

**Board for Judicial Administration  
Meeting Minutes**

**February 20, 2009  
Temple of Justice  
Olympia, Washington**

**Members Present:** Chief Justice Gerry L. Alexander, Chair; Judge Vickie Churchill, Member-Chair; Judge Marlin Appelwick; Judge Ronald Culpepper; Judge Sara Derr; Judge Susan Dubuisson; Judge Tari Eitzen; Judge Deborah Fleck; Mr. Jeff Hall; Judge Michael Lambo; Ms. Paula Littlewood; Justice Barbara Madsen; Judge Richard McDermott; Judge Christine Quinn-Brintnall; and Judge Marilyn Paja

**Guests Present:** Judge Steven González, Ms. Marti Maxwell, Mr. Tom McBride, Ms. Barb Miner, Mr. Joe McGuire, and Mr. Michael Merringer

**Staff Present:** Ms. Ashley DeMoss, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, Ms. Regina McDougall, Mr. Ramsey Radwan, and Mr. Chris Ruhl

The meeting was called to order by Chief Justice Gerry Alexander.

January 16, 2009 Meeting Minutes

**It was moved by Judge McDermott and seconded by Judge Dubuisson to approve the January 16, 2009 BJA meeting minutes. The motion carried.**

Bail Forfeiture – Proposed Revision to CrRLJ 3.2

Judge Paja requested that this item be removed from today's agenda and put on next month's agenda.

Local Option User Fee Issue

Judge Churchill explained the materials contained in the meeting packet related to this agenda item: A letter from the Board for Judicial Administration (BJA) to Judge Bruce Hilyer, the King County Superior Court Presiding Judge, regarding local option user fees; Judge Hilyer's response to the BJA letter; and a letter from the Access to Justice (ATJ) Board regarding their position on local option user fees.

The BJA Legislative Executive Committee members were told during one of their weekly conference calls that the King County Superior Court was discussing possible legislation regarding local option user fees. The letter from the BJA to Judge Hilyer urged King County Superior Court to go through the normal channels for proposed legislation. The response from Judge Hilyer indicated that King County Superior Court would not go through the proper process.

The BJA Legislative Executive Committee voted to oppose the concept of local option user fees but they requested broader BJA support and that is why it is now before the Board for consideration.

Judge McDermott stated that the Superior Court Judges' Association (SCJA) voted unanimously to oppose legislation creating local option user fees. Judge Churchill added that the SCJA felt they should not have one county, without going through the proper processes, making policy changes for all the courts in the state.

Judge González said he was a representative of the ATJ Board and a King County Superior Court judge. His opinion regarding local option user fees is the same no matter which role he considers. In his role as a King County Superior Court judge, Judge González shared that the King County Superior Court Executive Committee voted in favor of exploring local option user fees because of the difficult economic times they face. The King County judges, as a whole, never voted on this issue. They never had the debate or the vote because it happened at the Executive Committee level. In his role as a representative of the ATJ Board, Judge González reported that the ATJ Board unanimously voted to oppose legislation establishing local option user fees.

Judge McDermott mentioned that the Washington State Bar Association's (WSBA) Legislative Committee voted unanimously last Wednesday to oppose the concept of local option user fees. Apparently Oregon allows local option user fees and it is a disaster. It costs more money to collect the fees than they generate and it is a nightmare. The judges and lawyers want to get rid of it because it is not working.

Judge Paja shared that the District and Municipal Court Judges' Association (DMCJA) also voted to oppose local option user fees.

Judge McDermott said Judge Hilyer was doing what he thought was necessary to try to save the unified family court. The cause was just. The end purpose is something that we can all agree with even though we might not agree with the way it was done.

**It was moved by Judge Dubuisson and seconded by Judge Culpepper to affirm the BJA Legislative Executive Committee's recommendation to oppose legislation creating local option user fees. The motion carried with a unanimous vote.**

#### Legislative Report

Ms. McAleenan reported that the BJA request bills are moving along well. There are a few updates to the bill status list that was distributed in the materials.

1) HB 1158 (Electronic Juror Signatures) was moved from House Rules to the suspension calendar which is where noncontroversial bills are placed for a vote.

2) The Juvenile Case Records Access bill (HB 1238/SB 5133) was amended in the Senate to clarify that no existing access to records will be impaired by the bill.

3) The BJA will use the Senate version of the King County District Court judges bill (SB 5135) and amend it on the floor to include the Spokane County District Court judge reductions which are necessary because the city took over administration of Spokane Municipal Court. This approach makes the most sense at this point in the session. No existing judges will be eliminated because by statute, there are ten judicial positions in Spokane County District Court but only eight are filled at the moment.

### Budget Report

Mr. Radwan reported that a preliminary budget forecast was released earlier this week and the budget shortfall is now up to \$8 billion. The forecast was requested by the Legislature so they could begin preliminary budget work. The final budget will be based on the March forecast.

For the current biennium the revenue has decreased about 5.5% since this time last year. The forecast has decreased about 20% for the 09-11 biennium. Overall, there has been a 12-13% decrease in revenue in a four-year time horizon.

