

WASHINGTON STATE  
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



LANE POWELL  
CITY CENTRE BUILDING, 1420 5TH AVE, 42ND FLOOR  
SEATTLE, WASHINGTON 98101  
FRIDAY, DECEMBER 7, 2012, AT 8:45 A.M.

# WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

## COMMISSION MEMBERS

Justice Charles W. Johnson  
Co-Chairperson  
Washington State Supreme Court

Judge Mary I. Yu  
Co-Chairperson  
King County Superior Court

Justice Debra L. Stephens  
Washington State Supreme Court

Mr. Jeffrey A. Beaver  
Graham and Dunn

Professor Robert C. Boruchowitz  
Seattle University School of Law

Judge Vickie I. Churchill  
Island County Superior Court

Ms. Jennifer K. Davis-Sheffield  
Lane Powell PC

Ms. Callie Dietz, State Court Administrator  
Administrative Office of the Courts

Judge Deborah D. Fleck  
King County Superior Court

Ms. Bonnie J. Glenn  
Models for Change, DSHS

Mr. Russell D. Hauge  
Kitsap County Prosecuting Attorney

Ms. Carla Lee  
Center for Children and Youth Justice

Dr. Sandra E. Madrid  
University of Washington School of Law

Commissioner Joyce J. McCown  
Court of Appeals, Division III

Judge LeRoy McCullough  
King County Superior Court

Ms. Karen W. Murray  
Associated Counsel for the Accused

Judge Mariane C. Spearman  
King County Superior Court

Mr. Jeffrey C. Sullivan  
Retired, US Attorney

Judge Gregory D. Sypolt  
Spokane County Superior Court

Judge Vicki J. Toyohara  
Judge Pro Tem

Judge Dennis D. Yule, Retired



# MINORITY AND JUSTICE COMMISSION

AOC SEATAC

FRIDAY, DECEMBER 7, 2012

JUSTICE CHARLES W. JOHNSON, CO-CHAIR

JUDGE MARY YU, CO-CHAIR

AGENDA	PAGE
<b>CALL TO ORDER</b>	
Introductions and Approval of Minutes	1
Co-Chairs Report	
<ul style="list-style-type: none"> <li>• Appointments and Reappointments</li> <li>• Stakeholder Meeting</li> <li>• Retreat Summary</li> <li>• DMC Press Release</li> <li>• Chief Justice Madsen's Priorities</li> </ul>	Justice Charles Johnson and Judge Mary Yu  5 7  9
Staff Report	
<ul style="list-style-type: none"> <li>• Financial Statement Review</li> <li>• Gender and Justice Commission</li> <li>• Perception of Justice Study</li> <li>• Judicial College</li> </ul>	Ms. Myra Downing  Mr. Monto Morton
<b>COMMITTEE AND WORK GROUP REPORTS</b>	
Youth and Justice Committee Update	Ms. Carla Lee
Collaboration Work Group	Judge Vickie Churchill and Judge Marianne Spearman
By-laws Work Group	Ms. Jennifer Davis-Sheffield and Commissioner Joyce McCown
	<b>13</b>
<b>UNFINISHED BUSINESS</b>	
Priority Setting for Commission Work Process for Completing Work – Committees, Work Groups and/or Projects Managing Requests for Educational Programs	Justice Johnson and Judge Yu
<b>NEW BUSINESS</b>	
Annual Fall Conference Educational Proposals	<b>23</b>
<b>ADJOURNMENT</b>	





**Washington State Supreme Court  
Minority and Justice Commission**  
 Friday, October 12, 2012 (2:00 p.m. – 5:30 p.m.)  
 Saturday, October 13, 2012 (8:30 p.m. – 1:00 p.m.)  
 Red Lion Hotel, 18220 International Blvd, Seattle, Washington



**MEETING NOTES**

**Commission Members Present:**

Justice Charles W. Johnson, Co-Chair  
 Judge Mary I. Yu, Co-Chair  
 Jeffrey A. Beaver  
 Robert C. Boruchowitz  
 Judge Vickie I. Churchill  
 Jennifer K. Davis-Sheffield  
 Judge Deborah D. Fleck  
 Bonnie J. Glenn  
 Russell Hauge  
 Uriel Iniguez  
 Yemi Fleming Jackson  
 Carla C. Lee  
 Sandra E. Madrid, Ph.D.  
 Commissioner Joyce J. McCown  
 Judge LeRoy McCullough  
 Karen W. Murray  
 P. Diane Schneider  
 Judge Mariane C. Spearman  
 Jeffrey C. Sullivan  
 Judge Gregory D. Sypolt  
 Judge Vicki J. Toyohara

**Members Not Present:**

Ann E. Benson  
 Robert S. Chang  
 Callie Dietz  
 Judge Donald J. Horowitz  
 Eric A. Jones  
 Rosa M. Melendez  
 Justice Debra Stephens  
 Judge Dennis D. Yule, Retired

**AOC Staff Present:**

Myra Downing  
 Monto Morton

**Guests Present:**

Carl McCurley, Ph.D.  
 Travis Stearns (Sub for Ann Benson)

**Facilitator:**

Dean Kellye Y. Testy

MJCOM held a retreat on Friday, October 12, and Saturday, October 13, 2012, to revisit the progress and process for achieving its purpose as defined by Court Order No. 25700-B-503.

The Washington State Supreme Court Minority and Justice Commission (MJCOM) was established to identify problems and make recommendations to ensure fair and equal treatment in the state courts for all parties, attorneys, court employees, and other persons. The Commission advances equal treatment of all without regard to race and ethnicity through research and implementation of recommended improvements to court operations, practices, and procedures and through educational and outreach programs provided to court, youth and justice system-related groups.

