BOARD FOR JUDICIAL ADMINISTRATION

WASHINGTON COURTS

MEETING PACKET

FRIDAY, OCTOBER 19, 2012
9:00 A.M.

AOC SEATAC OFFICE
18000 INTERNATIONAL BOULEVARD, SUITE 1106
SEATAC, WASHINGTON

Board for Judicial Administration Membership

VOTING MEMBERS:

Chief Justice Barbara Madsen, Chair
Supreme Court

Judge Chris Wickham, Member Chair
Superior Court Judges' Association
Thurston County Superior Court

Judge Sara Derr, President
District and Municipal Court Judges' Association
Spokane County District Court

Judge Deborah Fleck
Superior Court Judges' Association
King County Superior Court

Judge Janet Garrow
District and Municipal Court Judges' Association
King County District Court

Judge Jill Johanson
Court of Appeals, Division II

Judge Kevin Korsmo
Court of Appeals, Division III

Judge Linda Krese
Superior Court Judges' Association
Snohomish County Superior Court

Judge Michael Lambo
District and Municipal Court Judges' Association
Kirkland Municipal Court

Judge Craig Matheson, President
Superior Court Judges' Association
Benton and Franklin Superior Courts

Judge Jack Nevin
District and Municipal Court Judges' Association
Pierce County District Court

Justice Susan Owens
Supreme Court

Judge Kevin Ringus
District and Municipal Court Judges' Association
Fife Municipal Court

Judge Ann Schindler
Court of Appeals, Division I

Judge Scott Sparks
Superior Court Judges' Association
Kittitas County Superior Court

NON-VOTING MEMBERS:

Ms. Callie Dietz
Interim State Court Administrator

Ms. Paula Littlewood, Executive Director
Washington State Bar Association

Mr. Patrick Palace, President-Elect
Washington State Bar Association

Judge Christine Quinn-Brintnall
Presiding Chief Judge
Court of Appeals, Division II

Ms. Michele Radosevich, President
Washington State Bar Association

Judge Charles Snyder, President-Elect
Superior Court Judges' Association
Whatcom County Superior Court

Judge David Svaren, President-Elect
District and Municipal Court Judges' Association
Skagit County District Court

WASHINGTON COURTS

Board for Judicial Administration (BJA)

Friday, October 19, 2012 (9:00 a.m. – 12:15 p.m.)
AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

AGENDA

1. Call to Order	Chief Justice Barbara Madsen Judge Chris Wickham	9:00 a.m.
2. Welcome and Introductions	Chief Justice Barbara Madsen Judge Chris Wickham	9:00 a.m.
Action Items		
3. September 21, 2012 Meeting Minutes Action: Motion to approve the minutes of the September 21, 2012 meeting	Chief Justice Barbara Madsen Judge Chris Wickham	9:05 a.m. Tab 1
Reports and Information		
4. Disproportionality in Washington and Juvenile Detention Alternatives Initiative (JDAI)	Mr. Rand Young Dr. Sarah Veele Ms. Jennifer Zipoy	9:10 a.m. Tab 2
5. Filing Fee Workgroup	Judge Stephen Brown	9:55 a.m. Tab 3
6. Budget	Mr. Ramsey Radwan	10:10 a.m. Tab 4 - Handout
7. Legislative Agenda	Ms. Mellani McAleenan	10:20 a.m. Tab 5
BREAK		10:45 a.m.
8. Retreat Recap	Chief Justice Barbara Madsen Judge Chris Wickham	11:00 a.m. Tab 6
9. Strategic Planning Recap	Chief Justice Barbara Madsen Judge Chris Wickham	11:10 a.m. Tab 7

Reports and Information (Continued)		
10. BJA Structure Workgroup	Chief Justice Barbara Madsen Judge Chris Wickham	11:20 a.m.
11. Overview of Current Committee Structure	Chief Justice Barbara Madsen Judge Chris Wickham	11:35 a.m. Handout
12. Other Business Next meeting: November 16 Beginning at 9:00 a.m. at the AOC SeaTac Office, SeaTac	Chief Justice Barbara Madsen Judge Chris Wickham	11:55 a.m.
Executive Session		12:00 p.m.
13. Adjourn		12:15 p.m.
Persons with a disability, who require accommodation, should notify Beth Flynn at 360-357-2121 or beth.flynn@courts.wa.gov to request or discuss accommodations. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.		

TAB 1

Board for Judicial Administration (BJA)

Friday, September 21, 2012 (9:00 a.m. – 11:00 a.m.)
AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

MEETING MINUTES

Members Present:
Chief Justice Barbara Madsen, Chair
Judge Chris Wickham, Member Chair
Judge Sara Derr
Ms. Callie Dietz
Judge Deborah Fleck
Judge Janet Garrow
Judge Jill Johanson (by phone)
Judge Kevin Korsmo (by phone)
Judge Linda Krese
Judge Craig Matheson
Justice Susan Owens
Judge Christine Quinn-Brintnall
Judge Kevin Ringus
Judge Ann Schindler
Judge David Svaren (by phone)
Judge Scott Sparks

Guests Present:
Mr. Dan Becker
Ms. Ishbel Dickens
Justice Christine Durham
Mr. Pat Escamilla
Justice Mary Fairhurst
Mr. Paul Sherfey
Renee Townsley

Public Present:
Mr. Tom Goldsmith
Mr. Christopher Hupy
Mr. Mark Mahnkey

AOC Staff Present:
Ms. Beth Flynn
Mr. Dirk Marler
Ms. Mellani McAleenan

Judge Wickham called the meeting to order.

July 20, 2012 Meeting Minutes

It was moved by Judge Derr and seconded by Justice Owens to approve the July 20, 2012 BJA meeting minutes. The motion carried.

BJA Public Trust and Confidence Committee Projects

Justice Fairhurst reported on the BJA Public Trust and Confidence Committee's projects.

Senior Volunteers in the Courts: The Committee released a survey regarding senior volunteers in the courts and the survey report will be added to the Committee's Web site after it is e-mailed to clerks and court administrators. The report identifies a variety of ways the volunteers can be used. In addition, they created a brochure template that can be used by courts to recruit senior volunteers. In these tough economic times courts are involving seniors and retirees in many tasks.

It was moved by Judge Ringus and seconded by Judge Sparks to approve the senior volunteer brochure developed by the BJA Public Trust and Confidence Committee. The motion carried.

Juror Survey: Snohomish County Superior Court Assistant Administrator of Superior Court Operations Ms. Marilyn Finsen studied juror stress for her Institute for Court Management Court Fellows Development Program through the National Center for State Courts. She developed a cover letter and survey template that the Committee supports for use in courts to assess the experience of jurors make improvements in the courts.

> **It was moved by Judge Ringus and seconded by Judge Sparks to approve the cover letter and survey templates for distribution to Washington courts. The motion carried.**

Legislative Scholars Program: The Committee is working on the Legislative Scholars Program again this year. It is a four-hour presentation for teachers at the Temple of Justice regarding the interaction between the legislative and judicial branches of government.

New Subcommittees: The Committee has added three new subcommittees: One will develop a template for courts to present to the entity that funds them which will explain what the mandated functions of the court are and the impact of budget cuts. Another subcommittee will create a public education campaign regarding the work of the courts and role of the parties. They are collaborating with TVW and developing teaching videos regarding state courts. The videos will explain the role of the courts, how the system works, and the role of the parties. The intended audiences of the videos are high school students and the general public. The final subcommittee is looking at unique public trust and confidence issues facing rural courts. They are looking to understand the issues and develop strategies to address them.

BJA Public Trust and Confidence Committee Appointment

> **It was moved by Judge Sparks and seconded by Judge Garrow to appoint Ms. JulieAnne Behar to the BJA Public Trust and Confidence Committee. The motion carried.**

BJA Best Practices Committee Appointments

> **It was moved by Judge Derr and seconded by Justice Owens to appoint Judge Gregory Tripp, Ms. Terri Cooper, and Ms. Lisa Rumsey to the BJA Best Practices Committee. The motion carried.**

BJA Long-Range Planning Committee

> **It was moved and seconded to appoint Judge Charles Snyder, Judge Glenn Phillips, Judge Maggie Ross, Judge J. Robert Leach and Judge Sparks to the BJA Long-Range Planning Committee but the statement regarding Judge Leach's replacement will be removed. The motion carried.**

BJA Dues

Ms. McAleenan stated that the BJA collects dues of $55 approximately every two years and the dues amount has not increased since 1993. About 70% of Washington's judges voluntarily participate. Dues are used to fund Salary Commission meeting attendance and travel costs

along with legislative dinners every two years. The BJA voted last month to move forward with those dinners and staff is in the process of planning them. The dinners will largely deplete the funds. Ms. McAleenan is asking for approval to send a dues notice.

It was moved by Judge Ringus and seconded by Judge Sparks to approve the mailing of BJA dues notices. The motion carried.

CMC Transcription Subcommittee

Ms. Townsley reported that the work of the Court Management Council (CMC) Transcriptionist Subcommittee began with a discussion about the vagueness in the court rules regarding who is authorized to perform transcription work for courts. Some counties were maintaining lists of qualified transcriptionists/independent court reporters and some were not. If a transcriptionist regularly submits untimely or substandard work it is difficult to effectively deal with the issue and prevent it from reoccurring.

The subcommittee was also tasked with reviewing audio and visual recording standards. The subcommittee reviewed a white paper regarding digital records that was created by the Conference of State Court Administrators (COSCA). Electronic recording is being used more often and the technology has improved and is more reliable than it has been in the past. The subcommittee did not include court employed reporters because they are already under the authority of the court.

In 2010 the subcommittee surveyed the courts to determine how courts are monitoring the quality of their recordings and transcripts. The survey helped the subcommittee understand the current state of transcription. With that base information they decided it was necessary to update the Records Management Advisory Committee (RMAC), Report and Recommendations for Court Electronic Recording before looking at statute or court rule changes.

The subcommittee then looked at the pertinent statutes and court rules that might need some adjustment to get some consistency in how they manage transcription practices. A copy of the recommended statute and court rule revisions was provided in the meeting materials. The suggested revisions have gone to all of the court management groups represented on the Court Management Council (CMC) for review and revision. The recommendation presented was approved by the CMC to move ahead. The CMC is now submitting these recommended updates to the BJA and to judicial associations for comment. The multi-court level approach was taken to facilitate a coordinated review of court transcript management in all Washington courts.

Ms. Townsley thanked Ms. Nancy Scott, Ms. Delilah George, Mr. Dave Ponzoha, Ms. Kathei McCoy, Mr. Bob Dowd, Ms. Peggy Bednared, Mr. Dirk Marler and Ms. Caroline Tawes for their work on this project.

Court Security

Judge Wickham stated that the BJA previously had a Court Security Committee and he wants to know what role, if any, the BJA should play in court security at this time.

It was suggested that perhaps judges should have training on court and personal security like has been provided in the past.

In addition, it was suggested that there be a central clearinghouse for security incidents that occur statewide. Ms. Kinlow reported that the DMCMA is beginning to track their incidents.

Ms. McAleenan stated that in 2011 the BJA decided to put the Court Security Committee on hiatus for three years. The Committee did most of its work via phone. When the incident happened in Grays Harbor County, AOC staff gathered security information and sent it to presiding judges. The BJA also passed a court security resolution which was shared with presiding judges and the BJA successfully got a bill passed in the legislature to add the aggravating circumstance when judges and court personnel are assaulted.

Chief Justice Madsen said security needs to take place at the local courthouse and local jurisdiction. She does not want to see the BJA rush to form another committee. There were good reasons why the BJA put the Court Security Committee on hiatus.

Department of Justice (DOJ) Letter

Chief Justice Madsen reported that a superior court and the AOC received a letter from the DOJ regarding language access for persons with limited English proficiency. The DOJ's position is that courts that are direct or indirect recipients of federal funds must provide interpreters without charge regardless of the litigant's ability to pay. The BJA passed a resolution stating that the BJA believes interpreters should be provided for criminal and civil cases. It is a hot topic throughout the United States. The AOC has to respond to the letter within 30 days.

Ms. Dietz stated that the DOJ is addressing two areas of concern: 1) that courts not assume English proficiency based on written documents—courts must evaluate speaking ability; and 2) that they want courts to provide interpreters in all cases.

The AOC will be sending a survey to courts to gather information regarding how interpreter services are provided around the state.

Other Business

GR 31.1 Update: Chief Justice Madsen reported that after a public hearing on GR 31.1 and an extensive comment period the Supreme Court decided to revise GR 31.1. The revisions were approved by the Court during the September En Banc Conference. The amended rule is now out for public comment. The Court will evaluate any new comments and make any necessary revisions. Chief Justice Madsen will discuss the revisions more thoroughly during the Joint Business Meeting at Fall Conference.

There being no further business, the meeting was adjourned.

