

# **BOARD FOR JUDICIAL ADMINISTRATION**



**WASHINGTON  
COURTS**

## **MEETING PACKET**

**FRIDAY, FEBRUARY 20, 2015  
9:00 A.M.**

**AOC OLYMPIA OFFICE  
1112 QUINCE STREET SE  
OLYMPIA, WASHINGTON**

# Board for Judicial Administration Membership

## VOTING MEMBERS:

**Chief Justice Barbara Madsen**, Chair  
Supreme Court

**Judge Kevin Ringus**, Member Chair  
District and Municipal Court Judges' Association  
Fife Municipal Court

**Judge Thomas Bjorgen**  
Court of Appeals, Division II

**Judge Bryan Chushcoff**  
Superior Court Judges' Association  
Pierce County Superior Court

**Judge Janet Garrow**  
District and Municipal Court Judges' Association  
King County District Court

**Judge Judy Rae Jasprica**  
District and Municipal Court Judges' Association  
Pierce County District Court

**Judge Michael Lambo**  
District and Municipal Court Judges' Association  
Kirkland Municipal Court

**Judge John Meyer**  
Superior Court Judges' Association  
Skagit County Superior Court

**Judge Sean Patrick O'Donnell**  
Superior Court Judges' Association  
King County Superior Court

**Justice Susan Owens**  
Supreme Court

**Judge Jeffrey Ramsdell**, President  
Superior Court Judges' Association  
King County Superior Court

**Judge Ann Schindler**  
Court of Appeals, Division I

**Judge Laurel Siddoway**  
Court of Appeals, Division III

**Judge Scott Sparks**  
Superior Court Judges' Association  
Kittitas County Superior Court

**Judge David Steiner**, Acting President  
District and Municipal Court Judges' Association  
King County District Court East Division - Bellevue

## NON-VOTING MEMBERS:

**Judge Harold Clarke III**, President-Elect  
Superior Court Judges' Association  
Spokane County Superior Court

**Ms. Callie Dietz**  
State Court Administrator

**Mr. Anthony Gipe**, President  
Washington State Bar Association

**Mr. William Hyslop**, President-Elect  
Washington State Bar Association

**Judge Kevin Korsmo**  
Presiding Chief Judge  
Court of Appeals, Division III

**Ms. Paula Littlewood**, Executive Director  
Washington State Bar Association

**Judge G. Scott Marinella**, President-Elect  
District and Municipal Court Judges' Association  
Columbia County District Court



**Board for Judicial Administration (BJA) Meeting**  
**Friday, February 20, 2015 (9:00 a.m. – Noon)**  
 AOC Office, 1112 Quince St SE, Olympia

**AGENDA**

<b>1. Call to Order</b>	Chief Justice Barbara Madsen Judge Kevin Ringus	9:00 a.m.
<b>2. Welcome and Introductions</b>	Chief Justice Barbara Madsen Judge Kevin Ringus	9:00 a.m.
<b>Action Items</b>		
<b>3. January 16, 2015 Meeting Minutes</b> Action: Motion to approve the minutes of the January 16, 2015 meeting	Chief Justice Barbara Madsen Judge Kevin Ringus	9:05 a.m. Tab 1
<b>Reports and Information</b>		
<b>4. Washington State Association of Counties Legislative Agenda</b>	Mr. Eric Johnson	9:10 a.m. Tab 2
<b>5. BJA Public Trust and Confidence Committee Report</b>	Justice Mary Fairhurst	9:30 a.m. Tab 3
<b>6. Suggested Rule GR 35 Judicial Performance Evaluations</b>	Judge Kevin Ringus	9:50 a.m. Tab 4
<b>Break</b>		10:30 a.m.
<b>7. Legislative Report</b>	Ms. Mellani McAleenan	10:45 a.m. Tab 5
<b>8. Standing Committee Reports</b> Budget and Funding Committee Court Education Committee Legislative Committee Policy and Planning Committee	Judge Ann Schindler Judge John Meyer Judge Sean O'Donnell Judge Scott Sparks	11:00 a.m. Tab 6
<b>9. BJA Account</b>	Ms. Callie Dietz	11:15 a.m. Tab 7
<b>10. Salary Commission Report</b>	Ms. Mellani McAleenan	11:25 a.m. Tab 8
<b>11. GR 31.1 Suggested Rule Changes</b>	Mr. John Bell	11:30 a.m. Tab 9

<b>12. Other Business</b> Next meeting: March 20 AOC SeaTac Office  Court Management Council 2014 Annual Report	Chief Justice Barbara Madsen Judge Kevin Ringus  Ms. Callie Dietz	11:50 a.m.  Tab 10
<b>13. Adjourn</b>		Noon
Persons with a disability, who require accommodation, should notify Beth Flynn at 360-357-2121 or <a href="mailto:beth.flynn@courts.wa.gov">beth.flynn@courts.wa.gov</a> to request or discuss accommodations. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.		

# Tab 1



## Board for Judicial Administration (BJA) Meeting

Friday, January 16, 2015 (9 a.m. – Noon)

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

### MEETING MINUTES

#### **BJA Members Present:**

Chief Justice Barbara Madsen, Chair  
Judge Kevin Ringus, Member Chair  
Judge Veronica Alicea-Galvan  
Judge Bryan Chushcoff  
Ms. Callie Dietz  
Judge Janet Garrow  
Mr. Anthony Gipe  
Judge Kevin Korsmo (by phone)  
Judge Michael Lambo  
Ms. Paula Littlewood  
Judge Sean O'Donnell  
Justice Susan Owens  
Judge Jeffrey Ramsdell  
Judge Ann Schindler  
Judge Laurel Siddoway (by phone)  
Judge David Steiner

#### **Guests Present:**

Ms. Linda Baker  
Justice Mary Fairhurst  
Ms. Ruth Gordon  
Judge Thomas Wynne

#### **Public Present:**

Mr. Tom Goldsmith  
Mr. Page Carter

#### **AOC Staff Present:**

Mr. John Bell  
Ms. Vonnie Diseth  
Mr. David Elliott  
Ms. Beth Flynn  
Mr. Steve Henley  
Mr. Dirk Marler  
Ms. Mellani McAleenan  
Mr. Ramsey Radwan

Judge Ringus called the meeting to order.

