



DMCJA Board of Governors Meeting
Friday, September 11, 2016, 9:00 a.m. – 12:00 p.m.
AOC SeaTac Office
SeaTac, WA

AMENDED MEETING MINUTES

Members Present:

Chair, Judge G. Scott Marinella
Judge Scott Ahlf
Judge Joseph Burrowes
Judge Linda Coburn
Judge Karen Donohue
Judge Douglas Fair (via phone)
Judge Michelle Gehlsen
Judge Judy Jasprica (non-voting)
Judge Michael Lambo
Commissioner Rick Leo (via phone)
Judge Kevin Ringus (non-voting)
Judge Rebecca Robertson
Judge Douglas Robinson
Judge Charles Short
Judge Tracy Staab

Guests:

Mr. Salvador Mungia, ACLU
Mr. Loyd Willaford, WSAJ (via phone)

AOC Staff:

Ms. Callie Dietz
Ms. Sharon R. Harvey
Mr. Dirk Marler

Members Absent:

Judge Michael Finkle
Judge Janet Garrow (non-voting)
Judge Mary Logan (non-voting)
Judge Samuel Meyer
Judge David Steiner

CALL TO ORDER

Judge G. Scott Marinella, District and Municipal Court Judges' Association (DMCJA) President, noted a quorum was present and called the DMCJA Board of Governors (Board) meeting to order at 9:06 a.m. Judge Marinella asked attendees to introduce themselves.

GENERAL BUSINESS

A. Minutes

The Board moved, seconded, and passed a vote (M/S/P) to approve the Board Minutes for August 12, 2016.

B. Treasurer's Report

M/S/P to approve the Treasurer's Report. Judge Robertson reported that the Treasurer's Report was sent to each Board member electronically on Saturday, September 10, 2016. She further informed that fifteen thousand dollars (\$15,000) was paid for the Presiding Judge and Administrator Program, which includes five thousand dollars (\$5,000) for the District and Municipal Court Managers' Association (DMCMA) and ten thousand dollars (\$10,000) for the DMCJA portion of the funding commitment. In February 2016, the Board voted to fund the Program, which will be held November 6-8, 2016 in Chelan, WA.

C. Special Fund Report

M/S/P to approve the Special Fund Report. Judge Burrowes informed that there was nothing to report regarding the Special Fund. Judge Marinella addressed the issue regarding the two hundred fifteen dollars

(\$215) incidental fees for the 2016 Annual Spring Conference. In 2016, there were fifteen DMCJA members who attended the conference but did not pay their incidental fees. Judge Marinella informed that Ms. Harvey met with AOC staff regarding the collection of the fees and determined that the AOC prefers to collect the incidental fees owed. Thus, the Board determined that the AOC, not the DMCJA, would collect the monies owed. Judge Burrowes volunteered to personally contact judges who had not paid their incidental fees. By general consensus, the Board decided to educate the membership regarding general dues, special fund assessments, and incidental fees.

D. Standing Committee Reports

1. *Rules Committee Minutes*

Judge Marinella informed that the Rules Committee's Minutes for July 20, 2016 are located in the Board materials. Judge Robertson reported that she was not present at the August 24, 2016 Rules Committee meeting, and, therefore unable to provide an update on Infraction Rule for Courts of Limited Jurisdiction (IRLJ) 3.5. For this reason, Judge Marinella requested that the issue be deferred to the October Board meeting. Judge Marinella suggested, however, that the amendment to IRLJ 3.5 include language regarding no appeals for telephonic or video conference mitigation hearings. This recommendation will be provided to Judge Franklin Dacca, DMCJA Rules Committee Chair.

2. *Diversity Committee*

Judge Coburn and Judge Short reported that the DMCJA Diversity Committee co-hosted a biannual Pro Tem Training with the Washington State Bar Association (WSBA) August 19-20, 2016 in Seattle. They informed that the training was well attended and received positive oral responses. The Committee is awaiting written evaluations from attendees. Judges Coburn and Short then reported that several attendees received funding to attend the training. The cost to attend the Pro Tem training was approximately four hundred dollars (\$400). The Committee advertised scholarship funding to minority bar associations in an effort to increase diversity on the bench. Judge Marinella informed that Judge Paja sent out letters thanking Pro Tem Training faculty for their support.

