DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

BOARD MEETING

November 12, 2021

VIA ZOOM
VIDEO CONFERENCE

DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION
SCHEDULE OF BOARD MEETINGS

2021-2022

DATE	***TIME***	***MEETING LOCATION***
Friday, July 9, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Aug 13, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Sept 10, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Oct 8, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Nov 12, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Dec 10, 2021	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Jan 14, 2022	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, Feb 11, 2022	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, March 11, 2022	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, April 8, 2022	12:30 – 3:30 p.m.	ZOOM Video Conference
Friday, May 13-14, 2022 TENTATIVE	May 13: 12:00-5:00 p.m. May 14: 9:00-1:00 p.m.	DMCJA Board Retreat Location: TBD
June 2022 – TBD	9:00 a.m. – 12:00 p.m.	DMCJA Spring Program, Location: TBD

AOC Staff: Stephanie Oyler

Updated: September 7, 2021

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DMCJA BOARD MEETING
FRIDAY, NOVEMBER 12, 2021
12:30 PM – 3:30 PM
ZOOM VIDEO CONFERENCE

PRESIDENT CHARLES SHORT

AGENDA	PAGE
Call to Order	
1. Welcome and Minutes – Judge Charles D. Short	
A. Minutes for October 8, 2021 Meeting	1
2. Presentation – Judge Charles D. Short	
A. Survivor FIRST (Facilitating Interventions and Resources for Survivors of Trauma) – Gender-Based Violence Specialized Services at the YWCA Seattle King County Director Doris O'Neal and King County Prosecuting Attorney's Office Lead Deputy Caroline Djamalov	6
3. Reports	
A. Liaisons' Reports	
1. District and Municipal Court Management Association (**DMCMA**) – Kris Thompson, President	
2. Misdemeanant Probation Association (**MPA**) – Regina Alexander, Representative	
3. Washington State Association for Justice (**WSAJ**) – Mark O'Halloran, Esq.	
4. Washington State Bar Association (**WSBA**) – Francis Adewale, Esq.	
5. Minority Bar Associations – Filipino Lawyers of Washington (**FLOW**) – John Laney	
6. Seattle University School of Law – Cole Story, President of the Black Law Students Association	8
7. Administrative Office of the Courts (**AOC**) – Dawn Marie Rubio, State Court Administrator	
8. Board for Judicial Administration (**BJA**) – Judge Mary Logan, Judge Dan Johnson, Judge Tam Bui, and Judge Rebecca Robertson	
9. CLJ-CMS Project and Rules for E-Filing – Judge Kimberly Walden	
10. Superior Court Judges' Association **(SCJA)** – Judge Jennifer Forbes, SCJA President-Elect	
11. Racial Equity Consortium – Judge Anita Crawford-Willis and Judge Michelle K. Gehlsen	
B. Rules Committee Report – Judge Jeffrey D. Goodwin	
1. Rules Committee Meeting Minutes – September 22, 2021	9
C. Diversity Committee Report – Judge Karl Williams	
D. Legislative Committee Report – Judge Kevin G. Ringus & Commissioner Paul Wohl	
E. Therapeutic Courts Committee Report – Judge Laura Van Slyck	
1. Grants Funding Awards Summary	11
F. Public Outreach Committee Report – Judge Michelle K. Gehlsen	
G. Education Committee Report – Judge Jeffrey R. Smith	
H. Treasurer's Report– Judge Karl Williams	12
I. Special Funds Report – Judge Jeffrey R. Smith	20

4. Break - 10 minutes	
5. Action Items A.	
6. Discussion A. Representative Hansen and House Civil Rights & Judiciary Committee Work Session: Unifying the Court System B. Legislative Workgroups – ESB 5476 (Blake), HB 1320 (Protection Orders), SB 5307 (Pretrial Release and Detention Act) C. Municipal Court Judges Swearing-In Ceremony – Judge Kevin Ringus D. Spring Program Update E. President's Fund – Splitting funds between general fund and special fund	23
7. Information A. New DMCJA Nominations to External Committees: 1. DSHS General Advisory Committee - Judge Jeffrey J. Baker, Klickitat County District Court 2. Washington Pattern Jury Instructions Committee (WPI) – Judge Whitney Rivera (mid-term replacement for Judge Aimee Maurer) B. Member Volunteer Service Opportunity – Washington State Supreme Court Gender and Justice Commission C. Memorial Service Announcement – Honorable Judge Eric Z. Lucas, retired D. King County Bar Association Announcement – Honorable Judge David Steiner's Passing	 136 137 138
8. Adjourn	
Next Scheduled Meeting: **Friday, December 10, 2021, 12:30 p.m. – 3:30 p.m., Via Zoom Video Conference**	

DMCJA Board of Governors Meeting
Friday, October 8, 2021, 12:30 p.m. – 3:30 p.m.
Zoom Video Conference https://wacourts.zoom.us/j/97570254401

MEETING MINUTES

Members Present:
Chair, Judge Charles D. Short
Judge Anita Crawford-Willis
Judge Michael Frans
Judge Michelle K. Gehlsen
Judge Drew Ann Henke
Commissioner Rick Leo
Judge Lloyd Oaks
Judge Kevin Ringus
Judge Jeffrey Smith
Judge Mindy Walker
Judge Karl Williams
Commissioner Paul Wohl

Members Absent:
Judge Thomas Cox
Judge Catherine McDowall
Judge Laura Van Slyck

Guests:
Judge Jeffrey Goodwin
Judge Jennifer Forbes, SCJA
Judge Rebecca Robertson, BJA
Judge Steve Rosen, King County Superior Court
Judge Megan Valentine
Kris Thompson, DMCMA
Jessica Kerr, Washington Women Lawyers
Chris Gaddis, Pierce Co. Superior Ct Administrator
Mark O'Halloran, WSAJ

AOC Staff:
Stephanie Oyler, Primary DMCJA Staff
J Benway, Principal Legal Analyst
Vicky Cullinane, Business Liaison
Cynthia Delostrinos, Associate Director
Tracy Dugas, Court Program Specialist
Carl McCurley, Court Research Center Manager

CALL TO ORDER

Judge Charles D. Short, District and Municipal Court Judges' Association (DMCJA) President, noted a quorum was present and called the DMCJA Board of Governors (Board) meeting to order at 12:33 p.m.

WELCOME AND MINUTES

Judge Short welcomed everyone to the October 2021 meeting of the DMCJA Board of Governors.

A. Minutes

The minutes from the September 10, 2021 meeting were previously distributed to the members. Judge Short asked if there were any changes that needed to be made to the minutes. Hearing none, the minutes were approved by consensus.

COMMITTEE AND LIAISON REPORTS

A. Diversity Committee Report

Judge Karl Williams reported that the Electronic Home Monitoring survey will be distributed in the next few days and requested that members please take the survey when it becomes available.

B. Legislative Committee Report
Commissioner Paul Wohl reported that normally at this time of year, the Legislative Committee shares the proposals that they recommend move forward for action by the board, however at the committee meeting this morning, it was decided to recommend that the board approve the plan to not put forth bills of their own this year. Commissioner Wohl shared that the committee expects the focus this year will be on providing information and resources for stakeholders and legislators, providing testimony, and attending meetings. Commissioner Wohl reported that based on recent conversations with legislators, he anticipates that Senator Pedersen's Uniform Pretrial Release and Detention Act (SB 5307) will again be a focus this session. In addition, he anticipates that there will be proposals for amendments to HB 1320 (Protection Orders), amendments to the Blake response bill (SB 5476). Commissioner Wohl noted that Blake in particular will begin to impact courts of limited jurisdiction, as cases that were felony level before will now be filed in district and municipal courts, and legislators seem to prefer therapeutic alternatives to address these cases. Judge Short responded that DMCJA can prioritize funding for e-filing, a policy analyst, and court security without having specific bills of our own introduced this year.

C. Rules Committee Report
Judge Jeffrey D. Goodwin reported that DMCJA and SCJA have been working together to address concerns about potential changes to rules for remote jury selection and remote trials (GR 41 and CR 39), and a joint proposal will be forthcoming. Judge Goodwin shared that the committee received a lot of feedback from membership regarding remote jury trials, and the majority expressed that they are generally not opposed to the idea but that it is needs to be discretionary. Judge Goodwin also noted that CR 39 is a Superior Court Rule, so it does not apply to courts of limited jurisdiction, but that it is possible there will be a proposal for a comparable rule in the future. He shared that the Rules Committee should have a recommendation ready for the Board at the November meeting, and that the comment period ends on December 29. Judge Goodwin reported that the committee is also looking at the possibility of a statewide efiling rule that could help to streamline the process and alleviate some concerns that courts have expressed about implementing a local rule. Judge Goodwin reported that there is also some news regarding CrRLJ 2.1 (Citizen Complaint Rule) and asked J Benway, AOC Principal Legal Analyst, to explain.

J Benway reported that in September and in response to a recent concurrence by Justice Yu that indicated citizen complaints were unconstitutional, Washington Association of Prosecuting Attorneys (WAPA) submitted a proposed amendment to CrRLJ 2.1 to remove subsection (c) which would remove the citizen complaint provisions of the rule. The DMCJA Rules Committee will be monitoring that submission and will submit comments to support the changes when it is published in January.

D. Therapeutic Courts Committee Report
Judge Short noted that Judge Van Slyck was not able to join the meeting today, but that he felt it important to note that the application period for therapeutic courts grant funding from SB 5476 had now closed. Judge Short reminded the board that $4.5 million would be distributed to therapeutic programs in courts of limited jurisdiction.

E. Public Outreach Committee Report
Judge Michelle K. Gehlsen reported that the Public Outreach Committee had recently sent a request to the listserv asking if members knew specific key legislators, and that they received many responses which will be helpful for the Legislative Committee's work this session. The committee also sent a request for materials to the listserv for public presentation samples, and are working on starting a Facebook page.

F. Education Committee Report
Judge Jeffrey R. Smith reported that the committee has been receiving proposals for educational sessions, and they will be reviewed and prioritized by the committee at their meeting on October 21. Proposals are still welcome, and Judge Smith encouraged members to submit their ideas for

conference education topics. Judge Smith reminded the board that Judicial College will be fully virtual again this year, and that there still has not been a decision about whether Spring Program will be held in person, but a decision will likely be made after the first of the year.

G. Treasurer's Report

Judge Karl Williams referred to the packet and is available to respond to any questions.

H. Special Funds Report

Judge Jeffrey R. Smith reported that the Special Fund has generated $6.40 in interest. We're working on fixing the issue with mail going to Judge Gehlsen at the Bothell Municipal Court. Judge Short inquired if anyone has a personal banking relationship with Bank of America, to please let staff know, as we are hoping to simplify the process of switching officers on the account every year.

I. Liaison Reports

1. Administrative Office of the Courts (AOC)

State Court Administrator Dawn Marie Rubio was not present.

2. Board for Judicial Administration (BJA)

Judge Rebecca Robertson reported that representatives from the Gender and Justice Commission attended the recent BJA meeting to provide a presentation on their work. Judge Robertson shared that BJA's goals continue to include recovery from COVID-19, including addressing any rules changes that are necessary for COVID recovery. Additional goals include consistent funding that is not fee-based, and court security improvements. Judge Robertson reported that BJA is also looking at how Blake is impacting courts, and amending the judicial retirement plan.

3. CLJ-CMS Project and Rules for e-Filing

Judge Kimberly Walden was not present.

4. District and Municipal Court Management Association (DMCMA)

DMCMA President Kris Thompson reported that DMCMA will be holding one more Silence = Acceptance training on October 21, and it is open to everyone including stakeholders and non-court staff. In addition, DMCMA will be continuing their racial justice series at the fall regional training with a workshop called Courageous Conversations. Kris Thompson shared that DMCMA is working on compiling information regarding jury trials and virtual hearings.

5. Judicial Information System (JIS) Report

AOC Business Liaison Vicky Cullinane reported that AOC is collaborating with DMCJA to request funding for efiling in the supplemental budget, and that a state rule for efiling is being explored. The CLJ-CMS project is continuing to move ahead with implementation for pilot courts next year.

6. Minority Bar Associations – Washington Women Lawyers (WWL) Bar Association

WWL President Jessica Kerr introduced herself and reported that WWL has several exciting events coming up, including their annual banquet, and that this is the time of year when positions turn over in their association. Jessica Kerr shared that the American Bar Association also has an event next month, and that the calendar on Washington State Bar Association's website includes many events held by minority bar associations. She shared that WWL is collaborating with many other groups on projects right now, including a mentorship program that may be of interest to DMCJA, and that WWL.org has registration information. They regularly offer membership discounts for members of the bench, but it is WWL's 50th anniversary this year, so they are offering free membership at this time.

7. Misdemeanant Probation Association (MPA)

MPA Representative Regina Alexander was not present.

8. Racial Equity Consortium
Judge Anita Crawford-Willis reported that participation in the consortium has been a great experience, as it has allowed her to meet a lot of people, view excellent presentations, and participate in breakout work. Judge Crawford-Willis shared that each of the last few meetings have focused on a particular topic, and the meeting in October will be devoted to issues related to reentry, with Columbia Legal Services providing the main presentation.

9. Superior Court Judges' Association (SCJA)
SCJA President-Elect Judge Jennifer Forbes reported that SCJA has been very busy with proposed court rules changes, including comments to address some of the deficiencies in the judicial canons regarding unrepresented litigants, which would clarify what judges can do without violating ethics rules. Judge Forbes shared that the intention behind the suggested changes is for judges to feel more comfortable while providing better access to justice. Judge Forbes noted that SCJA is also busy preparing for the upcoming legislative session, and that pretrial reform is a shared concern with DMCJA, so she is hoping for collaboration on that issue.

10. Washington State Association for Justice (WSAJ)
WSAJ Representative Mark O'Halloran, Esq. reported that WSAJ recently held their annual convention, and that this is a transitional year for leadership positions.

11. Washington State Bar Association (WSBA)
WSBA Representative Bryn Peterson, Esq. was not present.

BREAK
Judge Short recessed the meeting for a 10 minute break.

ACTION

A. The Board moved, seconded, and passed (M/S/P) a vote to move forward with exploring the Secret Shopper program, with Commissioner Leo heading the project.

DISCUSSION

A. Supreme Court Commissions: Juror Demographic Survey
Judge Steve Rosen (King County Superior Court), Chris Gaddis (Pierce County Superior Court Administrator) and Cynthia Delostrinos (AOC Associate Director, Office of Court Innovation) shared a presentation about implementing an upcoming statewide juror demographic survey that is required by a 2021 legislative proviso.

B. Judicial Needs Estimate
AOC Court Research Center Manager Carl McCurley, PhD, presented on the judicial needs estimate. Carl McCurley recommended that DMCJA and SCJA consider launching (or supporting) a program to standardize the way that court data is collected, as the current model does not distinguish across types of matters the courts hear, and subsequently provides inaccurate estimates.

C. DMCJA Reimbursement Process
AOC Court Program Specialist Tracy Dugas explained that the previous three forms that were provided for DMCJA member use when requesting reimbursement for pro tem expenses, time spent providing

legislative testimony or when requesting reimbursement for committee expenses have been consolidated into one form, which is now fillable for member convenience. The form is available on the DMCJA website under "Reimbursement Form."

D. Municipal Court Judges Swearing-In Ceremony

Judge Ringus reported that he has been working with the Chief Justice's Judicial Administrative Assistant to see if a location and date is available. A Zoom swearing-in may actually allow more participation for the municipal judges since it would not require travel. Judge Ringus suggests moving forward with holding the event on December 6, as elections should be certified by then. Judge Ringus will confirm this date with the Chief Justice.

E. DMCJA Action Plan – Secret Shopper Update

Judge Short reported that DMCJA has been working through items from the Diversity Committee Action Plan. One of those items suggested in the Action Plan is the Secret Shopper program, taking the model that Thurston County used, but statewide. Judge Short noted that courts would volunteer to participate in the program, and would then work with the Center for Court Innovation, to get a representative sample for the state. Judge Short noted that he may have a potential conflict of interest, requested that the board discuss this item without his presence, and was moved to a breakout room temporarily. Commissioner Wohl shared some information about his experience with this program at Thurston County District Court and that he found it to be very beneficial to improving service and access to justice. Judge Gehlsen expressed that some courts may be concerned about how the reports from this program will impact elections but that she supported that idea.

The Board moved, seconded, and passed (M/S/P) a vote to move this item to Action today.

F. Race/Ethnicity and Gender Demographics Information Project

Commissioner Rick Leo reported that he had been contacted by Professor Chang from Task Force 2.0 to inquire if DMCJA was tracking race/ethnicity or gender information for members, and if not, if the association would consider taking on this project. Judge Forbes shared that SCJA is also considering taking on this or a similar project. After brief discussion, it was decided that staff will check with WSBA to determine what demographic they collect and how this information is used.

INFORMATION

Judge Short brought the following informational items to the Board's attention.

A. DMCJA President's appointments to the DMCJA Nominating Committee pursuant to DMCJA Bylaws, Art. IX, Sec. 2(a) (2)

B. AOC's September 20, 2021 response to AWC letter dated September 9, 2021 regarding AOC's distribution of *Blake* funds

C. CLJ Vaccine Mandates Survey data

OTHER BUSINESS

The next DMCJA Board Meeting is scheduled for Friday, November 12, 2021 from 12:30 p.m. to 3:30 p.m., held via Zoom video conference.

The meeting was adjourned at 3:20 p.m.

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Survivors FIRST (Facilitating Interventions and Resources for Survivors of Trauma)

Survivors FIRST is a partnership between the YWCA of Seattle King County and the King County Prosecuting Attorney's Office (KCPAO) that identifies justice-involved survivors of gender based violence and connects them to culturally specific services at the **YWCA Seattle King County**. Our program supports the needs of Black/African American and women of color survivor-defendants and victims of abuse who have been accused of a crime. The vast majority of women in jails and prisons were abused before imprisonment, and almost all incarcerated women experienced domestic violence or sexual abuse in their childhood. We aim to help underserved communities identify and address the unmet needs of criminalized survivors. By providing survivors of color with culturally appropriate domestic violence and intimate partner violence services, our program helps reduce the racial disproportionality of survivors of gender-based violence in the criminal legal system.

The program began when the YWCA sought to confront the rampant inequality in the criminal justice system **towards Black/African American and women of color survivor-defendants**. Survivor-defendants, when charged with a crime, often as a result of their abusive relationship, are blatantly discriminated against when seeking help. Survivor-defendants are re-traumatized, oftentimes humiliated in front of their children, and automatically assumed to be the aggressor due to their race. Instead of receiving **support** and services, survivors are incarcerated and forced to navigate the criminal justice system on their own as defendants. This isolation from resources often leads to pressure to plead guilty at earlier stages of the case to leave jail as quickly as possible, without realizing the implications. Any length of incarceration can lead to loss of the survivor's employment, housing, custody of children, and her dignity. We have a saying, "When the cuff goes on, life is never the same." Countless survivors are going to prison, trying to survive prison, and trying to survive even as they leave prison.

In our unique partnership with the King County Prosecutor's Office, we collaborate closely with prosecutors to analyze history and identify cases that fit this situation. Does this survivor have a history of being abused? Have they been assaulted by a partner or family member in the past? Once that pattern is identified, the survivor is referred to the YWCA for participation in the program. **Across the country, we see that there are drug courts, batterer intervention programs, mental health courts, and other resources, but we lack supportive services for survivor-defendants that are furthest from opportunity.**

The prosecutor's office receives referrals from law enforcement and they take a second look to determine victimization of the survivor-defendant and to decide whether the case will be dismissed or declined. Then, a referral is made to the YWCA Survivors FIRST Program. A broader diversion program is planned for more serious cases. As the YWCA works with the survivor, we link them with resources that will help them meet a variety of needs that are neglected, such as housing, safety planning, rental and utilities assistance, legal services, support groups and counseling, job readiness programs, transportation, and childcare costs. We also provide culturally specific personal care items, for women who need assistance maintaining their physical appearance.

Thanks to funding from the Washington State legislature, the program is expanding to encompass more survivor-defendants and more eligible cases. Recognizing that abusive relationships and the trauma they create can cause survivors to face criminal charges that are not domestic violence-related. The partnership with the KCPAO is open to any legally recognized black and brown survivor, those furthest from opportunity, who is facing a misdemeanor or nonviolent felony.

Giving survivors a culturally responsive, safe space to receive resources, support, and compassion from advocates that look like them, can dramatically alter the outcomes in criminal cases. Deep inequalities take place in a criminal justice system that constantly re-traumatizes black and brown survivors who do not fit the image of the "typical victim." By providing survivors with a caring support system of people who want to see them succeed and treat them with the dignity they deserve, we can break the cycles of abuse in our communities.

give help. get help.
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Survivors FIRST

Survivors FIRST (Facilitating Interventions and Resources for Survivors of Trauma) is a partnership between the YWCA of Seattle King County and the King County Prosecuting Attorney's Office (KCPAO) that identifies justice-involved survivors of gender-based violence, diverts eligible survivor-defendants away from criminal prosecution, and connects them to culturally specific services at the YWCA of Seattle King County. Survivors FIRST takes referrals from all jurisdictions in King County.

The program is designed for a survivor-defendant who:

1. Is a legally recognized victim of gender-based violence, including domestic violence, sexual violence, trafficking, and prostitution;
2. Is facing criminal charges (either in a police referral or in a filed case);
   a. Fileable misdemeanors or first-time nonviolent felonies (exceptions apply) and
   b. Any case that is not fileable/viable.
3. Has no severe mental health issues; and
4. Is an African American woman/woman of color.

At this time, Survivors FIRST is not a plea program. The prosecutor dismisses or declines the case, giving the survivor-defendant the opportunity to engage voluntarily with the YWCA and connect with community advocates who provide culturally specific services, including housing assistance, rapid rehousing, DV/protection order advocacy, and more.

Community members, including legal aid, victim advocates, defense attorneys, and jail health personnel, can make a referral by emailing survivorsfirst@kingcounty.gov with the survivor-defendant's name and as much background information as the referrer has available, including the case number, the police/incident report, and contact information for the survivor-defendant (phone numbers, email address, alternate contacts).

The Program Lead at KCPAO will screen the case for eligibility. If eligible, KCPAO will either dismiss/decline or do outreach to the municipal prosecutor to dismiss/decline and will send a referral packet to the YWCA, which informs them of the current incident, any history of abuse, and contact information for the survivor-defendant.

Questions for KCPAO? Contact the KCPAO Program Lead, Senior Deputy Prosecuting Attorney Caroline Djamalov at cdjamalov@kingcounty.gov or (206) 477-4225.

Questions for the YWCA? Check out https://www.ywcaworks.org/programs/survivors-first or contact Director of Gender-Based Violence Specialized Services, Doris O'Neal at (206) 280-9961.

LAW REVIEW

BLSA
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SCHOOL OF LAW

Epoch: Institutional Transformation and the Law

The Epoch Spotlight Symposium is the product of a partnership between Seattle University's Law Review (SULR) and the Black Law Student Association (BLSA). In developing the symposium, our intention has been to embody BLSA's mission to articulate and promote the professional needs and goals of Black law students; to foster professional competence; and to instill in students a greater awareness of and commitment to the needs of our diverse communities. Further, our hope is to create a hub in the Northwest where students and the region's legal community can engage with brilliant and distinguished scholars from around the country. The goal of the Epoch Spotlight Symposium is to create space for Black legal scholarship. Black lawyers make up a small fraction (4%) of practicing attorneys in the U.S., and possibly an even lower percentage among legal scholars. We aspire to develop an annual event that inspires and encourages the next generation of Black legal scholarship, where students, scholars, and legal practitioners can explore contemporary legal issues.

We will host our second annual Epoch Spotlight Symposium, titled *Institutional Transformation & the Law,* on February 25th, 2022. Those who attend this year's symposium will have an opportunity to (1) critically discuss substantive equality and formal equality-oriented initiatives; (2) receive a framework to critically examine racial-justice initiatives; (3) understand opportunities and strengths of diversity, equity, and inclusion (DEI) initiatives; and (4) engage in discussion about an outcome-oriented, substantive approach to racial justice.

PANEL #1:
Understanding the limits of Formal Equality (10AM–11AM)
Formal equality can be characterized as superficial or symbolic forms of justice. Substantive equality is concerned primarily with outcomes, that is, with the elimination of the conditions of social subordination. Substantive equality involves systemic or institutional transformation. This panel critically discusses when, how, and why formal equality is offered in place of substantive equality, and how to turn formal equality into substantive equality.

PANEL #2:
Shifts Toward Justice (2:00PM–3:00PM)
The 2020 uprisings sparked by the murder of George Floyd came with demands of racial justice and racial equity at the systemic level. Since then, several public and private entities have committed themselves to change. Learn how some organizations have taken the lead in ushering in the shift toward racial justice. Critical discussion about substantive racial justice initiatives.

Keynote: Justin Hansford (3:00PM–4:00PM)
Justin Hansford founded the Thurgood Marshall Civil Rights Center in Fall 2017. Professor Hansford was previously a Democracy Project Fellow at Harvard University, a visiting professor of Law at Georgetown University Law Center, and an associate professor of Law at Saint Louis University.

