



Board for Judicial Administration (BJA) Meeting
Friday, March 17, 2023, 9:00 a.m. – 12:00 p.m.
Videoconference

MEETING MINUTES

BJA Members Present:

Chief Justice Steven González, Chair
Judge Tam Bui
Judge George Fearing
Judge Jennifer Forbes
Judge Marilyn Haan
Judge Dan Johnson
Judge Mary Logan
Judge David Mann
Justice Raquel Montoya-Lewis
Judge Rebecca Pennell
Judge Rebecca Robertson
Judge Michael Scott
Judge Jeff Smith

Administrative Office of the Courts (AOC) Staff Present:

Crissy Anderson
Judith Anderson
Jeanne Englert
Kyle Landry
Penny Larsen
Dirk Marler
Stephanie Oyler
Haily Perkins
Christopher Stanley
Caroline Tawes

Guests Present:

Ellen Attebery
Ashley Callan
RaShelle Davis
Tim Fitzgerald
Robert Lichtenberg
Sophia Byrd McSherry
Robert Mead
Gabriel Villarreal
Judge David Whedbee

Call to Order

Chief Justice González called the meeting to order at 9:01 and the meeting participants introduced themselves.

Presentation: Disability Justice Task Force Steering Committee

Judge David Whedbee introduced himself as the Director of the Disability Justice Task Force Steering Committee, and Robert Lichtenberg introduced himself as a member of the Disability Task Force.

Judge Whedbee presented an overview of the Task Force Steering Committee, which is part of the Disability Justice Task Force. The Steering Committee has requested \$805,000 to fund a two-year study of Washington State courts to discover problems with court access and to develop solutions to those problems. The proposed study would collect data from surveys and site visits, and the data will be analyzed to identify areas where the AOC and courts can create greater opportunities for access to justice and GR 33 compliance.

There is currently no comprehensive way for courts to manage GR 33. The plan is to create a practice for better data to help support compliance to GR 33. The Task Force will communicate to the Supreme Court on the progress of the study and will submit a final report to the Supreme Court upon completion of the two-year study.

The study will begin in 2024, and will address past and current access issues to identify deficiencies in GR 33 compliance. There will also be a focus on the intersection of disability and race and gender. This work will overlap with the work of the Gender and Justice Commission and the Minority and Justice Commission.

Funding for the study will cover one staff support, a research coordinator, part-time research assistants, and site visits. Stakeholder interviews will be part of the study. The Steering Committee is currently creating a charter and bylaws, finalizing the duties of the Task Force, communicating with outside groups to identify experts, and communicating with legislators and stakeholders to identify the composition of the Task Force.

This study will provide best practices and an evidence-based tool the Disability Justice Task Force can use to continue GR 33 best practices. The study will focus on both physical and programmatic access to courts with a comprehensive investigation of all issues for all courthouse users. Information from the study will provide reliable data regarding compliance with GR 33 and the Americans with Disabilities Act (ADA).

Small Group Discussions

Meeting participants broke into groups to discuss the following questions:

- 1) What kinds of situations involving a person with a disability would you like more guidance on handling, given that accommodations need to be done on a case by case basis? Consider how guidance may differ for judicial officers, administrators, and clerks.
 - It would be helpful to have a best practices guide with resources.
 - Education is needed and a resource center/toolkit. It feels overwhelming.
 - Zoom closed captioning technical assistance is needed.
 - Experts like clinical social workers and advocates would be very helpful consultants to serve individuals with complex needs like a disabling condition combined with mental illness.
 - A bench card for judges and staff is needed for steps to take when there is a request. Facilities are very different throughout the state.
 - Funding for capital improvements was a common theme among the groups.
 - Judges struggle with persons who say they have cognitive/mental health disabilities but have no documentation and ask for an attorney as an accommodation (not in situations dealing with indigent defense). Judges want to err on the side of accommodations but have limiting financial resources.
 - Court administrators and clerks need a standard operating procedure for requesting accommodations such as forms across the state, even though Washington is not a unified court system. A standard procedure for requesting accommodations would be helpful for patrons and court staff. Uniformity on how the request is made for each court jurisdiction is possible and could be helpful.

