



Board for Judicial Administration (BJA)

Friday, February 17, 2012 (9:00 a.m. – 3:00 p.m.)

AOC, 1112 Quince St SE, Olympia, Washington

MEETING MINUTES

Members Present:

Chief Justice Barbara Madsen, Co-Chair
Judge Chris Wickham, Member Chair
Judge Marlin Appelwick
Mr. Stephen Crossland
Judge Ronald Culpepper
Judge Sara Derr
Judge Deborah Fleck
Judge Janet Garrow
Mr. Jeff Hall
Judge Laura Inveen
Judge Jill Johanson
Judge Teresa Kulik (by phone)
Judge Michael Lambo
Ms. Paula Littlewood
Judge Craig Matheson
Judge Jack Nevin
Judge Kevin Ringus
Judge Ann Schindler
Judge Gregory Tripp

Guests Present:

Mr. Jim Bamberger
Mr. M. Wayne Blair
Ms. Bonnie Bush (by phone)
Ms. Darby DuComb
Justice Steven González
Ms. Joanne Moore
Ms. Leslie Savina
Judge Mary Yu

AOC Staff Present:

Ms. Beth Flynn
Mr. Steve Henley
Mr. Dirk Marler
Ms. Mellani McAleenan
Mr. Ramsey Radwan

The meeting was called to order by Chief Justice Madsen.

Implementation of GR 34

Judge Yu was involved with the drafting of GR 34 when she was the Chair of the Superior Court Judges' Association (SCJA) Rules Committee. At the time, there was concern by some judges regarding whether or not they could waive fees in civil cases and they wanted to create some rules and practices. GR 34 was adopted in 2008 and the rule directed the Administrative Office of the Courts (AOC) to create pattern forms related to GR 34. The intent of GR 34 was to promote access to courts and remove financial impediments for those without financial resources and also an attempt to have some uniformity across the state.

Judge Yu is asking for the BJA's assistance with the implementation of GR 34 in a way that is clear and uniform throughout the state.

29 of 39 counties were surveyed regarding their compliance with GR 34. Smaller counties are in complete compliance. Below are some of the results of the survey:

- It is the experience of many civil legal aid providers that locally-created forms that deviate from the AOC pattern forms are being created by local courts.
- Some courts have rejected the AOC forms.
- Deferral of payments and payment plans have been established.
- Some courts are imposing fees for services.
- Some waivers are not being granted despite the poverty of the applicant.

Judge Yu gave some examples of actual court cases showing how courts around the state are implementing GR 34 in a non-uniform manner.

Judge Yu would like the BJA to consider the following:

- Approval of a resolution that would express a commitment to the full intent of GR 34.
- A letter from the BJA to each judicial officer outlining concerns related to GR 34 and a brief discussion of the spirit and intent of the rule.
- A letter from the BJA to presiding judges requesting assistance in achieving full compliance.
- A letter to the clerks of each county concerning fees for services and multi-layered systems for waivers.
- Judicial education focused on assessing poverty and understanding federal guidelines, sensitivity training on poverty and the connection to domestic violence, and implementation of GR 34.

The survey focused on superior courts because of dissolutions. Judge Yu does not know if the scope and depth of the problem is the same in the district and municipal courts.

The presentation by Judge Yu was followed by a discussion regarding practices in courts. Some of the comments were:

- It was thought that courts had the discretion to come up with payment plans to pay the fees.
- Most courts do not have financial screeners, they do them on the fly and the pattern forms do not screen very well.
- If GR 34 is mandatory, instead of an authorization, it would not be a problem to comply. Judge Yu explained that she wanted the rule to be discretionary.
- It was pointed out that in some cases, once the dissolution is complete, the fees can be paid. Judge Yu responded that she does not think a total fee shifting occurs in the majority of cases.

It was moved by Judge Fleck and seconded by Judge Tripp that the BJA convene a work group to discuss the GR 34 compliance issues brought up by Judge Yu and to draft some proposals, which do not have to be based on Judge Yu's suggestions, to deal with the compliance issues. The motion carried.

The work group should be broad-based with varying opinions. Proposed work group members are: Judge Yu, Justice González, Mr. Blair, Judge Fleck, Mr. Bamberger (to provide assistance), Ms. Littlewood and Ms. Savina. In addition, the work group membership should include a County Clerk and a District and Municipal Court Judges' Association (DMCJA) representative. Interested members can contact Chief Justice Madsen or Judge Wickham if they would like to participate in the work group.

It is expected that the work group will report to the BJA in April.

