

**Board for Judicial Administration
Meeting Minutes**

**October 15, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen E. Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Judge Laura Inveen; Ms. Paula Littlewood; Judge Jack Nevin; Judge Kevin Ringus; Judge Dennis Sweeney; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; and Judge Chris Wickham

Guests Present: Ms. Peggy Bednared, Ms. Delilah George (by phone), Mr. Doug Klunder, Ms. Sophia Byrd McSherry, Ms. Catherine Moore (by phone), Mr. Kiwaunuka V. Nsubuga, Mr. Kevin Stock, Mr. Rowland Thompson, and Mr. Bob Welden

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

Judge Lambo called the meeting to order.

Introductions were made around the room.

September 17, 2010 Meeting Minutes

Mr. Ruhl requested a revision to the minutes on Page 2, in the first paragraph. He asked that "reentry" be eliminated from the fourth line for accuracy.

It was moved by Judge Dubuisson and seconded by Judge Baker to approve the minutes with the corrections requested by Mr. Ruhl. The motion carried.

Appointments to the Justice in Jeopardy Implementation Committee

It was moved by Judge Fleck and seconded by Judge Dubuisson to reappoint Ms. Paula Littlewood and appoint Mr. J. D. Smith, Mr. Lee Kerr and Ms. Lynne Jacobs to the Justice in Jeopardy Implementation Committee. The motion carried.

Proposed Revisions to GR 31

Judge Appelwick stated that this meeting provides an opportunity for comments on the proposed revisions to GR 31 and the presentation of minority reports. On certain points in the draft rule the work group had differences in opinion and Judge Appelwick encouraged dissent to be submitted by minority report. The BJA will hear from Mr. Thompson from Allied Daily Newspaper of Washington (ADNW) and Mr. Welden from the Washington State Bar Association (WSBA) regarding their minority reports.

Mr. Thompson reported that according to the Washington State Constitution, the administration of justice shall be open and that extends to all courts. The main concern ADNW has with proposed GR 31 is that some of the fundamental principles of Article 1, Section 10 of the Washington State Constitution should be articulated as a threshold matter.

In the ADNW's version of the proposed rule (available in the meeting packet) Mr. Thompson tried to rearrange for clarity and make it easier to read for court personnel. Mr. Thompson did away with the common law balancing test and that is explained in the narrative. He also made sure all the agencies listed in the proposed rule remain in the rule, however, the location of the list was rearranged within the rule. Mr. Thompson did not change the nature of chambers records or how they are disclosed.

He spoke with some of the clerks and finds their argument that there should be a separate rule for case files and administrative records to be somewhat compelling.

Mr. Welden stated that the WSBA Board of Governors (BOG) will review the proposed revisions to GR 31 during their October 29 meeting and at this point in time they have not taken a position.

Mr. Welden believes the WSBA is different from the other agencies listed in the rule and should be excluded. The WSBA should not be defined as a judicial agency because, unlike other judicial agencies, the WSBA receives no government funding; it is a member organization; the WSBA staff are not state employees, but employees of the WSBA; it is responsible for enforcement and is already well regulated; and currently, the WSBA's bylaws contain a public records disclosure bylaw that the WSBA feels closely mirrors the Public Records Act (PRA).

The WSBA maintains a great deal of member information such as age, home address, law school, confidential demographic information, application for hardship waivers, and exemptions from MCLE rules which would not be kept confidential with the proposed revisions to GR 31.

One of the interesting things about GR 31 is that to appeal, the WSBA appeals would go to the Chief Justice of the Washington State Supreme Court which would result in a financial impact on the bar and court. If the records requestor did not like the original ruling by the Chief Justice, the appeal would be to a superior court. That is just one of a number of concerns the Bar has with the proposed revisions.

Judge Culpepper stated that he was unable to attend the final meeting of the BJA Public Records Work Group and he would have excluded the WSBA from the rule if he had been in attendance.

Mr. Thompson read an e-mail from Mr. Toby Nixon from the Washington Coalition for Open Government regarding the inclusion of the WSBA in the agencies subject to GR 31. The main point in the e-mail was:

Whether it likes it or not, the Bar is and should be answerable to the public because of its "singular authority over the provision and providers of legal services" in this state. By excluding the Bar from GR 31, the Bar remains free to decide which information it deems suitable for the public to know.

