



GENDER AND JUSTICE COMMISSION

AOC SEATAC FACILITY

THURSDAY, JUNE 21, 2018 (8:45 AM – NOON)

JUSTICE SHERYL GORDON MCCLOUD, CHAIR

JUDGE MARILYN PAJA, VICE CHAIR

Agenda

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8:45AM – 9:00 AM CALL TO ORDER & WELCOME

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|---|------------------------|---|
| ➤ Approval of May 4, 2018 Meeting Notes | Justice Gordon McCloud | 1 |
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9:00 – 10:00 AM COMMITTEE AND PROJECT UPDATES

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|---|------------------------------------|--|
| ➤ Gender Bias Study | Justice Gordon McCloud & Committee | |
| ➤ Grant notification timeline & any updates | | |
| ➤ Domestic & Sexual Violence Committee | Ms. Erin Moody & Committee | |
| ➤ Model sexual harassment policy updates | | |
| ➤ In-person meeting June 26 th | | |
| ➤ Tribal State Court Consortium | Staff | |
| ➤ June 1 st Regional Meeting report | | |
| ➤ Planning in-person committee meeting | | |
| ➤ Incarcerated Women & Girls Committee | Ms. Gail Stone & Committee | |
| ➤ Success Inside & Out Conference | | |
| ➤ DOC Kiosks update | Justice Gordon McCloud | |
| ➤ Communications Committee | Judge Paja & Committee | |

10:00 AM – 10:30 AM GUEST SPEAKER

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| ➤ Color of Justice Program, National Association of Women Judges | Judge Helen Whitener
Pierce County Superior Court | |
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10:30 AM – 10:45 AM BREAK

10:45 AM – 11:15 AM COMMITTEE AND PROJECT UPDATES, Continued

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|---------------------------------|--------------------------|--|
| ➤ HB 1163 DV Workgroups | Judge Paja & Judge Lucas | |
| ➤ Update on legislative reports | | |
| ➤ Liaison Reports | | |
| ➤ Washington Women Lawyers | Ms. Jennifer Ritchie | |
| ➤ Access to Justice Board | Mr. Sal Mungia | |



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- **Education Committee** Judge Melnick & Committee
 - Recent Programs
 - DMCJA Conference
 - Upcoming Programs
 - Fall Conference
 - DMCMA Conference

- **Announcements** All
 - Events of interest
 - New project ideas

11:15 am – 12:00 PM CHAIR AND STAFF REPORTS

- **Chair Report** Justice Gordon McCloud
 - Membership updates
 - Request for Comments: draft CPD performance guidelines for attorneys who represent respondents in ITA proceedings 7
 - BJA Legislative Agenda discussion 16

- **Vice Chair Report** Judge Paja

- **Staff Report** Ms. Kelley Amburgey-Richardson & Ms. Cynthia Delostrinos
 - Budget Updates & Planning
 - Project/member recognition
 - Next meeting – September 7, 2018

APPENDIX

- GJCOM Budgets (State funds, OVW STOP grant funds) 20-21

The Incarcerated Women & Girls Committee will meet in the large conference room immediately following the Commission meeting.



Gender and Justice Commission (GJCOM)
SeaTac Office
18000 International Blvd
Friday, May 4, 2018 (8:45 AM – 12:00 PM)

MEETING NOTES

Present: Justice Sheryl Gordon McCloud, Chair, Judge Anita Crawford-Willis, Judge Michael Evans, Ms. Gail Hammer, Ms. Grace Huang, Ms. Trish Kinlow, Judge Eric Lucas, Ms. Heather McKimmie, Ms. Erin Moody, Ms. Riddhi Mukhopadhyay, Justice Susan Owens, Dr. Dana Raigrodski, Ms. Leslie Savina, Judge Cindy K. Smith, Ms. Vicky Vreeland, Ms. Cassidy Wiseley-Paul (Law Student Liaison)

Guests: Ms. Laura Edmonston, Ms. Laura Jones, Ms. Lynda Zeis

AOC Staff: Ms. Kelley Amburgey-Richardson, Ms. Cynthia Delostrinos, Ms. Nichole Kloepfer

Excused: Ms. Josie Delvin, Ms. Patty Eakes, Judge Richard Melnick, Mr. Sal Mungia (ATJ Board Liaison), Judge Marilyn Paja, Ms. Jennifer Ritchie, Ms. Sonia Rodriguez True, Ms. Gail Stone

CALL TO ORDER

The meeting was called to order at 8:45am.

March 2, 2018 Meeting Notes

Minutes approved as amended. Ms. Erin Moody was added to the attendance.

WELCOME & INTRODUCTIONS

Justice Gordon McCloud gave brief introductions.

SPEAKER

Women Trial Attorneys Research – Ms. Vicky Vreeland

- Ms. Vreeland summarized her recent CLE presentation regarding treatment of women trial attorneys, primarily in large firms.
- She presented on the research the ABA Commission on Women has conducted, starting in 1988. There are increasing numbers of women in large firms, but the culture has not made significant changes. In particular, women of color report experiencing barriers and marginalization.
- The group discussed the need to develop tools, resources for supporting young women of color in the profession. Mentoring programs and training on implicit bias are helpful.

ACTION: Ms. Vreeland's CLE materials will be distributed to the Commission listserv.

