of mediation by allowing more time for both sides to consider the issues, instead of concentrating the mediation process into a single high-stakes event.

Private arbitration

Arbitration's traditional advantage over civil litigation, reduced time and expense, has been eroded by the expanding scope of discovery in arbitration. Streamlining the typical arbitration would make the practice more efficient and attractive. However, private arbitration is a contractual affair between the parties, into which the Bar has little

[63] Mediation need not wait until the parties have complete information. A vast majority (from 76–89 percent, depending on the jurisdiction) of attorneys in cases within federal ADR demonstration programs reported that the first ADR contact (mostly mediation) occurred "at about the right time"—despite the fact that the cases were referred to ADR at very different stages. Stienstra, *et al.*, *Study of the Five Demonstration Programs*, *supra* note 62, at 20.

authority to intrude. For that reason, the Task Force recommends creating a series of best practices to which arbitrators and arbitrating parties can refer. These practices are based on the professional experience of the members of the ADR Subcommittee, as well as input from experienced arbitrators and lawyers who frequently participate in arbitration.

Mandatory arbitration

The mandatory arbitration rules were intended to give parties in low-stakes cases access to a trial-like procedure. However, the Task Force's recommendations will increase parties' access to relatively quick and affordable trials, by making the district courts more attractive to litigants and by introducing Tier 1 in superior court. Parties may choose to forgo mandatory arbitration once these other options become available. Further, currently courts and parties incur significant expenses because of de novo appeals from mandatory arbitration. At this point the Task Force cannot predict to what extent parties will continue to access mandatory arbitration. The Task Force therefore makes no recommendation at this time.

Conclusion

Courts, litigants, and lawyers across the country are faced with escalating litigation costs. Litigants may lose access to the civil justice system if they cannot afford to vindicate or defend their rights in court.

Washington is not the first state to recognize the problem, nor the first jurisdiction that has decided to address it. The Task Force has benefited from the lessons learned, and the choices made, by similar task forces from outside Washington. Equally important, the Task Force has drawn on the experience and opinions of the judges, lawyers, and other knowledgeable parties whom it interviewed, surveyed, and met with—and of those who have agreed to serve as members. This report, and the recommendations it contains, rests on this broad base of practical knowledge.

The Task Force's recommendations aim to make our courts affordable and accessible while preserving the paramount goal of justly resolving disputes. Some of the recommendations are bold, some minor; none are made lightly. They are the result of four years of study and deliberation.

The ultimate success of these recommendations, should the Board of Governors approve, will depend on buy-in by the bench and bar. The Task Force urges the Board not only to adopt these recommendations, but to help educate the judges and lawyers who will be responsible for making the recommendations a reality. One of the recommendations relates to the principles of proportionality and cooperation, and these two principles infuse the entirety of the Task Force's work. Controlling litigation costs means making those costs proportional to the issues from which litigation arises. Achieving proportionality, or taking steps towards that goal, will take the cooperation of all of us who work in and use our state's courts. Only together can we ensure that justice is available for all.

The following Judges have applied for the position on the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) Court User Work Group (CUWG):

1. Judge Tam Bui – Snohomish District Court
2. Judge David Larson – Federal Way Municipal Court
3. Judge Aimee Maurer – Spokane District Court
4. Judge Linda W.Y. Coburn – Edmonds Municipal Court
5. Judge Brian Sanderson – Yakima District Court
6. Judge Matthew Williams – King County District Court

The following are e-mails from Judges interested in the CUWG Position:

1. **Judge David Larson**

Sharon: I am interested in serving on the CUWG. However, I would rather be honest and not get the appointment than fool you into believing that I will just fall in lock-step with the prevailing view. With that said...my hope is that my court will be a direct user of the new CLJ-CMS, but we are currently developing a CMS that will operate parallel to JIS that will do more than outlined below (i.e. we will be able to do more than "...enable courts and probation departments to more quickly and efficiently manage cases"). We will continue to enter all of the same elements that we have been entering in JIS with our new system so we are in no way abandoning JIS. However, our new system will allow efficiencies for the court, probation, prosecutors, and the defense attorneys that appear in our court by offering document automation, paperless files, and business rules that automate scheduling and other court functions. It will also allow lawyers and defendants to set up accounts that will let them interact with cases and create documents. I would hope that my appointment to the CUWG would bring these same efficiencies to the new CLJ-CMS system, but I may not be the right person if the new CLJ-CMS will only assist the courts/probation in being more efficient. My court would actually lose key capabilities if the new CMS-CLJ did not allow all end-users to be efficient. I am also on record supporting the development of a data exchange that would allow different systems to communicate with the new CLJ-CMS. I continue to hold the belief that this should be an essential element of any new CLJ-CMS so I may not be the right person if that voice is not desired on the CUWG.

I will not be available for the meeting on February 25th and I will be out of town the week of March 23rd if that makes a difference too.

Thank you.

