



Board for Judicial Administration (BJA)

Friday, July 20, 2012 (9:00 a.m. – 12:00 p.m.)

AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

MEETING MINUTES

Members Present:

Chief Justice Barbara Madsen, Chair
Judge Chris Wickham, Member Chair
Mr. Stephen Crossland
Judge Sara Derr
Ms. Callie Dietz
Judge Deborah Fleck
Judge Jill Johanson
Judge Kevin Korsmo (by phone)
Judge Linda Krese
Ms. Paula Littlewood
Judge Craig Matheson (by phone)
Justice Susan Owens
Judge Christine Quinn-Brintnall
Judge Kevin Ringus
Judge David Svaren

Guests Present:

Mr. Jim Bamberger
Ms. Bonnie Bush (by phone)
Mr. Charles Dyer
Ms. Sophia Byrd McSherry
Mr. Paul Sherfey (by phone)
Judge Laura Gene Middaugh

Public Present:

Mr. Christopher Hupy
Mr. Mark Mahnkey

AOC Staff Present:

Ms. Beth Flynn
Mr. Dirk Marler
Ms. Mellani McAleenan
Ms. Janet Skreen

The meeting was called to order by Judge Chris Wickham.

June 15, 2012 Meeting Minutes

It was moved by Judge Ringus and seconded by Judge Derr to approve the June 15, 2012 BJA meeting minutes. The motion carried.

Plain Language Forms

Project Goals: Ms. Skreen explained that the goals of the plain language court forms project include enhancing the understandability and usability of forms for non-attorneys or attorneys who are working outside their normal field. In addition, the forms should retain flexibility for practitioners. Up to 70% of litigants in family law actions are *pro se*.

Project History: The Access to Justice (ATJ) Board developed an Integrated *Pro Se* Assistance Plan and in 2009 the ATJ Board created the *Pro Se* Project. Part one, of Phase 1 in the *Pro Se* Project is to provide pattern forms for litigants in plain language.

Transcend was contracted with to translate the forms into plain language. Ms. Laurie Garber, a Northwest Justice Project attorney, is reviewing all the forms and giving feedback to Transcend. Once the form is ready, a group reviews the forms. Initially, they are using focus groups to test

the forms but they are hoping to use jury panels in the fall and use a survey questionnaire to work through the forms and give feedback while the jurors are waiting before being impaneled.

All nine of the Supreme Court justices support the project, and a letter was included in the materials indicating their support. Ms. Skreen chairs the Rally Committee and the committee gives presentations to local judiciaries, bar associations, clerks' offices, domestic violence advocates, etc. They ask for input when making the presentations.

The goal is to have all the forms out for comment soon, and implementation will occur in 2013.

Plain Language: Plain language involves the use of short, simple sentences. It uses common words with well understood meanings. For example, "stay away" replaces "enjoin . . . from." The forms also use checkboxes and headings that are bold and eye-catching. In addition, the steps in each form will be numbered so users can refer back to each step. Graphics will be used on the forms to help people who are only partially literate. Plain language makes everything clear and understandable to everyone who will be using the forms.

Legal terms have precise meanings for attorneys but are often completely lost on a non-attorney. If there is a legal term on a form, it will be defined. Precise, complicated words are not needed to convey facts in a document. Mr. Dyer stated that facts are more easily represented in plain language than in legal terminology. The person filing the pleadings is filing factual information so the court can make a determination. That is where plain language is needed the most.

Judge Middaugh said that, as they translate the forms into plain language, they are finding errors and correcting them. They are also making changes based on comments from judicial officers. For example, there is no place for "findings" on the forms and that can be added. Also, all of their family law forms have been translated into Spanish and now they will have to be translated again. Mr. Dyer commented that translation from plain language is about 40% cheaper than the original translations and interpreters are able to translate forms for clients much easier.

Next Steps: Mr. Dyer expects all the domestic relations forms to be translated this fall and the Forms Review Work Group will be able to work through most of the forms by the end of the year. They are actively starting to test some of the forms now. The whole package will be turned over to the Pattern Forms Committee in early spring.

Ms. Skreen said the courthouse facilitators will have a big job in front of them to replace all the forms packets. There will be some anxiousness as the new forms are implemented because there will be a mix of old and new forms, and the project partners are working hard to alleviate as much of that stress as possible.

Interpreter Resolution

Justice Owens presented the revised Resolution Regarding Language Access Services in Court which was submitted by the Interpreter Commission. The resolution endorses the provision of interpreter services, at public expense, in all legal proceedings, both criminal and civil; supports the elimination of language-related impediments to access to the justice system for limited

English proficient litigants; and encourages the state to fulfill its commitment to share equally in the responsibility to provide adequate and stable funding for court interpreting services.

Ms. McAleenan stated that the last time the resolution was discussed by the BJA there was a desire to address costs more directly. This version of the resolution does that.

Judge Derr has some technical changes to the cover sheet: it should be “public” expense instead of “court” expense in #4, 1) and in 2) “trial courts” is listed but everywhere else it is “judicial system” or “courts.”