COMMITTEE & PROJECT UPDATES

Education Committee – Committee & Staff

- Recent Programs
 - Appellate Conference
 - Co-sponsored session on Collateral Consequences took place in March and was very well-received. Evaluations are in the meeting packet.
 - SCJA & AWSCA Conferences
 - Co-sponsored sessions on Immigration's Impact on the Judiciary took place in April and were well received. There is a lot happening in this area, robust content, wasn't time to cover everything. Evaluations are in the packet.
 - Session on Court Access for Incarcerated Parents took place in April. There were 4 presenters, did a great job. Presentation on parenting alternatives program and court rule for telephonic access were particularly interesting. Came away with tangible tips to use in the courtroom. Participants who had attended past sessions on this topic saw the progression and development of solutions. Evaluations are in the packet.
 - Poverty Simulation
 - Cynthia worked with Trish Kinlow to coordinate 7 DMCMA poverty simulations, targeting court line staff.
 - Three of the simulations had to be canceled on the eastside because the simulation requires at least 30 participants and 17 volunteers. Learned from this experience. More advance notice may be needed next time.
 - There were 7 to 10 family scenarios. Transportation and housing were the most critical components. The experience was very impactful. A participant explained she had forgotten what it was like to empathize with people who cannot pay LFOs, have transportation barriers, and other poverty based issues.
 - Court staff felt the training should be presented to judges next. There was also a suggestion to share resources and best practice models at the end so participants had a practical take-away.
- Upcoming Programs
 - DMCJA Conference
 - Session on Technology Misuse in DV Cases will take place in June. This is Part 2 of last year's G&J sponsored session. Judge Crawford-Willis has agreed to serve as G&J Education Committee's liaison for planning the program.
 - Fall Conference
 - Procedural Justice: Fair Treatment Matters with Center for Court Innovation faculty was selected and is scheduled as a plenary session on September 23rd. First planning call was last week and went very well. Emily Gold LaGratta is the Director of CCI's Procedural Justice Initiatives and will present evidence-based practices, barriers to implementation, and facilitate an interactive piece.

- Immigration's Impact on the Judiciary: Implementing New Evidence Rule 413 was selected and is scheduled as a choice session on September 24th. This program will be adapted from the SCJA conference session. More practical information on how to implement the evidence rule will be included.
 - Dana Raigrodski suggested that the group consider a recorded webinar on the black letter law that participants could watch ahead of the session, to reduce the amount of content needed to be covered in 90 minutes.

Gender Bias Study – Justice Gordon McCloud, Chair

- Our grant application for a State Justice Institute Project Grant to conduct the study was submitted on April 25th.
- If selected, the project will start at the beginning of next fiscal year (July 1st).

Domestic & Sexual Violence Committee – Ms. Erin Moody, Co-Chair

- Erin Moody and Judge Jackie Shea-Brown (Benton & Franklin Superior Courts) have agreed to Co-Chair the newly combined DSV Committee. They are working to schedule the committee's next meeting to discuss upcoming projects.
- WAC Comments
 - Comments on the proposed revisions to the DV perpetrator treatment provider certification standards (Chapter 388-60A WAC) were developed by the committee and submitted to DSHS on April 24th. A copy may be found in the packet.
- Sexual harassment model policy
 - The BJA asked GJCOM to take this on for the judiciary as an employer. Other issues may be considered as the policy develops.
 - Ms. Moody has developed a draft model sexual harassment policy, and is consulting with Aviva Kamm at Stokes Lawrence (a presenter for the recent #MeToo CLE), Patty Eakes, and others.
 - Vicky Vreeland suggested that the advisory group needs representation from plaintiff attorneys and that the policy should follow the Washington Law Against Discrimination rather than Title VII. Leslie Savina agreed. Both will provide attorney names to Kelley Amburgey-Richardson.
 - Members also discussed two new laws – establishing the Women's Commission and requiring the development of a model sexual harassment policy for WA employers. The Commission is interested in how the implementation of these laws may intersect with the Commission's work and mission.
- DV & Firearms Surrender
 - The committee is interested in regional meetings on DV & firearms surrender, and development of a firearms bench card, which is also of interest to the Education Committee. The committee will also consider the firearms recommendations Judge Levinson made during her presentation at the last GJCOM meeting.
- Sexual Offense Bench Guide

- There are several chapters that have been drafted by students and/or practitioners that need review by judicial officers. The committee will be working on a plan for this and for maintaining the Domestic Violence and Sexual Violence bench guides in general.

ACTION: Vicki Vreeland and Leslie Savina will provide names of plaintiff attorneys to invite to participate in the sexual harassment policy advisory group.

Tribal State Court Consortium – Judge Cindy K. Smith, Committee Chair

- The TSCC Regional Meeting is scheduled for June 1st and the Tulalip Tribe is hosting.
- The meeting will focus on consortium development and emerging issues, with a focus on effectively addressing gender based violence issues.
- This is one of the TSCC projects that is supported by GJCOM's required STOP grant set-aside to support tribal courts with DV and SA issues.
- The planning committee is hoping to schedule an in-person meeting in July to discuss the agenda for the Annual Meeting, which is held at the Annual Fall Judicial Conference.
- Justice Owens and Justice Madsen submitted a request to the Attorney General's Office for an opinion on protection order enforcement. The office accepted the request and will research and write an opinion. No deadline is set. Once received, it will be shared out to appropriate agencies.