Judge David Larson
Federal Way Municipal Court

2. **Judge Linda Coburn**

Hi Sharon,

If there is any possibility the monthly meetings are changed so that they fall on days other than Wednesdays, I would very much like to join this group. Wednesdays are my big court calendar days and includes motions hearings so it is difficult for me to miss that day so often. It sounds like this is a well-established group with a schedule that has worked for current members, but I thought I would respond as an FYI.

Judge Linda W.Y. Coburn
Edmonds Municipal Court
250 Fifth Avenue North
Edmonds, WA 98020
425-771-0211

3. **Judge Brian Sanderson**

Hello Sharon,

I am interested in volunteering as a member of the CUWG. If appointed, I can attend the February 25, 2015 meeting. I will try to call you to obtain more information.

Thank you,

Brian Sanderson

From: Harvey, Sharon [mailto:Sharon.Harvey@courts.wa.gov]
Sent: Friday, February 06, 2015 4:12 PM
To: Brian Sanderson
Cc: Steiner, David
Subject: RE: CUWG

Judge Sanderson,

Thank you for your interest in the CUWG position and for your telephone call today. I would also like to thank you for sharing your technology experience. We will be sure to contact you as soon as a decision has been made for the CUWG position. Have a wonderful weekend.

Sharon R. Harvey
Court Association Coordinator
Office of Trial Court Services and Judicial Education
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170
(360) 705-5282
Sharon.Harvey@courts.wa.gov

Sharon,

It appears that service on the CUWG would require me to miss two days of court a month for the next five years. I am concerned that our budget may not be able to handle my absence. Does AOC reimburse for Pro Tem coverage?

Brian Sanderson

4. **Judge Tam Bui**

I am interested and willing to give time to participate.

Tam Bui, Snohomish County District Court
425-388-3598

5. **Judge Matthew Williams**

I would like to volunteer to serve as part of this work group.

As you know, I was the moderator of our Plenary Session on Technology and Court Management Systems at the 2012 Spring Conference. I've been directly involved in the creation and development of case management and document management systems with state and federal agencies as well as in the private sector.

I would appreciate the opportunity to serve our community as part of this Work Group.

Matthew Williams
Judge, King County District Court
Matthew.williams@kingcounty.gov
206-477-0477

6. **Judge Aimee N. Maurer**

Ms. Harvey: I would be interested in participating in the volunteer position for the DMCJA Court User Work Group. If you would send me some information regarding this opportunity I would be very grateful. Should you have any questions or concerns, please do not hesitate to contact me.

Best Regards,
Aimee N. Maurer
Spokane County District Court Judge

Courts of Limited Jurisdiction Case Management System Project
Court User Work Group Charter

Last Revised: June 26, 2014

ADMINISTRATIVE OFFICE OF THE COURTS
1206 Quince Street SE • P. O. Box 41170 • Olympia, WA 98504-1170
360-753-3365 • 360-586-8869 • www.courts.wa.gov

Contents

1 Introduction

The Courts of Limited Jurisdiction wish to acquire and implement at a statewide level, a commercially available off-the-shelf court case management system to replace the aging District Court Information System (DISCIS) aka Judicial Information System (JIS). On April 25, 2014, the Judicial Information System Committee (JISC) authorized the project and the formation of the CLJ Project Steering Committee and the CLJ Court User Work Group (CLJ-CUWG) to establish an effective project governance structure ensure a successful project.

The CLJ-CUWG will serve as subject matter experts on court business processes, court operations, and the use of the DISCIS/Judicial Information System (JIS) for the purposes of defining and implementing the court's desired business processes and requirements through a case management system.

2 Purpose

The CLJ-CUWG is needed to support the project by providing guidance and essential information regarding the court's business processes and requirements. The CLJ-CUWG will work closely with AOC's Court Business Office (CBO) and the CLJ project's business analysts to capture and document the desired processes to be implemented via a new case management system.

The CLJ-CUWG will be a decision making body in regard to the court's business processes and requirements, ensuring that the process and requirements being captured are complete and accurate.

The CLJ-CUWG will strive to identify opportunities to establish common court business processes that could be packaged and configured as a model for deploying a new case management system across the state.

The CUWG will also need to provide insight on potential impacts, opportunities, and constraints associated with the transition to a new case management system.

The CLJ-CUWG will need to exist throughout the duration of the CLJ-CMS project to provide consistency.

3 Sponsor

The Judicial Information System Committee (JISC) is the sponsor for the formation of the CUWG.

4 Guiding Principles

The CLJ-CUWG will be guided by the following principles:

- Members will have a statewide and system-wide view of court operations, and shall pursue the best interests of the court system at large while honoring local decision making authority and local practice.

- Members will make timely decisions as needed to successfully implement a statewide solution.
- Members will be open to changing practices where it makes sense.
- Members will not avoid or ignore conflicting processes, requirements, and stakeholder views, and will proactively discuss and resolve issues.
- Members will strive to build a healthy and collaborative partnership among the court stakeholders, the AOC, and vendor representatives that is focused on providing a successful outcome.
- Members will ensure the CLJ-CMS Project Team complete and document validated court functions and processes to arrive at a complete understanding of the current and desired future state of court business processes.
- Members will work to understand the features and capabilities of the new case management system.
- Members will fulfill a leadership role in communicating with their peers about issues and decisions.
- Members will be guided by the Access to Justice Technology Principles.

