

**Board for Judicial Administration
Meeting Minutes**

**November 19, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member Chair; Judge Stephen E. Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Mr. Jeff Hall; Judge Laura Inveen; Ms. Paula Littlewood; Justice Susan Owens; Judge Jack Nevin; Judge Kevin Ringus; Judge Dennis Sweeney; Mr. Steven Toole; Judge Gregory Tripp; and Judge Stephen Warning

Guests Present: Mr. Marc Boman, Mr. M. Wayne Blair, Judge Harold Clarke, Ms. Delilah George (by phone), Ms. Shelly Maluo, Judge Christine Quinn-Brintnall, Mr. Kevin Stock, and Mr. Earl Long

Staff Present: Ms. Beth Flynn, Mr. Tom George, Mr. Steve Henley, Mr. Dirk Marler, Ms. Mellani McAleenan, Dr. Carl McCurley, Mr. Ramsey Radwan, and Mr. Chris Ruhl

The meeting was called to order by Chief Justice Madsen.

WSBA Council on Public Defense Resolution

Mr. Marc Boman, Chair of the WSBA's Council on Public Defense, spoke about the Council's resolution encouraging Washington courts to provide written notice to defendants regarding the possible consequences of pleading guilty. There is a failure of some defendants to understand the consequences of pleading guilty and judges have limited time to explore the direct consequences of a plea and can't possibly get to know the individual circumstances of defendants who plead guilty which could include non-citizens being deported, students being disqualified from Pell Grants, sex offender registration, not being able to join the military, etc.

The Council thought it would be helpful to judges to use a two-sided handout that was developed by the Council and urges defendants to consider the consequences of a guilty plea and inform them they have a right to consult with an attorney. The handout is in Word format and could be altered by a court to fit their needs.

The Council prepared a resolution for the Washington State Bar Association (WSBA) regarding the handout and would welcome the support of the BJA in the form of a resolution or whatever the BJA feels is appropriate.

There was some discussion about how the handout would affect appeals and the burden on defense attorneys to explain all the possible guilty plea consequences to defendants. That is not the attorney's area of expertise.

Judge Inveen stated there is a collateral consequences handbook and it is available online.

It was moved by Judge Sweeney and seconded by Judge Culpepper to give further consideration to this issue at the December meeting. The motion carried with Judge Ringus opposed.

Problem Solving Courts Policy Statement

Judge Clarke, of the Washington State Association of Drug Court Professionals (WSADCP), made a presentation to the BJA in September and introduced a policy statement regarding problem solving courts. There is a need for education and funding across the state for problem solving courts and a need to know and understand best practices. Problem solving courts need to assist each other and measure outcomes.

Hopefully this is the right time and place to seek support from the BJA. It would be from the top down to the local courts throughout the state. The WSADCP is asking for support in the policy statement. It will be difficult as far as funding and it is not the year to ask for additional funding. Problem solving courts need some structure and as they look toward statewide funding in the future and at the local level it will be nice to have the policy statement. It will also help them stay focused as they move forward.

Judge Sweeney's objections to drug courts are fundamental. Judges are not psychologists or social workers, they are trained to apply the law. One problem is what they are set up to do as an institution. The second concern is that he worries about the courts being at the end of a societal pipeline. The social and economic problems are better addressed by the legislative and executive branches. He worries that the judicial branch is now dealing with the problems and the executive and legislative branches will not do anything because the judicial branch is taking care of it.

Judge Nevin stated he has the same concerns as Judge Sweeney but this train has left the station and courts are at the end of the line. That is troubling on a host of levels. Maybe having some guidance and parameters will help the courts deal with this.

Chief Justice Madsen suggested that this issue be set over for a month or two and the BJA can look at the language. Judge Lambo suggested that this be put on as an action item in January.

Justice Owens suggested having a subcommittee wordsmith and shorten the resolution. It is a little ambitious. AOC staff will work with Judge Clarke and get some other volunteers. Mr. Hall would like to be involved.

Mr. Hall would like to have a discussion about resolutions in general at a future meeting.