Dean Testy served as the facilitator for the retreat. She managed conversations until consensus was reached on two significant areas: the structure of the Commission and confirming the mission and purpose of the Commission. The results are outlined below.

## STRUCTURE

### Number of Commission members

Currently there are 21 members of the Commission with technical members appointed to assist in collaborating with other entities that also work to ensure fair and just treatment for all. There was much discussion at the retreat regarding the effectiveness of this model in fulfilling a leadership role in bringing all the affected parties together.

A **decision** was made to abolish the technical member positions and provide the people who have served in those positions the opportunity to become full Commission members.

**Action:** Technical members will contact Judge Yu and let her know if they would like to become members of the Commission.

**Action:** Commissioner Joyce McCown and Ms. Jennifer Davis-Sheffield will draft changes to the existing bylaws to reflect the decisions made during the retreat.

### Term Limits

Members appointed to the Commission serve four-year terms. Presently, there are no limitations on the number of times that a person can be reappointed. Discussion at the retreat surfaced several issues. Several members have served for many years and bring a wealth of experience to the Commission. While some members want to continue serving, some feel it may be time to relinquish their position so someone with new energy can be appointed.

One of the positive results to having term limits is an increase in the number of people in the courts and in the court community who have served on the Commission. This is one way of building support for this important work by having knowledgeable people in a variety of settings being mindful of the Commission and ensuring its involvement in educational programs, research, and policy recommendations and implementation. While this is a value, a **decision** was made to not limit the number of times one could be reappointed to the Commission.

**Action:** Commission members with expiring terms will contact Justice Johnson and let him know if they would like to be reappointed.

**Action:** Keeping in mind that the bylaws state that appointments shall be made to assure that the membership on the MJCOM reflects racial, ethnic, gender, cultural, and geographical diversity of the population of Washington State, members are to make recommendations for new members to Justice Johnson and Judge Yu. Tribal, law enforcement, an elected official, and someone representing the faith-based community were suggested.

#### Meetings

MJCOM does not have regularly scheduled meetings. It was proposed to have the meetings every other month on the second Friday and held at the Administrative Office of the Courts SeaTac Office. Members agreed with the schedule but want to hold the meetings at the location of MJCOM partner organizations.

**Action:** Dr. Sandra Madrid and Ms. Jennifer Davis-Sheffield will find and secure locations for Commission meetings.

### COMMISSION WORK

#### Purpose

The purpose of the Minority and Justice Commission is to determine whether racial and ethnic bias exists in the courts of the state of Washington. To the extent that it exists, the Commission is charged with taking creative steps to overcome it. To the extent that such bias does not exist, the Commission is charged with taking creative steps to prevent it.

Members discussed the breadth of work that is needed to accomplish their purpose and the challenges they face in attempting to do this independent of other entities. Some mentioned a desire to establish the MJCOM as the body that brings all the groups together. The technical member positions were an attempt to do this. The shared staffing between the MJCOM and the Gender and Justice Commission is another effort. Members wanted a mechanism to ensure collaboration occurs so overlaps of efforts could be reduced and information can be easily shared.

**Action:** MJCOM staff will provide a list of possible collaborating partners to a committee chaired by Judge Spearman and Judge Churchill with members Professor Jeffrey Beavers and Mr. Russ Hauge. The committee will provide an update on their work at the December 7, Commission meeting.

#### Revisiting the Mission Statement

A question was asked about expanding the work of the MJCOM outside of the court community. The MJCOM is in existence by a Supreme Court Order so it is not realistic or wise to expand the work beyond issues facing the courts.

### Accomplishing the Work

Conducting or commissioning research, providing or supporting educational programs, collaborating with others on supporting legislation, or recommending policy and practice changes are the ways members believe they will accomplish the mission of the MJCOM.

The last topic addressed during the retreat was the decision regarding priority areas of focus for the Commission. Three areas surfaced and will be discussed further at future meetings:

1. **Workforce Diversity.** Supporting and increasing diversity in the workforce is one of the primary reasons given for forming the MJCOM.
2. **Juvenile Justice.** MJCOM is committed to addressing disproportionality in the justice system. The intention is to begin with younger people – juvenile offenders.
3. **Bias.** Discussion focused on engaging in research that explores the perception of bias in the justice system. Education programs will also focus on this area.

Previous committees were retired. Work groups were formed to do some additional work and will report back to the Commission at the December 7, meeting.

### Workgroups and Members

- Research – Karen Murray, Professor Robert Boruchowitz, and P. Diane Schneider.
- Youth and Justice – Carla Lee, Bonnie Glenn, and Russell Hauge.
- Meetings and Annual Town Hall – Jennifer Davis-Sheffield and Dr. Sandra Madrid.
- Collaborations – Judge Vickie Churchill, Judge Mariane Spearman, Jeffrey Beaver, and Russell Hauge.
- Legislation – Carla Lee and Russell Hauge.
- Workforce Diversity – Judge Deborah Fleck, Bonnie Glenn, and Jeffrey Sullivan.
- Bylaws – Commissioner Joyce McCown and Jennifer Davis-Sheffield.

Two additional **decisions** were made during the retreat:

1. The MJCOM Co-Chairs are the official spokespersons for the Commission.
2. There will be financial reports at each meeting.

The meeting concluded at 1:00 p.m. on Saturday, October 12, 2012.



