



Board for Judicial Administration (BJA)

Friday, November 16, 2012 (9:00 a.m. – 12:00 p.m.)

AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

MEETING MINUTES

Members Present:

Chief Justice Barbara Madsen, Chair

Judge Sara Derr

Ms. Callie Dietz

Judge Deborah Fleck

Judge Janet Garrow

Judge Jill Johanson

Judge Kevin Korsmo (by phone)

Judge Linda Krese

Judge Michael Lambo

Judge Craig Matheson

Justice Susan Owens

Judge Kevin Ringus

Judge Ann Schindler

Judge Charles Snyder (by phone)

Judge David Svaren

Guests Present:

Mr. Jeff Amram (by phone)

Mr. Jim Bamberger

Ms. Ishbel Dickens (by phone)

Ms. LaTricia Kinlow

Ms. Sonya Kraski

Ms. Joanne Moore

Public Present:

Mr. Tom Goldsmith

Mr. Kevin Hupy

Mr. Mark Mahnkey

AOC Staff Present:

Ms. Beth Flynn

Mr. Steve Henley

Mr. Dirk Marler

Mr. Ramsey Radwan

October 19, 2012 BJA Meeting Minutes

Judge Fleck stated that the Governor's Juvenile Justice Advisory Committee in the second paragraph on page two should be changed to the Washington State Partnership Council on Juvenile Justice.

It was moved by Judge Fleck and seconded by Judge Schindler to approve the October 19, 2012 BJA meeting minutes with the revision requested by Judge Fleck. The motion carried.

Filing Fee Workgroup Recommendations

Mr. Marler stated that Judge Brown presented recommendations at the October BJA meeting regarding filing fees and they are on the agenda for action today. There are three recommendations to consider: 1) extend the JSTA surcharge in its current form for an additional two years; 2) adopt the filing fee principles listed on page 12 of the materials; 3) request that the Washington State Center for Court Research (WSCCR), through its advisory board, consider conducting a study that would look at potential effects on particular case types and increases in filing fees generally.

It was moved by Judge Garrow and seconded by Judge Krese to approve the extension of the JSTA surcharge for two years. The motion carried.

Judge Fleck moved to adopt the filing fee principals as written on page 12. There was no second.

It was moved by Judge Ringus and seconded by Judge Garrow to adopt the Filing Fee Principles with Principle Four reworded as follows: "Filing fees should be periodically reviewed to determine if they should be adjusted consistent with these principles." The motion carried.

It was moved by Judge Derr and seconded by Judge Matheson that the Washington State Center for Court Research (WSCCR) should study the impact of raising filing fees depending upon the type of cases involved (e.g. family, landlord-tenant, tort, contract, etc.). The motion carried.

The hope is to have the WSCCR study finished by the end of 2013.

Legislative Agenda

New Judicial Position in Benton/Franklin Counties Superior Court: Ms. Dietz reported that there is a request for a new superior court judge position in Benton and Franklin Counties Superior Court. There has been a need for an additional judge for quite some time. They are working with their county commissioners and are pushing the request out a year because the counties are having their own budget issues.

It was moved by Judge Garrow and seconded by Judge Lambo to approve the Benton and Franklin Counties Superior Court judge request legislation. The motion carried.

New Judicial Position in Whatcom County Superior Court: The Whatcom County Superior Court judge request has local support and they are working with their legislative delegation which is supportive of this request. The judicial needs data supports the request.

It was moved by Judge Schindler and seconded by Judge Lambo to approve the Whatcom County Superior Court Judge Request Legislation. The motion carried.

Budget Outlook: Mr. Radwan stated that the economic and revenue forecast came out two days ago and indicated that the State General Fund balance for the next several biennia will be negative due to relatively flat revenue and anticipated maintenance level expenditures. Last legislative session the legislature mandated that the revenue forecast be adjusted to reflect a 4.5% increase per year if the official forecast was lower. Additionally, the legislature mandated that a four-year revenue and expenditure outlook be periodically produced. A further change results from the amount of funding transferred to the budget stabilization account. The current projected combined deficit is approximately \$1.9 billion, about \$400 million less than previously forecast. These deficits do not include additional expenditures resulting from the McCleary case.

The good news is that revenue remained flat and did not decrease.

Payment of Interpreter Expenses: Ms. Dietz stated that another piece of potential legislation for the BJA's consideration is payment of interpreter services. There are three options:

- Require that interpreters be provided at no expense to all non-English speakers, regardless of indigency, in all cases. That option will have a \$2.5 million fiscal impact. Cities and counties would have to pick up a lot of the costs. It would be an unfunded mandate.
- Eliminate the option of the state paying up to 50% and just require 50% from the state. Looking at data provided by the courts, the option would cost \$2.8 million to \$3.3 million.
- Require some type of phase-in of state funding to reach 50%. This would cost \$3.3 million total but would only increase about 10% each year or about \$170,000 a year.