5 Decision Making and Escalation Process

The CLJ-CUWG should work towards unanimity, but make decisions based on majority vote. Decisions made by the CLJ-CUWG are binding. Issues that are not able to be resolved by the CLJ-CUWG will be referred to the CLJ-CMS Project Steering Committee for resolution. Any issue that cannot be resolved by the CLJ-CMS Project Steering Committee and will materially affect the project's scope, schedule or budget, will be referred to the Judicial Information System Committee (JISC) for a final decision.

6 Membership

The CUWG will include representatives from the District and Municipal Court Judges' Association (DMCJA), the District and Municipal Court Management Association (DMCMA), the Misdemeanant Corrections Association (MCA), the Administrative Office of the Courts (AOC), the Washington State Bar Association (WSBA), and the Access To Justice (ATJ) Board.

Membership from the court should include a cross section of different geographic locations and court characteristics (district court, municipal court, court size, rural, metropolitan, etc.).

The CLJ-CUWG will be comprised of 15 total members of which only 11 are voting members who are direct users of the system and 4 are non-voting members.

The voting members will be appointed by the following associations and organizations:

- 2 members from the District and Municipal Court Judges' Association (DMCJA)
- 5 members from the District and Municipal Court Management Association (DMCMA)
- 2 members from the Misdemeanant Corrections Association (MCA).
- 2 members from the Administrative Office of the Courts (AOC).

The 4 non-voting members will be appointed by the following associations and organizations:

- 1 representative from the DMCMA from a court that has not expressed an intent to use the statewide case management solution provided by AOC.
- 1 representative from the DMCJA from a court that has not expressed an intent to use the statewide case management solution provided by AOC.
- 1 representative from Washington State Bar Association (WSBA).
- 1 representative from the Access to Justice Board (ATJ).

Non-voting members are encouraged to provide subject matter expertise and input into the decision making process. Other subject matter experts may be invited to provide additional detailed information to support and inform the decision making process.

All CLJ-CUWG members should have deep knowledge of court functions, business processes, and business rules in the following areas:

- Manage Case
  - Initiate case, case participant management, adjudication/disposition, search case, compliance deadline management, reports, case flow lifecycle
- Calendar/Scheduling
  - Schedule, administrative capabilities, calendar, case event management, hearing outcomes, notifications, reports and searches
- Entity Management
  - Party relationships, search party, party management, reports and searches, administer professional services
- Manage Case Records
  - Docketing/case notes, court proceeding record management, exhibit management, reports and searches
- Pre-/Post Disposition Services
  - Compliance, access to risk assessment tools, reports and searches
- Administration
  - Security, law data management

7 Membership Terms

CLJ-CUWG members must be consistent to maintain continuity and minimize risk. Members are expected to attend all meetings for the duration of the project. If a member is not able to attend a meeting, the member must delegate an alternate or proxy from their association in advance and notify the AOC CBO.

Organization	Member(s)	Alternate(s)
District and Municipal Court Judges' Association	Judge R.W. Buzzard, Lewis County District Court Judge Patricia Connolly Walker, Spokane County District Court (non-voting) Judge Donna Tucker, King County District Court	
District and Municipal Court Management Association	Ms. Suzanne Elsner, Marysville Municipal Court, Ms. Paulette Revoir, Lynnwood Municipal Court Ms. Amy Shaffer, Tukwila Municipal Court Mr. Maury Baker, Kitsap County District Court Ms. Karen Carr, Pierce County District Court (non-voting) Ms. Leanna Young, King County District Court	
Misdemeanant Corrections Association	Mindy Breiner, Tukwila/SeaTac Municipal Probation Services Kristine Nisco, Pierce County District Court Probabtion Department	
Administrative Office of the Courts	Eric Kruger, Information Services Division Michelle Pardee,	

Organization	Member(s)	Alternate(s)
	Judicial Services Division	
Washington State Bar Association	TBD	
Access to Justice Board	TBD	

8 Roles and Responsibilities

JISC – The JISC shall authorize the creation of the CUWG and is the final authority when issues are escalated by the CLJ-CMS Project Steering Committee that affect scope, budget and/or schedule.

CLJ-CMS Project Steering Committee – The project steering committee will establish the CLJ-CUWG charter and provide overall guidance and decision making authority on issues that are not resolvable at the CLJ-CUWG level.

Associations – The various associations will select members to represent them on the CLJ-CUWG.

CLJ-CUWG Members – The CLJ-CUWG members will actively participate in court business process discussions, make timely decisions, and complete assignments as needed to accomplish business process initiatives, improvements, and standardization.