# STATE OF WASHINGTON MINORITY AND JUSTICE COMMISSION

## COMMISSION MEMBERS

Justice Charles W. Johnson  
Washington State Supreme Court  
Co-Chairperson

Judge Mary I. Yu  
King County Superior Court  
Co-Chairperson

Justice Debra L. Stephens  
Washington State Supreme Court

Judge Vickie I. Churchill  
Island County Superior Court

Judge Deborah D. Fleck  
King County Superior Court

Judge LeRoy McCullough  
King County Superior Court

Judge Mariane C. Spearman  
King County Superior Court

Judge Greg D. Sypolt  
Spokane County Superior Court

Judge Vicki J. Toyohara  
Judge Pro Tem

Judge Dennis D. Yule, Retired  
Benton-Franklin County Superior Court

Jeffrey A. Beaver  
Attorney at Law

Robert C. Boruchowitz  
Seattle University School of Law

Callie T. Dietz  
Administrator for the Courts

Bonnie J. Glenn  
Special Assistant to Secretary, DSHS

Russell Hauge  
Kitsap County Prosecuting Attorney

Sandra E. Madrid, Ph.D.  
University of Washington School of  
Law

Jeffrey C. Sullivan, Retired  
United States Attorney

Myra W. Downing  
Executive Director

December 4, 2012

Honorable Barbara A. Madsen  
Washington State Supreme Court  
Temple of Justice  
Post Office Box 40929  
Olympia, Washington 98504-0929

Dear Chief Justice Madsen:

Re: Appointments and Reappointments

It is with great pleasure and honor that we submit this request to appoint the individuals listed below to the Minority and Justice Commission.

As you know, members of the Minority and Justice Commission have expressed a renewed sense of energy and enthusiasm for the work of the Commission and our service to courts throughout the State. In addition, your leadership and expressed interest in our concerns has enabled us to formulate specific goals regarding the reduction of racial disproportionality. Such work takes time and capacity and we are pleased to report that we have attracted an abundance of talent.

At this time, in accordance with the Supreme Court order signed on September 10, 2010 and consistent with our by-laws, we request that the following individuals be appointed to the Minority and Justice Commission for a term of four (4) years beginning January 1, 2013 and expiring on December 31, 2016:

- Ms. Jennifer Davis Sheffield;
- Ms. Carla Lee;
- Commissioner Joyce McCown; and
- Ms. Karen Murray.

Administrative Office of the Courts ♦ Post Office Box 41170 ♦  
Olympia, Washington 98504-1170  
Telephone (360) 705-5327 ♦ Telefacsimile (360) 956-5700  
E-mail: [Minority.Justice@courts.wa.gov](mailto:Minority.Justice@courts.wa.gov) ♦ Website: [www.courts.wa.gov](http://www.courts.wa.gov)

Honorable Barbara A. Madsen  
December 4, 2012  
Page 2

We further request that the Court reappoint Judge Gregory Sypolt and Judge Dennis Yule for a four (4) year term expiring on December 31, 2016.

We are enclosing a Proposed Order Appointing Members to the Washington State Minority and Justice Commission for consideration by the Supreme Court. Please do not hesitate to contact us if you have any questions.

Very truly yours,

Justice Charles W. Johnson, Co-Chair  
Minority and Justice Commission



Judge Mary I. Yu, Co-Chair  
Minority and Justice Commission

Enclosure

cc: Justice Susan J. Owens  
Justice Tom Chambers  
Justice Mary E. Fairhurst  
Justice James M. Johnson  
Justice Debra L. Stephens  
Justice Charles Wiggins  
Justice Steven Gonzalez



# STATE OF WASHINGTON MINORITY AND JUSTICE COMMISSION

## COMMISSION MEMBERS

November 26, 2012

Justice Charles W. Johnson  
Washington State Supreme Court  
Co-Chairperson

Judge Mary I. Yu  
King County Superior Court  
Co-Chairperson

Justice Debra L. Stephens  
Washington State Supreme Court

Judge Vickie I. Churchill  
Island County Superior Court

Judge Deborah D. Fleck  
King County Superior Court

Judge LeRoy McCullough  
King County Superior Court

Judge Mariane C. Spearman  
King County Superior Court

Judge Greg D. Sypolt  
Spokane County Superior Court

Judge Vicki J. Toyohara  
Judge Pro Tem

Judge Dennis D. Yule, Retired  
Benton-Franklin County Superior Court

Jeffrey A. Beaver  
Attorney at Law

Robert C. Boruchowitz  
Seattle University School of Law

Callie T. Dietz  
Administrator for the Courts

Bonnie J. Glenn  
Special Assistant to Secretary, DSHS

Russell Hauge  
Kitsap County Prosecuting Attorney

Sandra E. Madrid, Ph.D.  
University of Washington School of Law

Jeffrey C. Sullivan, Retired  
United States Attorney

Name  
Address  
Address

Dear \_\_\_\_\_,

On March 28, 2012, the Task Force on Race and the Criminal Justice System convened a day-long symposium at the Washington State Supreme Court on the issue of Racial Disproportionality and the Juvenile Justice System. The purpose of the event was to initiate a dialogue on racial disproportionality in the juvenile justice system and to explore new and innovative ways to reduce it. The presentation also acknowledged that the problem of over-representation of youth of color in the juvenile justice system is complex and requires a systemic, collaborative response from a multitude of stakeholders.

Recognizing that no single system stakeholder – court, prosecutors, defense, or law enforcement – bears sole responsibility for the over-representation of youth of color, the Task Force developed a series of recommendations that provide a systemic collaborative framework to respond to this urgent concern. The full set of recommendations is attached for your convenience.

Chief Justice Madsen has asked the Minority and Justice Commission to formally convene the various stakeholders named in the Task Force Report in order to assess whether any of the recommendations have been implemented and what future steps might be taken together to reduce disproportionality. In addition, the Supreme Court has invited the Commission to convene another symposium in 2013 that will report on our findings and to share any successful projects.