Hansford is a leading scholar and activist in the areas of critical race theory, human rights, and law and social movements. He is a co-author of the forthcoming Seventh Edition of "Race, Racism and American Law," the celebrated legal textbook that was the first casebook published specifically for teaching race-related law courses.

EDUCATING POWERFUL ADVOCATES FOR JUSTICE

DMCJA Rules Committee Meeting
Wednesday, September 22, 2021 (12:15 – 1:15 p.m.)

Via Zoom

MEETING MINUTES

Members Attending:
Chair, Judge Goodwin
Judge Buttorff
Judge Eisenberg
Judge McDowall
Judge Meyer
Commissioner Nielsen
Judge Oaks
Judge Padula
Judge Samuelson

AOC Staff:
Ms. J Benway

Members Not Attending:
Judge Campagna
Judge Finkle
Judge Gerl
Commissioner Hanlon
Ms. Tina Gill, DMCMA Liaison

Judge Goodwin called the meeting to order at 12:18 p.m.

The Committee discussed the following items:

1. **Welcome & Introductions**

Judge Goodwin welcomed the Committee members in attendance.

2. **Approve Minutes from the August 25, 2021 Committee Meeting**

Judge Goodwin noted that Robert's Rules of Orders provides that a formal vote does not need to be taken to approve meeting minutes; they can be deemed approved. Hearing no objections, he deemed that the minutes of the August 25, 2021 Committee meeting were approved. The minutes will be forwarded to the DMCJA Board.

3. **Discuss Rules Published for Comment: [Deadline of December 29, 2021]**
   - King County Superior Court Bench proposed amendments to CR 39 – Trial by Jury or by the Court
   - King County Superior Court Bench proposed new General Rule – Jury Selection by Videoconference

The comment deadlines for the proposal to amend CR 39 and the new proposed GR 41 pertaining to jury selection by videoconference were extended to December 29, 2021. The Committee noted that neither proposal would seem to have a major impact on courts of limited jurisdiction, although the general rule would be applicable to CLJs. Because CRLJ 39 is reserved, it would require more than a rule amendment to make the trial court rules congruent with the new amendment. The Committee decided to invite input from DMCJA membership regarding interest in a CRLJ equivalent rule. Judge Goodwin will send an email to the DMCJA listserve to gauge interest, and this item will be carried over to next month.

4. Discuss Potential Amendment to CrRLJ 2.1 re Citizen Complaints

In the recent Supreme Court case Stout v. Felix (filed August 26, 2021), the concurrence called into question the constitutionality of the citizen compliant provision of CrRLJ 2.1; various judges have now questioned whether a proposal should be submitted to delete that subsection (c). The Committee was advised that at least one proposal had already been submitted that would delete subsection (c) so there is no reason for the DMCJA to take action at this time; the Committee will track this issue.

5. Discuss Judge Portnoy's Suggested Amendment to CrRLJ 3.2

The Committee discussed Judge Portnoy's proposal to add a subsection to CrRLJ 3.2 similar to subsection (j) of CrR 3.2. Judge McDowall said that she would review the proposal and work on draft language to circulate to the Committee. Judge Padula offered to assist. This item will be carried forward to the next Committee meeting.

6. Discuss Judge Portnoy's Suggested New Rule

Judge Portnoy has requested the Committee consider recommending a new rule that would require a written motion for reconsideration of bail or release conditions be filed with a declaration setting forth why the court was wrong or describing the change of circumstances or the new information. The Committee ran out of time before it could consider this item, which will be carried forward to the next Committee meeting.

7. Other Business and Next Meeting Date

The next Committee meeting is scheduled for Wednesday, October 27, 2021 at 12:15 p.m., via zoom video conference.

There being no further business, the meeting was adjourned at 12:35 p.m. because several Committee members had to leave.

ESB 5476 – Therapeutic Courts Grant Funding Awards Summary

- Total funds requested: $9,435,324.88
- Total applications received: 37 (includes 4 joint program applications for a total of 41 courts)
- Total applications funded: 22 programs ($4,506,152.00) in 26 courts
- Total number of courts receiving funding: 63% of applicant courts
- Applications/Awards from municipal courts: 23 applications, 16 funded
- Applications/Awards from district courts: 18 applications, 10 funded
- Applications for new programs (includes programs in existence for less than 1 year): 18 applications for 22 courts, all received some funding for a total of $3,633,313
- Applications for enhancing or maintaining an existing program: 19 applications, 21% funded for a total of $872,839
- Percentage of applications from "east of Cascades": 27% of applications, 26% of funds requested
- Percentage of applications from "west of Cascades": 73% of applications, 74% of funds requested
- Percentage of applications funded from "east of the Cascades": 70% of east side applicants, 27% of all applicants (for a total of $1,316,142.00 or 29% of funds awarded)
- Percentage of applications funded from "west of the Cascades": 56% of west side applicants, 73% of all applicants (for a total of $3,190,010.00 or 71% of funds awarded)

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SUMMARY OF REPORTS

WASHINGTON STATE
DISTRICT AND MUNICIPAL COURT JUDGES' ASSOCIATION

For the Period Ending October 31st, 2021

Please find attached the following reports for you to review:

- Statement of Financial Position
- Monthly Statement of Activities.
- Bank Reconciliation Reports
- Transaction Detail Report (year-to-date)
- Special Fund Bank Statement
- Current Budget Balance

Please contact me if you have any questions regarding the attached.

PLEASE BE SURE TO KEEP FOR YOUR RECORDS

Washington State District And Municipal Court Judges Assoc.

Statement of Financial Position

As of October 31, 2021

	Oct 31, 21
ASSETS	
Current Assets	
Checking/Savings	
Bank of America - Checking	8,730
Bank of America - Savings	254,037
Washington Federal (Spec Fund)	38,961
Total Checking/Savings	301,727
Total Current Assets	301,727
Fixed Assets	
Accumulated Depreciation	(703)
Computer Equipment	579
Total Fixed Assets	(124)
TOTAL ASSETS	301,603
LIABILITIES & EQUITY	
Equity	301,603
TOTAL LIABILITIES & EQUITY	301,603

Washington State District And Municipal Court Judges Assoc.

Statement of Activities

For the Four Months Ending October 31, 2021

	Jul 21	Aug 21	Sep 21	Oct 21	TOTAL
Ordinary Income/Expense					
Income					
Interest Income	9	9	9	9	35
Total Income	9	9	9	9	35
Gross Profit	9	9	9	9	35
Expense					
Prior Year Budget Expense	1,645	5,031	0	0	6,677
Bookkeeping Expense	318	318	318	318	1,272
Judicial Assistance Committee	0	0	1,525	750	2,275
Judicial College Social Support	2,000	0	0	0	2,000
Lobbyist Contract	6,000	6,000	6,000	6,000	24,000
President Expense	0	0	100	0	100
Pro Tempore (Chair Approval)	0	0	395	166	561
Total Expense	9,963	11,349	8,338	7,234	36,884
Net Ordinary Income	(9,954)	(11,340)	(8,329)	(7,225)	(36,849)
Net Income	(9,954)	(11,340)	(8,329)	(7,225)	(36,849)

Washington State District And Municipal Court Judges Assoc.
Reconciliation Detail
Bank of America - Checking, Period Ending 10/31/2021

Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						7,588.66
Cleared Transactions						
Checks and Payments - 5 items						
Check	09/29/2021		Susanna Neil Kanth...	X	-1,525.00	-1,525.00
Transfer	10/07/2021			X	-100.00	-1,625.00
Check	10/15/2021		Bogard & Johnson, ...	X	-6,000.00	-7,625.00
Check	10/15/2021		D. Gregg Mohr	X	-750.00	-8,375.00
Check	10/15/2021		Pierce County Book...	X	-318.00	-8,693.00
Total Checks and Payments					-8,693.00	-8,693.00
Deposits and Credits - 1 item						
Transfer	10/05/2021			X	10,000.00	10,000.00
Total Deposits and Credits					10,000.00	10,000.00
Total Cleared Transactions					1,307.00	1,307.00
Cleared Balance					1,307.00	8,895.66
Uncleared Transactions						
Checks and Payments - 1 item						
Check	10/27/2021		City of Tacoma		-166.00	-166.00
Total Checks and Payments					-166.00	-166.00
Total Uncleared Transactions					-166.00	-166.00
Register Balance as of 10/31/2021					1,141.00	8,729.66
New Transactions						
Deposits and Credits - 1 item						
Transfer	11/04/2021				5,000.00	5,000.00
Total Deposits and Credits					5,000.00	5,000.00
Total New Transactions					5,000.00	5,000.00
Ending Balance					6,141.00	13,729.66

Washington State District And Municipal Court Judges Assoc.
Reconciliation Detail
Bank of America - Savings, Period Ending 10/31/2021

Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						264,034.38
Cleared Transactions						
Checks and Payments - 1 item						
Transfer	10/05/2021			X	-10,000.00	-10,000.00
Total Checks and Payments					-10,000.00	-10,000.00
Deposits and Credits - 1 item						
Deposit	10/29/2021			X	2.17	2.17
Total Deposits and Credits					2.17	2.17
Total Cleared Transactions					-9,997.83	-9,997.83
Cleared Balance					-9,997.83	254,036.55
Register Balance as of 10/31/2021					-9,997.83	254,036.55
New Transactions						
Checks and Payments - 1 item						
Transfer	11/04/2021				-5,000.00	-5,000.00
Total Checks and Payments					-5,000.00	-5,000.00
Total New Transactions					-5,000.00	-5,000.00
Ending Balance					-14,997.83	249,036.55

Washington State District And Municipal Court Judges Assoc.
Transaction Detail by Account
July through October 2021

Type	Date	Name	Memo	Amount	Balance
Bank of America - Checking					
Trans...	07/06/2021		Funds Transfer	(949.70)	(949.70)
Trans...	07/07/2021		Funds Transfer	(490.65)	(1,440.35)
Check	07/07/2021	Michelle Gehlsen		(422.66)	(1,863.01)
Check	07/13/2021	MD Engraving		(417.05)	(2,280.06)
Check	07/20/2021	Pierce County Bookke...		(318.00)	(2,598.06)
Check	07/20/2021	Timothy Jenkins		(69.90)	(2,667.96)
Check	07/20/2021	King County District C...		(244.90)	(2,912.86)
Check	07/21/2021	Bogard & Johnson, LLC		(6,000.00)	(8,912.86)
Check	08/01/2021	Bogard & Johnson, LLC		(6,000.00)	(14,912.86)
Check	08/10/2021	Pierce County Bookke...		(318.00)	(15,230.86)
Check	08/16/2021	AOC		(190.29)	(15,421.15)
Check	08/23/2021	SCJA		(4,841.05)	(20,262.20)
Check	09/10/2021	Okanogan County Dist...		(394.63)	(20,656.83)
Check	09/15/2021	Bogard & Johnson, LLC		(6,000.00)	(26,656.83)
Check	09/15/2021	Pierce County Bookke...		(318.00)	(26,974.83)
Check	09/29/2021	Susanna Neil Kanther-...		(1,525.00)	(28,499.83)
Trans...	10/05/2021		Funds Transfer	10,000.00	(18,499.83)
Trans...	10/07/2021		Funds Transfer	(100.00)	(18,599.83)
Check	10/15/2021	D. Gregg Mohr		(750.00)	(19,349.83)
Check	10/15/2021	Bogard & Johnson, LLC		(6,000.00)	(25,349.83)
Check	10/15/2021	Pierce County Bookke...		(318.00)	(25,667.83)
Check	10/27/2021	City of Tacoma		(166.00)	(25,833.83)
Total Bank of America - Checking				(25,833.83)	(25,833.83)
Bank of America - Savings					
Deposit	07/31/2021		Interest	2.24	2.24
Deposit	08/31/2021		Interest	2.24	4.48
Deposit	09/30/2021		Interest	2.17	6.65
Trans...	10/05/2021		Funds Transfer	(10,000.00)	(9,993.35)
Deposit	10/29/2021		Interest	2.17	(9,991.18)
Total Bank of America - Savings				(9,991.18)	(9,991.18)
Washington Federal (Spec Fund)					
Deposit	07/31/2021		Interest	6.61	6.61
Deposit	08/31/2021		Interest	6.62	13.23
Deposit	09/30/2021		Interest	6.40	19.63
Deposit	10/31/2021		Interest	6.62	26.25
Total Washington Federal (Spec Fund)				26.25	26.25
Prepaid Expenses					
Gene...	07/01/2021		DMCJA Sup...	(2,000.00)	(2,000.00)
Total Prepaid Expenses				(2,000.00)	(2,000.00)
Credit Cards					
Bank of America C. C.					
Trans...	07/06/2021		Funds Transfer	949.70	949.70
Credi...	07/07/2021	Homewetbar Gifts		(490.65)	459.05
Trans...	07/07/2021		Funds Transfer	490.65	949.70
Credi...	09/06/2021	Harbor Blooms		(100.00)	849.70
Trans...	10/07/2021		Funds Transfer	100.00	949.70
Total Bank of America C. C.				949.70	949.70
Total Credit Cards				949.70	949.70

Washington State District And Municipal Court Judges Assoc.
Transaction Detail by Account
July through October 2021

Type	Date	Name	Memo	Amount	Balance
Interest Income					
Deposit	07/31/2021		Interest	(2.24)	(2.24)
Deposit	07/31/2021		Interest	(6.61)	(8.85)
Deposit	08/31/2021		Interest	(2.24)	(11.09)
Deposit	08/31/2021		Interest	(6.62)	(17.71)
Deposit	09/30/2021		Interest	(2.17)	(19.88)
Deposit	09/30/2021		Interest	(6.40)	(26.28)
Deposit	10/29/2021		Interest	(2.17)	(28.45)
Deposit	10/31/2021		Interest	(6.62)	(35.07)
Total Interest Income				(35.07)	(35.07)
Prior Year Budget Expense					
Credi...	07/07/2021	Homewetbar Gifts	President Ex...	490.65	490.65
Check	07/07/2021	Michelle Gehlsen	President Lin...	319.70	810.35
Check	07/07/2021	Michelle Gehlsen	President Lin...	102.96	913.31
Check	07/13/2021	MD Engraving	President Lin...	417.05	1,330.36
Check	07/20/2021	Timothy Jenkins	Jasp line item	69.90	1,400.26
Check	07/20/2021	King County District C...	Pro Tempore ...	244.90	1,645.16
Check	08/16/2021	AOC	President Lin...	190.29	1,835.45
Check	08/23/2021	SCJA	1/2 of leftover...	4,841.05	6,676.50
Total Prior Year Budget Expense				6,676.50	6,676.50
Bookkeeping Expense					
Check	07/20/2021	Pierce County Bookke...	June Services	318.00	318.00
Check	08/10/2021	Pierce County Bookke...	July Services	318.00	636.00
Check	09/15/2021	Pierce County Bookke...	August Servi...	318.00	954.00
Check	10/15/2021	Pierce County Bookke...	September In...	318.00	1,272.00
Total Bookkeeping Expense				1,272.00	1,272.00
Judicial Assistance Committee					
Check	09/29/2021	Susanna Neil Kanther-...	Quarter 3	1,200.00	1,200.00
Check	09/29/2021	Susanna Neil Kanther-...	FJLC Meetin...	325.00	1,525.00
Check	10/15/2021	D. Gregg Mohr	Presentation ...	750.00	2,275.00
Total Judicial Assistance Committee				2,275.00	2,275.00
Judicial College Social Support					
Gene...	07/01/2021		DMCJA Sup...	2,000.00	2,000.00
Total Judicial College Social Support				2,000.00	2,000.00
Lobbyist Contract					
Check	07/21/2021	Bogard & Johnson, LLC		6,000.00	6,000.00
Check	08/01/2021	Bogard & Johnson, LLC		6,000.00	12,000.00
Check	09/15/2021	Bogard & Johnson, LLC		6,000.00	18,000.00
Check	10/15/2021	Bogard & Johnson, LLC		6,000.00	24,000.00
Total Lobbyist Contract				24,000.00	24,000.00
President Expense					
Credi...	09/06/2021	Harbor Blooms	DMCJA sent...	100.00	100.00
Total President Expense				100.00	100.00
Pro Tempore (Chair Approval)					
Check	09/10/2021	Okanogan County Dist...	8/20/21	394.63	394.63
Check	10/27/2021	City of Tacoma	10/8/21	166.00	560.63
Total Pro Tempore (Chair Approval)				560.63	560.63
TOTAL				**0.00**	**0.00**

Other current information not included in reports

Statement of Account

Statement End Date	October 31, 2021
Statement Begin Date	October 1, 2021
Account Number	

To report a lost or stolen card, call 800-324-9375.
For 24-hour telephone banking, call 877-431-1876.

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Business Premium Money Market Summary

Annual Percentage Yield Earned for this Statement Period	0.200%
Interest Rate Effective 10/01/2021	0.200%
Interest Earned/Accrued this Cycle	$6.62
Number of Days in this Cycle	31
Date Interest Posted	10-31-2021
Year-to-Date Interest Paid	$71.59

Beginning Balance	**$38,954.23**
Interest Earned This Period	+6.62
Deposits and Credits	+0.00
Checks Paid	-0.00
ATM, Electronic and Debit Card Withdrawals	-0.00
Other Transactions	-0.00
Ending Balance	**$38,960.85**

	Total for This Period	Total Year-to-Date
Total Overdraft Fees	$0.00	$0.00
Total Returned Item Fees	$0.00	$0.00

Interest Earned This Period

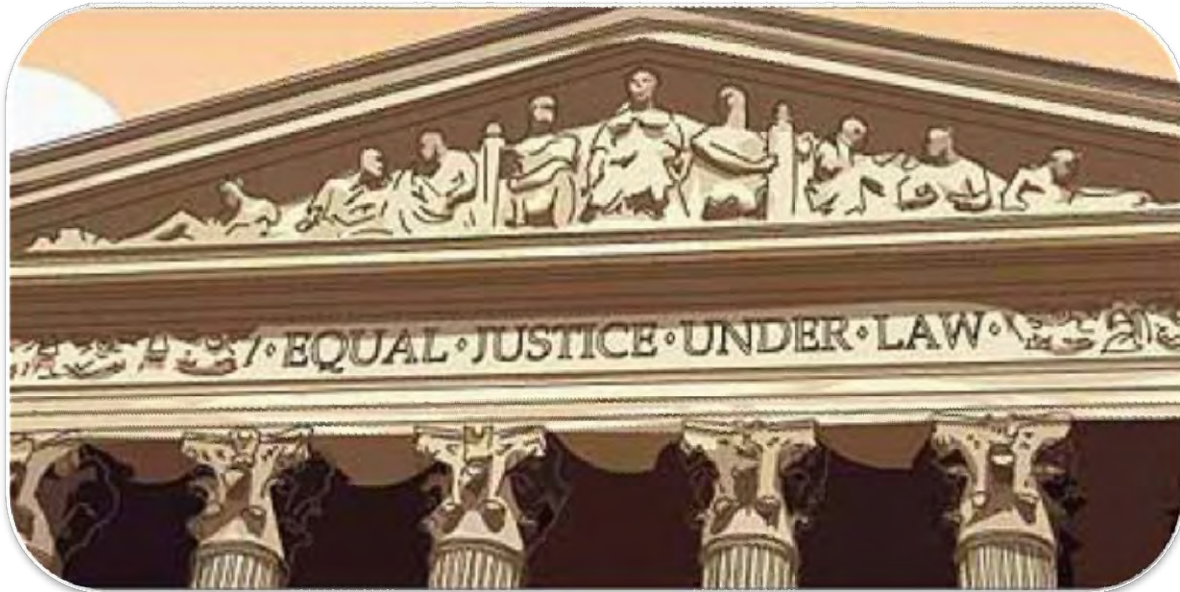
Date	Description	Amount
10-31	Credit Interest	6.62
	Total Interest Earned This Period	**6.62**

Visa may provide updated debit card information, including your expiration date and card number, with merchants that have an agreement for reoccurring payments. You may opt out of this service by calling 1-800-324-9375.

DMCJA 2021-2022 Adopted Budget

Item/Committee	ALLOCATED	SPENT	REMAINING
Access to Justice Liaison	$ 100.00		100.00
Audit (every 3 years)			
Bar Association Liaison	$ 100.00		100.00
Board Meeting Expense	$ 15,000.00		15,000.00
Bookkeeping Expense	$ 3,500.00	1,272.00	2,228.00
Bylaws Committee	$ 250.00		250.00
Conference Calls	$ 200.00		200.00
Conference Planning Committee	$ 4,000.00		4,000.00
(reconsider in Spring based on finances)	$ -		
Contract Grant Writer	$ 50,000.00		50,000.00
Contract Policy Analyst	$ 50,000.00		50,000.00
Council on Independent Courts (CIC)	$ 500.00		500.00
Diversity Committee	$ 500.00		500.00
"Trial Court Sentencing and Supervision	$ -		
DMCMA Liaison	$ 100.00		100.00
DMCMA Mandatory Education	$ 20,000.00		20,000.00
DOL Liaison Committee	$ 100.00		100.00
Education Committee	$ 5,000.00		5,000.00
Education - Security	$ 2,500.00		2,500.00
Educational Grants	$ 5,000.00		5,000.00
Judicial Assistance Service Program (JASP) Committee*	$ 16,000.00	2,275.00	13,725.00
Insurance (every 3 years)			
Judicial College Social Support	$ 2,000.00	2,000.00	0.00
Judicial Community Outreach	$ 1,600.00		1,600.00
Legislative Committee	$ 1,500.00		1,500.00
Legislative Pro-Tem	$ 2,500.00		2,500.00
Lobbyist Contract	$ 105,000.00	24,000.00	81,000.00
Long-Range Planning Committee	$ 750.00		750.00
MPA Liaison	$ 250.00		250.00
yrs (next 12/2021)	$ 500.00		500.00
Mary Fairhurst National Leadership Grants	$ 5,000.00		5,000.00
Nominating Committee	$ 100.00		100.00
President Expense	$ 2,000.00	100.00	1,900.00
Pro Tempore (committee chair approval)	$ 10,000.00	561.00	9,439.00
Professional Services (Dino Traverso, CPA)	$ 1,500.00		1,500.00
Public Outreach (ad hoc workgroup)	$ 150.00		150.00
Rules Committee	$ 500.00		500.00
SCJA Board Liaison	$ 250.00		250.00
Therapeutic Courts	$ 2,500.00		2,500.00
Treasurer Expense and Bonds	$ 100.00		100.00

Trial Court Advocacy Board - DORMANT	$ -		
Uniform Infraction Citation Committee	$ 1,000.00		1,000.00
Totals	$310,050.00	$30,208.00	$279,842.00
Special Fund	$ -		
*Includes $8,000 from the SCJA			
	updated 10/31/2021		



Judicial Independence & Part-Time Municipal Courts

DMCJA Workgroup Report Appendix
September 14, 2012

CONTENTS

Introduction **4**

Judicial Independence and Washington's Courts of Limited Jurisdiction-An Historical Review **4**

John F. Boyd Associates Study (1974) 4

Judicial Administration Commission (1984) 6

Minimum Standards for Courts of Limited Jurisdiction (1988) 6

Judicial Council Task Force on Courts of Limited Jurisdiction Report (1989) 12

Commission on Washington Trial Courts–The Gates Commission (1990) 14

Washington Courts 2000−Gates II (1992) 15

A History of Court Reform in Washington from Statehood to the Present, 1889-1995 (1995) 15

The Walsh Report (1996) 20

The Wilson Report (1997) 23

The McSeveney Judicial Independence Committee Report (1997) 28

DMCJA Action Report Re: The Wilson Report (1999) 31

Judicial Independence in Courts of Limited Jurisdiction Report (King County Bar Association 1999) 35

Project 2001−Coordinating Judicial Resources for the New Millennium (2000) 40

Municipal Courts, Judicial Independence, and the Board for Judicial Administration (McSeveney, WSBA Bar News, October 2002) 48

Separation of Powers: The Legislature and the Judiciary (2003) 63

Always the People−Delivering Limited Jurisdiction Court Services Throughout Washington (JMI 2003) 65

Justice in Jeopardy: The Court Funding Crisis in Washington State (2004)....67

Courts of Limited Jurisdiction Delivery of Services Work Group Report (Court Funding Task Force 2004)....68

Regional Courts of Limited Jurisdiction Policy Statement (BJA 2005)....72

Justice in Jeopardy: 2007/2009 Biennium Information & Advocacy Guide (BJA 2006)....73

How We Choose Judges: It's Time For A Change (Bridges, Buzzard, Lawrence, Ruhl, Schubert, Velikanje and Yu, WSBA Bar News, April 2008)....76

Courts Are Not Revenue Centers (COSCA 2011-2012)....83

INTRODUCTION

The DMCJA Judicial Independence & Part-Time Municipal Courts Workgroup decided to include the following summary of judicial independence reports and studies in an appendix to the workgroup's report, rather than include them in the report. It is hoped that this appendix will be useful to the DMCJA Board when considering future policy decisions.

JUDICIAL INDEPENDENCE AND WASHINGTON'S COURTS OF LIMITED JURISDICTION-AN HISTORICAL REVIEW

Several reports and studies have examined the independence of Washington's judicial branch including courts of limited jurisdiction. The reports analyzed various aspects of Washington courts, and provided recommendations to improve judicial independence. Some recommendations were ultimately adopted, many were not.