#### December 12, 2014 Meeting Minutes

**Judge Alicea-Galvan moved and Judge Ramsdell seconded to approve the December 12, 2014 BJA meeting minutes. The motion carried.**

#### GR 31.1 Forms

Mr. Bell stated that there were no revisions to the GR 31.1 forms between the December and January BJA meetings. These are the last of the forms and policies that will come to the BJA for approval. Training will begin soon. Judge Schindler, Judge O'Donnell and Judge Garrow will review the training materials along with minor changes to the rule and those will be brought to the BJA in the future.

**It was moved by Judge Garrow and seconded by Judge Ramsdell to approve the following GR 31.1 forms: Memorandum of Understanding, Guidance on Chamber Records, and Exemptions. The motion carried.**

### Public Trust and Confidence Committee Appointment

Judge Alicea-Galvan asked that the BJA approve the appointment of Commissioner Paul Wohl to the BJA Public Trust and Confidence Committee.

**It was moved by Judge Ramsdell and seconded by Judge Garrow to appoint Commissioner Paul Wohl to the BJA Public Trust and Confidence Committee. The motion carried.**

### Supreme Court Budget Report

Mr. Radwan reviewed the Supreme Court budget submittal. The budget information was included in the meeting materials. He stated that it is going to be a tough legislative session and information about the budget should start coming out at the end of February. Mr. Radwan believes there will be a budget reduction to assist in balancing the budget.

The Judicial Information System (JIS) budget requests were discussed. There is a request for 11 staff for the Courts of Limited Jurisdiction Case Management System (CLJ-CMS). Some of the other JIS requests are maintenance requests along with internal and external equipment requests.

Page 4 of the budget materials contains requests from the Administrative Office of the Courts (AOC).

Pages 5 through 9 represent the rest of the judicial branch. The Supreme Court decided to allow the Office of Civil Legal Aid (OCLA) and the Office of Public Defense (OPD) budgets to pass through, after Supreme Court review and comment, because they have oversight boards.

### JIS Governance

The BJA was reminded that they did not evaluate or rank the JIS budget requests because the Judicial Information System Committee (JISC) does not fall under the BJA. Last month when the BJA discussed supporting the Superior Court Case Management System (SC-CMS) project additional information was requested about the project and data exchanges.

Justice Fairhurst gave an overview of the history of the JISC. The JISC is a large, robust committee that oversees all of the information systems for the judicial branch and sets policy, priorities and approves the information technology projects that AOC must follow. The funding comes from the JIS Account which receives most of its money from assessments on traffic infractions. There is some discussion about changes in the infraction fees which could have an impact on the JIS funding.

Justice Fairhurst walked through the IT Governance Process and the information was included in the meeting materials.

The JISC is currently working on the Appellate Court Electronic Content Management System (ECMS), the SC-CMS project and the Courts of Limited Jurisdiction Case Management System (CLJ-CMS) and the AOC is at capacity.

A variety of legislative provisos have been put on the JISC and the legislative priorities change, but the JISC is continuing to respond. The AOC is just trying to provide updated statewide systems and it is a continuous work in progress. For most of Washington's counties, the SC-CMS project will replace a vital system. Two large counties are able to use their own systems but their case information needs to be integrated into the SC-CMS.

The Appellate ECMS is close to go live and the requirements gathering for the CLJ-CMS project has begun. They can begin the request for proposals process as soon as the staff and funding become available.

Ms. Diseth stated that there are court user work groups for all of the projects to look at the business needs to determine how the system should be configured. There is a huge commitment of time and energy to doing this and all of the representatives who contribute their time and knowledge are appreciated.

Ms. Diseth said that the money in the budget for the Information Networking Hub (INH) funds the work for data exchanges. As courts migrate onto the new system, that data is sent back to SCOMIS through the INH so the courts not on the new system maintain a view of the statewide information from the courts on Odyssey. The funding also includes commercial, off-the-shelf (COTS) preparation money that is being used for work that must be done to integrate our existing JIS systems to work with the new systems (i.e. Odyssey).

Judge Wynne explained that data exchanges are very expensive and they take two partners.

If there are further questions, please contact Justice Fairhurst, Judge Wynne, Ms. Diseth or Ms. Dietz.

#### Justice Reinvestment Initiative

Mr. Marshall Clement, from the Council of State Governments Justice Center, works on issues ranging from mental health courts, other specialty courts, and juvenile justice issues. He works on justice reinvestment which is supported by the Department of Justice and Pew Charitable Trusts.

In June 2014 a Justice Reinvestment Task Force was created. The Task Force developed some high level findings and recommendations which were distributed at the meeting. The Task Force had a lot of data to work with and were able to match records and analyze them.

They initially looked at Washington's prison population which exceeds capacity. Felony sentences have decreased since 2000 but prison sentences have increased by nearly 30 percent.

Washington now ranks #1 in property crime. Washington's rate has been flat but other states have shrinking property crime. Burglary arrests have increased since 2004 driven by the increase in repeat burglary arrests. One-third of property crime offenders are new and 18% were released from prison within the last two years.

Washington State's Justice Reimbursement Policy Framework consists of the following:

1. Reduce property crime and support victims of property crime.
2. Hold people convicted of property offenses accountable with supervision and, if needed, treatment.
3. Reinvest to strengthen supervision policies and practices to reduce recidivism.

The estimated impact of implementing the policy framework on the prison population is a potential savings of approximately 900 beds.

#### Legislative Report

Ms. McAleenan stated that the Washington State Association of Counties provided copies of their 2015 Legislative Agenda, 2015 Fiscal Sustainability, and Why Counties Matter. They wanted to share the information with the BJA since they started doing so during a meeting with the BJA in 2014.

Ms. McAleenan provided the BJA with a list of bills that the BJA took action on. All of the BJA bills are in good shape. Judge David Svaren testified for the Skagit County judge bill.

The BJA was asked if they want to hold a legislative reception this year. In previous years, the BJA special account funded dinners regionally so judges and legislators could get to know each other. Last year Ms. McAleenan looked to find something that would be more cost-effective and might encourage more participation. Usually the legislative dinners had between 25 - 37 legislators and cost between \$6,000 - \$10,000. Last year, the legislative reception was \$2,500 and 15 legislators and nine legislative staff attended.

After discussion, the BJA decided to hold the legislative reception on Thursday, February 19 and move the February 20 meeting to Olympia.

#### Standing Committee Reports

**Legislative Committee Report:** Judge O'Donnell reported that the Legislative Committee had their first meeting of the 2015 legislative session. Ms. McAleenan provided a good outline for them and they gave her authority to sign in on a variety of bills.

