

**Board for Judicial Administration  
Meeting Minutes**

**January 12, 2011  
Temple of Justice  
Olympia, Washington**

**Members Present:** Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Stephen Brown; Judge Deborah Fleck; Judge Janet Garrow; Mr. Jeff Hall; Ms. Paula Littlewood; Judge Jack Nevin; Justice Susan Owens; Judge Christine Quinn-Brintnall; Judge Kevin Ringus; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; and Judge Chris Wickham

**Guests Present:** Ms. Tricia Crozier, Ms. Delilah George (by phone), Ms. Betty Gould, Mr. Doug Klunder, Judge Barbara Linde, Judge Richard McDermott, Ms. Linda Myhre Enlow, Mr. Rowland Thompson, and Ms. Kristal Wiitala

**Staff Present:** Mr. Charley Bates, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, and Mr. Rick Neidhardt

The meeting was called to order by Judge Lambo.

December 10 BJA Meeting Minutes

**It was moved by Judge Warning and seconded by Judge Ringus to approve the December 10 BJA meeting minutes. The motion carried.**

Appointments to the BJA Public Trust and Confidence Committee

**It was moved by Judge Ringus and seconded by Judge Wickham to appoint Judge Elizabeth Stephenson and Mr. Michael Killian to the BJA Public Trust and Confidence Committee. The motion carried.**

Resolution Regarding Notice of Potential Consequences of Guilty Pleas

Ms. Littlewood stated that the Resolution Regarding Notice of Potential Consequences of Guilty Pleas came to the Washington State Bar Association (WSBA) Board of Governors (BOG) at their October meeting and Mr. Hall suggested at that time that it come to the Board for Judicial Administration (BJA). There were some WSBA concerns and it was pulled from the BOG agenda. They revised the fourth clause down and the revised language is included in the materials. The BOG would like to know that the BJA is okay with this language before they approve the resolution.

Discussion focused on the following areas:

- That there is a false impression of only having the consequences if the defendant pleads guilty. In reality, the defendant can plead not guilty but be found guilty and have the same consequences.
- Judges were concerned about what happens if, for some reason, they do not distribute the fliers to defendants.
- There is a Uniform Collateral Consequences of Conviction Act that is being developed that could be used to solve this issue.
- The District and Municipal Court Judges' Association (DMCJA) has not had time to review the resolution and take a position on it.
- Judges should not be encouraging or advising defendants whatsoever. Judges should not feel like they are wearing more than one hat.
- How would the resolution be used? Consequences can be very broad and can come up decades later. You never know what the consequences could be.
- To the extent this can be phrased that it is a best practice so it doesn't convey any mandatory consequences of a judge not doing it, it would be okay.
- This is an excellent instrument to send a message to the counties and cities that courts need to be funded so everyone has counsel.
- There is a lot of text in this and will every non-English proficient person have the expectation that this document will be translated by interpreters?
- Is there any consequence if the BJA does not endorse this?
- Difficult to make sure this works for every court since a lot of them operate differently.

This resolution will be revisited next month.

#### Reconsideration of Position on Judicial Salaries

Chief Justice Madsen commented that since the BJA adopted a position on salaries, there was quite a bit of commotion in the political area regarding salaries. Some elected officials sent a letter to the Salary Commission asking that their salaries be reduced even though according to the Washington State Constitution salaries cannot be reduced during their term of office. The Supreme Court supports the 2011 position as it was approved in the fall in an effort not to have to play catch-up in the future.

Judge McDermott indicated that many of his colleagues on the King County bench were concerned that a salary reduction would lead many judges to a reassessment of their judicial career versus a return to the private sector, in particular those judges who are relatively new to the bench.

Mr. Hall stated that the BJA Legislative/Executive Committee has not taken a position on the legislation. The first piece of legislation, HJR 4201, amends Article XXVIII, Section 1 of the Constitution of the State of Washington. It proposes that whenever the omnibus operating appropriations act reflects a general salary reduction for state employees, the Salary Commission shall decrease salaries adopted pursuant to this section at a commensurate rate and for the same period of time.

The second piece of draft legislation, H-0478.1/11, amends a different section of the Constitution, Article XXX, Section 1, eliminating the current provision which prohibits salary reductions during a term of office. This legislation includes municipal and county officials along with state elected officials.

What position does the BJA want to take, if any, on this legislation?

There was a lot of discussion regarding the legislation with the key points being:

- District and municipal court judges' salaries are not paid for by the state so this legislation makes no sense. The bill creates the possibility to decrease salaries with a trigger unrelated to funding source.
- From September 2008 to September 2013 there will be a 7% reduction in judicial salaries based on inflation. The reduction due to inflation will erase the pay increases made prior to that.
- A number of judges who are baby boomers and many judges around the state will be retiring in the next six years. The pay reduction will affect their retirement.
- Judges in the Court of Appeals, Division II are opposed to a COLA because they would need to make layoffs and furloughs to accommodate the salary increase and they do not want to do that.
- Recently, there was a question regarding the BJA possibly changing their position on judicial salaries based on the elected officials' letter to the Salary Commission. The position taken by the BJA is not asking for a raise but stating these are the factors that should be considered regarding judicial salaries.