December 9, 2011 BJA Meeting Minutes

It was moved by Judge Ringus and seconded by Judge Lambo to approve the December 9, 2011 BJA meeting minutes. The motion carried.

Regional Courts Work Group

Judge Derr reported that the last meeting of the Regional Courts Work Group was held in January. During that meeting the group decided to apply for a State Justice Institute (SJI) grant to fund a study of existing Washington State court models. Data gathering is very important and at a minimum the study will look at court models that have been identified as 1) using the district court as a hub, 2) multiple municipal courts working together, and 3) one other district court model which has not yet been determined.

There is a need for some governance at a regional court but the group could not agree on what the governance should look like.

Judge Derr asked that the BJA approve the work group's approach—not necessarily the details but the overall concept and philosophy and grant implementation.

There was a question about the amount of court staff time that would be devoted to data collection during the study of existing court models. Mr. Hall responded that the study would turn to local courts to verify their staffing levels and get copies of their budgets. He is hoping that the impact on the local staff will not be too great. Staff time will most likely be spent on confirming information and maybe taking a few follow-up phone calls.

It was moved by Judge Schindler and seconded by Judge Inveen to approve the proposed direction and recommendation by the Regional Courts Work Group. The motion carried.

Trial Court Operations Funding Committee (TCOFC) Appointments

In December the BJA approved a revamped TCOFC charter. It is now time to fill the committee and Ms. McAleenan provided a membership list for the BJA's approval. The BJA needs to determine a term start date and the length of the terms are listed on the recommended membership list. There are one and two year terms and after this first group of members, all the terms will be for two years.

It was moved by Judge Ringus and seconded by Judge Garrow to approve the appointment to the Trial Court Operations Funding Committee of the committee members provided, with the terms indicated, and a start date of January 1, 2012. The motion carried.

Legislative Report

The full legislative report is located behind Tab 5 and includes all of the bills the BJA has taken a position on this session or last session if the bills remained active. In terms of policy legislation there are not many that the BJA has concerns about. Ms. McAleenan provided information about the following bills:

- HB 2196 – Collaborative Law Act – the Washington State Bar Association (WSBA) is working on an amendment to remove the provisions relating to the governance of the practice of law and the BJA will support the amendment.
- The traffic infraction surcharge fee bill died but it could be used to help balance the budget and be resurrected.
- 2SSB 6292 – Juvenile Records Access – This bill died but prior to that it was amended to eliminate fiscal impact.
- SB 6025 – District Court Judge Retirement Age Bill – This bill is still alive. Representative Jamie Pedersen gave it a hearing yesterday and it is on the executive session list so hopefully he has plans to pass it out of committee.
- The ethics in public service bill was amended on the floor in a manner that will impact judicial branch employees. Mr. Marler and Ms. McAleenan met with the committee chair, Representative Sam Hunt, this morning regarding amendments. Representative Hunt stated the amendments could be given to him but he didn't think the bill will move. The bill will be heard at 1:30 p.m. on Monday.

The House Republican budget will be released at noon today. The House Democrats will release their budget on Tuesday at noon and the Senate will release their budget after the House Democrats. So far, good things are being said about the budget. There could be a JSTA fee increase in order to backfill the budget cuts.

DWLS 3 Reform Bill

Ms. DuComb presented information about reforming the law related to driving while license suspended third degree (DWLS 3). Some of the points Ms. DuComb brought up during her presentation were:

- The most common reason for DWLS 3 filings is simply the failure to pay traffic infraction fines. There is no correlation between the failure to pay and public safety.
- 43% of the DWLS 3 filings are made up of African-Americans.
- In Washington State, 83.5% of us drive to work so a driver's license is critical for most workers. The working poor need to be street legal so they can drive to work, school, for health care, and the grocery store. Suspending a driver's license for non-driving reasons is not useful. We need to change our policy.
- DWLS 3 makes up 50% of the King County docket. Almost \$300,000 was spent in King County on DWLS 3 cases in 2006. King County stopped prosecuting most DWLS 3

cases in 2010 and saved over \$200,000/year. It is estimated that if Washington stops prosecuting most DWLS 3 cases the state could save over \$7 million a year. DWLS 3 would still be filed but not for non-payment of infractions for non-moving violations. The state would still suspend for moving violations. SB 6234 is pending now in the Legislature and it addresses this issue.

