WASHINGTON STATE
BAR ASSOCIATION

Office of the Executive Director
Paula C. Littlewood, Executive Director

October 15, 2018

VIA ELECTRONIC AND FIRST CLASS MAIL

Honorable Mary E. Fairhurst
Chief Justice, Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, Washington 98504-0929

Honorable Charles W. Johnson
Associate Chief Justice, Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

RE: Request to Enact Newly Revised Technology Principles as Court Rules

Dear Chief Justice Fairhurst and Justice Johnson:

We are writing to submit the enclosed GR 9 cover sheet and text for the proposed Access to Justice Technology Rules. We request that the Court review the proposed Technology Rules and publish them for public comment.

In the Access to Justice Board's August 7, 2018, letter, we submitted updated Technology Principles which were approved by the Access to Justice (ATJ) Board on July 13, 2018. Since then, the ATJ Board met with you and the rest of the Court on September 6, 2018, and discussed needing to submit a GR 9 cover sheet if the Board desired to have the Court review them as rules. Also, since then, the ATJ Board received additional comments from the Administrative Office of the Courts (AOC) in a letter dated September 4, 2018.

The ATJ Board's Technology Principles Workgroup met with representatives from AOC on October 8, 2018, to discuss their comments. The workgroup incorporated all but two of AOC's suggested changes: the use of "must" vs. "should" and whether they should remain as principles or become rules.

The ATJ Board reviewed the newly revised rules on October 12, 2018, and approved the use of

"must" and submitting them to the Court as rules. Enclosed are the proposed rules and GR 9 cover sheet which were approved by the ATJ Board.

If you have any questions, please feel free to contact us by directing them to Diana Singleton, Access to Justice Manager and staff to the ATJ Board, at dianas@wsba.org or 206-727-8205.

Sincerely,

Paula C. Littlewood
Executive Director, WSBA

Salvador Mungia
Chair, Access to Justice Board

Enclosures

cc: William D. Pickett, President, WSBA
Diana Singleton, Access to Justice Manager, WSBA
Shannon Hinchcliffe, Administrative Office of the Courts

Access to Justice Technology Court Rules

Scope

The Access to Justice Technology Court Rules are adopted to

- Guide the justice system's use of technology,
- Combat discrimination, unfair treatment, and unjust biases in the justice system, and
- Ensure that technology does not create unfair results or processes for resolving legal problems.

The Access to Justice Technology Court Rules apply to everyone involved in the justice system, including:

- Courts,
- Clerks of the court,
- Administrative Office of the Courts, and
- Court administrators..

Definitions of Terms:

- Equity
    - Equal access to participation in the justice system for all people with a focus on fair and understandable processes and outcomes.
- Technology
    - Technology includes but is not limited to hardware and software, and all mechanisms and means used for the production, storage, retrieval,

aggregation, transmission, communication, dissemination, interpretation, presentation, or application of information, including but not limited to data, documents, records, images, video, sound and other media.

Access to Justice for All

Everyone should have access to the justice system.

Use of technology in our justice system should increase and must not diminish:

- equitable access to justice;
- opportunities for participation; and
- usability, accountability, efficiency, and transparency.

Technology in our justice system must start with a design for fairness and must be evaluated regularly against these rules.

All technology must be designed and used to eliminate discrimination, unfairness, and other unjust systemic biases and practices.

Openness, Privacy and Safety

Technology in the justice system must

- be open to the public and transparent,
- protect the safety of the people involved,
- protect the privacy of the people involved,
- ensure that people people only have access to the appropriate information that they are allowed to see based on their role in the justice system,
- assure that information can be viewed, created, changed or deleted only by participants with the appropriate access levels, and
- assure that confidential information is not introduced into the public domain.

People must have meaningful access to view their own information and have it corrected if inaccurate.

Accountability and Fairness

The justice system must maximize the beneficial effects of technology while continuously improving technology to address the needs of people most impacted by or least able to engage effectively with the justice system. Users should have a voice in the acquisition and implementation of technology, including as testers.

The justice system must ensure that technology, especially algorithms, are periodically evaluated before, during and after development and implementation, for

- inequitable processes;
- unfair outcomes; and
- unintended negative impacts.

Technology in development that results in unfairness or inequity must not be implemented.

Technology that is already implemented that results in unfairness or inequity must be corrected, or if the harm cannot be eliminated, removed from use.

Maximizing Public Awareness and Use

The justice system must provide access to knowledge about itself and promote public awareness of its processes and resources.

Actors in the justice system must

- regularly seek input from and listen to the public, and
- make regular improvements to technology, and the methods of providing information about the technology, based on user needs, experience, and feedback.

Usability

Technology in the justice system must be easy to use, affordable, and efficient.

Accessible Formats

Court information must be available to the public and should be available in ways that best enable its use. Information and resources must be offered in formats that do not place an undue financial burden upon users.

Plain Language

The justice system must create or provide legal information resources available to the public in plain language.

Best Practices Workgroup

The technology committee of the Access to Justice Board will establish a workgroup that maintains and shares practical information, resources, definitions, and best practices for implementing the ATJ Technology Court Rules. The workgroup will continuously update these resources and publish them at: [URL]. The workgroup should coordinate with AOC and will report to the Access to Justice Board and JISC annually.

Accessibility

The justice system must consider, design, and implement technology systems for all persons, including those with disabilities.

Cultural Responsiveness

Technology in the justice system must incorporate principles and practices which address and respond to cultural variables and diversity of people and communities.

Human Touch

Technology should be used to improve the level of quality of human interaction, and to preserve or increase the humanity of our justice system.

Technology should be used to increase the satisfaction of the public's interaction with the justice system to ensure timely and fair outcomes.

Technology should be used to reduce the necessity of the public to physically go to court to resolve conflict.

Language Access

Courts should communicate in the preferred languages of people. Technology must be used in ways which enhance communication.