Justice Madsen stated that unless someone who votes in the majority wants to change position, the BJA already has a position on salaries. There were no motions for reconsideration. The position adopted previously will continue to be used for the judiciary with the Salary Commission.

### GR 31A Discussion

The revised draft of General Rule 31A was included in the meeting materials. Judge Appelwick explained that there were still several issues for the BJA to resolve:

- The deliberative process exemption/chambers records exclusion

- Other potential exclusions such as family court files and date of birth
- Issues discussed by the Work Group such as the common law balancing test and the prospective application
- Issues brought up by the BJA members such as excluding incarcerated individuals from making requests
- Fees

The BJA discussed the outstanding issues and made the following decisions:

*Regarding the exemptions for family court evaluation/DV files, family court mediation, and juvenile court probation's social files:*

**It was moved by Judge Fleck and seconded by Judge Wickham to add these three exemptions to GR 31A: family court evaluation/DV files, family court mediation, and juvenile court probation's social files. The motion failed because of a tie with 4 in the affirmative, 4 in the negative and 3 abstentions, including Chief Justice Madsen and Justice Owens. The file types will be called out expressly in a comment in the final draft of GR 31A.**

*Regarding the exemption for date of birth:*

**There was a recommendation from the Superior Court Judges' Association (SCJA) to include birth date in the category of "personal identifying information" in the list of excludable records. The recommendation carried with 4 in the affirmative, 3 in the negative and 4 abstentions, including Chief Justice Madsen and Justice Owens.**

*Regarding the exemption of raw datasets:*

Raw datasets were discussed but there was no motion on this issue so an exemption will not be added.

*Regarding the proposals to charge fees for public records and research:*

**A vote was taken based on a recommendation from the SCJA to allow courts to charge the same amount that County Clerks charge for public records. The recommendation failed with 2 in the affirmative, 5 in the negative and Chief Justice Madsen and Justice Owens abstaining.**

*Regarding the request from the SCJA to exempt records that originate in chambers:*

There was a lot of discussion regarding this issue. Judge Appelwick clarified that the Work Group viewed chambers records as related to work of chambers staff and communications between chambers staff, not overall court administration material.

Some members were concerned about the release of budget information to county/city executives and thought maybe the deliberative process exemption could be narrowed down to the budget issue.

The proposed rule, under the deliberative process exemption, currently protects the work-up material from disclosure until the product is final and then everything is discloseable. The SCJA would like the work-up materials to never be disclosed. The deliberative process issue is imported in this rule by way of the Public Records Act (PRA).

**A vote was taken to adopt a deliberative process exemption like the PRA but make it permanent. It failed with 3 in the affirmative, 4 in the negative and Chief Justice Madsen and Justice Owens abstaining.**

**A vote was taken to adopt the PRA deliberative process exemption but make budget-related materials (only) exempt permanently. It failed with 1 in the affirmative, 6 in the negative and Chief Justice Madsen and Justice Owens abstaining.**

Language will be set out dealing with this issue in the draft rule at the next meeting.

*Regarding the exemption of trial and appellate court public defense reports and invoices:*

There is a request to delete "but only during the pendency of the case." from (6) on page 7 of the draft rule.

**A vote was taken to delete, "only during the pendency of this case." from (6) on page 7 of the draft rule. It carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding incarcerated individuals requesting records:*

There was discussion regarding this issue and it will be discussed at the February meeting.

*Regarding further review within the court or agency:*

An amendment will be made to B (3) on page 10 in the proposed rule. The amendment will give the option to the presiding judge to designate another judicial officer to hold a review proceeding. This will be brought back for discussion at the February meeting.

*Regarding a Best Practices work group:*

**A vote was taken to include language to formally request the convening of a Best Practices work group to assist with the implementation of GR 31A. It carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding removing the County Clerks from the draft rule:*

Judge Appelwick pointed out that the County Clerks can be removed from this rule since it is now a standalone rule and no longer applies to case records. See page 1 (c) (1) B on page 1 of the draft rule.

**There were no objections so the County Clerks were removed from the rule.**

*Regarding the proposed amendments submitted by the Washington Association of Criminal Defense Lawyers (WACDL):*

At the time that WACDL submitted their amendments, they were not aware that GR 31A separated from GR 31 and was now a standalone rule.

**A vote was taken to add the following language in proposed GR 31A: “An attorney or entity appointed by a court or judicial agency to provide legal representation to a litigant in a judicial or administrative proceeding does not become a judicial agency by virtue of that appointment.” It carried with Chief Justice Madsen and Justice Owens abstaining.**

*Regarding prospective application:*

Should this rule apply to all records currently in possession as of the date of the rule or begin with only records created from the effective date of the rule forward? The SCJA requested that this be absolutely prospective only. There is a concern about public perception. Will records be kept a different way or handled a different way?