Incarcerated Women & Girls Committee – Committee & Staff

- Court Access Convening workgroups
 - We hope to schedule an in-person meeting of the workgroup leads this summer, perhaps during an IWG Committee meeting.
 - Laura Edmonston's workgroup is focusing on access to law libraries and legal research, what is available and ideas around that. One idea the group is working on is a guide to maximize time when researching, as incarcerated people may have limited access to the library.
- Success Inside & Out
 - This conference, held at Mission Creek Corrections Center for Women, is an annual partnership between the National Association of Women Judges and the Commission.
 - It is scheduled for October 11-12th and planning is underway. The planning committee hopes to encourage more judicial officers from Central and Eastern WA to attend this year.
 - Judge Karen Donohue is the NAWJ representative on the planning committee. She requested input from the Commission about potential conference speakers.

ACTION: Commission members should send any recommendations they have for Success Inside & Out speakers to Kelley Amburgey-Richardson.

Communications Committee – Committee

- Annual Women's History Month CLE

- On March 13th, the Commission co-sponsored a CLE with WWL and WSBA, The #MeToo Movement & Employment Law. Several Commission members were able to attend and the event was well-received.
- Following the CLE, Judge Paja solicited feedback from the Communications Committee about whether this should be an annual partnership. The committee expressed its full support, and now asks the Commission for approval to move forward with this.
- **DECISION:** Motion to support this partnership as an Annual Women's History Month CLE event unanimously passed.

- Public Trust & Confidence Committee PSA
 - All three Commissions are participating in the development of a PSA by this committee of the BJA. Trish Kinlow is G&J's representative on the planning committee.
 - The focus is members of the public being treated with dignity, fairness, and respect in the courthouse.
 - First conference call took place this week, to understand the impetus, audience, how we want people to feel when they watch it, and anticipated outcome.
 - The impetus was the letter Chief Justice Fairhurst sent out about ICE enforcement in the courthouse and people not feeling safe coming to court, but won't necessarily be the topic of the PSA.
 - Discussion: Is the PSA targeted at immigrants and others fearful of coming to court?
 - Commission members expressed concern that we wouldn't want the PSA to tell people it's safe to come to court if we can't guarantee that.
 - Could the PSA be targeted instead toward people who think enforcement at the courthouse is ok, and may not empathize with immigrants and others who don't feel safe? It could show the impact of people not being shown respect, dignity, or fairness.
 - The PSA should include resources, what to do if you are not treated with respect.

- Additional Written Reports in Packet
 - WSBA Licensing Demographics Form Meeting
 - NAWJ Midyear Conference

CHAIR & STAFF REPORTS

Chair Report – Justice Gordon McCloud

- Bylaw amendment adoption - Section 3.3 of the Gender & Justice bylaws was amended to allow the Chair discretion to invite a member to be appointed to additional full or partial terms beyond the existing term limits. A copy of the amendment language is in the packet.
- Membership updates
 - Justice Gordon McCloud has invited Judge Melnick to stay for an additional term and continue his work as Chair of the Education Committee, while helping the Commission conduct succession planning for that committee.

- This is Leslie Savina's last meeting – Congratulations to Leslie on her retirement from the Northwest Justice Project and thank you for all of the important work you have done with the Commission!
- The Chairs will be in communication with the Nominations Committee about appointments for membership vacancies.

Staff Report – Kelley Amburgey-Richardson

- Washington Initiative for Diversity's Legal Executives Summit will be held on May 23, 2018. The Commission is sponsoring this event and Jennifer Ritchie is attending as GJCOM's representative.
- The Commission is also sponsoring the Beyond Pink 4 Conference put on by the Justice for Girls Coalition of WA State. This year the conference theme is One Girl, Many Systems, and will focus on building supportive environments and practices for working with girls within and across systems. The event is on November 4th (same day as our Commission meeting). We will be extending the opportunity to attend to some of our more active ad hoc committee members.
- Next GJCOM meeting is June 21st, which is a Thursday. Please mark your calendars.

ANNOUNCEMENTS

- Dr. Dana Raigrodski announced there is a lunch presentations at UW on Sexual Harassment this coming week. Information will be distributed via the Commission listserv.

GUEST SPEAKER

HB 1163 DV Workgroups Legislative Reports – Ms. Laura Jones, Staff Workgroups Coordinator

- Ms. Laura Jones is AOC's contracted staff person coordinating the legislative workgroups on DV Perpetrator Treatment/Intervention and Risk Assessment.
- Judge Paja and Judge Lucas Co-Chair these workgroups for the Commission.
- The workgroups have legislative reports due in June, and Laura presented on key issues, consensus/decision points reached by the workgroups, and provided an overview of the legislative reports.
- Commission members recommended that the workgroups consider victim privacy issues that may arise with data collection.
- Grace Huang recommended that the Commission allocate resources to updating these sections of the DV Bench Guide when the reports are final.
- If Commission members have questions or comments about the reports, please contact Judge Paja or Judge Lucas.

The meeting adjourned at approximately 12:20pm.

WASHINGTON STATE BAR ASSOCIATION

June 13, 2018

Justice Sheryl Gordon-McCloud
Gender and Justice Commission
PO Box 41170
Olympia WA, 98504
Sent by email to J_S.GordonMcCloud@courts.wa.gov

Dear Justice Gordon McCloud,

The Council on Public Defense (“CPD”) Mental Health Committee has developed the attached performance guidelines for attorneys who represent respondents in Involuntary Treatment Act (ITA) proceedings. We are asking for your comments to help inform the discussion by the full CPD as it decides what Guidelines should be forwarded to the Board of Governors for approval.