**Budget and Funding Committee:** The Budget and Funding Committee will meet after the February BJA meeting.

**Education Committee:** The Education Committee provided a written report of their activities.

**Policy and Planning Committee:** The Policy and Planning Committee is in a state of transition and will be meeting later.

Suggested GR 35 Judicial Performance Evaluations

Some additional information regarding judicial performance evaluations was provided in the meeting materials and this will be on the February 20 meeting agenda.

The next BJA meeting is scheduled for February 20 in Olympia and the BJA legislative reception will be held in Olympia on February 19.

There being no further business, the meeting was adjourned.

**Recap of Motions from the January 16, 2015 meeting**

<b>Motion Summary</b>	<b>Status</b>
Approve the December 12, 2014 BJA meeting minutes	Passed
Approve the following GR 31.1 Forms: Memorandum of Understanding, Guidance on Chamber Records, and Exemptions	Passed
Appoint Commissioner Paul Wohl to the BJA Public Trust and Confidence Committee	Passed

**Action Items from the January 16, 2015 meeting**

<b>Action Item</b>	<b>Status</b>
<u>December 12, 2014 BJA Meeting Minutes</u> <ul style="list-style-type: none"><li>• Post the minutes online</li><li>• Send minutes to the Supreme Court for inclusion in the En Banc meeting materials</li></ul>	Done Done
<u>BJA Public Trust and Confidence Committee</u> <ul style="list-style-type: none"><li>• Send appointment letter to Commissioner Paul Wohl</li></ul>	Done
<u>GR 35</u> <ul style="list-style-type: none"><li>• Add to February agenda</li></ul>	Done

# Tab 2



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Association of Counties

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# 2015 LEGISLATIVE AGENDA

## County Fiscal Sustainability

Counties deliver constitutionally and statutorily directed state services to all of Washington's residents. The Washington State Association of Counties is working to secure the fiscal sustainability of all 39 counties by advancing legislation to control cost drivers and provide adequate revenue.

### CONTROL COST DRIVERS

**Ensure County Access to Public Employee Benefits Board Programs:** Providing adequate and cost-effective health insurance for county employees is a significant challenge. Several counties have been denied access to the benefits provided by the PEBB, despite the fact that county employees are "public" employees. Counties should have access to health insurance benefits through the PEBB.

**Legal Notices:** The cost of meeting state requirements for providing legal notice are significant. Allow counties to meet legal notice requirements by posting notices on their websites or on a single statewide website.

**Liability:** Make common-sense amendments to Washington's expansive joint and several liability laws that will save taxpayer dollars.

### PROVIDE ADEQUATE REVENUE

#### Protect State Shared Revenue

The loss of county revenue from prior state cuts means that state shared revenues are more important to counties than ever before. Protecting these fund sources is critical.

#### Revenue Flexibility

**Real Estate Excise Tax Flexibility:** Locally collected REET dollars are a significant source of funding for infrastructure. The uses and definitions between REET 1 and 2 need to be harmonized to eliminate confusion for the public and allow funding options for elected officials. Additionally, going forward these revenues won't be available for operation or maintenance and as a result counties can build new facilities, but not maintain existing ones. Flexibility is needed to allow a portion of REET to be used to maintain facilities acquired and developed with REET monies.

**Permit Fee Flexibility:** Counties have no dedicated fund source for mandated planning and code compliance activities, yet both are necessary to support economic and population growth in our communities. Allow building permit fees to be used to pay for long range planning and code compliance.

#### New Revenue

**Direct revenue from recreational marijuana equitably to counties:** New revenue from the sale of recreational marijuana should be dedicated to state services provided by counties.

**Indigent Defense Court Rules:** New funding is required to offset increased costs associated with implementation of the Supreme Court's Indigent Defense Rules establishing case load standards and increasing counties' costs.

**Limit Property Tax Revenue Growth to Inflation and Population:** Property taxes are counties' top revenue source, comprising approximately 60% of general fund revenue, but are capped at a level that doesn't keep up with costs. Property tax growth should be limited to inflation and population growth.



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# 2015 FISCAL SUSTAINABILITY

## **COUNTIES NEED LOCAL OPTIONS, LOCAL CONTROL**

Counties need additional options for funding because the current model does not fund the services they are required to provide to the public. Unlike cities, counties cannot impose other types of taxes. The cost of providing essential public services continues to rise while revenue remains flat.

## **CUTS HAVE LED TO PUBLIC HEALTH AND SAFETY RISKS**

Counties have taken extreme measures to trim costs including reduction of workforce, substantial cuts to programs, and transitioning some services to community non-profit organizations. Unfortunately, essential services have been made unavailable or are inadequate for the needs of the public in many counties. This has led to public health and safety risks including dangerous road conditions, delayed criminal justice proceedings, and unavailable treatment for the injured, sick and mentally ill.

## **FISCAL SUSTAINABILITY INITIATIVE**

It's time for a new approach. Counties must identify additional options for how they control costs and fund operations.

The Fiscal Sustainability Initiative is needed to advance new revenue generation and cost containment options that will improve the fiscal health of county governments. As counties face the grim reality of costs outpacing revenues, WSAC is leading an effort so that counties can maintain essential public services. While every county is unique, a unified initiative is needed to effect change at the legislative level.

Each county will have the opportunity to share ideas for cost and revenue reforms that would address their local needs. Once input from across the state has been collected, a subgroup of WSAC policy staff and elected leaders will develop recommendations for viable solutions and then WSAC will take those recommendations back out to Washington State Counties for further input.

Together, counties in Washington State can drive a collective action to allow greater local influence and broader flexibility to better serve constituents.

The Washington State Association of Counties needs your support and feedback to develop solutions that will contribute to the fiscal sustainability of county governments.