Recap of Motions from September 21, 2012 meeting

Motion Summary	Status
Approve the July 20, 2012 BJA meeting minutes.	Passed
Approve the senior volunteer brochure developed by the BJA Public Trust and Confidence Committee.	Passed
Approve the juror survey and letter templates developed by the BJA Public Trust and Confidence Committee.	Passed
Approve the appointment of JulieAnne Behar to the BJA Public Trust and Confidence Committee.	Passed
Approve the appointments of Judge Gregory Tripp, Ms. Terri Cooper and Ms. Lisa Rumsey to the BJA Best Practices Committee	Passed
Approve the appointments of Judge Charles Snyder, Judge Glenn Phillips, Judge Maggie Ross, Judge J. Robert Leach, and Judge Scott Sparks to the BJA Long Range Planning Committee	Passed
Approve sending a BJA dues notices to all Washington judges.	Passed

Action Items updated for September 21, 2012 meeting

Action Item	Status
July 20 BJA Meeting Minutes	
• Post the minutes online	Done
• Send minutes to Supreme Court for inclusion in the En Banc meeting materials	Done
Committee Appointments	
• Send appointment letter to JulieAnne Behar (BJA Public Trust and Confidence Committee)	Done
• Send appointment letters to Judge Gregory Tripp, Ms. Terri Cooper and Ms. Lisa Rumsey (BJA Best Practices Committee)	Done
• Send appointment letters to Judge Charles Snyder, Judge Glenn Phillips, Judge Maggie Ross, Judge J. Robert Leach, and Judge Scott Sparks (BJA Long Range Planning Committee)	Done
CMC Transcription Committee	
• Refer this to the trial court associations to review and be prepared to discuss at a future BJA meeting	
BJA Dues Notices	
• Send BJA dues notices	
Court Visit Agenda Item	
• Hold this agenda item over to a future meeting	Done

TAB 2

WASHINGTON
COURTS

Washington State
Center for Court Research

Dr. Carl McCurley, Manager

Disproportionate Minority Contact
Overview of Juvenile Courts Data Release

Presentation to BJA
October 19, 2012

Data to be released to Juvenile Courts

- Relative Rate Index (RRI)
  - Juvenile Arrest
  - Referral to Juvenile Court
  - Referrals filed with JDO codes B+ or above
  - Cases Diverted
  - Non-petitioned referrals
  - Petitioned referrals
  - Adjudicated cases
  - Adjudicated cases with JRA dispositions
  - Cases with local dispositions
  - Cases handled in adult court

October 29, 2012* Release on Inside Courts

- State and County
  - Annual Report (2005-2011)
  - Five Year Average (2007-2011)

Juvenile Courts will have one month to review and comment to the Washington State Center for Court Research

November 29, 2012* Release on Washington Courts Public Webpage

- State and County
  - Five year average (2007-2011)

*Release dates are approximate

Summary: Relative Rate Index Compared with White Juveniles

Reported data (unadjusted)

Data displayed for Washington

Calendar year 2010

	Black, non-Hispanic	Hispanic	Asian or Pacific Islander, non-Hispanic	American Indian or Alaska Native, non-Hispanic	All Minorities	Base for rates
2. Juvenile Arrests***	**1.72**	**	**0.33**	**1.22**	0.97	per 1,000 population
3. Refer to Juvenile Court	**3.17**	**3.23**	**0.60**	**2.61**	**2.91**	per 1,000 population
4. Referrals filed with JDO codes B+ or above	**1.94**	1.01	0.87	1.22	**1.19**	per 100 referrals
5. Cases diverted	**0.69**	**0.87**	**1.38**	**0.57**	**0.88**	per 100 referrals
6. Non-petitioned referrals	**0.76**	**0.83**	**1.16**	**0.81**	**0.87**	per 100 referrals
7. Petitioned referrals	**1.30**	**1.22**	**0.80**	**1.24**	**1.16**	per 100 referrals
8. Adjudicated cases	1.02	1.02	0.92	1.01	1.00	per 100 petitioned
9. Adjudicated cases with JRA dispositions	**1.56**	0.85	0.97	1.21	**1.06**	per 100 adjudicated cases
10. Cases with local dispositions	**1.30**	**1.22**	**0.80**	**1.24**	**1.16**	per 100 referrals
11. Cases handled in adult court	**3.41**	**1.88**	X	X	**2.68**	per 100 referrals
Group meets 1% threshold?	**Yes**	**Yes**	**Yes**	**Yes**		

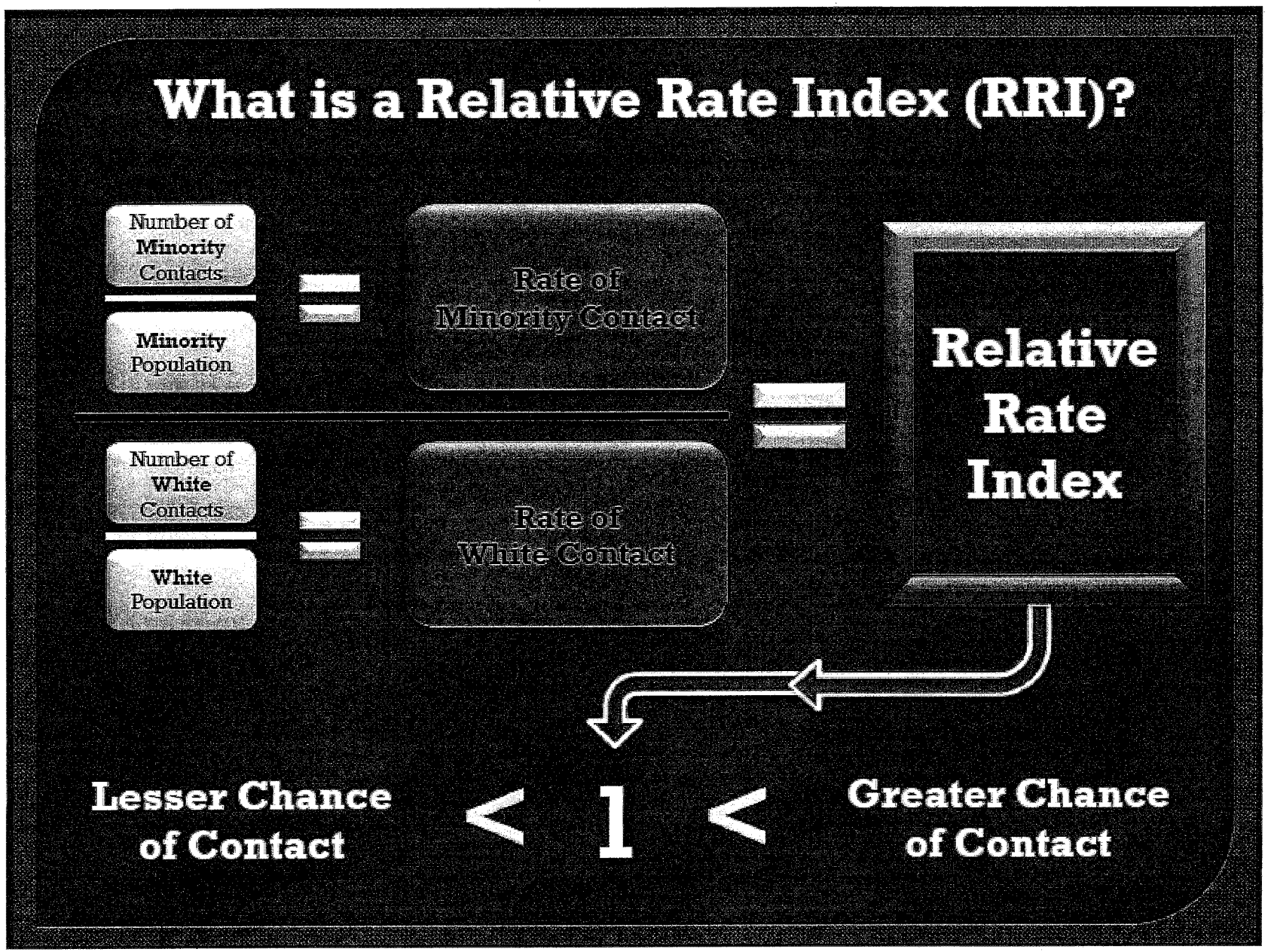
Key:

** No data available for this stage

X too few cases to calculate a reliable rate

Bold : significant

*** The race detail for the arrest data differ from the details provided with the court data. Arrest data do not take into consideration ethnicity. As such, in this table, the arrest counts presented under each of the 4 race groups are arrest counts for all persons of a particular race. For example, the arrest counts in the White, non-Hispanic cell are actually counts of arrests involving any white youth.



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Disproportionate Minority Contact
Relative Rate Indices Workbook

Frequently Asked Questions

Why are these RRI's important to me?

Relative Rate Indices (RRIs) are calculated to demonstrate the scope of the overrepresentation of youth of color in the juvenile justice system.

Overrepresentation and disproportionate minority contact (DMC) refer to the same concept, that youth of color are involved in the system at greater proportions than would be expected based on the proportion of the group in the general population. For example, black youth may make up 12% of the population in one county, yet make up 35% of the referrals to juvenile court. That would be overrepresentation.

RRIs allow administrators and program managers to identify areas where potential revisions to policy or practice could be implemented that would make the system more equitable for all youth.

What is a Relative Rate Index and how do you calculate it?

The RRI compares rates of contact. For example, the rate of minority contact with the system is the number of contacts divided by the population for a specific minority group. The same rate is calculated for white youth. The minority rate is then divided by the white rate, which results in a number (2.5, for example). If the number is less than 1, then the minority group has a lesser chance of contact with the juvenile justice system than white youth, and if it is greater than one, there is a greater chance that minority youth will come in contact with the justice system. In this example, the RRI of 2.5 is interpreted to mean that this minority group comes in contact with the juvenile justice system two and a half times more often than white youth.

RRIs are designed to be comparable across sites, no matter the size of the jurisdiction, similar to the way percents are used. The RRI is represented as a number, and is calculated for each minority group (Asian/Pacific Islander, American Indian/Alaska Native, Black and Hispanic). The graphic on the next page represents the calculation visually.

RRI's are calculated at nine standard decision points in the system in order to identify places where overrepresentation may occur. RRI's are calculated at
1) Arrest, 2) Referral to Court, 3) Diversion, 4) Detention, 5) Petitioned referrals, 6) Adjudicated cases, 7) Adjudicated cases with a sentence to state corrections, 8) Adjudicated cases with local dispositions, and 9) Cases waived to adult court.

Where did you get the data for the workbook?

Data for decision points 2 – 9 were extracted from Washington State's Judicial Information System (JIS) using BOXI and basing the extract on existing codes. A breakdown of codes utilized for each step is available if there is interest. Arrest data was requested from the Washington Association of Police Chiefs and Sheriff's (WASPC).

Currently, the Center is unable to get consistent data on detention. Because overrepresentation in detention is the reason that DMC became a national issue and the Juvenile Detention Alternatives Initiative (JDAI) came to be, it is particularly important to the Center to build the detention data warehouse in JCS. Courts who do not currently provide data to JCS will be contacted.

Is the data reliable?

Currently, the data is considered to be "the best we've got". There are some fundamental problems with the way that race and ethnicity data is collected in the state system, and there are large portions of data (particularly ethnicity data) that are coded "unknown", which means we are only reporting on a subset of the possible population. Additional work that the Center has conducted on the Hispanic data designed to identify mis-coded Hispanic youth suggest that there are youth are being mis-classified as unknown when indeed they should be coded as Hispanic.

The RRI workbook presented is the first step in identifying the scope of the DMC in Washington's courts. The Center plans to provide additional information about steps in the process that are not traditionally included in the national data, and to implement several statistical controls so that offending history and severity of offense are taken into account when comparing youth.

The Center has developed a Best Practice document for courts to inform data collection practices. The Center is working with the JIS staff to prepare monthly BOXI reports that will assist data managers to identify youth who are entered with race-ethnicity pairings that have unknown information so that records can be cleaned. A training webinar will be developed to assist in training staff doing data entry. Additionally, the Center is developing an ITG request that will alter the way race and ethnicity data is collected, by adding codes and allowing staff at the superior and CLJ court levels to clean race and ethnicity data.

Center for Court Research
IT Governance Request, August 2012

The Center for Court Research has been working with the Minority and Justice Commission, the Superior Court Judges Association, the Juvenile Court Administrators, the Board for Judicial Administration, and both the John D. and Catherine T. MacArthur Foundation and the Annie E. Casey Foundation to assess and report on disproportionate minority contact in Washington. Disproportionate minority contact (DMC) refers to the overrepresentation of persons of color in the justice system, and its reduction for juveniles is a mandate in the 2002 reauthorization of the Federal Juvenile Justice and Delinquency Prevention Act.

Being able to obtain and analyze high quality data (data with few missing, unknown, or inaccurate entries) is the only way to accurately identify the scope of the problem. As our first effort at identifying DMC in Washington's juvenile courts, a summary review of the existing JIS data was prepared describing juveniles referred to juvenile courts statewide. This review found large percentages of unknown data. It appears that the decentralized nature of the Washington court system permits a lack of uniformity in the process through which race and ethnicity are collected at different courts. Therefore, there is a great deal of variation across the juvenile courts in the completeness and validity of race and ethnicity data. Without valid and complete data, accurate analyses cannot be carried out and effective interventions cannot be implemented.

One large improvement would result from implementation of the Federal approach to classifying race and ethnicity, a move that would bring Washington into comparability with most of the nation. Federal policy[1] outlines five race categories and two ethnicity categories:

RACE	ETHNICITY
(1) American Indian/Alaska Native, (2) Asian, (3) Black/African American, (4) Native Hawaiian/Pacific Islander, and (5) White/Caucasian.	(1) Hispanic and (2) Non-Hispanic.

Identified Problems:
We have been focusing on the development of reports for courts to inform them about their race/ethnicity data and provide information about best practices in data collection.

1. PROBLEM: Upon a closer review of the JIS data, it was discovered that our coding system does not match the federal policy in separating Asian and Native Hawaiian/Pacific Islander into two categories - JIS currently combines them into one (code A).