Below are some of the comments related to DWLS 3:

- There are currently services in place in local courts to deal with alternatives to DWLS 3. Some examples are diversion, community service, payment plans, etc. This is an issue of responsibility and accountability. The DMCJA will not vote to support the bill.
- Most people have two to three speeding tickets throughout their entire lives. Others have traffic issues two to three pages long because they just ignore the fines. What is criminal is when people ignore the order not to drive their car. The cost to fill up a car with gas is more than paying the fine. They are choosing not to pay their fines.
- There are negative consequences for being too poor to pay traffic infractions. Why do we continue prosecuting DWLS 3 cases?
- It is a real problem having a criminal record simply because a person did not pay his/her traffic ticket.
- Good arguments can be made about the responsibilities of drivers, issues of poverty, and issues of transportation. This is a no-win all around. It is really important for the Legislature to look at this issue in these tough economic times. The Legislature has to decide, frankly, how important the money is and how humane their laws should be.
- The BJA is in the best position to tell the Legislature how their laws are working because judges are in the trenches. The better question is if the BJA should start looking at issues like this when they are brought to the BJA's attention? Should the judiciary take the opportunity to proffer viewpoints? It is not a matter of if the BJA agrees or not but the information should be provided.

Role of the BJA

The role of the BJA has been something Chief Justice Madsen has wanted to discuss since she became Chief. She wants to find out if there is an appetite for a more robust or enhanced role of the BJA. What is it that the BJA should be doing and should the BJA be doing more or doing it in another way?

Judge Wickham stated that being a decentralized court system makes speaking with one voice necessary. This is the beginning of the conversation of the role of the BJA and he is hoping to get the conversation going so that it might be continued in an extended meeting in the future.

History of the BJA: Mr. Hall gave a brief history of BJA. The BJA was created in 1981 and in 1986 the current BJA rule was created. The Justice, Efficiency and Accountability (JEA) Commission created the BJA of today. The JEA Commission reinforced the governance versus representative role and defined the allegiance of BJA members to the judiciary at large. BJA members represent the entire judiciary, not just their court levels.

To date, the BJA primarily develops policy issues and works through the Legislature to pass legislation.

Chief Justice Madsen stated that as opposed to being proactive, the BJA has been reactive. The BJA has run some initiatives but has not done a particularly great job in all the areas the BJA was intended to work on. Should the BJA head in a different direction?

Comments from Associations: Judge Schindler commented that the judiciary does need to speak with one voice and understand what the competing demands and requirements are for all of the court levels.

Judge Inveen stated that she would like to see more substantive issues on the agenda, not just a reporting out from month to month.

Judge Tripp said he is glad to have a seat at this table. The BJA plays a very important role and the DMCJA thinks the BJA serves a purpose. Some DMCJA members have commented that the BJA is sort of like a board of directors but does not have any authority. The BJA should continue to review matters that affect all court levels and everyone needs to continue to work together.

Mr. Bamberger said that the BJA is a relative and significant body and substantive meetings are held in the framework of a subtle understanding of what the branch is and what the branch's mission is. He is of the belief that the BJA is but a shadow of what it could be. It has a responsibility to be more than just a single voice to promote justice. The BJA should set the policy initiatives to drive where the justice system goes. He is glad the BJA is having this conversation because it is time to reassess the objectives of the BJA.

Mr. Blair has been on many, work groups, task forces, commissions, and committees. He first served on the BJA in 1995 and other than a small break has been on it since then. He thinks the Legislature listens to this body when it functions in a policy-making manner and it has an enormous amount of influence. One of the issues that needs to be addressed is the relationship between the BJA and the Supreme Court. It has not been a difficult issue in the past because it has worked out relatively well but it has the potential to be decisive. What should the relationship be? Washington Courts 2000 is the task force that reconstituted the BJA and they started out in an attempt to unify the court system and the Chief Justice was going to run things. They did not get very far down that road and determined that it was better to be a collegial body.

Mr. Crossland said that his perspective of the BJA as a bar member and a member of the public is that it is really important to realize how collegial and intelligently the issues are discussed. The role that the BJA can play is vitally important to the trust and confidence of the judiciary. He applauds the BJA for stepping back and reevaluating the role of the board.

Ms. Littlewood stated that outside the judiciary the BJA is perceived as the governing council for the judicial branch but as Judge Tripp pointed out, the BJA does not have the authority to be the governing body. For the WSBA, every year the BOG turns over and the BJA has similar turnover. However, the BJA seems to operate more like a group of delegates rather than as a board. She also observed that outside the judiciary there is a perception that the Supreme Court is the head of the judiciary and the Chief Justice speaks for the courts.