Review and acknowledgement of these past efforts is helpful in providing guidance to possible future solutions. These reports and studies as related to Washington's courts of limited jurisdiction are summarized below.

JOHN F. BOYD ASSOCIATES STUDY (1974)

In 1974, the Office of the Administrator of the Courts commissioned a comprehensive survey of Washington's courts of limited jurisdiction by John F. Boyd Associates.[1] The Wilson Report,[2] discussed the Boyd study as follows−

> The last comprehensive survey of the courts of limited jurisdiction in Washington State was completed in 1974 by John F. Boyd Associations for the Office of the Administrator for the Courts. Many of the problems noted in that survey have been noted again in this survey, more than 20 years later…

[1] The workgroup has been unsuccessful in its attempts to obtain a copy of the Boyd study.

[2] The Wilson Report is discussed below.

The Boyd study concluded that the "best overall solution" to significantly improve the judicial system is to establish a unified court administrative system, under the direction of the State Supreme Court. "There simply is no single agency that has the authority to direct the various governmental entities involved to implement the needed improvements." The study goes on to say "there is little doubt in our minds that eventually a unified administrative system, by necessity, will be established in Washington State"…As noted in the 1974 survey, "the Office of the Administrator for the Courts is the only agency that has the responsibility for information pertaining to statewide judicial operations and is currently up to date on legislation, events, ideas, etc."…[3]

The best overall solution to significantly improve the judicial system is to establish a unified court system, under the direction of the State Supreme Court.

The 1974 Boyd study of the Washington State judicial system, stated:

> Generally, municipal courts are viewed as revenue producing agencies for the cities and the State Traffic Safety Fund, and justice courts are viewed as revenue producers for the county and State General Fund…[T]he expressed fear of both county and city governments [is] that a unified court system would eliminate these sources of government revenue.[4]

[3] The Wilson Report, at 164.

[4] The Wilson Report, at 166.

JUDICIAL ADMINISTRATION COMMISSION (1984)

The Judicial Administration Commission was formed by the Legislature in 1984 and chaired by Justice James M. Dolliver. The Commission was convened to "evaluate the existing structure of Washington's judicial system, the jurisdiction of each level of court, and the existing means of administering and financing the state's courts and related court services, including probation, family court, court reporting, and juvenile services."

The DMCJA adopted the minimum standards … as "minimum mandated services for the administration of justice in all courts of limited jurisdiction in the State of Washington.

The Commission recommended concurrent civil jurisdiction between superior and district courts be eliminated, state funding of superior and district court judges, and indigent defense, definition of the responsibilities of presiding judges, and a task force to consider problems of civil court congestion and delay.

MINIMUM STANDARDS FOR COURTS OF LIMITED JURISDICTION (1988)

In 1988, the DMCJA created a Consolidation Committee chaired by Judge James M. Riehl, Kitsap County District Court, to explore consolidation of district and municipal courts. The Committee recommended consolidation of these courts, with a dissenting report prepared by Judge John T. Lindel, part-time municipal court judge for Cosmopolis, Oakville, Montesano and McCleary.[5] The Committee also proposed minimum standards for courts of limited jurisdiction.

[5] Judge Lindel's summary says–

The arguments put forward in favor of consolidation are more apparent than real. Further, even if the arguments were valid, the recommendations of the Judge's Committee are inadequate to remedy those problems after consolidation as some are shared by the district court system.

The haste in which this study has been made, not only in the Judges' Committee but also in the Judicial Council Task Force, precludes any in depth study. The information has been limited, inadequate and, in some cases, wrong and misleading. It is clearly being pushed by those in favor of consolidation.

The DMCJA adopted the minimum standards proposed by the Consolidation Committee as "minimum mandated services for the administration of justice in all courts of limited jurisdiction in the State of Washington." The DMCJA also resolved that any legislation or proposed legislation for the consolidation of district and municipal courts "must provide for the minimum mandated standards" as set forth by the Consolidation Committee. The minimum standards adopted by DMCJA, along with commentary, are as follows−

I. Staffing.

1.1 Judicial Officers

1.1.1 Definition. The term judicial officer encompasses elected and appointed judges, both full time and part-time as well as court commissioners, magistrates, and judges pro tempore.

1.1.2 Adequate Number. An adequate number of judges should be provided. The number of judges should be based on a weighted caseload system.[6]

1.1.3 Qualifications. (a) Criteria. All judicial officers in courts of limited jurisdiction shall be admitted to the practice of law in the state of Washington. (b) Status. All judges in courts of limited jurisdiction shall be elected as full time.[7]

Finally, consolidation should be defeated. The cities, counties and public would not be well served. The probable result will be crowded courts unabel [sic] to respond to the justifiable expectations of the participants and public.

[6] Commentary. A Weighted Caseload study is currently being conducted for district court judges and should be completed by January 1990. The weighted caseload system should be adjusted to reflect travel time and time necessary to conduct legal research. The weighted caseload system should be updated to encompass municipal court cases.

[7] Commentary. Currently, there are 199 judges in the courts of limited jurisdiction. Of the 106 district court judges, 79 are full-time attorney judges, 20 are part-time attorney judges, and 7 are part-time non-attorney judges. Of the 93 municipal court judges, 9 are full-time attorney judges, 65 are part-time attorney judges, and 19 are part-time non attorney judges.

In rural areas, there may not be any attorneys willing to serve as judges. If a rural court has an attorney judge, another attorney may not be available in the area to hear cases in which the judge has a conflict or an affidavit has been filed against the judge.

Requiring full time judges may cause some problems especially in rural areas since the judges would need to ride circuit to justify a full time position. The effect on the family and interruption in community activities often deter good candidates, especially women, from seeking judgeships.

1.1.4 Adequate Time. Each judicial officer should be provided adequate time in which to conduct necessary research.

1.1.5 Continuing Education. (a) Hours. Judicial officers should complete 15 hours of continuing legal education each year.
(b) Compensation. Funds and time should be provided for judicial officers to attend education sessions.

1.1.6 District and Municipal Court Judges Association. Funds and time should be provided for judicial officers to attend District and Municipal Court Judge's Association meetings including committee and Board meetings and Supreme Court appointed and legislatively mandated committees.

1.1.7 Travel Considerations. The amount of travel time required of a judicial officer should be considered when determining the number of judicial positions.[8]

1.1.8 Salary. Full time judges are compensated at the rate prescribed by the Washington State Citizens' Salary Commission.[9]

1.2 Court Staff

1.2.1 Definition. Court staff includes: administrators, clerks, bailiffs, probation staff, and interpreters.

1.2.2 Adequate Number. An adequate number of court staff should be provided.[10]

1.2.3 Supervision. Court staff should be supervised by the judicial branch.[11]

There are problems with utilizing part-time judges. Where the part-time judge is a practicing attorney, the potential is great for conflicts with other attorneys, defendants or litigants.

[8] Commentary. Judicial officers should not be expected to travel extensively during non-court hours.

[9] Commentary. Other judicial officers and part-time judges, if any, should be compensated at a prorated formula.

[10] Commentary. The number of court staff should be based on a weighted caseload system.

[11] Commentary. When Chapters 3.45 and 3.50 RCW were enacted in 1961, the legislature attempted to have court personnel appointed by the local executive branch. This was vetoed by the governor partly because courts have always appointed their clerks and office staff, but mainly

1.2.4 Continuing Education. (a) Hours. Court staff should be required to attend a certain number of continuing education classes each year. (b) Compensation. Funds and time should be provided for court staff to attend education sessions.

1.2.5 Washington State Association for Court Administration. Court administrators should be required to be members of the Washington State Association for Court Administration.

1.2.6 Ethics. A Code of Ethics should be developed and applied to all court staff.

II. Necessary Support Services

2.1 Probation Services

2.1.1 Services. There should be adequate probation services for all courts handling criminal cases based on a weighted caseload system and taking into consideration the extent of services provided.[12]

2.1.2 Supervision. Probation staff should be supervised by the judicial branch.

2.1.3 Community Service. Community service should be available as a sentencing alternative for appropriate defendants.

2.2 Automation

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because of the separation of powers doctrine. Both statutes clearly state that municipal court employees are employees of the city. However, this appears to be for the purpose of providing compensation and employee benefits. The power to appoint and terminate court employees remains with the court.

[12] Commentary. Misdemeanant probation departments are necessary service agencies designed to assist the courts in the management of criminal justice. Their mission, as part of the criminal justice system, is to aid in the preservation of public order and safety. Surveillance, supervision, employment assistance, and counseling are means to that end.

Potential probation services should include but not be limited to: offender background investigations; sentencing recommendations; supervise conditions of sentences; ongoing assessments of probationers' needs and risk to the community; identify and coordinate community services; coordinate and monitor community service hours; assist victims and offenders' families; assist offenders in areas of employment, education, and reinstatement of drivers licenses and auto insurance; increase the collection rate of fines and fees; provide intensive supervision for high risk offenders; and offer flexible sentencing alternatives to jail time.

2.2.1 Automated System. All courts should have access to an automated system which provides functions for receipting, accounting, managing and collecting time payment of fines, managing caseflow and calendar information.[13]

2.2.2 Access. All court staff should have direct and convenient access to the court's automated system to perform their necessary functions.

2.3 Legal Services

2.3.1 Prosecution. (a) Adequate Number. An adequate number of prosecutors should be provided for each court of limited jurisdiction. (b) Services. Prosecution services should be available for all contested criminal and infraction hearings.

2.3.2 Indigent Defense. Adequate indigent defense services should be provided to all criminal defendants who qualify.[14]

2.4 Miscellaneous

2.4.1 Financial Audit. Every court should have an annual financial audit.

2.4.2 Manuals. The State should be required to keep all manuals updated, i.e. Manual of Courts of Limited Jurisdiction, Uniform Manual of Accounting, Driver Services Manual.

2.4.3 Interpreters. Courts should have access to interpreters for foreign language and hearing impaired.[15]

[13] Commentary. The collection of monies as a judicial function should be studied further.

[14] Commentary. Currently, a Task Force on Indigent Defense has been formed by the Legislature. The recommendations from this task force are due in January 1989 and should be consulted in regard to this standard.

[15] Commentary. There should be a state-wide coordinator for certification and assignment of interpreters. The Court Interpreter Task Force should be contacted for further recommendations.

III. Facilities and Equipment

3.1 Facilities

3.1.1 Minimum Standards. Minimum standards relating to court facilities should be established and all court facilities should meet these standards.[16]

3.1.2 Accessibility. Court facilities should be open and accessible to all members of the public including handicapped persons for a reasonable and adequate number of hours and days. (a) Public. A standard travel time for the public to reach a court facility should be established. (b) Judicial Officers and Court Staff. A standard travel time for judicial officers and court staff to reach their court facility should also be established.

3.1.3 Security. Standards should be developed and implemented regarding security of judicial officers, court staff, courtrooms, courthouses, and court records.[17]

3.2 Equipment

3.2.1 Adequate Number. Judicial officers and court staff should have adequate equipment and number of DISCIS computer terminals or personal computers to process workload.

3.2.2 Adequate Resources. Judicial officers and court staff should have access to law library materials.[18]

[16] Commentary. The standards should include space, lighting, acoustical, security (both physical and records/date) concerns.

[17] Commentary. The standards should include such items as the following: 1. No weapons allowed in courthouses; 2. “Panic” buttons in cashier areas as well as courtrooms and chambers; 3. Proper security for jurors; 4. Transportation of funds to bank on a daily basis; 5. Proper holding facilities for defendants in custody; 6. Separate waiting areas for witnesses and victims; 7. Annual awareness seminar for judges and clerks; 8. Locked cash drawer for money kept during the day and a safe for money kept over the night; and 9. A locked exhibit storage area including a safe for storage for narcotics and weapons.

[18] Commentary. Each court should have access to Revised Code of Washington, Washington Administrative Code, Washington Reports, Washington Appellate Reports, advance sheets, court rules, municipal and county ordinances, and other law library related materials. The access may be in the form of Westlaw.

3.2.3 Electronic Recording. (a) Proceedings. All court proceedings should be recorded, either audio or video. (b) Appeals. Appeals should be on the record rather than de novo.[19]

IV. Standards

4.1 Bail Schedules

Uniform state-wide bail schedules should be developed for criminal offenses.

4.2 Penalties

Where the state legislature has defined an offense, criminal or infraction, and the local jurisdiction (city or county) adopts or has adopted a similar offense, the penalty structure should follow the state statute.

JUDICIAL COUNCIL TASK FORCE ON COURTS OF LIMITED JURISDICTION REPORT (1989)

The Judicial Council Task Force on Courts of Limited Jurisdiction was formed in May 1988 at the request of the Legislature to "study the effects on the administration of justice of consolidating the district and municipal courts into a single level court of limited jurisdiction." The Task Force, chaired by Judge W. Edward Allan of Grant County District Court, was composed of representatives from the Legislature, the DMCJA, the Washington State Bar Association, the Superior Court Judges' Association, the Washington Association of Sheriffs and Police Chiefs, the Washington Association of Prosecuting Attorneys, the Washington State Association of Municipal Attorneys, the League of Women Voters, the Association of

Municipalities should have the option of contracting with the district court or maintaining their own independent municipal court or traffic violations bureau, provided that the minimum standards for courts of limited jurisdiction … are met

[19] Commentary. This includes small claims which is a departure from tradition.

Washington Cities, the Washington State Association of Counties, and the Administrator for the Courts.

The report included proposals for consolidation of courts of limited jurisdiction and minimum standards for courts of limited jurisdiction which were developed and approved by DMCJA.[20]

The Task Force's report, which contained the Judicial Council recommendations and commentary, is summarized as follows−

- Municipalities should have the option of contracting with the district court or maintaining their own independent municipal court or traffic violations bureau, provided that the minimum standards for courts of limited jurisdiction established by the Washington State Legislature based upon recommendations from the Judicial Council are met.
- Based upon recommendations from the Judicial Council, the Washington State Legislature should set minimum standards including but not limited to: staffing (judicial officers and court staff), necessary support services, facilities and equipment, and other operational standards with which all courts of limited jurisdiction shall comply.
- The number of district court judges should be dictated by population as now provided in RCW 3.34.020, with additional judicial positions mandated by the weighted caseload methodology.
- All statutory references to non-attorney judges should be repealed with a grandfather clause for all existing non-attorney judges running with the person and not the term of office.
- Part-time district court districts should be combined to create full-time judicial positions wherever possible but this is not required. Court would be conducted in any contracting municipality where a proper facility is provided.

[20] The minimum standards are discussed above.

- The Public Safety and Education Assessment (PSEA) (RCW 3.62.090) should be increased to one hundred percent of fines, forfeitures, and penalties assessed and collected, other than for parking infractions. For district courts and contracting municipalities, the split would be 60 percent for the county/city and 40 percent for the state. For municipalities which maintain their own municipal courts and traffic violations bureaus, the split would be 57 percent for the municipalities and 43 percent for the state.

- The state should pay one-half of the salary and all of the benefits of district court judges from the general fund.

COMMISSION ON WASHINGTON TRIAL COURTS–THE GATES COMMISSION (1990)

The Commission of Washington Trial Courts was formed in 1990 by Chief Justice Keith Callow, and chaired by William Gates, Sr. The Commission, commonly referred to as the "Gates Commission," conducted an extensive examination of trial court reform and concluded that neither "adequate support or organization" existed in the civil and criminal justice system.

The Commission recommended a host of procedural and administrative changes to improve the quality of justice, many of which were subsequently implemented. These include expanding the jury source list to include licensed drivers, increasing the jurisdictional limit of district courts to $25,000, publishing local court rules in a statewide volume, and preempting local penalty schedules except where specifically authorized in statute.

The Commission also concluded that "[t]he Superior Courts should have adequate personnel, and should be able to offer an adequate level of services to the public, including to pro se litigants. The Commission believes most courts are under-funded, understaffed, and lack adequate support services. Some have an inadequate number of judges. Additional resources should be provided to meet these needs."[21]

[21] Commission on Washington Trial Courts (1990), at 44.

WASHINGTON COURTS 2000–GATES II (1992)

Washington Courts 2000 was convened by the Board for Judicial Administration in 1992. Again chaired by William Gates, Sr. and commonly referred to as "Gates II," the committee recommended expanded membership on BJA from the trial courts, court management groups and citizens, and a majority vote approach to decision making.

A HISTORY OF COURT REFORM IN WASHINGTON FROM STATEHOOD TO THE PRESENT, 1889-1995 (1995)

In 1995, Carin M. Johnson prepared a report for the Walsh Commission.[22] The report chronicled Washington's history of court reform from statehood.[23] The following are selected excepts from the report.

> Washington Courts in the Territorial Years, 1853-1889.
> [Washington's] judicial system was founded in 1853, when Congress established three district courts to serve the Washington Territory, an area carved out of Oregon Territory north of the Columbia River and south of the Canadian border. At that time, Washington Territory stretched from the Pacific Ocean in the west to the Rocky Mountains on the eastern border. In 1873, Idaho and Montana Territories were created, leaving Washington with its present boundaries. The number of courts eventually proved inadequate to meet the needs of the vast and rugged geography and a growing population.
>
> The courts sitting in Washington held something of a hybrid status. Since the federal government controlled the territories, the courts acted as both "territorial courts" and United States district courts. There were also probate courts, but their jurisdiction was limited to estate matters. Federal control, until statehood was granted in 1889, prevented Washington pioneers from establishing a completely independent court system. The Territorial Legislature passed several statutes creating a local court system, but these were ruled unconstitutional.

[22] The Walsh Report (1996) is discussed below.

[23] The report was revised to include court reform efforts through 2002.

Citizen dissatisfaction with the territorial courts was created in part by the absence of judges, who were appointed by the President. In addition, their positions were often doled out as a reward for political patronage. At least some of the judges did not perceive a duty to leave the comforts of the East to attend to their court duties in the frontier Northwest.

The State Constitutional Convention of 1889. In November 1889, Washington gained statehood and the newly formed Supreme Court and superior courts took over cases from the Territorial district courts. The new court system bore similarities to California's system.

Seeking to localize the judicial selection process, and hence, avoid problems resulting from judges' absenteeism, the framers of the state Constitution provided for the election of Supreme Court justices. A concern in the minds of the framers of the constitutional provision on the election of the Supreme Court was how to ensure representation of minority political groups.

In 1908, the Legislature effected a change to a nonpartisan judiciary, in order to depoliticize judicial elections, but this was soon repealed because Republicans feared losing control in the 1910 elections. Nonpartisanship was reenacted in time for the 1912 elections.

The Foundations of Court Rules and Administration, 1921-1970. Following the adoption of the state constitution and early years of court reform, the bar and courts demonstrated a noticeable trend toward greater rule making and administrative requirements. Often the additional regulations were intended to promote efficiency and fairness.

Managing a Growing Caseload: Court Reform, 1960-1990. Replacing justice of the peace courts, which functioned through the collection of fines and forfeitures, district courts were created in 1961.

In 1980, the Legislature created the courts of limited jurisdiction. These courts were below county superior courts, which were of

"general jurisdiction." The limited jurisdiction courts included municipal courts, serving one city or town, and district courts, serving a county.

The 1984 Court Improvement Act conferred power on district courts to create a municipal department to deal exclusively with cases from a particular city. The 1984 Act also allowed municipal courts to organize under the alternative statutory provision set forth at Chapter 3.50 RCW. Originally, city or town councils could choose whether judges would be elected or appointed. In 1993, this was changed to require elections of municipal court judges who filled a "full time equivalent" position.

In 1989, in response to a request from the Legislature, the Judicial Council formed the Task Force on Courts of Limited Jurisdiction, to study the possible effects of merging county-sponsored district courts with their city-based counterparts, the municipal courts. As the 1989 Annual Report reported: "The issue is one of efficiency and cost-savings: do services of district and municipal courts duplicate one another, resulting in lower service levels and increased cost to local taxpayers?" In December 1988, the task force issued a final report listing minimum standards for all courts of limited jurisdiction, as recommended by the state District and Municipal Court Judges' Association.

First Citizens' Conference on Washington Courts. 1966. In late 1966, the first Citizens' Conference on Washington Courts was convened to examine problems facing the justice system and devise alternative solutions to those problems. The conference attracted almost 200 people. The citizens' group identified the following needs: "statewide administration and management of the entire judicial system; establishment of a court of appeals; upgrading courts of limited jurisdiction by increasing their jurisdiction and making them courts of record; merit selection and retention of judges; and a means for discipline or removal of judges when appropriate." The 1967 legislative session addressed some of these concerns with the following measures: passage of a constitutional amendment creating a court of appeals, passage of a constitutional amendment allowing judges' salaries to be increased

during their term of office; and passage of legislation funding staff for the administrator of the courts and Judicial Council, salary raises for judges and the creation of additional superior court judgeships.

In 1968 voters approved creation of a Court of Appeals.

Second Citizens' Conference on Washington Courts. 1972. The second citizens' conference was convened in the summer of 1972 and compiled an extensive list of suggestions for reform. The group's recommendations included: "More and better information about courts should be provided, so that the public could judge the adequacy of various proposals to reform the courts; trial courts should operate more rapidly, more efficiently and provide more equitable justice; courts should be administered as part of one statewide system; all courts should be unified under one central administrative authority (such as the chief justice), whose tenure in office should be extended and strengthened; the entire cost of the courts should be borne by the state; the courts should be encouraged to utilize modern technological advancements including computers; and judges should be selected for office on the basis of merit and periodically subjected to the scrutiny of the electorate at uncontested elections."

The work of the citizens' conference contributed in part to proposed constitutional amendments, introduced to the senate in 1973 and 1975. Both proposals encountered opposition from a number of parties and were subsequently dropped. Among the provisions in the first proposal were: "a structurally unified court system to permit uniform statewide administration of all courts and, ultimately, the establishment of a single-level trial court; the screening by commissions to review qualifications of lawyers who wished to be judges and to make recommendations to the governor when he was filling vacancies; the lengthening of judicial terms; a discipline and removal commission to hear and act on complaints against judges; a longer term for the chief justice and assurance that the justice chosen was the best possible administrator available; and the delegation of responsibility for managing the entire court system to the Supreme Court."

Arguments against the proposals were many. The state Labor Council opposed any form of judicial selection other than nonpartisan elections. It also opposed the lengthening of terms of office. The state bar association believed an independent commission composed of judges, lawyers and laymen should administer the state system, not the Supreme Court. The bar argued that the Supreme Court lacked both the time and expertise to assume the responsibility. Superior court judges advocated local control of the courts, including responsibility for funding, and opposed a single-level trial court.

Judicial Administration Commission. 1985. Pursuant to the 1984 Court Improvement Act, the Judicial Administration Commission was convened to “evaluate the existing structure of Washington’s judicial system, the jurisdiction of each level of courts, and the existing means of administering and financing the state’s courts and related court services. Chaired by Supreme Court Justice James M. Dolliver, the commission made recommendations concerning the district court system, state funding of the courts and improving overall efficiency in the courts. In the first area, the commission recommended that concurrent civil jurisdiction between superior and district courts should be eliminated.

Commission on Washington Trial Courts. 1990. The Gates Commission, as the Commission on Washington Trial Courts was known, provided a comprehensive examination of trial court reform. Created in April 1990 by Chief Justice Callow, the commission issued a final report in December. According to the final report: “The hard truth is that the justice system, civil and criminal, cannot deliver the results citizens desire without adequate support and organization, neither which presently exists. Moreover, the primary reason why they do not exist is that funding and other decisions are made without taking into account the interdependent nature of the parts of the judicial system”

The commission made recommendations in some of the following areas: DWI trials, court resources and staff, pro se litigants; selection and term of chief justice; facilities and security; minimum standards for courts of limited jurisdiction; expanding the jury

source list, mediation; Sentencing Report Act; court fees; and electronic records.

Courts of Limited Jurisdiction Assessment Survey ("Wilson" Project). [See discussion concerning the Wilson Report, below.]

Finding ways to improve judicial selection (Walsh Commission). [See discussion concerning the Walsh Report, below.]

Project 2001. [See discussion concerning Project 2001, below.]

THE WALSH REPORT (1996)

In recognizing that almost 50 percent of voters in general elections chose not to vote for judicial candidates because the voters lacked sufficient information, a public opinion poll of 800 voters was conducted by GMA Research Associates. The poll confirmed voters' concerns over too little information about judicial candidates. This concern, coupled with focus group findings that showed an increasing dissatisfaction among voters about the difficulty of making choices in judicial races prompted Chief Justice Barbara Durham to announce the formation of a judicial selection review commission in her State-of-the-Judiciary speech to a joint session of the Washington State Legislature on January 23, 1995.

In response, the Walsh Commission was created to restore citizen control to Washington's judicial selection process. Ms. Walsh, chair of the commission, affirmed 17th century British philosopher John Locke's revolutionary idea that the people should be in control of the mechanisms of government. "That principle is the keystone of our report and the effort to restore lost citizen control is at the heart of our recommendations."[24]

Fundamental differences between the role of the judge in a democratic community and that of other elected officials were discussed. The people elect legislators and governors to further individual policy preferences. The law-making process should be marked by lively debate among conflicting policies which in the end leads to better and more accountable public policy.