There was much discussion regarding the proposed revisions to GR 31. Some BJA members felt it would make sense to leave GR 31 as is and create a new rule for judicial administrative records requests. Judge Appelwick said that a separate rule would, ultimately, still require alterations to GR 31.

Several BJA members expressed concern about the lack of resources necessary to respond to public records requests. Judge Appelwick stated that is a concern that needs to be addressed and it is possible smaller courts could contract with someone outside the court such as the county/city public records officer, a larger local court or the Administrative Office of the Courts. Mr. Thompson commented that courts are still going to receive records requests whether or not GR 31 is revised. He does not think the revision of GR 31 will cause a spike in records requests. The judiciary is much better off creating a rule so a clerk or administrator has a rule to look to. Right now they are flying blind and have nothing to guide them and courts have ruled the Public Records Act does not apply to the judiciary. With this proposed framework, courts are able to make those records release decisions and it will cost less.

Judge Appelwick explained that the work group completed their work in eight meetings in less than a year and he hopes in the next two or three months the BJA can make a definitive statement and let the Supreme Court decide if they want to move forward on this proposed rule revision. He assumed that if the BJA sent something to the Supreme Court Rules Committee this fall, it would not be effective until next fall but would still require a year or so of training before it is up and running.

There is a concern that legislation could put courts under the Public Records Act. The judiciary can fight the battle legislatively but needs to be clear on whether the judiciary embraces the concept.

Judge Lambo stated this issue would be put on the December BJA agenda for further discussion and for action in January.

Justice in Jeopardy Outreach Committee Report

Judge Fleck reported that the Justice in Jeopardy Outreach Committee is a subcommittee of the Justice in Jeopardy Implementation Committee (JIJIC) and has strong staffing from the Administrative Office of the Courts (AOC). The goals of the committee are to:

- Re-engage our partners, including the counties and cities, business, labor, WAPA, WDTL, good government groups, as well as legislators.
- “Refresh” the Justice in Jeopardy Initiative message with the state executive and legislative branches and with local government.
- Educate the public and community groups.

This year the Committee decided to look at more discrete tasks. They are planning a few Courthouse Open Houses which will showcase the critical work being done for the public and the lack of funding for essential justice services.

The Committee would love to have additional members or suggestions for future projects.

Washington State Association of County Clerks Legislative Agenda

Mr. Stock reported that the Washington State Association of County Clerks (WSACC) has one legislative issue they are putting forward. It is three-pronged and will: 1) ensure that legal financial obligation (LFO) funding reductions cannot be made by AOC; 2) clarify that civil judgments are enforceable for a period of 10 years, unless extended, and criminal judgments are in effect until the judgment is satisfied; and 3) give clerks the same authority the Department of Corrections (DOC) has to issue orders to banks, financial institutions or other entities to “withhold and deliver” the property or earnings of offenders to satisfy court-ordered obligations.

The main priority of the legislation for the WSACC is the money side. In 2003 the clerks assumed the program from DOC. Since they have taken over that program the collection of restitution has increased over 60% and crime victims have received over \$18 million more than before the clerks took over the process. Because of the budget reductions, they have had to go to every-other-month billing.

Mr. Hall responded that AOC obviously has concerns about the proposal. Generally, there is a perception that AOC is a bureaucracy and if cuts can be made to the bureaucracy, the money saved by the cuts can be spent on other programs/courts. Mr. Hall appreciates the WSACC's concerns and one of the things that can be done is to work collaboratively regarding the priorities of AOC and where to take budget reductions in the future. He encouraged everyone to review the document *Maintaining Justice: A Profile of the Administrative Office of the Courts* and let him know what projects/programs are important to stakeholders. Everything the AOC does is in support of the courts.

Mr. Stock stated that the statute currently indicates the AOC shall not deduct any amount from LFO funding and shall distribute the funds to the clerks. If funding is cut in the future, the program would eliminate all billing or clerks would take the reduction on their side and eliminate all collections staff. Is it justified to cut programs that bring in revenue? Their concern is that the money be put back in the program account so they can continue the good work the clerks have done across the state to bring in restitution.

Mr. Hall said the BJA Legislative/Executive Committee will discuss this proposed legislation during their conference call at the end of the month.

Washington Judiciary's Presentation to the Washington Citizens' Commission on Salaries for Elected Officials

Mr. Hall reported that the Salary Commission will convene in November and start their process for setting salaries for statewide elected officials. The judicial salary information provided in the meeting materials will be sent to the Salary Commission for distribution to Commission members.