- Identify common court business processes that could be packaged and configured as a model and used for deployments to courts with similar characteristics
- Identify opportunities to refine court business processes through review, analysis and continuous process improvement
- Must be open to new ideas and new ways of doing things
- Ensure that court business processes and requirements are complete, accurate and documented
- Provide insight on potential impacts, opportunities, and constraints associated with transforming court business processes and transitioning to new systems.
- Advocate for the agreed-upon process change, innovation, and standardization
- Advocate for and communicate decisions and changes to their staff, colleagues, associations, and coworkers

Court Business Office – The CBO staff will facilitate the CLJ-CUWG meetings and work collaboratively with the CUWG, vendor representatives, and others in AOC in identifying common court business processes that could be packaged and

configured as a model for deploying a new case management system across the state. CBO staff will regularly report to the JISC on the activities of the CUWG.

CLJ-CMS Project Team – The project team is responsible for providing the project plan, executing the project activities, and making decisions at the project level that do not have a significant impact on the overall schedule, scope, and budget. Additionally, the project team will provide analysis and documentation to support the CUWG, the project steering committee and/or sponsors for business decision processing when the decision cannot or should not be made at the project level.

AOC CLJ-CMS Project Sponsors (State Court Administrator, Information Services Division Director and Judicial Services Division Director) – The project sponsors make non-policy decisions that have an impact on the scope, schedule or budget for the CLJ-CMS project and provides analysis to the AOC and the CLJ-CUWG to support the decision making process when escalated to the CLJ-CMS Project Steering Committee.

9 Meetings

- The CLJ- CUWG shall hold meetings as necessary by the project schedule and associated deliverables.
- Travel expenses shall be covered under the project budget.
- There must be a quorum of 6 voting members present to hold a vote; 1 from the DMCJA, 3 from the DMCMA, 1 from the MCA, and 1 from the AOC.
- If a voting member is not available, proxy voting is allowed.

Meeting Frequency:

- Meetings will be scheduled as needed, but are expected to be monthly.
- The meeting will be held in-person at AOC's SeaTac facility or a designated alternate facility.
- Meetings will begin promptly at 8 a.m.
- It is expected that each meeting will last up to 6 hours.
- Voting members will be mandatory attendees on meeting schedule notices and every effort will be made to avoid scheduling conflicts.
- Subject matter experts brought to the meeting by the members – to provide expert information on a specific topic – will be identified in advance to ensure that they are included on the agenda and receive meeting materials.
- AOC's CBO will facilitate the meetings and will be responsible for providing the members pertinent meeting information and artifacts at least 3 days before the scheduled meeting.

Decisions:

- The CLJ-CUWG will use the majority voting model.
- Voting members who disagree or have concerns with a decision must articulate the reasons for the conflict and concern. The concerns will be documented by the

CBO and the work group will strive to answer and address the conflict until all members are comfortable with the direction to move forward.

- If all options have been explored by the group and a clear impasse exists, the issue will be directed to the CLJ-CMS Project Steering Committee for direction and decision.
- Decisions must be made in a timely manner to ensure the successful progression of the project activities dependent on the completeness and accuracy of the business processes and requirements.
- All decisions that materially impact scope, schedule or budget of the project will be automatically escalated to the CLJ-CMS Project Manager to follow the established governance process.

10 Budget

There is no designated funding for the CLJ project in the current biennium. All project resources for the initial phase of this project will be provided using internal AOC staff. Staffing is dependent on current workloads and staff availability. Future phases of the project are dependent on funding from the legislature.

11 Signatures

Date 7/9/14

Callie T. Dietz
Washington State Court Administrator
Administrative Office of the Courts

Date 7-1-14

Honorable Veronica Alicea-Galvan
President
District and Municipal Court Judges Association
(DMCJA)
Judge
Des Moines Municipal Court

Date 7-1-14

Aimee Vance
President
District and Municipal Court Management Association
(DMCMA)
Administrator
Kirkland Municipal Court

Date 7-3-14

Deena Kaelin
President
Misdemeanant Corrections Association
(MCA)
Probation Officer
Puyallup and Milton Municipal Probation Services

Afternoon, Judge Clarke and Judge Steiner.

Thank you, both, for the consensus for a meeting in September. I note that at the last en banc meeting, the court stated its preference to meet on Thursday, September 3 from 2:00-4:00 at the Temple of Justice. I also understand that Justice Fairhurst would be issuing an invitation to the attendees to a reception at her Olympia home following the meeting.

The chief justice or I will follow up w/you in the coming months to determine any agenda topics and who will be attending—the court leaves it to your discretion on whether to invite your executive committees or the full association boards.

In the meantime, please do not hesitate to contact me or the chief if you have any questions or concerns.

Julie Keown
Admin. Assistant to Chief Justice Barbara A. Madsen Washington State Supreme Court Temple of Justice, P. O. Box 40929 Olympia, WA 98504-0929
360/357-2038
julie.keown@courts.wa.gov

Greetings:

The following is presented to the Board for its information and consideration.

In November 2014, William Scheidler presented a citizen's complaint pursuant to CrRLJ 2.1(c) to the Kitsap County District Court seeking to initiate a criminal action against David Ponzoha, clerk of Division II of the Court of Appeals. Scheidler wanted seven gross misdemeanors and one misdemeanor charged against Ponzoha based upon actions taken by Ponzoha in his official capacity.

