



WASHINGTON  
COURTS

**DISTRICT AND MUNICIPAL  
COURT JUDGES' ASSOCIATION**

***BOARD MEETING***

**FRIDAY, January 9, 2015**

**AOC SEATAC OFFICE  
SEATAC, WASHINGTON**

# DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION SCHEDULE OF BOARD MEETINGS

## 2014-2015

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

AOC Staff: Sharon Harvey

(AOC Conference Room Reserved)

Updated: December 16, 2014



WASHINGTON  
COURTS

**DMCJA BOARD MEETING**  
**FRIDAY, JANUARY 9, 2015**  
**12:30 P.M. – 3:30 P.M.**  
**AOC SEATAC OFFICE**  
**SEATAC, WA**

**PRESIDENT JUDGE VERONICA ALICEA-GALVAN**

**AGENDA**

**TAB**

**Call to Order**

**General Business**

**1**

- A. Minutes – December 12, 2014
- B. Treasurer's Report – *Judge Ahlf*
- C. Special Fund Report – *Judge Marinella*
- D. Standing Committee Reports
  - 1. Legislative Committee 2015 Session Update – *Judge Meyer*
  - 2. Rules Committee
    - a. Meeting Minutes – November 19, 2014
  - 3. Therapeutic Courts
    - a. WA Supreme Court Decision that Adult Drug Court Staffing is not Presumptively Open to the Public
- E. Trial Court Advocacy Board (TCAB) Update – *Judge Steiner*
- F. JIS Report – *Ms. Cullinane*

**Liaison Reports**

DMCMA      MCA      SCJA      WSBA      WSAJ      AOC      BJA

**Action**

**2**

- A. Rules Committee
  - 1. Memorandum to DMCJA President regarding Revised Proposal to Amend CrRLJ 3.2(o)
  - 2. DMCJA Comment Proposal for JISCR 13

**Discussion**

**3**

- A. Memorandum to DMCJA President regarding Board Request to Review CrRLJ 3.2 and CrRLJ 6.2

**Information**

**4**

- A. DMCJA Letter to BJA in support of Additional Judge for Skagit County District Court
- B. DMCJA Annual Report submitted to WA Supreme Court
- C. WA Supreme Court Report on Defects and Omissions in the Laws

<p>D. Updated DMCJA Board of Governors Meeting Schedule</p> <p>E. DMCJA Board of Governors Retreat will be held at the Enzian Inn, Leavenworth, WA, May 8-9, 2015</p> <p>F. DMCJA Spring Conference will be held at the Skamania Lodge, Stevenson, WA, June 7-10, 2014</p>	
<p><b>Other Business</b></p> <p>A. Next Meeting: Friday, February 13, 2015, 12:30 p.m. – 3:30 p.m., AOC SeaTac Office</p>	
<p><b>Adjourn</b></p>	





DMCJA Board of Governors Meeting  
Friday, December 12, 2014, 12:30 p.m. – 3:30 p.m.  
AOC SeaTac Office

**MEETING MINUTES**

**Members Present:**

- Chair, Judge Alicea-Galvan
- Judge Ahlf
- Judge Burrowes
- Judge Gehlsen
- Judge Jahns
- Judge Marinella
- Judge Meyer
- Commissioner Noonan
- Judge Olwell
- Judge Ringus (non-voting)
- Judge Robertson
- Judge Staab
- Judge Steiner
- Judge Svaren

**Guests:**

- Judge Harold Clark III, SCJA
- Ann Danieli, Esquire, WSBA
- Ms. Suzanne Elsner, DMCMA
- Judge James Heller
- Ms. Deena Kaelin, MCA

**AOC Staff:**

- Ms. Vicky Cullinane
- Ms. Sharon R. Harvey

**Members Absent:**

- Judge Garrow (non-voting)
- Judge Jasprica (non-voting)
- Judge Lambo (non-voting)
- Judge Smith

Judge Alicea-Galvan, District and Municipal Court Judges' Association (DMCJA) President, noted that a quorum was present and called the DMCJA Board of Governors (Board) meeting to order at 12:30 PM.

**GENERAL BUSINESS**

Minutes

The Board motioned, seconded, and passed a vote (M/S/P) to approve the Board Meeting Minutes dated November 14, 2014.

Treasurer's Report

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

Special Fund Report

M/S/P to approve the Special Fund Report.

Standing Committee Reports

**Diversity Committee**

Judge Willie Gregory, DMJCA Diversity Committee Chair, provided correspondence and evaluation results regarding a Pro Tem Training sponsored by the Diversity Committee. Judge Gregory was unable to attend the December Board meeting because of unforeseen circumstances, and, therefore, will present at the January meeting.

### **Education Committee**

Judge Burrows presented the evaluation results for the 2014 DMCJA Spring Conference, which received an overall "good" rating. Although many participants enjoyed the plenary sessions, some requested break-out sessions and civil law sessions for future Spring Conferences. Judge Burrows reported that the 2015 DMCJA Spring Conference will be curriculum driven and modeled on a five year curriculum plan. The focus will be on core values instead of specialty issues. Judge Burrows informed that no proposals are being accepted now; however, if the education proposal focuses on a curriculum plan, then it will be accepted. Judge Burrows stated that all previous proposals were accepted except for language access. The Minority and Justice Commission and the Gender and Justice Commission will present at the 2015 Spring Conference. Additionally, there will be updates for legal financial obligations (LFO) and General Rule (GR) 31 that will be a repeat of the 2014 Annual Fall Conference in Spokane, WA. The Administrative Office of the Courts (AOC) Staff will be necessary to support multiple break-out sessions. Judge Burrows further reported that The Neuroscience of Judicial Decision-Making presentation received the second highest ratings but Ms. A. Kimberly Papillon, the presenter, was very expensive. The benefits of this presentation will lead the DMCJA Education Committee to request funds in order to retain such beneficial speakers.

### **Rules Committee**

The DMCJA Rules Committee provided written meeting minutes dated October 15, 2014.

### **Therapeutic Courts Committee**

The DMCJA Therapeutic Courts Committee provided written meeting minutes dated September 22, 2014. This Committee meets twice a year at (1) the DMCJA Spring Conference, and (2) the Annual Fall Conference.

### **Legislative Committee**

Judge Meyer reported that Melanie Stewart, DMCJA Lobbyist, is in the process of getting the DMCJA legislative agenda bills drafted. Judge Meyer met with Judge Kitty-Ann van Doorninck, former Chair and SCJA Legislative Committee member, and determined that communications between the SCJA and DMCJA will be good as both have a mutual interest. Judge Meyer further informed that he attended the Electronic Home Monitoring (EHM) Workgroup meeting on Friday, December 5, 2014, and learned that standards would apply to any EHM legislation. Judge Glenn Phillips, DMCJA Representative for the Driving Under the Influence of Intoxicants (DUI) Workgroup, met with the DUI Workgroup and discussed a DUI bill. Judge Meyer then stated that the DMCJA Executive Legislative Committee will convene on Monday, January 12, 2015. Judge Meyer will provide an update at every Board meeting during the 2015 Legislative Session.

### Judicial Information System Committee (JISC) Representatives

DMCJA Representatives for the JISC, Judge Heller and Judge Steve Rosen, were asked to regularly attend Board meetings in order to keep the Board informed of the new courts of limited jurisdiction case management system (CLJ-CMS) project. Judge Heller, who has been a Representative since 1987, provided the JISC history and his long-time commitment to the CMS-CLJ project. He informed that the JISC started in the 1980's at which time it introduced the District and Municipal Court Information Systems (DISCIS). Historically, CLJ technology was not promoted and the Superior Court Management Information System (SCOMIS) was identified as a priority for system replacement. Thus, the CLJ-CMS project is just now getting started. He stated that the JISC solicited bids for an off-the-shelf case management system when asked to do so at the last DMCJA Board meeting that he attended. At present, the JISC is in the process of adopting a new system for trial courts, however, the biggest issue is legislative funding for the project. Judge Heller informed that the funding source has been attached by the Legislature several years in a row and the JISC is trying to protect the funding for the new CLJ-CMS system. Both the Superior Court and the CLJs are required to adopt data standards in order to obtain state funding. Judge Heller briefly mentioned the ground work that went into this product, the compromises, and the time and effort that occurred at the same time as the Superior Court CMS project, which is estimated to begin in June 2015 in Lewis County. A goal was to have one system to serve all trial court levels but technology did not support the courts' needs and would demand lots of resources. Judge Heller further explained that JISCR 13 was implemented in order to maintain a case management system that would allow all systems to exchange data. The CLJs will request funding but notice will be an issue. Judge

Heller stated that he voted for JISCR 13 because the standards would allow data to be shared among Washington state trial courts, which has been the ideal since the mid-1980s. He stated that the JISC is working on solutions for situations in which courts have opted out of the CMS project. Judge Heller stated that it is his desire for courts to participate in the project in order for all CLJs to exchange crucial court information. Judge Alicea-Galvan informed the Board that the comment period for JISCR 13 opens on December 23, 2014. The DMCJA Steering Committee and CUWG will pass along comments to approve the Rule. The Board will have a robust discussion regarding JISCR 13 at its January meeting. The Board will then send a letter stating its position regarding the Rule.