[1] Office of Management and Budget (1997) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity. Federal Register, October 30, 1997 available at: http://www.whitehouse.gov/omb/fedreg_1997standards/

a. *Proposed Solution: We propose that the JIS coding system should be changed to separate the groups currently combined as noted above to bring the JIS system into compliance with Federal standards. This change would, of necessity, occur from the date of change-implementation forward, with no expectation of conversion of legacy data. Courts would have the option to review and correct their own data.*

2. PROBLEM: The JIS codebook lists Hispanic as an option under the race category. Although there is a JIS business process for recoding Hispanic as an ethnicity from the race category, reviews demonstrate large percentages of unknown ethnicity data which cause problems in interpretation of results, making it impossible to be sure that the court data accurately represents the extent of the overrepresentation.

    a. *Proposed Solution: We propose that ethnicity be a required field in JIS. The existing JIS business process for coding H in the race field as Unknown Race, Hispanic Ethnicity is consistent with national best practices. However, for other racial groups, there should be an ethnicity designation of Hispanic or Non-Hispanic, therefore ethnicity must be required.*

3. PROBLEM: Ethnicity is a read-only field for users in superior or CLJ courts. Only the juvenile court users are able to update the ethnicity field. Even if courts were to adopt the proposed

    a. *Proposed Solution: We propose that ethnicity be an updatable field for court users at all levels.*

4. PROBLEM: According to OFM race and ethnicity data, the percentage of youth identifying as Multiple Race (more than one race category) is increasing. OFM population data has a separate designation ("Mixed Race"), but JIS does not. Clerks have contacted Research to request that an option for Multiple be added in order to capture youth who identify their race in multiple categories.

    a. *Proposed Solution: We propose that "Multiple" be added as a choice (code M) in the Race field.*

5. PROBLEM: Race and ethnicity are often volatile topics due to the emotion attached to such a designation, and there are cases where a person chooses not to self-identify. With the expectation that courts are engaging in regular data reviews and could correct such designations, it is preferable to have a code added (R – Refused) to designate a refusal to choose. In research, data is far more reliable if there is a clear refusal than a simple unknown – that way data analysts know how much data is known/refused vs actually unknown.

    a. *Proposed Solution: We propose to add a code R for "Refused" to both the race and ethnicity fields in addition to the currently existing U for "Unknown".*

Data from Other Agencies:

Concerns were expressed about "scraping" data from databases maintained by other agencies.

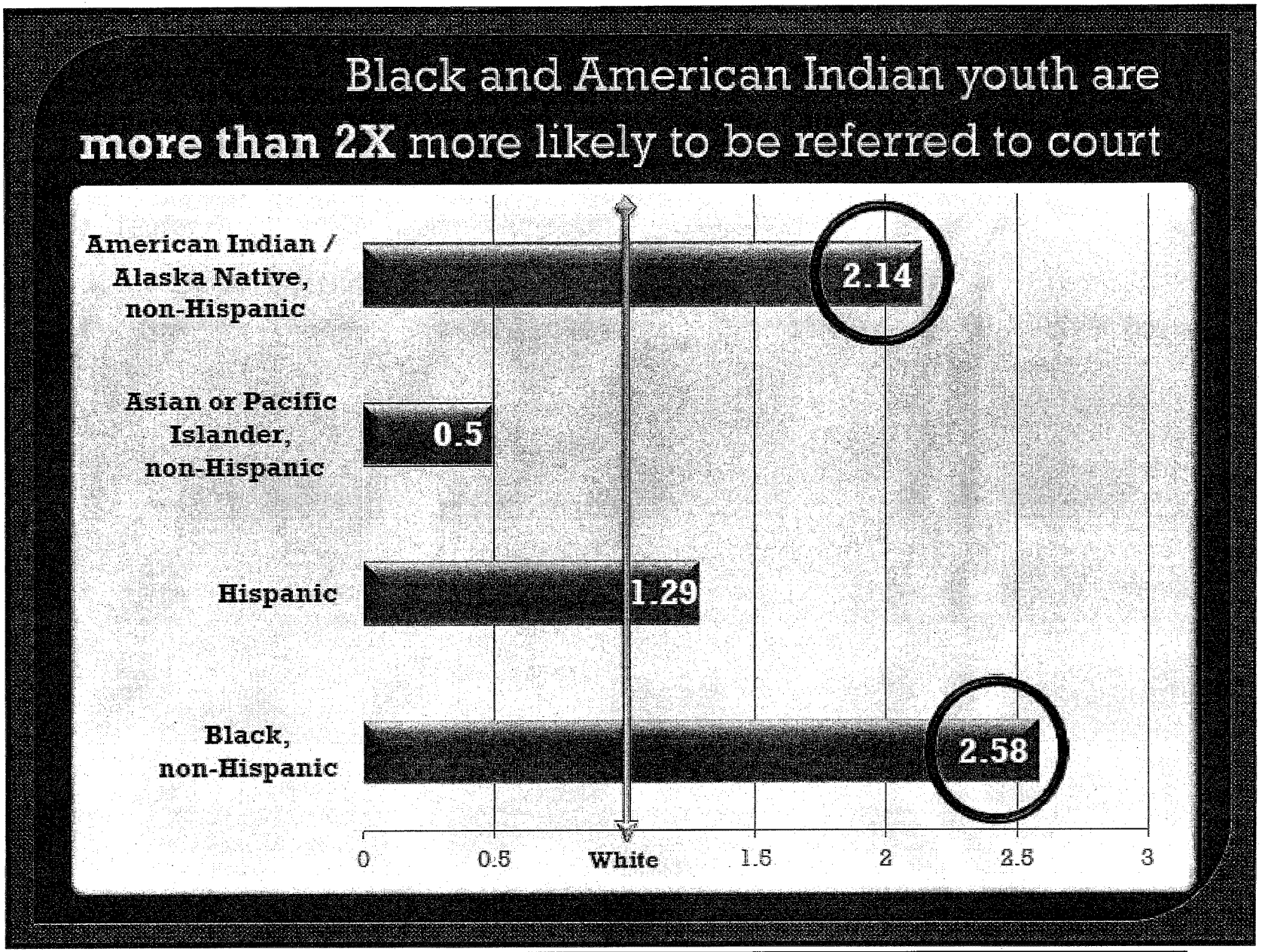
- Research staff met with the President of the Washington State Association of Police Chiefs and Sheriffs (WASPC) and learned that they do not collect ethnicity data as it is not required for their reporting to the federal government (UCR/NIBRS).
- Research staff met with the Kitsap County Prosecutor, who is active with the Washington Association of Prosecuting Attorneys (WAPA) and learned that they collect data from multiple databases, but only enter specific data into JIS.
- Research staff met with the Department of Licensing (DOL) staff and determined that DOL does not maintain race and ethnicity data at all, so it cannot be "scraped" into JIS.

Ultimately, we would hope that the codes would follow the pattern below:

RACE	ETHNICITY
• American Indian/Alaska Native (I) • Asian (A) • Black/African American (B) • White/Caucasian (W) • Unknown (U) • *NEW! Native Hawaiian/Pacific Islander (P)* • *NEW! Multiple (M)* • *NEW! Refused (R)*	• Hispanic (H) • Non-Hispanic (N) • Unknown (U) • *NEW! Refused (R)*

Solutions:

Once these changes are approved and implemented, staff from Research will work with Court Education to develop a webinar-style tutorial that can be recorded and shared with front-line staff. In addition, Research staff are working with Information Access to develop a set of exception reports in BOXI to address incorrect race and ethnicity combinations, as well as a best practice "answer" in RightNow.



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TAB 3

WASHINGTON COURTS

BOARD FOR JUDICIAL ADMINISTRATION

FILING FEE WORK GROUP
RECOMMENDATIONS TO BJA

CHARGE

The Filing Fee Work Group (Work Group) was created as an *ad hoc* work group of the Board for Judicial Administration (BJA) to review the existing fee structure for civil cases in Washington State courts and other jurisdictions and to make recommendations to the BJA regarding whether changes should be made to the current structure.

The Work Group was also charged with developing a set of principles against which to weigh proposals for changes to the filing fee structure by this work group or other entities.

MEMBERSHIP

The Work Group's members were:

- Justice Debra Stephens, Washington Supreme Court;
- Judge Christine Quinn-Brintnall, Court of Appeals;
- Judge Deborah Fleck, King County Superior Court, on behalf of the Superior Court Judges' Association;
- Judge Stephen Brown, Grays Harbor District Court, on behalf of the District and Municipal Court Judges' Association and chair of this Work Group;
- Mr. Dirk Marler, Administrative Office of the Courts;
- Mr. Jim Bamberger, Office of Civil Legal Aid;
- Ms. Sophia Byrd McSherry, Office of Public Defense;
- Ms. Betty Gould, Thurston County Clerk, and Ms. Barb Miner, King County Clerk, on behalf of the Washington State Association of County Clerks;
- Mr. Peter Ehrlichman, Mr. Pete Karademos, and Ms. Joanna Plitcha Boisen, on behalf of the Washington State Bar Association;
- Ms. Ishbel Dickens, Access to Justice Board;
- Representative Roger Goodman, D-45, on behalf of the House Democratic Caucus;
- Representative Charles Ross, R-14, on behalf of the House Republican Caucus;
- Senator Tracey Eide, D-30, on behalf of the Senate Democratic Caucus; and
- Senator Mike Padden, R-4, on behalf Senate Republican Caucus.[1]

[1] While a quorum of members was present at each meeting, not all members attended every meeting.

OPERATING PERIOD

The Work Group's operating period was from April 20, 2012 through October 2012. The Work Group met in person for four two-hour meetings and engaged in email correspondence.

RECOMMENDATIONS

Materials

In developing their recommendations, the Work Group reviewed, among other items:

- The BJA Filing Fee Work Group Charter;
- Washington's current filing fee structure;
- Civil filing fees in state trial courts as collected by National Center for State Courts;
- The 2011-2012 COSCA Policy Paper, *Courts are Not Revenue Centers*, which was co-authored by former Washington State Court Administrator Jeff Hall;
- Selected materials from the Court Funding Task Force Report, 2004;
- The Principal Policy Objectives of the Washington State Judicial Branch;
- A presentation from Mr. Hugh Spitzer, Affiliate Professor at the University of Washington School of Law, and his law review article, *Taxes vs. Fees: A Curious Confusion,* regarding the distinctions between taxes and user fees under the Washington State Constitution and laws; and
- A presentation by Mr. Ramsey Radwan, AOC's Management Services Division, regarding inflationary calculators.

Limitations

The Work Group limited its discussion to "civil filing fees and related surcharges," and did not contemplate other miscellaneous fees such as photocopying charges, parenting class fees, or local fees, believing that those fees were beyond the scope of their charge. Some members, however, believed that further review in the area of "local fees" is needed, and a motion was passed to note the value of exploring these other issues in the Work Group's final recommendations.

Principles

Much time was devoted to the development of the Filing Fee Principles. The Principles adopted by the Work Group for approval to the BJA are included on page four of this report. In developing the Principles, the Work Group referred to the Principal Policy Objectives and was guided by the prior work of the Court Funding Task Force.

Inflationary Calculations

Some discussion was devoted to whether filing fees should be periodically increased based on an inflationary calculation. Many different methods of calculating inflation are possible. The Work Group did not decide that fees should be increased based on an inflationary calculation at this time. However, after a presentation by Mr. Radwan, the Work Group generally, but not unanimously, agreed that the Office of Financial Management's Fiscal Growth Factor could serve as the starting point for assessing the impact of inflation on baseline filing fee levels. The Fiscal Growth Factor is used as the benchmark for determining allowable growth in expenditures under Initiative 601, codified at RCW 43.135.025. Whether funding should track changes in the Fiscal Growth Factor was not decided, nor did the Work Group embrace any other approach to automatic targeting of changes in filing fees to respond to inflation over time.

Changes to the Current Filing Fee Structure

Regarding changes to the existing filing fee structure in Washington, the group discussed several different options and approaches, including allowing the Judicial Stabilization Trust Account (JSTA) surcharge to expire, incorporating the JSTA surcharge into the existing filing fee structure, indexing filing fees to the Fiscal Growth Factor codified at RCW 43.135.025, and increasing or reducing specific filing fees, among other proposals. During these discussions, much weight was given to the observation that significant structural changes or fee increases would be difficult to pass during this legislative session. Furthermore, the Work Group was concerned about the scheduled sunset in JSTA surcharges and the impact this would have on state and local judicial branch services. In light of the impact of the scheduled sunset of the JSTA and the Work Group's lack of consensus on any other proposal, the Work Group unanimously agreed to recommend to the BJA that a two-year extension of the JSTA surcharges, in their current form (including both the 2009 and 2012 surcharges and the 75%/25% state-local split), be supported by the BJA. Pending additional information regarding the impact of civil filing fees and surcharges on access to the courts for low and moderate income civil litigants, the Work Group recommends that no further substantive changes be suggested this year.

Further Discussion and Information

The Work Group generally believed that more discussion should be had regarding the impact of filing fees, including any impact from the JSTA surcharges, on access to the courts for low and moderate income civil litigants. The Work Group recommends that the BJA request the Washington State Center for Court Research Advisory Board to ask the Washington State Center for Court Research (WSCCR) at the Administrative Office of the Courts to study and report on the question by December 2013, including potential different impacts depending upon the type of cases involved (e.g., family, landlord-tenant, tort, contract, etc.).

The Work Group would like to reconvene in the fall of 2013 in anticipation of the report from WSCCR to consider changes to the current structure such as inflationary increases and changes to specific fees that may be indicated by the results of the WSCCR study.

Board for Judicial Administration
Filing Fee Principles

Principle One
As one of the three branches of government, the judicial branch should be funded largely from general tax revenues, enabling it to fulfill its constitutional and statutory mandates.

Principle Two
Court users may be charged reasonable filing fees[2], which should only be used to offset, in part, the cost of court and clerk operations and other necessary judicial branch infrastructure.

Principle Three
Filing fees should not preclude access to the courts and should be waived for indigent litigants.

Principle Four
The BJA, in conjunction with stakeholders, should periodically review filing fees to determine if they should be adjusted consistent with these principles.

Principle Five
Filing fee information should be simple, easy to understand, and easy to find.

Principle Six
Filing fees should not be used or charged in a way that infringes on the independence or appearance of independence of the judiciary.

In developing these principles, the BJA was guided by the work of the Court Funding Task Force. The following selected principles regarding trial court funding were approved by the BJA when it received the report of its Trial Court Funding Task Force in October 2004 entitled *Justice in Jeopardy: The Court Funding Crisis in Washington State (pp. 23-24)*:

- Trial courts are critical to maintain the rule of law in a free society; they are essential to the protection of the rights and enforcement of obligations for all.
- Trial courts must have adequate, stable, and long-term funding to meet their legal obligations.
- Legislative bodies, whether municipal, county, or state, have the responsibility to fund adequately the trial courts.
- Trial court funding must be adequate to provide for the administration of justice equally across the state.
- The state has an interest in the effective operation of trial courts and the adequacy of trial court funding, and should contribute equitably to achieve a better balance of funding between local and state government.