E. Trial Court Advocacy Board (TCAB) Update

Judge Marinella reported that the next TCAB meeting is Tuesday, September 13, 2016, at noon. The group will discuss Engrossed Second Substitute Senate Bill (E2SSB) 5454, *An act relating to court operations*, which passed the Legislature in 2005. The bill created an equal justice subaccount created as a subaccount of the public safety and education account. The state treasurer was charged with depositing monies received from imposed court fees into the account. This subaccount was appropriated only for the following: (1) Criminal indigent defense assistance and enhancement at the trial court level, (2) Representation of parents in dependency and termination proceedings, (3) Civil legal representation of indigent persons, and (4) Contribution to district court judges' salaries and to eligible elected municipal court judges' salaries. See E2SSB 5454, Section 8 (2).

ACTION

A. DMCJA Rules Committee Proposed Amendments to Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 3.5, *Decisions on Written Statements*

The general consensus of the Board was to defer this action item to the October Board meeting in order to obtain more information regarding the proposed amendments to IRLJ 3.5.

B. Request for Proposals (RFP) Evaluators

M/S/P to authorize up to fifteen thousand dollars (\$15,000) partial pro tempore coverage for all volunteers upon application. This issue relates to a discussion item regarding the need for RFP evaluators for the courts of limited jurisdiction case management system (CLJ-CMS) Project.

LIAISON REPORTS

A. Board for Judicial Administration (BJA)

Judge Jasprica and Judge Ringus reported that the August meeting was an orientation for new BJA members. During the August meeting, the BJA resolution regarding courthouse security was reenacted. The next meeting is September 16, 2016. Ms. Dietz, State Court Administrator, reported that the BJA Legislative Committee will meet on September 20, 2016. She added that Judge Ringus is the BJA Legislative Committee Chair. Ms. Dietz further reported that the Judicial and Legislative Relations Associate Director position had been offered to an out-of-state candidate, who decided not to move to Washington State, and, therefore, rejected the offer. Judge Ringus then mentioned that he will join the interview panel on September 21, 2016. Judge Jasprica noted a strong DMCJA presence on the BJA because three out of four BJA standing committees are chaired by DMCJA members.

B. Administrative Office of the Courts (AOC)

Mr. Marler, Judicial Services Director, reported that the AOC is focused on court case management system projects. Judge Marinella inquired about the mediation between the SCJA and DMCJA regarding the Office of the Superior Court. Ms. Dietz, State Court Administrator, informed that the SCJA and AOC signed a non-disclosure agreement prohibiting both sides from discussing details of the mediation.

C. Washington State Association for Justice (WSAJ)

Mr. Willaford reported that the WSAJ is hosting a session regarding how to become a judge on November 29, 2016. The event will be held in downtown Seattle. The session is free and lunch will be provided.

DISCUSSION

A. *ACLU Proposed Amendments to General Rule 35, Jury Selection*

This issue relates to an American Civil Liberties Union (ACLU) proposed rule regarding peremptory challenges during jury selection. The Board discussed the proposed rule at its Board Retreat in May. At the June meeting, the Board determined not to support the rule in its current form but to invite Mr. Salvador Mungia, ACLU rule proponent, to the September Board meeting to further discuss the proposed rule.

During the September Board meeting, Mr. Mungia stated that the rule was proposed as a fundamental solution to the failings of the three-part test in *Batson v. Kentucky*, 476 U.S. 79 (1986). This test is also known as the “*Batson* challenge.” A *Batson* challenge requires a party to make a prima facie case of purposeful discrimination based on the totality of the facts. The burden then shifts to the opposing party to present a neutral explanation for releasing a prospective juror. The trial court then has the duty to determine if the challenging party has established purposeful discrimination, such as a race-related reason for jury exclusion. Mr. Mungia stated that the proposed rule is expected to provide a new, functional method to prevent racial bias in jury selection. He further discussed *State v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (2013), to support the argument that *Batson* does not work. Mr. Mungia noted that in *Saintcalle*, the Supreme Court acknowledged that racial discrimination remains rampant in jury selection.