Judge Fleck’s suggested revisions on the cover sheet include making the wording consistent throughout the document. For example, in the first paragraph it states: “offset the financial burden at the local level” and in the second paragraph it states “both the State and the courts should share the responsibility” and it should be “local government” instead of “courts.” The RCW is dealing with the costs of providing court interpreters and the cost of providing the interpreter should be borne by the governmental body. Ms. McAleenan pointed out that only the resolution will be used in the future and the cover sheet was only for use in the transmittal of the resolution to the BJA.

It was moved by Judge Fleck and seconded by Justice Owens that the BJA adopt the proposed interpreter resolution. The motion carried with seven members voting for the motion, Judge Johanson opposed, and Judge Derr abstaining.

Race and the Criminal Justice System Task Force Recommendations

Chief Justice Madsen said the Race and the Criminal Justice System Task Force recommendations have been on the BJA agenda several times but were removed because of time constraints. The Task Force on Race and the Criminal Justice System had meetings with the Supreme Court and provided recommendations that were parsed out to various entities of the justice system—the state bar, local government, prosecutors, BJA, etc.

Two of the most recent Task Force recommendations were assigned to the BJA:

1. Under the Supreme Court’s recommendations, 1. Exercise leadership and encourage the judiciary at all levels to examine and address racial disparities in the juvenile and criminal justice systems. Judges should be encouraged to examine practices and policies within their courts to determine whether they contribute to such racial disparities.
2. Under the Local Governments/Courts recommendation, 1. Working collaboratively with DSHS’ Office of Juvenile Justice, the Washington State Center for Court Research (WSCCR), or other interested stakeholders to convene a committee or workgroup to gather and review local data, identify decision points where disparity exists including length of stay in detention, and establish benchmarks and incentives to reduce disproportionate minority contact at each decision point.

Chief Justice Madsen would like to determine if the BJA is interesting in taking on these recommendations. If so, what is the right process for taking these recommendations forward?

Ms. McAleenan mentioned that the BJA did adopt a resolution in July 2011 regarding racial and ethnic bias:

http://www.courts.wa.gov/programs_orgs/pos_bja/RacialEthnicBiasJusticeSystem.pdf

Judge Wickham stated that it is his understanding that the WSCCR is in the midst of looking at juvenile justice data and will report in the fall. It seems to him that the first recommendation for the BJA is already happening and maybe the BJA should support the process and give them the forum to present the information.

Ms. Bush stated that the counties that are involved with the Juvenile Detention Alternatives Initiative (JDAI) work had a meeting on Wednesday and they know that the WSCCR will be involved in gathering data from their sites. The data will be broken down by gender, race and age. They also have a risk assessment instrument that has been validated and is expected to be totally unbiased. They will discuss these items at their September meeting. The BJA can support this work by ensuring the WSCCR has enough staff to get the work done.

It was moved by Judge Fleck and seconded by Chief Justice Madsen that the BJA adopt the role identified for the BJA in the two recommendations from the Race in the Criminal Justice System Task Force on the basis that having the leadership of the BJA supporting these efforts eases the process of working with other entities and branches of government.

There was concern about the BJA supporting all of the recommendations because the BJA has no control over some of the areas listed in the recommendations. It was pointed out that the motion was specific to the two recommendations to the BJA.

There was also concern about what is being asked of the BJA and not being comfortable with overarching support from the BJA.

Judge Fleck withdrew the motion and will bring it back to the next meeting.

Chief Justice Madsen stated that it is critical that the courts be committed to these issues and she did not envision the BJA being asked to do a discrete task but to support the work of the Task Force. The Supreme Court recognizes that they do not influence what happens in individual courts and that is why the support of the BJA is so important.

Getting this on the table was Chief Justice Madsen's and Judge Wickham's goal. If people in this room say the BJA does not have a role in this, that's the end of it but if the BJA does have a role, a process needs to be established to figure out how to go forward. Judge Wickham hopes that at some point the BJA will assume some leadership in this issue, whatever that may be.

Problem-Solving Courts Workgroup

The Problem-Solving Courts Authorizing Legislation Workgroup was created at the previous BJA meeting. The Workgroup met to determine if a general statute regarding problem-solving courts is necessary and advisable and if so, what the legislation would look like.

The Workgroup recommended a white paper or statement of principles that could be used with an amendment to legislation. They did not feel they should submit proactive legislation but they did want to recognize the fact that these bills arise every year and that the BJA should be ready to deal with them when they come up by providing a draft amendment. They volunteered to draft an amendment that can be added to future problem-solving courts legislation.

The group, by consensus, said they want the Problem-Solving Courts Workgroup to continue working on this.

BJA Account and Dues

The BJA account summaries were distributed. The balance of the account is about \$12,000. The biggest expense the dues go toward is the legislative dinners. The costs have ranged from \$6,000 - \$10,000 in the past. If the BJA wants to hold legislative dinners this legislative session they should consider a dues request. The BJA dues are voluntary and not paid by the courts. Dues have been \$55 since the 1990s and have never been raised. A dues request is sent, on average, every two years and it is time to start thinking along those lines because it does take several months to get the money rolling in. Sending dues notices will be on the September meeting agenda for action.