The Board of Governors established the CPD in 2004 to address issues relating to public defense in Washington. Past CPD work includes development of Criminal Defense Performance Guidelines and Standards for Indigent Services. The Criminal Defense Performance Guidelines were approved by the Board of Governors in 2011. The Standards for Indigent Defense Services were adopted by the Board that same year and several of the Standards were subsequently adopted by the Washington Supreme Court.

The Mental Health committee is particularly interested in your comments relating to the scope and duration of representation when an attorney is appointed to represent a client in an ITA hearing

We invite your organization to give your feedback in any or all the following ways:

- Provide general feedback or feedback on specific Guidelines by July 19, 2018 [using this form](#).
- Share your feedback at our meeting on July 20, 2016 from 12:00 to 2:30 p.m. at the WSBA offices, 1325 Fourth Avenue or call in at 1-866-577-9294/Access Code 52874#. [RSVP here](#).

If you have any questions, please contact Diana Singleton, WSBA Access to Justice Manager, who is the CPD liaison. You can reach her at 206-727-8205 or dianas@wsba.org.

Very truly yours,

Eileen Farley, Chair
WSBA Council on Public Defense



1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-9722 | 206-443-9722 | questions@wsba.org | www.wsba.org

GUIDELINES PREAMBLE

The following guidelines are intended to assist defense attorneys in providing vigorous and effective representation to clients responding to a civil commitment petition. The facts of each case, the circumstances of each respondent, and developments in the law and in court procedures require counsel to determine, with the client's assistance and on a case-by-case basis, the best manner to proceed.

As used in these Guidelines, "must" and "shall" are intended to describe mandatory requirements. "Should" is not mandatory but is used when providing guidance about what attorneys can and are encouraged to do in the interest of providing quality representation.

Guideline 1 Role of Counsel

Counsel shall assist the client in determining the client's goals and objectives in the commitment proceedings, shall explain to the client how best to achieve those goals, and advocate for the client at all stages of the commitment process.

Counsel shall represent the client's expressed wishes. Where counsel believes that the client's directions will not achieve the best long-term outcome for the client, counsel shall provide the client with additional information to help the client understand the potential outcomes and offer an opportunity to reconsider. In the end, counsel shall act in accordance with the client's expressed interests.

Counsel shall not substitute counsel's view of the client's best interests for those expressed by the client. Counsel shall not substitute the interests or views of a family member or friend, a guardian or holder of a durable power of attorney for those expressed by the client.

Guideline 2 Role of Counsel When a Client Does Not Express His or Her Ultimate Goals

When a client cannot express his or her ultimate goals and objectives, then counsel shall protect the client's constitutional and statutory rights.

Counsel shall abide by the Rules of Professional Conduct (RPCs) throughout the representation, particularly RPC 1.14 which provides:

When a client's capacity to make adequately considered decisions in connection with a representation is diminished...the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. If counsel reasonably believes that the client has diminished capacity, is at risk of serious physical, financial or other harm unless action is taken and cannot adequately act in the client's own interests, [then] the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

In taking any protective action, counsel should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the twin goals of intruding to the least extent possible on the client's right to make independent decisions and maximizing the client's capacities. In considering alternatives, counsel should be aware of any law that requires counsel to advocate the least restrictive action on behalf of the client. *See* Comment to RPC 1.14.

Guideline 3 Education, Training and Experience of Counsel

Counsel shall, at minimum, have the qualifications required by the Washington Supreme Court's *Standards for Indigent Defense*, Standard 14.1 and 14.2(M), for representation of a respondent in a civil commitment proceeding.

Counsel shall have a basic knowledge of the classification of mental disorders, as described in the most recent Diagnostic and Statistical Manual of Mental Disorders ("DSM") and other resources, and the ability to read and understand medical terminology related to mental disorders and treatment of persons with a mental illness, substance abuse, co-occurring disorders, and chemical dependency. Counsel shall have ready access to the most recent DSM, as well as research resources for related medical conditions. Counsel should also have basic knowledge and understanding of common personality disorders and medical conditions which may produce similar symptoms.

Counsel shall be familiar with the classes of medication prescribed to treat mental disorders and chemical dependency and the possible effect of those medications on the client's ability to interact with counsel and to participate in court proceedings.

Counsel should be familiar with treatment facilities, both in-patient and out-patient, that provide services to persons with mental illness, including the scope of those services. Counsel should be familiar with local facilities and state hospitals that may be remote from where the client lives. Counsel should be familiar with the limitations on available treatment and transportation obstacles associated with such facilities.

Counsel should attend CLEs or specialized training for further education on substantive issues, substantive law, statutes, local court rules, and local practice relating to commitment proceedings. Counsel should also develop interviewing and de-escalation skills through appropriate training opportunities.

Guideline 4 General Issues and Duties of Counsel for Respondents in Civil Commitment Proceedings

Before agreeing to act as counsel or accepting appointment by a court, counsel shall determine if counsel has sufficient time, resources, and knowledge to effectively represent the client.

Counsel shall be alert to potential and actual conflicts of interest that would impair counsel's ability to represent a client. Counsel shall not represent a client in a civil commitment

proceeding and act as guardian *ad litem* for that client in the same or any other proceeding. Counsel shall not reveal information relating to the representation of a client unless:

- a) the client gives informed consent to the release; or
- b) disclosure is impliedly authorized to carry out the representation; or
- c) disclosure is an exception to the rule of confidentiality permitted by the Rules of Professional Conduct.

Disclosures, for example to prevent reasonably certain death or substantial bodily harm, are permitted only to the extent necessary to prevent the harm.