#### Trial Court Advocacy Board (TCAB) Update

Judge Steiner reported that all trial court judges have received a TCAB letter encouraging them to contact their local legislators in order to familiarize legislators with the work of the trial courts. The TCAB continues to address the Trial Court Security issue.

#### JIS Report

Ms. Cullinane provided talking points regarding the CLJ- CMS project that may be used when a judge speaks with a local legislator. The project will need seven million and two hundred thousand dollars (\$7.2 million) in funding in order to initiate and complete the vendor selection process and prepare existing systems for the transition to the new CMS. She further revealed that the procurement process for the vendor would likely take one year based on the Superior Court case management process. Ms. Cullinane distributed color copies of the Court User Work Group (CUWG) project timeline and informed that the CUWG is ahead of schedule. She also directed Board members to review resource information contained in the December Board packet.

#### **LIAISON REPORTS**

DMCMA – Ms. Elsner reported that the District and Municipal Court Management Association (DMCMA) Education Retreat will be held the first two weeks of December 2014. General Rule (GR) 31.1 will be discussed at the Retreat.

MCA – Ms. Kaelin reported that the Misdemeanant Corrections Association (MCA) Spring Conference will be held from April 20-22, 2015 at the Enzian Inn in Leavenworth, WA. Scholarships are available for MCA probation officers.

SCJA – Judge Clark III reported that the Superior Court Judges Association (SCJA) met on December 5, 2014 for its annual legislative meeting for which Judge Steiner attended. The SCJA Legislative Committee Chair shared meeting information with Judge Meyer on Monday, December 8, 2014. At the annual meeting, the SCJA talked about the Supreme Court budget, court interpreter issues and the impacts to Superior Court, the JIS project needing twelve million dollars (\$12 million) in funding, and probate and guardianship on the criminal side. Judge Clark III also reported that the Justice Reinvestment Task Force proposal to push back from prison and jail, which would take a huge bite out of county funds, was discussed at the annual meeting. Further, mental health funding legislation was also discussed at the SCJA Board meeting. Judge Steiner added that the goal is to avoid jail or prison time. Thus, the Adult Static Risk Assessment (ASRA) Committee will strive to marry jail with supervision and treatment in order to create better people. There are funding issues, however. The SCJA is also watching issues related to Juvenile Family law.

WSBA – Ms. Danieli reported that the Washington State Bar Association (WSBA) is raising Business and Occupation (B&O) taxes and working on rules for how Limited License Legal Technicians (LLLTs) should operate. The WSBA will raise Bar dues because it is losing money on continued legal education courses.

AOC – Ms. Harvey reported that AOC representatives met with DOL representatives regarding a DOL proposal to set a mandatory two hundred dollars (\$200) one-time Ignition Interlock Device (IID) fee in DUI cases in order to finance IIDs for the indigent. The AOC dissuaded the DOL from moving forward with the proposal by proving that DOL would not create the revenue anticipated.

BJA – Judge Ringus reported on budget proposals relating to the Judiciary.

## **DISCUSSION**

### Skagit County District Court Judicial Needs Request

M/S/P to make this an action item.

### DMCJA Policy Regarding Status of Judge When Court Is Dissolved

The Board discussed the status of Judge Kayne, former Medical Lake Municipal Court judge whose court dissolved when it contracted with the Cheney District Court. The Board determined that an appointed judge is a judge until (1) the end of the contract, or (2) the judge is removed. It was suggested that a policy regarding judges with dissolved courts be placed in the Bylaws. Judge Svaren recommended the Board send a letter to the Rules Committee regarding a Bylaw for Judicial status. Judge Steiner recommended the Board look at current Rules that may already address the issue. The Board decided to maintain the status quo regarding Judge Kayne and allow him to remain a DMCJA member until the end of his term in 2017.

### Proposed Amendments to Judicial Information System Committee Rules (JISCR) 13

The Board addressed JISCR 13 during Judge Heller's presentation. Judge Alicea-Galvan informed that the comment period begins on December 23, 2014.

### Access to Justice Board's (AJB) Proposed Changes to Code of Judicial Conduct (CJC)

The AJB would like to meet with DMCJA members on Friday, January 9, 2015, to discuss the AJB's proposed changes to the Comments of the CJC relating to pro se civil litigants. Judge Svaren discussed possible ethical issues that may occur when judges tell litigants what to do, and, provided the history of this 2013 proposal. Both the DMCJA, via Rules Committee Chair, Judge Garrow, and the SCJA sent letters to the AJB stating their opposition to the proposed amendment. Thus, the AJB did not go forward with its proposal. Chief Justice Madsen requested the DMCJA, SCJA, and AJB get together and discuss the issue. Hence, the group will meet for a consensus on Rule changes that meet the needs of pro se litigants. Judge Svaren volunteered to attend the meeting and will contact a DMCJA Rules Committee member to attend.

### California Civil Lawsuit

The DMCJA President provided the Board with a copy of a DMCJA letter denying a California litigant's request for DMCJA support in a civil lawsuit regarding the repossession of a vehicle.

### Memorandum to DMCJA President regarding Revised Proposal to Amend CrRLJ 3.2

M/S/P to make this issue an action item at the January meeting because, although the Board had reviewed the DMCJA Rules Committee "Comment" to Criminal Rules for the Courts of Limited Jurisdiction (CrRLJ) 3.2, this was the first time the Board had seen the CrRLJ amendment. During the discussion, it was stated that the Rule is mandated by the Legislature, and, the statute is not inconsistent with the amended Rule. Judge Ringus warned, however, to make the Rule generic and not too specific.

## **ACTION**

### Memorandum to DMCJA President regarding Revised Proposal to Amend CrRLJ 3.2

M/S/P to make this action item a discussion item.

### Skagit County District Court Judicial Needs Request

M/S/P to draft a letter to the Board for Judicial Administration (BJA) regarding Skagit County District Court's request for an additional judge.

## **OTHER BUSINESS**

A. The next Board Meeting will be held on Friday, January 9, 2014, 12:30 PM to 3:30 PM, at the AOC SeaTac Office Center in SeaTac, Washington.

**ADJOURNED** at 2:03 PM.

# District and Municipal Court Judges' Association

January 6, 2015

**President**

**JUDGE VERONICA ALICEA-GALVAN**  
Des Moines Municipal Court  
21630 11<sup>th</sup> Ave S, Ste C  
Des Moines, WA 98198  
(206) 878-4597

**President-Elect**

**JUDGE DAVID STEINER**  
King County District Court  
585 112th Ave, S.E.  
Bellevue, WA 98004  
(206) 477-2102

**Vice-President**

**JUDGE G. SCOTT MARINELLA**  
Columbia County District Court  
535 Cameron St  
Dayton, WA 99328-1279  
(509) 382-4812

**Secretary/Treasurer**

**JUDGE SCOTT K. AHLF**  
Olympia Municipal Court  
900 Plum St SE  
PO Box 1967  
Olympia, WA 98507-1967  
(360) 753-8312

**Past President**

**JUDGE DAVID A. SVAREN**  
Skagit County District Court  
600 S 3<sup>rd</sup> Street  
PO Box 340  
Mount Vernon, WA 98273-0340  
(360) 336-9319

**Board of Governors**

**JUDGE JOSEPH M. BURROWES**  
Benton County District Court  
(509) 735-8476

**JUDGE MICHELLE K. GEHLSSEN**  
Bothell Municipal Court  
(425) 487-5587

**JUDGE JEFFREY J. JAHNS**  
Kitsap County District Court  
(360) 337-4972

**JUDGE SAMUEL MEYER**  
Thurston County District Court  
(360) 786-5562

**COMMISSIONER SUSAN J. NOONAN**  
King County District Court  
(206) 477-1720

**JUDGE KELLEY C. OLWELL**  
Yakima Municipal Court  
(509) 575-3050

**JUDGE REBECCA C. ROBERTSON**  
Federal Way Municipal Court  
(253) 835-3000

**JUDGE HEIDI SMITH**  
Okanogan County District Court  
(509) 422-7170

**JUDGE TRACY A. STAAB**  
Spokane Municipal Court  
(509) 625-4400

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

Dear President Alicea-Galvan, 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 - \$100,482.03, as of October 31, 2014

Bank of America Accounts:  
Investment Account - \$90,073.21 as of December 31, 2014  
Checking Account - \$4,983.00, as of December 31, 2014

## EXPENDITURES

Total 2014/2015 adopted budget:	\$244,400.00
Total expenditures to date (01-06-15):	\$ 94,373.77
Total remaining budget as of Jan. 6, 2015:	\$150,026.23