[2] For the purposes of this document, the term "filing fee" refers to fees to initiate civil judicial proceedings, including fees to initiate a claim, counter-claim, third-party claim, or cross-claim, and surcharges such as those that fund state judicial branch operations, courthouse facilitators, dispute resolution, and the like.

TAB 4

Proposed 2013 BJA Request Legislation

- **New Judicial Position in Benton/Franklin County Superior Court**
  - Benton/Franklin County Superior Court requests authorization for one additional judicial position.
  - The Judicial Needs Estimate supports the request.
  - County funding is anticipated in January 2014 if the bill passes.
  - Supporting documents: JNE, 09/20/12 letter

  Status: BJA Approval Requested; Leg/Exec Committee supports request to BJA.

- **New Judicial Position in Whatcom County Superior Court**
  - Whatcom County Superior Court requests authorization for one additional judicial position.
  - The Judicial Needs Estimate supports the request.
  - County officials are supportive and a local senator also indicated support.
  - Supporting documents: JNE, 10/08/12 letter

  Status: BJA Approval Requested; Leg/Exec Committee supports request to BJA.

- **Judicial Stabilization Trust Account Surcharges**
  - Temporary JSTA surcharges were added in 2009 to offset state general fund reductions to judicial branch agencies.
  - Since passage in 2009, the sunset date of the surcharges has been extended, the surcharges have been increased by $10, and a 75/25 split with local governments was added.
  - The existing surcharges expire in 2013.
  - The BJA Filing Fee Work Group recommends supporting the extension of the surcharges, in their existing amounts and with the existing split, for two years.
  - Supporting documents: FFWG report, ESHB 6608

  Status: BJA Approval Requested; Leg/Exec Committee supports request to BJA.

- **Payment of interpreter expenses in civil hearings**
  - Require that interpreters be provided at no expense to non-English speaking persons regardless of indigency in all cases.
  - Whether state funding should be requested has not been determined.
  - The Interpreter Commission requested this bill last year, but BJA decided not to request legislation for the 2012 legislative session.
  - The issue has again arisen because of communications with the Dept. of Justice and discussions at the Supreme Court budget meeting on 10/08/12.
  - Supporting documents: 09/21/11 Interpreter Commission letter, 2011 survey (2012 survey pending), BJA resolution, RCW 2.43.040

  Status: Leg/Exec Committee sends request to BJA without recommendation for further discussion.

Superior Courts—Judicial Needs Estimates by Full-Time Equivalents, 2012 Projected Filings1

Court	Judges	Authorized Unfilled Judge Positions[2]	Full-Time Commissioners	Part-Time Commissioners	Total Estimated Judge Need[3]
Adams	1.00	0.00	0.00	0.00	1.02
Asotin/Columbia/Garfield	1.00	0.00	0.00	0.00	1.59
Benton/Franklin	6.00	0.00	2.00	0.50	9.87
Chelan	3.00	1.00	1.00	0.04	3.19
Clallam	3.00	0.00	1.00	0.00	3.47
Clark	10.00	0.00	3.00	0.60	14.02
Cowlitz	4.00	1.00	0.00	0.61	5.56
Douglas	1.00	0.00	0.00	0.09	1.27
Ferry/Stevens/PendOreille	2.00	0.00	0.00	0.40	2.54
Grant	3.00	0.00	0.00	1.00	4.04
Grays Harbor	3.00	0.00	0.00	0.00	3.66
Island	2.00	0.00	0.00	0.10	2.72
Jefferson	1.00	0.00	0.00	0.30	1.58
King	53.00	5.00	13.00	0.00	63.16
Kitsap	8.00	0.00	1.00	0.10	8.49
Kittitas	2.00	0.00	0.00	0.00	1.74
Klickitat/Skamania	1.00	0.00	0.00	0.13	1.53
Lewis	3.00	0.00	1.00	0.00	4.08
Lincoln[4]	1.00	0.00	0.00	0.00	1.13
Mason	2.00	0.00	0.90	0.18	2.73
Okanogan	2.00	0.00	0.00	1.00	2.12
Pacific/Wahkiakum	1.00	0.00	0.00	0.00	1.27
Pierce	22.00	2.00	8.00	0.00	29.93
San Juan	1.00	0.00	0.00	0.00	0.75
Skagit	4.00	0.00	1.00	0.25	6.53
Snohomish	15.00	0.00	5.00	0.00	20.98
Spokane	12.00	1.00	5.00	0.80	18.12
Thurston	8.00	0.00	2.00	0.00	11.01
Walla Walla	2.00	0.00	0.00	0.30	2.84
Whatcom	3.00	0.00	3.00	0.80	7.02
Whitman	1.00	0.00	0.00	0.00	1.29
Yakima	8.00	0.00	2.00	0.60	9.51
TOTAL	189.00	10.00	48.90	7.80	**248.77**

1. Year 2012 projected filings are based on the previous five-year filing trends of the various case types in a given court. Needs estimates are based on the previous five years of data for the number of total judicial officers and case resolutions.

2. Superior court judge positions authorized by state statute yet unfunded at the county level.

3. This column represents the estimated number of judge positions needed, as required by RCW 2.56.030(11). Individual counties or judicial districts may choose to establish and fund court commissioner positions instead of superior court judge positions. Identical indicators are used to measure the workload of both judges and commissioners.

4. The estimation process eliminates Lincoln County due to caseload anomalies which strongly influence the overall results. In order to obtain a true statewide total, the estimated judge need for Lincoln County is imputed to be identical to the current judicial officer FTE count in that county.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES

7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336

CAMERON MITCHELL
PRESIDING JUDGE

BENTON COUNTY JUSTICE CENTER
FRANKLIN COUNTY COURTHOUSE
TELEPHONE (509) 736-3071
FAX (509) 736-3057

September 20, 2012

Ms. Callie Dietz, Administrator
Office of the Administrator for the Courts
Temple of Justice
PO Box 41170
Olympia, Washington 98504-1170

Re: Judicial Position

Dear Ms. Dietz:

Last year this court wrote to Mr. Jeff Hall, State Court Administrator, and informed him that the judges of the Benton and Franklin Counties Superior Court Judicial District had determined that the Court's caseload warranted the creation of an additional judgeship. This determination was based upon the discussions among the local bench regarding increased population and the associated need that increase places on the courts, as well as the 2011 Judicial Needs Estimate and caseload statistics.

Due to the budget deficit at the state level last year the court temporarily withdrew its request for a judicial position, however, we would like to request that your office pursue legislation in 2013 creating a seventh judicial position in our district contingent and effective upon funding in 2014 by the local legislative authorities. We understand similar "contingent" legislation has been adopted in the past with an extended sunset date, which also seems appropriate at this time.

The court discussed support of the additional judicial position and 2014 funding of that position with the local legislative authorities last year and expected support at the local level. We are again scheduling a meeting within the next couple of weeks to reaffirm that support.

Please feel free to contact Pat Austin, our Administrator, or myself if you need any additional information or if there is any action we need to take locally. Thank you in advance for your time and efforts extended on our behalf.

Sincerely,

Cameron Mitchell
Presiding Judge

Board for Judicial Administration Request Legislation

Increases the number of superior court judges in Benton and Franklin Counties jointly. Provides that the addition judicial position created by this act shall become effective only if the county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute.

Contact:
Mellani McAleenan, Associate Director
Board for Judicial Administration
(360) 357-2113 (office)
(360) 480-3320 (cell)
Mellani.mcaleenan@courts.wa.gov

AN ACT relating to increasing the number of superior court judges in Whatcom County; amending RCW 2.08.064; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 2.08.064 and 2006 c 20 s 1 are each amended to read as follows:

There shall be in the counties of Benton and Franklin jointly, ((~~six~~)) seven judges of the superior court; in the county of Clallam, three judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, fifteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, five judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court.

NEW SECTION. **Sec. 2.** The additional judicial position created by section 1 of this act in Benton and Franklin Counties jointly becomes effective only if the counties, through their duly constituted legislative authority, documents their approval of the additional position and their agreement that they will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute.

--- END ---

Superior Court of the State of Washington
For Whatcom County

311 Grand Avenue, Bellingham, Washington 98225

Chambers of
CHARLES R. SNYDER
Judge

(360) 738-2457
FAX (360) 676-6693
csnyder@co.whatcom.wa.us

October 8, 2012

Ms. Callie Dietz
Administrator for the Courts
1206 Quince Street SE
P.O Box 41170
Olympia, WA 98504-1170

Re: Request for Superior Court Judge for Whatcom County

Dear Ms. Deitz,

I am writing on behalf of the Whatcom County Superior Court to formally request consideration of approval for a fourth Superior Court Judge for Whatcom County. The most recent two judicial needs surveys have shown that Whatcom County should have seven full-time judicial officers. At this time we have three elected judges and three full-time court commissioners, for a total of six. We have divided our workload to best utilize this arrangement, but find that our greatest need is for trial judge time to meet our criminal and, increasingly, backlogged civil trial calendars. Whatcom County last added a judge in the early 1970's and the population of the county has tripled in the ensuing years. A request was forwarded last year to the Board for Judicial Administration as well.

The Court has been working with our County Executive and County Council to this end. The County Council has authorized a design review for the needed courtroom space and there is a plan that should meet our needs. Our County Executive, Prosecuting Attorney, Public Defender and private bar are all in support of this request. Letters of support can be provided upon request.

The Court believes that efficient and effective administration of justice in Whatcom County requires the addition of a fourth Superior Court Judge. Please consider this request for the 2013 legislative session. Please feel free to seek further information or clarification.

Sincerely,

Charles R. Snyder
Judge, Whatcom County Superior Court

Cc: Jack Louws, County Executive
Mellani McAleenan
Senator Kevin Ranker

Board for Judicial Administration Request Legislation

Increases the number of superior court judges in Whatcom County. Provides that the addition judicial position created by this act shall become effective only if the county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute.

Contact:
Mellani McAleenan, Associate Director
Board for Judicial Administration
(360) 357-2113 (office)
(360) 480-3320 (cell)
Mellani.mcaleenan@courts.wa.gov

AN ACT relating to increasing the number of superior court judges in Whatcom County; amending RCW 2.08.063; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 2.08.063 and 2005 c 95 s 1 are each amended to read as follows:

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, four judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima, eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, ((~~three~~)) four judges of the superior court.

NEW SECTION. **Sec. 2.** The additional judicial position created by section 1 of this act in Whatcom County becomes effective only if the county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute.

--- END ---

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6608

Chapter 199, Laws of 2012

62nd Legislature
2012 Regular Session

JUDICIAL STABLIZATION TRUST ACCOUNT SURCHARGES

EFFECTIVE DATE: 06/07/12

Passed by the Senate March 6, 2012
YEAS 39 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House March 7, 2012
YEAS 54 NAYS 43

FRANK CHOPP

Speaker of the House of Representatives

Approved March 29, 2012, 7:40 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6608** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 29, 2012

Secretary of State
State of Washington

ENGROSSED SENATE BILL 6608

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

By Senators Harper, Pflug, Frockt, Kline, and Eide

Read first time 02/24/12. Referred to Committee on Ways & Means.

AN ACT Relating to judicial stabilization trust account surcharges; and amending RCW 3.62.060, 36.18.018, and 36.18.020.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 3.62.060 and 2011 1st sp.s. c 44 s 4 are each amended to read as follows:

(1) Clerks of the district courts shall collect the following fees for their official services:

(a) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(b) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of twelve dollars.

(c) For filing a supplemental proceeding a fee of twenty dollars.

(d) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(e) For preparing a transcript of a judgment a fee of twenty dollars.

(f) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(g) At the option of the district court:

(i) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(ii) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(iii) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(iv) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(v) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

(h) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(i) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(j) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

(k) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(l) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(2)(a) Until July 1, 2013, in addition to the fees required to be collected under this section, clerks of the district courts must collect a surcharge of ((~~twenty~~)) thirty dollars on all fees required to be collected under subsection (1)(a) of this section.

(b) Seventy-five percent of each surcharge collected under this subsection (2) must be remitted to the state treasurer for deposit in the judicial stabilization trust account.

(c) Twenty-five percent of each surcharge collected under this subsection (2) must be retained by the county.

(3) The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded.

Sec. 2. RCW 36.18.018 and 2011 1st sp.s. c 44 s 3 are each amended to read as follows:

(1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2013, in addition to the fee established under subsection (2) of this section, a surcharge of ((~~thirty~~)) forty dollars is established for appellate review. The county clerk shall transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

Sec. 3. RCW 36.18.020 and 2011 1st sp.s. c 44 s 5 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings

filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) Until July 1, 2013, in addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of ((~~twenty~~)) thirty dollars must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of ((~~thirty~~)) forty dollars must be collected.

Passed by the Senate March 6, 2012.
Passed by the House March 7, 2012.
Approved by the Governor March 29, 2012.
Filed in Office of Secretary of State March 29, 2012.

WASHINGTON
COURTS

September 21, 2011

TO: Chief Justice Barbara Madsen, BJA Chair; and
Judge Chris Wickham, Member Chair

FROM: Justice Susan B. Owens, Chair, Interpreter Commission

RE: PAYMENT OF INTERPRETER EXENSES IN CIVIL HEARINGS

Washington law requires courts to secure the rights of persons who are unable to communicate in the English language by providing qualified interpreters.[1] Without the aid of interpretation, participants with limited English proficiency (LEP) are excluded from opportunity to exercise their legal rights. However, in civil matters, Washington law creates barriers to LEP individuals in exercising their rights. Courts may charge the cost of interpreter expenses to LEP parties in civil cases, unless they have demonstrated indigency.[2] And, in many cases, courts simply do not appoint court interpreters in civil matters.