In sharp contrast, the law-interpreting and applying tasks entrusted to judges must be impartial. "Judges serve the people through the impartial interpretation

[24] The Walsh Report (1996), at 2.

of laws made by a democratically elected legislature." Unlike the other two branches of government, it is not the role of the judge to make fundamental policy decisions, to express preferences for one policy over another, or to represent one group over another. "To the contrary, impartiality means judges will not favor one view, one group or one policy over another."[25]

A method of selection that works well for the legislative and executive branches may not be suitable for the judicial branch. In Washington, judges reach the bench by appointment or by contested election. The Commission concluded that "both processes have serious problems in today's world for the selection of the neutral, skilled professionals the people demand in their judiciary."[26]

The failure to look clearly at what is actually happening with judicial selection has resulted "in a system in which the people are largely excluded from meaningful participation in decisions about judicial selection and tenure. The Commission's recommendations are intended to restore some of that citizen control, to return to John Locke's vision of a community where the people shall judge."[27]

The Commission made nine recommendations.

1. Recommendations for Qualified Judges. Length of Practice. All candidates for judicial office shall have been active members of the state bar and/or shall have served as a judicial officer for at least the stated time periods: Supreme Court and Court of Appeals – 10 years; Superior Court – 7 years; and District Court – 5 years.

2. Recommendations for Qualified Judges − Residency. All candidates for judicial office shall have resided in the judicial district or county of the stated time periods immediately preceding candidacy: Supreme Court – 7 years in state; Court of Appeals – 5 years in judicial district; Superior Court – 5 years in judicial district; and District Court – 2 years in county.

3. Recommendations for Qualified Judges − Judicial Selection. Judges shall be selected by nominating commissions or by contested election.

[25] *Id.*
[26] *Id.*, at 3.
[27] *Id.*

4. Recommendations for Qualified Judges − Nominating Commissions. Volunteer citizen nominating commissions shall be created to review and compile a list of recommended candidates from which the appointing authority shall fill all judicial openings.

5. Recommendations for Voter Information and Judicial Accountability − Judicial Performance Information. A process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme Court.

6. Recommendations for Voter Information and Judicial Accountability − Judicial Candidate Information. A process for collecting and publishing information about candidates for judicial office shall be created under the authority of the Supreme Court.

7. Recommendations for Voter Information and Judicial Accountability − Judicial Voter Information. The Supreme Court shall authorize the publication of a judicial voter pamphlet and encourage other methods for distributing judicial candidate information.

8. Recommendations for Voter Information and Judicial Accountability − Public Education. More information shall be made available to students, the public and news media about the nature of the judicial system and the character of the judicial office.

9. Recommendation for Judicial Independence − Campaign Finance. Canon 7 of the Code of Judicial Conduct shall be revised to impose limits on campaign contributions by persons or organizations and impose aggregate limits on expenditures by a judicial candidate's campaign committee.

The report's conclusion discussed the difficult obstacles such proposals face. Chief among the obstacles was political resistance to change. The Commission noted that it did not "underestimate the strength of the opposition." With the support of farsighted political leaders, the Commission believed that a judicial selection system could be put in place in which "the people shall judge."[28]

[28] *Id.*, at 51.

THE WILSON REPORT (1997)

In 1995, Chief Justice Barbara Durham commissioned a comprehensive survey of the policies, procedures, and facilities of Washington's district and municipal courts. Retired Snohomish County District Court Judge W. Laurence Wilson and his wife Carol J. Wilson were retained by the Office of the Administrator for the Courts to attempt to conduct site visits and interview all Washington courts of limited jurisdiction with more than 400 annual filings.

The survey team included the District and Municipal Court Judges' Association and the District and Municipal Court Management Association, as well as the Supreme Court and superior court judges and administrators. Suggestions were also elicited from other stakeholders, including legislators, the Department of Licensing, the Auditor's Office, the Bar Association and the Washington State Patrol.

The completed questionnaire included approximately 1,100 questions. To ensure that every question was interpreted in the same manner by each participating court, the survey team visited every location. The on-site interview process took approximately seven hours at each court.

The survey interview process started in June 1995 and was completed in December 1996. Out of an estimated 190 courts, 136 courts were surveyed. Courts in all 39 counties participated. All 58 district courts participated, along with 78 of the municipal courts.

The Wilson Report noted that the last comprehensive survey of Washington's courts of limited jurisdiction was completed over twenty years earlier in 1974 by John F. Boyd Associates. Unfortunately, many of the problems noted in that 1974 survey "have been noted again in this survey, more than 20 years later."[29]

The election of the judge, or appointment by an individual or agency other than the funding authority, is critical to the independence of the court.

[29] The Wilson Report (1995), at 164.

Several "major issues of concern" were discussed in the Wilson Report's conclusion. A synopsis follows–[30]

A. Leadership. The major problems facing the courts of limited jurisdiction can be traced to a lack of effective leadership. For example, funding is a major problem facing all of the courts, yet there is no minimum funding standard for the proper and necessary operation of the district and municipal courts. In addition to the need for minimum standards, court rules and statutes are subject to interpretation by each of the judges which often results in diverse operations from court to court or within a single court. Only the Supreme Court has the power to determine the fiscal, operational, and leadership requirements of the judiciary and to effectively represent the courts to the people and the other branches of government.

Several citizen comments noted during the survey suggest a public perception that the Supreme Court is responsible for the operation of the judiciary. We believe that the Supreme Court has the inherent power to provide leadership for the judiciary; however, if necessary, the court's rule making authority could be exercised in conjunction with legislative action to firmly and clearly establish Supreme Court responsibility for the administration of the courts.

B. Separation of Powers. In the past, local funding authorities have expressed grave concern over the possible loss of "control" of their local court. While it is widely recognized and accepted that the public interest can only be served by full cooperation between three equally independent branches of government, the independence of the judicial branch seems to be less widely accepted.

In some courts, support of the funding agency is contingent upon directives contained in ordinances that limit the judicial officer's discretion. In other courts, judicial officers are considered only contract employees with no responsibility or control over events, records, or personnel outside of the courtroom. In our opinion, the court must be truly independent of the local funding agency.

[30] *Id.*, at 164-169.

Fair and equal justice for all demands that the court be free of local interference and control. Therefore, in our opinion, a totally independent trial court under the leadership of the State Supreme Court is absolutely necessary. An independent trial court will not survive unless the politically expedient tactics of the past are discontinued.

C. State Funding. Sufficient funding of the courts of limited jurisdiction is at the very core of the effective delivery of judicial services. Without sufficient funding, courts are neither independent nor effective.

Local city and county funding agencies faced with dwindling resources and increasing demands for services routinely cut all budgets "across the board" or reduce funding for the service they know the least about – the court. To ensure adequate funding of the courts, minimum standards must first be set for all facets of court operation from facilities through services, and definitions must be established for such basic words as "court" and "judicial officer." The time has come to clearly define the minimum budgetary needs for the courts of limited jurisdiction, and with the leadership of the Supreme Court, to fund them at the state level.

State funding of the courts of limited jurisdiction is necessary, in our opinion, to remove local bias and influence, special conflicts of interest, political power bickering, and the other trappings of cash register justice. The Supreme Court should closely examine the funding issue, with the assistance of a committee or task force, to guarantee both adequate public service and the independence of the courts.

D. Judicial Officers. The independence of the court depends on the independence of the judge. If the local funding authority is telling the judge by ordinance when to hire staff, who to hire, and how and when to function, then the judge clearly works for the local funding authority, but not necessarily the public. Conflicts of interest are almost unavoidable if the judge is only a part-time judicial officer, with other responsibilities involving a private law practice or some other position. There are instances where part-time judicial officers,

free of conflicts of interest, are very ably serving the court. However, in the public interest there is no substitute for a legally trained full-time judicial officer.

Where a full-time judicial officer is not required, an appropriate solution might be the consolidation of local courts in the region for the purpose of electing a judicial officer. The difficulty of serving two masters is demonstrated when the judicial officer is appointed by the funding agency, and later learns the meaning of serves at the pleasure of. The election of the judge, or appointment by an individual or agency other than the funding authority, is critical to the independence of the court.

E. Delivery of Judicial Services. The public has expressed confusion over where cases are to be heard and which courts have jurisdiction over which types of cases. Over the years it has been repeatedly suggested that the municipal and district courts be consolidated as a means to resolve many issues, including public confusion. It has also been suggested that a single trial court be established as has been done in several states. In short, the delivery of judicial services has always been a popular subject of debate.

To abolish municipal courts and establish regional circuit district courts may not meet the public need in every case. If a court has been established for the purpose of raising revenue, then it should be abolished whether it is a district or a municipal court. On the other hand, some cities have had courts since the 1800s and are very proud of local municipal independence with three co-equal branches of government. The municipal court, in each of these observed cases, appeared to be free of control or influence by city policy makers.

As a result of the foregoing observations, the survey team concludes that municipal courts do have a legitimate role in the delivery of judicial services, provided that within municipal corporate limits, they are subject to the same statues, rules, policies, and procedures that apply to district courts, i.e., elected judges, identical civil, small claims, and criminal jurisdiction with

identical maximum penalties, etc., subject to the administrative supervision of the Supreme Court.

Only municipalities that embrace the "cash register justice" would have reason to oppose this type of legitimate municipal court.

F. Minimum Enforceable Operating Standards. Throughout this report we have made repeated reference to the need for minimum standards for courts of limited jurisdiction. The lack of operating standards was also referenced in the 1974 Boyd study and the 1989 Judicial Council report, yet there are still no minimum enforceable operating standards. Minimum service standards have been recommended by the District and Municipal Court Judges Association, and minimum facility standards have been published, but neither have been enforced.

The creation of minimum enforceable operating standards implies that compensation for the same work task would be the same throughout the state. This is certainly not true today, notwithstanding differences in the level of responsibility or staff supervised. We conclude that a comprehensive clerical weighted caseload analysis must be conducted to establish and determine legal process assistant job descriptions, as well as minimum staffing and salary levels based on workload and responsibility factors. Also, the current judicial weighted caseload study is woefully inadequate and should be revised to include administrative overhead factors that have outstripped the original analysis.

G. Court Registration and Certification. No one knows, for sure, how many courts of limited jurisdiction there are in the state of Washington. There is no statutory or court rule requirement that a court be registered. The Supreme Court should define a court of limited jurisdiction by court rule and require that any such tribunal be registered with OAC.

Court performance audits or surveys should be conducted by OAC staff at least every three years to ensure that minimum standards for court operation have been met, as established by the Supreme Court and the Legislature.

To accomplish this task, OAC should be adequately funded to ensure that field representatives conducting performance audits have previous court work experience, so that new ideas can be shared and assistance rendered where appropriate. Where, as a result of an audit, the Supreme Court determines that a court has failed to meet minimum requirements, the offending court should be de-certified, and the judicial business of that court temporarily transferred to other certified courts in the area until the noted deficiencies have been corrected. Public trust and confidence in the judiciary demands no less.

THE MCSEVENEY JUDICIAL INDEPENDENCE COMMITTEE REPORT (1997)

The DMCJA created a Judicial Independence Committee chaired by former Kent Municipal Court Judge Robert B. C. McSeveney to explore the "plight of some past and present municipal court judges throughout the state whose judicial independence and administration of their courts has been challenged or interfered with by their respective local legislative officials who are either ignorant of state laws and legal principles governing judicial independence and court operations, or who intentionally disregard legislative mandate for the sake of expedience and/or compromise."[31]

On April 30, 1997, Judge McSeveney presented the committee's findings to the DMCJA, along with recommendations. The report highlighted several examples of municipal court judicial independence concerns.

- Personal service contracts which either severely limit the judge's involvement with court operations or which contract away legislative mandates under RCW 3.50 *et. seq.*
- Disciplinary or hiring and firing decisions of court personnel made by City officials without judicial involvement, in violation of RCW 3.50.080.
- City ordinances on municipal court operations and judicial authority enacted in direct conflict with state law.

[31] The McSeveney Judicial Independence Committee Report (1997), at 1.

- Court trust accounts and other financial operations being handled by the City finance department instead of the court administrator.
- Improper and inappropriate annual performance reviews of judges by City administrators in accordance with local personnel policies.
- Municipal court unconstitutionally organized under the executive branch of local government subject to a city department head.[32]

In conclusion, the Judicial Independence Committee recognizes that all appointed municipal court judges sooner or later will be confronted with issues of separation of power and judicial independence, if they have not already. As we see more and more municipal courts created, there is a greater need for uniformity in organization and procedures. A viable local rule promulgated by the Supreme Court would provide authority and leverage for judges to carry out their responsibilities without improper interference by the local legislative entities.

The Report discussed a recent example of interference with judicial independence and its consequences involving Judge Jean A. Cotton of Elma Municipal Court. As a result of a dispute with the city administration regarding the discipline of a court employee, Judge Cotton was suddenly "unappointed" by the mayor in clear violation of RCW 3.50.040 (four-year term) and RCW 3.50.095 (grounds for removal of office).

> Unfortunately, judges who are "victims" of the above incidents are often not reappointed and thus no longer involved with the DMCJA, and much valuable input is therefore not provided to this association. Many current municipal court judges face reappointment and in an effort to retain their position may be reluctant to bite the hand that feeds them.

[32] *Id.*, at 1-2.

> Judicial freedom from improper influence is essential. All part-time municipal court judges could find themselves in Judge Cotton's position, along with all the associated stress, public attention and embarrassment. It is therefore incumbent on all DMCJA members and particularly part-time municipal court judges to collectively support this organization's efforts to create an integrated and consistent municipal court system with judicial independence.[33]

The Report next focused on a judicial officer's obligations under the Code of Judicial Conduct and Administrative Rules for Courts of Limited Jurisdiction concerning judicial independence. Because of judicial ethical constraints and court rules−

> [A]ppointed municipal court judges often find themselves tip-toeing through a mine field of intervention by city governments. With no "army" to fight the invasion, a judge's only recourse is to educate the respective city attorneys and administrations on the law and hope they will comply, ask the DMCJA for assistance (which is severely limited), or hire legal counsel and be embroiled in a dispute detracting from other legal duties, and in the meantime run the court and hear cases, usually as a sole judge.[34]

The Committee considered a variety of options, including new legislation, or an amendment to RCW 3.50, or a new general rule by the Supreme Court to address the DMCJA's concerns.

The Committee concluded after discussing several Washington cases that the most appropriate option would be the creation of a new judicial independence general rule.

> It has long been established by the Washington Constitution that all judicial power is vested in the courts independent of all legislation, including municipal ordinances. The separation of powers doctrine is a fundamental principle of the American constitutional system and serves to ensure that the fundamental functions of each branch remain inviolate. Although the doctrine is grounded in flexibility and practicality, it is violated when the activity of one branch threatens

[33] I*d.*, at 2.
[34] *Id.*, at 3.

> the independence or integrity or invades the prerogatives of another. Once violated, the damage accrues directly to the branch invaded and when unwarranted coercion or intrusion occur the "judiciary should exercise its authority to sustain its separate identity."[35]

The Report ended with a warning for municipal court judges, and the hope for an optimistic result if a judicial independence court rule was promulgated.

> In conclusion, the Judicial Independence Committee recognizes that all appointed municipal court judges sooner or later will be confronted with issues of separation of power and judicial independence, if they have not already. As we see more and more municipal courts created, there is a greater need for uniformity in organization and procedures. A viable local rule promulgated by the Supreme Court would provide authority and leverage for judges to carry out their responsibilities without improper interference by the local legislative entities.[36]

DMCJA ACTION REPORT RE: THE WILSON REPORT (1999)

On June 7, 1999, DMCJA President Judge Janis Whitener-Moberg presented a letter to the Honorable Charles W. Johnson summarizing DMCJA's responses to the Wilson Report. Judge Whitener-Moberg's letter emphasized that DMCJA gave its highest priority to the Wilson Report recommendations that contribute to the preservation and strengthening of judicial independence.

Other Wilson Report recommendations required additional analysis from DMCJA. Those items were referred to the DMCJA's Long-Range Planning Committee.

Judge Whitener-Moberg also stated she would transmit a proposed rule change to the Administrative Rules for Limited Jurisdiction Courts which would strengthen and clarify the role of the presiding judge. The Board believed that amendment of the rule was an important step in furthering the independence of judges in courts of limited jurisdiction.

[35] *Id.*, at 4 (citations omitted).

[36] Id., at 5.

The DMCJA Action Report attached to Judge Whitener-Moberg's letter identified Wilson Report recommendations, and the action taken by DMCJA. The DMCJA Action report says in pertinent part−

Access/Customer Services/Accommodation.

Wilson Report. OAC, in conjunction with DMCJA and DMCMA, should develop model public information brochures on court services and facilities for distribution to the district and municipal courts and inclusion on the Washington Court Home Page on the Internet.

DMCJA Action. The DMCJA will ask the Chief Justice for direction and leadership in formulating a strategy in support of the importance of judicial independence. The DMCJA should extend assistance to the Chief in this endeavor.

Wilson Report. The DMCJA and DMCMA should include in their training curriculum, seminars on educating the public as to court processes and procedures, and should distribute program materials to all courts of limited jurisdiction.

DMCJA Action. The DMCJA concurs: Specific focus should be placed on developing a curriculum to instruct about the meaning and application of the principle of judicial independence.

Wilson Report. OAC, in conjunction with DMCJA and DMCMA, should develop a generic annual report template in pamphlet format, for use by court management to assist in providing information to the public as well as the funding agencies.

DMCJA Action. The DMCJA will initiate a request to OAC to develop a generic annual report template in pamphlet form which courts could use to describe the "state of the court."

Accounting Procedures.

Wilson Report. DMCJA should propose legislation to repeal RCW 3.02.045(2) or modify it to provide a uniform cost for court credit card banking services.

DMCJA Action. The DMCJA will propose legislation to add references in appropriate statutes to specify that credit card charges are "costs" which may be assessed. The LRP [Long Range Planning] committee recommends against the repeal of RCW 3.02.045(2) because the authority for the courts' use of credit cards and collection agencies is viewed as desirable.

Wilson Report. DMCJA should propose legislation to clarify jurisdiction to collect financial obligations in restitution, criminal, and infraction cases comparable to the existing statue for superior courts.

DMCJA Action. The DMCJA will propose legislation to enact a statute to clarify the jurisdiction to collect financial obligations in limited jurisdiction courts.

Case Processing.

Wilson Report. OAC, in conjunction with DMCJA and DMCMA, should continue efforts to define caseload and workload measures so that accurate date comparisons can be made.

DMCJA Action. The DMCJA will ask the BJA to direct OAC to begin immediate implementation of a comprehensive judicial needs assessment (weighted caseload study) and clerical needs assessment.

Wilson Report. DMCJA should propose a Supreme Court Rule requiring that all court proceedings be audio recorded.

DMCJA Action. The DMCJA will propose a Supreme Court rule change to require that all courts electronically record all proceedings.

Wilson Report. DMCJA and DMCMA should propose a retention schedule for maintaining audio tapes of proceedings.

DMCJA Action. The DMCJA will ask the statewide Records Management Advisory Committee for a thorough review of retention schedules, particularly in light of the previous recommendation.

Court Management.

Wilson Report. DMCJA should propose legislation to modify RCW 10.05.060 to eliminate the requirement to physically segregate deferred prosecution case files from other active case files.

DMCJA Action. The DMCJA will include this action as a legislative "housekeeping" fix. The statute no longer serves an identifiable purpose.

Wilson Report. DMCJA should propose legislation that would require counties and cities to provide local courts with Supreme Court Rules, RCWs, and current copies of local ordinances.

DMCJA Action. The DMCJA will include this action in proposed legislation.

Safety/Security.

Wilson Report. DMCJA should draft legislation to amend RCW 2.04.110 to require that all judicial officers wear black robes.

DMCJA Action. The DMCJA will propose a Supreme Court rule requiring all judicial officers to wear black robes.

Separation of Powers/Independence of Judiciary.

Wilson Report. OAC, in conjunction with DMCJA, should draft a model judicial services contract for judges who are employed on a contractual basis, consistent with the provisions of RCW 3.50.080.

DMCJA Action. The DMCJA will propose an amendment to Supreme Court ARLJ 5 to clarify the authority and responsibility of judges of courts of limited jurisdiction.

Wilson Report. DMCJA and DMCMA should include in their training curriculum plans, training on the techniques of budget preparation and cost and benefit analysis to assist in the process of preparing and presenting effective budget requests.

DMCJA Action. The DMCJA will ask its representatives to the Board for Court Education to incorporate such programs in its curriculum-planning document.

Wilson Report. OAC, in conjunction with DMCJA, DMCMA, and the State Auditor, should identify those budget line items that should not be included in the courts of limited jurisdiction annual budgets.

DMCJA Action. The DMCJA will ask OAC to replicate the training program for auditors held in 1995 and 1998.

Contractual Agreements.

Wilson Report. DMCJA should draft legislation requiring that all contracts or agreements for court services be reduced to writing and filed with OAC.

DMCJA Action. The DMCJA will propose an amendment to RCW 3.50.100 and 3.50.060 requiring new courts to report their establishment to the Supreme Court.

JUDICIAL INDEPENDENCE IN COURTS OF LIMITED JURISDICTION REPORT (KING COUNTY BAR ASSOCIATION 1999)

In 1997, a series of newspaper articles were published relating to inappropriate political pressures that were being brought to bear on municipal court judges in south King County. These articles came to the attention of the King County Bar Association's Judiciary and Courts Committee, which is charged to study and recommend improvements in judicial administration and court rules.

On October 6, 1999, the King County Bar Association Board of Trustees approved a report by the Judiciary and Courts Committee outlining the committee's concerns about judicial independence in King County courts of limited jurisdiction.

On November 10, 1999, Lucy P. Isaki, President of the King County Bar Association, presented a copy of this report to all King County judges, the judges of the Court of Appeals, Division I, Washington Supreme Court justices, and others. Ms. Isaki wrote−

Chances are the average citizen is much more likely to have contact with the judiciary through a court of limited jurisdiction than through the higher courts of the state. Thus, the average citizen's view of access to justice, impartiality, and "justice" itself, are most commonly formed by experience in a court of limited jurisdiction. Accordingly, it is of paramount importance that every reasonable effort be made to assure the citizens of this state that when they walk into any court they are going to be treated fairly, impartially, and with dignity; and judged fairly and impartially by a judicial officer who has been subjected to neither improper nor inappropriate pressure.

The King County Bar Association is circulating this report because we believe the issues raised are matters of very substantial public importance and that it is important to continually raise and reassess the actual workings of the co-equal branches of government at all levels if over time they are to remain co-equal. While the King County Bar Association is certainly cognizant that there is a tremendous interplay of dynamics at work in our democratic system of government, not the least of which is the reality of budgetary constraints, if the independence of the judiciary is not maintained there can be no question but that respect for the rule of law will be eroded.

Thus, it is clear from the information solicited that it is all too common for the judiciary not to be viewed or accepted as an independence branch co-equal with the executive and legislative in municipalities around the state. The sub-committee is convinced the problem is very significant and worthy of our resources and attention. Implementation of judicial independence appears a politically difficult task because the local governments are well organized and have much influence in the legislature.

The report began with a discussion of judicial independence and separation of powers. The report said−

> Preface. The issue of judicial independence is a constitutional one. The judges who are the subject matter of our concerns are required by their oath to uphold and implement the Washington State Constitution and the Constitution of the United States. Their independence is rooted in the constitutional principle of Separation of Powers, a doctrine that delineates judicial powers and duties, and the limitations upon the power of the executive and legislative branches.

The report next discussed newspaper articles published in the South County Journal relating to judicial independence.

> The articles concerned pressure brought upon judges of courts of limited jurisdiction, in particular municipal court judges, to rule favorably to the positions put forward by their appointing authorities typically the mayor, the city council or an administrator appointed by the executive.

Common types of abusive behaviors and situations were presented. They include−

> pressure being brought on judges not to impose jail sentences because of the cost to the municipality; reprimand, coercion, and firing or non-renewal of contracts by the municipality for “non-cooperative” judges; “score cards” being kept on whether judges dismissed too many cases; similar traffic offenses committed a few miles apart with the fine being substantially different as an obvious moneymaking effort on the part of the higher fining jurisdiction; a disrespect for the independence of the judge who did not comply with the perceived goals of the executive or legislative branches of the municipality or county; and conduct appearing to show an absence of independence such as police personnel having free access into non-public court spaces.

Prior to public dissemination of the report, the King County Bar Association Board of Trustees sought specific King County examples of judicial independence issues. Examples provided to the Board include−

- A judge being required to sign a paper giving authority to hire and fire the court manager to the City Planning Administrator;
- City Attorney asking in interview of an applicant for municipal court judge whether the applicant would be willing to serve with knowledge that the city considered the municipal court to be a department of the Mayor's office;
- Municipal judge being informed by the City Operations officer that the judge is not to talk to City Council members;
- Municipal judge being told that any news release concerning court matters had to be released only by the Mayor's office;
- Municipal judge being given only a one-year personal service contract by the city despite the fact that the judge clearly worked full-time as defined by statute and was entitled to a four-year term;
- The Assistant City Manager telling the Court Manager that the judge was only a contract employee and in no way did the Assistant City Attorney intend to consult the judge on anything and telling the same to the judge;
- A municipal ordinance imposing specific limitations on the municipal judge's discretion involving minimum penalties that the judge could impose;
- A judge executing warrants in blank and managerial/administrative employees filling them in and using them; and
- DUI cases being dismissed or reduced because the municipality does not want or cannot afford to bear the cost of the mandatory jail term.