## DEPOSITS

Total deposits 2014/2015:	\$24,609.00
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## 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	\$7,676.22	\$22,323.78
Bookeeping Expense	\$3,000.00	\$1,050.00	\$1,950.00
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	\$33.56	\$466.44
Education Committee**	\$21,000.00	\$12,538.26	\$8,461.74
Educational Grants	\$5,000.00	\$1,000.00	\$4,000.00
Judicial Assistance Committee*	\$10,000.00	\$5,319.05	\$4,680.95
Legislative Committee	\$6,000.00	\$694.53	\$5,305.47
Legislative Pro-Tem	\$2,500.00	\$0.00	\$2,500.00
Lobbyist Expenses	\$1,000.00	\$224.00	\$776.00
Lobbyist Contract	\$55,000.00	\$12,000.00	\$43,000.00
Long-Range Planning Committee	\$1,500.00	\$0.00	\$1,500.00
MCA Liaison	\$1,500.00	\$539.88	\$960.12
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	\$1,089.69	\$6,410.31
Reserves Committee	\$250.00	\$0.00	\$250.00
Rules Committee	\$1,000.00	\$0.00	\$1,000.00
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	\$7,786.49	\$7,213.51
<b>TOTAL</b>	<b>\$244,400.00</b>	<b>\$94,373.77</b>	<b>\$150,026.23</b>
<b>TOTAL DEPOSITS MADE</b>	<b>\$24,609.00</b>		
<b>CREDIT CARD (balance owing)</b>	<b>\$0.00</b>		
*includes \$5,000 from the SCJA			
**includes \$12,500 committed to the Presiding Judges Conference as a onetime expense			



P.O. Box 1800  
Saint Paul, Minnesota 55101-0800

3452 TRN

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### Business Statement

Account Number: [REDACTED]

Statement Period:

Dec 1, 2014  
through  
Dec 31, 2014

Page 1 of 1



000137731 1 AV 0.381 106481868326176 P  
THE WASHINGTON STATE DISTRICT AND  
MUNICIPAL COURT JUDGES ASSOCIATION  
PO BOX 7  
DAYTON WA 99328-0007



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### PLATINUM BUSINESS MONEY MARKET

Member FDIC

U.S. Bank National Association

Account Number [REDACTED]

#### Account Summary

	# Items				
Beginning Balance on Dec 1		\$	100,494.41	Annual Percentage Yield Earned	0.15%
Other Deposits	1		12.80	Interest Earned this Period	\$ 12.80
Ending Balance on Dec 31, 2014		\$	100,507.21	Interest Paid this Year	\$ 150.58
				Number of Days in Statement Period	31

#### Other Deposits

Date	Description of Transaction	Ref Number	Amount
Dec 31	Interest Paid	3100003266	\$ 12.80
Total Other Deposits			\$ 12.80



ACCT# ██████████ WA STAT D N HISTORY INQUIRY 01/06/15 15:24 1 OF 1 SIDP

Date	TCO	Amount	Balance	Teller	STAT	MOD	DESCRIPTION
01 06/20/14	DEP	48,541.79	48,541.79	332-8679			
02 06/30/14	INT	2.19	48,543.98	080-0080			
03 07/02/14	WDL	10.35	48,533.03	080-0001	NF		HARLAND CLARKE
04 07/31/14	INT	6.18	48,539.21	080-0080			
05 08/31/14	INT	6.18	48,545.39	080-0080			
06 09/30/14	INT	5.99	48,551.38	080-0080			
07 10/31/14	INT	6.19	48,557.57	080-0080			
08 11/30/14	INT	5.99	48,563.56	080-0080			
09 12/31/14	INT	6.19	48,569.75	080-0080			
ENDING BAL			48,569.75				

1950-1951



## DMCJA Rules Committee

Wednesday, November 19, 2014 (12:00 p.m. – 1:00 p.m.)  
Via Teleconference

### MEETING MINUTES

**Members:**

Chair, Judge Garrow  
Vice Chair, Judge Dacca  
Judge Buttorff  
Judge ~~S. Buzzard~~  
Judge ~~Fraser~~  
Judge Grant  
Judge ~~Harmon~~  
Judge ~~Robertson~~  
Judge ~~Steiner~~  
Judge Szambelan  
Judge Williams  
Ms. Patti Kohler, DMCMA Liaison

**AOC Staff:**

Ms. J Berway

Judge Garrow called the meeting to order at 12:05 p.m.

The Committee discussed the following items:

**1. October 2014 meeting minutes**

The October 2014 Rules Committee meeting minutes were approved as presented.

**2. CRLJ Subcommittee Report: Proposed Revisions to CRLJ 26 and CRLJ 56**

The CRLJ Subcommittee (Judge Dacca, Judge Williams and Judge Buttorff) previously presented proposed revisions to CRLJ 26, Discovery, and CRLJ 56, Summary Judgment, which are now in proposal form with GR 9 cover sheets. The Committee determined that it would like to seek comment from the WSBA before presenting the proposals to the DMCJA Board. It was motioned, seconded and passed to request input from the WSBA on both proposals before proceeding. Judge Dacca will facilitate submitting the materials to the WSBA for comment, after making some minor revisions suggested by the Committee.

**3. DMCJA request regarding potential amendment to CrRLJ 3.2(o), given the passage of SHB 6413 (DUI)**

The DMCJA Board requested the Rules Committee propose an amendment to CrRLJ 3.2(o), rather than a comment, to reflect changes to DUI laws. It was motioned, seconded and passed to provide the revised proposal to the DMCJA Board.

#### **4. Status report on SCJA proposal to amend CrR 3.2, in light of Barton decision**

The recent decision of *State v. Barton*, \_\_\_ Wn.2d \_\_\_, 331 P.3d 50 (July 31, 2014), caused the Superior Court Judges' Association (SCJA) to propose that CrR 3.2 be amended. Judge Szambelan reviewed *Barton* to determine if CrRLJ 3.2, which has identical language to the Superior Court rule, should be amended. She provided a report to the Committee, which stated that the language of concern to the SCJA is rarely used in courts of limited jurisdiction. The Committee recommends that the DMCJA Board send a comment letter to the Supreme Court advising that it is not seeking to amend CrRLJ 3.2(b)(4) but if the Court adopts the SCJA's amendment, the DMCJA recommends the Supreme Court adopt a similar amendment to CrRLJ 3.2(b)(4) so the trial court rules remain congruent.

#### **5. IRLJ Subcommittee Report**

The IRLJ Subcommittee prepared comments regarding the Infraction rules for courts of limited jurisdiction. It appears that the IRLJ may be scheduled for review by the WSBA, and the Committee would like to coordinate with the WSBA if possible. Ms. Benway will check with Judge Robertson, liaison to the WSBA Rules Committee, regarding the WSBA efforts to review the IRLJ.

#### **6. Other Business and Next Meeting Date**

The next Rules Committee is scheduled for Wednesday, December 17, 2014 at noon.

There being no further business, the meeting was adjourned at 12:55 p.m.

**From:** Skreen, Janet  
**Sent:** Tuesday, December 23, 2014 12:59 PM  
**To:** Harvey, Sharon  
**Subject:** Excerpt from Sykes

Public access to staffings interferes with a key feature--the appearance and fact of collaboration--that differentiates adult drug courts from ordinary criminal adjudications. Public access to staffings therefore does not play a significant positive role in adult drug court functioning. Article I, section 10 of the Washington Constitution does not require adult drug court staffings to be presumptively open.

**Janet Skreen**  
Court Association Coordinator  
Administrative Office of the Courts  
PO Box 41170  
Olympia WA 98504-1170  
360-705-5252  
[Janet.skreen@courts.wa.gov](mailto:Janet.skreen@courts.wa.gov)

**For more information on the case of State v. Sykes, No. 87946-0, please visit the following website:**

<http://www.courts.wa.gov/opinions/pdf/879460.pdf>





KING COUNTY DISTRICT COURT  
East Division – Redmond Courthouse

Judge Janet E. Garrow  
206-477-2103

8601 160th Ave NE  
Redmond, WA 98052-3548

Kathy Orozco  
Court Manager

TO: Judge Veronica Alicea-Galvan, President, DMCJA Board  
FROM: Judge Janet Garrow, Chair, DMCJA Rules Committee  
SUBJECT: Revised Proposal to Amend CrRLJ 3.2(o)  
DATE: November 19, 2014

Recent legislation (SHB 6143) modified RCW 10.31.100 to require law enforcement officers to keep DUI offenders in custody until release by a judicial officer when the officer has probable cause to believe that the person has violated RCW 46.61.502 or 46.61.504 and the police officer has knowledge that the person has a prior offense within ten years. As this language potentially creates a conflict with CrRLJ 3.2(o), regarding Bail in Criminal Offense Cases--Mandatory Appearance, the Rules Committee previously recommended that a comment be added to CrRLJ 3.2(o) to clarify that for a second or subsequent DUI offense, the provisions of RCW 10.31.100(16) apply.

At its August 2014 meeting, the DMCJA Board voted to send the proposal back to the Rules Committee with a recommendation that the rule itself be amended rather than a comment added. The Rules Committee considered the recommendation and has approved the following GR 9 Cover Sheet to be presented to the DMCJA Board for review. I am available for any questions.

