

**Board for Judicial Administration
Meeting Minutes**

**December 10, 2010
AOC SeaTac Office
SeaTac, Washington**

Members Present: Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Stephen E. Brown; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Judge Laura Inveen; Justice Susan Owens; Judge Jack Nevin; Judge Kevin Ringus; Judge Dennis Sweeney; Judge Gregory Tripp; Judge Stephen Warning; and Judge Chris Wickham

Guests Present: Mr. Jim Bamberger, Ms. Peggy Bednared, Ms. Roni Booth, Mr. M. Wayne Blair, Mr. Ron Carpenter (by phone), Ms. Delilah George, Ms. Lynne Jacobs, Mr. Doug Klunder, Ms. Kathy Kuriyama, Ms. Shelly Maluo, Ms. Marti Maxwell, Ms. Sharon Paradis, Judge Christine Quinn-Brintnall, Mr. Rowland Thompson, Ms. Renee Townsley (by phone), Ms. Kristal Wiitala, and Judge Thomas Wynne

Staff Present: Mr. Charley Bates, Ms. Beth Flynn, Mr. Steve Henley, Ms. Shannon Hinchcliffe, Mr. Dirk Marler, Ms. Mellani McAleenan, Mr. Rick Neidhardt, and Mr. Ramsey Radwan

The meeting was called to order by Judge Lambo.

Recognition of Judge Dubuisson

In recognition of Judge Dubuisson's service on the Board for Judicial Administration (BJA), Chief Justice Madsen and Judge Lambo presented Judge Dubuisson with a signed Temple of Justice print. Judge Dubuisson has served on the BJA since 2007 and is retiring at the end of December. Judge Dubuisson said she has appreciated working with the BJA and will miss this group.

Court Manager of the Year Award

Mr. Hall gave a brief history of the Court Manager of the Year Award which was established in 1987 to honor outstanding court managers who exemplify the leadership and ideals of their chosen profession. This year's nominees were Mr. N. F. Jackson, Whatcom County Superior Court; Ms. Delilah George, Skagit County Superior Court; Mr. Ron Miles, Spokane County Superior Court; Ms. Rafaela Selga, Clark County District Court; Mr. Chuck Ramey, Pierce County District Court; Ms. Sharon Paradis, Benton/Franklin Juvenile Court; Ms. Tiziana Morgan, Federal Way Municipal Court; and Mr. Gary Carlyle, Thurston County Juvenile Court. As a group, they are incredible and it was difficult to choose one.

Mr. Hall announced that Ms. Paradis was the 2010 Court Manager of the Year because of her exemplary leadership skills and her efforts to improve the quality of service for youth in Washington's courts. Mr. Hall presented a vase to Ms. Paradis.

Ms. Maluo congratulated Ms. Paradis on behalf of the Washington Association of Juvenile Court Administrators. She said Ms. Paradis's steady leadership and guiding force have been beneficial for the Association. Ms. Paradis has been admired, a mentor, and a role model while leading the Association and very delicately balanced the needs of courts statewide to serve the most vulnerable kids in our state.

Ms. Pat Austin of Benton/Franklin Superior Court and other management staff joined the award ceremony by video and phone and congratulated Ms. Paradis on the well-deserved award.

Ms. Paradis thanked everyone for the incredible honor and stated that she has an amazing job with exceptional staff and she was honored to be recognized.

November 19, 2010 Meeting Minutes

It was moved by Judge Ringus and seconded by Judge Dubuisson to approve the November 19, 2010 meeting minutes. The motion carried.

Appointments to the Public Trust and Confidence Committee

It was moved by Judge Appelwick and seconded by Judge Brown to appoint Judge Elizabeth Martin and reappoint Judge Scott Stewart to the BJA Public Trust and Confidence Committee. The motion carried.

Resolution Urging Adequate Funding of the Judicial Branch

Judge Fleck reported that a letter was sent to 15-20 judicial branch stakeholders requesting support for a resolution urging adequate funding of the judicial branch. A number of them have signed onto this resolution. Judge Fleck seeks the BJA's support for this resolution.

It was moved by Judge Fleck and seconded by Judge Warning that the BJA support the Resolution Urging Adequate Funding of the Judicial Branch. The motion carried.