The Administrative Office of the Courts (AOC) surveyed the courts regarding the use of interpreters in court proceedings and did not ask about out-of-court interpreter use. They had responses from approximately 75% of the courts. There were responses from all superior courts, except one; all district courts, except four; and all municipal courts, except 33.

There are approximately 130 languages interpreted in the courts. Spanish, Russian, Vietnamese, sign language, and Korean are the top five languages. There are problems getting certified interpreters in Eastern Washington and more rural locations.

Approximately \$5.6 million was expended in 2011 on interpreter services by the responding courts. Courts do not seem to be tracking interpreter costs consistently but about \$4.9 million was spent in criminal cases and \$749,000 in civil cases. There is not a consistent practice in who pays for interpreters.

Chief Justice Madsen stated that the interpreter funding could not be included in the budget but it is okay to put this in legislation and see if the Legislature will fund it.

Discussion included:

- A concern about whether this should be asked for in this session because the consensus on the Legislative/Executive Committee conference call was that it should not be requested this year.
- Funding is needed if this becomes policy change.
- It is a political decision on whether this should be put forward or not. There may be other issues that are far more fundable that should be pursued instead.
- Municipal courts in King County have started coordinating calendars so they can get interpreters between courts easily. They also instituted a payment plan for the interpreters and are having great success with this pilot program.
- This session should be about educating the legislators about the issue and suggesting a phased-in approach to funding.
- The Department of Justice letter could be used as a declaration for an emergency.
- The BJA should ask for 50% funding for all the courts in the state. If they say no, they say no.

Judge Fleck moved and Judge Matheson seconded to have the state fund 50% of court language interpreter services by July 1, 2017. The motion carried with Judge Schindler and Judge Lambo opposed and Judge Derr and Justice Owens abstaining.

Judge Fleck moved and Justice Owens seconded to have the Legislature restore, during this upcoming legislative session, the money that has been cut previously for interpreter funding. The Department of Justice letter could be used to indicate need. This funding would be part of the 50% funding requested earlier and would be pursued outside the budget process. Four BJA members voted in favor and the rest were opposed with Judge Johanson abstaining. The motion failed.

Judge Ringus moved and Judge Derr seconded to amend RCW 2.43.040(2), to state: "In all legal proceedings in which a non-English speaking person would be appointed an interpreter at no expense." The motion carried with Judge Johanson abstaining.

It was moved by Judge Derr and seconded by Judge Garrow to strike RCW 2.42.120(3) and renumber the remaining sections. The motion carried with Judge Johanson opposed and Judge Garrow abstaining.

Therapeutic Courts: During the BJA Legislative/Executive Committee call they tried to figure out if there was some way to cover all types of problem-solving courts with a statute/legislation/local rules, etc. Ms. Dietz sent a question through the COSCA listserv to find out how other states approach this issue and received responses from 18 states. None of them have umbrella legislation but a number of them are using court rules.

There was consensus that the BJA does not want to put this in legislation and will convene a group to propose a court rule.

District and Municipal Court Judges' Association (DMCJA) Legislative Agenda: Judge Derr stated that the DMCJA has legislation that changes when a judge has to retire from the end of the year the judge turns 75 to the expiration of the term in which the judge turns 75. The DMCJA also has court security legislation that requests that cities and counties be obligated to supply some security for the courts. Another piece of legislation deals with the termination of municipal courts and what happens with their judges. The legislation would allow termination of the court only upon the conclusion of the judicial term. They are working on one other piece of legislation that has not been finalized yet. That legislation has to do with a \$25 administrative fee. They are also looking at a restriction stating cities cannot have DUI courts.

Superior Court Judges' Association (SCJA) Legislative Agenda: Judge Matheson stated that Judge Alan Hancock provided an analysis if the definition of intent was amended. The issue was referred to the SCJA Legislative Committee for consideration. Judge Kitty-Ann van Doorninck brought forth a proposal to modify the requirement to appoint an attorney to a youth turning 18 and eligible for extended foster care.

Appointment to the BJA Public Trust and Confidence Committee

It was moved by Ringus and seconded by Judge Garrow to reappoint Judge Laurel Siddoway and Judge Elizabeth Stephenson and to appoint Judge James Docter to the BJA Public Trust and Confidence Committee. The motion carried.

Appointment to the BJA Trial Court Operations Funding Committee

It was moved by Judge Ringus and seconded by Judge Garrow to appoint Judge Richard Fitterer and reappoint Ms. Elsa Anderson to the BJA Trial Court Operations Funding Committee. The motion carried.

BJA Retreat Workgroups

The BJA Structure Workgroup met for a full day last month and they have another meeting scheduled in a few weeks.

The BJA Committee Unification Workgroup has not met. It was noted that Judge Krese should be added to the membership list and that Judge Nevin should be deleted.