A hearing was conducted pursuant to CrRLJ 2.1(c), the Honorable Stephen Holman presiding. Judge Holman took the matter under advisement.

On December 11, 2014, Judge Holman issued a written ruling denying Scheidler's request to institute criminal charges against Ponzoha.

No appeal was taken from Judge Holman's ruling.

On February 5, 2015, Scheidler presented a demand to recall Judge Holman to the Kitsap County Auditor alleging that Judge Holman's actions in the citizen complaint proceeding justified a recall election pursuant to RCW 29A.56.110, which reads:

> Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.
>
> For the purposes of this chapter:
>
> (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
>
> (a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

Pursuant to RCW 29A.56.120, the Auditor's Office promptly served a copy of the charge on Judge Homan and certified and transmitted the charge to the Prosecutor's Office to prepare the ballot synopsis provided in RCW 29A.56.130.

RCW 29A.56.130(1) requires the Prosecutor's Office, within 15 days after receiving the charge, to formulate a ballot synopsis of the charge of not more than 200 words. The ballot synopsis shall then be certified and transmitted to the person filing the charge and the official subject to recall. The Kitsap County Prosecutor's Office is currently reviewing the recall petition.

The Prosecutor's Office shall also additionally certify and transmit the charges and ballot synopsis to the superior court, and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges. RCW 29A.56.130(2).

Within 15 days after receiving the petition, the superior court shall conduct a hearing without cost to any party and determine (1) whether the acts stated satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. RCW 29A.56.140.

The clerk shall notify the parties. Both parties may appear with counsel. RCW 29A.56.140.

If the petition is approved by the superior court, signatures in support of the recall petition of at least 25% of the total number of votes cast for Judge Holman's department in the last election must be secured. RCW 29A.56.180.

If the petition for recall bears the required number of signatures of certified legal voters, a date for the special election shall be fixed. RCW 29A.56.210.

Issues:

Several significant issues are presented by Scheidler's demand for a recall election of Judge Holman.

1. No Opportunity to Respond Until Ballot Synopsis Made Public. Much of RCW 29A.56's recall procedural process is mandatory, with no ability of the person subject to recall to participate. Once the demand for a recall election is presented to the auditor, the auditor shall present the demand to the prosecutor's office. The prosecutor's office then shall prepare a ballot synopsis and present it to superior court. The first chance a person subject to recall has to respond is in open court only after the ballot synopsis is made public.

While this is true for any public official subject to a recall demand, such a process places a significant burden on the judicial branch where a mere allegation of impropriety damages the integrity of the judicial branch.

2. Supreme Court the Only Entity Which May Remove a Sitting Judge During a Term. More significantly, whether a judicial officer can be subject to a recall election is certainly unclear. When a threat of recall is presented based upon actions taken by a judicial officer in his or her official capacity, the recall threat directly impacts both decisional and institutional judicial independence.

Const. art. I, §33, approved in November 1912, authorizes recall of elective public officers.

> Every elective public officer of the state of Washington expect [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided.

Const. art I, §34 requires the legislature to enact necessary laws to carry out Const. art I, §33.

I have not researched the 1912 meaning of the phrase "judges of courts of record" to determine whether the phrase includes or excludes judicial officers of courts of limited jurisdiction.

The question arises whether the 1980 constitutionally created Commission on Judicial Conduct (Const. art. IV, §31) is the sole method for sanctioning and/or removing a sitting elected judicial officer during his or her term. The CJC is an independent agency of the judicial branch, which has jurisdiction over all Washington judicial officers. Only the Washington Supreme Court has constitutional authority pursuant to Const. art. IV, §31(5) to remove a sitting judicial officer during his or her term of office.

The separation of powers doctrine and the doctrine of judicial independence are outlined in Const. art. IV, §1:

> The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

3. Payment of Judicial Officer's Attorney's Fees. Certainly, a CLJ judicial officer subject to recall would not want to publicly argue his or her own case in response to a recall petition. Such arguments must be made, and made by an attorney. It would seem that the prosecutor's office who is required to review the charges and prepare the ballot synopsis on behalf of the auditor would be conflicted from representing the judicial officer. If the prosecutor's office does represent the judicial officer, must the judicial officer disclose this relationship to all litigants appearing before the officer where the prosecutor's office is a party? Who is responsible for paying a judicial officer's costs of counsel?

I present this information to the Board for its consideration. I expect that the superior court will find Judge Holman's recall petition not to be authorized by law and dismiss the action. However, in my opinion the impact of potential statewide recall petitions against courts of limited jurisdiction judicial officers in response to a litigant's unsuccessful litigation is a most troubling attack on our judicial independence.

Jeff

Jeffrey J. Jahns
Kitsap County District Court
614 Division Street, MS-25
Port Orchard, WA 98366
360-337-4469
jjahns@co.kitsap.wa.us

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION
SLATE FOR ELECTION
June 2015

Simple majority vote wins.