- In Lincoln County District Court the primary ADA/GR 33 request is for equipment in the courtroom for people who are not deaf but are hard of hearing. The court has equipment to provide when these requests are made and they seem to work pretty well. Judge Whedbee indicated it is up to the Judicial Officer to set the standard of serving as a juror to encourage everyone to participate in jury service.
 - Spokane has received a lot of GR33/ADA requests for appointment of counsel which is problematic. How do Courts determine between a pro se who want a free lawyer and a pro se who has a neurodivergent disability? Judge Whedbee discussed a case where he appointed a GAL to help a litigant with a neurodivergent disability navigate the case processes. The group agreed this is an area that courts need more guidance on.
 - The King County Courthouse has made improvements in becoming ADA accessible but it still is not an ideal situation.
 - For requesting an accommodation under the ADA or GR 33, Spokane Superior Court has a single point of contact in Court Administration and then the requests are reviewed by the presiding judge. In King County Superior Court, the assigned judge sometimes reviews the request for accommodation which can cause ex parte communication concerns.
 - How much can courts really assist with mental health disabilities or other similar challenges? People may be confused about procedures and documents that can be extremely overwhelming. Courts need more direction on how far they can really go without going too far.
 - More clients are appearing at oral argument in the Court of Appeals and there are concerns with physical encumbrances/impediments. There are similar concerns with regard to mental health issues, and there is a request for appointment of an attorney, indicating that because of a developmental disability or mental illness the person needs assistance in navigating appellate system and presenting the brief and argument. This has raised two questions: when does someone qualify under the rule, and how is that assistance paid for? There is no money to pay an attorney to assist someone. When does a person with a disability get appointed counsel if it becomes apparent later while the person didn't want a lawyer, but needed secretarial help to go through the process. Not all those with a mental disability would be willing to accept help.
 - If someone shows up and wants a sign language interpreter or hearing assistance device, are those available? For interpretation, there are only a limited number of languages.
 - There is a lack of available attorneys who are willing to take on these cases, as the cases tend to be complicated and very involved. How can we work to expand funding and the number of people who are trained and willing to do this work?
 - There needs to be more guidance on how to handle court clients with significant mental health needs.
 - There needs to be guidance with clients for whom English is a second language or those who don't speak English.
 - Unseen disabilities present a unique issue in trying to anticipate needs.
 - Approaches are needed that are specific to the individual. As much guidance and information as possible would be preferred, and the unhelpful aspects can be filtered out.
- 2) Do court staff get the kind of information from the GR 33 request that helps them make the right decision for a party, victim, or witness seeking accommodations? Do court staff know what an interactive dialogue with a requestor looks like or how it should be done?

- More guidance and education are needed. There needs to be guidance on how to conduct an inquiry when someone needs an accommodation. It would be helpful to have a subject matter expert to call.
- A lot of civil pro se clients have requested an attorney, and judges need guidance on when this accommodation is needed. Is there a statewide request form? Spokane has a form that lists exactly what they need. There was a discussion on training needed for working with clients with cognitive disabilities.
- Training for presiding judges and court administrators at a conference would be helpful.
- Staff need training and guidelines for how to deal with accommodations in general, both for the general public and court patrons.
- Annual training for courts and staff would be beneficial, but can be difficult with the turnover.
- No, the form has been sanctioned as the one to use but it has limited information and limited understanding of what accommodation is needed. More assistance is needed on how a court can truly assist with whatever request is begin made. Staff may need to be better educated on how to question someone.
- Staff need more guidance on when to appoint counsel for disabled individuals and navigators or facilitators. Assistance may not need to be a lawyer.
- Disability training is needed.
- Court staff approach judicial officers with accommodation requests.
- It may be difficult to have an interactive dialogue if there are multiple issues involved, such as neurodivergent and mobility issues.
- More guidance is needed, but that will be difficult due to the number of ways disabilities can manifest or work in combination. Many judges receive most of their support from their staff, so training for them could be helpful.
- How to handle it when a court provides an accommodation that they think is “good enough” yet is not an effective to meet the actual need effectively.
- What to do when a pro se litigant wants assistance with a writing a motion or brief as an accommodation.
- Give guidance on how to conduct an “interactive dialogue” so that the court and the requestor agree on an accommodation. Examples: Braille reader placed in an awkward location; audio describer request that was denied because there was no assurance of its accuracy.

Judge Whedbee thanked the BJA.

BJA Task Forces

Alternatives to Incarceration Task Force

The Task Force report was included in the meeting materials. The next meeting will be at the end of March. Meeting participants were encouraged to complete the Alternatives to Incarceration Task Force survey on assessment of services.

Court Security Task Force

The Task Force co-chairs have been meeting with legislators to advocate for their budget request of \$5 million over two years with a shared cost model. Commissioners from seven rural counties wrote to legislators in support of the budget request and to express willingness to

match funds. The Task Force is working on a plan with the Department of Homeland Security to do free assessments of courthouse security.

Penny Larsen thanked Judge Fearing for meeting with legislators in support of court security funding, and thanked Kyle Landry for the audit survey.

Remote Proceedings Workgroup

The Workgroup report was included in the meeting materials. Workgroup members have created court-level groups. At the Workgroup meeting next week the members will review court rule drafts. The Workgroup will present at the Appellate Courts spring program, and will present their survey data at the May BJA meeting.

Standing Committee Reports

Budget and Funding Committee (BFC)

Members tracking a particular bill should consider that a bill passed out of one of the chambers is more likely to be funded by that chamber. Christopher Stanley let the members know he will write a proviso for a bill if there is not funding for it.

The revenue forecast will be published on Monday, March 20, 2023. There is not as much funding available as last year. AOC will send an e-mail to the court community when the budgets are published. The Senate budget is expected next Thursday, March 23, 2023.

AOC is preparing for the 2024 supplemental budget. Announcements will be sent in April. Supplemental budget packages will be submitted to AOC between mid-May and mid-July, will be analyzed in August, and released at the end of October.