Attachment

CC: DMCJA Rules Committee  
J Benway, AOC Staff

**GR 9 COVER SHEET**

**Suggested Amendment to  
WASHINGTON STATE COURT RULES:  
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION**

**Amend CrRLJ 3.2(o): Release of Accused; Bail in Criminal Offense Cases--  
Mandatory Appearance**

**Submitted by the District & Municipal Courts Judges Association**

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- A. Name of Proponent:** District & Municipal Courts Judges Association
- B. Spokesperson:** Judge Veronica Alicea-Galvan, President  
DMCJA
- C. Purpose:** CrRLJ 3.2 governs issues regarding release of accused persons in courts of limited jurisdiction. Subsection (o), pertaining to bail in criminal offenses and mandatory appearance, provides:

- (1) When required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be \$500 and for a gross misdemeanor shall be \$1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.
- (2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

In 2010, the Supreme Court adopted amendments to CrRLJ 3.2 to delete the bail forfeiture schedule for certain types of offenses. Those amendments went into effect in 2012. At that time, the \$500 bail for misdemeanors and the \$1,000 bail for gross misdemeanors were added. These amounts have not been amended since they went into effect.

The 2014 Legislature enacted SB 6413, which amended RCW 10.31.100 and added a new subsection (16) addressing when a police officer may arrest without a warrant. The new subsection provides:

A police officer shall arrest and keep in custody, until release by a judicial

officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 or RCW 46.61.504 or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years.

A complete copy of the bill is provided below. RCW 46.61.502 involves the offense of Driving While Under the Influence (DUI) and RCW 46.61.504 involves the offense of Physical Control While Operating a Vehicle While Under the Influence (Physical Control).

The requirement for mandatory arrest and keeping the person in custody until a judicial officer sets bail or permits release on personal recognizance or court order for a second or subsequent DUI or Physical Control offense is not covered by the current bail rule. While CrRLJ 3.2(o)(2) allows courts of limited jurisdiction to enact a local rule for a certain "class of offenses", a second or subsequent DUI or Physical Control arrest is still within the same class of offense, gross misdemeanor offenses. The new amendment makes clear it is the intent of the Legislature that persons arrested for DUI or Physical Control, who have a defined "prior offense" within ten years, are to be arrested by the police and held in custody until a judicial officer sets bail or orders release. The uniform bail schedule contained in CrRLJ 3.2(o)(2) does not contemplate these circumstances.

The DMCJA is requesting that CrRLJ 3.2(o) be amended to reflect this legislative amendment, by amending subsection (1) and adding a new subsection (3) to read as follows:

(1) Except as provided in subsection (3) below, when required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be \$500 and for a gross misdemeanor shall be \$1,000.

In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.

(2) [no change]

(3) Pursuant to RCW 10.31.100, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 (Driving Under the Influence) or RCW 46.61.504 (Physical Control of a Vehicle Under the Influence) or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as

defined in RCW 46.61.5055 within ten years.

The amendment to RCW 10.31.100 became effective July 12, 2014. Therefore, the DMCJA requests that this proposed amendment be considered as expeditiously as possible.

**D. Hearing:** A hearing is not requested.

**E. Expedited Consideration:** Expedited consideration is requested as the relevant legislation has already gone into effect.

Proposed Amendment

CrRLJ 3.2

RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

- (1) The court determines that such recognizance will not reasonably assure the accused's appearance, when required, or
- (2) There is shown a likely danger that the accused:
  - (a) will commit a violent crime, or
  - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" may include misdemeanors and gross misdemeanors and are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

- (1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

- (2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (3) Require the execution of an unsecured bond in a specified amount;
- (4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;
- (5) Require the execution of a bond with sufficient solvent sureties or the deposit of cash in lieu thereof;
- (6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or
- (7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

A court of limited jurisdiction may adopt a bail schedule for persons who have been arrested on probable cause but have not yet made a preliminary appearance before a judicial officer. The adoption of such a schedule or whether to adopt a schedule, is in the discretion of each court of limited jurisdiction, and may be adopted by majority vote. Bail schedules are not subject to GR 7. The supreme court may adopt a uniform bail schedule as an appendix to these rules.

If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors—Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

- (1) The accused's history of response to legal process, particularly court orders to personally appear;
- (2) The accused's employment status and history, enrollment in an educational

institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;\_

- (3) The accused's family ties and relationships;
- (4) The accused's reputation, character and mental condition;
- (5) The length of the accused's residence in the community;
- (6) The accused's criminal record;
- (7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (8) The nature of the charge, if relevant to the risk of nonappearance;
- (9) Any other factors indicating the accused's ties to the community.-

(d) Showing of Substantial Danger—Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall

consider, on the available information, the accused financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors—Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing. Release may be revoked only if the violation is proved by clear and convincing evidence.

(k) Arrest for Violation of Conditions.

(1) Arrest with Warrant. Upon the courts own motion or a verified application by the prosecuting authority alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (j).

(2) Arrest without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (j).

(l) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(m) (Reserved.)

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.

(1) Except as provided in subsection (3) below, ~~When~~ required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be \$500 and for a gross misdemeanor shall be \$1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.

(2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

(3) Pursuant to RCW 10.31.100, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 (Driving Under the Influence) or RCW 46.61.504 (Physical Control of a Vehicle Under the Influence) or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years.

(p) (Reserved.)

(q) (Reserved.)

[Amended effective September 1, 2002; April 1, 2003; September 1, 2005; amended June 2, 2010 effective July 1, 2012]



Filed  
Washington State Supreme Court

DEC - 3 2014

Ronald R. Carpenter  
Clerk

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED )  
AMENDMENTS TO JISCR 13 — ELECTRONIC )  
COURT RECORD SYSTEMS )  
)  
)  
)  
)  
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**ORDER**

NO. 25700-A-1088

The Judicial Information System Committee, having recommended the adoption of the proposed amendments to JISCR 13 — Electronic Court Record Systems, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

701/125

IN THE MATTER OF THE PROPOSED AMENDMENTS TO JISCR 13 — ELECTRONIC  
COURT RECORD SYSTEMS

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 30 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov). Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 3<sup>rd</sup> day of December, 2014.

For the Court

  
CHIEF JUSTICE

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## GR 9 COVER SHEET

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### Proposal to Amend Judicial Information System Committee Rule 13 Concerning Local Court Systems

#### Purpose:

JISCR 13 (effective May 15, 1976) requires counties or cities wishing to establish automated court record systems to provide 90 days' notice of the proposed development to the Judicial Information System Committee (JISC) and the Administrative Office of the Courts (AOC) for review and approval.

The proposed rule defines "electronic court record system," clarifies that JISC approval is required for all electronic court record systems, provides for increased notice of proposed systems, and requires courts with alternative electronic court record systems to comply with the JIS Data Standards for Alternative Electronic Court Record Systems.

#### HISTORY

On March 28, 2011, the JISC and the State Court Administrator received a letter from Spokane Municipal Court requesting approval to purchase *JustWare* software from New Dawn Technologies (see attached letter from Judge Tracy Staab, March 28, 2011).

The District Court Information System (DISCIS) is the current statewide person-centric court case management system used at the Courts of Limited Jurisdiction (CLJ) level. DISCIS is used for initiating case filing for well-identified persons and CLJ cases. It is also used to manage persons, case-related financial activities, CLJ calendaring and to perform other functions including delinquent payment processing.

The JIS is the designated statewide repository for criminal and domestic violence case histories. A complete case and person history is essential to the business of the courts for judicial decisions regarding public safety. Therefore, all Washington State Municipal, District, and Superior Courts are required to enter cases into JIS for the purpose of providing a central, statewide data repository for criminal and domestic violence related information.

References: RCW 26.50.070(5), 7.90.120, 10.95.045.

The JISC first discussed Spokane Municipal Court's request at their May 6, 2011 meeting (see attached JISC History on Spokane Municipal Request and JIS Local CMS Policy, 2011-2012). The JISC agreed to consider Spokane's request at its next meeting, June 24, 2011. AOC provided key questions for discussion and responses from

Spokane in areas including: the alternate system's unique functionality, data sharing, data integrity, security, and technical requirements (see attached Spokane Municipal Court Request for Approval to Implement a Local Automated Court Record System, May 11, 2011). AOC also provided an analysis and cost estimates for three options for data transfer from Spokane's system to the statewide system (see attached Spokane Municipal Court to Implement a Local Court Management System Options, June 24, 2011).

**Option One:**

AOC would prioritize the creation of a nightly batch transfer for Spokane, ahead of previously approved and prioritized IT Governance projects. This was estimated to take 1,400 hours of AOC staff time, 6-12 months to complete, and at a cost to AOC of \$100,000.

**Option Two:**

Spokane would continue its implementation of JustWare, and commit to continuing to enter the full set of required data separately into JIS (which may grow and change over time) until an expanded data transfer was available.