## **To provide feedback or get additional information, please contact:**

Josh Weiss  
Washington State Association of Counties  
Director, Policy and Legislative Relations and General Counsel  
phone (360) 489-3015  
jweiss@wacounties.org

<u>Bill Details</u>	<u>Status</u>	<u>Sponsor</u>	<u>Priority</u>	<u>Position</u>
<p><b>Public utility tax, counties</b>                      Authorizing counties to impose a public utility tax.</p> <p><a href="#">HB 1133</a></p> <p>Authorizes a county, subject to certain conditions and requirements, to impose an excise tax on the privilege of engaging in business as a utility.</p>	H Local Govt	Tharinger	High	
<p><b>Marijuana local jurisd. fund</b>                      Concerning the establishment of a dedicated local jurisdiction marijuana fund and the distribution of a specified percentage of marijuana excise tax revenues to local jurisdictions.</p> <p><a href="#">HB 1165</a></p> <p>Creates the dedicated local jurisdiction marijuana fund, which consists of marijuana excise taxes. Requires the state treasurer to be custodian of the fund. Distributes a specified percentage of marijuana excise tax revenues to local jurisdictions.</p>	H Commerce & Gam	Condotta	High	
<p><b>Fed. govt owning land in WA</b>                      Creating a task force to examine land ownership by the federal government in Washington.</p> <p><a href="#">HB 1262</a>                      (SSB 5405)</p> <p>Creates a legislative task force on the transfer of federal lands to study the risks, options, and benefits of transferring federal lands in this state to an alternative ownership. Expires July 1, 2017.</p>	H Cap Budget	Blake	High	
<p><b>Health coverage through PEBB</b>                      Addressing political subdivisions purchasing health coverage through the public employees' benefits board program.</p> <p><a href="#">HB 1740</a>                      (SB 5731)</p> <p>Addresses the purchase, by political subdivisions, of health care coverage through the public employees' benefits board program.</p>	H Approps	Appleton	High	
<p><b>Real estate excise tax</b>                      Granting counties and cities greater flexibility with real estate excise tax proceeds.</p> <p><a href="#">HB 1789</a></p> <p>Allows real estate excise tax proceeds to be used for the maintenance and operation of capital projects.</p>	H Local Govt	Springer	High	
<p><b>Long-range planning costs</b>                      Concerning optional methods of financing long-range planning costs.</p> <p><a href="#">HB 1802</a></p> <p>Addresses the costs to local governments of long-range planning.</p>	H Local Govt	Fitzgibbon	High	
<p><b>Indigent defense</b>                      Modifying indigent defense provisions.</p> <p><a href="#">SB 5232</a></p>	S Rules 2	Sheldon	High	

than the state and county, in the county current expense fund to defray the costs of collection.

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**SB 5731**  
**(HB 1740)**

**Health coverage through PEBB**      S Health Care      Dansel      High

Addressing political subdivisions purchasing health coverage through the public employees' benefits board program.

Addresses the purchase, by political subdivisions, of health care coverage through the public employees' benefits board program.

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**SB 5750**

**Property tax, DFW-owned land**      S Natural Resourc      Parlette      High

Regarding payments to counties in lieu of property taxes by the department of fish and wildlife.

Addresses the department of fish and wildlife's payments to counties in lieu of property taxes.

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**SB 5866**

**County sales and use tax**      S GovtOp&Sec      Honeyford      High

Providing that counties are not required to distribute to the cities within the county certain county sales and use tax proceeds.

Specifies that a county that imposes any portion of certain county sales and use taxes on or after July 1, 2015, is not required to distribute money from the proceeds of that portion of the tax imposed after June 30, 2015, to the cities within the county.

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January 16, 2014

The Honorable Barbara Madsen  
Chief Justice, Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

RE: Petition to Amend IRLJ 6.2

Dear Chief Justice Madsen:

In partnership between the local governments that fund and operate courts of limited jurisdiction and the Washington State Office of Public Defense, we petition the Supreme Court to amend the statewide Monetary Penalty Schedule for Infractions (IRLJ 6.2) to adjust for inflation.

RCW 46.63.110(3) recommends adjusting the monetary penalties for driving infractions every two years, and historically the Court has periodically reviewed and updated infraction penalties. The last comprehensive update occurred in 2007. Since then, according to the federal Consumer Price Index and the Fiscal Growth Factor, general inflation has increased significantly. As our state continues to progress beyond the recent economic recession, we believe now is an appropriate time for the Court to consider adjustments to infraction penalties to keep pace with inflation.

Currently, many cities and counties have a need to increase their public defense programs, but budgets are strained creating significant need for additional revenue to support that effort. In addition, the state has not increased its appropriation for the RCW 10.101 public defense improvement program since 2007.

A small, inflation-based increase in penalties for driving infractions would impose a very limited burden on individual drivers while collectively providing critically needed new revenue to cities, counties, and the state to support the judicial system including both public defense and court operation needs. Extrapolating from collections data published in a 2013 legislative fiscal note, we estimate that an update in traffic infraction penalties could generate several million dollars a year. This revenue could be an invaluable resource to improve constitutionally required indigent defense services as well as court operations.



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2015

# FISCAL SUSTAINABILITY



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## PROPERTY TAX

Counties are challenged with revenue sources that are not flexible, stagnant with regard to meeting inflationary pressures and less diverse compared to those revenue streams afforded both the State and cities.

Property tax growth is currently limited by a factor that is not related to inflation – 1% plus the value of new construction.

The services delivered by county government are unrelated, or inversely related to economic growth, i.e.: additional demands on the criminal justice system. Growth in these costs often exceeds inflation, making it even more difficult for property tax revenues to keep pace.

In order to continue providing the mandated services required of counties, the limit in property tax growth must be tied to a measure of inflation and population growth. Counties are not asking for a return to the former growth limit of 6%. The growth limit shouldn't be based on any arbitrary number, but should be tied to inflation and population growth – the factors that drive county costs.

The impact of the current growth cap was masked for several years and is only now being felt by counties. Between 2002, when the current cap went into effect, and 2008, when the Great Recession hit, new construction was booming and property tax revenues kept pace with inflation. The subsequent economic recovery has resulted in sales tax revenues growth outstripping property tax growth. The State and cities have recovered much more quickly than counties, who are more dependent on property tax revenue.

Current law does allow counties to raise property taxes by more than 1% through a super-majority vote of the people. However, this is not a practical means for funding basic county government functions that do not captivate the voters' interest. For example, would a super-majority of voters authorize a property tax increase for the county to pay for the increased cost of providing treasury services to the county, cities, and other local governments located within the county?

In Washington, property taxes are assessed and collected by counties and revenue is distributed to the state and local governments. Unlike sales taxes and real estate excise taxes, the government agents responsible for administering the property tax are not allowed to retain any of the revenue to pay for their costs.

