

**Board for Judicial Administration
Meeting Minutes**

**February 19, 2010
Temple of Justice
Olympia, Washington**

Members Present: Chief Justice Barbara Madsen, Co-Chair; Judge Marlin Appelwick; Judge Stephen Brown; Judge Ronald Culpepper; Judge Sara Derr; Judge Susan Dubuisson; Judge Tari Eitzen; Judge Deborah Fleck; Mr. Jeff Hall; Mr. Sal Mungia; Judge Jack Nevin; Justice Susan Owens; Judge Glenn Phillips; Judge Stephen Warning; and Judge Chris Wickham

Guests Present: Ms. Marti Maxwell, Mr. Michael Merringer, and Ms. Barb Miner

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

The meeting was called to order by Chief Justice Madsen.

January 15, 2010 Meeting Minutes

It was moved by Judge Appelwick and seconded by Judge Culpepper to approve the January 15, 2010 BJA meeting minutes as written. The motion carried.

Appointment to the BJA Public Trust and Confidence Committee

It was moved by Judge Appelwick and seconded by Judge Dubuisson that the BJA appoint Judge C. C. Bridgewater to the BJA Public Trust and Confidence Committee. Motion carried.

Appointment to the Justice in Jeopardy Implementation Committee

It was moved by Judge Phillips and seconded by Justice Owens to reappoint Judge Sara Derr and Judge Eileen Kato to the Justice in Jeopardy Implementation Committee. The motion carried.

Public Financing of Supreme Court Campaigns

This bill ended up dying because of an I-960 challenge raised by Senator Don Benton. The President of the Senate determined that the funding mechanism on the bill was a tax and not a fee.

Chief Justice Madsen does not think the BJA has seen the last of this issue and asked if the BJA wanted to discuss it today or take it up at a future BJA meeting.

She reported that she discussed this issue with her Supreme Court colleagues and no one supported the bill as written. A few justices did not think the policy of publicly funded campaigns was good policy period. If there was a policy put in place that would improve the administration of justice, they would approve that.

The justices were also concerned about the minimum number of contributions required to receive public financing. It is too difficult to get that minimum number of contributions, especially the week before filing, and they felt it would drive judges to a PAC to collect the contributions. Chief Justice Madsen believes this public financing idea may eventually reach the Courts of Appeal and the trial courts.

It was moved by Judge Wickham and seconded by Judge Appelwick to postpone discussion on this issue until a future meeting date to be determined. The motion carried.

Budget Update

Mr. Radwan reported that the February state revenue forecast indicates that revenue is down again but it is the smallest reduction since February 2008. However, that increases the need for reductions in the general fund. To augment the shortfall, the Governor has proposed a list of tax increases and some expenditure reductions.

The forecast indicates the 2011-13 biennium revenue will increase 12.2% but it is still not enough to cover anticipated expenditures. Mr. Radwan reported that legislators are stating that this current reduction is nothing compared to the expected 2011-13 biennium budget reductions.

The early savings bill started out with a \$300 million reduction that the Governor implemented last summer. The Legislature has compressed it down to \$45 million.

There have been several versions of the furlough bill, but it is now languishing in the House. It probably will not come back in bill form but will most likely be slipped into the budget bill. Something will come through in at least the House budget and if the House and Senate can reach an agreement, it will come out in both budgets. Ms. McAleenan, Mr. Hall and Mr. Radwan are watching the furlough exemption language closely.

Mr. Radwan has heard different things regarding the judicial branch budget—from no cuts to silence. Mr. Radwan will probably not see the final budget until the end of the session.

Court Closure/Hours of Operations

Chief Justice Madsen met with Judge Bruce Hilyer from King County Superior Court a few weeks ago and they discussed what it means to have a court "open." Many courts are being asked to close on certain days, reduce services, or reduce hours they are open to the public. During their conversation, Judge Hilyer asked that the BJA address what it means to have an open court.

Mr. Marler commented that Mr. Rick Neidhardt, AOC Legal Services staff, is responsible for most of the research that has been done on the court closure topic (included in the meeting packet). AOC regularly receives questions about what is/is not a judicial day and the process courts should follow on reducing hours and notifying the public. AOC is not in a position to direct activity at the court level but AOC has provided information for the courts to use and interpret as they want.

Chief Justice Madsen commented that former Chief Justice Gerry Alexander's letters that were included in the packet state that courts have to be able to do business to be considered open. That suggests strongly that open court means doing business in superior courts, but maybe there is a different definition for district or municipal courts. Judge Phillips stated that RCW 3.50.110 provides that the legislative body of the city or town will set the municipal court hours.

After discussion, the Board decided to refer the issue to the judicial associations to determine how they define an open court. This issue will be discussed during the May BJA meeting to determine if the BJA wants to take a united position on this issue.