Administrative Office of the Courts  
Post Office Box 41170 ♦ Olympia, Washington 98501-1170  
Telephone (360) 705-5290 ♦ Telefacsimile (360) 956-5700  
Website: [www.courts.wa.gov](http://www.courts.wa.gov)

In order to get this work done in a timely manner, the Minority and Justice Commission established a Juvenile Justice Committee. We invited Ms. Carla Lee, from the Center for Children & Youth Justice, to serve as chair of the Committee and she has graciously accepted the appointment.

Thus, we are now inviting you to join us in our first roundtable table meeting to report on what steps, if any, your organization might have taken in response to the Task Force recommendations re: racial disproportionality in our juvenile justice system. The meeting will take place on Thursday, December 20, 2012 from 8:00 am to 1:00 pm at the Washington State Bar Association Office, 1325 Fourth Avenue, Suite 610, Seattle, Washington 98101.

We will follow-up this letter with a phone call to determine your interest and to identify a representative who can attend the meeting.

We thank you in advance for your participation. Our goal is to create a juvenile justice system where all youth are treated are treated fairly and equitably and hope that we can count on you to join us.

Sincerely,



---

Justice Charles Johnson  
MJCOM Co-Chair



---

Judge Mary Yu  
MJCOM Co-Chair

The Supreme Court  
State of Washington

BARBARA A. MADSEN  
CHIEF JUSTICE  
TEMPLE OF JUSTICE  
POST OFFICE BOX 40929  
OLYMPIA, WASHINGTON  
98504-0929



(360) 357-2037  
FAX (360) 357-2085  
E-MAIL J\_B.MADSEN@COURTS.WA.GOV

November 21, 2012

Dear Judges, Court Administrators, County Clerks:

At the Supreme Court's November administrative en banc conference, I was honored to be re-elected by my colleagues to a four-year term as chief justice. I am grateful for the trust the court has placed in me to continue in this important position, and I look forward to working with all of you over the next four years.

As a decentralized court system, the role of chief justice offers a unique opportunity to provide leadership to the branch alongside the judges and court administrators of our appellate, superior, and limited jurisdiction courts and our county clerks throughout Washington State. Before taking the oath of office for this second term in January, I wanted to discuss my priorities for the next four years directly with you.

- **Improving our budget process.** I am proud of the strides we have made to ensure that judicial branch budget requests are as cohesive as possible and represent our highest priorities. This is particularly important as Washington continues to experience slow economic and financial recovery. With the enhancement to the budgeting process instituted this year, representatives from each level of court, other judicial branch agencies, and the BJA, have a better opportunity to provide valuable input and help in achieving a unified position in working with the other branches of government. I am committed to continuing this tradition of transparency and collaboration at the earliest stages of the budget development process and to finding additional ways to increase participation by all levels of courts and our justice partners.

- **Enhancing the BJA's role as a policy-setting body.** In addition to my ongoing commitment to planning for our future, a critical first step in this effort will be to restructure the Board for Judicial Administration (BJA) to strengthen its role as a policy-setting body.

At a BJA retreat in September, we started this process by forming two work groups that will meet during the next 90 days to (a) review existing boards, commissions, task forces, and other entities to determine whether any of these can be combined to reduce duplication of efforts, and (b) develop recommendations for the restructuring of the BJA in order to be the most effective in the future. I am grateful to the leadership of BJA co-chair, Thurston County Superior Court Judge Chris Wickham, in these efforts, as well as the leaders of our appellate, superior, and district and municipal courts and look forward to starting the new year with recommendations that will further strengthen and unify our branch.

- **Fostering regional courts that best serve the public.** Our courts of limited jurisdiction are truly the "people's courts" with more than two million case filings per year. This is where most citizens interact with the judicial system, and we need to foster an approach that best serves the public. With more than 170 municipalities currently contracting with a district or municipal court, it is imperative that we examine the most efficient and cost effective method of providing judicial services to the citizens of Washington State. Many community leaders are interested in supporting cooperative operational arrangements among municipalities in the delivery of municipal court services, a concept that is broadly described as regional courts.

Thanks to a grant from the State Justice Institute, the National Center for State Courts is currently exploring existing configurations to better understand the attributes of combined courts that contribute to better court performance and fiscal efficiency. I would like to express my thanks to the BJA's Regional Court Study Oversight Committee, chaired by Judge David Svaren of Skagit County District Court, which is guiding this process. The committee work is scheduled to be completed at the first of the year, and I look forward to the report.

- **Finding ways to address racial disproportionality in our justice system.** As justices and judges, we are deeply committed to reducing racial disproportionality in our justice system, particularly in light of new research providing more detail on where disproportionality exists. The Task Force on Race & the Criminal Justice

System set us on a path to gather and examine data on disproportionality in our justice system, and to then recommend and help follow through on solutions. Following presentations by the task force, the Supreme Court requested that the Minority and Justice Commission take the lead on implementing recommendations of the task force and coordinating a roundtable at the Supreme Court to discuss our progress. The Washington State Center for Court Research, which operates within the Administrative Office of the Courts (AOC), has been hard at work collecting and sharing data not just on a statewide level but also county-by-county. It is the specific details at the county and court level that can help us determine the causes for disproportionality—which can vary as significantly as our counties vary—and guide our efforts in enacting solutions.

My colleagues and I take these recommendations very seriously and will continue to work as a branch to reduce and eliminate racial disproportionality and ensure that justice is administered equally for all of our residents.

- **Enhancing diversity and inclusion within our court system.** While we work to address racial disproportionality affecting court customers, we must remember to also look within to support diversity in our attorneys, judges, and court staff. Members of the public gain confidence in our system when they can walk into a court and see people like themselves—including women and minority judges and attorneys and staff—as part of the mix of professionals overseeing justice in their cases.