There was discussion about including outside groups in the Committee Unification Workgroup but Chief Justice Madsen stated once there is a product, the stakeholders will vet it at that time.

It was also noted that the timeline for the Committee Unification Workgroup seems to be unrealistic.

It was moved by Judge Derr and seconded by Judge Schindler to approve the BJA Structure Workgroup Charter. The motion carried with Judge Korsmo abstaining.

It was moved by Judge Schindler and seconded by Judge Derr to approve the charge for the BJA Committee Unification Workgroup with the workgroup determining a realistic timeline for completion. The motion carried.

2013 BJA Meeting Schedule

This item will be carried over to the next meeting.

Court Security

This item will be carried over to the next meeting.

There being no further business the meeting was adjourned.

Recap of Motions from November 16, 2012 meeting

Motion Summary	Status
Approve the October 19, 2012 BJA meeting minutes with the revision requested by Judge Fleck.	Passed
Approve the extension of the JSTA surcharge for two years.	Passed
Adopt the Filing Fee Principles with Principle Four reworded as follows: "Filing fees should be periodically reviewed to determine if they should be adjusted consistent with these principles."	Passed
The Washington State Center for Court Research (WSCCR) should study the impact of raising filing fees depending upon the type of cases involved (e.g. family, landlord-tenant, tort, contract, etc.).	Passed
Approve the Benton/Franklin Superior Court Judge Request Legislation.	Passed
Approve the Whatcom County Superior Court Judge Request Legislation.	Passed
Have the state fund 50% of the language interpreter services by July 1, 2017.	Passed with Judge Schindler and Judge Lambo opposed and Judge Derr and Justice Owens abstaining
Have the Legislature restore, during this upcoming legislative session, the money that has been cut previously for interpreter funding. The Department of Justice letter could be used to indicate need. This funding would be part of the 50% funding requested earlier and would be pursued outside the budget process.	Failed - Four BJA members voted in favor and the rest were opposed with Judge Johanson abstaining.
Amend RCW 2.43.040(2), to state: "In all legal proceedings in which a non-English speaking person would be appointed an interpreter at no expense."	Passed with Judge Johanson abstaining.
Strike RCW 2.42.120(3) and renumber the remaining sections.	Passed with Judge Johanson opposed and Judge Garrow abstaining.
Reappoint Judge Laurel Siddoway and Judge Elizabeth Stephenson and to appoint Judge James Docter to the BJA Public Trust and Confidence Committee.	Passed
Appoint Judge Richard Fitterer and reappoint Ms. Elsa Anderson to the BJA Trial Court Operations Funding Committee.	Passed
Approve the BJA Structure Work Group Charter.	Passed with Judge Korsmo abstaining
Approve the charge for the Committee Unification Workgroup with the workgroup determining a realistic timeline for completion.	Passed

Action Items updated for November 16, 2012 meeting

Action Item	Status
<p><u>October 19 BJA Meeting Minutes</u></p> <ul style="list-style-type: none"> • Revise and post the minutes online. • Send revised minutes to Supreme Court for inclusion in the En Banc meeting materials. 	<p>Done Done</p>
<p><u>Filing Fee Workgroup Recommendations</u></p> <ul style="list-style-type: none"> • Get sponsors and drop bill regarding two-year extension of JSTA surcharge. • Submit request for WSCCR to study the impact of raising filing fees depending upon the type of cases involved (e.g. family, landlord-tenant, tort, contract, etc.). Submit request via letter to Judge Schindler w/cc to Ms. Dietz and Dr. Carl McCurley. • Send thank you letters to members thanking them for their service. 	
<p><u>BJA Legislative Agenda</u></p> <ul style="list-style-type: none"> • Change wording on Benton-Franklin draft bill to state Benton-Franklin, not Whatcom. • Get bill sponsors and drop new judge bills. • Draft, get sponsors and drop 50% language interpreter services funding bill and amend RCW 2.43.040(2), to state: "In all legal proceedings in which a non-English speaking person would be appointed an interpreter at no expense." Also, strike RCW 2.42.120(3) and renumber the remaining sections. • Convene a group to propose a court rule regarding therapeutic courts. 	
<p><u>BJA Public Trust and Confidence Committee Appointments</u></p> <ul style="list-style-type: none"> • Send letters to reappoint Judge Laurel Siddoway and Judge Elizabeth Stephenson and to appoint Judge James Docter to the BJA Public Trust and Confidence Committee. 	
<p><u>BJA Trial Court Operations Funding Committee Appointments</u></p> <ul style="list-style-type: none"> • Send letters to appoint Judge Richard Fitterer and reappoint Ms. Elsa Anderson to the BJA Trial Court Operations Funding Committee. 	
<p><u>BJA Committee Charters</u></p> <ul style="list-style-type: none"> • Change the Committee Unification Workgroup charter to indicate that the workgroup will determine the timeline for completion. 	