Counsel should assess how a client's participation and position in a civil commitment proceeding may affect the client's participation in other proceedings, such as a criminal case. To the extent authorized by the client, the attorney should consult with counsel representing the client in the other proceedings.

Guideline 5 Preparation for Initial Client Meeting

Prior to the first meeting with the client, counsel shall be knowledgeable about civil commitment law, procedures, and court rules. Counsel should have obtained copies of the initial petition or petition for continued court-ordered treatment, statements in support of the petition, and other materials that will be submitted to the court in support of the petition, reviewed them, and researched any unfamiliar terms in advance of the meeting.

When first appointed counsel shall make every effort to consult with the client to determine the client's goals and to develop evidence to present to the court that will support those goals. Counsel should recognize that communication with the client may require additional efforts.

The initial client meeting shall be in private and occur enough in advance of any scheduled hearing to allow time for preparation and reasonable efforts to contact potential witnesses on the client's behalf. If there is not sufficient time for adequate preparation between counsel's appointment and the scheduled hearing, then counsel must advise the court and make every effort to continue the hearing, even if only for a few hours, to allow sufficient time for preparation.

In some cases an attorney will be appointed to represent a client only after the client is detained pursuant to a 72-hour hold. Counsel should meet with the client within 24 hours of being notified of assignment when preparing to respond to a 14-day petition. Counsel representing a client responding to a 90-day petition, shall meet with the client within 24 hours of appointment or as soon as practicable thereafter, regardless of whether counsel previously represented the client when responding to a petition for a 14-day commitment or is newly appointed. Counsel representing a client responding to a 180-day petition shall meet with the client within 24 hours of appointment or as soon as practicable thereafter, regardless of whether counsel has previously represented the client when responding to a petition for a 14-day or 90-day commitment or is newly appointed.

Guideline 6 Substance of Client Meetings

Counsel shall communicate information to the client during the initial or subsequent meeting. Counsel shall determine the amount and kind of information the client is able to absorb in one meeting. If necessary or as requested by the client, counsel shall repeat this information during the course of the representation.

Counsel shall explain that conversations between client and attorney are confidential, counsel's role, the civil commitment process and the client's rights during that process.

Counsel shall obtain, when possible in light of the client's symptoms, the client's version of the facts of the case, the names and contact information of persons with knowledge of the circumstances that led to the filing of the petition, the names and contact information of persons knowledgeable about the client's current level of functioning relative to discharge to the community, information about past treatment, and information relevant to possible alternatives to commitment.

Counsel shall advise the client of the legal bases under which the Court can order the client be discharged, committed, or released conditionally, and the length of any commitment period. Counsel shall specifically advise the client of the right to remain silent and possible consequences following civil commitment, such as the loss of the right to possess a firearm.

Counsel shall explain the different consequences that could follow from a voluntary agreement to enter treatment, an involuntary commitment following a contested hearing, an agreement to a stipulated order of commitment, and a negotiated agreement to a less restrictive order. These may include, among others, an impact on the right to possess a firearm and whether a hospital will help the client find a place to live after the client leaves the hospital or to enroll in a supplemental income program such as SSI or outpatient treatment. Counsel should inquire of any proposed provider whether a client will be billed for voluntary or outpatient treatment.

Guideline 7 Preparation for Commitment Hearing

Counsel shall obtain and review the court file, investigation report, medical records, police reports, if any, and all other evidence offered by the petitioner(s) or opposing counsel. In advance of the hearing, counsel should attempt to interview witnesses who will be called by opposing counsel. Counsel also should attempt to contact persons the client has identified as possible witnesses and who, in counsel's assessment, may provide relevant information. Counsel shall make any appropriate request for expenses to pay for the services of expert witnesses.

Counsel shall determine whether the petition and/or request for commitment should be challenged because it does not satisfy the statutory criteria required for civil commitment and/or constitutional protections. Counsel shall determine whether the client was given a timely opportunity to refuse psychotropic medications for the 24 hours before a potential hearing. If the treatment team has failed in this regard, counsel must advise the client of the options available to address such failure. Counsel shall be familiar with the rules of evidence, particularly those that

apply to civil commitment hearings and govern the admissibility of documentary and testimonial evidence.

Guideline 8 Planning for Release Following Commitment

Counsel should evaluate whether it would be helpful to consult with an independent social worker or mental health professional to aid in planning for the client's release or a less restrictive commitment order and, if so, apply for funds. Counsel should contact persons whom the client has identified as willing to assist in arranging an alternative to hospitalization or otherwise support discharge at the hearing.

If counsel learns of persons who may be willing to assist with an alternative to hospitalization or otherwise support discharge from a source other than the client, then, with the client's permission, counsel should contact those persons. Counsel should evaluate whether release planning is adequately provided by the hospital staff and, if so, with the client's permission, provide information supporting an alternative to hospitalization or discharge to hospital or other personnel involved in discharge planning.

Guideline 9 Commitment Hearing

Counsel shall, prior to the commitment hearing, communicate to the client what is expected to happen before, during, and after the hearing. Counsel should provide the client with information regarding appropriate courtroom conduct.

If the hearing is scheduled to be conducted by video, then counsel shall advise the client of the process and ask whether the client wishes to object to proceeding by video. If the client objects to proceeding by video, then counsel shall make that objection on the client's behalf.

Counsel shall be familiar with the legal and technological requirements for video proceedings. If the hearing will proceed by video, whether or not the client objects, counsel shall make every effort to ensure those requirements are satisfied and make objections, if needed.