One way we work to support increasing diversity in the court community is through the Initiative for Diversity. The Initiative works through a broad partnership including the Gender and Justice Commission, the Minority and Justice Commission, minority bar association, law schools, the Washington State Bar Association (WSBA), and many law firms to produce measurable progress toward a legal profession that promotes diversity among lawyers. A diverse legal community is critical to ensuring a fair and unbiased legal system. I am committed to continuing to work with the Washington State Bar Association, law schools, courts, and law firms to find ways to increase opportunities for inclusion.

- **Supporting a transformation of AOC.** Finally, I am delighted to start this new term as Chief Justice with the assistance of Washington's new State Court Administrator Callie Dietz. As Callie mentioned in her letter of introduction to you, she is working to transform the AOC to provide better service from

technological advances to research and planning. While changes of this scale take time, I am confident that our shared vision of enhancing communications with our court family and external stakeholders and strengthening our relationships with the executive and legislative branches will be achieved.

Each of us has an important role to play in the success of these initiatives, which are critical to the success of the branch in meeting our mission of providing justice to the people of Washington. As we move forward I look forward to working with you and to keeping you informed each step of the way either with direct e-mail communications, or in our electronic newsletter for the judiciary, *Full Court Press*.

I would also like to take this opportunity to invite you to attend the 2013 State of the Judiciary Address, which is tentatively scheduled for January 23 at the House of Representatives Chamber. This address will be coordinated with the January BJA meeting, and there is plenty of seating in the gallery should you be able to join us in person. Further details will be provided on the courts' website.

It is an honor to serve you, and if you should have any questions, suggestions or concerns regarding the areas outlined above, or facing the judiciary in general, please contact me at 360/357-2037 or Callie Dietz at 360/357-2120.

Sincerely,



Barbara A. Madsen  
Chief Justice

c: Supreme Court Staff  
AOC Staff  
Joanne Moore  
Paula Littlewood  
Reiko Callner  
Jim Bamberger

WASHINGTON STATE MINORITY AND  
JUSTICE COMMISSION BYLAWS

**PREAMBLE**

On October 4, 1990, the Supreme Court established the Washington State Minority and Justice Commission to identify problems and make recommendations to ensure fair and equal treatment in the state courts for all parties, attorneys, court employees and other persons. The Commission was created (1) to examine all levels of the state judicial system in order to particularly ensure judicial awareness of issues affecting persons of color in the judicial system in order to achieve a better quality of justice; and (2) to make recommendations for improvement to the extent it is needed.

**ARTICLE I**

**Purpose**

- 1.1 The Minority and Justice Commission is charged with determining whether racial and ethnic bias exists in the courts of the State of Washington and to the extent that bias exists, taking creative steps to overcome it. To the extent that such bias does not exist, the Commission takes creative steps to prevent it.

**ARTICLE II**

**Membership**

- 2.1 The Minority and Justice Commission is co-chaired by a Supreme Court Justice, designated by the Chief Justice.
- 2.2 The other co-chair is a Member Chair of the Commission, who shall be elected from the ~~twenty one (21)~~thirty-five (35) Commission members by a majority either when the Commission is renewed by order of the Supreme Court or upon resignation of the Member Chair (Co-chair).
- 2.3 The Commission shall consist of a maximum of thirty-five (35) members, ~~twenty-one (21) members~~, appointed by the Supreme Court, representing an approximate mix of judges of all levels of court, members of the legal system and private citizens of the State of Washington. Members should be chosen to assure racial, ethnic, gender, cultural and geographic diversity.
- 2.4 All appointments of the ~~twenty one (21)~~thirty-five (35) members shall be for a four (4) year renewable term. Vacancies shall be filled by the Supreme Court upon recommendations made by Commission.
- 2.5 At the end of the first term, there will be an option to renew for another four (4) year term if both the Commission member and the Commission co-chairs consent to a second term.

2.6 At the end of a member's second term, the Commission co-chairs will evaluate whether a third term is in the Commission's best interest.

2.7 No Commission member shall be appointed for more than three consecutive terms.

~~2.5 Technical Support members may be appointed at any time by the Commission co-chair(s) and may be asked to continue at the end of each calendar year.~~

### ARTICLE III

#### **Standing Committees**

3.1 The Executive Committee shall consist of the Commission co-chair(s) and chair(s) of each standing committee.

3.2 The Commission co-chair(s) shall appoint such standing committees as the work of the Commission shall reasonably require.

3.3 The Commission co-chair(s) shall appoint a chair for each standing committee, who shall serve at the pleasure of the Chair(s).

3.4 The Commission co-chairs shall be responsible for speaking publicly on behalf of the Commission. No Commission member may make a public statement about the Commission without the consent of the Commission co-chairs.

### ARTICLE IV

#### **Ad Hoc Committees**

4.1 The Chair(s) may appoint such ad hoc committees as the work of the Commission shall from time to time require. The Chair(s) shall appoint a chair for such ad hoc committees from among the Commission members, but may staff these committees with non-Commission members, with the advice and consent of a majority of the quorum present when such appointments are made.

### ARTICLE V

#### **Quorum**

5.1 A quorum shall consist of fifty (50) percent plus one or more of the ~~twenty-one (21)~~ thirty-five (35) Commission members. Vacancies shall not be considered. A member participating in a meeting by teleconference, video conference, or other electronic means approved by the Commission shall be counted in the determination of the quorum.

- 5.2 Commission action shall be by majority vote of the ~~twenty-one (21)~~thirty-five (35) Commission members present or participating by teleconference, video conference, or other electronic means approved by the Commission, so long as a quorum is present.
- 5.3 In the absence of a quorum at a regularly scheduled meeting, the Executive Committee may take contingent action on business the Chair(s) determine to require action by the Commission prior to the next regularly scheduled meeting.
- 5.4 No proxy voting shall be allowed.