### Josh Weiss

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60%

60% of county revenues are derived from property tax – by far our largest revenue source

\$9.6 bil

Statewide property tax collections in 2013 were over \$9.6 billion

1.7%

Statewide property taxes grew 1.7% in 2013

11%

During the Great Recession, counties reduced their workforce by about 11%

\$280 mil

In 2013, between the current cap on growth and a cap based on inflation would have meant an additional \$280 million for counties



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**FISCAL SUSTAINABILITY**



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**Allowing Counties to Retain a Portion of Property Taxes  
to Defray the Cost of Collection - SB 5677**

SB 5677 by Senators Dansel, Fraser, and Sheldon

Counties in Washington State are "but arms or agencies of the state organized to carry out or perform some functions of state government."

A leading example of the services provided by counties on behalf of the state is the assessment, collection, and distribution of property taxes. These services are provided for the state, cities, school districts, fire districts, and every other local taxing district. By analogy, the State Department of Revenue retains 1% of all sales taxes it collects and distributes statewide.

HB 5677 allows counties to retain a portion of the property taxes they collect. The rate starts at .25%, moves to .5% after two years, and again to 1% in another two years. Because the state portion of the property tax constitutionally is required to be dedicated to basic education, the service charge does not apply.

The measure is estimated to raise around \$17 million per year at .25%, \$34 million at .5%, and \$68 million at 1%. This amount continues to grow over time as property tax collections grow.

As counties struggle to make ends meet while costs climb more quickly than revenues, it is important that they are allowed to defray the cost of services they provide on behalf of the state.

**\$17 mil**

The measure is estimated to raise around \$17 million per year at .25%

**\$34 mil**

The measure is estimated to raise around \$34 million at .5%

**\$68 mil**

The measure is estimated to raise around \$68 million at 1%

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# 2015 FISCAL SUSTAINABILITY

## MARIJUANA 2015 - HB 1165, SB 5417

We are asking that the state partner with local governments to meet the commitment to provide local communities with strong regulation, law enforcement and public safety protections expected by citizens when voters legalized marijuana. Of the eight mandates for legalized marijuana from the federal government, five fall to local jurisdictions and local law enforcement.

Washington voters supported marijuana legalization with the assurance that government would implement robust oversight and enforcement. The state needs to meet these commitments to make the new marijuana laws work. To do so the state and locals must work in cooperation

Counties are responsible for overseeing permitting, code enforcement, ensuring money and drugs stay out of criminal hands, preventing distribution to minors, and addressing drugged driving and other adverse public health consequences.

Communities are already feeling the impacts of legalized marijuana, The state has only 69 liquor enforcement officers and they will only focus on licensing. All other oversight and enforcement falls to local governments.

### Marijuana 2015: County and City policy agenda

The citizens of Washington passed Initiative 502 by a significant margin. However, many implementation questions still remain unanswered. Without assistance from local government the revenue promises of the Initiative will remain unachieved.

Counties and Cities are willing to work in partnership with state and federal authorities, but this partnership must recognize the needs of local governments. These needs include:

#### Sharing marijuana revenue with counties and cities:

- Recognize the need for funding local impacts and enforcement efforts.
- Local government performs critical services such as public safety, courts, chemical dependency treatment. Resources for these functions are limited and in need of additional stable long-term revenue.
- 50% of the revenue was dedicated by the Initiative to the State Basic Health Program, which was rendered obsolete when the Legislature approved Medicaid expansion. When added to the 19% directed by the Initiative to the State General Fund, a total of 69% of the revenue will be available for allocation
- A significant portion of this revenue should be dedicated to local funding needs.

#### Brian Enslow

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#### Josh Weiss

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#### Reconciling medical and recreational marijuana to ensure a tightly regulated system as required by the federal government:

- Have a single state licensed system for growing, producing and selling marijuana.
- Eliminate collective gardens and require all purchases of marijuana be made at state licensed facilities.
- Require authorized patients to be part of a state registry with annual renewal of medical authorization
- Support Liquor Control Board and Department of Health efforts to reduce the opportunity for abuse of the medical marijuana system.
- Reduce the amount of marijuana that an authorized patient may grow or possess.
- Maintain local zoning authority over the production, processing and dispensing of marijuana within local communities as currently provided in RCW 69.15A.140.
- Ensure that recreational marijuana is not accessible to minors

# Tab 3

*Myth...*

*"Judges are very biased  
against the fathers."*

*Find the reality here...*

**MYTHS AND MISPERCEPTIONS**

**ABOUT THE WASHINGTON COURTS**



<https://www.youtube.com/watch?v=vBy43azhWHk>

*Myth...*

*"I believe that judges do work for the police."*

*Find the reality here...*

## MYTHS AND MISPERCEPTIONS

ABOUT THE WASHINGTON COURTS



<https://www.youtube.com/watch?v=vBy43azhWHk>

*Myth...*

*"When judges don't grant protection orders, it seems like they don't care about the safety of women."*

**MYTHS AND MISPERCEPTIONS**  
**ABOUT THE WASHINGTON COURTS**



*Find the reality here...*



<https://www.youtube.com/watch?v=vBy43azhWHk>

## **RURAL COURT SURVEY, SUMMARY AND ANALYSIS**

Throughout January and February of 2013, the BJA Public Trust and Confidence Committee - Rural Courts Subcommittee surveyed rural courts throughout the state in an attempt to understand their capacities, characteristics, needs, and challenges. The overall goal is to establish a framework for future PT&C action and collaboration with key stakeholders.

In total, 92 courts completed the survey. The results provide a great deal of information about the courts, as well as suggesting areas for future action.

The respondents self-identified, meaning they were asked to respond if they considered themselves to be a rural court. For example, one court employee in Spokane County indicated that while the City of Spokane may not be considered “rural,” parts of Spokane County are rural.

The questions spanned the following areas:

- Staffing issues, including specifically access to training and courthouse facilitators
- Security
- Incarceration and Alternatives
- Technology Resources
- Representation and Justice Issues (such as pro se help and interpreters)
- Grants
- Relationship to Local Government
- Challenges Posed by Rural Characteristics, such as transportation

Below, the survey is broken up into sections including a summary and analysis of each area. Each section analyzes the information pertinent to it and contains a discussion of potential future areas of research.

### **STAFFING**

*“As a small court and the only employee for the judges, it is hard to get away for training opportunities. They are offered, but I cannot always go.”*

*“Access to video conferencing training opportunities would be helpful.”*

#### **Training and Courthouse Facilitators**

We asked the courts about access to training opportunities for judicial officers and staff, and access to courthouse facilitators. We also asked each to prioritize these staffing concerns in relation to delivering service to the public.