Although in many respects we believe Washington far outpaces the national norms with respect to serving LEP persons, the Interpreter Commission is concerned that our state law regarding payment for interpreter services in civil matters may not meet federal standards. Developed pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166, the U.S. Department of Justice (DOJ) established Guidance addressing language access standards that must be met by federal funding recipients.[3] DOJ's position is that courts that are direct and indirect funding recipients of federal funds are required to pay interpreter costs in all hearings, regardless of case type, and regardless of a party's economic status.[4]

The inconsistency between the requirements of Title VI and Washington statute create uncertainty and risk for all Washington courts.

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[1] RCW 2.43.010).
[2] RCW §.43.040(3.
[3] 28 C.F.R. §42.101 and §42.201.
[4] October 14, 2010 letter from Thomas E. Perez, Assistant Attorney General, to Chief Justices and State Court Administrators.

Therefore, the Interpreter Commission respectfully requests that the BJA pursue a legislative change mandating the courts to pay interpreter expenses in all cases types, regardless of parties' economic status, harmonizing RCW 2.43.040 and federal requirements for civil hearings. The Commission is not requesting State funding to accommodate the change.

Current Practices in Washington Courts: Washington courts take inconsistent approaches to appointing and charging litigants for interpreter expenses in civil cases. Interpreter schedulers of thirty-two courts responded to an informal survey regarding payment of interpreter expenses. Respondents represented a mix of Superior, District and Municipal Courts. The survey showed that most responding courts already pay interpreter expenses in civil cases. Specific findings include:

- **Traffic Infraction Hearings:** All but one responding court pays for interpreter expenses in all traffic hearings.
- **Other Civil Hearings:** Of the twenty-one responding District and Superior Courts, seventeen pay interpreter costs in all civil cases. Four collect fees when parties are not found to be indigent.
- **Protection Order Hearings:** Twenty-one courts reported paying interpreter expenses in all protection order hearings. One reported paying only if the party is indigent, and one indicated "when ordered by the Judge."

Although the majority of responding courts reportedly cover the costs of interpreting in civil matters, some still do not. Advocates have brought concerns to the Interpreter Commission's attention regarding the provision of interpreters in civil cases. Transcripts illustrate that judges sometimes confuse the requirement to pay interpreter costs, with the right to having an interpreter. Additionally, the burden to prove indigency is placed on the LEP parties, without the benefit of an interpreter to address the procedural requirements.

Current Practices in Other States: Courts in at least sixteen states pay interpreter costs for all civil cases. Those states are listed below, along with the source of their directive:

1. Colorado (result of DOJ MOU)
2. Georgia (court rule)
3. Idaho (statute)
4. Indiana (statute)
5. Kansas (statute)
6. Kentucky (statute)
7. Maryland (Supreme Court directive)
8. Massachusetts (statute)
9. Maine (result of DOJ MOU)
10. Minnesota (statute)
11. Nebraska (statute)
12. New Jersey (administrative directive)
13. New Mexico (statute)
14. New York (statute)
15. Oregon (not firm in statute, but done as a matter of policy)
16. Wisconsin (statute)

National Attention: In recent years the U.S. Department of Justice Civil Rights Division has increased its enforcement of language access requirements. To date the DOJ's only audit and investigation in Washington occurred with the Mattawa Police

Department in 2008.[5] However, audits and investigations have occurred or are occurring with courts in California, Colorado, Maine, Wisconsin, North Carolina, Delaware, and Alabama. There has been increased visibility to the issue of court interpreting and requiring courts to pay those expenses. Washington has been identified as a state that does not pay interpreter expenses in non-indigent civil matters in the Brennan Center for Justice's publication *Language Access in State Courts*[6] and COSCA's 2007 *White Paper on Court Interpretation: Fundamental to Access to Justice.*[7]

Cost Considerations: Paying the costs of interpreter cases in non-indigent civil matters will have a fiscal impact on counties and cities. However, courts may opt to use the opportunity to identify cost-savings approaches to interpreter management. Proven and effective cost saving approaches include, but are not limited to:

- Establishing "interpreter calendars" to better utilize paid interpreter time, and reduce the number of separate court events requiring interpreters;
- Consolidating interpreter scheduling responsibilities among neighboring courts, sharing costs and resources;
- Hiring staff Spanish interpreters for a single court, or to be shared by neighboring courts;
- Implementing online scheduling technology to reduce the amount of staff time used for finding and communicating with court interpreters.

Additionally, the AOC is currently piloting video remote interpreting technology, which has the potential to deliver services to courts statewide at reduced costs.

Alternative to Statutory Changes: An alternative to seeking a statutory change is establishing Court Rules regarding the payment of interpreters. The Supreme Court has certain inherent powers; among these is the power to prescribe rules for procedure and practice in State Courts.[8] Case law indicates that, where the rule of court is inconsistent with procedural statute, the power of the court to establish the procedural rules for the courts of this state is supreme.[9]

Chapter 2.43 RCW applies not only to Washington State Courts, but also to any "department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof."[10] Creating a Court Rule regarding the

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[5] http://seattletimes.nwsource.com/html/localnews/2004438670_bilingual26.html
[6] http://www.brennancenter.org/content/resource/language_access_in_state_courts/ See page 19.
[7] http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf See page 39.
[8] State v. Smith, 84 Wn.2d 498, 502, 527 P.2d 674, 677 (1974).
[9] Petrarca v. Halligan, 83 Wn.2d 773, 777, 522 P.2d 827, 830 (1974); State v. Pollard, 66 Wn.App. 779, 785, 834 P.2d 51, 54 (1992); State v. Saldano, 36 Wn.App. 344, 350, 675 P.2d 1231, 1235 (1984).
[10] RCW 2.43.020(1) (2010).

payment of interpreters provides an opportunity to craft language specifically applicable to State Courts.

Summary: The Washington statutory standards regarding the payment of court interpreter costs in non-indigent civil cases do not conform to U.S. Department of Justice standards . Moreover, the general trend among Washington courts and other state judiciaries is to absorb these costs as a court expense. The Interpreter Commission respectfully requests that the BJA support and seek a legislative change to RCW 2.43.040 requiring courts to provide court interpreters at court expense for all hearing types. In the alternative, the Interpreter Commission requests the BJA's endorsement of establishing a procedural court rule requiring the same.

RESOLUTION of the BOARD FOR JUDICIAL ADMINISTRATION
of the State of Washington

In Support of Language Access Services In Court

WHEREAS, equal access to courts is fundamental to the American system of government under law; and

WHEREAS, language barriers can create impediments to access to justice for individuals who are limited-English proficient; and

WHEREAS, it is the policy of the State of Washington "to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them." RCW 2.43.010 (Interpreters for non-English speaking persons); and

WHEREAS, courts rely upon interpreters to be able to communicate with limited-English proficient litigants, witnesses and victims in all case types; and

WHEREAS, the State has previously acknowledged a responsibility to share equally with local government in the costs incurred in paying for quality court interpreting services; and

WHEREAS, the Board for Judicial Administration recognizes the benefit that interpreting services provide to limited English proficient litigants and to the fact-finder in the efficient and effective administration of justice; and

WHEREAS, the Board for Judicial Administration previously adopted a Resolution to, among other things, "remove impediments to access to the justice system, including physical and language barriers, rules and procedures, disparate treatment and other differences that may serve as barriers." (Board for Judicial Administration, Civil Equal Justice); and

WHEREAS, the provision of free and qualified interpreter services in all legal proceedings promotes the Principal Policy Objectives of the State Judicial Branch regarding fair and effective administration of justice in all civil and criminal cases, and accessibility to Washington courts;

NOW, THEREFORE, BE IT RESOLVED:

That the Board for Judicial Administration:

1) Endorses the provision of interpreter services, at public expense, in all legal proceedings, both criminal and civil;

2) Supports the elimination of language–related impediments to access to the justice system for limited English proficient litigants; and

3) Encourages the State to fulfill its commitment to share equally in the responsibility to provide adequate and stable funding for court interpreting services.

ADOPTED BY the Board for Judicial Administration on July 20, 2012.

Municipal Courts – Interpreter Costs in Civil Cases

Location	Approx. annual interpreter costs	Receive Federal funds?	Process to track reimbursement of interp. costs?	Approx. amount recovered annually	Provide interpreting at court expense in ALL civil hearings
Auburn	$75,000	No	No	**$100**	No
Bonney Lake	$3,000	No	No	0	No
Brewster	$100	No	No	0	No
Buckley	$1,500	No	No	0	No
East Wenatchee	$3,000	No	No	0	**Yes**
Edmonds	$43,000	No	No	0	**Yes**
Federal Way	$75,000	**Yes**	No	0	**Yes**
Fife	$20,000	No	No	0	**Yes**
Gig Harbor	$3,500	No	No	0	**Yes**
Kirkland	$30,000	No	No	0	**Yes**
Lakewood	$35,000	No	No	0	**Yes**
Lynnwood	$84,000	No	No	0	**Yes**
Marysville	$22,000	No	No	0	**Yes**
Mercer Island	$12,000	No	No	0	**Yes**
Ocean Shores	$3,000	No	**Yes**[1]	**$2000**	No
Pacific and Algona	$15,000	No	No	**$9000**	No
Port Orchard	$3,500	No	No	0	**Yes**
Renton	$60,000	No	No	0	No
Roy	$400	No	No	0	**Yes**
SeaTac	$38,000	No	No	0	**Yes**
Seattle	$350,000	**Yes**	No	0	**Yes**
Tukwila	$60,000	No	No	0	**Yes**
Union Gap	$24,000	No	No	0	**Yes**
Vancouver	$60,000	**Yes**	No	0	**Yes**

	Protective Orders	Infractions	Other
We provide and pay for interpreters when requested.	9	22	3
We provide and pay for interpreters, but seek reimbursement of costs from the non-English speaking party, unless so ordered by the court.	0	2	2
We require non-English speaking parties to provide their own interpreters, unless so ordered by the court.	0	2	2

[1] We track it as restitution to the City of Ocean Shores.

District Courts – Interpreter Costs in Civil Cases

Location	Approx. annual interpreter costs	Receive Federal funds?	Process to track reimbursement of interp. costs?	Approx. amount recovered annually	Provide interpreting at court expense in ALL civil hearings
Clark	$75,000	**Yes**	No answer	0	No
Columbia	$1,000	No	No	0	No
Douglas	$89,000	No	No	0	**Yes**
King	$680,000	No	No	0	**Yes**
Kitsap	$40,000	No	No	0	No
Klickitat	$1,500	No	No	0	**Yes**
Okanogan	$30,000	No	No	0	**Yes**
Pacific	$300	No	No	0	**Yes**
Pend Oreille	$150	No	No	0	**Yes**
Pierce	$350,000	**Yes**	No	0	**Yes**
San Juan	$2,000	No	No	**$500**	No
Skamania	$4,000	No	**Yes**[2]	0	No
Spokane	$2,100 (civil only)	**Yes**	No	0	**Yes**
Thurston	$25,000	No	No	0	**Yes**
Whatcom	Unknown	No	No	0	**Yes**
Whitman	$1,000	No	**Yes**[3]	0	No
x	x	No	No	0	**Yes**
Yakima	$146,000	No	No	**$500**	**Yes**

	Protective Orders	Infractions	General Civil	Other
We provide and pay for interpreters when requested.	16	14	10	5
We provide and pay for interpreters, but seek reimbursement of costs from the non-English speaking party, unless so ordered by the court.	0	1	2	0
We require non-English speaking parties to provide their own interpreters, unless so ordered by the court.	1	3	5	0

[2] Setting 6 month reviews.

[3] We have very few civil/small claim cases where an interpreter is requested - less than one per year. The finance coordinator keeps a folder with the case number and tracks payment manually.

Superior Courts– Interpreter Costs in Civil Cases

Location	Approx. annual interpreter costs	Receive Federal funds?	Process to track reimbursement of interp. costs?	Approx. amount recovered annually	Provide interpreting at court expense in ALL civil hearings
Benton & Franklin	$72,250	Yes	No	0	Yes
Chelan	$58,000	Yes	No	0	Yes
Clark	$100,000	Yes	No	0	No
Cowlitz	$43,000	Yes	No	0	Yes
Jefferson	$3,000	No	No	0	Yes
King	$800,000	Yes	No	0	No
Kitsap	$45,000	Yes	No	0	Yes
Mason	$18,000	Yes	No	0	No
Pierce	$350,000	Yes	No	0	Yes
San Juan	$0	No	No	0	Yes
Snohomish	$150,000	Yes	No	0	No
Spokane	$500	Yes	No	0	Yes
Stevens/Ferry/Pend Oreille	$1,000	Yes	No	0	Yes
Thurston	$40,000	Yes	No	0	Yes
Whatcom	$34,000	Yes	No	0	Yes
Yakima	$149,000	Yes	No	0	No

	Family	Protection Orders	Involuntary Commitments	General Civil	Other
We provide and pay for interpreters when requested.	11	15	15	12	6
We provide and pay for interpreters, but seek reimbursement of costs from the non-English speaking party, unless so ordered by the court.	2	0	0	2	0
We require non-English speaking parties to provide their own interpreters, unless so ordered by the court.	3	1	1	2	1

RCW 2.43.040
Fees and expenses — cost of providing interpreter — reimbursement.

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

(5) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where an interpreter is appointed by a judicial officer in a proceeding before a court at public expense and:

(a) The interpreter appointed is an interpreter certified by the administrative office of the courts or is a qualified interpreter registered by the administrative office of the courts in a noncertified language, or where the necessary language is not certified or registered, the interpreter has been qualified by the judicial officer pursuant to this chapter;

(b) The court conducting the legal proceeding has an approved language assistance plan that complies with RCW 2.43.090; and

(c) The fee paid to the interpreter for services is in accordance with standards established by the administrative office of the courts.

[2008 c 291 § 3; 1989 c 358 § 4. Formerly RCW 2.42.230.]