**Option Three:**

Spokane would defer implementation of its separate JustWare system until expanded data transfer was complete.

AOC recommended Option Two or Option Three, and not Option One, as it would prioritize this over other projects that had already been approved through the IT Governance process, and would provide limited data to other courts in the state, updated once every 24 hours, which could pose a safety risk.

AOC also outlined unanswered policy questions:

1. Who bears the cost of taking the court off JIS?
2. Who bears the cost of putting the court back on if it decides to come back later?
3. If there are differences of opinion as to fee splits or other things, whose opinion rules?

The JISC voted to defer a decision until its August 5, 2011 meeting, and also to form an ad hoc workgroup to propose a draft policy on implementation of local court systems for JISC approval.

The JISC Policy Workgroup on Implementation of Local Court Systems met twice in August, but was not prepared to propose a policy to the JISC in August. The decision on the policy and on Spokane's request was deferred until October 7, 2011. In the interim, AOC had numerous meetings with Spokane to understand their data exchange issues and how to make it work.

On August 16, 2011, Spokane Municipal Court sent a letter to Justice Mary E. Fairhurst stating that they had chosen to proceed with Option Two, and that they planned to proceed with implementation of their own local system. Option Two: Commit to continuing to enter the *full set of required data* (emphasis added) separately into JIS (which may grow and change over time) until the generic expanded data transfer (ITG #27) is available for use (see attached letter from Judge Mary Logan, August 16, 2011).

At their September 9, 2011 meeting, the JISC decided to send Spokane a letter clarifying the JISC position on Spokane's request.

On September 21, 2011 Justice Fairhurst, on behalf of the JISC, sent a letter to Judge Mary Logan, Spokane Municipal Court Presiding Judge, acknowledging that the JISC was not in a position to approve or deny Spokane's request because "there is not currently a corresponding policy in place to provide the necessary guidance and conditions to support an individual court's efforts to implement a non-JIS system, while ensuring the integrity of data and information upon which all courts depend." The letter went on to state, "the JISC feels it is prudent to inform you of the possible risks associated with implementing a local court system that has not been vetted in advance by the AOC to certify that it meets a predetermined set of business and technical standards. If problems are discovered at a later time, it could potentially be quite costly to you to make the needed corrections." (See attached letter to Judge Mary Logan, September 21, 2011).

On December 14, 2011, Pierce County opted out of the Superior Court Case Management System (SC-CMS) project, opting to retain their existing separate case management system, LINX (see attached letter to Judge Bryan Chushcoff, December 14, 2011).

In November 2012, AOC became aware that Spokane Municipal Court did not plan to enter complete data into JIS, as they had agreed in their August 18, 2011 letter. Justice Fairhurst and Callie Dietz, the State Court Administrator, sent a letter to Spokane Municipal Court on December 3, 2012, warning that "this decision can have significant consequences, including jeopardizing the Administrative Office of the Court's ability to produce consistent statewide caseload reports and to provide estimates of judicial need." (See attached letter to Judge Mary Logan, December 3, 2012). Spokane responded December 13, 2012, stating that the court intended to do double-data entry, but not each event, citing as an example the limited case information sent from Seattle Municipal Court to JIS (see attached letter to Justice Fairhurst and Callie Dietz, December 13, 2012). Since Spokane Municipal implemented its JustWare system in 2013, Spokane has entered significantly less than the full set of data into JIS. In particular, hearing date information and accounting information are missing. Subsequently, AOC received information from Spokane District Court indicating

numerous difficulties created because Spokane Municipal Court was not entering hearing information.

The JISC Policy Workgroup on Implementation of Local Court Systems continued to meet through 2011 and 2012 with the purpose of developing first a policy and then amendments to JISCR 13, but could not come to consensus. The draft policy contained references to an AOC data standard that would detail the data elements required for courts on local systems to share with the statewide system. On June 22, 2012, the workgroup brought majority and minority drafts to the JISC, declared it had reached an impasse, and requested direction from the JISC. The JISC gave the workgroup direction as to several questions, but did not approve either raft. The JISC ordered the workgroup to continue its work and bring a revised draft back to the committee (see attached summary of JISC minutes). The workgroup met through November 2012, but still could not reach consensus. The workgroup then became dormant, until it was finally disbanded in 2014. Having been unable to reach consensus on the policy, the workgroup never addressed the planned amendments to JISCR 13. Because a policy was never passed, the accompanying AOC data standards were also never passed.

In late 2013, AOC became aware that several other courts were pursuing independent local systems, including King County District Court, Yakima County District Court, and Federal Way Municipal Court, in addition to Seattle Municipal Court and Spokane Municipal Court, which already had separate local systems. Representatives of the District and Municipal Court Judges' Association, the District and Municipal Court Management Association, and AOC met on January 24, 2014, to discuss the courts' future plans for independent systems, and the impact on the statewide court information database. If all of these courts of limited jurisdiction leave the statewide system, there must be data standards in place so that their information is visible to other courts and justice partners.

On January 27, 2014, AOC received a letter from King County Superior Court declaring that they were withdrawing from the SC-CMS project (see attached letter from Judge Craighead, January 27, 2014). When King County Superior Court implements its own case management system, there will be a need for King County Superior Court's information to continue to be in the statewide system. Without it, there will be a significant gap in the case information available statewide.

In the 2014 Supplemental Budget, the legislature attached the following proviso to AOC's funding for the Superior:

The administrative office of the courts and the judicial information systems committee shall develop statewide superior court data collection and exchange standards. Upon implementation, these standards must be met by each superior court in order to continue to receive judicial information

systems account funding or equipment and services funded by the account.

For those courts that do not use the statewide superior court vendor solution as chosen by the judicial information systems committee, judicial information systems account funds may not be allocated for (a) the costs to meet the data collection and exchange standards developed by administrative office of the courts and judicial information systems committee, and (b) the costs to develop and implement local court case management systems.

Responding to the legislature's direction for superior courts, as well as the growing need to ensure the integrity of statewide information for courts of limited jurisdiction, the JISC passed JIS Data Standards for Alternative Court Record Systems and the accompanying Implementation Plan on October 24, 2014 (see attached data standards and implementation plan).

The proposed amended JISC Rule 13 was distributed to JISC members and stakeholders on August 25, 2014, for consideration at the September 5 JISC meeting. Justice Fairhurst received numerous requests to delay consideration of the proposed rule. At the September 5<sup>th</sup> meeting, the JISC agreed to delay the decision until their October 24<sup>th</sup> meeting, and had a lengthy discussion about the proposed rule. Justice Fairhurst requested written comments from members.

After receiving suggestions and comments, Justice Fairhurst sent a revised version of the rule to JISC members on September 29, with a request for comments by October 7. More comments were received from members and court stakeholders. A final proposed version of the rule was sent to JISC members and stakeholders on October 13, 2014 for the October 24 JISC meeting. Shortly before the meeting, Justice Fairhurst again received requests to delay a decision on JISCR 13. When the JISC member requesting more time was asked how much more time would be needed, the response was six months.

On October 24, 2014, the JISC approved the proposed amendment to JISCR 13 to include the language in the first paragraph of the legislative proviso above, and made it applicable to both superior and limited jurisdiction courts. The JISC's rationale is to give the JISC authority to enforce the new data standards for courts with independent systems by tying compliance with JIS funding, as the legislature did in its 2014 budget proviso. As more limited jurisdictions contemplate using alternative systems, it is also necessary to ensure the integrity of statewide information for all courts (see attached excerpt from draft minutes, JISC October 24, 2014 meeting).

On October 24, the JISC also added the second paragraph of the legislative proviso to its JIS General Policies, ensuring that JIS funds would not be used for

costs for local systems or for those systems to meet the data standards. (See attached JIS General Policy10.2).

**Proposed Change to JISCR 13**

The proposed rule defines "electronic court record system," clarifies that JISC approval is required for all electronic court record systems, provides for increased notice of proposed systems, and requires courts with alternative electronic court record systems to comply with the JIS Data Standards for Alternative Electronic Court Record Systems.

1 RULE 13            ELECTRONIC LOCAL COURT RECORD SYSTEMS

2  
3 (a) An “electronic court record system” is any electronic court records technology  
4 system that is the source of statewide court data identified in the JIS Data  
5 Standards for Alternative Electronic Court Record Systems.

6            Comment: The JIS Data Standards for Alternative Electronic Court Record Systems  
7 define “Statewide court data” as “data needed for sharing between courts, judicial  
8 partners, public dissemination, or is required for statewide compilation in order to  
9 facilitate the missions of the Washington Courts, justice system partners, and the  
10 AOC.”

11  
12 (b) All electronic court record systems must receive the approval of the Judicial  
13 Information System Committee. Notice of the proposed development must be  
14 provided to the Judicial Information System Committee and the Administrative  
15 Office of the Courts 12 months prior to the purchase or acquisition of software or  
16 services.