Discussion: Judge Garrow has been on the BJA for more than a year and thinks it would be very helpful to have an orientation for new BJA members. She thought sharing the agendas and minutes with all members of the judiciary would help keep them advised regarding what the BJA is doing. Judge Garrow is supportive of long-range planning for the judicial branch.

Judge Fleck stated that the BJA and its members have addressed significant issues since the BJA was restructured, including among them considering and approving the work of the Time for Trial Task Force rewriting the speedy trial rule, the intensive work on Project 2001, with the legislative and constitutional changes that were recommended, the two year Trial Court Funding Task Force effort by over 100 individuals leading to the Justice in Jeopardy Initiative and the more recent efforts to develop and recommend the adoption of GR 31A addressing public access to court administrative records. She mentioned that when she was co-chair of the BJA and chair of its Long-range Planning Committee, that committee took two years just to develop the long-range plan for the BJA itself. She believes that the judicial branch is the cornerstone of our democracy and that the BJA as the deliberative, policy-making body of the branch, is critical to making the judicial branch accessible and efficient for everyone.

Judge Appelwick has had a unique experience with the BJA. He had the privilege of meeting with each court level representative and being a referee during court-level disagreements. He has attended BJA meetings off and on since 1985. From the legislative side, when the associations were at odds the way the disagreements played out created very lasting memories. In his view, the BJA is not currently a team—there are multiple teams in the room. It is more like a meeting of the warlords. No one is unpleasant about it but if the point of BJA is that it is running the judiciary, it is not treated that way. The members are meeting to protect their territory. Also, the BJA does not do much other than hear reports and he feels there is not much that is relevant to the appellate courts much of the time. Judge Appelwick thinks it is important to meet and share, but the BJA needs to be much more proactive. He believes one problem is that there is no one person who is in charge. If there was a more developed agenda, the BJA could play to those issues. To the extent that the BJA is visible as a board or branch, it needs to be for justice, as good stewards of taxpayer dollars, and for public safety. The BJA should not be more visible on salaries, benefits, and retirement issues than the previous issues. Taxpayers do not necessarily perceive judges as underpaid and overworked. He feels that the BJA can do a lot more than is currently being done collectively or individually.

Strategic Planning: Chief Justice Madsen stated that long-range planning is critical to being proactive. Currently, the direction the BJA is going in is being driven from the outside. The BJA is in the best position to know what the challenges are and what needs to be overcome. It is always deenergizing to be told what to do from the outside. Long-range planning is a way to think about who the BJA is, where the BJA wants to be, where the BJA wants to go and what the BJA can accomplish.

Mr. Henley reported that the Washington court system resembles a basic court model with four levels with several agencies plugged in. With people at the top, it becomes assumed that the people at the top run the courts which is not true. In order to avoid being in the position of being reactive as a branch, there has to be a vision of where the branch wants to be further down the road which results in how everyone else reacts to the branch.

A group has been convened to plan to plan as a branch of government. The judicial branch strategic planning group is comprised of members from various court levels. They will decide the mission, purpose and vision of the judicial branch.

Judge Garrow moved and Judge Fleck seconded that the BJA support the plan to plan group going forward. The motion carried.

The idea of a retreat in the spring was discussed and it would include a broad range of people to come together and start the process of determining the role of the BJA.

Judge Fleck moved and Garrow seconded to hold a BJA retreat to continue the role of the BJA discussion. Mr. Bamberger and Ms. Moore should be included along with a representative from the County Clerks. The Motion carried.

Budget Process

As a result of the two budget development process review meetings held last fall, Mr. Hall would like to know if the BJA wants to have a role in the vetting of projects included in the AOC budget such as projects recommended by the TCOFC, SCJA, DMCJA, Washington Association of Juvenile Court Administrators (WAJCA), and Washington State Association of County Clerks (WSACC).

The proposed role the BJA would play in the budget process is that the BJA would be presented with AOC budget proposals and make recommendations to the Supreme Court regarding the inclusion of the AOC proposals in the judicial branch budget request. The BJA would be advisory to the Supreme Court.

It was moved by Judge Inveen and seconded by Judge Appelwick that the BJA participate in the proposed budget review process with the idea that there will be some wordsmithing of the process that was presented. The motion carried.

The BJA will vote on the process after the language is finalized.

Therapeutic Courts

Ms. McAleenan said that the therapeutic courts resolution, submitted on behalf of the Association of Drug Court Professionals, will be an action item for next month. The resolution was sent to the BJA Executive Committee pursuant to the BJA resolution guidelines. There were only a few responses but there were no issues with the resolution. It is possible the BJA will want to create a more overarching framework.