Counsel shall assert and seek to protect the client's right to actively participate in the civil commitment proceeding. If at the time of the hearing the client is under the influence of prescribed medication, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects on the client's demeanor.

Counsel should make an opening statement describing the client's goal and the facts that support that goal, cross-examine expert and lay witnesses as is appropriate to the case, and present alternatives to confinement as approved by the client.

At the hearing, counsel should be prepared to: raise procedural motions including exclusion of witnesses; assert privileges, including physician/patient, psychotherapist/patient, spouse/domestic partner, Fifth Amendment, social worker/patient and other privileges; and, as appropriate, introduce evidence on the client's behalf. Counsel representing a client in a jury trial contesting the State's commitment petition shall be familiar with the laws and procedures governing the selection of a jury and jury instructions.

Counsel shall communicate the advantages and disadvantages of the client testifying. The decision to testify ultimately rests with the client. Counsel shall be familiar with state law regarding examination of the client and what information may be admissible for purposes of the hearing.

Counsel should make a closing argument that includes the evidence presented, the burden of proof, and the statutory requirements for commitment.

Counsel should consider proposing findings of fact and conclusions of law and/or making objections to findings and conclusions proposed by opposing counsel, and should ensure that any proposed findings and objections are included in the record for appeal.

Guidelines 10 Limited Basis for Waiver of Client's Presence at the Hearing and Alternatives to Waiver

Counsel shall be familiar with the practice of the local jurisdiction regarding waiver of presence and inform the client about local practice. Some jurisdictions will not permit a client to waive presence at a hearing. Others will allow the client to waive presence only after the court has advised the client about the possible loss of the right to possess firearms.

Counsel shall not waive the client's presence at the hearing, except when the client elects to waive or unequivocally refuses to attend, despite encouragement to attend.

If the court is considering whether the client's behavior constitutes a constructive waiver of presence, then counsel shall, after consultation with the client, offer alternatives to removing the client from the hearing. Possible alternatives may include: offering the client a paper and pencil to write down questions rather than orally responding; taking frequent breaks; asking the judge to give the client a "roadmap" regarding who will be testifying and when; offering to mute client and counsel's microphone during witness testimony during video proceedings other than when making an objection or responding to an objection; and/or offering the client, if available, the option to observe video proceedings from a separate room.

Guideline 11 Post-Commitment Proceedings When the Client Is Committed

If the court orders the client committed for up to 14 days, then counsel has a continuing obligation to maintain contact with the client and prepare to represent the client if the State seeks a 90-day commitment. Such representation shall include consulting with the client to determine the client's goals and to develop evidence to present to the court that will support those goals. Such evidence may include, for example, proposals for less restrictive treatment, housing alternatives, or an individualized treatment plan appropriate to the client's needs. Counsel shall, to the extent the client agrees, argue against all provisions that are unnecessarily restrictive or unsupported by the record.

If the State seeks a 180-day commitment, then counsel should seek to provide continuity of representation and to represent the client in the 180-day commitment hearing. If the client is transferred to another hospital outside the jurisdiction in which counsel works then, when

feasible, counsel shall work to ensure a smooth transition to the new counsel who will represent the client at the 180-day hearing.

Mental Proceeding Rules (MPR) 2.4 and 3.4 provide that commitment hearings “shall be proceeded with as in any other civil action.” Counsel should be familiar with Civil Rule (CR) 71(b), which provides “A court appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place of the motion to be heard.”

The Rules “govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or equity....” The limited exceptions to CR 71 are found in CR 81 and do not, on their face, include civil commitment proceedings.

Guideline 12 Post-Commitment Proceedings When the Client Is Not Committed

If a petition is dismissed or if the court does not order a client committed, then counsel should, where appropriate, inform the client of social services or direct the client to appropriate hospital or treatment staff who can assist the client. Such services may include housing and food available in the community, the existence and location of mental health providers, and the existence of medical treatment available upon discharge from a hospital.

Guideline 13 Advising the Client about Revisions and Appeals

Counsel shall advise the client of the right to seek revision of a commissioner’s ruling or to appeal and the process for each. Counsel shall explain to the client the consequences of any decision to waive the right to seek revision or to appeal. The decision whether to seek revision or to appeal belongs to the client. If the client is not able to absorb the information immediately following a hearing, then counsel shall consult with the client in person or by phone to explain the revision or appeal process and the client’s choices.

Counsel shall take the necessary steps to seek revision of a commissioner’s ruling or to perfect an appeal if the client requests it.

Counsel should consider developing a short advisory sheet to give clients outlining the right to appeal and deadlines by which an appeal must be filed. The advisory should include information about how to contact counsel to discuss an appeal and, in appropriate cases, counsel’s recommendation about whether to appeal. Such an advisory may be helpful when counsel must immediately appear in another hearing or leave for another hospital to represent another client.

Guideline 14 Perfecting an Appeal

When the client chooses to appeal, counsel shall file a notice of appeal and preserve the client’s right to appeal, including presenting a motion to proceed *in forma pauperis*. Counsel shall assist the client in obtaining appellate representation.

To preserve issues for appeal, counsel should consider proposing findings of fact and conclusions of law and/or making objections to findings and conclusions proposed by the

prosecutor or entered by the court, and should ensure that counsel's proposed findings, conclusions, and/or objections are included in the record.