In mid-January 1999, Justice Charles Johnson had an extensive conversation with a sub-committee member about the Board's judicial independence concerns. Justice Johnson had been appointed by Chief Justice Guy to head a

task force known as the Washington State Supreme Court Committee on Judicial Services which was created to address judicial independence issues. Justice Johnson hoped his task force would be able to clearly articulate standards for judicial independence and also hoped to address state funding of courts of limited jurisdiction. The report continued−

> Thus, it is clear from the information solicited that it is all too common for the judiciary not to be viewed or accepted as an independence branch co-equal with the executive and legislative in municipalities around the state. The sub-committee is convinced the problem is very significant and worthy of our resources and attention. Implementation of judicial independence appears a politically difficult task because the local governments are well organized and have much influence in the legislature.

The report makes the following recommendations−

> A. Municipalities should be reminded of RCW Chap. 3.50, which among other provisions requires that municipal judges, full-time or part-time, be appointed to a term of four years (RCW 3.50.050) and that each full-time equivalent judicial position shall be filled by election (RCW 3.50.055). In appropriate cases KCBA should lend amicus support to legal challenges contesting municipalities that violate these statutes.
>
> B. Legislative and executive officers and administrators must be reminded repeatedly that courts are not established as money-makers and must be guided by concerns for the administration of justice, not concerns relating to the production of revenue.
>
> C. Urge the Washington State Supreme Court Committee on Judicial Services in conjunction with the Office of the Administrator of the Courts (OAC) and with the District & Municipal Court Judges Association (DMCJA) and the District & Municipal Court Managers Association (DMCMA) to work together in the most effective way possible to implement the recommendations of the “Courts of Limited Jurisdiction Assessment Survey Report 1995-1997” [The Wilson Report] dealing with separation of powers/independence of judiciary issues. The issues most compelling for redress are:

1. The drafting of a model Judicial Services Contract for adoption on a statewide basis;

2. The development of performance standards for use by Courts of Limited Jurisdiction;

3. The development of organizational charts showing internal, as well as external, lines of authority consistent with the Separation of Powers doctrine; and

D. The creation of a group of KCBA members, perhaps similar to a speaker's bureau, available to address issues of judicial independence to governmental officials.

PROJECT 2001–COORDINATING JUDICIAL RESOURCES FOR THE NEW MILLENNIUM (2000)

Project 2001 was initiated by the Board for Judicial Administration to undertake a thorough review of the judicial system and establish a continuing process for improving the courts. A wide variety of issues were addressed, including evaluating whether Washington's trial courts should be reorganized or merged into a single level trial court, and analyzing the administrative services provided by courts in each jurisdiction for efficiency, duplication, and improvement.

Project 2001 concluded that court reform efforts should focus on improvements to the existing trial court structure, rather than reorganization of the trial courts.

Project 2001 began its report with a synopsis of what led to the BJA's decision to launch Project 2001.

> There is no shortage of perceptions and opinions about Washington's judicial system. Judges, court professionals, lawyers, legislators, community and business leaders and citizens all have views that are based on a wide variety of experiences with the courts. Some believe the courts' inadequacies result directly from insufficient funding−too few resources to handle growing caseloads; too many unfunded legislative mandates; and for the trial courts nearly complete reliance on already stretched local government

> dollars. Others charge the system, with its two-tiered trial court (superior court and courts of limited jurisdiction), is overly complex and unwieldy, resulting in inefficiencies and wasted resources. Jurors report dissatisfaction with long waits and unclear procedures at the courthouse and many courts have seen the response rate from potential jurors reach an all-time low. Some courts are unable to meet minimum time standards, especially for domestic relations and civil cases, because criminal trials take priority over civil calendars. Polls indicate that the public believes their cases take too long and cost too much money.
>
> Just as there are different perceptions about the problems courts face, there are many different ideas for addressing them. In both the 1999 and the 2000 legislative sessions, major court reforms initiatives were introduced offering a wide range of solutions. The 1999 bill, initiated by the Board for Judicial Administration, proposed to increase state funding for operating the trial courts, including jury reforms. The proposals were to be financed by the state general fund in combination with an increase in fines and fees, and would have shifted some of the cost of operating trial courts from local government to the state. Because of its price tag and the lack of support from local government and other stakeholders, the bill was not successful. The 2000 bill which proposed trial court unification, at local option with state funding, and a variety of other operational reforms was initiated by State Supreme Court Justice Phil Talmadge. The bill was not supported by members of the judiciary, and also failed to win passage from the legislature.[37]

After an analysis concerning the benefits often associated with a complete reorganization of the structure and funding of the trial courts, Project 2001 concluded that court reform efforts should focus on improvements to the existing trial court structure, rather than reorganization of the trial courts.

Project 2001 recommended the following[38]–

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[37] Project 2001, at v.

[38] Project 2001's report includes lengthy commentary to each recommendation. A commentary is included in this report when specific to the judicial independence of courts of limited jurisdiction.

1. Cooperation, Coordination and Collaboration Among the Trial Courts.

1.1 All trial courts in each jurisdiction should develop a comprehensive system of cooperation, coordination and collaboration. The BJA should, by resolution and other appropriate action, promote the establishment of a broadly based trial court coordination council in each jurisdiction, composed of trial court judges, clerks, court administrators, lawyers, citizens, and local officials in other branches of government, to work toward maximum utilization of judicial and other court resources by first developing and then implementing a comprehensive trial court coordination plan. Presiding judges and court managers working with trial court coordination councils and others should actively collaborate to minimize duplication of services and maximize court resources−both judicial and administrative. The BJA should establish criteria for the award of funding to trial court jurisdictions.

1.2 BJA, working in collaboration with the other branches of government, both state and local, and with trial court judges, clerks, court administrators, lawyers, citizens and other state and local officials, should initiate a request to the Legislature to establish a funding mechanism to support trial court coordination activities. Funds should be administered by the Office of the Administrator for the Courts at the direction of the Board for Judicial Administration, to cover expenses associated with action by the trial courts in a jurisdiction to coordinate judicial and other court resources and services. The BJA should establish criteria for the award for funding to trial court jurisdictions for developing and implementing a trial court coordination plan. See draft legislation at Appendix E of this report.

1.3 The Supreme Court should modify provisions of Superior Court Administrative Rule 4 and Administrative Rule for Courts of Limited Jurisdiction 5 to increase the authority of presiding judges.

1.4 Courts should coordinate, where possible, the scheduling and management of cases that need an integrated disposition, e.g. family/domestic, drug, mental health cases. The BJA should adopt

the resolution from the Conference of Chief Justices and Conference of State Court Administrators in support of problem-solving courts.

1.5 The statutory “freeze-out” period for cities that elect to contract with a district court, which effectively requires a municipality to contract for a ten-year period, should be amended. The amended statute should include a two year notice requirement and prohibit cities from terminating contracts within a four-year term of a district court judge.

The statutory “freeze-out” period for cities that elect to contract with a district court, which effectively requires a municipality to contract for a ten-year period, should be amended. The amended statute should include a two year notice requirement and prohibit cities from terminating contracts within a four-year term of a district court judge.

Commentary:

In discussing reasons that have led to an increase in the number of municipal courts, the Project reviewed RCW 3.46.155 and 3.50.610, which effectively places a ten-year requirement on cities that opt to contract for district court services. Anecdotal evidence suggests that some cities might be more inclined to consider contracting with the county if they were not “locked in” for a decade. Additionally, a representative from the Association of Cities reports that, in his view, the success of cities in Benton/Franklin Counties to coordinate for regionally provided services was in large part due to the ability of each city to withdraw from the joint agreement within a reasonable period of time if the contractual arrangement did not prove to be satisfactory.

The Project concluded that statutory provisions should be repealed to eliminate the “chilling effect” on those cities that view contracting for court services as a viable alternative to establishing an independent court. The Office of the Administrator for the Courts should develop a model contract

for judicial services that includes provisions for notice, and emphasizes the importance of planning to reduce the impact on jurisdictions when a change in the contractual relationship is considered. The provisions of RCW 3.50.805, which prescribe the steps a municipality must follow in order to withdraw from the county court system, should remain intact so that when a municipality decides to abolish its court or criminal ordinances, it must plan for the impact that decision will have on the county. See draft legislation at Appendix H of report.

1.6 The Board for Judicial Administration should study the current statutory provisions allowing multiple districts for district court within a single county. The study should determine for district courts which structure is more effective and efficient; multiple districts within a county or a single district.

1.7 The Project 2001 Committee supports the concept of minimum certification standards for courts of limited jurisdiction and recommends the Board for Judicial Administration continue to study the issue.

2. Portability of Judges and Cases.

2.1 Statutory, constitutional and court rule changes should be made to allow a previously elected judge, active or retired, to sit in any trial court (superior, district or municipal) at the request of the presiding judge, pursuant to supreme court rule.

3. Court Improvement Fund.

3.1 The BJA, working in collaboration with the other branches of state and local government, should seek funds from the Washington State Legislature to be placed in an account administered by the Board for Judicial Administration and the Office of the Administrator for the Courts. The fund should be used to initiate innovative court programs. The funds appropriated should be sufficient to provide evaluation components and to study integration and institutionalization of valuable approaches and best practices developed in these projects into all the courts of the state.

3.2 The Board for Judicial Administration's newly created Best Practices Committee should act as a clearinghouse to promote best practices and innovative ideas among all trial courts.

4. Civil Law Improvements.

4.1 Holders of judgments from small claims court should be allowed to obtain discretionary collection fees including attorney fees of up to $300.

4.2 The Board for Judicial Administration should draft legislation to allow mandatory arbitration under RCW Chapter 7.06 in the district courts as a local option.

5. Criminal Law Improvements−Redefining Certain Felonies.

5.1 The Board for Judicial Administration should study the monetary levels that define certain property offense felonies in order to redefine them as misdemeanors.

6. Enforcement and Payment of Judgments and Warrants.

6.1 Electronic access for payment of court-ordered fines and penalties should be pursued as a priority of Judicial Information System. "One-stop shopping", or universal cashiering, as it is often called, should include the ability of a court to receipt a payment ordered by another court using the Judicial Information System (JIS).

6.2 The OAC should establish a statewide protocol for collection of delinquent court-ordered financial obligations. A committee including court managers and judges should provide oversight.

6.3 Courts of limited jurisdiction are encouraged to establish community license reinstatement programs, with voluntary participation by individual jurisdictions. The Office of the Administrator for the Courts should serve as a repository for information, and provide guidance and assistance to jurisdictions in developing programs.

6. The Board for Judicial Administration should study whether all legal financial obligations (LFO) in criminal cases, except those related to restitution should be decriminalized.

7. Appeals from Courts of Limited Jurisdiction.

7.1 Procedures for small claims appeals should be governed by the Rules on [sic] Appeal for Courts of Limited Jurisdiction (RALJ). They should not be heard de novo.

7.2 The Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) should be amended to allow a procedure that parallels a "motion on the merits" as authorized in RAP 18.14 for appeals to the appellate courts.

7.3 The RALJ should be amended to require all matters in courts of limited jurisdiction to be recorded and appealed under RALJ provisions.

8. Family and Juvenile Law Improvements.[39]

9. Courthouse Facilitators and Access to Justice.

9.1 The Washington State Legislature should amend RCW 2.56.030, which generally sets forth the powers and duties of the Office of the Administrator for the Courts, to add a new section that would generally provide that the Office of the Administrator for the Courts, in consultation with the Washington State Bar Association, and the Access to Justice Board, shall periodically undertake an assessment of the unmet civil legal needs of low income people in the state, including the needs of persons who experience disparate access barriers to the courts, and develop a funding plan to meet the civil legal needs of such persons.

9.2 The Supreme Court should adopt a court rule that allows for the expansion of courthouse facilitator services throughout the state, establishes qualification and training requirements for family law courthouse facilitators to be administered by the Office of the

[39] Project 2001's recommendations concerning family and juvenile law improvements are not included in this report.

Administrator for the Courts, defines the basic services provided by courthouse facilitators, authorizes facilitators to provide those services, and provides that no attorney-client relationship is created between a facilitator and the user of the facilitator.

9.3 The Board for Judicial Administration should study and determine if courthouse facilitator programs should be implemented in other areas of law that have a significant pro se presence, such as stepparent adoptions, landlord/tenant, and probate/guardianship.

10. Education.

10.1 Mandatory continuing judicial education requirements for all judicial officers including part-time judicial officers should be established and tracked.

11. Pattern Forms.

11.1 Pattern forms should be produced in a user-friendly format. Forms should be available in the most common software programs, and should incorporate clear, simple instructions.

11.2 The Pattern Forms Committee should work with the Domestic Relations Commission, the Superior Court Judges' Association and other interested groups to provide additional information and clarification on parenting plan forms.

12. Records Management.

12. The Board for Judicial Administration, in conjunction with the Judicial Information System Committee (JIS), should work with interested groups to implement methods for protecting personal and confidential information contained in physical and electronic court records.

13. Case Management.

13.1 Reports similar to those available to the superior courts for caseflow management should be prepared and made available to district court and municipal court judges and administrators and

Project 2001 should give its support to the Courts of Limited Jurisdiction Case Management project.

13.2 The OAC should establish an ongoing committee to address improvement of caseflow management reports for the superior court, creation of an effective set of caseflow management reports for the district and municipal courts, and the development and dissemination of approaches to individual case management including using existing SCOMIS (Superior Court Management Information System) data to create reports appropriate to effectively manage a judge's assigned caseload and individual cases themselves. That committee should also develop a training curriculum and work with the Superior Court Judges' Association and the District and Municipal Court Judges' Association to provide judicial education on the effective and efficient management of cases and caseloads.

13.3 To promote and enhance efficiency and accountability, The [sic] OAC should provide and publish reports by which judges measure their efficiency in management of cases across the entire spectrum of cases for which that court has responsibility.

13.4 The Board for Judicial Administration should establish a workgroup to study the discovery rules in the trial courts, with the goal of achieving effective and efficient case management.

MUNICIPAL COURTS, JUDICIAL INDEPENDENCE, AND THE BOARD FOR JUDICIAL ADMINISTRATION (MCSEVENEY, WSBA BAR NEWS, OCTOBER 2002)

Former Kent Municipal Court Judge Robert B. C. McSeveney addressed his on-going concerns about the judicial independence of Washington's municipal courts in an article published in the October 2002 edition of the Washington State Bar Association's Bar News. Judge McSeveney wrote[40]–

In his concurring opinion in *Discipline of Hammermaster,* 139 Wn.2d 211, 249 (1999), Justice Philip Talmadge penned the following tersely worded warning to municipal court judges and municipalities in Washington:

[40] Footnotes omitted.

… I write separately to emphasize my views on the operation of some courts of limited jurisdiction in the state of Washington.

Justice Madsen appropriately notes in the majority opinion that concerns have arisen regarding the independence of courts of limited jurisdiction, particularly municipal courts, in our state. Indeed in this case, involvement of the City executive authorities in the development of Judge Hammermaster's "rules" creates concerns over separation of powers and judicial independence.

Our opinion today conveys a very strong message to the judiciary and local governments in Washington that the Supreme Court will not tolerate short cuts in due process. While many municipalities have established municipal courts because they want to administer justice locally, it is also true many jurisdictions establish municipal courts for purely avaricious reasons−as revenue agencies to be operated if they "make money" and be dispensed with if they become inconvenient to administer or generate insufficient revenues.

Some local jurisdictions have even attempted to control performance of duties by municipal court judges through devices such as performance audits, the provision of substandard court facilities, or nonjudicial control of court personnel. Occasionally, in some jurisdictions, when the judge has been too independent, and has refused to generate sufficient revenue for the municipality, the city's legislative or executive authorities have forced the ouster of the judge.

> The Washington Supreme Court has inherent authority to supervise the administration of justice in the lower courts. … We must not condone any derogation of the independence of the judicial branch of government by officials intent on revenue collection; we should not permit our courts to degenerate into collection agencies for local government at the expense of due process of law.

This article is about the current state of municipal courts in Washington, and will attempt to address why there is cause for concern about the independence of such courts, what is being done about it, and the new role of the Board for Judicial Administration (BJA) to ensure that courts of limited jurisdiction remain distinct and independent.

Regrettably, there is an ongoing dark side to some municipal court operations in this state centering on the dilemma of which official is responsible to administer the court and the extent of the authority of the presiding judge. In many municipalities, it is all too common for the local judge to be considered a "department head" or worse, merely an "employee" of the court, void of any independent authority beyond the policies, procedures and dictates of the local government or a personal-service contract.

Judges have a legal and ethical obligation to administer justice according to law, without fear or favor, and without regard to the wishes or policy of the executive or legislative branch of government. Independence of any kind can be perceived as a threat by the other branches of government; however, such considerations are overridden by the demands of justice and our country's ideals, in which the judiciary in all areas of responsibility is independent of the other government branches. The independence of the judiciary from other branches of government is indispensable if there is to be public confidence in the administration of justice.

Background

There are currently 219 judges of courts of limited jurisdiction in Washington. There are 85 full-time elected district court judges and 28 part-time; there are 20 full-time elected municipal court judges and 86 part-time. These judges hear thousands of cases daily and are the "front-line" courts where the general public encounters and develops impressions and opinions on justice and the court system in this state. Audits show that these judges are, for the most part, well-trained and adept at processing and administering high volumes of filings and are able to dispose of cases expeditiously and as efficiently as possible given budget, space, staffing and other constraints. The public and the Bar have every reason to have confidence in these judges and the quality of justice being dispensed by courts of limited jurisdiction.

Overview of Municipal Court Law in Washington

Municipalities are agents of the state, and responsible for the regulation and administration of the local and internal affairs of the incorporated city, town or district. *Lauterbach v. Centralia,* 49 Wn.2d 550, 554 (1956). They have been invested with extensive power to enact police-power regulations, and to that end must exercise power and control over internal operations to effect executive policy. But, municipalities have no authority over matters of judicial practice and procedure or court administration. GR 29, *Spokane v. J-R Distributing,* 90 Wn.2d 722, 726 (1998). Municipal court law has been well-established in Washington. The Washington Constitution delegates to the Legislature the sole authority to create "inferior" courts and prescribe their jurisdiction and powers. (Article IV, section 1) *Id*. The constitution also bestows on the Legislature the sole authority to determine the qualifications of district and municipal court judges and the criteria for their removal. *Young v. Konz,* 91 Wn.2d 532 (1979); *Municipal Court v. Beighle*, 96 Wn.2d 753, 756 (1982).

The Court Improvement Act of 1984 governs courts of limited jurisdiction and is an example of the Legislature's exercise of its constitutional directive, vesting judicial power with district and

municipal courts in an effort to provide an integrated and consistent trial-court system in Washington. *In Re Eng,* 113 Wn.2d 178 (1989).

Prior to the Court Improvement Act, judges were known as either "justices of the peace" or "police-court judges." The purpose of the Court Improvement Act was to reorganize the "inferior" courts of Washington in an effort to eliminate confusion over police-court judges and justices of the peace, allowing such courts to operate in a more effective and efficient manner. RCW 3.50.005. The act converted "justices of the peace" and "police courts" into the current district and municipal court system, which now provides for two types of judges, "municipal court judges" and "district court judges." *In Re Eng, supra*, pp. 185-186.

Judicial Independence and Separation of Powers

There are generally two categories of judicial independence. The first, decisional independence, pertains to a judge's ability to render decisions free from political or popular influence based solely upon the individual facts and applicable law. The second, institutional independence, involves the separation of the judicial branch from the executive and legislative branches of government.

For courts to effectively maintain their independence as a separate branch of local government, they must have the power to do all things that are reasonably necessary for the proper administration of their office within the scope of their jurisdiction. *Zylstra v. Piva*, 85 Wn.2d 743, 754 (1975). This includes the power to control decision-making, the adjudicatory process, and ancillary functions subordinate to the decision-making process. *Id.* at 755. As stated:

> It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the laws. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things, which are normally done by the other departments.

Thus, both the legislative department and the judicial department have certain housekeeping chores which are prerequisite to the exercise of legislative and judicial power. And, to accomplish these housekeeping chores, both departments have inherently a measure of administrative authority not unlike that primarily and exclusively vested in the executive department:

> The inherent power of the judiciary is a judicial power, but only in the sense that it is a natural necessary concomitant to the judicial power. The inherent power of the Court is nonadjudicatory. It does not deal with justiciable matters. It relates to the administration of the business of the Court.

Wayne Circuit Judges v. Wayne County, 383 Mich. 10, 20-21, 172 N.W.2d 436 (1969), *modified on other grounds*, 386 Mich. 1, 190 N.W. 2d 228 (1971). As cited in *Zylstra, Id.* at 755.

By implication, the constitutional provisions in Washington vesting judicial power in the courts carry with them the authority necessary to the exercise of that power, including rule-making and judicial administration. *Id.* at 755.

It is sometimes possible to have an overlap of responsibility in governing the administrative aspects of court-related functions. "The branches of government need not be hermetically sealed off from one another; rather they must remain partially intertwined if for no other reason than to maintain an effective system of checks and balances, as well as an effective government." *In Re Juvenile Director, supra* at 239-240.

The separation of powers doctrine, then, allows for some interplay between the branches of government. *Spokane County v. State*, 136 Wn.2d 663, 672 (1998). However, the spirit of reciprocity and interdependence requires that if checks by one branch undermine the operation of another branch or undermine the rule of law, which all branches are committed to maintain, those checks are improper and destructive exercises of the authority. *In Re Juvenile Director*, 87 Wn.2d 232, 243 (1976).

Thus, the purpose of the separation of powers doctrine is "to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed." *Commonwealth ex rel Carroll v. Tate*, 442 Pa. 45, 53 (1971) *cert. denied* 402 U.S. 974 (1971), as cited in *In Re Juvenile Director*, 87 Wn.2d 232, 245 (1976).

The test to determine whether a separation of powers violation has occurred is whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another. *Zylstra v. Piva,* 85 Wn.2d 743, 750 (1975). If it does, then the damage caused by a separation of powers violation accrues directly to the branch invaded. *Commodity Futures Trading Comm'n. v. Schur*, 478 U.S. 833, 851 (1986), as cited in *Carrie v. Locke*, 125 Wn.2d 129, 136 (1994).

Supreme Court Rules

The case of *The Washington State Bar Association v. State of Washington,* 125 Wn.2d 901 (1995), illustrates a separation of powers violation and the rule-making authority inherent in the Supreme Court. In that case, the Legislature had passed a statute making collective bargaining mandatory for Bar Association employees. The statute directly conflicted with court rule GR 12, which gave the Bar Association discretion as to whether or not to bargain collectively with its employees. In striking down the statute, the Supreme Court held: "Legislation which directly and unavoidably conflicts with a rule of court governing Bar Association powers and responsibilities is unconstitutional as it violates the separation of powers doctrine: Such legislation is therefore void." *Id.* at 906.

The court stated further:

> The ultimate power to regulate court-related functions including the administration of Bar Associations, belongs exclusively to this court … when a court rule and statute conflict … if they cannot be harmonized, the court rule will prevail and … once this court has adopted a rule concerning

a matter related to the exercise of its inherent power to control the bar, the Legislature may not therefore reverse or override the court's rule. *Id.* at 909.

Current Issues

Regrettably, there is an ongoing dark side to some municipal court operations in this state centering on the dilemma of which official is responsible to administer the court and the extent of the authority of the presiding judge. In many municipalities, it is all too common for the local judge to be considered a “department head” or worse, merely an “employee” of the court, void of any independent authority beyond the policies, procedures and dictates of the local government or a personal-service contract. Courts are also demeaned by being labeled a “department” or “office” of the city subject to the policies of the executive or legislative branch of the municipality. This conduct persists in courts of limited jurisdiction despite court rules, cases and statutes to the contrary.

Aware of these and other issues, in January 1995, Chief Justice Barbara Durham of the Washington State Supreme Court commissioned a comprehensive survey of the policies, procedures and facilities of the state's district and municipal courts (Courts of Limited Jurisdiction Assessment Survey Report 1995-1997 by Larry and Carol Wilson). The purpose of the Wilson Report was to audit the standards, practices and procedures in place in these courts. The Wilsons conducted this survey by interviewing all of the limited-jurisdiction judges in the state, and touring each court. Addressing issues of separation of powers, the Wilson Report concluded: “In our opinion, a totally independent trial court under the leadership of the State Supreme Court is absolutely necessary. An independent trial court will not survive unless the politically expedient tactics of the past are discontinued.” *Id*. at 165.

The Walsh Commission Report also identified similar problems and reinforced the need for judicial accountability and judicial independence in Washington courts. (The People Shall Judge: Restoring Citizen Control to Judicial Selection, Walsh Commission Report, March 1996.)

In 1999, the King County Bar Association held a Bench Bar Conference addressing the issues surrounding the problem of independence in the courts of limited jurisdiction. Cited examples of abuse identified by the Judiciary and Courts Committee included:

> Pressure being brought on judges not to impose jail sentences because of the cost to the municipality; reprimand, coercion, and firing or non-renewal of contracts by the municipality for “non-cooperative” judges; “score cards” being kept on whether judges dismissed too many cases; similar traffic offenses committed a few miles apart with the fine being substantially different as an obvious moneymaking effort on the part of the higher fine jurisdiction; a disrespect for the independence of the judge who did not comply with the perceived goals of the executive or legislative branches of the municipality or county; and conduct appearing to show an absence of independence such as police personnel having free access into non-public court spaces. (*King County Bar Association, A Report by the Judiciary and Courts Committee*, 1991.)