OFFICERS: 2015-2016 (1-YEAR TERM)

POSITION		NOMINATION	WRITE-IN CANDIDATE
President	X	**Judge David Steiner** King District Court	*Write-in candidates for President are not allowed according to Bylaws.*
President - Elect	☐	**Judge G. Scott Marinella** Columbia District Court	☐
Vice – President	☐	**Judge Scott Ahlf** Olympia Municipal Court	☐
Secretary/Treasurer Vote For One	☐	**Judge Joseph Burrowes** Benton District Court	☐
	☐	**Judge Rebecca Robertson** Federal Way Municipal Court	☐
Past - President	X	**Judge David Svaren** Skagit District Court	*Automatic succession according to Bylaws.*

BOARD OF GOVERNORS: 2015-2018 (3-YEAR TERM)

POSITION		NOMINATION	WRITE-IN CANDIDATE
#1 Fulltime District Ct Vote For One	☐	**Judge Douglas Fair** Snohomish District Court	☐
	☐	**Judge Michael Finkle** King District Court	
	☐	**Judge Anthony Howard** Snohomish District Court	
#8 Open Position Vote For One	☐	**Judge Karen Donohue** Seattle Municipal Court	☐
	☐	**Judge Wade Samuelson** Lewis District Court	
#9 Open Position Vote For One	☐	**Judge Tyson Hill** Grant District Court	☐
	☐	**Judge Douglas Robinson** Whitman District Court	

WASHINGTON COURTS

DMCJA BOARD MEETING
FRIDAY, MARCH 13, 2015
12:30 P.M. – 3:30 P.M.
AOC SEATAC OFFICE
SEATAC, WA

PRESIDENT JUDGE DAVID STEINER

SUPPLEMENTAL AGENDA	TAB
Call to Order	
General Business A. Minutes - February 13, 2015 B. Treasurer's Report – *Judge Ahlf* C. Special Fund Report – *Judge Marinella* D. JISC Project Update – Judges Rosen and Heller E. Standing Committee Reports 1. Legislative Committee – *Judge Meyer* a. 2015 Session Update b. Meeting Minutes for October 10, 2014 F. Trial Court Advocacy Board (TCAB) Update – *Judge Steiner* G. JIS Report – *Ms. Cullinane*	1
Liaison Reports DMCMA MCA SCJA WSBA WSAJ AOC BJA	
Action A. Court Security Rule Amendment	2
Discussion A. WSBA Escalating Cost of Civil Litigation Task Force Seeking Comments **B. Financial Contribution Request for Outlook Webinar** C. CLJ-CMS Court User Work Group Replacement 1. CUWG Applicants and Expressions of Interest 2. CLJ-CMS CUWG Charter D. SCJA/DMCJA Meeting with the Washington Supreme Court	3 X

E. Proposed DMCJA Bylaws Changes **1. Commissioner Position on DMCJA Board** **2. DMCJA Representatives on Board for Judicial Administration** F. Recall Petitions Against CLJ Judges	X
Information A. Nominating Committee Report – 2015 Slate for Election **B. State of Washington Minority and Justice Commission DMCJA Liaison Request**	4 X
Other Business A. Next Meeting: Friday, April 10, 2015, 12:30 p.m. – 3:30 p.m., AOC SeaTac Office	
Adjourn	

Dear Judge Steiner,

Attached you will find a description of a webinar on effectively managing Outlook email and information on the presenter, Laura Stack.

I don't know about you, but I am drowning in email. Consequently, as co-chair of the SCJA Education committee I researched and found this program is available for a noon webinar for $2500. It also allows viewing of the webinar afterward for those who are not able to attend.

When I mentioned this webinar at a BCE meeting, District Court judges, administrators, Superior Court judges and administrators expressed a strong interest in this webinar.

Consequently, I approached SCJA to see if they would be willing to allocate $1000 toward the expense and the SCJA Board agreed. The SCJA administrators association indicated they are interested in contributing $500 toward the expense.

This email is to ask if the DCMJA would be willing to allocate the remaining balance needed, $1000, toward the expense of this webinar. Ms. Stack is tentatively available to present on May 20. If it would be helpful, I can try to arrange to attend your next board meeting to "make the pitch", or at least be available by phone.

I do know that her presentation will not cover the proposed GR 31. She caters to Fortune 500 companies and they all have various retention policies, so you will see from the attached description, that is not part of the program.

Thank you for your consideration!

Judge Chip Small
Dept #2
Chelan County Superior Court
509 667-6210

"The quickest distance between a goal and a checkmark is Laura Stack."

– Montague Boyd, Senior VP Wealth Management, UBS

Laura Stack, MBA, CSP

International Keynote Speaker and bestselling author of six books, Laura Stack, is an expert in Productivity and Performance. Her engaging personality, combined with nearly 25 years of experience helping organizations achieve RESULTS have made her one of the most sought after experts and keynote speakers in her field. Funny, engaging, and full of real life strategies that work, Laura will change mindsets and attitudes so your team can maximize its productivity. Increase market share. Strengthen performance. Foster better leaders. Increase sales. And get the job done right!