Washington State Bar Association

Mr. Toole reported that the next WSBA Board of Governors (BOG) meeting is December 10. GR 31 was discussed at length at their BOG meeting in October. The WSBA does not believe they come under GR 31 or the Public Records Act (PRA) but they do come under GR 12 and they are drafting an amendment that will be presented for action at their December 10 meeting.

They are also getting an update from the Local Rules Task Force at their December meeting.

They made a decision to have the 2011 bar exam in both Spokane and Seattle and will decide if that should be done on a permanent basis.

They held their 50 year member tribute luncheon recently and thanked Chief Justice Madsen for her participation.

Salary Commission Statement

Mr. Hall stated that in the past, the BJA has taken a position with the Salary Commission that judges want their salaries to keep pace with inflation. They also want parity with the federal bench. The position has not been to ask for a salary increase but they do want the 5% differential between the four levels of court to be maintained.

The Salary Commission's Owen-Portier report established the federal courts as an appropriate benchmark. Also, the BJA provides the Salary Commission with a list of the number of judges who are lost to the federal bench and a list of judges who leave state service to go into private mediation and arbitration services.

Mr. Hall suggested maintaining this position. The judiciary has a good relationship with the Commission and the Commission members are very sympathetic to the salaries of judges.

The Superior Court Judges' Association (SCJA) thought it would be foolish to request a salary increase and if the Salary Commission can see clear to do anything for the judges, they will.

Judge Brown stated the District and Municipal Court Judges' Association (DMCJA) has not taken a formal vote on this but the general consensus is to agree with SCJA. One issue they might be assisting with is to request that the Salary Commission set the salaries for part-time district court judges. Part-time judges might make presentations on their own to the Salary Commission.

There was a comment about the political statement it would make if judges expressly stated they will forego a cost of living. Another comment was that projections are for revenues to increase at a lower level and maybe funds would be available in the future and the BJA should continue with the proposed request. It would be five years without a COLA if they specifically ask not to have a COLA. It is important to take a supportive position on behalf of judges.

It was moved by Judge Dubuisson and seconded by Judge Nevin that the BJA adopt the proposed Salary Commission position. The motion passed with Judge Quinn-Brintnall opposing.

October 15, 2010 Meeting Minutes

It was moved by Judge Dubuisson and seconded by Judge Sweeney to approve the October 15 meeting minutes. The motion carried.

Appointments to the BJA Public Trust and Confidence Committee

It was moved by Judge Quinn-Brintnall and seconded by Justice Owens to appoint Judge Laurel Siddoway and Ms. Kathy Martin to the BJA Public Trust and Confidence Committee. The motion carried.

2011 BJA Meeting Schedule

It was moved by Judge Ringus and seconded by Judge Sweeney to approve the proposed 2011 BJA meeting schedule. The motion carried.

Washington State Center for Court Research

Dr. McCurley, manager of the Washington State Center for Court Research (WSCCR), gave an update on the work of the WSCCR. He indicated that Judge Sweeney had recently stepped down as Chair of the WSCCR Advisory Board and that Judge Ann Schindler is the new Chair. Dr. McCurley highlighted the work of his staff.

The WSCCR is working on the following projects and Dr. McCurley gave a brief overview of each of the projects.

- Becca and Truancy Evaluation
- Washington Assessment of Risks and Needs of Students (WARNS)
- Dependent Youth Interviews
- Residential Time Summary Report
- Timeliness of Dependency Case Processing in Washington State
- Judicial Salary Comparison

- Judicial Needs Estimates
- Juvenile Court Case Management and Assessment Process
- Therapeutic Courts – implement drug court case management system and establish performance reporting – evaluate local drug courts
- Thurston county Pretrial Risk Assessment

The WSCCR has been in operation over four years and the WSCCR Advisory board is a key link between court research and the court community. They are continually reviewing the alignment between research priorities and the needs of the judicial branch.

Becca/Truancy Funding Study

Mr. George gave a brief presentation regarding the Becca/Truancy Funding Study. The purpose of the study is to investigate the impact of receiving a truancy petition on educational and juvenile offender outcomes.

45,000 kids are eligible to receive a truancy petition. That is about 14% of all high school students. Currently about one-third of the students who should be referred to court are referred. About 18,000 students a year are court-petitioned truants. 470,600 students are non-petitioned students.