Mr. Blair commented that the resolution came before the Access to Justice (ATJ) Board and they approved it with one modification. At end of the second paragraph of the "Resolved" section of the resolution, they added, "without resorting to additional user fees". Judge Fleck said she appreciated having that particular wording in the ATJ resolution but she thinks it would be confusing to do it for the BJA. Chief Justice

Madsen appreciates the ATJ board adding the language but doesn't think it is necessary in this instance. Ms. McAleenan said stakeholders were told they could amend the resolution but does agree with Chief Justice Madsen and Judge Fleck that now that people have signed it, it might be confusing to change their tune now.

JSTA Discussion

Chief Justice Madsen explained that a group of stakeholders has been discussing what route to take with the Judicial Stabilization Trust Account filing fee surcharge which will expire next year. She would like the BJA to discuss the issues and decide how to proceed.

Mr. Hall gave a brief overview of the issue. In 2009 the Legislature created the Judicial Stabilization Trust Account (JSTA) and added filing fee surcharges to fund the account. The surcharges on filing fees expire on June 30, 2011 which will eliminate the revenue stream into the JSTA. The question is what do we do? The potential outcomes are:

1. The funding will expire if the Legislature takes no action this session.
2. The surcharges will be extended for a period of time, maintaining the status quo.
3. The filing fee surcharges will become permanent, maintaining the status quo from here on out.
4. Surcharges will be kept at their current level but split with the local courts. This would result in having to backfill the JSTA or reduce the three state judicial agency budgets that benefit from the JSTA (AOC, OPD, and OCLA).
5. The surcharge will increase to a level that would ensure the current level of state funding and also allow the split to be added for local courts.

Another item to consider is if the BJA takes a position on the JSTA filing fee surcharges will the BJA be responsible for pushing this policy position forward? Chief Justice Madsen asked the stakeholder group for volunteers to lead the effort but no one stepped forward. Mr. Hall and Chief Justice Madsen discussed the situation and determined it probably would be the BJA to move forward on this.

Chief Justice Madsen said the consensus of the stakeholder group was to simply say to the Legislature that the courts need to be funded and if the Legislature wants the state/local split, then the Legislature needs to step up and fund courts. Chief Justice Madsen had the sense that people were willing to lock arms and go forward and put the weight of their associations behind this issue. During the recent legislative dinners the message to legislators was that the judiciary wants the sunset clause removed but they also urge the implementation of the state/local split.

Mr. Hall stated there are some issues surrounding the filing fee surcharges but because the surcharges go to a dedicated account it should be okay to eliminate or extend the sunset date or raise the fee or surcharge to backfill for the split even with the passage of

I-1053. Mr. Hall said it will not be known for sure if I-1053 affects filing fees and surcharges until it gets to the Legislature. It can be put forward either way and if wrong, someone will correct it. The key for the BJA is to understand whether or not there is any non-supplant language included in the proposed legislation. If so, the counties will probably not support it.

Mr. Hall commented that the resolution included in the materials was not proposed by or vetted by the stakeholder group. It was drafted by Mr. Bamberger to capture the essence of what came out of the stakeholder meeting.

There was some concern regarding the BJA taking a position on increasing the cost to access courts. The BJA has previously stated to the Legislature that courts should not be funded with filing fees. As the BJA moves forward with this, how is this contradiction dealt with?

It was moved by Judge Wickham and seconded by Judge Appelwick to draft legislation with language to extend the sunset date at least through the 2011/2013 biennium and implement the state/local split. The motion carried with ten votes. Judge Culpepper and Judge Dubuisson opposed and Judge Lambo abstained.

The BJA Legislative/Executive Committee will work on appropriate language.

GR 31 Discussion

Judge Appelwick presented the draft rule created by the Public Records Act Work Group which was discussed by the BJA previously. Judge Appelwick discussed the proposed rule with some stakeholder groups and all the comments that have been received so far were included in the meeting materials. Judge Appelwick walked the BJA through the outstanding issues regarding the proposed rule.

1. Should the work group's new standards/procedures be moved out of GR 31 and into a new stand-alone rule?

It was moved by Judge Fleck and seconded by Judge Culpepper to make the standards and procedures for public access to judicial documents a freestanding rule. The motion carried.