Concerns about lack of courthouse facilitators were much stronger than concerns about lack of training opportunities. Almost a third of responders were either dissatisfied or very dissatisfied with their court's access to courthouse facilitators. Of the comments received, most concerned

the fact that either the courthouse facilitators were understaffed, non-existent, or their function was taken up by the courthouse clerks or other staff.

However, the information that the courts are generally satisfied with their facilitator program may be misleading. One respondent replied that they were “satisfied” with their access to courthouse facilitators, but nonetheless stated that they wanted to see their funding increased. Another responded that they were “satisfied” with their access to facilitators, but then stated they had no program; it could be that they are indeed satisfied having no program, or that they selected that answer as a default due to lack of frame of reference (however, other courts did not answer the question, stating they could not because they did not have a program).

By contrast, over 92% of responders were somewhat satisfied or satisfied with their court's access to training opportunities. However, when responders were asked to choose the "most helpful" among ten possible improvements, few courts gave training opportunities a low rating (the most common ratings were between 4 and 7). The discrepancy may be due in part to some inconsistent answers (for example, one court responded that they are “satisfied” with access to training opportunities, and then commented that they are “not satisfied with training opportunities for staff”; another stated they were both “somewhat satisfied” and “dissatisfied”). However, it appears that most courts are generally satisfied with their training opportunities, but the subject remains of moderate importance for improvement when compared to the other categories.

Of specific areas of training that the courts commented upon, the most common concerned training on how to better handle the needs of pro se litigants.

#### *Ideas for Further Study or Action*

With respect to training, we should pass along to AOC the desire for more advanced and in-depth training programs. As for courthouse facilitators, we could explore further which courts have them, which courts don't, why, and what can be done to help. The Access to Justice Board is exploring this issue and it may be a place for the two committees to collaborate.

The Washington Courts website has a page on courthouse facilitators that suggests that "most counties have courthouse facilitator programs." It also has a link to a courthouse facilitator program list. The 2010 Washington Courts Funding Survey points out, however, that "in recent years, County Clerk offices and superior court officials had established court facilitator programs throughout the state to provide information to self-represented (pro se persons) regarding court processes and court forms," but that "facilitator and other customer service staff positions have been deeply cut, leaving the growing number of self-represented persons with little help." Board of Judicial Administration Justice in Jeopardy Implementation Committee, *Washington Courts: Consequences of Inadequate Funding*, at p. 5. This decline in services and the effect it has on rural courts in Washington may be a needed area for future study.

## SECURITY

*“We don’t have any security. Too small and broke to fund any type of security.”*

### Concerns and Priority for Improvement

We asked the survey participants whether they were satisfied with their court’s security, and asked them to rank security compared to other concerns based on priority. We also received information on how the courts would prioritize security if they received additional grants or loans.

Almost two-thirds (64.83%) of the courts responded that they were either “satisfied” or “somewhat satisfied” with security, while a little more than a third (35.17%) responded that they were “dissatisfied” or “very dissatisfied” with security. Of those that responded with comments, the common theme appeared to be that security in the courthouses is inadequate or non-existent. This trend held true even in the comments to those that responded that they were “satisfied” or “somewhat satisfied” with the security in their courthouse.

When asked which areas of improvement would be priorities if the court were to gain access to additional grants or loans, security was the top response by a large margin (with an average ranking of 3.6). Almost 80% of those that responded stated that security would be among their priorities for increased funding.

The specific security concerns among the responders varied greatly. Some stated that security was essentially non-existent in their courthouse, others stated that security services ceased at the court after-hours despite the fact that the building remained open, some stated that employees are not properly trained in how to raise alarms, and some stated that they need additional tools such as scanners and detectors. Some courts are challenged in addressing security because of historic building restrictions. Many courts also reported that they have communicated these concerns to their governing bodies, but have been unable to get funding.

Some courts responded that security has improved recently, due to increased funding and investment in security services.

### *Ideas for Further Study or Action*

The specific security concerns stated by the counties are varied, but all the comments seem to suggest the limiting factor is funding. We could look to see if there are grant or loan opportunities for rural courts to improve their security. It may also be helpful to look at security practices and funding at rural courts across the state and elsewhere in the country to see if any model exists for increasing cost-effectiveness of courthouse security, but it may be that each court is unique to the point where standardized practices aren’t feasible.

## INCARCERATION AND ALTERNATIVES

*“Our jail refuses to do work release in any meaningful way and will not consider other alternative sanctions, even though they could make money utilizing them.”*

### Capacity Concerns

We asked the survey participants if they were satisfied with their county/city’s jail capacity and access, and whether they were satisfied with their court’s access to and use of jail alternatives. We also received information on how they would rank and prioritize jail capacity and alternatives compared to other court services and concerns.

Most courts appear to be satisfied with jail capacity and access, with roughly 25% being either “dissatisfied” or “very dissatisfied.” Of those who were dissatisfied, they commented that the jails were over-capacity, they needed a new jail, they had difficulty tracking inmates held in other jurisdictions, their court did not have a jail and had to transport inmates long-distances, or the jail did not have the funds for proper staffing. Some courts reported that, due to capacity issues, the jails are often only admitting those with felony-related charges. Several responders reported that due to budget issues, jail alternatives have been cut. Even in those that reported they were satisfied, there were some concerns of jails being at or over capacity, or that the jails are in need of repair and maintenance.

Most responders were satisfied with their court’s access to jail alternatives, with only 18% being “dissatisfied” or “very dissatisfied.” Some courts reported that their work-release programs had been terminated and wanted them reinstated. At least one court responded that they did not know what kind of jail alternatives are out there.

In terms of prioritization of improvements to jail capacity compared to other issues facing rural courts, the responders rated jail capacity fairly average, with an average ranking of 5.07.

### *Ideas for Further Study or Action*

Jail capacity issues appeared to be a concern of many responders, even those that replied that they were satisfied with their capacity. Furthermore, many reported that misdemeanor offenders are often not admitted, and that work release programs have been discontinued. All these issues appear to be due to funding constraints. Due to the capacity problems, and the low likelihood that counties and cities will be able to fund jail expansion in the near future, it might be worthwhile to look at the costs and benefits of implementing (or re-implementing) jail alternatives versus not admitting some offenders, both in terms of dollar value and social cost. However, this may be a difficult and time-intensive analysis to carry out, especially for an area of lower concern for rural courts relative to some of the other areas we surveyed.

### Probation Services

We asked the survey participants if they were satisfied with their court's access to probation services to ensure compliance with pre-trial and post-conviction conditions. Roughly 68% were either "satisfied" or "somewhat satisfied," while roughly 32% were either "dissatisfied" or "very dissatisfied." In terms of prioritization of improvement to probation services ranked against other issues facing rural courts, the average ranking was 5.3.