The King County Bar study concluded:

> The problem of judicial independence for judges of courts of limited jurisdiction, and in particular municipal courts, is a significant problem that bears close scrutiny by the Supreme Court.

The District and Municipal Court Judges' Association (DMCJA) had been fielding separation of powers and judicial-independence issues for years, and responded by creating a judicial-independence committee that documented the abuses. The DMCJA ultimately proposed to the Supreme Court that it intervene by exercising its inherent authority to regulate the judiciary by court rule. In order for judges to carry out their legal and ethical duties administering their respective courts, the Supreme Court promulgated a court rule that both municipalities and judges could rely on to avoid conflicts and violations of judicial independence. Effective September 1, 2000, ARLJ 5 was amended to contain

administrative provisions setting forth the duties and authority of the presiding judge.

GR 29 and the New BJA (Board For Judicial Administration)

In June of 2000, Chief Justice Richard P. Guy recreated the Board for Judicial Administration (BJA) and turned it into a governing board for the state's judiciary, similar to a board of directors. Justice Guy believed the BJA should be representative of all judges in this state and should "speak with one voice" on all matters dealing with judicial administration and court improvement. The mission of the BJA is to secure adequate funding, maintain the independence of the judicial branch, and preserve and improve the core business functions of the third branch of government, assuring access to justice. To date, the BJA has been extremely successful, and responsible for implementing key changes in how judicial services are provided to the public.

Under the current leadership of Chief Justice Gerry Alexander and Kitsap County Judge James M. Riehl, the BJA was briefed on the plight of municipal court judges, and, as a result, set about to implement a general rule applicable to all levels of courts setting forth the duties and responsibilities of the presiding judge. The BJA believed such a rule was critical, because it would delineate for all concerned the duties of the presiding judge. The new rule, GR 29, was passed by the Supreme Court and took effect April 30, 2002. Without question, GR 29 makes it clear that it is the presiding judge, not executive branch officers, who administers the court. Further, the court administrator and staff work for the judge and the judge cannot delegate, nor can a municipal administration interfere and assign judicial functions elsewhere. GR 29(f)(1-5). GR 29 provides that city or county government has authority over court employees limited to matters relating to "wages, or benefits directly relating to wages."

But GR 29 is a double-edged sword. First, it places significant responsibility and accountability on the presiding judge to ensure the court is managed correctly, free from improper executive or legislative power and control. The Wilson Report noted: “The

independence of the court depends on the independence of the judge." *Id.* at 7. Judges cannot acquiesce to separation of powers violations. If judges do not respect and value their own independence, no one else will. The Wilson Report further noted: "Historically within the judiciary, judges in positions of responsibility have been so anxious to cooperate with their executive and legislative counterparts that judicial independence has been adversely affected." *Id.* at 6. Judges now must "step up to the plate" and administer their courts according to law and GR 29. If not, noncompliance may constitute a violation of the Code of Judicial Conduct. GR 29(h). Second, municipal and county governments are on notice as to which functions and duties are within the exclusive purview of the presiding judge. Judicial personal-service contracts are still permissible, but:

> The personal service contract shall not contain provisions, which conflict with this rule, the Code Of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and this rule.

GR 29(k). (Also see State of Washington Judicial Ethics Rulings, Opinions 99-9 and 00-17, on the propriety of judicial service contracts and delegation of judicial duties.)

Well in advance of GR 29's effective date, the DMCJA took the initiative in contacting the Association of Washington Cities (AWC) to propose a joint educational component surrounding GR 29, beneficial to both organizations. In a letter dated November 1, 2001, President Judge Christopher Culp of the DMCJA wrote:

> I believe our organization's concerns are best addressed through an educational component within each of our respective organizations involving on-going annual training and education. I would like to suggest that the AWC consider

> working with the DMCJA to develop some mutually beneficial educational programs for each of our respective memberships. If we can accomplish this, it will foster and generate respect and accountability among the branches of government that will ultimately benefit the community and promote public confidence in government and our judicial system.

Unfortunately, to date, the AWC has expressed no interest in Judge Culp's proposal.

Ongoing Interference

Despite the Supreme Court's mandates in GR 29, the DMCJA continues to receive complaints and investigate requests for assistance from judges and court administrators who experience interference primarily from the executive branches of local government. Some post-GR 29 examples:

1. City ordinances and organizational charts that place the court administrator and staff under the direct supervision of the city operations director, finance director or other executive officer contrary to GR 29.

2. City ordinances that identify the court as a “department” or “office” of the city, which reports to city administration. In Washington, virtually all local municipal court statutes and personal-service contracts contain provisions contrary to chapter 3.50 RCW, GR 29, and court case law. These built-in conflicts usually surface with respect to who hires, disciplines and fires court staff; to whom the court administrator reports; and the administrative powers of the judge. These ordinances and policies persist despite notice to the contrary.

3. Collective-bargaining agreements governing working conditions of court employees being negotiated and approved by the executive branch without the judge's input or approval. (GR 29(f)(5)(b). The commentary to GR 29 states:

> The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

Also see *Spokane County v. State*, 136 Wn.2d 663 (1998). Also, *Zylstra v. Piva*, 85 Wn.2d 743 (1975).

4. A budgeted and council-approved FTE court position being removed from the court and transferred to the city parks department over objection of the presiding judge.

5. A mayor telling the judge to cease recording court sessions because such recording "serves no purpose" and is a "potential liability."

6. A city executive, with the blessing of the city attorney, interfering with a court employee discipline/termination decision despite notice of GR 29 and the judge's prerogatives.

7. A city manager with the concurrence of the city attorney assigning all city bankruptcy filings and proceedings to a court clerk for processing over the judge's objection.

The BJA Court Independence Response Team (CIRT)

In a further effort to deal with independence issues, the BJA has recently formed a committee called the Court Independence Response Team (CIRT), modeled after the Bench-Bar-Press Liaison Committee (or Fire Brigade, as it is commonly called). CIRT will serve as a forum for discussion and resolution of issues that arise between a court and the local executive or legislative authority. This committee is currently in the process of being selected and organized, and will consist of representatives from all levels of trial courts including court administrators, representatives of cities and counties, city attorneys, the ACLU, the attorney

general's office, and others. As commissioned by the BJA, this committee will be both proactive and reactive to separation of powers and other court-related issues in our state courts.

Although proposed rule ARLJ 7 on court certification/decertification is dead, the BJA and the Administrative Office of the Courts (AOC) will monitor CIRT's progress and local government's adherence to GR 29 in their respective courts. It is hoped the CIRT committee will be educational and helpful to all concerned, fostering mutual respect and cooperation among the branches of government. It is possible that in some cases CIRT will be ineffective. If so, continued egregious violations could be documented through AOC performance audits resulting in published reports on the quality of due process in that municipality. Counties and municipalities need to remember that the continued growth and success of local courts depends on a variety of state resources and expertise. For example, continued access to the Judicial Information System (JIS) and other resources might be jeopardized if due process is compromised locally.

Significance to the Bar

The State Bar has a compelling interest in the quality of justice at the local level, given the foregoing discussion. Judges who are distracted or bogged down by administrative squabbles have no army to fight their battles and cannot effectively perform their job. Support from the Bar is critical to assist in ensuring the integrity of access to justice. County and municipal lawyers must be reminded of their ethical obligations to uphold the courts and not engage in or turn the other cheek to violations of GR 29. In order to assist in maintaining the fair and independent administration of justice, all lawyers should support and continue traditional efforts to defend judges and courts from unjust criticism, and not engage in conduct that is prejudicial to the administration of justice. RPC 8.2 and (d)(f). RLD 1.1(c):

Government attorneys should be proactive and make diligent efforts to amend or repeal conflicting local ordinances or personal service contracts to make them conform to state law and the

express intent of the Supreme Court as set forth in GR 29. Such efforts would further promote an independent judiciary and eliminate significant potential conflicts between government branches.

Timeless Concepts

The judiciary should be respected no matter what level of court is involved. Attorney Leonard W. Schroeter has been a champion and a “point of light” on issues of judicial independence. He has written extensively about separation of powers violations both locally and nationally. In a recent conversation with Mr. Schroeter about GR 29 and the impetus behind the rule, he remarked: “Judicial independence is the mechanism by which the rule of law is perpetuated and it is the backbone of a free society.” Another judge has commented: “Every judge, lawyer and government official should honor and respect the rule of law and the role and function of each branch of government. Respecting and maintaining judicial independence does not involve an attitude of abrasive antagonism towards everyone in government.” There is a great deal to be achieved through appropriate cooperation between the three arms of government. (“The Role of the Judge and Becoming a Judge,” speech by the Hon. Murray Gleeson AC, Chief Justice of Australia; August 16, 1998; Sydney, Australia.)

Judges themselves must respect and value their own independence because the concept is timeless. This rings true for municipal courts and municipalities alike. Mr. Schroeter has so astutely written:

> The people’s courts in the large are courts of limited jurisdiction−the municipal courts, the traffic courts, and small-claims courts. And each is a court with a robed judge there to dispense justice. And if that court is beholden in any way to anything but the fundamental constitutional principals that protect individual rights from abuse of private or government power, there is no justice; there is no meaningful access to the justice system. Each of us is the

> prey of privilege, wealth, and power, rather than the majesty of equal justice under law.

SEPARATION OF POWERS: THE LEGISLATURE AND THE JUDICIARY (2003)

In 2003, Aldo Melchiori, counsel for the Senate Judiciary Committee, prepared a report for the Senate discussing the separation of powers doctrine. The Executive Summary of the report says−

> The separation of powers doctrine encompasses all three constitutionally created branches of government: legislative, executive and judicial. Part I of this document traces the development of the doctrines of separation of powers and checks and balances. Part II outlines the constitutional basis for the doctrines in Washington. Since the primary concern for this analysis is the separation of powers doctrine as it applies to the legislature and the courts, Part III is devoted exclusively to selected Washington case law regarding that relationship.
>
> The separation of powers is a dominant principle of the American political system. In Washington, the legislative authority of the state is vested in the legislature and in the people through the initiative or referendum process. The judicial power of the state is vested in the courts. Courts also possess inherent power derived from their creation as a separate branch of government. This compartmentalization is not watertight, but rather, each branch is given the power to exercise a limited part in the exercise of the other's functions. The separation of powers doctrine became a living principle through development of the concept of checks and balances. The legislature makes the laws, but its authority is balanced by the judiciary's role to interpret what the constitution and legislative enactments mean.

The judiciary does, however, have the inherent power to ensure its own survival as the third branch of government by requiring funding reasonably necessary for the efficient administration of justice or fulfillment of constitutional duties.

The courts may, through court decisions and stare decisis, legislate in fields left vacant by the legislature. A subsequent legislative enactment intended to be comprehensive on a subject, however, pre-empts that field with the result that the court's constitutional function with regard to it is then limited to an interpretation of what the legislature meant by the statutory language. Once interpreted by the court, an unambiguous statute's meaning is determined from its date of enactment. The legislature's power to retroactively amend the intent and meaning of a statute that has been interpreted by the court is limited to statutes that the court has found to be ambiguous and then only to the extent that the amendment is curative and clearly intended to apply retroactively.

Canon 4 of the Washington Code of Judicial Conduct provides that judges may engage in activities to improve the law, the legal system, and the administration of justice. They may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice. The comment to the rule defines the "administration of justice" to include the revision of substantive and procedural law and the improvement of criminal and juvenile justice. Judges are encouraged to contribute individually or through the bar association, judicial conference, or other organizations dedicated to the improvement of the law. No cases have been found interpreting this Canon or similar canons in other states.

It seems clear that, in Washington, there is no express or inherent limitation of the ability of judges to participate in public legislative hearings or to consult with a legislative body individually or through professional organizations. In fact, it is even possible for a judge pro tempore to be a state senator as long as the dual roles do not interfere with each other.

Generally, the judiciary does not have the authority to make the legislature act unless, by failing to act, the legislature is failing to fulfill a constitutional mandate. The judiciary does, however, have

> the inherent power to ensure its own survival as the third branch of government by requiring funding reasonably necessary for the efficient administration of justice or fulfillment of constitutional duties. In Washington, the court has not tested the limits of its inherent power. Currently in Nevada, however, the court recently ordered the legislature to fund education by raising sufficient revenues while maintaining a balanced budget. The court also ordered the legislature to proceed under simple majority rule instead of requiring a two-thirds vote. The separation of powers doctrine would appear to preclude enforcement of this order. While this would not directly affect Washington law, it bears close monitoring.

ALWAYS THE PEOPLE−DELIVERING LIMITED JURISDICTION COURT SERVICES THROUGHOUT WASHINGTON (JMI 2003)

The Courts of Limited Jurisdiction Delivery of Services Work Group discussed below commissioned a study by the Justice Management Institute from Denver, Colorado to assist the Work Group.

> The purpose of the study is to compare the practices and procedures in the various courts, identifying promising practices and suggesting changes in structure and practice that will improve the overall delivery of limited jurisdiction court services through the State of Washington.[41]

The JMI report identified five primary criteria identified by the Work Group, and submitted conclusions as to each of those criteria.[42] These criteria were−Judicial Branch Independence and Public Trust and Confidence; Equal Access to Justice; Judicial Administration and Management; Enforcement of Judgments; and Compliance, Competence, and Training. Concerning judicial independence, the JMI report stated−

[41] Always the People, at 1.

[42] *Id.*, at 1-4.

Judicial Branch Independence and Public Trust and Confidence.

Selection of those who serve the courts that is merit based and independent of the funding authority increases the appearance of justice. This independence in selection, supervision, and retention is as important for court staff members as it is for judicial officers. In a limited jurisdiction court setting court staff have a very important role not only in preparing for court hearings and trials, but also in meeting the public, accepting payments, and scheduling cases. Washington has a rule in place requiring that court administrators are selected by the presiding judge. This rule needs to be enforced. Currently the work group is considering revisions to the judicial selection process. Because of the central role that staff plays in the operation of limited jurisdiction courts, courts need to place emphasis on providing ongoing education and training to both judges and staff members.

The presiding judicial officer must exercise management and decisional authority free from inappropriate influence by executive or legislative branch. The judicial officer needs to have time available to spend on management related activities. Training on management related issues needs to be provided to the judge/administrator teams.

Budget preparation, presentation, monitoring and amendment should be conducted in a manner that comports with generally accepted accounting principles but should not be conducted in such a way as to infringe upon the independent exercise of the judicial power by a court of limited jurisdiction. The presiding judicial officer and court administrator should prepare and present the budget to the funding authority. Monitoring of expenditures should be an ongoing responsibility of the court. Those preparing the budgets must be mindful of the financial situation faced by the funding authority. However, budgets should not be predicated on revenue produced by the court. A uniform system for construction and monitoring of limited jurisdiction court budgets would be helpful. Even if local funding bodies have their own budget documents, a

uniform process that courts could use to prepare budgets would be of assistance both to the courts and to local funding agencies.

While good management practices suggest that a court should maintain working relations with stakeholders in the justice process and with all parts of the government structure, both the court and the other branches of government must remain mindful of the need to protect the separation of powers and promote the appearance as well as the fact of judicial independence. While it may be good practice for representatives of the local court to attend meetings of funding authority in order to remain aware of issues facing the local government, a clear line needs to be maintained between the executive branch and the judicial branch in order to protect both the fact and the appearance of judicial independence.

The public, including offenders, witnesses, victims, and jurors should have quick and convenient access to courtrooms, court offices, defense services, and probation services so as to encourage public trust and confidence in the court system. Court offices and clerk of court offices need to be available during reasonable hours and convenient to the public. It may be possible to establish local offices for the purpose of receiving payments for infractions and/or scheduling hearings which are convenient to the court's customers but which do not contain courtrooms. Consideration should be given to establishing court hearing hours during the evening to make the court more convenient to customers. Either the establishment of satellite locations or the establishment of evening hours would require management changes related to the scheduling of staff and judge time.

JUSTICE IN JEOPARDY: THE COURT FUNDING CRISIS IN WASHINGTON STATE (2004)

In March 2002, the Superior Court Judges' Association held its annual long-range planning retreat at La Conner, Washington. The meeting focused on the longstanding problem and growing crisis of trial court funding. Attendance was expanded to include bar association leaders and representatives from all levels of court including Chief Justice Alexander.

These leaders reviewed the current funding of Washington's trial courts, prior efforts at improving the administration of justice and increasing funding for the trial courts, the structure of trial court funding in five other states, state and local government revenues and expenditures, and the long-term consequences of not fully funding the trial courts. Ultimately, these leaders unanimously concluded that a broad-based task force should be convened to study and recommend the best approach to achieve adequate and stable funding of the trial courts. Acting immediately at its April 12, 2002 meeting, the BJA authorized the formation of the Court Funding Task Force. M. Wayne Blair, former president of the Washington State Bar Association, agreed to chair the Task Force.[43]

Although not originally contemplated as an issue to be addressed by the Task Force, events in King County surrounding the County Executive's decision in the fall of 2002 to terminate the county's contracts with 16 cities to provide judicial services through the county district court led the DMCJA to request that a Courts of Limited Jurisdiction Structure Work Group be created.[44]

The Task Force, its Steering Committee and workgroups[45] and subcommittees held over 100 meetings.[46] The Task Force's recommendations were presented to the BJA in July and August 2004. The final report was issued in December 2004.

The report's Executive Summary adopted the workgroup's recommendations, including the long-term recommendation for regional courts of limited jurisdiction and the workgroups short-term recommendations. Discussion of the workgroup's recommendations follows.

COURTS OF LIMITED JURISDICTION DELIVERY OF SERVICES WORK GROUP REPORT (COURT FUNDING TASK FORCE 2004)

The BJA created the Court Funding Task Force to focus on developing a plan to achieve adequate and long-term funding of Washington's trial courts. One of the five sub-committees of this Task Force was to study and make recommendations relating to structural and court funding issues particular to courts of limited jurisdiction. The Courts of Limited Jurisdiction Delivery of Services Work Group

[43] Justice in Jeopardy: The Court Funding Crisis in Washington State (2004), at 4-5, 20.

[44] *Id.*, at 22 n.5.

[45] Problem Definition Work Group; Funding Alternatives Work Group; Courts of Limited Jurisdiction Structure Work Group; Public Education Work Group; and Implementation Strategies Work Group.

[46] *Id.,* at 20-21.

was to recommend efficient and effective methods of delivering judicial services, and whether changes such as consolidation of district and municipal courts should be made to the current system.

The Work Group published its final report on October 12, 2004. The report recommended a long-term goal of regionalization of all district and municipal courts to be funded by the state.

> These regional courts of limited jurisdiction would have jurisdiction over all applicable state laws and county and city ordinances, and causes of action authorized by the legislature. Regional courts would be located in convenient locations serving both the public and other court users including law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, have elected judges, and offer predictable recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the proliferation of small limited operation part-time courts. Ideally, regional courts would offer convenience, consolidated services, staff and administration, and would achieve economies of scale savings for all participating jurisdictions. Regional courts would allow jurisdictions to reduce the duplication of administrative costs among individual courts and improve the quality of services to the public.

Regional courts would operate full-time, have elected judges, and offer predictable recognized levels of service, including probation… A regional structure for courts of limited jurisdiction will decrease the proliferation of small limited operation part-time courts.

The report made several short-term recommendations in support of a more regionalized court of limited jurisdiction court structure.

> 1. Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All courts of limited jurisdiction court models should be contained in Title 3 RCW.

2. Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.

3. Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.

4. Elect judges at all levels of court to promote accountability and the independence of the judiciary.

5. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.

6. Amend Title 3 to emphasize a collaborative regional approach to the provision of district and municipal court services by expanding the role and membership of the districting committee.

7. Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.

8. Authorize municipal courts to hear anti-harassment protection matters.

9. Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.

10. Increase the civil jurisdiction amount in dispute that can be filed in district court to $75,000.

11. Require district courts to implement dedicated civil calendars and case scheduling.

The report also addressed other issues including expanded jurisdiction, part-time courts, driving while license suspended cases, indigent defense and prosecutor availability in courts of limited jurisdiction, driving under the influence cases, and probation.

Concerning part-time courts, the report said−

> Part-time courts are another issue of longstanding concern that was discussed but about which no consensus was reached. As illustrated by information provided to the CLJWG by the AWC and AOC, there are small municipalities operating their own independent courts that do not provide the services contemplated by the legislature. Of municipal courts surveyed by the Association of Washington Cities, 23 of 74 reported meeting less than 20 hours per month; 51 of 74 reported being under half-time (appendix C). Some of these courts restrict their caseload exclusively to traffic infractions. Most do not offer domestic violence protection orders or court security. Selected exercise of jurisdiction, and the insistence that courts generate revenues to meet operating costs, create a perception that municipal courts exist only to generate revenue.
>
> JMI noted in its report that "[t]he gain in convenience that may exist as a result of having a local municipal court would appear to be negated by the fact that the court staff may not be available as frequently in the smaller courts." The part-time nature of some courts has an impact on many of the other issues addressed by the Work Group; discussions of judicial independence, elections, and access to court services all take on an added dimension when discussed in the context of part-time courts.
>
> Based on the information provided by AWC and AOC, the CLJWG was asked to consider the possibility of eliminating small municipal courts in cities not meeting an objective threshold such as that based on a relationship to population or caseload size. No consensus was reached and therefore no recommendation is included in the final report. City representatives made clear their position that cities should have the right to establish a court without regard to population or caseload size or the services provided.
>
> Part-time judicial officers play a vital role in the courts of limited jurisdiction and the majority of them serve with distinction. However, the potential for conflicts of interest, coupled with the limitation in services that can be provided by a court with a part-time judge also raises concerns. Part-time courts frequently employ

attorneys who have a private practice or other endeavor outside the court. Wilson stated that "[c]onflicts of interest are almost unavoidable if the judge is only a part-time judicial officer, with other responsibilities involving a private practice of law or other position." Wilson at 166-7. In a presentation to the CLJWG by the Commission on Judicial Conduct, it was noted that part-time judges, because they are also able to practice law, have a greater potential for ethical conflicts than do full-time judges. Isolation and some tendency to not attend judicial education were also identified as issues that may lead to ethical problems for those judges.

REGIONAL COURTS OF LIMITED JURISDICTION POLICY STATEMENT (BJA 2005)

On November 18, 2005, the BJA adopted the following policy statement and goal for the courts of limited jurisdiction in Washington. The policy statement and goals reads−

> Long term, the courts of limited jurisdiction in Washington State should be restructured as regional courts having a full range of judicial functions including jurisdiction over all applicable state laws, county and city ordinances, civil cases and small claims. Regional courts would be located in convenient locations serving both the public and other users such as law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, with elected judges, and offer predictable recognized levels of service, including probation departments and be appropriately funded by state and local government. A regional structure for courts of limited jurisdiction will offer convenience by making courts open and accessible to the public, and coordinate services, staff, and administration and achieve economies of scale for all participating jurisdictions.

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- Regional courts would be located in convenient locations serving both the public and other users such as law enforcement agencies, lawyers, and court personnel.
- Regional courts would operate full-time, with elected judges.
- Regional courts would offer predictable recognized levels of service, including probation departments.
- Regional courts would be appropriately funded by state and local government.
- A regional structure for courts of limited jurisdiction will offer convenience by making courts open and accessible to the public.
- A regional structure for courts of limited jurisdiction will coordinate services, staff, and administration and achieve economies of scale for all participating jurisdictions.

JUSTICE IN JEOPARDY: 2007/2009 BIENNIUM INFORMATION & ADVOCACY GUIDE (BJA 2006)

In September 2006, the BJA presented an information and advocacy guide updating the actions taken by the Justice In Jeopardy Initiative. The guide was intended to provide information to persons interested in the Justice In Jeopardy Initiative by outlining the various components adopted to date and set for action in 2007/2009.

The DMCJA was listed as one of the "primary partners" in the Justice in Jeopardy Initiative. The guide listed the Guiding Principles for the Justice in Jeopardy Initiative as follows[47]–

[47] Justice in Jeopardy: 2007/2009 Biennium Information & Advocacy Guide (BJA 2006), at 5.

Guiding Principles

• The judicial branch must maintain its constitutional role as a separate, equal, and independent branch of government.

• Trial courts are critical to maintaining the rule of law in a free society; they are essential to the protection of the rights and enforcement of obligations for all.

• The primary mission of the trial courts is to fairly, expeditiously, and efficiently resolve cases and serve the community, not to generate revenue for local or state government. Trial courts should be structured and function in a way that best facilitates their primary mission.

To ensure the independence of the judiciary, all judges, including part-time judges, should be elected.

• To ensure the independence of the judiciary, all judges, including part-time judges, should be elected.

• Trial courts must operate in compliance with court rules and statutes.

• Trial courts must have adequate, stable, and long-term funding to meet their legal obligations.

• Legislative bodies, whether municipal, county, or state, have the responsibility to fund adequately the trial courts.

• Trial courts are not self-funding. The imposition of fines, penalties, forfeitures, and assessments by trial courts are for the purpose of punishment and deterrence, and must not be linked to the funding of trial courts.