2. Should any judicial entities be removed from the list of entities covered by the rule?

The WSBA has proposed to amend GR 12 and that they be exempted from GR 31. The Certified Professional Guardian Board and the Capital Case Committee would also like to be exempted.

Judge Appelwick explained that the work group started with the presumption that everyone is in who can be in. The work group took out the Commission on Judicial Conduct and the vote to delete WSBA was a tie but some members were missing. The WSBA was created by statute, has regulatory functions, is a trade association, and has members in the pension system. It meets a lot of criteria for "looking like a state agency." The dues are paid by private members and the WSBA has taken a position that they are a regulatory agency.

It was moved by Judge Dubuisson and seconded by Judge Culpepper to remove the WSBA from the proposed access to court records rule and make them subject to their proposed amendments to GR 12. The motion carried with Chief Justice Madsen abstaining.

Judge Wickham commented that he would like the Certified Professional Guardian Board removed from the rule because they deal with applications and licensing issues and are governed by GR 23 and have their own disclosure rules which were set out in the meeting materials.

It was moved by Judge Wickham and seconded by Judge Sweeney to remove the Certified Professional Guardian Board from the rule. The motion carried with Judge Culpepper opposing.

By consensus, it was agreed that the Capital Case Committee will get an exemption for the evaluation of its attorneys.

By consensus, it was agreed that the list under "Application of Rule" will be condensed and everything that can fall under "(c)Z" on page 3 of the draft rule will be eliminated from the list of entities covered under the rule.

Judge Appelwick walked the BJA through the revisions submitted by the Superior Court Judges' Association (SCJA).

The first change was adding the wording near the end of (a) "Access to judicial records by persons who are subject to a court's judgment and sentence or whose civil rights have not been restored is not covered by this rule."

There was much discussion about this revision and Judge Appelwick stated this issue was not discussed by the work group. Associations that participate in this discussion with the BJA may not agree with all points and can speak directly with the Supreme Court during the rule comment period.

It was determined that this issue should be taken off the table for now.

The SCJA asked that the draft rule not refer to courts as judicial agencies but include “courts and” or “courts or” before “judicial agency” throughout the draft.

Another request of the SCJA was to add (13) on page 12 of the SCJA revised rule, “Raw datasets supporting court performance measures” as an exemption. Judge Appelwick suggested that this be included in a comment under (4) (page 10 of the SCJA revised rule) and that (13) not be amended to make clear that metadata and e-mails are subject to disclosure. Judge Fleck would like this information in both locations and pointed out the definition of chambers records at the bottom of page 4 of the SCJA revision.

Judge Appelwick indicated he would bring back a draft amendment at the next meeting that clarified the status of metadata and phone records, but not necessarily amending that section.

(5)(a) (Page 4) Anything that is in chambers is exempt and anything that is not a chambers record is presumptively discloseable. If a copy is somewhere other than under the chambers’ control, it can be disclosed if it is not exempt.

By consensus it was determined not to include the SCJA’s request to add “bailiff” to (5)(a) (page 4) because of the language at the end of the section.

On page 5 of the SCJA proposal in (5)(a) at the top of the page, it was the consensus of the BJA to restore “to the management of the court” which was removed during the September 15 meeting.

The deliberative policy exception should be drafted for the next meeting. (This is a protection afforded under the PRA and imported here, but could be stated explicitly. It protects drafts and communications during the deliberative process, but not after a final decision.)

Judge Appelwick clarified that the “experts” included in the rule would not be available until a final disposition of the case. The SCJA proposal is that they are never released (on page 10, section 10 of the SCJA proposal).

Judge Appelwick stated it should not be a problem to enumerate an exemption for family court, juvenile court mediation and juvenile court probation’s social files (see page 10, sections 5, 6, 7 in the SCJA proposal).

There was a request that birthdates not be disclosed. This issue was not resolved during the meeting.

The BJA will continue this discussion during the January BJA meeting. A draft of the standalone rule will be sent to the BJA prior to the January meeting.

Board for Judicial Administration Meeting Minutes

December 10, 2010

Page 7 of 7

The January meeting date has not yet been determined. It will coincide with the State of the Judiciary Address. As soon as a date is known, the BJA will be notified.

Because of time constraints, the meeting was adjourned.