The Governor has required expenditure reductions for her cabinet and signed HB 1694 and SB 5460 earlier this week. HB 1694 is the first supplemental budget for the current biennium and makes a \$635 million reduction. For the judicial branch, about \$1.5 million was cut this biennium which is less than 1% of the near general-fund budget for the biennium. It is approximately a 3-4% reduction to the operating budgets for AOC, COA, and the Law Library because the cuts have to be implemented prior to June 30, 2009. The preliminary economic and revenue forecast estimates that current biennial revenue will be approximately \$721 million less than projected in November, which will cause the Legislature to implement further expenditure reductions in the current biennium. There is another budget forecast in March so all cuts will be adjusted again in March. There is a very short timeframe to absorb the first budget reductions which will primarily impact AOC internally. The initial cuts did not impact direct services to the courts or pass-through programs.

SB 5460 which was signed by the Governor establishes a number of expenditure restrictions on hiring, equipment, contracting, and out-of-state travel for state agencies. The bill was amended to state the Chief Justice will approve any expenditure exceptions for the judicial branch. He will approve/reject exception requests from the Court of Appeals, the Office of Public Defense, the Office of Civil Legal Aid, the Commission on Judicial Conduct, and the Administrative Office of the Courts.

### Access to Justice Board

Judge González reported that the ATJ Board recognizes the difficult times low-income members of the community are facing now and they need representation in housing. There has been an effort by the WSBA and the ATJ Board to try to address this. Mr. John McKay and Judge González are addressing the need for pro bono assistance from members of the Bar. They are very excited about the effort and are working very hard to address the real and emerging need for access to courts.

### Washington State Bar Association

Ms. Littlewood reported that the home foreclosure crisis took a little bit longer to hit Washington than the rest of the nation but it did hit. The WSBA will be asking for pro bono assistance from the membership to assist low-income citizens facing foreclosure. They plan to assist people who are at 200-400% of the Federal Poverty guidelines. They are looking at options for state or federal funding to carry this forward a few years.

Some of the issues they are working out as they develop the program are: 1) how to handle intake (both of clients and lawyers willing to volunteer), 2) how to match clients with lawyers once they are identified, 3) how to use technology for people in rural areas who need assistance, 4) how to train and mentor those lawyers who volunteer who have never practiced in this area, and 5) they are also exploring the idea of creating a database to store information about what policies various lenders have recently implemented.

The WSBA Board of Governors met in Olympia in January and discussed the Discipline Review Report from the American Bar Association. The Task Force is looking at various recommendations and at the January meeting there was discussion of where the discipline system should reside: with the WSBA or be transferred to the Supreme Court. The decision ended in a tie vote which had to be broken by Mr. Stan Bastian—he voted to keep the system with WSBA as it is currently.

The Board voted to support the proposed IOLTA rule change and it was forwarded to the Supreme Court. The rule change requires banks that want to participate in the IOLTA program to offer interest rates similar to comparable accounts.

### Reports from the Courts

**Supreme Court:** Chief Justice Alexander said the Supreme Court held court last week at Pierce College in Puyallup. They had a terrific experience and were well received. They are heading to Peninsula College in Port Angeles in October.

Justice Madsen reported that the Supreme Court justices are preparing for the Appellate Judges' Spring Program which will be held April 5-8 in Chelan. *I Dissent* is the book they are reading this year.

**Court of Appeals:** Judge Appelwick reported that Judge Schultheis will undergo hip replacement surgery in the next few weeks so Division III will be a bit shorthanded. They are all busy working on the budget crisis.

**Superior Courts:** Judge McDermott shared that the SCJA Board of Trustees met on February 7. One of the items on the SCJA legislative agenda is advancing the concept of evidence based treatment programs and pointing out how they can save state and local funds. They have had opposition, but SB 6067 is still alive.

The SCJA Board supported an amended to the Rule for Professional Conduct which was also supported by the WSBA and the Commission on Judicial Conduct.

There is an extremely hardworking group of people on the Board this year and Judge McDermott appreciates their dedication.

**Courts of Limited Jurisdiction:** Judge Paja reported that the DMCJA Diversity Committee has been working with the WSBA to develop a joint program to train attorneys interested in serving as judges pro tem.

The DMCJA has taken a position of concern on HB 1781 regarding the proportion of public defense costs being paid by the counties and the cities. The DMCJA asked Ms. Joanne Moore at the Office of Public Defense to provide more information regarding the bill.

Judge Paja has been participating in several Criminal Justice Summits related to criminal justice costs during a budget crisis. The Summits brought together judges, lawyers, and advocates to discuss the funding crisis. They are currently discussing DWLS – 3 revisions. There is a bill in the Legislature to decriminalize a first offense of DWLS.

#### Administrative Office of the Courts

Mr. Marler reported that AOC staff are working on and tracking well over 600 bills.

#### Other Business

**BJA Financial Report:** Ms. McAleenan distributed the BJA Financial Report and explained that the bulk of the expenses were for the BJA Legislative Dinners.

There being no further business, the meeting was adjourned.