At Chief Justice Madsen's request, Mr. Hall revised the report this year to indicate that judges participate in statewide committees. Other than that, it is the same material presented in years past but it has been updated with current statistics.

There was a request to add information about the Owen-Pottier study to the materials and another request to point out that judges are losing ground when it comes to parity with federal judges.

At the November meeting, the BJA will consider their position on judicial salaries. In the past the BJA's position has been that judicial salaries should be given parity with federal judicial salaries. That will be Mr. Hall's recommendation at next month's meeting and that approach does not put the judiciary in the position of asking for a raise and has been fairly successful in the past.

The Salary Commission will meet in Olympia on February 4. Chief Justice Madsen and the association presidents will attend. The Commission will then hold meetings

throughout the state and Mr. Hall and representatives from the judicial associations will attend those meetings. Travel expenses for Salary Commission meetings are funded with BJA funds. The judiciary maintains a presence during the meetings which results in a good relationship and good communication with the Salary Commission members.

Washington State Bar Association

Mr. Toole reported that the Washington State Bar Association (WSBA) Board of Governors (BOG) met on September 23 and 24. Their annual awards banquet was held September 23 and he was sworn in as President of the WSBA by Chief Justice Madsen. The WSBA awarded Outstanding Judge Awards to: Judge Vickie Churchill, Judge Tari Eitzen and Judge Richard McDermott.

In the next few years the WSBA is going to pursue enhancing their culture of service within the WSBA membership; provide more assistance to lawyers with the business of law practice; provide more assistance to lawyers in avoiding or dealing with the stress of law practice; and conduct a detailed study of the composition of the legal profession and retention rates within the profession in Washington.

The BOG went forward with the membership bylaws amendment. The \$50 judicial membership fee will not be effective until 2012.

Ms. Littlewood reported that the Moderate Means Program will be launched soon. The program will involve law students doing client intake and lawyers working on the cases.

Reports from the Courts

Court of Appeals: Judge Sweeney reported that the Executive Committee of the Court of Appeals (COA) voted to cancel their spring conference due to budget reductions. The COA has adopted their first long-range strategic plan.

Superior Courts: Judge Warning is happy to see the WSBA bylaws provision come together as it did. The Superior Court Judges' Association (SCJA) is gearing up for the legislative session.

Courts of Limited Jurisdiction: Judge Brown said the District and Municipal Court Judges' Association (DMCJA) is getting ready for the legislative session. Part-time judges appreciate the new WSBA membership bylaws. The DMCJA is spending time on the court records issue.

Association Reports

County Clerks: Mr. Stock stated the WSACC is working on the legislative item discussed earlier in the meeting.

Superior Court Administrators: Ms. George reported that the Association of Washington Superior Court Administrators (AWSCA) is looking forward to the October 20 fall conference via the eCCL system. The conference will cover ADA and appointment of counsel requests and the GR 33 rewrite. On October 28 they will hold a second eCCL session which will focus on ethics and social media.

District and Municipal Court Administrators: Ms. Bednared stated there is a board meeting next week with guests from the Department of Licensing (DOL) and the DMCJA. They are also working on spring conference.

Administrative Office of the Courts

Mr. Marler gave a brief update on the state budget. The Governor invoked emergency powers to reduce funding by 6.287% across all state agencies. The AOC ended up backing out all costs that are constitutionally mandated and cannot be cut (superior court salaries, pro tem costs, and the staffing component for the portion of the interpreter program which is required to certify and regulate the interpreters). AOC then took a 6.287% reduction on the remaining funds. There will be reductions to the Becca and truancy funds, vacancy savings throughout the agency, a hiring freeze, and pro tem funding that is being under-utilized will off-set reductions to the remaining pass-through programs.

The AOC was advised that they were successful in receiving a drug court enhancement grant to implement automated case management and data collection. The project will be a partnership between the DSHS Division of Behavioral Health and Recovery, AOC and nine drug courts. Additional partners will include the human services office in participating counties, alcohol and drug treatment agencies, the Washington State Office of Research and Data Analysis, and consultants from Washington State University and NPC Research in Portland, Oregon.

Other Business

BJA Account Update: Ms. McAleenan reported that in the third quarter report, there is just over \$21,000 in the BJA account because quite a few more judges have paid their BJA dues. The only recent expenses were for standard bookkeeping. Upcoming expenses will be the legislative dinners.

There being no further business, the meeting was adjourned.