When the client, at the time that commitment is ordered, is unable to decide whether to appeal, counsel shall make clear to the client the deadline for filing an appeal, seek a decision from the client in time to meet the deadline, and be prepared to file the appeal should the client decide to appeal. If a guardian or person holding a durable power of attorney decides the client should not pursue an appeal, counsel should advise the court in writing that counsel assumes the client has the authority to make the decision to appeal and proceed as the client wishes.

Guideline 15 Obligations of Counsel to Appellate Attorney

Counsel should be available to appellate counsel to answer questions and issues regarding the appeal and provide privileged information and documents requested by appellate counsel, to the extent authorized by the client.

Guideline 16 Continuity of Representation

Counsel should make every effort to represent the client for the duration of the commitment process. If the client is transferred out of the jurisdiction, then representation continues until new counsel is appointed.

If counsel is not able to continue to represent the client, then counsel shall work to ensure a smooth transition to new counsel when possible. Steps to provide a smooth transition shall include: advising the client about the process for the client's transfer to a different hospital; move the court pursuant to CR 71 for an order allowing counsel to withdraw and appointment of new counsel; advise the client how to contact substituted counsel; and, to the extent permitted by the client, providing the substituted counsel with privileged information and documents counsel received when representing the client.



April 24, 2018

TO: Chief Justice Mary E. Fairhurst, BJA Chair
Judge Laurel H. Siddoway, COA Presiding Chief
Judge Blaine G. Gibson, SCJA
Judge Scott K. Ahlf, DMCJA
Justice Charles W. Johnson & Justice Mary Yu, Minority and Justice Commission
Justice Steven C. González, Interpreter Commission
Justice Sheryl Gordon McCloud & Judge Marilyn G. Papa, Gender and Justice Commission
Justice Bobbe Bridge, (Ret.) & Ms. Connie Lambert-Eckel, Commission on Children in Foster Care
Justice Mary Yu, BJA Public Trust & Confidence Committee
Judge Judy Rae Jasprica & Judge Douglas J. Fair, BJA Court Education Committee
Judge James W. Lawler, Certified Professional Guardian Board
Judge Robert A. Lewis & Commissioner Tony Rugel, WINGS Steering Committee
Ms. Susan L. Carlson, Court Management Council
Ms. Callie Dietz, State Court Administrator

FROM: Judge Kevin Ringus, BJA Legislative Committee Chair

RE: BOARD FOR JUDICIAL ADMINISTRATION 2019 LEGISLATIVE AGENDA

The Board for Judicial Administration (BJA) has a standing Legislative Committee, which consists of judges from all levels of court. The purpose of the Legislative Committee is to develop a proactive legislative agenda on behalf of the BJA as well as recommend positions on legislation of interest to the BJA.

In order to prepare for the 2019 Legislative Session that convenes on January 14, 2019, we are soliciting legislation proposals. Examples of these from prior years include [HB 1285](#) (modifying oath requirements for interpreters in legal proceedings), [HB 1140](#) (extending surcharges on court filing fees for deposit into the Judicial Stabilization Trust account), and [HB 1111](#) (concerning court transcripts). The Legislative Committee will review all proposals and make recommendations to the BJA this fall.

While the Legislative Committee will consider all legislative proposals from the court community, we are particularly interested in proposals that further the Principal Policy Goals of the Judicial Branch (attached) and are at the request of a board, commission, association, or BJA committee. We invite you to submit ideas for our consideration using the attached form by August 15, 2018.

Please do not hesitate to reach out to Brady Horenstein, AOC Associate Director, Legislative and Judicial Relations at brady.horenstein@courts.wa.gov or (360) 357-2113. As staff to the Legislative Committee, Brady is able to help craft proposals and answer questions about the process.

Thank you in advance for your proposals. We look forward to working with you to improve Washington's justice system.

Attachments

Washington Justice Leaders

April 24, 2018

Page 2

cc: Judge Marlin J. Appelwick, COA
Judge Kitty-Ann van Doorninck, SCJA
Judge Stephen Warning, SCJA
Judge Samuel Meyer, DMCJA
Ms. Kelley Amburgey-Richardson, AOC
Ms. Crissy Anderson, AOC
Ms. Judith Anderson, AOC
Ms. Cindy Bricker, AOC
Ms. Misty Butler Robison, BJA
Ms. Carolyn Cole, AOC
Ms. Cynthia Delostrinos, AOC
Ms. Margaret Fisher, AOC
Ms. Sharon Harvey, AOC
Mr. Brady Horenstein, AOC
Ms. Stacey Johnson, AOC
Mr. Robert Lichtenberg, AOC
Mr. Dirk Marler, AOC
Mr. Ramsey Radwan, AOC
Ms. Intisar Surur, AOC/SCJA

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PRINCIPAL POLICY GOALS OF THE WASHINGTON STATE JUDICIAL BRANCH

“Justice in all cases shall be administered openly, and without unnecessary delay.”
Washington State Constitution, Article I, Section 10.

Washington State’s judicial branch is a constitutionally separate, independent and co-equal branch of government. It is the duty of the judicial branch to protect rights and liberties, uphold and interpret the law, and resolve disputes peacefully through the open and fair administration of justice in the state.

The judicial branch in Washington State is a local and state partnership where local courts, court managers and court personnel work in concert with statewide courts, judicial branch agencies and support systems.

The judicial branch maintains effective relations with the executive and legislative branches of state and local governments, which are grounded in mutual respect.