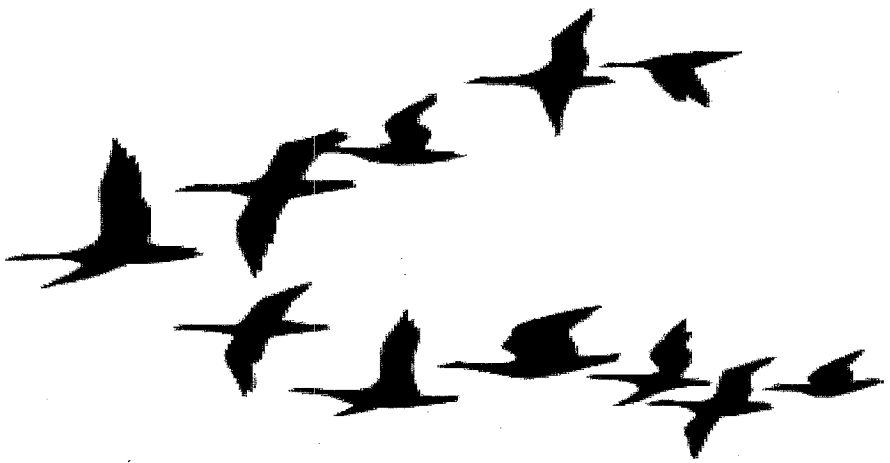
Notes:
Severability -- 1989 c 358: See note following RCW 2.43.010.

TAB 6

WASHINGTON
COURTS

Board for Judicial Administration

REPORT



Governance Retreat
September 21-22, 2012

BJA Governance Retreat Report

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Introduction

On September 21-22, 2012, thirty judges, administrators, judicial branch agency directors, and Administrative Office of the Courts staff came together to discuss the future of the Board for Judicial Administration.

We wish to express our sincere appreciation to these dedicated members of the judicial branch who volunteered their time to discuss ways of enhancing the system of governance in Washington State. Participants started this important work prior to the retreat by reviewing a variety of materials including documents that created the Board for Judicial Administration originally as well as the improvements that resulted from the Report of the Washington State Commission on Justice, Efficiency and Accountably in 1999. Additionally, participants were asked to familiarize themselves with governance principles that had been employed in Utah as a possible model for Washington to consider.

The retreat was the first step in a continuing dialog. It raised many questions that we are now attempting to answer. However, we were gratified to learn that on the very fundamental questions regarding whether there should be a governance body and a unified message, the answers were clearly in the affirmative.

To finalize the work begun at the retreat, two work groups consisting of current court association leadership will be created. One group will develop recommendations for BJA structure and the other group will make recommendations concerning committees and commission membership. These will be presented for formal approval by the full Board for Judicial Administration. It is anticipated that these recommendations will be ready for consideration in February 2013.

We look forward to continuing to build on these efforts.

Sincerely,

Chief Justice Barbara A. Madsen
Chair, Board for Judicial Administration

Judge Chris Wickham
Member-Chair, Board for Judicial Administration

Participants

Members of the Judiciary

Honorable Barbara Madsen, Chief Justice, Washington Supreme Court (BJA Chair)
Honorable Chris Wickham, Thurston County Superior Court (BJA member-chair)
Honorable Susan Owens, Washington Supreme Court
Honorable Christine Quinn-Brintnall, Chief Presiding Judge, Court of Appeals, Division 2
Honorable Ann Schindler, Court of Appeals, Division 1
Honorable Craig Matheson, Benton/Franklin Superior Court (President, Superior Court Judges' Association)
Honorable Deborah Fleck, King County Superior Court
Honorable Linda Krese, Snohomish County Superior Court
Honorable Scott Sparks, Kittitas County Superior Court
Honorable Sara Derr, Spokane County District Court (President, District and Municipal Court Judges' Association)
Honorable Janet Garrow, King County District Court
Honorable Jack Nevin, Pierce County District Court
Honorable Kevin Ringus, Fife Municipal Court
Honorable Stephen Dwyer, Court of Appeals, Division 1 (Facilitator)
Honorable Ellen Fair, Snohomish County Superior Court (Facilitator)
Honorable James Riehl, Kitsap County District Court (Facilitator)

Special Guests

Honorable Chris Gregoire, Governor
Honorable Christine Durham, Utah Supreme Court (former Chief Justice)
Mr. Dan Becker, Utah State Court Administrator
Ms. Laura Klaversma, Court Services Director, National Center for State Courts

Judicial Branch Associations

Mr. Pat Escamilla, Administrator, Clark County Juvenile Court (President, Washington Association of Juvenile Court Administrators)
Ms. LaTricia Kinlow, Administrator, Tukwila Municipal Court (President, District and Municipal Court Management Association)
Ms. Michele Radosevich, President, Washington State Bar Association
Mr. Paul Sherfey, Chief Administrative Officer, King County Superior Court

Judicial Branch Agency Directors

Mr. Jim Bamberger, Director, Office of Civil Legal Aid
Ms. Joanne Moore, Director, Office of Public Defense

Administrative Office of the Courts

Ms. Callie Dietz, Interim State Court Administrator
Ms. Beth Flynn, Executive Assistant
Ms. Ileen Gérstenberger, Court Educator
Mr. Dirk Marler, Judicial Services Division Director
Ms. Mellani McAleenan, Associate Director, Board for Judicial Administration

Principles of Court Governance

As part of a series from the *Executive Session for State Court Leaders in the 21st Century*[1], Utah Supreme Court Justice Christine Durham and Utah State Court Administrator Daniel Becker authored "A Case for Court Governance Principles," which formed the basis for much of the Board for Judicial Administration (BJA) Governance Retreat discussions. The paper is reproduced in its entirety beginning on page 13 of this report.

In developing the agenda for this retreat, these principles were reviewed and nine were selected to be the basis for additional discussion:

- A well-defined governance structure for policy decision-making and administration for the entire court system.
- Meaningful input from all court levels into the decision-making process.
- Commitment to transparency and accountability.
- A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.
- Open communication on decisions and how they are reached.
- Clear, well-understood and well-respected roles and responsibilities among the governing entity, presiding judges, court administrator, boards of judges, and court committees.
- A system that speaks with a single voice.
- Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.
- Positive institutional relationships that foster trust among other branches and constituencies.

The principles were grouped into three categories of similar dimension, and retreat participants were asked to determine whether these principles should be applied in Washington and how. Along with these principles, participants were asked to discuss three general topics:

- Why do we need a Board for Judicial Administration?
- Who is the Board for Judicial Administration?
- How will the Board for Judicial Administration function?

[1] Learn more about the Executive Session for State Court Leaders in the 21st Century at the National Center for State Court's website at http://ncsc.org or Harvard's website at http://www.hks.harvard.edu/programs/criminaljustice/research-publications/executive-sessions/esstatecourts

Discussion

Retreat attendees were divided into three groups, each with a facilitator and a recorder, to discuss both the principles and the general topics as they related to three of the principles. Each group discussed the general question with regards to application of the three principles chosen for that topic. Reports to the full group were given by the facilitators after each "breakout" group discussion was completed. There was overlap in discussion topics between groups. Consensus issues are only listed in one group report to reduce redundancy.

In the first "breakout" discussion, participants were asked **"Why do we need a Board for Judicial Administration?"** and to discuss the following principles:

- A well-defined governance structure for policy decision-making and administration for the entire court system.
- A system that speaks with a single voice.
- Positive institutional relationships that foster trust among other branches and constituencies.

Issues presented included whether an entity such as the Board for Judicial Administration is necessary and, if so, why. Questions also included who the BJA should represent and what topics should be included within the BJA's purview. Consensus was developed on the following conclusions:

- Speaking with a single message is necessary and appropriate as long as there is confidence that all positions are being considered in the development of that single message.
- Having a cacophony of voices working on the same problems can lead to differing conclusions and the inability to make good policy decisions. There is much duplication of effort in our current system.
- There needs to be a body that is future-thinking, and it is appropriate that the BJA is that body.
- There is a need for commonly accepted values, and the BJA's work relates to that.
- The BJA struggles with the notion of independence of its members at the court level.
- There is no clear sense of who is in charge of what. There is a need to reopen the "jurisdictional" debate – what is the BJA in charge of and how much power does it need to have to make change?
- The BJA needs more power. In order for the BJA to have power, others have to relinquish some power to the BJA.
- Fostering relationships outside of the branch important, but fostering feelings of mutual trust and respect within the branch and court levels is equally, if not more, important.
- The BJA can and should do more with administrative rulemaking.

- To make the BJA more effective, there should be a better articulation of norms and expectations, which should be used as a recruitment and orientation tool. BJA members should do more consistent outreach and nurturing of judiciary leadership with a more intentional educational process about the benefits of a stronger BJA to the whole judiciary.
- A version of the Utah Judicial Council Norms should be adopted.[2]
- The BJA needs to be resourced appropriately in order to be successful.

In the second "break out" discussion, participants were asked **"Who is the Board for Judicial Administration?"** and to discuss the following principles:

- A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.
- Clear, well-understood and well-respected roles and responsibilities among the governing entity, presiding judges, court administrators, boards of judges, and court committees.
- Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.

Issues presented included the composition of the BJA membership, including whether the BJA should include non-judge members and how members should be selected. Consensus was developed on the following conclusions:

- Clear guidance to the Administrative Office of the Courts (AOC) would be beneficial. There is a lack of understanding about the AOC's functions. The AOC is pulled in many different directions, which makes it difficult to identify priorities.
- An evaluation process is important in setting policies and determining if they are carried out.
- Membership in the BJA carries a significant time commitment. Incentives for membership should be considered.
- The Utah model of advocacy from subgroups rather than members has merit.[3]
- Membership in the BJA should be limited to judges but the other judicial branch stakeholders play a valuable role in providing information.
- Expanding membership beyond the judiciary would make the development of a unified message very difficult because each group has different priorities. Coalitions are important and can be achieved without actual voting membership on the BJA.
- Not all groups are necessary participants at all times, but they should be included when necessary.
- Too large of a group can be unwieldy.
- Present terms and selection of chairs is appropriate.

[2] See Utah Judicial Council Norms at page 26
[3] See Utah Judicial Council Norms at page 26

In the third "break out" discussion, participants were asked **"How will the Board for Judicial Administration function?"** and to discuss the following principles:

- Meaningful input from all court levels into the decision-making process.
- Commitment to transparency and accountability.
- Open communication on decisions and how they are reached.

Issues presented included whether BJA members should represent their individual constituencies or the judiciary as a whole and how decisions should be reached and subsequently communicated. Consensus was developed on the following conclusions:

- Some thought should be given to how the BJA communicates its decisions to others.
- Much progress has been made since the creation of the original BJA. The positive changes should not be forgotten.
- The addition of a co-chair was a positive change.
- Without the BJA, there is no other audience for a single court level to obtain "buy in" on issues that are specific to that association.
- BJA members currently appear to engage in caucus decision-making with each court level voting as a bloc, but the BJA members should be making decisions in the best interest of the judiciary as a whole.
- The president of each association should speak on behalf of that association but the other court level members should make decisions on behalf of the judiciary as a whole and not on behalf of their particular association or court level.
- Task forces and work groups can be an important part of the decision-making process but should not be used as a stalling tactic when BJA members do not want to make difficult decisions.

Next Steps

Many questions remain about the details regarding the structure of the Board for Judicial Administration, but the discussions at this retreat make it clear that the judiciary and judicial branch members who attended believe in the need for a BJA as the entity that develops policy for the Washington judicial branch and provides the means for the judiciary to speak with one voice. To address those remaining structural questions, two work groups consisting of current court association leadership will be created. One group will develop recommendations for BJA structure and the other group will make recommendations concerning committees and commission membership. This process is anticipated to take approximately ninety days, so approval by the full BJA should occur in early 2013.

A summary report from Laura Klaversma of the National Center for State Courts is included on page eight. Ms. Klaversma suggests specific next steps for defining the BJA's structure, roles, and responsibilities. After these questions are answered, the long-range planning process for the Washington judiciary can be fully implemented building on the work of previous planning committees, the work of the retreat, and interviews conducted by Ms. Klaversma and her colleague, Tom Clarke.

NCSC Summary Report

Mary Campbell McQueen
President

Daniel J. Hall
Vice President
Court Consulting Services
Denver Office

TO: Barbara A. Madsen, Chief Justice
Callie Dietz, Acting SCA
FROM: Laura Klaversma
Tom Clarke
DATE: September 25, 2012
RE: Washington Long-Range Planning
Site Visit Interviews 9/18-9/19
BJA Retreat 9/21-9/22

Issues and concerns that arose from those interviewed during the site visit:

- Who did the interviewees think is leading and in charge of the long-range planning effort?

  Interviewees had a variety of answers; unclear as to who was leading and in charge. They mentioned the following:

  Chief Justice?
  Supreme Court?
  BJA?
  Steve Henley?

- What did the interviewees think is the long range planning strategy?

  Interviewees were uncertain.

  Some thought it was only an effort for the Administrative Office.
  Some thought it was only an effort for the Supreme Court.
  Quite a few did not know what the effort was trying to be.
  Some said it was too broad.
  Some said it was too top down.
  Some said it did not affect them.

- What did those who have participated in the process think of the long range planning effort?

  Too much "pie in the sky."
  Too much time and no result.
  No direction or plan.
  Too many starts and stops.
  Waste of time.

Effort has a hidden agenda.

- What did those who have not participated in the process think of the long range planning effort?

  Most do not know about it.
  Others have no interest in it.
  Some said it does not affect them.
  Some said that decisions could not be enforced in a decentralized state.

Conclusion from Interviews:

The current long-range planning effort is ineffectual. This is due to at least two primary reasons.

1) There is no governance in place or accepted as governance to carry out the planning and implementation. The BJA, members and non-members, view the planning effort with distrust, disinterest or lack of understanding. The Washington Chief Justice and Supreme Courts of the past have been uninvolved and inactive in administering and leading any planning or governance effort. No precedence or cultural expectation that the Supreme Court or the Chief Justice would lead this.
2) The process, traditional strategic planning, is not a good fit for courts in general and particularly a heavily decentralized state such as Washington.