17 (c) Alternative electronic court record systems must comply with the JIS Data  
18 Standards for Alternative Electronic Court Record Systems. These standards  
19 must be met in order for a court with an alternative electronic court record system  
20 to continue to receive Judicial Information Systems (JIS) account funding or  
21 equipment and services funded by the account.

22 ~~Counties or cities wishing to establish automated court record systems shall~~  
23 ~~provide advance notice of the proposed development to the Judicial Information~~  
24 ~~System Committee and the Office of the Administrator for the Courts 90 days~~  
25 ~~prior to the commencement of such projects for the purpose of review and~~  
26 ~~approval.~~  
27

- (a) An “electronic court record system” is any electronic court records technology system that is the source of statewide court data identified in the JIS Data Standards for Alternative Electronic Court Record Systems.

**Comment:** The JIS Data Standards for Alternative Electronic Court Record Systems define “Statewide court data” as “data needed for sharing between courts, judicial partners, public dissemination, or is required for statewide compilation in order to facilitate the missions of the Washington Courts, justice system partners, and the AOC.”

- (b) All electronic court record systems must receive the approval of the Judicial Information System Committee. Notice of the proposed development must be provided to the Judicial Information System Committee and the Administrative Office of the Courts 12 months prior to the purchase or acquisition of software or services.
- (c) Alternative electronic court record systems must comply with the JIS Data Standards for Alternative Electronic Court Record Systems. These standards must be met in order for a court with an alternative electronic court record system to continue to receive Judicial Information Systems (JIS) account funding or equipment and services funded by the account.

~~Counties or cities wishing to establish automated court record systems shall provide advance notice of the proposed development to the Judicial Information System Committee and the Office of the Administrator for the Courts 90 days prior to the commencement of such projects for the purpose of review and approval.~~



KING COUNTY DISTRICT COURT  
East Division – Redmond Courthouse

Judge Janet E. Garrow  
206-477-2103

8601 160th Ave NE  
Redmond, WA 98052-3548

Kathy Orozco  
Court Manager

TO: Judge Veronica Alicea-Galvan, President, DMCJA Board  
FROM: Judge Janet Garrow, Chair, DMCJA Rules Committee  
SUBJECT: DMCJA Board Request to Review CrRLJ 3.2 and CrRLJ 6.2  
DATE: December 9, 2014

The Superior Court Judges' Association recently petitioned the Supreme Court to amend CrR 3.2 and CrR 6.2. During its November meeting, the DMCJA Board charged the Rules Committee with reviewing these rules and determining whether the DMCJA should propose like revisions to CrRLJ 3.2 and CrRLJ 6.2. For the reasons discussed below, the Rules Committee recommends that the DMCJA not propose amendments to CrRLJ 3.2 and CrRLJ 6.2.

Prior to the Board's request, the DMCJA Rules Committee considered whether CrRLJ 3.2 should be amended in light of the *Barton* decision (*State v. Barton*, 181 Wash.2d 148, 331 P.3d 50 (July 31, 2014)), and Judge Szambelan drafted a memo for the Committee to review. A copy of that memo is attached. The conclusion was that the section of concern to the SCJA that was at issue in *Barton*, CrR 3.2(b)(4), although identical, is rarely used by the courts of limited jurisdiction, and that the majority of the Supreme Court rejected the argument that section (b)(4) was constitutionally infirm.

The Supreme Court has published the SCJA's proposed amendment to CrR 3.2 for comment. The comment period ends April 30, 2015. The Supreme Court adopted the SCJA proposed amendment to CrR 6.2, without a comment period, and it becomes effective upon publication. The Rules Committee recommends the DMCJA Board send a comment letter to the Supreme Court advising that it is not seeking to amend CrRLJ 3.2(b)(4) but if the Court adopts the SCJA's amendment, the DMCJA recommends the Supreme Court adopt a similar amendment to CrRLJ 3.2(b)(4) so the trial court rules remain congruent.

With regard to CrRLJ 6.2, Jurors' Orientation, the errors that the SCJA seeks to remedy are not present in the CLJ rule. The current version of CrR 6.2 refers to "the Washington State Magistrates Association" and "petit jurors." CrRLJ 6.2 properly refers to the DMCJA and jurors.

For these reasons, the Rules Committee recommends against proposing amendments to CrRLJ 3.2 and CrRLJ 6.2.

If you have any questions, please contact me or J Benway.

Attachments: SCJA proposed amendment to CrR 3.2(b)(4)  
Memo from Judge Szambelan regarding CrR 3.2(b)(4)

CC: DMCJA Rules Committee  
J Benway, AOC Staff

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## GR 9 COVER SHEET

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Suggested Amendment  
CrR 3.2 Release of Accused

Submitted by the Superior Court Judges' Association

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**Purpose:** To bring CrR 3.2 into compliance with *State v. Barton*, \_\_\_\_\_ Wn.2d \_\_\_\_\_  
(July 31, 2014) (No. 89390-0).

Suggested Amendment CrR 3.2 RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases.

Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear-Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

~~(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;~~

(5) (4) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

~~(6)~~ (5) Require the accused to return to custody during

specified hours or to be placed on electronic monitoring, if available; or

~~(7)~~ (6) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(Remainder of rule unchanged)

*Comment: Rule changed to comply with State v. Barton, ---Wn2d ---- (7/31/14)*

Memo

TO: Judge Garrow, Chair DMCJA Rules Comm.

FROM: Shelley Szambelan

DATE: September 24, 2014

---

Question: Is any modification necessary to CrRLJ 3.2(b)(4) as a result of the Supreme Court's decision in *State v. Barton*?<sup>1</sup> [N.B., While *Barton* addressed CrR3.2(b)(4), the counterpart for courts of limited jurisdiction is identical.]

Short Answer: Not necessarily. While at least some of SCJA believe this section needs to be deleted<sup>2</sup>, the majority decision did not hold that the court rule violated the state constitutional provision that mandates when bail is permitted that is "shall be by sufficient sureties." Admittedly, the dissent had a good point when it noted the Majority's complicated argument that subsection (b)(4) remained constitutional: "It reasoned that the rule was fine, but the trial court erred in following that rule to the letter."<sup>3</sup> It's unknown how the three-person minority in the dissent (JJ. Gordon McCloud, Madsen & González) will affect any subsequent decision by the Supreme Court\* on CrR 3.2(4)(b) or CrRLJ 3.2(4)(b). [J. Yu did not participate, COA J. Korsmo signed the majority decision].

The majority analyzed whether Wash. Const. art. 1, § 20 requires that a defendant be allowed the option to secure bail using a surety, differentiating it from cash or other security. Mr. Barton was accused of a child rape. Initially, the trial court set bail at \$250k. The prosecution asked for a condition that required that 10% be deposited in cash with the registry of the court. Barton objected to the "cash-only" bail requirement and the trial court delayed consideration.

The next day, the prosecution sought an even higher bond (\$1M w/ 10% in cash). The trial court set bail at \$500k, requiring that Barton execute a bond depositing 10% cash into the court registry. Again, Barton moved to strike the cash-only provision. After briefing and a new hearing, the court

---

<sup>1</sup> \_\_\_ Wn.2d \_\_\_, 331 P.3d 50 (July 31, 2014).

<sup>2</sup> The SCJA Board is meeting today. Its Rules Comm chair (J. Cozza) wasn't sure if Board would vote on the Committee's proposal on the suggested clean-up at today's meeting or the next. However, he was confident that the Board would support the Committee's proposal and that even if it wasn't approved until the next meeting, the Supreme Court would still consider its comments after the October 15<sup>th</sup> deadline. Their chair expressed hope that the DMCJA would likewise follow suit.

<sup>3</sup> *Id.* at ¶ 39.

clarified that it intended for the earlier order to track CrR3.2(b)(4), which states how a court may:

Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release.

The court modified its order to state: “Defendant shall execute a bond in the amount of \$500,000 and deposit into the registry of the court in \$50,000 cash **or other security . . .**” Barton appealed and the Supreme Court accepted review. Emphasis supplied.

The Supreme noted how the legislative changes that followed tragic deaths in Lakewood while a defendant was on bail for felony charges that would have resulted in life imprisonment and concerns about how much financial liability a posting defendant had at stake (*i.e.*, some requirements of cash premiums on bail were a fiction).

The state constitutional provision did not have a federal counterpart, and it was a case of first impression in Washington. The Court considered the dual purpose of the provision: protecting an accused’s presumption of innocence, as well as the court’s interests. It focused on the key word, “surety,” and analyzed the distinction between who and what the law looks to when a surety is involved as opposed to cash (*e.g.*, the law looks to surety to guarantee the defendant’s appearance, but looks to the money posted with cash bail). The Court drew a clear contrast between the two.

Historical context came into play as well. Back in the days of merry old England, magistrates traveled a circuit and it was likely that an accused could be potentially detained long periods of time awaiting trial. Persons of good reputation could vouch for the accused as a “personal surety” and agree to ensure the accused’s presence and faced a monetary penalty if they did not. Once punishment transitioned from fines to corporal punishment, availability of bail became more restricted because there was a higher incentive to flee. An archaic “Statute of Westminster” created in 1275 a confusing uniform system of bail administration that governed English bail law for 500 years.