This issue will be addressed at the February meeting.

A new draft will be brought to the February meeting for consideration and the draft will include inmate records request language from the PRA and the effective date amendment.

#### BJA Resolution Guidelines

Justice Madsen stated she would like to see the BJA have an expanded role in the life of the courts of Washington and stated the mechanism to make that happen is resolutions.

**It was the consensus of the BJA to go forward with the use of resolutions in order to expand the role of the BJA in the life of Washington courts.**

Mr. Hall stated that the question now is that the BJA currently has no mechanism to process resolutions. The BJA needs to be selective or their resolutions will carry no weight.

Ms. McAleenan reported that she included a draft Process and Guidelines for Resolution Requests in the BJA meeting materials. The guidelines include a procedure to have resolutions reviewed/screened by the BJA Legislative/Executive Committee before coming to the full BJA. The resolutions would not be broad policy statements but they would be specific and directive.

**It was moved by Judge Ringus and seconded by Judge Fleck to put the BJA Resolution Guidelines on the February meeting agenda as an action item. The motion carried.**

#### Diversifying the Bench Guidebook

Judge Fleck reported that the Diversifying the Bench Guidebook is a product of the Minority and Justice Commission's Workforce Diversity Subcommittee. The diversity of the bench has been declining and the Guidebook contains information about how to run for election and how to seek appointments. The "Judges' Insight" section should be particularly helpful. It was a result of a meeting of about 15 judges from all levels of court from around the state who came together three years ago to answer questions that people frequently ask of judges if they have the opportunity.

The Workforce Diversity Subcommittee would like as many of the tentatively listed law schools, bar groups, and judicial associations to co-sponsor this guidebook as possible. The reason it is on the agenda today is to ask the BJA to become a co-sponsor.

Judge Lambo said he thought a lot of the BJA members would like more time to review the guidebook and stated it will be an action item on next month's agenda.

### Washington State Bar Association

Mr. Toole reported that the Washington State Bar Association (WSBA) Board of Governors (BOG) met December 10 and 11 in La Conner. They are mindful of all the budgetary issues going on and the BOG's Budget and Audit Committee is working on an exercise to see how cutting 10% of the budget would impact programming.

The Washington Leadership Institute surveyed female members of the WSBA. It was quite an interesting project. The Bar is taking a broader survey and this is an ongoing two-year process.

The WSBA is drafting a new rule, GR 12.4 to address the BJA's recommendation to exclude the WSBA from the proposed GR 31A. They established a work group and have a recommendation that will be presented to the BOG in Olympia in a few weeks.

Ms. Littlewood reported that the WSBA launched their Moderate Means Program in December and they now have over 100 attorneys. They hired staff at the Washington law schools to train their students to process clients.

### Reports from the Courts

**Supreme Court:** Justice Owens reported that the Supreme Court is back in session. Last week they were busy with administrative matters and with the swearing-in of new Justice Charlie Wiggins. Chief Justice Madsen shared that there will be a roundtable discussion on race and the criminal justice system on March 2 in the Supreme Court courtroom. She was asked by the WSBA and others to hold a meeting on this issue and hopefully it will result in a meeting of the minds on the issue.

**Court of Appeals:** Judge Appelwick reported that Division II has a retirement dinner planned for Judge C. C. Bridgewater and Judge Jill Johanson will take the bench soon. They are working on budget issues.

**Superior Court Judges:** Judge Warning updated the BJA on the legislation the SCJA is working on. Judge Warning testified on the assault of the judge bill. He asked that judges have the same protections as police dogs. Judge Wickham reported that Thurston County is working with Mr. Barney Barnoski on a risk assessment tool. If it is successful, it will satisfy a concern raised across the state that the static domestic violence risk assessment is not satisfactory.

**District Court Judges:** Judge Brown stated that the DMCJA Board meeting is this Friday. The Legislative Committee is up and running and are always on the lookout for new fees.

Association Reports:

**County Clerks:** Ms. Gould reported that there is a lot going on and the legislative session has a huge impact on the clerks. They are trying to monitor bills for impact on county clerks. They are also mentoring some new clerks and continuing to look at technology.

**District and Municipal Court Administrators:** Ms. Crozier said they are working hard with a lot of transition at their level of court.

Administrative Office of the Courts (AOC)

Mr. Hall reported that it has come to his attention over the past several weeks that all of the JISC plans are finally coming off the page and they are moving forward.

Mr. Hall thanked all the stakeholder groups for their participation in the prioritization of AOC's services. He will be using the information to make some possible short-term decisions, with the Legislature, and with final budget appropriations this spring. He will also use to communicate the AOC services with the stakeholders.

There being no further business the meeting was adjourned.