Conclusion from BJA Retreat:

During the BJA retreat it seemed that the members felt that there is a need for the BJA structure and culture to change in order to be effective. There was no indication that any of the members thought the BJA should cease to exist. The Board for Judicial Administration Rules (BJAR) state that one of its duties is to "establish a long-range plan for the judiciary."

Recommendations:

1) The BJA structure, roles and responsibilities need to be clearly defined and acknowledged if it is to be of any value in governing or developing long-range planning.
2) The Commissions, Boards and Committees for the BJA and Associations needs to be reviewed and modified to give clarity and authority to those within the BJA. This can also help in lessening the time strain on the volunteer judges, court administrators and clerks as well as staff in the Administrative Office of the Court that support them.
3) Once the first two recommendations are completed, a Long-Range Planning Effort designed for loosely coupled organizations can be initiated.

Next Steps:

Review material and information from Long-Range Planning effort. Develop a document that presents the accepted mission, vision and values. To accomplish this quickly, we suggest first having AOC staff develop the materials from the information that has

already been developed. The NCSC can then review and suggest changes to the document, especially with the Principles based on work in other states.

The following plan should be presented to the BJA membership at the October meeting. If the document with the Mission, Vision and Values is ready, this can also be presented to the BJA membership to start the process.

Phase 1:

1) Define BJA Structure, Roles and Responsibilities
   a. A select group of BJA members, to include the President and President-Elect of each court level as well as the Co-Chairs of BJA, will meet at a retreat (one-two days) to do the initial development. Through electronic means or shorter meetings, the document can be reviewed, finalized and approved.
   b. The document, once reviewed and approved by the group, will be presented, discussed and approved by the BJA members. The goal for completion of this document will be the end of January with the approval by BJA members at the February meeting.
   c. Once approved, the BJA members will present to their associations for approval.

Phase 2:

1) AOC staff will provide a list of BJA and Association Committees, Boards, Commissions, Task Forces to the BJA members. It is preferable that the BJA members receive this at least one week prior to the next BJA meeting in October.
2) BJA will have a working meeting to discuss redundancies and plan for ways to consolidate Committees, Boards, Commissions, and Task Forces. One of the goals will be to reduce time and efforts by judges, clerks, court administrators and AOC staff. Another goal would be to increase the opportunity for communication by increasing the cross pollination of committees and efforts. Another goal would be to focus efforts of the Judiciary as a whole and increase the opportunity for successful results in the areas that the committees, boards, commissions and task forces have common objectives.
3) BJA will make a plan of action to run concurrently during the 90 day effort for delivering a BJA structure, roles and responsibilities document. The final recommendations of Phase 2 should enhance the efforts of Phase 1.

Phase 3:

The Long-Range Planning Process should be initiated once the governance is in place, through the auspices of the BJA. This process should follow the Strategic Planning for loosely coupled organizations model.

- What does the planning process look like?
  - Short term time line for process with planning taking three-six months
  - Designed around campaigns, two-three areas of focus with distinct steps for implementation
  - Based on the premise that those implementing the campaigns do so voluntarily
- What are the steps for the planning process?

1) Organize:
    a. Select members of the BJA
    b. Establish a timeline
    c. Plan steps to completion
2) Gather input on campaigns:
    a. Surveys
    b. Focus groups
3) Review information gathered through surveys and focus groups
    a. Refine possibilities for campaigns using criteria
    b. Further in-depth analysis on selected campaigns
4) Make recommendations to BJA for campaigns selected
5) Develop strategies and steps for each campaign

A Case for Court Governance Principles

Perspectives on
State Court Leadership

A CASE FOR COURT GOVERNANCE PRINCIPLES

One in a series from the Executive Session for State Court Leadership in the 21st Century

written by:
Christine M. Durham
Daniel J. Becker

HARVARD Kennedy School
Program in Criminal Justice Policy and Management

NCSC
National Center for State Courts

SJI
State Justice Institute

BJA

Perspectives on State Court Leadership

This is one in a series of papers that will be published as a result of the **Executive Session for State Court Leaders in the 21st Century.**

The Executive Sessions at the Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue.

Members of the Executive Session for State Court Leaders in the 21st Century over the course of three years sought to clarify the distinctive role of state court leaders in our democratic system of government and to develop and answer questions that the state courts will face in the foreseeable future. Themes addressed include principles for effective court governance, the tension between problem solving and decision making, the implications of social media for court legitimacy, how courts defend themselves from political attack, and the notion of chief justices as civic leaders. Many themes were developed by Session members into papers published in a series by the National Center for State Courts.

Learn more about the Executive Session for State Court Leaders in the 21st Century at:

NCSC's Web site:
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Harvard's Web site:
http://www.hks.harvard.edu/criminaljustice/executive_sessions/statecourts

BJA's Web site:
http://www.ojp.gov/BJA/

SJI's Web site:
http://www.sji.gov/

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INTRODUCTION

Hard times can inspire new ways of thinking about old problems. State courts today have ample reasons for questioning the continued viability of traditional approaches to organizing their work and to providing leadership. This paper proposes a set of principles for governing state court systems that is intended to begin a dialogue about how court governance can best be enhanced to meet current and future challenges. Governance is defined as "the means by which an activity or ensemble of activities is controlled or directed, such that it delivers an acceptable range of outcomes according to some established social standard" (Hirst, 2000:24).

The principles outlined in this paper were developed by re-examining what courts, as institutions, need to do internally to meet their responsibilities. This is in contrast to much of the current writing about the future of court governance, which tends to focus on ways in which the state courts can improve their relationship with the other branches of government.

The section that follows sets the stage by describing the ways in which state court systems currently are structured. The manner in which state court systems are organized presents problems for effective court governance. The next section discusses the distinctive cultural problems associated with governing courts as opposed to other parts of state government. Existing discussions of court governance are insufficiently attentive to this cultural dimension. Eleven principles of court governance are then presented, with explanatory commentary, to respond to the challenges presented by both court structure and court culture.

The administrative rules for a state's courts, would be set not by the legislature, but by the governing authority of the judiciary, consistent with the principle of the judiciary as an independent branch of state government.

COURT ORGANIZATION: CONTEMPORARY MODELS

The state court systems of today emerged in the 1970s and 1980s as the long-standing vision of court reformers began to be realized at a rapid pace. Reformers had decried the degree to which trial courts were enmeshed in local politics, subject to overlapping jurisdiction, and governed by widely divergent court rules and administrative procedures within a state.

To varying degrees in recent decades, all states have changed the organization of their courts to address these concerns. Implementation of court unification was the main engine driving that change, which had four key components. First, the number of trial courts was to be reduced as the courts of each county were consolidated into one trial court or a simple two-level structure of a single general jurisdiction and a single limited jurisdiction court. A side benefit would be the gradual elimination of non-law trained judges.

Second, responsibility for trial court funding would be taken from county and city governments and placed instead in the state budget process. Judicial salaries would no longer be paid out of fees and fines. The court budget could be used to distribute resources across the state courts in an equitable and efficient manner, and budget priorities could be established for the entire state court system.

Third, court administration would be centralized in a state-level administrative office of the courts that prepared the state court budget. This would standardize court policies across the state and take local politics out of the hiring and supervision of court personnel. At the same time, centralization would promote professionalization of the state court workforce.

Finally, the administrative rules for a state's courts, would be set not by the legislature, but by the governing authority of the judiciary, consistent with the principle of the judiciary as an independent branch of state government.

A progress report in 2010 shows the court unification agenda was only partly realized. Today, 10 states have a single trial court and another seven have a

simplified two-level system. Thus, roughly one-third of the states completed the logic of consolidation. On the other hand, five states retain a significant number of non-law trained limited jurisdiction court judges.

State funding was more fully realized. Forty-two states now fund 100 percent of salaries for their general jurisdiction court judges. However, only 17 (out of 44) states with limited jurisdiction courts provide full funding for their judges. Even where judges' salaries are fully funded, however, responsibility for other court funding is still fragmented in some states.

Most states took important steps toward centralization. All states have an administrative office of the courts and in the majority of states the office has sole responsibility for budget preparation, human resources, judicial education, and serving as a legislative liaison.

Most state judicial branches have taken over rule making responsibilities. In 32 states, the court of last resort has exclusive rulemaking authority, and in 21, there is no legislative veto. Legislatures retain primary rulemaking responsibility in eight states. In others, the authority is shared or held by a judicial council.

The pace of changes to state court structures slowed considerably in the 1990s. While some states continued to consolidate trial courts and shift responsibilities to the state level, in most states the model for court organization seems fixed for at least the medium term.

One reason for the slower pace is that the fundamental logic of the unification model is being questioned. There is no longer a consensus that full unification is the desired end state for all court systems to reach. Even during the heyday of the unification movement, it was speculated that "it is the individual elements of court unification—and not the overall level of court unification—which affect court performance" (Tarr, 1981:365).

There are developments that, in time, will likely strengthen the hand of central court administration in all models of court organization. There has been a dramatic improvement in the quantity and quality of the case level information that flows from trial courts to the state level. This provides the raw material for planning and policy development. At the same time, sophisticated performance measurement systems and workload assessment methodologies have been developed that can provide a standard of management information never before available to court managers at both the local and state levels.

The court unification agenda focused on structural aspects of how trial courts should be organized. The next section looks at another dimension of challenges to court governance, those associated with the very distinctive organizational culture that characterizes courts.

THE CULTURE OF COURT SYSTEMS

> *"In our country judicial independence means not just freedom from control by other branches, but freedom from control of other judges" (Provine, 1990:248).*

In these few words, Doris Marie Provine captures the challenge facing any effort at court governance. Accepting the above as a truism, how are decisions to be made on behalf of independent actors who see themselves first, as autonomous adjudicators and, second, if at all, as part of a system? Stated another way, how do you balance self-interest with institutional interests, while attempting to respect both?

An Orientation of Autonomy and Self-Interest

It is critical to understand the cultural challenges to effective governance if improved governance models are to be advanced. The manner in which judges are selected by third parties (governors, legislators, or the electorate) rather than their future colleagues contributes to this sense of independence from the outset of a judicial career (Lefever, 2009). As a consequence, judges' "mandates" do not all derive from the judicial institution itself, resulting in a decreased sense of organizational identity for many new judges. This sense

of individual independence poses a significant obstacle to creating a system identity and, in turn, fidelity to the decisions of a governing authority.

At the trial court level, this manifests itself in judges resisting the notion that they should be concerned about anything other than handling "my cases." Presiding judges will frequently be heard describing themselves as "firsts among equals," who experience great difficulty in confronting the self-interested perspective that many judges bring to issues of court administration and operations. In an environment where the first instinct is to assess any proposal from the perspective of "how will it impact me," it is difficult to initiate change, or even make decisions.

Appreciating this self-interest orientation and working to overcome it, as well as understanding and working with it, will be critical to any form of court governance. Soliciting input, providing an opportunity to be heard, providing a forum for debate, explaining why an issue is important and why a decision was made the way it was, and ensuring effective lines of communication are important in any organization. The culture of courts makes such activities imperative.

Organizational Implications

Any organization (including courts) operates the way it does because the people in that organization want it that way or are at least complicit in accepting the operational structure (Ostrom and Hanson, 2010). The people who create this organizational culture in courts are judges, who used to be attorneys. Attorneys operate in a professional culture where goals tend to be abstract, authority diffuse, and there is low interdependence with others. It has been said that "the inherent conflict between managers and professionals results basically from a clash of cultures: the organizational culture, which captures the commitment of managers, and the professional culture, which socializes professionals" (Raelin, 1985:1). Professional court administration, whether in the form of court administrators, chief judges, or judicial councils, must operate in the world of concrete goals, more formal authority, and task interdependence if the needs of the organization are to be met.

The culture of judges being equals and a presiding judge being only a first among equals, frequently results in a lack of appreciation for the qualities needed in a leader.

As noted above, some judges are called upon to take on administrative roles. The culture of judges being equals and a presiding judge being only a first among equals, frequently results in a lack of appreciation for the qualities needed in a leader. This can result in the practice of choosing administrative leaders based on seniority rather than administrative competence, or of selecting judges who are least likely to challenge individual judicial autonomy. At the state level, the practice of rotating chief justices is a manifestation of this culture, and frequently results in tenures too short to permit effective engagement or accomplishment. The desire for a personal legacy can result in a personal agenda at the expense of system needs.

The culture of courts also directly affects non-judicial, professional administrators who are responsible for ensuring effective and efficient court operation, but who, in most instances, lack the authority of chief operating officer positions found in other governmental or business environments. Court executives and presiding judges, and state court administrators and chief justices, ideally function as a management team. The extent to which this ideal relationship actually exists can vary widely, again because of court culture. Something as simple as whether a court executive has a seat at the table during bench meetings, or whether they are relegated to the back row, speaks volumes about the role of the executive in the operation of the court and the existence of a true management team.

Additional cultural challenges result from the competing interests of different court levels and state versus local orientations. The culture of a supreme

court could not be more different from the culture of a trial court, yet in many jurisdictions it is the supreme court or the chief justice who sets policy for the entire system. It is not surprising that as state supreme courts have taken on more administrative oversight, budget, and policy setting, that trial courts have frequently resisted many forms of coordination and centralization. Trial courts often seek autonomy and flexibility, whereas state goals tend to be more in line with coherence and consistency.

The cultural dimension of courts raises difficult questions. In the policy-setting arena, how do the voices of trial judges get heard? Are there forums for expressing needs and concerns, and if so, are they viewed as effective and credible? Do judges have to speak collectively through "associations" to be heard and, if so, how will these various voices speak for the system? If multiple voices result in conflicted messages, are not other branches of government free to selectively hear, interpret, and ignore judges' voices? Providing a meaningful way for judges to contribute to policy decisions, maintaining effective communications, and assuring that decisions are clear are all critical to bridging the various interests of court levels and facilitating effective system governance.

It has been suggested that striking the balance between self-interest and institutional interests, while binding separate units of an organization together, requires strategies that embrace three elements: a common vision of a preferred future, helpful and productive support services that advance the capabilities of the organization's component parts, and a shared understanding of the threat and opportunities facing the system (Griller, 2010). The governance principles set out in the next section are intended to explore these elements.