## ARTICLE VI

### **Meetings**

- 6.1 The AOC staff serve as recording secretary for the Commission.
- 6.2 Commission meetings shall be held at least four (4) times a year. Additional meetings may be scheduled or specially called at the discretion of the Chair(s). Reasonable notice shall be given to each member. Participation in meetings of the Commission may be held by teleconference, video conference, or other electronic means approved by the Commission.

## ARTICLE VII

### **Special Funding**

- 7.1 In addition to such funding as shall be available through the AOC budgeting process, the Commission is authorized to seek and accept funding through appropriate processes and from appropriate sources to carry out Commission projects and purposes. Any funds so obtained shall be administered under proper auditing controls by AOC.

## ARTICLE VIII

### **Amendments to Bylaws**

- 8.1 These bylaws may be amended or modified at any regular or special Commission meeting, at which a quorum is present, by majority vote. No motion or resolution for amendment may be considered at the meeting in which it is proposed.



# Colloquy Regarding Immigration Consequences

## Notice at Arraignment re: Immigration Consequences

**Court to Defendant:** You are not required to disclose your immigration or citizenship status to the court. But if you are not a citizen of the United States you should tell your lawyer, even if you do not have legal immigration status to be here, because you have the right to receive advice from your lawyer about the specific consequences and risks that your case may have on your immigration status. Depending on the facts of your case, a plea of guilty or a conviction at trial can result in your deportation and may have other negative immigration consequences, such as preventing you from gaining citizenship or lawful status to remain in the United States. In some cases, if you are convicted, detention and deportation will be required. Defense counsel must advise a noncitizen client of adverse immigration consequences.

## Colloquy for the Beginning of Trial re: Immigration Consequences

**Court to Defendant:** You are not required to disclose your immigration or citizenship status to the court. If you are not a citizen of the United States, whether or not you have lawful immigration status, a conviction may result in detention, deportation, exclusion from the United States, or denial of naturalization or other immigration benefits, depending on the specific facts and circumstances of your case. In some cases, detention and deportation will be required. Immigration law is a complex area of law and any changes in the law could affect the consequences of a conviction. Your lawyer must advise you about these issues. You are not entitled to an immigration lawyer at public expense.

## Or For a Self-Represented Individual (proceeding pro se)

*(This advisement should also be given when the court grants a waiver of right to counsel.)*

**Court to Defendant:** You are not required to disclose your immigration or citizenship status to the court. But if you are not a citizen of the United States, you have the right to receive advice from a lawyer about the specific consequences and risk that your case may have on your immigration status. You are not entitled to an immigration lawyer at public expense. Depending on the facts of your case, a plea of guilty or a conviction at trial can result in your deportation and may have other negative immigration consequences, such as preventing you from gaining citizenship or lawful status to remain in the United States. In some cases, if you are convicted, detention and deportation will be required. This is a complicated area of law and if applicable, I strongly advise you to talk with an attorney. Do you wish to set this over so that you can consult with an attorney?

**Court:** *Counsel, the Court wishes to ensure that you have complied with your obligations to advise your client of any adverse immigration consequences that may follow from this plea. I am not asking you to disclose anything about your client's citizenship or immigration status. Do you need any additional time to discuss this issue with your client?*

# Colloquy Regarding Immigration Consequences

## Colloquy for Entering a Plea re: Immigration Consequences

**Court to Defendant:** You are not required to disclose your immigration or citizenship status to the court. If you are not a citizen of the United States, whether or not you have lawful immigration status, your plea or admission of guilt [or entry of an *Alford* plea] may result in detention, deportation, exclusion from the United States, or denial of naturalization or other immigration benefits, depending on the specific facts and circumstances of your case. In some cases, detention and deportation will be required. Immigration law is a complex area of law and any changes in the law could affect the consequences of a conviction. Your lawyer must advise you about these issues. You are not entitled to an immigration lawyer at public expense.

**Court:** *Counsel, the Court wishes to ensure that you have complied with your obligations to advise your client of any adverse immigration consequences that may follow from a conviction. I am not asking you to disclose anything about your client's citizenship or immigration status. Do you need any additional time to discuss this issue with your client?*

## Or For a Self-Represented Individual (proceeding pro se)

*(This advisement should also be given when the court grants a waiver of right to counsel.)*

**Court to Defendant:** You are not required to disclose your immigration or citizenship status to the court. If you are not a citizen of the United States, whether or not you have lawful immigration status, your plea or admission of guilt [or entry of an *Alford* plea] may result in detention, deportation, exclusion from the United States, or denial of naturalization or other immigration benefits, depending on the specific facts and circumstances of your case. In some cases, detention and deportation will be required. Immigration law is a complex area of law and any changes in the law could affect your plea. You have a right to seek advice from a lawyer about these issues before you take a plea or admit guilt to any offense. You are not entitled to an immigration lawyer at public expense. Upon request, the court will allow you additional time to consider the appropriateness of the plea in light of this notice. Do you wish to have additional time to talk with a lawyer?

---

If the answer is yes to any of the above, the court can provide the information below:  
**Washington Defender Association's Immigration Project for advice and assistance:**

**Website:** [www.defensenet.org](http://www.defensenet.org)

**Telephone:** 206-623-4321

*Provided by the following Washington State Supreme Court Commissions:  
Gender and Justice & Minority and Justice  
This project supported by State Justice Institute Grant (SJI-10-E-096)*

# Immigration Consequences

## United States Supreme Court Decision in *Padilla v. Kentucky*

In *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S. Ct. 1473, (2010), a native of Honduras faced deportation after pleading guilty to transportation of a large amount of marijuana in his tractor-trailer in the Commonwealth of Kentucky. Padilla claimed that he pleaded guilty based on his attorney's advice that he "did not have to worry about immigration status since he had been in the country so long." Contrary to his attorney's advice, the drug charge made Padilla's deportation mandatory. Padilla argued he was entitled to post-conviction relief because he would have gone to trial if he had received correct advice from his lawyer before agreeing to enter his plea. The Kentucky Supreme Court denied his request for post-conviction relief.