What makes her unique? She's been featured in the *New York Times*, *USA Today*, the *Wall Street Journal*, Entrepreneur, and Forbes magazine and has been a spokesperson for Microsoft, Dannon, belVita, 3M, Skillsoft, Office Depot, Day-Timer, Fellowes, and Xerox. Her client list includes top Fortune 500 companies, including Starbucks, Wal-Mart, Aramark, Bank of America, GM, Wells Fargo, and Time Warner, plus government agencies such the United States Air Force Academy, the Census Bureau, the U.S. Senate, and even the IRS. Her books have been published and translated in over 20 countries. And her audiences? Love her as much for her energy as they do the solutions she presents.

On stage, Laura is a powerhouse of ideas, and more importantly, ACTION—and is just what is needed to propel audiences (and organizations) to all new levels. Sound like what YOUR audience needs? Ready to empower your team? Contact Laura today!

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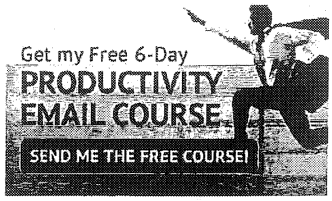
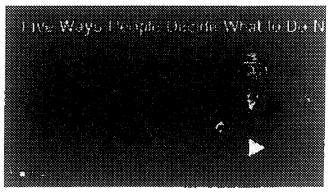
In the Media



See Laura in Action



View more videos of Laura →

The title and description:

Using Microsoft Outlook Effectively: How to Manage Your Email and Keep Your Inbox Empty!

By Laura Stack,
www.TheProductivityPro.com<http://www.TheProductivityPro.com

Feeling overwhelmed by the sheer volume of email? Unable to get or keep your inbox empty? Having a hard time keeping up with the deluge of information and requests? Take this one-hour webinar with Certified Outlook specialist, Laura Stack, and take back control from your inbox! The webinar includes a detailed workbook with screen shots and step-by-step instructions, plus the recording, so you can watch it again. Specifically, you'll learn:

* A six-step decision tree to process your emails to zero and regularly empty your inbox.

* Know where to keep emails that need answers (hint: it's not your inbox).

* Customize notification and send/receive options to maintain concentration.

* Discover tricks to reduce the size of your mailbox and stay under your limit.

* Automatically file listserv emails and newsletters to keep them grouped and out of your inbox.

* View your emails in groups and quickly delete redundant "reply all" strings.

* Convert emails into tasks and track delegation to fellow staff members.

* Assign and track Tasks for other people and quickly see the status.

WASHINGTON COURTS

DMCJA Bylaws Committee Report

March 2015

Committee Members:
Commissioner Kipling, Chair
Judge Gregory
Judge Phillips
Judge Smith

AOC Staff:
Ms. J Benway

The DMCJA Board requested the Bylaws Committee propose a Bylaws amendment to ensure that the "Commissioner" position on the Board of Directors would be filled by a Commissioner if one was available to serve. The Bylaws Committee discussed the issue and recommends the following amendment:

Proposed Amendment to DMCJA Bylaws Art. VII Sec. 1, 2nd paragraph:

Current language:
If any position designated one (1) through seven (7) is not filled because there is no candidate for the position, then that position shall be filled by a qualified candidate by appointment by the President with ratification of the Board of Governors at the first Board meeting following the annual election.

Proposed language:
If any position designated one (1) through six (6) is not filled because there is no candidate for the position, then that position shall be filled by a qualified candidate by appointment by the President with ratification of the Board of Governors at the first Board meeting following the annual election.

If the position designated seven (7) is not filled because there is no candidate for the position, then the President shall appoint a qualified commissioner or magistrate willing to accept the position, with ratification of the Board of Governors at the first Board meeting following the annual election. If no qualified commissioner or magistrate accepts appointment to the position, then the position shall be considered an open position for that term and any qualified judicial officer may be appointed by the President with ratification of the Board of Governors at the first Board meeting following the annual election.

Redline:
If any position designated one (1) through ~~seven (7)~~ six (6) is not filled because there is no candidate for the position, then that position shall be filled by a qualified candidate by appointment by the President with ratification of the Board of Governors at the first Board meeting following the annual election.

If the position designated seven (7) is not filled because there is no candidate for the position, then the President shall appoint a qualified commissioner or magistrate willing to accept the position, with ratification of the Board of Governors at the first Board meeting following the

annual election. If no qualified commissioner or magistrate accepts appointment to the position, then the position shall be considered an open position for that term and any qualified judicial officer may be appointed by the President with ratification of the Board of Governors at the first Board meeting following the annual election.

