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ADMINISTRATIVE OFFICE OF THE COURTS

Callie T. Dietz
State Court Administrator

September 4, 2018

Honorable Mary Fairhurst
Temple of Justice
PO Box 40929
Olympia, WA 98504

Honorable Charles W. Johnson
Temple of Justice
PO Box 40929
Olympia, WA 98504

Dear Chief Justice Fairhurst and Justice Johnson:

On August 14, 2018, the Administrative Office of the Courts (AOC) received an e-mail from the Access to Justice (ATJ) Technology Committee that attached "principles ATJ has proposed to the court." The document was described both as "Updated Technology Principles" and "Access to Justice Technology Court Rules." AOC was given until August 24 to report any "glaring issues," although the proposal had already been sent to the Court. Due to conflicting events and priorities, we were unable to provide our collective feedback to ATJ in this short time period.

It is unclear whether the Court is being asked to adopt revised Principles or adopt the revisions as new court rules. We urge the Court to do neither without substantial additional stakeholder input.

We wish to emphasize that AOC Leadership has been and remains fully committed to the fundamental goals of the Access to Justice Technology Principles: avoid unintentionally creating technological barriers to justice, and use technology to enhance access to justice, particularly for those who already struggle to connect with the justice system. As leaders of the agency principally responsible for providing statewide technology solutions for the Washington judicial system, we welcome this opportunity to provide the Court and ATJ with feedback regarding the process and the substance of the suggested Access to Justice Technology Court Rules.

The Court's December 3, 2004, Order adopting the Principles was the culmination of a four-year process that involved a vast array of groups and individuals. As noted in the Court's Order, the Principles were "endorsed by the Board for Judicial Administration, the Judicial Information System Committee, the Board of Trustees of the Superior Court

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1206 QUINCE ST SE • P.O. Box 41170 • Olympia, WA 98504-1170
360-753-3365 • 360-586-8869 Fax • www.courts.wa.gov

Judges' Association, the Board of Trustees of the District and Municipal Court Judges' Association, the Board of Governors of the Washington State Bar Association, the Minority and Justice Commission, the Gender and Justice Commission, the Attorney General, and the Council on Public Legal Education." The Board for Judicial Administration (BJA) discussed the proposal during at least three meetings before the Principles (originally "Access to Justice Technology Bill of Rights") were submitted to the Court. The Judicial Information System Committee (JISC) was first advised of the effort in 2001 and had substantive discussions about it at three meetings before the proposal went to the Court.

The vetting process for the current iteration included public input but seems to have bypassed the key governing and policymaking bodies for the judicial branch. The proponents do not seem to have sought comments from any of the entities mentioned previously before submitting the new ATJ Tech Principles/Rules.

There was a workshop at the University of Washington (UW) School of Law on Friday, October 27, 2017, that provided a limited time for a few invited guests to provide input. At the invitation of the ATJ Technology Committee, the Diverse Voices Project at the UW Tech Policy Lab convened four stakeholder panels: formerly or currently incarcerated people, legal professionals, immigrant communities, and rural communities. Panelists were provided a copy of the Principles in advance, viewed some videos and two cartoons, and were paid for their time and input. We understand that the updated product was presented to the ATJ Board on July 13, 2018, as "proposed rules." Although some Board members requested additional time to review them, the majority voted to "submit the proposed rules to the Court now" according to the draft Board minutes.

Whether considered as new rules or revised Principles, we strongly believe the governing and policymaking bodies of the judicial branch should have ample opportunity to review, comment, and suggest changes.

AOC wishes to be part of the discussion.

We have a number of specific comments and suggestions, including:

- SCOPE
  - These should remain Principles rather than new court rules;
  - AOC should be listed among the entities covered by the Principles;
  - The provision applying the Principles to contractors should be stricken and addressed through other means.

- OPENNESS, PRIVACY AND SAFETY
  - Provisions regarding maintaining definitions of access levels and assuring that only those with appropriate access levels should be stricken;
  - Substitute a provision such as: ensure that people only have access to the appropriate information that they are allowed to see based on their role in the justice system.
- ACCOUNTABILITY AND FAIRNESS
  - Requiring that "technology, especially algorithms are continuously evaluated" is unrealistic and unnecessary. Strike the word "continuously."
  - Some negative impacts could be intended and appropriate. Consider adding the word "unintended."
- ACCESSIBLE FORMATS
  - The requirement that "information and resources must be offered in formats that do not place a financial burden upon users" seems to set an expectation that multiple formats must be offered and that all information should be accessible to the public without any charge. As written, this provision has a substantial financial and policy impact for the courts and AOC. It warrants significant discussion among the policymaking and governing bodies. At a minimum, we suggest modifying the provision to add the word "undue."
- PLAIN LANGUAGE
  - Similar to the comment above, the requirement that all participants in the justice system create "**all** public information and resources in plain language" may not be achievable and has a significant financial impact. The Court has some experience with the long and arduous process for developing plain language family law forms. Imagine that level of effort for all forms, information, and other resources created and maintained at the state and local level. This goal should be aspirational not mandatory.
- BEST PRACTICES WORKGROUP:
  - We would like to better understand this group and, in particular, how it relates to the work of the JISC that is charged with providing statewide technology solutions.
- HUMAN TOUCH
  - The new proposal suggests that "technology should be used to increase the level of human interaction." Human interaction is vital to the justice system, but modern technology also affords many opportunities to improve access to the justice system and enhance the ***quality*** of human interaction while reducing the ***quantity*** of human interaction. We suggest modifying this provision to focus on the qualitative aspect of the experience.

Thank you for the opportunity to offer comments and suggestions. We hope the Court will refer the ATJ proposal to the broader community and look forward to participating in the discussion.

Sincerely,

The AOC Leadership Team

Callie Dietz
State Court Administrator

Vonnie Diseth
Chief Information Officer,
Information Services Director

Wendy Ferrell
Associate Director,
Communications and Public Outreach

Brady Horenstein
Associate Director,
Legislative and Judicial Relations

Dirk Marler
Chief Legal Counsel,
Court Services Director

Ramsey Radwan
Chief Management Officer,
Management Services Director

Jane Van Camp
Associate Director,
Human Resources

cc: Diana Singleton