The constitutional language “bailable by sufficient sureties” was first adopted in the colonies in 1682. The Quakers, who had been persecuted in England, had greater sympathy for those detained than the judiciary. This language was eventually incorporated into Pennsylvania’s constitution and two-thirds of all states, including Washington. The court examined the commercial bail bondsman system that derived from that system.

Ultimately, the Supreme Court decided that a defendant must be allowed the option of a surety arrangement in addition to the option of depositing cash or property in the registry of the court. The additional option is set forth in CrR3.2(b)(5). Because the Court Rule requires

courts to use the least restrictive alternatives, the provision in (b)(5) safeguards a defendant's right to a surety bond as an alternative to putting up cash or collateral, unless the court finds that a surety arrangement will not adequately secure the defendant's presence. The record in *Barton* contained no particularized findings about his likelihood of appearance. The Court held that the order violated the constitutional mandate to the degree that it disallowed use of a surety and remanded for proceedings consistent with the opinion.

Three justices joined the dissent that concurred with the bulk of the Majority opinion's analysis, except for the conclusion. In sum, it questioned: "how one can fault the trial court for applying the literal language of the rule but not fault the rule." They disagreed with the Majority's assertion that the subsection forming the basis for the unconstitutional bail order survives constitutional scrutiny.





WASHINGTON  
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# District and Municipal Court Judges' Association

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**Past President**

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JUDGE JEFFREY J. JAHNS  
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December 18, 2014

Honorable Barbara A. Madsen  
BJA Co-Chair  
Washington State Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

Honorable Kevin G. Ringus  
BJA Co-Chair  
Fife Municipal Court  
3737 Pacific Hwy E  
Fife, WA 98424-1135

Dear Chief Justice Madsen and Judge Ringus:

The Washington State District and Municipal Court Judges' Association (DMCJA) is aware of Skagit County's request to the Legislature requesting the creation of a third full time judicial position in Skagit County District Court (SCDC). SCDC presently has two judges, a full time commissioner and a part time commissioner providing judicial services to the district court and its three municipal departments – Anacortes, Burlington and Mount Vernon. In essence they are operating four courts. In 2008, the Legislature amended RCW 3.42.020 to remove a court commissioner's power to preside over trials of criminal matters and jury trial of civil matters. This greatly limited the utility of Court Commissioners and, in part, resulted in both Benton and Grant Counties seeking the creation of additional judicial positions in recent years. Scheduling speedy trials in four courts with only two available judges is a complicated process that can be readily solved by creation of a third judicial position. In addition, we note that SCDC (including its municipal departments) has consistently needed in excess of four judicial officers according to the annual AOC judicial needs estimate for at least the last six years.

With the foregoing in mind, DMCJA supports Skagit County's request for creation of a third full time judicial position.

Sincerely,

Judge Veronica Alicea-Galvan  
President, DMCJA

cc: Judge Samuel Meyer  
Ms. Melanie Stewart





WASHINGTON  
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# District and Municipal Court Judges' Association

## *President*

**JUDGE VERÓNICA ALICEA-GALVAN**

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December 30, 2014

## *President-Elect*

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Honorable Barbara A. Madsen  
Washington State Supreme Court  
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Olympia, WA 98504-0929

## *Vice-President*

**JUDGE G. SCOTT MARINELLA**

Columbia County District Court  
535 Cameron St  
Dayton, WA 99328-1279  
(509) 382-4812

Dear Chief Justice Madsen,

RE: 2014 DMCJA Annual Report

## *Secretary/Treasurer*

**JUDGE SCOTT K. AHLF**

Olympia Municipal Court  
900 Plum St SE  
PO Box 1967  
Olympia, WA 98507-1967  
(360) 753-8312

On behalf of the District and Municipal Court Judges' Association (DMCJA), I submit this annual report of the condition of business in the courts of limited jurisdiction, pursuant to the Revised Code of Washington (RCW) 3.70.040 (3).

## *Past President*

**JUDGE DAVID A. SVAREN**

Skagit County District Court  
600 S 3<sup>rd</sup> Street  
PO Box 340  
Mount Vernon, WA 98273-0340  
(360) 336-9319

The courts of limited jurisdiction (CLJs) have been busy in 2014. CLJ judges handled approximately 1.7 million cases, which include traffic infractions, misdemeanors, civil protection orders, civil, small claims, felony complaints, and parking infractions, according to the Administrative Office of the Court's 2014 Caseload Report for January 2014 to October 2014. The revenue generated from CLJs during this period is approximately two point one million dollars (\$2.1 million). The two hundred and fifty-eight CLJs in the State of Washington process more than eighteen million transactions a month, which is approximately eighty-seven percent of Washington State's caseload.

## *Board of Governors*

**JUDGE JOSEPH M. BURROWES**

Benton County District Court  
(509) 735-8476

## Case Management System

In 2014, the DMCJA Board of Governors (Board) determined that a new courts of limited jurisdiction case management system (CLJ-CMS) was its first priority. The DMCJA, therefore, joined the Administrative Office of the Courts (AOC) to gather requirements for, and develop a procurement plan to, select a modern commercial-off-the-shelf (COTS) case management system that would meet the needs of the courts and efficiently administer justice for the public. The DMCJA also worked with the Judicial Information System Committee (JISC), which is the leader of the new CLJ-CMS project, to establish a CLJ-CMS Project Steering Committee, that serves as the business and strategic decision-making team that speaks for the CLJs with a unified voice and vision, and a CLJ-CMS Court User Work Group (CUWG), that serves as subject matter expert on court business processes. The Project Steering Committee and the CUWG have met project deadlines and continue to work toward establishing an efficient and effective case-management system.

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(425) 487-5587

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Honorable Barbara A. Madsen  
December 30, 2014  
Page 2

#### Court Security

Establishing minimum standards for courtroom security remains a priority for the DMCJA. The Association strongly holds that the public has an inherent right to expect a safe environment when they are summonsed to court. Each year there is news of a judge and/or court official who has been injured by a disgruntled party because of a deficiency in courthouse security. Many of the CLJs lack the most basic security measures. In an effort to protect its courts, the DMCJA voted to support a court rule that outlines recommended court security measures in November 2014. The DMCJA continues to support courthouse funding initiatives for all CLJs.

#### Education Programs

In May 2014, a few DMCJA judges joined forces with the Board for Judicial Administration to create a public video entitled Myths and Misperceptions About the Washington Courts, which was created to dispel misconceptions of the Washington State Judiciary. The DMCJA leadership has also provided education to its members regarding the negative impacts of legal financial obligations (LFOs).

#### Judicial Needs Estimates

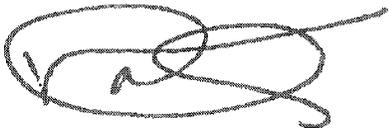
In August 2014, the DMCJA Board approved the Judicial Needs Estimate (JNE) Workgroup's recommendations to move forward with a new coding system. The JNE Workgroup was initiated in order to track the amount of cases that CLJs adjudicate.

#### Department of Licensing (DOL) Court Leadership Meeting

The DMCJA and the DOL continue to meet annually to work together to resolve administrative issues that arise from the high volume of cases administered. In July 2014, a joint meeting was held with the AOC, DMCJA, District and Municipal Court Management Association (DMCMA), and DOL to identify and resolve outstanding issues. All parties have committed to continued communication and efforts to improve business and technical processes regarding license issues.

Thank you for the opportunity to report on the business of the DMCJA. On behalf of the DMCJA Board and officers, I sincerely thank the Supreme Court and the Board for Judicial Administration for its continued support of all of the courts of limited jurisdiction.

Sincerely,



Judge Veronica Alicea-Galvan  
DMCJA President

The Supreme Court  
State of Washington

BARBARA A. MADSEN  
CHIEF JUSTICE  
TEMPLE OF JUSTICE  
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December 31, 2014

Honorable Jay Inslee, Governor  
Office of the Governor  
P. O. Box 40002  
Olympia, WA 98504-0002

Re: Defects and Omissions in the Laws

Dear Governor Inslee:

Pursuant to article IV, section 25, of the Constitution of the State of Washington and the provisions of RCW 2.04.230, the Supreme Court of the State of Washington is to report to you in December of each year regarding any defects or omissions in the laws as we believe may exist.

**Report from appellate courts.** The Washington State Supreme Court has no defects or omissions to report.

**Forwarded reports from other courts.** In addition to the constitutional and statutory responsibility of the Supreme Court, the judges of the Court of Appeals and superior courts are required by statute, and by the State Constitution in the case of superior courts, to report to the Supreme Court in November of each year regarding any defects or omissions in the laws that they believe exist. I have attached the reports I received from the Court of Appeals and from the Superior Court Judges' Association.

Sincerely,

A handwritten signature in cursive script that reads "Barbara A. Madsen".