The United States Supreme Court reversed and remanded. Accepting Padilla's assertions as true, the Court concluded he carried his burden of showing his attorney provided ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984) by failing to advise him of the immigration consequences of the plea. Under *Strickland*, a defendant must demonstrate both deficient performance and resulting prejudice. *Strickland*, 466 U.S. at 687.

In *Padilla*, the Court held that an attorney has an obligation under the Sixth Amendment to advise a defendant regarding deportation consequences of entering into a guilty plea. "[A]dvice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel." *Padilla*, 130 S. Ct. at 1482. The Court emphasized the unique nature of deportation and the importance of advising defendants about the deportation consequences for a criminal charge.

[C]hanges to our immigration law have dramatically raised the stakes of a noncitizen's criminal conviction. The importance of accurate legal advice for noncitizens accused of crimes has never been more important. These changes confirm our view that, as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part . . . —of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.

....  
.. The severity of deportation—"the equivalent of banishment or exile," *Delgado v. Carmichael*, 332 U.S. 388, 390-91, 68 S. Ct. 10, 92 L. Ed. 17 (1947)—only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation. *Padilla*, 130 S. Ct. at 1480, 1486.

# Immigration Consequences

## United States Supreme Court Decision in *Padilla v. Kentucky*

The Court rejected the rationale previously used by other courts that there was a distinction between “direct” and “collateral” consequences, and that defense counsel did not have a duty to advise a client about immigration and deportation consequences. *Padilla*, 130 S. Ct. at 1481-82.

We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally “reasonable professional assistance” required under *Strickland*. Whether that distinction is appropriate is a question we need not consider in this case because of the unique nature of deportation.

Deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence. The collateral versus direct distinction is thus ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation. We conclude that advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel. *Strickland* applies to Padilla's claim.

The Court in *Padilla* rejected the “limited conception” that the Sixth Amendment right to effective assistance of counsel did not include advising a defendant about the immigration consequences of a criminal conviction.

The Court emphasized that for “at least the past 15 years, professional norms have generally imposed an obligation on counsel to provide advice on the deportation consequences of a client’s plea.” *Padilla*, 130 S. Ct. at 1485. The Court also defined the scope of the duty to advise a noncitizen client about immigration consequences as follows:

When the law is not succinct and straightforward . . . , a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. . . . But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.

*Padilla*, 130 S. Ct. at 1483.

*Provided by the following Washington State Supreme Court Commissions:  
Gender and Justice & Minority and Justice  
This project supported by State Justice Institute Grant (SJI-10-E-096)*

# Immigration Consequences Washington Supreme Court Decision in *State v. Sandoval*

In *State v. Sandoval*, 171 Wn. 2d 163 (2011), the Washington Supreme Court followed the decision in *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S. Ct. 1473 (2010), and vacated the defendant's conviction because he received ineffective assistance of counsel regarding the advice his attorney provided on the immigration consequences of pleading guilty to rape in the third degree. The Court held that not only did defense counsel's performance fall below an objective standard of reasonableness, but the defendant also met his burden of showing prejudice under the *Strickland v. Washington* test.<sup>1</sup>

## Key Points

Issue Presented Was Narrowly Construed - The Court narrowly construed the issue presented to focus on the specific advice defense counsel gave to his client regarding deportation consequences of entering into a plea. The Court did not address other issues related to the immigration consequences, such as the filing of a criminal charge or a conviction on the ability of a noncitizen to obtain discretionary relief from removal.

Clear vs. Unclear Risk of Deportation - As in *Padilla*, the Court in *Sandoval* held that defense counsel has an affirmative duty under the Sixth Amendment to provide effective assistance of counsel regarding the deportation consequences of entering into a plea. In doing so, counsel must identify relevant provisions of the immigration statute and research relevant case law. The advice required depends on whether the risk of deportation is "truly clear." If immigration law is clear, defense counsel must correctly advise the client that pleading guilty would lead to deportation. If immigration law is not clear, counsel must advise the client that the charges may carry the risk of possible adverse immigration consequences. (It is not possible to craft a simple list of "clear" crimes that trigger deportation since such determinations are fact-specific.)

Boilerplate Advisory Language In Plea Form Does Not Meet Defense Counsel's Sixth Amendment Duty - The Court also held that under *Padilla*, the deportation warnings under RCW 10.40.200 that are in the plea form do not mitigate defense counsel's Sixth Amendment obligations.

Strickland's Prejudice Analysis - Unlike in *Padilla*, the Washington Supreme Court in *Sandoval* reached the prejudice prong of the *Strickland* test, and concluded the defendant showed that he would not have entered into the plea if he had known about the immigration consequences. Although the disparity in the punishment between rape in the third degree and the charged crime of rape in the second degree was significant, the Court states that "given the severity of the deportation consequence," it would have been rational for a lawful, permanent resident to go to trial.

---

<sup>1</sup> Washington has adopted the two-prong test set forth in *Strickland* in determining whether counsel was ineffective. *State v. Cienfuegos*, 144 Wn.2d 222, 226-27 (2001). Whether an attorney provided effective assistance of counsel is a fact-specific inquiry. *Strickland*, 466 U.S. at 688-89.

# Immigration Consequences

## Washington Supreme Court Decision in *State v. Sandoval*

### Duty of the Court to Ensure Advice is Given on Immigration Consequences

The Court must ensure each defendant is advised of possible immigration consequences as required by RCW 10.40.200. However as noted in Padilla and *Sandoval*, just providing the warnings in RCW 10.40.200 is not sufficient.