The concerns with probation services primarily involved funding. Many reported that they had no probation officer (often due to budget cuts) and no work release programs, thus probation orders cannot be monitored. One reported that while they do have probation officers, they are nevertheless overworked, and they have been forced to discontinue pre-trial supervision in most cases. Another reported concerns about DOC beyond funding issues—namely that DOC is not engaging in proper supervision with the funds they have, and is not engaging in honest dialogue with the court. At least one responder wants AOC and BJA to lobby to get lower the cost to courts for these services.

Some Courts  
reported very little  
access to jail  
alternatives

### Chemical Dependency, Domestic Violence, & Mental Health Providers

We asked the survey participants if they were satisfied with their community's access to CD, DV, and MH providers. Approximately 75% were either "satisfied" or "somewhat satisfied," while roughly 25% were either "dissatisfied" or "very dissatisfied." In terms of prioritization of CD, DV, and MH services ranked against other issues facing rural courts, the average ranking was 5.5.

There was a wide range of comments and concerns in this area. Many courts reported that they had no DV services, or that the DV provider is located in a neighboring county. At least one court reported language access problems, specifically a lack of Spanish-speaking services. A large number of comments focused on the lack or poor state of MH services, either due to there being too few services, or the fact that those with mental health issues are simply re-cycled through the system.

### Ignition-Interlock, Alcohol/Drug Use, & Electronic Home-Monitoring

We asked the survey participants if they were satisfied with the availability and verification of IID, EHM, and alcohol/drug use monitoring. Overall, the large majority of responders were either "satisfied" or "somewhat satisfied" with these monitoring services, with just under 14% being "dissatisfied" or "very dissatisfied." In terms of prioritization of IID, EHM, and alcohol/drug use monitoring services ranked against other issues facing rural courts, the average ranking was 6.9.

The comments received in this area were fairly mixed. One reported that these monitoring services are not readily available. Another stated that they do not engage in EHM monitoring, but that they are satisfied with their available IID and SCRAM monitoring. One court reported that their IID reports occur every 90 days, whereas the devices should be downloaded at least every 30 days. Finally, one court reported that they send people to a for-profit entity for alcohol monitoring and home detention, and that they had concerns about certification and minimum reporting and monitoring requirements.

Overall, based on the generally high rates of satisfaction of responders in their monitoring services, and the few comments received, improvements in this area appears to be of relatively low importance compared to others.

#### *Ideas for Further Study or Action*

Of the three-subcategories above, it appears that lack of probation oversight and poor access to mental health services were the chief concerns. Lack of adequate mental health services has long been an issue both in our state and across the country, and funding issues will continue to hinder improvements in this area. One respondent suggested that AOC and BJA need to take a more active role on funding issues for probation services. Concerning probation oversight, we could try to discern where the need is greatest, i.e. in either pre- or post-trial supervision (or some other area of supervision), and determine the benefit of providing adequate probation services versus the economic and social costs of not doing so. The Misdemeanant Corrections Association also occasionally has funds (from WTSC) to help courts start up a probation department; we could look to see if they have available resources, or refer rural courts to them.

Because of the costs of providing adequate probation and mental health services may be prohibitive in the current economic climate, one idea that was raised was to support some type of college class/program where college students would visit courts with specific needs and work on new ways to address them. This idea could obviously be used on court needs beyond the areas of probation and mental health services as well.

## **TECHNOLOGY RESOURCES**

*Respondents cited video conferencing as the most helpful technology improvement.*

### Current Resources and Needs

In an effort to identify the extent to which respondents viewed technology resources as an issue in their courts, respondents were asked whether they are satisfied with their court's access to technology and technology support (Question 1) and whether they were satisfied with their court's technology based research sources, i.e. Westlaw, Lexis, etc. They were also asked to rank their technology needs among the top 10 most helpful improvements that could be made to their court, to indicate whether their court has adequate access to technology to address the needs

of and effectively deal with pro se litigants, and to indicate how helpful web based information and live chat services would be to serving pro se litigants in their court. Finally, respondents were asked to indicate which technology resources/solutions would be helpful to their court.

Just over 90% of those who responded indicated that they were either satisfied or somewhat satisfied with their access to technology and technological support, and 89.89% indicated that they were either satisfied or somewhat satisfied with their access to research resources. Despite those numbers, access to technology and technological support was ranked 2<sup>nd</sup> among the ten improvements respondents would find most helpful to their courts (with an average ranking of 4.4). 59.72% of the respondents would like better access to video conferencing for court hearings and trainings, 52.78% would like additional computer software, and 51.39% would like additional technological support and information.

A review of the respondents' specific comments revealed dissatisfaction with case management systems, frustration with the antiquated DOS based JIS system, a desire for more wireless internet access and requests for programs that would permit access to JABS and warrant reviews using an iPad. One court indicated that the clerk is the only person in the courtroom with a computer. The vast majority of comments, however, expressed a desire for some sort of video conferencing ability. One court commented "This court does not have a local jail, instead house inmates in several different facilities. Because of location difficulties, the court does not have video capabilities with the jails, Judge, public defender or prosecutor."

#### *Ideas for Further Study or Action*

Consistent with the comment of the court cited above, the survey suggests that the most urgent technological need for the majority of rural courts is access to video conferencing software and the equipment to support it. This doesn't come as much of a surprise. Most rural courts don't have their own jails, so in-custody defendants are housed in neighboring city or county jails. Additionally, part-time courts have part-time judges, public defenders, and prosecutors that are only together at the same facility on a limited basis. This creates tremendous challenges in holding pre-trial hearings. To get a better understanding of how difficult and expensive the solution to this issue may be, it would be helpful for us to follow up our survey with one focused on gathering information from those courts that currently have video conferencing ability. It would be helpful to know what software those courts are using, the equipment necessary to support the software, the costs associated with its implementation and how they obtained funding. We could then create a fact sheet with that information as well as the cost benefits of implementing a video conference system, such as a lack of a need to transport defendants, increased security, and so on.

## REPRESENTATION AND JUSTICE ISSUES

*Over 70% of respondents reported adequate access to interpreters.*

### Interpreter Services Available Resources and Needs

The courts were asked whether they had adequate access to interpreters, whether or not they lacked access to interpreters in certain languages, and whether they had access to interpreters on short notice. The courts were then asked what additional resources would be beneficial to their court.