Board for Judicial Administration (BJA) Meeting

Friday, May 17, 2013 (9:00 a.m. – 11:00 a.m.)
AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

MEETING MINUTES

BJA Members Present:
Chief Justice Barbara Madsen, Chair
Judge Chris Wickham, Member Chair
Judge Sara Derr
Ms. Callie Dietz
Judge Stephen Dwyer (by phone)
Judge Deborah Fleck
Judge Janet Garrow
Judge Jill Johanson (by phone)
Judge Kevin Korsmo (by phone)
Judge Linda Krese
Ms. Paula Littlewood
Ms. Michele Radosevich
Judge Jeffrey Ramsdell
Judge James Riehl
Judge Kevin Ringus
Judge Ann Schindler (by phone)
Judge Charles Snyder
Judge Scott Sparks

Guests Present:
Mr. Jim Bamberger
Ms. Ishbel Dickens
Mr. Pat Escamilla (by phone)
Ms. LaTricia Kinlow
Ms. Sonya Kraski (by phone)
Ms. Sophia Byrd McSherry
Ms. Joanne Moore

Public Present:
Mr. Christopher Hupy
Mr. Mark Mahnkey
Mr. Arthur West

AOC Staff Present:
Ms. Vonnie Diseth
Ms. Beth Flynn
Mr. Steve Henley
Mr. Dirk Marler
Ms. Mellani McAleenan
Mr. Ramsey Radwan

Judge Wickham called the meeting to order.

April 19 BJA Meeting Minutes

It was moved by Judge Ringus and seconded by Judge Riehl to approve the April 19 BJA meeting minutes. The motion carried.

BJA Member Terms of Office

Ms. McAleenan stated that over the last few weeks questions have come up regarding when members start and end their terms. In 2010 there was a change to the BJA terms to enable more judges to be eligible to be Member Chair. BJA staff have been approaching it as July 1 to June 30 but the rule is unclear.

There is also confusion about the stagger dates. The rule book lists the date correctly but the online rule contains an incorrect date. In addition, the document being used to create the stagger in the first place has conflicting information. The District and Municipal Court Judges' Association (DMCJA) has appointed their two members with two-year terms according to the dates in the rule. The Superior Court Judges' Association (SCJA) has also appointed their two

members with two-year terms but it appears they used the dates included in the explanatory document rather than the dates listed in the rule. From a practical point, it seems to have worked out just fine. Technically, the rule doesn't comport with actual practice but actual practice has already happened and would need to be retroactive if any changes were made.

The rule doesn't list the Washington State Bar Association (WSBA) term begin and end dates and could be corrected if the BJA chooses to do so. It could be changed now or later.

In recent history, at least going back to 2005, the BJA has nominated the BJA Member Chair in May and voted on it in June.

Judge Wickham said that if the BJA accepts the reference to June in the rule as a scrivener's error, and it should actually be July 1, the BJA can solve that problem this morning and at least get some resolution as to when member terms end in the next two months.

Judge Riehl stated that the second week of June is when the DMCJA meets for their conference. He looked at the DMCJA Bylaws, and they indicate that the BJA representative begins his/her term on June 1 or at the end of the spring conference after the member is elected to serve on the BJA. He feels compelled to follow the DMCJA Bylaws. He believes that his successor will be at the June meeting and this is his last meeting. He was appointed by the DMCJA Bylaws and feels compelled to follow them.

> **It was moved by Judge Snyder and seconded by Judge Sparks to seek an amendment to BJAR 2 so it states July 1. For those elected in 2014 and thereafter all BJA members' terms will start July 1. The motion carried.**
>
> **It was moved by Judge Derr and seconded by Judge Ringus to have any present member terms comport with the July 1 date this year and in the future. After discussion, Judge Derr withdrew the motion.**

Judge Fleck stated that the rule is written in a confusing way in many respects, partly because of the language added in 2010. Before that language it made sense. June 1 was the original language and it wasn't a scrivener's error. To the extent the BJA can follow the rule, it should be followed.

Chief Justice Madsen said it does not make sense at this point to change anything. It makes more sense to suspend the rule for now so Judge Wickham will continue to be Member Chair until there is a new Member Chair.

Judge Riehl wants to make it clear that for purposes of the June meeting, he will follow the DMCJA Bylaws and his replacement needs to be a representative who can vote during the June meeting.

Judge Snyder said he would like to keep it how it has been going because it will change as of next month's meeting and the new folks come on next month. The SCJA Bylaws do not say when the BJA representative terms begin and end so they do not have that conflict. The SCJA can just tell the new BJA members that their terms start July 1. Judge Snyder will have the SCJA take this up at their June Board meeting.

STATE OF WASHINGTON
MINORITY AND JUSTICE COMMISSION

March 12, 2015

Honorable David A. Steiner
District & Municipal Court Judges' Association
KCDC East Division
585 112th Ave SE
Bellevue, WA 98004

Dear Judge Steiner,

The Washington State Supreme Court's Minority and Justice Commission works diligently on behalf of the judiciary to address and eliminate the racial and ethnic bias that exists within our state's court system. Our work would not be possible without the participation and collaboration from judges from all court levels throughout the state.

As you may be aware, prior to her appointment to the superior court bench, Judge Veronica Alicea-Galvan had been serving on the Commission as the DMCJA representative. We are contacting you because we would like your help and support in identifying a judge that would be interested in joining the Commission as the new DMCJA representative.

DMCJA's participation on the Commission is very important to us and we appreciate the continued support and collaboration amongst our organizations. If you have any questions please do not hesitate to contact us.

Very Truly Yours,

Justice Charles Johnson
Co-Chair

Justice Mary Yu
Co-Chair

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