The Board and Mr. Mungia engaged in a robust discussion regarding solutions to the peremptory challenge issue. Judges offered suggested amendments to Comment 3 and Comment 4 of the proposed rule. Mr. Mungia informed that the ACLU of Washington Committee has worked on drafting the rule for approximately two years and will submit it to the Washington Supreme Court in its current form. Stakeholders, such as the

DMCJA, will have an opportunity to provide input during the comment period. Judge Marinella expressed appreciation for Mr. Mungia's attendance and stated that the experience was educational.

B. DMCJA Audit – Whether to have a Full or Partial Audit

This topic is a continuation from the May Board Retreat discussion regarding whether to request a full or partial DMCJA financial audit. Judge Robertson reported that based on prior Board discussions, a full audit of the DMCJA's finances will be requested. **The audit will begin in six months.**

C. DMCJA Policy regarding Spring Conference Incidental Fees

This topic was discussed during the Special Fund report. Judge Burrowes will work with Ms. Harvey in order to coordinate efforts with AOC regarding the collection of DMCJA dues, assessments, and incidental fees.

D. 3DaysCount Review

This topic relates to the 3DaysCount Initiative, which is a program that offers states assistance in improving and reforming their pretrial bail practices. On August 12, 2016, the Board voted for the DMCJA to join the SCJA and Minority and Justice Commission in applying for program assistance. Judge Marinella reported that the first meeting regarding the 3DaysCount Initiative application is Friday, October 7, 2016, from 8:30 a.m. to 12:00 p.m., in Seattle, WA. Judge Marinella invited Board members to attend the meeting and informed that he would attend telephonically. Judges Ahlf and Robertson volunteered to attend the meeting.

E. JIS Report (RFP Evaluators)

Mr. Marler provided an update regarding the courts of limited jurisdiction case management system (CLJ-CMS) Project. He stated that on August 26, 2016, the Judicial Information System Committee (JISC) authorized that request for proposals (RFP) be published to potential Project vendors. The RFPs were based on business requirements promulgated by the CLJ-CMS court user work group (CUWG). Mr. Marler informed that the Project requires DMCJA volunteers to serve as RFP evaluators. The deadline for the CLJ-CMS Steering Committee to receive the names of the DMCJA volunteer evaluators is September 30, 2016. He noted that without judicial participation, the Administrative Office of the Courts would be the sole selector of a vendor, which is not ideal. The goal is for the AOC and DMCJA to work together to obtain a vendor that meets the business and technological needs of the courts of limited jurisdiction. Mr. Marler expressed that there will be two tiers of evaluators, namely, Tier I and Tier II. Tier I participants are needed from December 7, 2016 to January 11, 2017. These judicial volunteers will receive evaluator training and then score the vendors' written responses to the RFP on their own. In contrast, Tier II evaluators are needed from February 9, 2017 to April 28, 2017. Tier II judicial volunteers will receive evaluator training, attend demonstrations, and participate in client on-site visits and evaluations. The Board discussed the time commitment for this vital project and inquired whether the Project could cover the costs of hiring pro tempore judges to hear cases while a judicial volunteer is participating as an evaluator. Mr. Marler stated that regrettably there is no authority for AOC to reimburse pro tem costs for this purpose. The Board, therefore, discussed the possibility of offering funds for pro tempore judges in order to encourage judicial participation in the CLJ-CMS Project. The Board discussed whether to authorize up to fifteen thousand dollars (\$15,000) partial pro tempore coverage for all volunteers upon application.

M/S/P to make the discussion item regarding whether to authorize up to fifteen thousand dollars (\$15,000) partial pro tempore coverage for all volunteers an action item.

OTHER BUSINESS

The next DMCJA Board Meeting is October 14, 2016, 12:30 a.m. to 3:30 p.m., in AOC Office, SeaTac.

ADJOURNED at approximately 12:00 p.m.