Court Education Committee (CEC)

The CEC report was included in the meeting materials. The CEC is focusing on the structure of decision making of the CEC, and providing support and funds for educational events.

Registration is open for the spring programs, which will be in person this year.

AOC has hired a new Court Education Professional, Jennifer Mogren, who will focus on e-learning related to civil protection orders.

Legislative Committee (LC)

The LC is meeting weekly during the legislative session. The LC report was included in the meeting materials and includes information on BJA request legislation and other bills they are monitoring. Haily Perkins provided information on legislation of interest.

March 29 is the last day for live bills to move out committee; April 4 is the last day to move out of the fiscal and transportation committees; and the Legislature will adjourn on April 23, 2023.

Policy and Planning Committee (PPC)

No report was given.

Interbranch Advisory Committee

Adrienne Stuart reviewed the last Interbranch Advisory Committee meeting held on March 10 and provided a link to viewing the meeting on TVW. Representative Greg Cheney is a new member of the Committee.

The next meeting will be on June 20, 2023, from 9:00 a.m. to noon. It will be a hybrid Zoom/in person meeting; the in-person meeting will be held at Tumwater Center Building 3, the temporary location of the Supreme Court. Topics may include mental health treatment for those in jails and turnover in public defenders' and prosecutors' offices. An agenda is being developed.

Appellate Courts' Updates

The Supreme Court just finished its current term, and the next term will begin in a month and half. The Supreme Court is still in a temporary facility and expects to remain there for another year and a half, until work on the Temple of Justice is complete.

The Court of Appeals continues to transfer cases among divisions when necessary. A task force of Court of Appeals judges and Superior Court judges are working to facilitate the transfer of records among court levels and make records more accessible to counsel and parties. The Court of Appeals is facing the same downturn in cases experienced by Superior Courts early in the pandemic. The Court of Appeals oral arguments are streamed live on TVW, and some divisions are hearing cases at schools. Counsel may appear remotely or in person.

Judge Andrus is retiring from the Court of Appeals Division I, and Governor Inslee announced her replacement, as of May 1, 2023, will be Judge Leonard Feldman. Also, on May 1, Judge Lori Smith will become the Chief Justice of Division I as well as the Presiding Chief Judge. Judge Hazelrigg will become the Acting Chief Judge of Division I. Judge Smith will take Judge Mann's position on the BJA.

Feedback on future meeting topics

The Judicial Leadership Summit is planned for June 16, 2023, from 9:00 a.m. to 1:00. Planning is underway. BJA members were asked what topics would be beneficial to discuss at the Summit.

Members would like to discuss judicial branch priorities, especially what advances courts made during the pandemic, how courts look different now, acknowledge the hard work of courts during the pandemic, discuss what advances were made during the pandemic, and create standards for the future.

Another topic that could be discussed is the increasing complaints on the failure of judicial demeanor on the bench, and the effect of pandemic fatigue and increased remote viewing of court procedures. There could be a focus on judges' duties as employers and treating their staff with respect. Judge Logan reminded the participants of the [Judicial Assistance Services Program](#) (JASP).

A priority should be to continue advocating for funding from the Legislature, especially for small and rural courts.

Another topic suggested was the needs of unrepresented litigants.

The turnover and lack of public defenders and prosecutors will be discussed at the May BJA meeting. Participants are welcome to e-mail Jeanne Englert with suggestions on questions to include or whom to include in the discussion.

February 17, 2023 Minutes

The February 17, 2023 meeting minutes were passed by consensus.

Information Sharing

Judge Johnson discussed participation in a National Center for State Courts (NCSC) national technical assistance program on appearance rates for all defendants. Judge Johnson will participate in a related seminar next month and will report back to the BJA in May.

The Courts of Limited Jurisdiction Court Administrators' Academy will launch in May and will provide education, tools, and resources to administrators who have been in their position for four or fewer years. There may be room for those with a longer tenure. The District and Municipal Court Management Association will have information on financial and other support for the Academy.

Chief Justice González has been asked to speak in California, Arizona, Illinois, and Maine on Washington State's work on diversity, equity, inclusion, and culture, and the effect on state courts.

The Minority and Justice Commission is sponsoring the National Consortium on Racial and Ethnic Fairness in the Courts that will be held May 21–24, 2023, in Seattle. The Superior Court Judges' Association is offering tuition scholarships for the Consortium.

Participants were asked to send their group discussion notes to Jeanne Englert.

Adjourn

The meeting adjourned at 11:15.

Recap of Motions from the March 17, 2023 Meeting

Motion Summary	Status
Approve the February 17, 2023, meeting minutes.	Passed

Action Items from the March 17, 2023 Meeting

Action Item	Status
The Remote Proceedings Workgroup will present their survey data at the May BJA meeting	
The turnover and lack of public defenders and prosecutors will be discussed at the May BJA meeting.	
Judge Johnson will participate in a NCSC seminar next month and will report back to the BJA in May.	
<u>February 17, 2023, BJA Meeting Minutes</u> <ul style="list-style-type: none">• Post the minutes online• Send minutes to the Supreme Court for inclusion in the En Banc meeting materials.	Done Done