• Trial court funding must be adequate to provide for the administration of justice equally across the state.

• The state has an interest in the effective operation of trial courts and the adequacy of trial court funding, and should contribute

equitably to achieve a better balance of funding between local and state government.

• Courts will be accessible to the communities they serve and provide services that enable the public to navigate through the court process with a minimum of confusion.

• Trial courts are accountable and responsible for the funds appropriated for court operations.

• Courts will be administered with sound management practices that foster fairness and the efficient use of public resources, and enhance the effective delivery of court services.

The guide discussed the following−

2ESSB 5454

Trial Court Operations

2005−Judges Salary and Trial Court Improvement Accounts

2005−Local General Fund Revenues

2006−Juror Pay Research Project

2007−Court Interpreters

2007−CASA Program Expansion

Indigent Criminal Defense

2005−Local Indigent Defense Budget Structures

2005−2ESSB 5454 Indigent Criminal Defense Funding

2005/2006−HB 1542 State Responsibility for Criminal Indigent Defense

2007−Full Funding of HB 1542 Targeted

Parents Representation in Dependency Cases

2005−2007/09−Full State Assumption of Parent's Representation

Civil Legal Aid

2005−Expanded Funding to Meet the Needs Identified in the Civil Legal Needs Study/Creation of Office of Civil Legal Aid

2006−Funding for Statewide DV Representation

2007− (1) Rural Legal Aid Presence

2007− (2) Unifying Client Intake, Advice and Referral in King County

HOW WE CHOOSE JUDGES: IT'S TIME FOR A CHANGE (BRIDGES, BUZZARD, LAWRENCE, RUHL, SCHUBERT, VELIKANJE AND YU, WSBA BAR NEWS, APRIL 2008)

Chelan County Superior Court Judge John E. Bridges, Centralia, Chehalis, Napavine, Vader and Winlock Municipal Court Judge Steven R. Buzzard, Douglas C. Lawrence, John R. Ruhl, Kenneth L. Schubert Jr., George F. Velikanje, and King County Superior Court Judge Mary I. Yu addressed Washington's selection of judges in an article published in the April 2008 edition of the Washington State Bar Association's Bar News. The authors wrote[48]−

> The question of whether judges are better elected or appointed using a commission process is a long-standing one. Although many judges are still elected officials, 32 states and the District of Columbia today use commissions for the selection of some or all of their judges. In our state, the debate between election and a commission process began at the Constitutional Convention in 1889 and continues to this day. During the Convention, the issue of how to select judges was a subject of substantial discussion. The Constitution approved by the delegates provides for election of judges, but a vocal minority of delegates recognized the inherent tension created by judicial elections.

[48] Footnotes omitted.

History

In 1934, the newly formed Washington State Bar Association appointed a "Committee for the Selection of Judges and Bar Activities Related Thereto." The committee surveyed WSBA members and reported that 67 percent of the respondents wanted to change the way judges are selected, and 56 percent favored a constitutional amendment providing for the appointment of judges of the Superior and Supreme Court.

In 1969, Governor Daniel Evans appointed a 20-person Constitutional Revision Commission consisting of lawyers and nonlawyers. The Commission determined that "the traditional election method… is not suitable for selecting judicial officers," and recommended a constitutional amendment establishing a statewide "judicial nominating commission," which would make non-binding recommendations to the governor; each appointment would be followed by a retention election after a two-year probation period, and retention elections every four years thereafter.

In 1995, Chief Justice Barbara Durham convened the Walsh Commission, and directed its 24 members to review all aspects of judicial selection. A year later, the Walsh Commission issued its report recommending that judges be selected using citizen-based nominating commissions, with each appointee standing for re-election in a single contested nonpartisan election after a probation period, and unopposed retention elections thereafter.

In June of 2006, the WSBA Board of Governors established a Judicial Selection Task Force for the purpose of evaluating whether or not a commission system of selecting judges should be adopted in the state of Washington. A majority of that task force, which includes the authors of this article as well as the Honorable John A. Schultheis and David Endicott, concluded that it would be appropriate to explore changes and to consider adopting some form of a commission selection system.

Are judicial elections presently serving their intended purpose?

The reasons commonly given for wanting to have judges elected are:

• The people want the power to select their judges.

• Elections educate the public on the importance and role of the judiciary.

• By electing judges, the power of the governor or any other appointing authority is limited, maintaining a separation of powers.

• Electing judges preserves the independence of the judiciary.

• Elections provide a check on judicial abuses of power.

• Elections allow the best people possible to serve as judges.

While these are notable goals, the evidence shows that these objectives are not being met and that confidence in the judiciary is slipping:

1. Most judges are not elected. Since statehood:

• 58 percent of superior court judges were appointed to the bench. From 1994 to 2004, 73 percent of the superior court judges taking the bench in the five largest counties were appointed.

• 66 percent of the judges in the Court of Appeals were appointed. As of August 2007, 14 of the 22 sitting Court of Appeals judges (63.63 percent) initially attained their positions by appointment.

• More than half of the justices on the Supreme Court have been appointed.

2. Once attaining the bench, most sitting judges do not face subsequent contested elections. In larger counties (having populations in excess of 100,000), if a superior court judge is unopposed, his or her name won't even appear on the ballot.

3. If a vacancy occurs in the office of a judge of the Superior Court, Court of Appeals, or Supreme Court, the governor fills the position by appointment. There are no limitations on the governor's power to appoint.

4. People just don't vote for judges. Nationally, statistics indicate that 80 percent of the people don't vote in judicial elections. For those who do participate in elections, it is common for 25 to 33 percent of Washington's voters to stop at mid-ballot and to not vote for the judicial candidates.

5. Most voters are uninformed about judicial candidates. It has been reported that 80 percent of the people are unable to identify judicial candidates. There is little information available to the public about judicial candidates, their credentials, and, for incumbents, their performance while serving on the bench. There is also a general lack of knowledge about civics and the different roles the three branches of government have in our tripartite system.

6. The role of money has, at a minimum, created a perception that judges can be influenced by campaign contributions. Studies indicate that 90 percent of the public believe that elected judges are influenced by campaign contributions; 46 percent of judges believe campaign contributions have some influence on their decisions; and four percent believe that it has a great deal of influence on decisions. (See John Ruhl's article "Flood of Money Endangers Perception of Judges' Impartiality" on page 27.)

7. Many qualified candidates will not run. A recent survey was conducted to determine why attorneys may or may not want to run for judicial office. The survey, conducted by Associate Professor David Brody of Washington State University (the 2007 Brody Survey), was sent to 4,000 attorneys in all 39 counties. Responses were received from 1,109 attorneys from 37 counties. The survey results are informative:

• 86 percent of the respondents who had run for a judicial position found the personal financial requirements of a campaign to be a problem, with 56 percent saying it was a large problem.

• 69.8 percent of the respondents who decided not to run for a judicial position said the personal financial requirement had a large impact on their decision.

• 82 percent of the respondents who had run for a judicial position said the time commitment for a campaign was a problem, with 54 percent saying it was a large problem.

• 56.3 percent of the respondents who decided not to run for a judicial position said that the time commitment was a large factor in their decision.

• 60.3 percent of the respondents who decided not to run for a judicial position indicated that their personal distaste for having to campaign was a large factor in their decision.

• 72.7 percent of the respondents who decided not to run for a judicial position indicated that the need for fundraising was a large factor in their decision.

• 66 percent of the respondents who decided to run for a judicial position stated that their practices were negatively impacted during the campaign.

Why a commission selection system?

Most voters don't know who the candidates are, what their qualifications are, or even what it takes to be a good judge. This is distorted further by the influence of significant dollars now pouring into judicial campaigns. Although candidates in high-profile positions such as the Supreme Court and Court of Appeals often gain greater exposure to the community through the press, they are also the positions that are most likely to be targeted by special interests. It will be very difficult to preserve the confidence of the public in the impartiality of the judiciary if those positions continue to be filled using an election process. Campaign-reform legislation may provide some degree of relief, but it will be difficult, if not impossible, to contain or control independent expenditures. The judiciary needs to be impartial, independent, and have the

appearance of fairness. This objective is at risk if judges continue to be elected.

A commission selection process will provide a process where our judges are selected by members of the public who have the opportunity to understand who the candidates are and what their qualifications are through careful and deliberate study of the candidates.

A commission system is also more likely to enhance the diversity of the judiciary. Of the 20 minority judges sitting in the appellate and superior courts as of February 4, 2005, only three were elected. The other 17 (85 percent) were first appointed to the bench. This is consistent with the experience in New Mexico and Arizona. With the implementation of the commission system, more minorities and women are now being appointed than were previously being elected.

What should the commission selection system look like?

The commission system should have the following qualities:

• The membership of the commission must be broad-based with strong lay involvement.

• There must be broad diversity among the commission members.

• Commission members must be selected in a way that minimizes or eliminates the influence of special interests and political parties.

• The commission's activities must be open to the public to prevent "back-room deals."

Retention elections are also a necessary part of the process to provide accountability. However, to make the retention elections effective, there should also be a system that provides the public with comprehensive evaluations of our judicial officers.

Washington should model its commission selection system on Arizona's. Arizona changed from an election system to a commission selection system in 1974 by constitutional amendment.

In 1992, the Arizona Constitution was amended again, establishing a formal judicial performance-evaluation process. Under Arizona's system, two-thirds of the commission members must be nonlawyers. There are requirements that membership be balanced among political parties. At least three nominees must be submitted to the governor, and no more than 60 percent of the nominees may be members of the same political party. There is significant openness and public participation throughout the process. The public can review résumés, and can attend the candidate interviews. Performance evaluations are prepared for all judges. The results of the evaluations are made public and are mailed to voters. Arizona is widely recognized as being a national leader in this arena, and the public support for the Arizona system is very high.

Conclusion

The question is often asked: "Won't a commission system take away the people's right to participate in the process?" In fact, a commission system will enhance the public's ability to control the quality of the state's judiciary. Instead of having most judges appointed by the governor, they will instead be selected by members of the public serving on the commissions. The public will also have a more meaningful say through the implementation of a retention-election system that incorporates objective and publicly available performance evaluations for the judges.

A majority of the lawyers responding to the 2007 Brody Survey indicated that they are dissatisfied with the current election process. Only 36.4 percent of those responding wanted some form of election of trial court judges, and only 30.3 percent of the respondents wanted some form of election of appellate court judges. The statistics show that most judges are not elected, and that when they are elected, they are chosen by a small percentage of the population that is often ill-informed about the candidates and their qualifications. With the increasing role of money, the public's trust in our judicial system is eroding. The judiciary and the people of the state of Washington will be best served by implementing a commission system for the selection of judges that involves the

> public and that provides transparency to the process. Judges who are appointed to the bench should stand for re-election on a periodic basis. A comprehensive system of judicial evaluations similar to that used in Arizona should be considered, and the information that is compiled through that process should be made available to the public. We should join the 32 jurisdictions nationwide that use judicial-selection commissions. Moving to a commission system will help to assure that our state will continue to be served by an excellent judiciary.

COURTS ARE NOT REVENUE CENTERS (COSCA 2011-2012)

Former AOC state court administrator Jeff Hall recently co-authored a policy paper on behalf of the Conference of State Court Administrators. The paper, entitled "Courts Are Not Revenue Centers," began by noting that a quarter of a century ago the COSCA adopted a set of standards known as the "1986 Standards" relating to court filing fees, surcharges and miscellaneous fees in response to a "burgeoning reliance upon courts to generate revenue to fund both the courts and other functions of government." The introduction to the 2011-2012 policy paper says−

Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges.

> The issue of court revenue−and the relationship of that revenue to funding the courts−remains fresh and relevant and warrants a renewed examination and restatement of the previously adopted standards, couched here as "principles."[49]

After defining terminology, and examining relevant case law concerning filing fees and criminal court costs, the paper presents the following seven principles−

> Principle 1: Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. Court users derive a private benefit from

[49] Courts Are Not Revenue Centers (COSCA 2011-2012), at 1

the courts and may be charged reasonable fees partially to offset the cost of the courts borne by the public at large. Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges.

Principle 2: Fees and miscellaneous charges cannot preclude access to the courts and should be waived for indigent litigants.

Principle 3: Surcharges should only be used to fund justice system purposes and care must be exercised to ensure the cumulative cost of litigation does not impede access to justice and that the fee and cost structure does not become too complex.

Principle 4: Fees and costs, however set, should be determined in consultation with the appropriate judicial body, and reviewed periodically to determine if they should be adjusted.

Principle 5: Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.

Principle 6: Optional local fees or miscellaneous charges should not be established.

Principle 7: The proceeds from fees, costs and fines should not be earmarked for the direct benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system. All funds collected from fees, costs and fines should be deposited to the account of the governmental source providing the court's funding.

The COSCA paper concludes by recognizing that the issues addressed are a state-by-state matter, but advocates that its members address the problem of court fees and costs as follows−

1. Make the current system visible.

Promote accountability and transparency regarding fees and costs within each state by developing and maintaining accurate and

understandable information about the current laws, structures and amounts for fees and costs. Once developed, this information should be routinely shared with legislators, the executive branch, and the public. For example, the Texas OCA provides extensive guidance on the state court website, specifically for clerks but available to the public,85 and the court administrator used a blog post to provide information on the various bills in 2011 that would increase costs on conviction, advising, for example, that if all seven bills passed, the total for most tickets would increase from $98 to $137.86

2. Advocate for a principled approach.

The factual information regarding fees and costs must be presented within the context of a principled framework that accounts for fiscal realities. The seven principles provide a solid base from which individual states may craft a set of policy principles to frame their unique fee and cost discussions and dialogues. Development of a set of principles that work within the context of each state can best be undertaken by involvement of a workgroup or task force. That also takes into account all the constituencies that are dependent on the current array of dedicated funding streams, and strive to ensure that those services maintain necessary funding, even if future funding is not through court fees.[50]

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[50] *Id.*, at 12.

REGIONAL COURTS

1. Study forms of court regionalization and report whether existing forms are adequate.

There have been several studies conducted over the past few years. Attachment A provides a summary of those studies. The BJA Municipal Court Study Oversight Workgroup reviewed the conclusions from the 2013 study by the National Center on State Courts and concluded in their own report to BJA, in part, as follows:

> Evaluation projects. The workgroup is not supportive of an effort to promote regionalization projects for evaluation at this time. Members are aware that there have been discussions about municipal courts for a number of years, particularly regarding smaller and part-time municipal courts. The strategy of promoting regional courts appears to have emerged from those discussions several years ago as a remedy or solution to perceived shortcomings in those courts. The NCSC study, however, does not provide clear evidence of such shortcomings. The workgroup understands that this result may well be due to the fact that reliable and relevant data is not systematically collected and so not available to the researchers. In any event the fact is that the perceived problems of the municipal courts are not well defined. The workgroup feels that the board should more specifically articulate the concerns that it has with the municipal courts before attempting to fashion an appropriate remedy.

See Attachment B

The consensus of the subcommittee is that there is no need to further study the formation of a formal regional court system. Instead, the focus should be on addressing the "perceived problems" that seem to fuel the desire of some to form regional courts.

2. Whether new forms of regionalization are desirable.

The consensus is that we need to develop a "culture of cooperation" among jurisdictions so that service can be provided to the public in the most independent, direct, and local fashion possible. We need to develop systems that empower local courts to cooperate with other courts in ways that bolster services to the public without threatening the local control and independence necessary to adapt to local needs.

3. Whether legislation should be drafted to facilitate new methods of regionalization.

The consensus is that the DMCJA should take the lead in creating a "culture of cooperation" among local jurisdictions through changes to not only court rules and statutes, but also changes to attitudes on how local courts are perceived.

We also agree that the judiciary needs to have more influence when courts are formed or merged through interlocal agreements. The present statutory structure sees what we do as judges as a "service" rather than the exercise of power granted to us as a member of a co-equal branch of government. The present statutory structure allows the executive and legislative branch to farm out judicial services to other government

bodies in much the same way that the local government might contract with another jurisdiction to fill potholes. The judiciary's influence is effectively nullified under the present statutory structure. This is an affront to judicial independence because the other branches have undue influence to threaten existing arrangements as a way to influence judicial decisions and control judges. Judicial services need to be seen by policymakers and the public as holding a unique place in government because of its role in delivering justice and dignity independent of outside pressure and influence as a co-equal branch of government with distinct constitutional powers.

Judge Larson has developed some preliminary ideas on some statutory and court rule changes that could enable courts to create cooperative arrangements in an organized fashion. The subcommittee endorses further discussion on his ideas. The suggested changes are appended as Attachment C.

4. **Under what circumstances is regionalization desirable from a service standpoint?**
   The culture of cooperation would give power to localities through its judicial officers to develop ways to deliver service without threatening local control and independence.

5. **Under what circumstances is regionalization undesirable from a service standpoint?**
   Forced regionalization that feeds turf-orientated reactions will not be productive.

PERFORMANCE BENCHMARKS

1. **Whether performance benchmarks/best practices should be adopted to provide a baseline for evaluating court performance.**
   The National Center for State Courts Courtools program may be a good start. http://www.courtools.org/Trial-Court-Performance-Measures.aspx. However, the consensus is that a group dedicated to this sole task be formed to make recommendations.

2. **Identify a baseline of minimum services every court user can reasonably expect.**
   The consensus is that a group dedicated to this sole task be formed to make recommendations.

Attachment A

Attachment A

SUMMARY OF PAST REGIONAL COURT STUDIES

Year	Report	Recommendation(s)	Action(s) Taken
2001	"Project 2001"- Statewide taskforce created by BJA including diverse stakeholders conduct a thorough review of the judicial system.	1. Create Trial Court Coordinating Councils to formalize cooperation and coordination of services among courts, including different levels of trial courts in jurisdictions across the state; 2. Redefine the role of Presiding Judge by squarely placing the authority and responsibility for the effective management of the trial courts in their hands; 3. Authorize the use of elected judges to serve at different level of court in a jurisdiction without the consent of the parties or their lawyers who are appearing before that judge (referred to as "portability" of judges). 4. Regionalization: **Report did not recommend full regionalization (defined as a unified court system, in which courts of limited jurisdiction would merge with superior courts). The report found the "functional equivalent" of unification could be achieved through implementing the three reforms recommended, while avoiding the increased costs and inefficiencies of actually merging or combining (unifying) superior and limited jurisdiction courts.**	1. Recommendation for Trial Court Coordinating Councils implemented in some jurisdictions, but not required 2. GR 29 adopted by Supreme Court 3. Recommendation on "portability" implemented

October, 2003	"Always the People: Delivering limited jurisdiction court services throughout Washington". The Justice Management Institute (Denver, CO). Study was commissioned by BJA Statewide Court Funding Taskforce. This study was commissioned to supply information to the "Courts of Limited Jurisdiction Work Group"-a sub-group of the larger Funding Task Force	1. Selection of judges and court staff that is merit based and independent of the funding authority; 2. Recommend: emphasis on providing ongoing training and education to judges and staff; 3. Presiding judge exercise of management and decisional authority free from inappropriate influence by executive or legislative branches; 4. Judicial officers should have time for and specific training on management related activities; 5. The public, including offenders, should have quick and convenient access to courts, probation services, defense services; 6. Consideration should be given to evening court hours and establishing local offices separate from courthouses to receive payments and schedule hearings; 7. Victims of domestic violence should have access to court services for protection; 8. Develop a statewide protocol for providing DV protection orders and statewide training; 9. Develop methods to ensure fines and costs are paid, including a statewide system for processing payments and one that permits acceptance by any local court of payment for infraction cases anywhere in the state;	1. Nothing done. Choices might include merit based selection and retention election system or election of all judges 2. Ongoing training is being done with mandatory Judicial College and CJE hours. 3. Presiding judge authority addressed in GR 29. 4. Training on management issues occurs at DMCJA spring conferences 5. There is no current minimum requirement for open court hours or minimum judicial days per week 6. Courts establish night court at their discretion 7. RCW 10.99.040 provides DV victims protected by NCO have some process to address the issuing court regarding modification or rescission of the order. 8. State law was amended to allow all courts of limited jurisdiction to handle any kind of DV protection orders (with municipal courts having an option for civil anti-harassment orders) 9. There is no universal cashiering at present 10. Courts that wish to monitor their time to completion statistics do so voluntarily without mandate or assistance from AOC 12. Courts may set up forums with stakeholders to discuss the criminal justice system if they wish

		10. Courts should hold hearings with sufficient frequency to dispose of cases within acceptable time limits and courts should regularly monitor their completion of cases; 11. Examine court procedures to minimize duplicate appearances and reduce FTAs; 12. Provide courts forums to exchange ideas on problem solving and diagnose and evaluate performance of justice system; 13. Connect probation department and court information services so offender information is entered once and can be shared; 14. Gather and analyze data on collection effectiveness.	13. Probation departments across jurisdictions have no current way to share information 14. Courts may analyze collection data on their own.
Dec, 2004	BJA Court Funding Task Force: Justice in Jeopardy Report: The Court Funding Crises in Washington State"	1. All Judges in courts of limited jurisdiction should be elected. 2. Re-organize courts of limited jurisdiction into regional courts funded by the state. 3. RCW, Title 3 should be amended to provide different court options for local governments to provide court services to their community. Encourage regionalization of courts of limited jurisdiction by allowing interlocal agreement for court services. 4. Provisions should be made for expanded subject matter jurisdiction in district and municipal courts. 5. Courts of limited jurisdiction should be accessible to residents of the community it	1. Not implemented 2. Not implemented 3. Implemented by RCW 39.34.180, allowing for inter-local agreements between cities for court services. City of Medina v. Primm, 160 Wn. 2d 268 (2007). Title 3.50 was amended in 2008 to effectuate. 4. Municipal courts may hear all civil DV protection orders, but no further legislation was passed to allow for other civil cases, such as small claims. 5. No action taken 6. Action taken-RCW 3.42.020 amended in 2008 regarding duties of commissioners. 7. District Court District legislation in RCW 3.38 (Districting Committee) has not been

		serves, including providing services on a regularly scheduled bases at established hours that are posted for the public. 6. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges. 7. Amend RCW Title 3 to emphasize a collaborative regional approach to the provision of court services by expanding the role and membership of the districting committee. 8. Authorize municipal courts to hear anti-harassment protection petitions. 9. Require courts of limited jurisdiction to timely hear DV protection orders or have clear, concise procedures to refer victims to courts where services are available. 10. Increase civil jurisdiction amount in dispute for district courts to $75,000. 11. Recommend district courts implement dedicated civil calendars and case scheduling.	amended since 1995. 8. Legislation to allow municipal courts the option of hearing civil anti-harassment protection petitions passed. <u>RCW 10.14.150</u> (municipal court must pass local rule to exercise option). 9. Unsure if any courts currently do not comply with assistance to DV victims who need protection orders. Gender and Justice Commission provides standard forms and assistance to courts. 10. Legislation to raise jurisdiction amount to $75,000 passed. <u>RCW 3.66.020</u> 11. Unsure if any rule or legislation to require dedicated civil calendars and case scheduling.
May, 2013	Report by National Center for State Courts. Commissioned by BJA "Regional Courts Oversight Committee" to analyze effectiveness of CLJ as a "prelude to possible court organization reform". Report requested in	**Finding on regional courts by report:** **"The regional courts concept can effectively help to achieve these goals [standardizing court procedures, providing for a consistent cost structure or advancing equal justice throughout the state]. However, because there appears to be such a wide degree of variation in the organization and operation of the municipal courts, a regional court approach may not be necessary for all jurisdictions. In addition, without a clear baseline defining the level of**	*[NOTE: In September 2013, the BJA sent the recommendation on regional courts back to AOC staff to develop a proposal for looking at the history of regionalization and bring that back to the BJA to determine what the next steps should be. [BJA minutes, Sept. 20, 2013]]*

	furtherance of the BJA's policy position that Washington should establish a 'single regionally based court of limited jurisdiction'. [page 1]	**services and performance that should be provided by the municipal courts, whether an individual jurisdiction is proving sufficient 'quality' of justice is a subjective determination.' [page 59]** 1. Development of a comprehensive set of standards applicable to all courts of limited jurisdiction, including standardized measures of performance. 2. In some instances a regional court may provide the best alternative to improving delivery of court services. 3. Conduct one or more evaluation projects with municipalities to further assess the impact of consolidation or regionalization. The selection of courts in such an evaluation project should be those interested in court consolidation and those that have the capability of providing all necessary evaluation data.	1. No action taken to date 2. Options for interlocal agreements for municipal courts already exist. No current legislative options exist to allow for inter-local agreements between district and municipal courts. The only option under RCW Title 3 is for a city to contract for all court services with a district court. 3. No action taken on study suggestion

Attachment B

Board for Judicial Administration

Municipal Court Study Oversight Workgroup

Review of NCSC Recommendations

Background: The report conducted by the National Center for State Courts for the Board for Judicial Administration, entitled "Study on the Courts of Limited Jurisdiction in Washington State," was presented at the July meeting of the board. The report provides two recommendations, to be found on pages 60 and 61 of the report. One recommendation pertains to the development of performance standards and a data reporting system for the courts of limited jurisdiction, and the second pertains to the development of what the researchers call "evaluation projects" to experiment with inter-municipal collaboration to provide court services.