Union Gap Municipal Court Issue

Mr. Marler updated the BJA on the status of the dispute between the city of Union Gap and the municipal court regarding the city's attempt to "bump" a court clerk as a result of a reduction in force last fall. The judge decided that the city was outside of its authority to bump the court employee and fill the position with an unqualified court clerk so the judge sought and obtained injunctive relief. The city has now conceded that the judge has the authority to hire and fire court employees, but the union is continuing to pursue its grievance in arbitration. The judge is seeking a declaratory judgment in superior court.

National Center for State Courts Educational Materials

The meeting materials contained an excerpt from a court educational series available from the National Center for State Courts along with ordering information. Mr. Hall included the materials for the BJA's information.

Legislative Update

Ms. McAleenan included a status list of bills that the BJA has taken a position on in the meeting materials.

The Interpreter Oath Requirements bill, HB 2518, passed out of the House unanimously and is scheduled for a hearing in the Senate next week.

The Municipal Court Elections bill, SB 6686, is now in House Judiciary. Ms. McAleenan requested that BJA members make contact with House Judiciary members during the break to indicate their support for the bill. The bill is scheduled to be voted on by the committee on Monday. If the bill does not get out of committee then, it most likely will not make it out.

The Toll Bill, SB 6499, passed the Senate almost unanimously without discussion. The bill removes the infraction process from the courts to the Department of Transportation (DOT) as an administrative process. The Administrative Office of the Courts (AOC) has been working with DOT to get them to understand where they made some incorrect assumptions in their cost estimates for running the administrative process. The Governor's office is trying to get the AOC and DOT estimates to come closer together. DOT and the Governor do not really want the process but they need the bill to pass and they want to maintain good relationships with the chair of the Transportation Committee.

It was moved by Judge Appelwick and seconded by Judge Culpepper that in the event that the entire toll infraction process cannot be moved into district court that the BJA endorse having the appeal in the district court and not in the superior court. After further discussion, Judge Appelwick withdrew the motion.

Mr. Hall indicated he would have AOC staff determine what it would take to have the toll infraction appeals take place at the district court level and this issue will be discussed during the BJA Legislative Executive Committee conference call on Monday. In the meantime, Ms. McAleenan was authorized to have the conversation with legislators.

Kitsap County Court Interpreter Issue

Justice Owens said the Interpreter Commission discussed at last Friday's meeting the issue of the City of Bremerton requiring people who provide services to Bremerton Municipal Court to maintain a city business license (\$65 yearly) and pay tax on their gross revenue. They are requiring court interpreters to apply for city business licenses. There is concern that some of the interpreters in languages that are not frequently used will not want to pay the tax or the business license fee and will decide not to continue court interpreting in some languages in cities where business licenses are required.

There is also concern that this will end up becoming a problem for anyone who deals with courts (expert witnesses, etc.).

It was decided to refer this issue to judicial associations for discussion and to determine how widespread this issue is and bring it up for discussion at the June BJA meeting.

Access to Justice (ATJ) Board

Mr. Blair reported that next Friday is the annual Goldmark Award Luncheon and anyone interested in attending can sign up online. It is sponsored by the Legal Foundation of Washington and this year the foundation is honoring Mr. Steve Fredrickson, Statewide Advocacy Coordinator for Northwest Justice Project, who has been working on access to justice issues for over 40 years. The foundation is also honoring the Washington State Bar Association (WSBA) Board of Governors (BOG) for its donation last year to the foundation of about \$1.5 million. The Gates Foundation also gave \$3 million to the Legal Aid for Washington (LAW) Fund.

In two weeks the ATJ Board is having its annual meeting with the Supreme Court. During the meeting the ATJ Board will share its annual report which will be available on the WSBA Web site in about a week.

Washington State Bar Association

Mr. Mungia reported that there are a lot of legislative proposals regarding bail. The BOG passed a resolution that basically reaffirms that people are presumed innocent until proven guilty and urged the Legislature to proceed cautiously. Mr. Mungia is proud of the BOG for reaffirming the core values of the justice system.

The BOG also supported the Election of Municipal Court Judges bill and has also been active regarding court funding.

The WSBA and the Supreme Court are working together to try to improve the attorney disciplinary system.

The Bylaws Committee is still working on their membership section revisions. One sticking point is how administrative law judges are classified. Mr. Mungia thinks everyone will be happy with the revised Bylaws.

Regarding the Campaign for Equal Justice, there is not a mandatory system of contributions so it has been Mr. Mungia's message that "this is who we are" in supporting equal justice. Mr. Mungia thanked the Superior Court Judges' Association (SCJA) for their support of the Campaign for Equal Justice. So far, the preliminary numbers indicate that over 50% of the SCJA judges are participating. About a third of

the WSBA members are participating. Mr. Mungia wants to see every member of the WSBA participating.

Association Reports

Superior Court Administrators: Ms. Maxwell reported that the superior court administrators are working on their spring conference which will be a joint conference with the superior court judges.

Juvenile Court Administrators: Mr. Merringer said the juvenile court administrators submitted their recommendations for implementation of their block grant to the Legislature.

Executive Session

Non-members were excused and BJA members went into executive session to discuss court funding.

The regular meeting resumed.

There being no further business, the meeting adjourned.