Barbara A. Madsen  
Chief Justice

Attachments as noted (2)

c: Washington Supreme Court Justices  
Hon. Kevin M. Korsmo, Presiding Chief Judge, Court of Appeals  
Hon. Jeffrey Ramsdell, President Judge, Superior Court Judges' Ass'n  
Hon. Veronica Alicea-Galvan, President Judge, Dist. & Municipal Court Judges' Ass'n  
Callie Dietz, Court Administrator

The Court of Appeals  
of the  
State of Washington

KEVIN M. KORSMO, JUDGE  
NORTH 500 CEDAR STREET  
SPOKANE, WASHINGTON 99201



(509) 456-4032

October 28, 2014

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

Re: Annual Report on Defects and Omissions

Dear Chief Justice Madsen:

After consultation with the other judges of the Court of Appeals, I am writing with our suggested contributions for this year's report on defects and omissions in the laws. The bulk of these suggestions come from the recently retired Robin Hunt. In addition to these suggestions, we also urge you to call attention to Judge Applewick's extensive database tracking these problems.

*Nissen v Pierce County and Lindquist*, 44852-1-II (2014 WL 4435860, September 9, 2014), held that Pierce County Prosecutor Lindquist's personal cellular phone call logs and text messages involving the conduct of government business constitute "public records" as defined in RCW 42.56.010(3) and are therefore subject to PRA request. This is a statute that the legislature might like to review, especially in light of a new case coming up eventually from Kitsap County involving city councilmen conducting government business on private home computers, subject to the PRA.

*Woods v H.O. Sports*, No. 44346-5-II (2014 WL 4087432, August 19, 2014), involving judicially-created exception to judicially-created parental immunity from tort liability in non-parental, non-supervisory capacity (father driving motor boat towing teenagers on tube behind boat in excess of manufacturer's recommended speed and usage: could son sue father, especially if his friends could?). Case does not involve a statute, but legislature might like to be aware of it.

Chief Justice Babara Madsen

October 28, 2014

Page 2

*State v Daniels*, No. 436035-II (--- Wn. App. ---, 332 P.3d 1143, August 19, 2014), holding that the legislature intended separate punishments for promoting commercial sexual abuse of a minor (RCW 9.68A.101) and second degree promoting prostitution (RCW 9A.88.080).

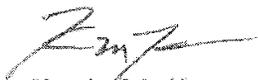
*Michelbrink v WSP*, No. 44035-1-II (180 Wn. App. 656, April 23, 2014), addressing whether injury to trooper from Taser training was a "deliberate intentional certain injury" for purposes of intentional tort exception (RCW 51.24.020) to otherwise exclusive remedy for workplace injury and employer tort action immunity under the workmen's compensation act (RCW 51.04.010).

*Gorre v. City of Tacoma*, No. 43621-3-II (180 Wn. App. 729, April 23, 2014), addressing RCW 51.32.185 statutory presumption of "occupational disease" (Valley Fever) arising from firefighter's course of employment for workmen's comp purposes.

*State v. Bergen*, 31648-3-III (publication pending): Does local DOSA sentencing option permit judge to retain defendant in custody until bed date is available to serve DOSA sentence?

I hope these brief summations are sufficiently explanatory. If I can provide any additional information, please contact me. Thank you very much for your attention to this matter.

Sincerely yours,



Kevin M. Korsmo  
Presiding Chief Judge

cc: L. Alfasso



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# Superior Court Judges' Association

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November 20, 2014

Honorable Barbara A. Madsen  
Washington State Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Dear Chief Justice Madsen:

RE: SCJA ERRORS AND OMISSIONS REPORT

It is my pleasure to supply the Washington State Supreme Court with the Superior Court Judges' Association's (SCJA) Errors and Omissions Report for 2014. Colleagues from across Washington State have contributed to this report.

**RCW 9.94A.535, .537 – Gang Aggravator.**

**Provisions Involved:**

- RCW 9.94A.535(3)(aa)
  - RCW 9.94A.030(12)
  - RCW 9.94A.030(14)
  - RCW 9.94A.030(36)
- RCW 9.94A.537(4)
- Criminal Rules, CrR 8.3(c)(3)
- Rules of Evidence, ER 404(b)
- Rules of Evidence, ER 609

**Brief Description of Defects:**

**Defect: Circularity – Impossibility of proof.**

RCW 9.94A.535(3)(aa) allows an enhanced sentence for a crime committed to benefit a *criminal street gang*. The definition of that term in RCW 9.94A.030(12) requires the State to prove the group has engaged in a *pattern of criminal street gang activity*. The definition of that term in

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RCW 9.94A.030(36) requires the State to prove that members of the group—defendant or others—have committed a series of *criminal street gang-related offenses*. The definition of that term in RCW 9.94A.030(14) includes a requirement that the past offenses were committed to benefit in some way a *criminal street gang*.

Thus, as now written, the definition can never be proved because it is circular. *It is only a criminal street gang if its past crimes were committed to benefit a criminal street gang, which requires us to look at the group's crimes before those past ones, and so on.*

The circularity could be resolved if RCW 9.94A.030(14), the definition of criminal street gang-related offense, were amended to clarify that the past crimes were committed to benefit a group or organization alleged by the State to be a criminal street gang.

**Defect: Tried in unified or bifurcated proceeding?**

RCW 9.94A.537 lays out which aggravators are to be proved by evidence during the guilt trial and which potentially by a bifurcated proceeding. When it was adopted, the aggravators in RCW 9.94A.535 were expressed in subsections (3)(a) through 3(y). Thus, .537(4) provided that evidence regarding the circumstances “under RCW 9.94A.535(a) through (y)” shall be presented to the jury during the guilt trial, except for certain exceptions specified in the statute.

In later years, six new aggravators were added to .535(3), so that now, instead of being expressed in (3)(a) through (3)(y), they are expressed in 3(a) through 3(ee). However, .537(4) was not amended accordingly. Thus, there is no statutory provision for how to try the six added aggravators, including the gang aggravator in (3)(aa).

**Defect: Fair trial.**

Assuming guilt-phase presentation of factual evidence regarding the gang aggravator [that is, implying that mere legislative inadvertence produces the foregoing defect], the process seems patently unfair and corruptive of the guilt-determination function of trial.

The State need only allege the gang aggravator, whether or not it has sufficient evidence (or any evidence) to prove it. CrR 8.3(c)(3) includes the following provision: “The court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section.”

During the guilt-determination trial, the State is then permitted to introduce evidence of countless prior crimes attributed not only to the defendant, but to persons with whom he associates, whether he was involved in those crimes or not. It is not even required that defendant was a member of the gang at the time the previous crimes by others were committed.

This appears grossly unfair and inimical, not only to the “prior bad acts” provisions of ER 404(b) and prior conviction provisions of ER 609, but to the constitutional mandates of fair trial and due process.

Honorable Barbara A. Madsen  
November 20, 2014  
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RCW 9.94A.537(4) should be amended to provide that the gang aggravator be tried only in a bifurcated proceeding. CrR 8.3(c)(3) should be amended to delete the prohibition on dismissal of an aggravating circumstance for which the State has legally insufficient evidence.

**RCW 46.61.024(1) Attempting to elude police vehicle — Defense — License Revocation.**

**Defect: Being in uniform as an element of eluding.**

Under RCW 46.61.024(1), the officer being in uniform is an element of the crime of attempting to elude a police vehicle.

It is unclear how a driver in a high-speed chase with police officers in patrol cars with lights/sirens activated would know whether the officer was in uniform or not. It is possible that the purpose of the "uniform" requirement relates historically to officers attempting to stop vehicles by hand or voice, as opposed to being in their vehicle, but given that the crime is called "attempting to elude police *vehicle*" and specifically requires the involvement of a police vehicle, it is hard to see when a hand or voice signal would play into it.

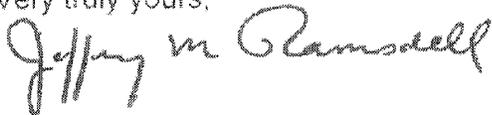
Any good-faith confusion over whether the signal to stop is made by a police officer is covered by RCW 46.61.024(2), which provides that it is an affirmative defense that a reasonable person would not believe that the signal to stop was given by a police officer.

This issue can be seen in context of probable cause determinations. The probable cause statement often describes a blatant attempt to outrun police in a high-speed chase, but finding probable cause is impossible because the statement does not indicate the officer was wearing a uniform. That is unacceptable.

From a policy standpoint, it sends a bad message to the public to even hint that they have a built-in defense if the police officer chasing them in a patrol car with lights/siren activated is not wearing a uniform.

The solution is to strike the last sentence in RCW 46.61.024(1).

Very truly yours,



Jeffrey M. Ramsdell  
President-Judge, SCJA

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cc: SCJA Board of Trustees  
Ms. Janet Skreen

**DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION  
SCHEDULE OF BOARD MEETINGS**

**2014-2015**

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

AOC Staff: Sharon Harvey

(AOC Conference Room Reserved)

Updated: December 16, 2014