Finally, while court culture must be understood and considered when addressing governance, it cannot be allowed to serve as an excuse for failing to provide a court system with an effective means of self-governance.

PRINCIPLES OF COURT GOVERNANCE

There are multiple structural models in place for governing and managing state and local courts and distinctive challenges associated with the culture of court organizations. Thus, it is likely that any prescriptive efforts aimed at re-alignment must be consistent with the history, culture, and goals of any individual court "system," however defined. This paper, therefore, attempts to posit unifying principles that can serve as a starting point for critiquing existing models, while understanding that they must be adapted to a variety of political, legal, and constitutional settings. The first eight principles are primarily focused on the internal governance of the court system, while the remaining three are focused on the relationship of the court system to other branches of government.

This paper, therefore, attempts to posit unifying principles that can serve as a starting point for critiquing existing models.

We suggest the following unifying principles for consideration:

1. A well-defined governance structure for policy decision-making and administration for the entire court system.

Ideally, in our view, this principle should apply to a state court system as a whole, but in many states this will have to be a long-term and perhaps incremental goal. The principle, applied at any level, however, suggests that structure should be explicit, and the authority for policy decision-making and implementation well defined. The absence of such clarity can significantly undermine the ability to make decisions.

2. Meaningful input from all court levels into the decision-making process.

This is a fairly obvious principle drawn from basic knowledge about system management. In the absence of any means of contributing to the process of making decisions, constituents who have to live with the decisions generally lack any sense of buy-in or ownership. This can result in, at best, indifference to the success of the enterprise or, at worst, resistance and sabotage. Perhaps more important, however, is the fact that the quality of the decision-making process is vitally enhanced by the knowledge and insights of all parts of the system.

3. Selection of judicial leadership based on competency, not seniority or rotation.

The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leadership should explicitly identify and acknowledge those skills, and judicial education should include their development. This is no easy task in the context of court cultures around the nation, but a more thoughtful conversation should begin and courts should seek ways to identify standards and practices that are better than many of those now in place.

4. Commitment to transparency and accountability.

The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also, and more importantly, the effectiveness with which resources are used. We in the courts should know exactly how productive we are, how well we are serving public need, and what parts of our systems and services need attention and improvement. This includes measuring the accessibility and fairness of justice provided by the courts as measured by litigants' perceptions and other performance indices. And we should make that knowledge a matter of public record.

No one wants to tell judges how to decide cases, although it is a reality that we may need to tell them how to manage case records, report court performance, move to electronic filings and discovery, and handle assignments and schedules.

5. A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation.

Decisions about policy belong with the governing authority of a judicial system, but implementation and day-to-day operations belong to administrative staff. An avoidance of micro-management by the policy-maker and clear authority for implementation in the managers are both important for the credibility and effectiveness of court governance, and can minimize the opportunities for undermining policy at the operational level. Finally, without a commitment to evidence-based evaluation of policies, practices, and new initiatives, courts cannot claim to be well-managed institutions.

6. Open communication on decisions and how they are reached.

Judicial culture generally fosters a strong sense of autonomy and self-determination amongst judges—a necessary corollary of decisional independence. In the administrative context, that same culture can make system management tricky. No one wants to tell judges how to decide cases, although it is a reality that we may need to tell them how to manage case records, report court performance, move to electronic filings and discovery, and handle assignments and schedules. To the extent judges, and staff, feel that decisions emerge from a "black box," without

their input and prior knowledge, the potential for discomfort and dissatisfaction, not to mention active defiance or other bad behavior is magnified. A good system of governance does everything it can to keep information flowing.

7. Clear, well-understood and well-respected roles and responsibilities among the governing entity, presiding judges, court administrators, boards of judges, and court committees.

Nothing undermines good governance faster than muddled understanding of who is responsible for what. Judges in general have a penchant for assuming that plenary jurisdiction and authority on the decisional side should translate into equally broad individual authority on the administrative front. Thus it is particularly important in court management for the assignments and authority of leaders and managers to be clear, explicit, and included in the general orientation of new judges and staff, as well as in the training of new and potential judicial leadership.

8. A system that speaks with a single voice.

A court system that cannot govern itself and cannot guarantee a unified position when dealing with legislative and executive branch entities is not, in fact, a co-equal branch of government. This does not imply only one voice; rather a unified message is necessary. Competing voices purporting to speak for the judiciary undermine the institutional independence of the courts and leave other parts of government (and the public) free to choose the messages they prefer in relation to court policy and administration. This is potentially very damaging both to the actual welfare of court systems and ultimately to the level of respect and attention afforded them.

9. Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.

If someone outside the judiciary has the power to direct the use of dollars, that entity has the power to direct policy and priorities for the third branch. Obviously, there is always negotiation over funding priorities, but budget practices like line-item funding shift the policy-making from the judicial branch to the legislative, and have the effect of pitting different parts of a court system against each other. Courts with the authority to manage their own funds can ensure that priorities are dictated by agreed-upon policy and planning and not by the "project du jour."

10. Positive institutional relationships that foster trust among other branches and constituencies.

Given the natural constitutional and political tensions that are inherent in our system of government generally, the judiciary must work constantly to explain itself to the other branches. Care and strategic attention must be afforded to building personal and professional relationships that will ensure an adequate level of credibility when the judiciary is in conversation with the other parts of state government. This is particularly essential on the budget and finance side, and on the question of openness and accountability. Legislative and gubernatorial staffers as well as their bosses need to know they can take information and numbers "to the bank" in terms of accuracy and transparency when they come from the courts. It also helps if courts are proactive in promoting quality in performance, demonstrating commitment to things like judicial education and performance evaluation for judges and courts.

11. The judicial branch should govern and administer operations that are core to the process of adjudication.

In some states and localities, the ownership and maintenance of the court record is the responsibility of an entity outside of the judicial branch. Key court staff may also be employees not of the courts but of an independently elected clerk of courts. Such an alignment is likely the vestiges of an earlier time when the administration of courts lacked structure and organization. Courts that follow this model should reexamine this structure.

CONCLUSION

American courts are not alone in reexamining the governance of our systems. In Australia, the dependence of the courts on the Ministry of Justice for the administration of the courts has given rise to a call for self-governance. A recent report entitled Governance of Australia's Courts: A Managerial Perspective contained this observation:

"Even if the current arrangements seem to "work," in the sense that they have not given rise to major catastrophes or dysfunctions, there is no reason why they could not be made to work even better. Good people can make bad structures work. But, good people can work even better within good structure" (Alford et al., 2004:94).

Many of us in the American state courts are in the same situation. Good people are doing good work in court systems hampered by a lack of good structure and good processes. We hope that this discussion will support a much broader consideration of what good court governance requires and how those principles might be brought to bear in the effort to do better work in better structures.

In conclusion, you may consider the following questions: if you assume for the moment that the principles set forth are viable and appropriate, would the state-level governance of your court system stand up to them? What about the governance within your individual judicial districts or courts? How would you know whose opinion would count, and how would you initiate meaningful improvements? If we ignore the question of how we can most effectively govern our courts, then are we not relegating the judiciary to something less than an equal branch of government and hindering our ability to provide the public with a fair and efficient forum for resolving disputes? Courts should carefully consider these questions along with the preceding unifying principles to maximize their own operability in favor of the most efficient, fair and highest standards of operation.

Good people are doing good work in court systems hampered by a lack of good structure and good processes.

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BJA

Utah Judicial Council Norms

Utah Judicial Council Norms

1. **Administrative role and judicial role**
   - **Judicial Council business takes priority and court calendars and vacation time must be set accordingly**

2. **Members are charged with representing the interest of the system as a whole**
   - **Members are not permitted to advocate for their court or court level**

3. **Members are not permitted to make presentations**
   - **Program or project presentations are made by Council standing committees and/or staff**

4. **Suggestions and problems should be aired by the boards of judges and then brought to Judicial Council by the board**

5. **Members have no independent authority; the Council acts collectively**

6. **Members are not permitted to serve on Council standing committees**

7. **Judicial Council should work with appropriate board when establishing policy that affects that court level**

8. **Boards should be consulted before Council make standing committee appointments**

9. **Members are charged with the responsibility to report on Council meetings and decisions to boards, local bench meetings, and conferences**

10. **No item can be calendared for a Judicial Council meeting without approval of the Management Committee**

11. **Consent calendar items are deemed approved unless a member requests discussion**

12. **Presentations should be completed before questions are asked of presenter**

13. **Presenters must be excused from the table before a Council vote is taken**

14. **Substitutes may attend and participate in discussion, but cannot vote**

TAB 7

NCSC
National Center for State Courts

A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Daniel J. Hall
Vice President
Court Consulting Services
Denver Office

TO: Barbara A. Madsen, Chief Justice
Callie Dietz, Acting SCA
FROM: Laura Klaversma
Tom Clarke
DATE: September 25, 2012
RE: Washington Long-Range Planning
Site Visit Interviews 9/18-9/19
BJA Retreat 9/21-9/22

Issues and concerns that arose from those interviewed during the site visit:

- Who did the interviewees think is leading and in charge of the long-range planning effort?
  Interviewees had a variety of answers; unclear as to who was leading and in charge. They mentioned the following:
  Chief Justice?
  Supreme Court?
  BJA?
  Steve Henley?

- What did the interviewees think is the long range planning strategy?
  Interviewees were uncertain.
  Some thought it was only an effort for the Administrative Office.
  Some thought it was only an effort for the Supreme Court.
  Quite a few did not know what the effort was trying to be.
  Some said it was too broad.
  Some said it was too top down.
  Some said it did not affect them.

- What did those who have participated in the process think of the long range planning effort?
  Too much "pie in the sky."
  Too much time and no result.
  No direction or plan.
  Too many starts and stops.
  Waste of time.

Effort has a hidden agenda.

- What did those who have not participated in the process think of the long range planning effort?

  Most do not know about it.
  Others have no interest in it.
  Some said it does not affect them.
  Some said that decisions could not be enforced in a decentralized state.

Conclusion from Interviews:

The current long-range planning effort is ineffectual. This is due to at least two primary reasons.

1) There is no governance in place or accepted as governance to carry out the planning and implementation. The BJA, members and non-members, view the planning effort with distrust, disinterest or lack of understanding. The Washington Chief Justice and Supreme Courts of the past have been uninvolved and inactive in administering and leading any planning or governance effort. No precedence or cultural expectation that the Supreme Court or the Chief Justice would lead this.
2) The process, traditional strategic planning, is not a good fit for courts in general and particularly a heavily decentralized state such as Washington.

Conclusion from BJA Retreat:

During the BJA retreat it seemed that the members felt that there is a need for the BJA structure and culture to change in order to be effective. There was no indication that any of the members thought the BJA should cease to exist. The Board for Judicial Administration Rules (BJAR) state that one of its duties is to "establish a long-range plan for the judiciary."

Recommendations:

1) The BJA structure, roles and responsibilities need to be clearly defined and acknowledged if it is to be of any value in governing or developing long-range planning.
2) The Commissions, Boards and Committees for the BJA and Associations needs to be reviewed and modified to give clarity and authority to those within the BJA. This can also help in lessening the time strain on the volunteer judges, court administrators and clerks as well as staff in the Administrative Office of the Court that support them.
3) Once the first two recommendations are completed, a Long-Range Planning Effort designed for loosely coupled organizations can be initiated.

Next Steps:

Review material and information from Long-Range Planning effort. Develop a document that presents the accepted mission, vision and values. To accomplish this quickly, we suggest first having AOC staff develop the materials from the information that has

already been developed. The NCSC can then review and suggest changes to the document, especially with the Principles based on work in other states.

The following plan should be presented to the BJA membership at the October meeting. If the document with the Mission, Vision and Values is ready, this can also be presented to the BJA membership to start the process.

Phase 1:

1) Define BJA Structure, Roles and Responsibilities
   a. A select group of BJA members, to include the President and President-Elect of each court level as well as the Co-Chairs of BJA, will meet at a retreat (one-two days) to do the initial development. Through electronic means or shorter meetings, the document can be reviewed, finalized and approved.
   b. The document, once reviewed and approved by the group, will be presented, discussed and approved by the BJA members. The goal for completion of this document will be the end of January with the approval by BJA members at the February meeting.
   c. Once approved, the BJA members will present to their associations for approval.

Phase 2:

1) AOC staff will provide a list of BJA and Association Committees, Boards, Commissions, Task Forces to the BJA members. It is preferable that the BJA members receive this at least one week prior to the next BJA meeting in October.
2) BJA will have a working meeting to discuss redundancies and plan for ways to consolidate Committees, Boards, Commissions, and Task Forces. One of the goals will be to reduce time and efforts by judges, clerks, court administrators and AOC staff. Another goal would be to increase the opportunity for communication by increasing the cross pollination of committees and efforts. Another goal would be to focus efforts of the Judiciary as a whole and increase the opportunity for successful results in the areas that the committees, boards, commissions and task forces have common objectives.
3) BJA will make a plan of action to run concurrently during the 90 day effort for delivering a BJA structure, roles and responsibilities document. The final recommendations of Phase 2 should enhance the efforts of Phase 1.

Phase 3:

The Long-Range Planning Process should be initiated once the governance is in place, through the auspices of the BJA. This process should follow the Strategic Planning for loosely coupled organizations model.

- What does the planning process look like?
  - Short term time line for process with planning taking three-six months
  - Designed around campaigns, two-three areas of focus with distinct steps for implementation
  - Based on the premise that those implementing the campaigns do so voluntarily
- What are the steps for the planning process?

1) Organize:
    a. Select members of the BJA
    b. Establish a timeline
    c. Plan steps to completion
2) Gather input on campaigns:
    a. Surveys
    b. Focus groups
3) Review information gathered through surveys and focus groups
    a. Refine possibilities for campaigns using criteria
    b. Further in-depth analysis on selected campaigns
4) Make recommendations to BJA for campaigns selected
5) Develop strategies and steps for each campaign