If any BJA members are interesting in wordsmithing the resolution they should contact Judge Harold Clarke and he can submit a revised version of the resolution next month.

Part-time Municipal Courts in Washington

About this time last year the AOC submitted a public records request to cities asking how their courts are organized, what is the role of the presiding judge, if the court is independent, and if

there are local fees or assessments. Mr. Marler highlighted some of the things that were discovered when reviewing the information received from the cities.

- Several cities permit a reduction in the judicial salary during the term of office, many pay hourly, and off-bench activity may not be compensated.
- Most cities have four-year judicial terms, several are on different cycles, others are month-to-month and some are four-year terms but with annual renewal.
- Many provisions regarding judicial discipline/removal mirror RCW 3.50.095 but few reference the Commission on Judicial Conduct and some are problematic.
- Many ordinances and contracts give pro tem appointment authority to mayors and city managers.
- Most cities acknowledge some presiding judge role although there are some exceptions.
- Many court administrators and staff report to executive branch officials. Staff in many small courts serve multiple roles simultaneously.
- Many city organizational charts do not show an independent judiciary, judges are rarely acknowledged as leading a branch of government, and some show no court staff.
- There were few examples of local costs or fees not specified in statute.

Some suggestions for improving the way part-time municipal courts operate are:

- Review and revise ordinances and contracts to not allow compensation to be diminished during a term of service, include four-year appointments, the presiding judge will appoint pro tems and the role of the Commission on Judicial Conduct is recognized.
- Review local costs, fees and assessments.
- Consider repealing RCW 3.50.095 regarding removal of municipal court judges and amending RCW 3.50.090 to clarify authority when there is no judge available to name a pro tem.
- Consider amending GR 29.
- The BJA/DMCJA could assist judges with their councils and executives, mentor/coach new judges and educate the legal profession about the administrative role.

Mr. Hall stated that the AOC originally requested the information from the cities because there were issues that came up on an ad hoc basis at the AOC over time and AOC wanted to determine if the issues were ad hoc or systemic.

The AOC will follow-up with the cities and send individual letters to each judge and jurisdiction and let them know what was identified at individual courts.

Other Business

By consensus it was decided that the March BJA meeting would be held at 9 a.m. at SeaTac.

There being no further business, the meeting was adjourned.

Recap of Motions from February 17, 2012 meeting

Motion Summary	Status
Convene a work group to discuss the GR 34 compliance issues and draft some proposals	Passed
December 9 BJA Meeting Minutes	Passed
Approve the proposed direction and recommendation by the Regional Courts Work Group	Passed
Approve the appointment of the committee members to the Trial Court Operations Funding Committee	Passed
Support the plan to plan group going forward	Passed
Hold a BJA retreat to continue the role of the BJA discussion	Passed
The BJA will participate in the proposed budget review process	Passed

Action Items updated for February 17, 2012 meeting

<p><u>December 9, 2012 Meeting Minutes</u></p> <ul style="list-style-type: none"> Send the approved minutes to Camilla Faulk for the En Banc binders and post the approved minutes online 	Done
<p><u>Implementation of GR 34</u></p> <ul style="list-style-type: none"> Create work group to discuss how to move forward on this. Do not have to start with Judge Yu's proposal but can use the ideas she presented and come up with other ideas. Work group would consist of Judge Yu, Justice González, Wayne Blair, Judge Fleck, Jim Bamberger, Leslie Savina (NW Justice Project), Clerk's Office rep., DMCJA rep., and Paula Littlewood. Interested members can contact Chief Justice Madsen or Judge Wickham. 	
<p><u>Trial Court Operations Funding Committee Appointments</u></p> <ul style="list-style-type: none"> The committee list was approved with a start date of January 1, 2012. Mail letters of appointment. 	Done
<p><u>Role of the BJA</u></p> <ul style="list-style-type: none"> Hold a retreat to continue the discussion of the role of the BJA. Jim Bamberger and Joanne Moore want to be included and the Clerks need to be included. 	Working on dates/locations
<p><u>Budget Process</u></p> <ul style="list-style-type: none"> The BJA will participate in the budget review process but there will be some wordsmithing by the SCJA to the budget process document. 	This is on the March agenda for action
<p><u>Therapeutic Courts</u></p> <ul style="list-style-type: none"> Put on the March agenda. Members interested in wordsmithing the resolution should contact Judge Clarke. 	Done
<p><u>March BJA Meeting</u></p> <ul style="list-style-type: none"> The March meeting will be held at SeaTac and begin at 9 a.m. 	Reserved room