The Principal Policy Goals of the Washington State Judicial Branch

1. **Fair and Effective Administration of Justice.** Washington courts will openly, fairly, efficiently and effectively administer justice in all cases, consistent with constitutional mandates and the judiciary’s duty to maintain the highest level of public trust and confidence in the courts. Washington courts will affirmatively identify and eliminate bias-based practices and procedures that deny fair treatment for persons due to their race, gender, ability or other personal characteristics unrelated to the merits of their cases.
2. **Accessibility.** Washington courts, court facilities and court systems will be open and accessible to all participants regardless of income, language, culture, ability, or other access barrier.
3. **Access to Necessary Representation.** Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to legal representation.
4. **Commitment to Effective Court Management.** Washington courts will employ and maintain systems and practices that enhance effective court management.
5. **Sufficient Staffing and Support.** Washington courts will be appropriately staffed and effectively managed, and court personnel, court managers and court systems will be effectively supported and trained.



WASHINGTON
COURTS

Board for Judicial Administration Legislative Committee 2019 Legislation Proposal Form

Please submit completed forms and any supporting documentation to Brady Horenstein, AOC Associate Director, Legislative and Judicial Relations at brady.horenstein@courts.wa.gov.

Proposals should be submitted by August 15, 2018.

Request Title

Requesting Entity (Organization & Contact Person)

Request Background

Summary/Request Justification

RCW(s) Impacted (please provide strikethrough if possible)

Court Level Impact

Fiscal Impact

Legislative Strategy Recommendations

Stakeholder Impact

Potential Opposition

Gender & Justice Commission
Budget July 1, 2017 - June 30, 2018

Commission Expenses	Proposed Budget	FY16-17
Commission Meetings	Travel-related costs for members (lodging, per diem, mileage, airfare, etc.) (<i>July, Sept, Nov, Jan, March, May</i>)	\$11,500
General Operating Expenses	Printing, conference calls, supplies, etc.	\$3,000
Staff Travel & Training	Registration Fees, Travel-related costs workshops, tuition reimbursement	\$3,000
Communications	Annual Report	\$700
Education Programs		
	<i>Appellate Conference</i>	\$1,000
	<i>DMCJA Conference</i>	\$3,000
	<i>Fall Conference (Sept. 2017)</i>	\$8,000
	<i>Poverty simulation</i>	\$1,000
	<i>Judicial College (STOP Sponsored)</i>	
	<i>SCJA Conference (STOP sponsored)</i>	
Sponsorships/Events	Judicial Officer & Law Student Reception	\$1,000
	Women's History/Legislative Reception	\$1,500
	Tribal State Court Consortium	\$7,500
	<i>Tribal Judges to Judicial College</i>	
	<i>TSCC Regional Meetings / Fall Mtg</i>	
	<i>Tribal Judges to SCJA Conference</i>	
	<i>Tribal Judges to Fall Conference</i>	
	Color of Justice	\$500
	IWGC Committee Mtg Support	\$300
	Tech Law Summit for Girls	\$1,000
	Mission Creek - Success Inside & Out	\$1,000
Special Allocation	HB 1163 Funding from Legislature	\$53,000
Requests	Gender Bias Report - <i>Undetermined</i>	

Starting Budget	\$50,000
Special Allocation	\$53,000
All Allocated Commission Expenses	\$97,000
<i>Unallocated</i>	\$6,000

Updated 10.26.2017

STOP BUDGET FFY17

January 1, 2018 - December 31, 2018

		Total = \$143,825	\$100,677 <small>(max amt)</small>	\$43,148 <small>(min amt)</small>
			Statewide	Tribal Courts
Salaries & Benefits	Staff		\$31,107	\$14,862
Office Supplies, Copies, Printing	Supplies, Copies, etc. <i>Benchguides (printed, flash drive, DVD/CD)</i>		\$6,750	\$1,286
Staff Training & Education	Staff to attend local and national conferences & training events		\$2,500	\$2,000
Committee Meetings	Support travel-related & pro tem costs for in-person Committee mtgs <i>Gender Bias Study - DV/SA Related Meetings; DSV Committee; TSCC - DV/SA Related Meetings</i>		\$5,000	\$5,000
Scholarship Support	Scholarships for judicial officers & court staff to attend trainings. <i>Enhancing Judicial Skills in DV (All Judicial Officers)</i> <i>Continuing Judicial Skills in DV (All Judicial Officers)</i> <i>NCJFCJ National Conference (All Judicial Officers)</i> <i>Women are Sacred Conference (Tribal Courts)</i> <i>National Indian Nations Conference (Tribal Courts)</i>		\$10,000	\$10,000
Education Programs	Monies for support of educational sessions <i>Judicial College (January 2018)</i> <i>SCJA Spring Conference - Immigration Session (April 2018)</i> <i>DMCJA Conference (June 2018)</i> <i>TSCC Regional Meeting (June 2018)</i> <i>Fall Conference (September 2018)</i> <i>Neurobiology of Trauma Webinar</i>		\$2,500 \$2,500 \$2,500 \$8,000 \$1,000	\$10,000
Projects	SA Benchguide - Editor for New Chapters		\$5,000	
Requests	Requests from others for support <i>DV Symposium (Judicial Officers & Court Personnel)</i>		\$10,000	
Legislative Requests	HB 1163 - Convene workgroups, write legislative reports		\$6,500	
		SUB-Totals per portion of grant	\$93,357	\$43,148
		Total	\$136,505	
		Non-dedicated Funds	\$7,320	

Updated 3.26.18