Truants do make up a high-risk group that courts should be paying attention to.

BJA Legislative Agenda

Ms. McAleenan reported that elections are certified on November 23 and Republicans will pick up a few seats. There are still some races that are too close to call: Representative Kelli Linville, Senator Randy Gordon, Senator Steve Hobbs.

Leadership positions in the House and the Senate should not change much.

The BJA legislative agenda includes the following:

1. A Grant County District Court judicial position.
2. Amendment of RCW 9A.36.031 to make assault of judges and court-related personnel a class C felony (assault 3) rather than a gross misdemeanor (assault 4).
3. Judicial Stabilization Trust Account, amendment to HB 2362, providing support for judicial branch agencies by imposing surcharges on court fees. This will be discussed further on December 10.

4. Changing the election and appointment provisions for municipal court judges.

There is a BJA Legislative/Executive Committee conference call on December 6 and the BJA could make a decision on this at the December 10 BJA meeting.

Washington State Budget Forecast

Mr. Radwan reported that the current biennium revenue forecast went down another \$385 million and this will impact the state judiciary. The shortfall could result in another \$2 million reduction to the judicial branch if across the board cuts are taken. The Governor is calling for the House and Senate to provide general fund budget reduction proposals to her by November 29. The Administrative Office of the Courts (AOC) will try to insert itself into the process so the judicial branch will not be caught by surprise.

For the upcoming biennium, the revenue forecast has been reduced by another \$809 million. Mr. Radwan assumes this forecast will continue to go down.

The caseload forecast usually defines the increase in expenditures over a period of time. At this point in time the caseload forecast looks okay although it does not include the drop-off for the unemployment federal funding.

The rolling deficit for next biennium is about \$5.6 billion. About half of this is due to the loss of federal funding. There is another \$2 billion that is in optional costs.

Resolution Urging Adequate Funding of the Judicial Branch

Ms. McAleenan presented a resolution regarding adequate funding of the judicial branch. The resolution has been circulated to other entities and she has heard back from the SCJA and DMCJA and they approved the resolution. The Access to Justice (ATJ) Board had a small revision and the WSBA is set for action in December and the Washington State Trial Lawyers Association (WSTLA) will consider the resolution in December. Ms. McAleenan would like the BJA to consider signing off on it. It will be an action item at the December meeting.

Access to Justice Board

Mr. Blair said the ATJ Board sees the Resolution Urging Adequate Funding of the Judicial Branch as a way to keep the coalition together and to remind everyone why the coalition needs to stay together instead of all competing against each other for funding.

The ATJ Board approved changes to GR 33.

Report from the Courts

Superior Court Judges: Judge Warning reported that the SCJA will continue a lively discussion about GR 31 and they are getting ready for the legislative session and hope to convince legislators to spend money on a risk assessment tool.

District and Municipal Court Judges: Judge Brown reported that the municipal court elections bill is being taken up again. Bainbridge Island Municipal Court is having trouble with the judge's salary being reduced while the judge is in office. The DMCJA supports the risk assessment tool and is working with the other groups supporting the tool to seek modifications on DUI and/or FTA issues which would make the tool useful for courts of limited jurisdiction.

Superior Court Administrators: Ms. George reported that the AWSCA met electronically in an online training session on October 20. Ms. Ruth Warren from Pierce County was the presenter and that segment was following the next week with a roundtable presentation. The AWSCA also used eCCL technology a week ago on an AOC survey. They are currently reviewing a caseflow and calendaring requirements document.

Juvenile Court Administrators: Ms. Maluo reported that the Juvenile Court Administrators have been approaching legislators as a team to educate them on juvenile issues. They are trying to get JRA funding transferred; especially the QA portion because they think there could be better outcomes for kids. They are trying to hold onto Becca funding and are concerned what will happen to the kids if Becca dollars are reduced or eliminated. Today is National Adoption Day.

Administrative Office of the Courts

In September, Doug Ford who managed the AOC Court Education Services (CES) section retired. It was just announced internally that Kathy Wyer, who currently works in the Information Services Division (ISD) at AOC will become the CES manager. She begins on December 6.

There being no further business, the meeting was adjourned.