Defense counsel has a duty to properly advise their client of the actual immigration or deportation consequences. Accordingly, the Court should inquire on the record as to whether there has been an opportunity for defense counsel to do so. Sample colloquies for the court to give at arraignment, before taking a plea, and at the beginning of trial are set forth in the bench cards.

Any colloquy adopted by the Court regarding immigration consequences should be applied uniformly to all individuals since selecting individuals by their names, appearance, or ability to speak English is improper. The Court should not make inquiries regarding an individual's legal status or ask counsel what advice was provided to a client. The proper inquiry is whether such advice has been provided. If requested, the Court should afford counsel the opportunity to review the immigration consequences with a client by setting the matter over to the end of the calendar or continuing the plea to another day.

The Court may also refer counsel to the attorneys at the Washington Defenders Association's (WDA) Immigration Project. The WDA Immigration Project, funded by the State, provides guidance to assist defenders and prosecutors in addressing the complex interplay between immigration and criminal law. Nationally recognized experts, Immigration Project staff attorneys Ann Benson ([abenson@defensenet.org](mailto:abenson@defensenet.org)) and Jonathan Moore ([jonathan@defensenet.org](mailto:jonathan@defensenet.org)) can be reached by email. Additional resources are available at the WDA website at: [www.defensenet.org](http://www.defensenet.org).

*Provided by the following Washington State Supreme Court Commissions:  
Gender and Justice & Minority and Justice  
This project supported by State Justice Institute Grant (SJI-10-E-096)*



# 55<sup>TH</sup> WASHINGTON JUDICIAL CONFERENCE

September 22 - 25, 2013

Print

Save

Clear Form

SUBMIT

## EDUCATION SESSION PROPOSAL FORM

Due Date: **JANUARY 11, 2013**

<b>Proposed by:</b>		
<b>Type:</b> <input type="checkbox"/> Plenary <input type="checkbox"/> Choice	<b>Time:</b> <input type="checkbox"/> 60 Minutes <input type="checkbox"/> 90 Minutes <input type="checkbox"/> 120 Minutes <input type="checkbox"/> 180 Minutes <input type="checkbox"/> Other:	<b>Limit Class Size?</b> <input type="checkbox"/> Yes    How Many?: <input type="checkbox"/> No
<b>Target Audience</b>		
<b>Court Level:</b> <input type="checkbox"/> All Levels <input type="checkbox"/> Appellate <input type="checkbox"/> Superior <input type="checkbox"/> District <input type="checkbox"/> Municipal	<b>Job Type:</b> <input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Other:	<b>Career Level:</b> <input type="checkbox"/> All Judges <input type="checkbox"/> Senior Judges <input type="checkbox"/> Mid-Career Judges <input type="checkbox"/> New Judges <input type="checkbox"/> Retired
<b>Session Information</b>		
<i>Session Topic/Title:</i>		
<i>Session Description (articulating key issues to be presented):</i>		
<i>Session Objectives (Participants will be able to . . . ):</i>		
<b>Materials</b>		
<i>Are there materials for the session? (i.e., case law, rules, seminal law review articles, etc.) If so, please briefly describe:</i>		

Contact: Jesse Walker (360) 705-5280 or jesse.walker@courts.wa.gov



**55<sup>TH</sup> WASHINGTON JUDICIAL CONFERENCE**  
September 22 - 25, 2013

**EDUCATION SESSION PROPOSAL FORM**

<b>Faculty &amp; Planning</b>
<i>Recommended person(s) to be involved in planning:</i>
<i>Has any preparatory work been completed?</i>
<i>Recommended or Potential Faculty:</i>
<b>Funding</b>
<i>Please estimate any expenses associated with this session:</i>
<input type="checkbox"/> Honorarium: \$ <input type="text"/>
<input type="checkbox"/> Travel: \$ <input type="text"/>
<input type="checkbox"/> Lodging: \$ <input type="text"/>
<input type="checkbox"/> Audio Visual: \$ <input type="text"/>
<input type="checkbox"/> Other: \$ <input type="text"/>
<input type="text" value="\$ 0.00"/>
<i>What expenses are you sponsoring?</i>

**Print**

**Save**

**Clear Form**

**SUBMIT**



## When Worlds Collide: How Immigration and State Civil Law Intersect

A free webinar to be held

**Monday, December 17, 2012**

**12:15 p.m. to 1:30 p.m.**

(Meeting room opens at 12:00 p.m.)

As the U.S. population is becoming increasingly diverse, state court decisions can have a substantial, if not determinative impact on immigration law issues. In addition, immigration law issues may also influence litigants' choices, ultimately having a significant influence on a court's decision making. In this webinar we will cover how federal immigration law interacts with state civil law, addressing issues including: domestic violence, employment, family law, dependency, and adoption.

### Register Now!

Click here to register online: <https://www.surveymonkey.com/s/XFYMGRZ>

**OR**

Fax or email the below information to Pam Dittman

Fax: 360.956.5700 ♦ Phone: 360.704.4031 ♦ e-mail: [pam.dittman@courts.wa.gov](mailto:pam.dittman@courts.wa.gov)  
by **Friday, December 14.**

Participant Name: \_\_\_\_\_

Title: \_\_\_\_\_ Court: \_\_\_\_\_

e-mail: \_\_\_\_\_ Phone: \_\_\_\_\_



 WASHINGTON COURTS  
electronic Communication,  
Collaboration & Learning

*Sponsored by:*  
*State Justice Institute (Grant SJI 10-E-096)*  
*Gender & Justice Commission*  
*Minority & Justice Commission*