Judge Fleck moved and Judge Ringus seconded to utilize legislative dinners as a way to educate legislators about the judicial branch and the needs of the courts. The motion carried.

Response to Inquiry from Judiciary and General Government Appropriations Committee

Chief Justice Madsen said that judicial branch entities were asked to meet with the Legislature regarding court and judicial branch funding. The discussion during the meeting focused on the needs of the courts and the agencies within the branch.

During the meeting, the legislators asked for input regarding legislation that negatively impacts the courts. Mr. Jeff Hall drafted a letter prior to his departure from the agency but Chief Justice Madsen felt like this is an issue that should be discussed more broadly with the BJA. Is there an appetite on the BJA to contribute to this letter?

After discussion it was determined that the letter should go out under Mr. Hall's signature and it should be revised to make it clear that he is not writing on behalf of the courts, the judicial branch or the AOC.

Other Business

Supreme Court Budget Meetings: The first set of budget meetings under the new budget process were held earlier in the week. Chief Justice Madsen thought the presentations were well done and that everyone did an excellent job of making their cases. She appreciated how orderly and informative the process was.

Office of Public Defense (OPD) Update: Chief Justice Madsen asked Ms. McSherry to give a brief update regarding the implementation of the standards for indigent defense. Starting

September 1, 2012 attorneys will certify that they meet the basic qualifications of the defense standards which are to: have access to an office, have access to investigators and use them as needed, and comply with standard 3.2. After September 1, 2013 they will also need to certify that they comply with Standard 3.4 regarding caseload but that portion of the rule is not mandatory. The certifications will be completed quarterly. OPD was asked to provide some technical assistance regarding implementation of the rule, and they scheduled a lunchtime webinar next Friday to talk about the “nuts and bolts” of the standards. They also scheduled an August 22 webinar that is directed to judges and court administrators. They are working on a series of six half-day CLEs around the state in August with about 3.5 CLE credits focused on the “nuts and bolts” of the standards.

Limited Legal Technician Rule and Board: The Supreme Court recently adopted APR 28. Ms. Littlewood reported that on Monday notices will go out requesting applications for membership on the Limited License Legal Technician (LLLT) Board. The Board of Governors (BOG) created a nominating committee to review applications and bring forward a slate of recommendations for the BOG to use for the creation of the LLLT Board. The LLLT Board should be up and running by January and will create the requirements for the program.

Appointment to the BJA Best Practices Committee:

It was moved by Judge Ringus and seconded by Judge Derr to approve the appointment of Ms. Sandy Ervin to the BJA Best Practices Committee. The motion carried.

BJA Retreat Materials: Two handouts were included in the back of the meeting packet for the BJA members to read prior to the BJA retreat.

Next Meeting: The August meeting has been canceled and the next meeting begins at 9 a.m. on September 21 at the AOC SeaTac office.

There being no further business, the meeting was adjourned.

Recap of Motions from July 20, 2012 meeting

Motion Summary	Status
Approve the June 15, 2012 BJA meeting minutes.	Passed
Adopt the Interpreter Resolution.	Passed with seven members voting for the motion, Judge Johanson opposed, and Judge Derr abstaining.
Adopt the role identified for the BJA in the two recommendations from the Race in the Criminal Justice.	Withdrawn
Utilize legislative dinners as a way to educate legislators about the judicial branch and the needs of the courts.	Passed
Appoint Ms. Sandy Ervin to the BJA Best Practices Committee.	Passed

Action Items updated for July 20, 2012 meeting

Action Item	Status
<u>June 15 BJA Meeting Minutes</u> <ul style="list-style-type: none"> • Post the minutes online • Send revised minutes to Supreme Court for inclusion in the En Banc meeting materials 	Done Done
<u>Interpreter Resolution</u> <ul style="list-style-type: none"> • Update the resolution footer and post online 	Done
<u>BJA Account</u> <ul style="list-style-type: none"> • Add BJA dues notices to the September BJA meeting agenda • The BJA approved moving forward on the legislative dinners 	Done
<u>Response to Inquiry from Judiciary and General Government Appropriations Committee</u> <ul style="list-style-type: none"> • Have Jeff Hall send the letter to Rep. Eddy but make it clear in the letter that the information in the letter is his own opinion and he is not speaking on behalf of the courts, the judicial branch or AOC 	Jeff Hall is not comfortable sending the letter because he is no longer at AOC.
<u>Race in the Criminal Justice System Recommendations</u> <ul style="list-style-type: none"> • Add this to the September BJA meeting agenda 	Done
<u>Problem-Solving Court Workgroup</u> <ul style="list-style-type: none"> • Continue moving forward on the Workgroup's recommendation 	
<u>Appointment to the BJA Best Practices Committee</u> <ul style="list-style-type: none"> • Send letter of appointment to Ms. Sandy Ervin regarding her appointment to the BJA Best Practices Committee 	Done