After some discussion among board members, Judge David Svaren, chair of the study oversight workgroup, was asked whether the workgroup had any recommendations regarding the researchers' recommendations. He responded that the workgroup did not, and explained that the workgroup had been directed to oversee the study and was not asked to generate recommendations of its own. He was then asked to reconvene the workgroup and ask it to provide its collective opinion.

The workgroup met by conference call on September 6th to consider for this purpose. Members on the call were Judge Mark Eide of the King County District Court, Chris Ruhl from Pierce County District Court and DMCMA, Candice Bock of the Washington Association of Cities, and Dirk Marler of the Administrative Office of the Courts, as well as Judge Svaren. AOC staff on the call were Steve Henley and Shannon Hinchcliffe.

The workgroup had several options:

A. Endorse both recommendations;
B. Endorse neither recommendation;
C. Endorse the recommendation for performance standards but not the recommendation to undertake evaluation projects;
D. Endorse the recommendation to undertake evaluation projects but not the recommendation for performance standards;
E. Any of the above and along with any recommendations of the workgroup's own.

Performance standards: Discussion revealed that the workgroup is generally supportive of the recommendation regarding development of performance standards but does have some reservations. A major concern is that, absent a broader commitment to develop standards for all of the court levels, it would be inconsistent and unfair to institute standards only for the municipal courts or limited jurisdiction courts. If the board is interested in performance standards it should consider a more comprehensive initiative to develop standards and reporting requirements for all of the Washington courts.

A second concern is that the focus of any performance standards that might be developed is not well defined. The workgroup is uncomfortable fully endorsing the concept without a clearer understanding of what the measures would focus on: whether fiscal efficiency, timeliness of case processing, individual judge productivity, staff qualifications and training, public access and service, or any other potential aspects of court performance and operations.

Evaluation projects. The workgroup is not supportive of an effort to promote regionalization projects for evaluation at this time. Members are aware that there have been discussions about municipal courts for a number of years, particularly regarding smaller and part-time municipal courts. The strategy of promoting regional courts appears to have emerged from those discussions several years ago as a remedy or solution to perceived shortcomings in those courts. The NCSC study, however, does not provide clear evidence of such shortcomings. The workgroup understands that this result may well be due to the fact that reliable and relevant data is not systematically collected and so not available to the researchers. In any event the fact is that the perceived problems of the municipal courts are not well defined. The workgroup feels that the board should more specifically articulate the concerns that it has with the municipal courts before attempting to fashion an appropriate remedy.

The workgroup would note that current law provides broad flexibility to municipalities to contract with district courts or with other municipalities to provide judicial services and to collaborate in more limited ways through inter-local agreement. A structured program to promote inter-municipal and municipal-district collaborations could help facilitate increased cooperation, and could provide an overlay of planning and evaluation that otherwise might not occur, but as it stands the workgroup is not aware of any current laws or rules constraining municipalities from entering into such arrangements on their own.

Additional comments. The workgroup urges the current board to contemplate and clarify its intentions and aspirations for the municipal courts and the limited jurisdiction courts in general. If the goal of regionalization is to promote consolidation so that fewer courts would have unelected part-time judges, there are more direct ways to achieve such an outcome: for example the legislature could be asked to address the issue by requiring election of all judges regardless of part-time status, abandoning the current standard found in RCW 3.50.055. If the goal is improved service, then the nature of the shortcomings and desired improvements should be identified and addressed directly. The adoption of performance standards might assist in the identification of such improvements. It is not obvious that regionalization is the only, or best, strategy to improve public service or court performance, however defined.

In summary, the workgroup feels that the overriding goal of the branch and the BJA should be to promote competent, effective and independent courts that provide valuable and timely services to the public. If this were the goal, it seems that it could be addressed more directly through improved training, education, and communication as well as support for opportunities for collaboration.

Attachment C

Attachment C
Summary of Suggested Changes

The general theme of the changes attached would be to use district court districts as the core of coordinating services in those areas to create a form of regionalization without compelling the elimination of any existing courts. The changes would also allow for sharing of cases and services between courts in a district court district. The key factor is that all of this is voluntary. The idea is to codify the "culture of cooperation".

There are some changes that relate to the right to vote for judges as well as giving more power to the judiciary when it is suggested by local government that interlocal agreements be formed for court services. There may be a need to amend some portions of RCW 35.20 (Seattle), but I have not included amendments to RCW 35.20 at this time.

In sum:

- RCW 3.38.050 – Amend to include areas that could be annexed by cities so that the unincorporated area next to the city can be included in the realm of possible services offered by both municipal and district courts.

- New Section by statute or court rule that would establish court-coordinating councils in existing or newly formed district court districts. The language speaks for itself. My recommendation would be to provide it by statute to give it some officialdom with members of the other branches who do not respect court rules.

- RCW 3.50.815 is amended to provide a logical service area for interlocal agreements entered into by cities and to keep the coordination of court services within the purview of the local coordinating council.

- RCW 39.34.180 is amended to require judge and staff needs to be considered, to respect the stature of the judiciary, and to provide for a review, approval, and audit mechanism by AOC.

- RCW 3.66.090 – This has some meat and potatoes to it. In sum, it allows us to move cases from court to court within a district court district without requiring the transfer to occur. It is also codifies existing venue court rules. It is designed mostly for single judge courts (that could include district courts in some counties) that would not need to hire a pro tem for a conflict calendar if this passed. It would also allow cases to be heard in one court if there are multiple charges or if a therapeutic court is not available (such transfers are already done but this would codify the practice). It also provides for interlocal agreements for the cost of such transfers and agreements so prosecutors, public defenders, etc. would not need to travel to the transferred jurisdiction. Please note that it also mentions civil cases (see below for more on that). Please note that a court cannot be forced to accept a transferred case.

- RCW 3.50.020 is amended to make it consistent with proposed changes to RCW 3.66.090, RCW 3.50.020, and suggested changes to RCW 12.40.010 below.

- RCW 3.50.125 is amended to be consistent with the amendments in RCW 3.66.090.

- RCW 3.50.045(2) is amended to be consistent with proposed changes to RCW 3.66.090.

- RCW 3.20.100 – Applies the statute to any court of limited jurisdiction and ties it in to RCW 3.66.090 to avoid redundancy and inconsistency.

- RCW 3.50.300 is amended to account for the imposition of sentences in cases transferred per RCW 3.66.090.

- RCW 3.34.130 and RCW 3.50.090 are amended to allow us to sit in any court in our district court district without further oath or affirmation. Nothing requires a judge to use other judges as pro tems, it just makes it easier to become a pro tem in another court in the district court district and makes it easier for us to share duties with each other per cooperative agreements.

- See proposed changes to CrRLJ 5.1 and 5.2 to bring them in line with proposed RCW 3.66.090.

- RCW 3.50.040 provides some limitations on which district court judge can be appointed to serve as a muni court judge. It is also amended because an elected muni court judge position can be part time and elected positions should be filled by election and not by appointment.

- RCW 3.50.055 is amended to provide for voting rights of citizens in contracting cities when the host judge is elected or if the total time of the appointed judge exceeds 35 hours.

- RCW 3.66.020 is amended to allow for <u>voluntary</u> agreements to coordinate the handling of civil cases in muni courts. It may be as simple as sharing space or allowing a district court judge to hear civil cases at the muni court.

- RCW 12.40.010 is amended to allow for <u>voluntary</u> agreements to coordinate the handling of small claims cases in muni courts. It may be as simple as sharing space or allowing a district court judge to hear small claims cases at the muni court.

- Artlicle I, Section 22 of the state constitution would need to be amended to allow jurors to hear cases if they live within the jurisdictional boundaries of the court where the case is heard. This also cures issues associated with cities with boundaries in more than one county.

RCW 3.38.050

District court districts — Standards.

District court districts shall be established in accordance with the following standards:

(1) Every part of the county shall be in some district.

(2) The whole county may constitute one district.

(3) There shall not be more districts than there are judges authorized for the county.

(4) A district boundary shall not intersect the boundary of an election precinct.

(5) A city, including the boundaries of that city's annexation area as established pursuant to RCW 35.13 or RCW 35A.14, shall not lie in more than one district.

(6) Whenever a county is divided into more than one district, each district shall be so established as best to serve the convenience of the people of the district, considering the distances which must be traveled by parties and witnesses in going to and from the court and any natural barriers which may obstruct such travel.

NEW SECTION IN RCW 3.38 or established by court rule

A court coordinating council shall be formed in each district court district, which shall consist of the presiding judges and court administrators of all municipal courts located in the district court district as well as a district court judge and administrator from the district court district. The judges shall appoint a chair and the court coordinating council shall meet regularly, but no less than biannually, to establish best practices, joint agreements, and cooperation among all courts in the district court district and to make recommendations to appropriate government bodies regarding the delivery of court services in the district.

RCW 3.50.815

Criminal justice responsibilities — Interlocal agreements.

A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities located within the same district court district.

RCW 39.34.180

Criminal justice responsibilities — Interlocal agreements — Termination.

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the

statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; ~~and~~ (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes; (c) judicial and staff needs; and (d) maintaining the judicial branch as a co-equal branch of government.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998.

(6) The Administrative Office of the Courts shall establish standards for the formation and operation of courts pursuant to interlocal agreements. Each jurisdiction desiring to enter into an interlocal agreement shall submit the proposed agreement along with a plan in a form approved by the Administrative Office of the Courts outlining how the contracting jurisdictions will meet the standards established by the Administrative Office of the Courts. The respective local legislative bodies may not approve the agreement until the plan has been approved by the Administrative Office of the Courts. The Administrative Office of the Courts may audit compliance with the standards from time to time.

RCW 3.66.090
Change of venue.

A change of venue may be allowed upon motion:

(1) Where there is reason to believe that an impartial trial cannot be had in the district or municipal court in which the action was commenced; or

(2) Where the convenience of witnesses or the ends of justice would be forwarded by the change; or

(3) Where the interests of justice would be served by disposing of multiple criminal matters commenced in different courts in the same district court district in a single court within that district; or

(4) Disqualification of the public defender, prosecutor, or all judges in the district court or municipal court in which the action was commenced; or

(5) To transfer the case to the district where a custodial facility is located, if the defendant is incarcerated therein and transporting the defendant is not practical; or

(6) To allow the case to be disposed of in a therapeutic court that is not available in the court in which the action was commenced.

When such change is ordered from a municipal court, it shall be to a municipal court or district court in the same district court district. If the change is ordered from a district court, then the change shall be made to a municipal court in the same district court district or to the district court of another district in the same county if no municipal court exists In the district court district. ~~If any, o~~Otherwise, to the closest district court ~~of an adjacent district~~ in an adjacent ~~another~~ county. Provided, that a municipal court cannot accept the transfer of a civil case, small claims case, or other civil matter from district court unless an interlocal agreement is entered into between the city and county for the handling of such civil matters. PROVIDED FURTHER, That where an affidavit of prejudice is filed against a judge of a municipal court or district court the cause shall be transferred to another department of the municipal court or district court, if one exists, but may also be transferred ~~otherwise~~ to a judge pro tempore appointed in the manner prescribed by law in lieu of changing venue. The court to which a case is removed on change of venue under this section shall have the same jurisdiction, either civil or criminal to hear and determine the case as the court from which the case was removed.

The presiding judges of courts within an established district court district may enter into an agreement in advance of transfer of cases to assure a fair and equitable distribution of transferred cases under this section. Local jurisdictions may enter into interlocal agreements pursuant to RCW 39.34.180 to provide for the sharing of the cost of adjudication, prosecution, incarceration, probation, and public defense services in the event of a transfer of cases from one jurisdiction to another.

RCW 3.50.020
Jurisdiction.

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction of matters transferred to the court pursuant to RCW 3.66.090 and as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. Pursuant to an interlocal agreement with the county, a municipal court may adjudicate any civil action or small claims action that could be filed in the district court district in which the municipal court is located.

RCW 3.50.125
Transfer within municipal court or to another court.

A transfer of a case from the municipal court to either another municipal judge of the same city, ~~or~~ to a judge pro tempore appointed in the manner prescribed by this chapter, or to another municipal court or district court shall be allowed in accordance with RCW 3.66.090 in all civil and criminal proceedings.

RCW 3.50.045
Judicial officers — Disqualification.

(1) A municipal court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer or one of the parties believes that the parties cannot have an impartial trial or hearing before the judicial officer. The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.

(2) When a judicial officer is disqualified under this section, the case shall be heard before

another judicial officer of the municipality or venue may be transferred pursuant to RCW 3.66.090.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

RCW 3.20.100
Change of venue — Affidavit of prejudice.

If, previous to the commencement of any trial before a ~~justice of the peace~~ judge of any court of limited jurisdiction, the defendant, his or her attorney or agent, shall make and file with the ~~justice~~ judge an affidavit that the deponent believes that the defendant cannot have an impartial trial before such ~~justice~~ judge. The judge will then be disqualified and the case shall be transferred to another judge of the same court, if any, or transferred to another court pursuant to RCW 3.66.090. ~~it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him or her. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. In precincts, and incorporated cities and towns where there are two or more justices of the peace, any one of them shall be considered the next nearest justice of the peace.~~

RCW 3.50.300
Execution of sentence — Jail in lieu of fine and costs, computation.

In all cases of conviction, unless otherwise provided in chapters 3.30 through 3.74 RCW as now or hereafter amended, where a jail sentence is given to the defendant, execution shall issue accordingly and where the judgment of the court is that the defendant pay a fine and costs, the court may refer such unpaid fine and costs to collection if the fine and costs are not timely paid. ~~defendant may be committed to jail until the judgment is paid in full. A defendant who has been committed shall be discharged upon the payment for such part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment, and after deducting the amount allowed for each day of imprisonment, which amount shall be the same and computed in the same manner as provided for superior court cases in RCW 10.82.030 and 10.82.040, as now or hereafter amended. In addition, all other proceedings in respect of such fine and costs shall be the same as in like cases in the superior court.~~ Provided, that in the event of a change of venue pursuant to RCW 3.66.090 the jail sentence or other form of incarceration shall be administered by the jurisdiction where the action was originally commenced at its sole expense. Any fines and costs assessed by the court accepting transfer of venue pursuant to RCW 3.66.090 shall be collected for the benefit of that jurisdiction pursuant to RCW 3.50.100. Provided, that any costs collected for jail recoupment or other costs of incarceration shall be remitted to the jurisdiction where the action was originally commenced.

RCW 3.34.130

District judges pro tempore — Reduction in salary of replaced judges — Exception — Reimbursement of counties.

(1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge or to serve as an additional judge for excess caseload or special set cases. The qualifications of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A district that has a population of not more than ten thousand and that has no person available who meets the qualifications under *RCW 3.34.060(2) (a) or (b), may appoint as a pro tempore judge a person who has taken and passed the qualifying examination for the office of district judge as is provided by rule of the supreme court. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority. A municipal court judge holding an elected or appointed position in a district court district may serve as a judge pro tempore or visiting judge in that district court district without any further oath or affirmation.

(2) For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the district judge in whose place the judge pro tempore serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: PROVIDED, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves:

(a) While a district judge is using sick leave granted in accordance with RCW 3.34.100;

(b) While a district court judge is disqualified from serving following the filing of an affidavit of prejudice;

(c) As an additional judge for excess case load or special set cases; or

(d) While a district judge is otherwise involved in administrative, educational, or judicial functions related to the performance of the judge's duties: PROVIDED, That the appointment of judge pro tempore authorized under subsection (2)(c) and (d) of this section is subject to an appropriation for this purpose by the county legislative authority.

(3) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (2) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (2) of this section. Upon receipt of the certification, the administrator for the courts shall reimburse the county from money appropriated for that purpose.

RCW 3.50.090
Judges pro tem.

The presiding municipal court judge may designate one or more persons as judges pro tem to serve in the absence or disability of the elected or duly appointed judges of the court, subsequent to the filing of an affidavit of prejudice, or in addition to the elected or duly appointed judges when the administration of justice and the accomplishment of the work of the court make it necessary. The qualifications of a judge pro tempore shall be the same as for judges as provided under RCW 3.50.040 except that a judge pro tempore need not be a resident of the city or county in which the municipal court is located. Judges pro tempore shall have all of the powers of the duly appointed or elected judges when serving as judges pro tempore of the court. Before entering on his or her duties, each judge pro tempore shall take, subscribe, and file an oath as is taken by a duly appointed or elected judge. Such pro tempore judges shall receive such compensation as shall be fixed by ordinance by the municipality in which the court is located and such compensation shall be paid by the municipality. A municipal court judge or district court judge holding an elected or appointed position in a court within a district court district may serve as a judge pro tempore or visiting judge in any municipal court or district court in that district court district without any further oath or affirmation.

RULE 5.1
COMMENCEMENT OF ACTIONS

(a) Where Commenced Under Municipal Ordinance. All actions alleging a violation of a municipal ordinance shall be commenced in the municipal court, in the municipal department of the district court where the municipality is located, or in a ~~district~~ host court pursuant to an interlocal government agreement.

(b) Where Commenced Under Other Laws.

(1) All other actions shall be commenced in the district where the alleged offense was committed, or in any district wherein an element of the alleged offense was committed or occurred.

(2) The action may also be brought:

(i) in the district in which the county seat is located, if (a) the alleged offense is a felony, or (b) if the defendant consents; or

(ii) in an adjacent district in the same county, if the alleged offense relates to driving, or being in actual physical control of a motor vehicle and occurred within an enhanced enforcement district under RCW 2.56.110 or any law amendatory thereof; or (iii) in a district where a custodial facility is located, if the defendant is incarcerated therein and transporting the defendant is not practical.

(c) Two or More Districts. Where there is reasonable doubt whether an alleged offense has been committed in one of two or more districts, the action may be commenced in any such district.

(d) Right To Change. When a case is filed pursuant to section (c) of this rule, the defendant shall have the right to change venue to any other district in which the offense may have been committed.

(e) Objection. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it.

RULE 5.2
CHANGE OF VENUE

(a) When Ordered--Improper District. The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper district or court.

(b) When Ordered--On Motion. The court may order a change of venue pursuant to RCW 3.66.090 ~~to another district in the same county, if any, or otherwise to an adjacent district in another county if the defendant consents~~:

(1) Upon written agreement of the prosecuting authority and the defendant; or

(2) Upon motion of the defendant, supported by affidavit, that the defendant believes he or she cannot receive a fair trial in the district where the action is pending; or

(3) Upon motion of either party that the convenience of witnesses or the ends of justice would be served by such change; or

(4) Upon motion of either party or the court, to a district where a custodial facility is located, if the defendant is incarcerated therein and transporting the defendant is not practical.

(5) Upon motion of either party or the court when the public defender or prosecutor are disqualified.

(6~~5~~) Upon the courts own motion, if all of the judges of the court ~~a district~~ are disqualified from hearing the case. ~~The court may also order a change of venue to the district in which the county seat is located, if the defendant consents.~~

(c) Procedure on Transfer. When the court orders a change of venue it shall direct that all the papers and proceedings be certified to the court of the proper district. The defendant and subpoenaed witnesses shall have a continuing obligation to appear and attend as required.

RCW 3.50.040
Municipal judges — Appointed — Terms, qualifications — District judge as part-time municipal judge.

Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court for a term of four years. The terms of judges serving on July 1, 1984, and municipal judges who are appointed to terms commencing before January 1, 1986, shall expire January 1, 1986. The terms of their successors shall commence on January 1, 1986, and on January 1 of each fourth year thereafter, pursuant to appointment or election as provided in this chapter. Appointments shall be made on or before December 1 of the year next preceding the year in which the terms commence.

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

A person appointed as a full-time or part-time municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington: PROVIDED, That in a municipality having a population less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court may be the judge. Any city or town shall have authority to appoint a district judge elected in the same district court district that covers the city's boundaries as its municipal judge when the municipal judge is not required to be elected ~~serve full time~~. In the event of the appointment of a district judge, the city or town shall pay a pro rata share of the salary.

RCW 3.50.055
Judicial positions — Filling — Circumstances permitted.

Notwithstanding RCW 3.50.040 and 3.50.050, judicial positions may be filled only by election under the following circumstances:

(1) Each full-time equivalent judicial position shall be filled by election. This requirement applies regardless of how many judges are employed to fill the position. For purposes of this section, a full-time equivalent position is thirty-five or more hours per week of compensated time.

(2) In any city with one or more full-time equivalent judicial positions, an additional judicial position or positions that is or are in combination more than one-half of a full-time equivalent position shall also be filled by election.

(3) When a hosting jurisdiction with an elected judge or judges has entered into an interlocal agreement with a contracting city, the voters of all cities covered by the interlocal agreement shall be entitled to vote for the judge or judges of the court at the next election held for the position(s).

(4) When a hosting jurisdiction with an appointed judge has entered into an interlocal agreement with one or more contracting cities and the total judicial hours exceeds thirty-five hours per week of compensated time, the judge serving the court shall be elected by the voters of all cities served by the interlocal agreement at the next election held for municipal court judges.

RCW 3.66.020
Civil jurisdiction.

If the value of the claim or the amount at issue does not exceed seventy-five thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

(1) Actions arising on contract for the recovery of money;

(2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;

(3) Actions for a penalty;

(4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed fifty thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

(5) Actions on an undertaking or surety bond taken by the court;

(6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;

(7) Proceedings to take and enter judgment on confession of a defendant;

(8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects;

(9) Actions arising under the provisions of chapter 19.190 RCW;

(10) Proceedings to civilly enforce any money judgment entered in any municipal court or municipal department of a district court organized under the laws of this state; and

(11) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of, real property is not involved.

(12) A county may enter into an interlocal agreement with a city for the disposition of all or part of the district court's civil caseload in a municipal court.

RCW 12.40.010
Department authorized — Jurisdictional amount.

In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court." The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed five thousand dollars. A city and county may enter into an interlocal

agreement for a municipal court to adjudicate small claims actions filed in the district court district in which the municipal court is located.

ARTICLE I, SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the ~~county~~ area served by the court having jurisdiction ~~in which the offense is charged to have been committed~~, and the right to appeal in all cases: *Provided,* The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

The Washington State Supreme Court Gender and Justice Commission currently has open membership positions and invites interested people to apply by November 30th.

The Gender and Justice Commission was established following the publication of "Gender and Justice in the Courts" in 1989, and its mission is to:

- Identify concerns and make recommendations regarding the equal treatment of all parties, attorneys, and court employees in the State courts, and
- Promote gender equality through researching, recommending, and supporting the implementation of best practices; providing educational programs that enhance equal treatment of all parties; and serving as a liaison between the courts and other organizations in working toward communities free of bias.

In September, the Commission published *2021: How Gender and Race Affect Justice Now*, a groundbreaking new study on how gender and race impact justice, and the intersection of gender and other identities and experiences (e.g., LGBTQ+, poverty). The recommendations from this study will help guide the Commission's work in the coming years, and we are looking for new members who want to join that exciting work!

To Apply:
Please send a letter of interest and resume to commissions@courts.wa.gov for consideration by the Commission Co-Chairs and Nominations Committee. If there are specific issues that you are interested in working on with the Commission, please reference that in your materials.

Eric Z. Lucas

Memorial Service For

The Honorable Judge Eric Z. Lucas, Retired

Monday, November 22, 2021

12:00p.m.

First Presbyterian Church

2936 Rockefeller Ave, Everett, WA 98201

Please join the family for a memorial service to celebrate the life of Judge Eric Z. Lucas, retired. We gather together on Monday, November 22, 2021, at noon at the First Presbyterian Church of Everett, 2936 Wetmore Avenue, Everett, WA. COVID protocols will be followed, and face masks are required. In lieu of flowers, the family asks that donations be made to the Domestic Violence Services of Snohomish County, P. O. Box 7, Everett, WA 98206.

NEWS

KCBA News and Announcements

Heartfelt Condolences for Judge Steiner's Passing

November 5, 2021 | in Announcements, News

FROM THE DESK OF THE EXECUTIVE DIRECTOR

Today, our hearts go out to Judge David Steiner's family and his loved ones as news of his passing ripples through our legal community. His gentle demeanor, kind spirit, and long-standing presence on the bench will be greatly missed. For those who did not have the pleasure of working with Judge Steiner, allow us to introduce him.

With aspirations to be an investigative journalist, Judge Steiner decided the field wasn't for him and instead dabbled in counseling. His great-grandfather owned a bicycle shop at the turn of the century and led automobile expeditions to Mt. Rainer, which gave Judge Steiner confidence in himself that he could strive for his dreams. He pursued a law degree at the University of Puget Sound (UPS), now Seattle University School of Law – he loved the idea of having an effect on what we see around us and after practicing both civil and criminal law, he began serving as a pro-tem.

He greatly enjoyed hearing cases and having the ability to make the decision in a case. He had a strong sense of justice all his life and even though he knew he wouldn't always be right, he still wanted to be a judge. He began his judicial career as a judge for the Northeast Division of the King County District Court in 1996 where he served as president of the Washington State District and Municipal Court Judges Association. Judge Steiner was appointed to King County Superior Court in March of 2019 and I had the pleasure of appearing before him during his year-long stint in Involuntary Treatment Act (ITA) Court.

In his free time, Judge Steiner was a mountain climber. One of his goals was to climb the top 100 peaks in Washington, also known as "The Bulger List."

Keep climbing Judge Steiner.