Most courts (73.63%) stated that they have adequate access to interpreters, with 13.19% reporting that they do not have adequate access (it appears that 13.18% did not respond to either option- taking out the non-responders changes the results to 85% and 15%, respectively). Roughly a quarter of the responders stated that they did not have access to certain language interpreters. Finally, of those that responded, 43.24% stated that they had access to interpreters on short notice, while 56.76% did not.

When asked what interpreter services would be beneficial to their court, 58.44% selected in-person translators, 41.56% selected language-line, 57.14% selected translated forms, and 37.66% selected court personnel with bi- or tri-lingual skills.

### *Ideas for Further Study or Action*

Unfortunately, we did not receive comments in this area, but the numbers provided above give us a good starting place for thinking about future study. While most courts appear to be satisfied with their available interpreter services, they did list some areas where they would like to see improvement, notably increasing in-person translators and having forms translated into other languages. While increasing the number of in-person translators was high on the list, improvement here may be constrained by each court's access to funding. However, translated forms may be an area where improvement is more easily attainable. We can identify areas where forms are consistent across the various courts as well as which forms are most commonly used, and then look into having them translated for all courts to use.

One Court reported additional public education on this judicial branch and the Courts as an area needing improvement.

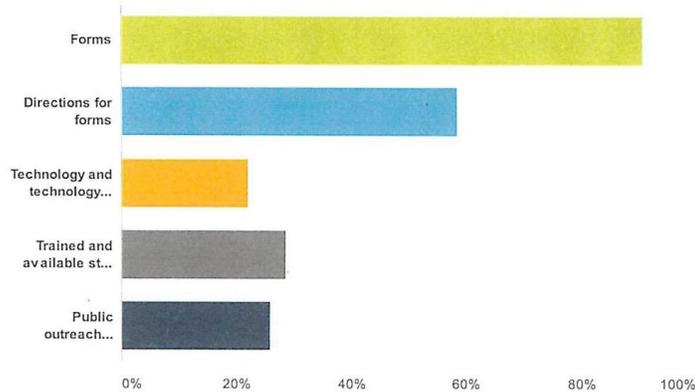
Resources for Pro Se Litigants

**SURVEY RESPONSE**

Rural Courts Survey

**Q13 Please indicate whether your Court has adequate access to the resources listed below to address the needs of and effectively deal with pro se litigants.**

Answered: 77 Skipped: 15



Answer Choices	Responses
Forms	90.91% 70
Directions for forms	58.44% 45
Technology and technology assistance	22.08% 17
Trained and available staff to aid pro se litigants through the court process	28.57% 22
Public outreach materials	25.97% 20
Total Respondents: 77	

*Available and Desired Resources*

We asked the courts what resources they had to help pro se litigants as well as what additional resources would be helpful in doing so. Just over 90% reported that they had adequate access to forms, 58.44% reported they had adequate access to form directions, 22% reported they had adequate access to technology and technology assistance, 28.5% reported that they had adequate access to trained and available staff to aid pro se litigants through the court process, and 25.97% reported they had adequate access to public outreach materials.

In regards to what resources would be beneficial to the court in serving pro se litigants, we asked the courts to select what would be of help to them from a list of potential options. In descending order based upon the percentage of courts that selected them, the additional desired resources were: “easily understandable forms and instructions” (70.93%); “web-based information about the court system, and how to prepare for what to expect” (61.63%); “court-assistance officers” (52.33%); a “court help line” (45.35%); “training for staff to provide assistance and

information/direction to pro se litigants” (37.21%); forms and case status (24.42%); “LiveChat” services (23.26%); and “docket information” (22.09%).

There appears to be some inconsistency in the responses received. In Question 13, only 28.5% reported that they had adequate access to trained staff to help pro se litigants, yet in Question 21 additional training was only selected by 37.21% of responders. It may be that, while available training is inadequate, additional training is lower on of lower priority than other needs; however, we did not ask the responders to rank their needs, but to select all that apply. So there is some difficulty in reconciling these responses and in determining court training needs.

### *Ideas for Further Study or Action*

Based on the responses received, it appears the greatest needs of rural courts in serving pro se litigants are in the areas of technology services, easily understandable forms, assisting pro se litigants navigate the court system, and training for staff (but note the inconsistent answers to training above). In regards to technology, we could look to what technology practices certain courts have adopted in assisting pro se litigants, and see if they are applicable to other rural courts as well. Some courts, for example, are able to assist pro se litigants digitally fill out their forms, while others only help fill in forms by hand.

Concerning training, we could look into what training the different rural court staffs receive in how to serve pro se litigants, and see if there are any additional training resources available elsewhere, such as from AOC. Furthermore, increasing numbers of pro se litigants is a nationwide trend, and so there may be some responsive practices that other states have adopted that could be applicable in Washington as well.

Regarding forms, there is an effort under way to convert family law forms to plain language. This may alleviate many of the needs that rural courts identified in this area. But it may be beneficial to identify which additional areas of law that plain language forms are needed.

Finally, courthouse facilitator staffing and funding is an issue that the Access to Justice Board is currently looking at. We could see what information they have in this area, and if it would be beneficial to rural courts or to any future research.

## **LOCAL GOVERNMENT INTERACTION**

*Respondents generally found local government more supportive than other branches of government.*

### Local Governments’ Understanding of Court Independence and Autonomy

We asked the courts whether local governments understand and respect their independence and autonomy. Most felt that their local government understands and respects their autonomy, with 76.6% saying they either “strongly agree” or “somewhat agree,” and 23.4% saying they either “somewhat disagree” or “strongly disagree.”

Comments varied greatly on this subject. Many courts that answered some form of “disagree” felt that their local government did not understand their needs or respect their autonomy; for example, one stated that their city is attempting to dissolve the court and merge it with another city’s, despite the fact that their city has not cut the budget to any other department. Another commented that their local government wouldn’t adequately staff the court, and then later complained when the court couldn’t adequately handle the number of incoming defendants.

Many who responded “somewhat satisfied” made comments related to budget constraints and the effect that had on their relationship with the local government; for example one stated that they had to share staff, but understood that, under current conditions, “that is just the way it is.” Another stated that, due to budget and furlough issues, the understanding and respect with local government was there, but it was grudging, and that judges were somewhat resented by other departments.

Finally, many courts commented that they had a good working relationship with their local government, and that the government understood and respected their needs. The comments of those who “strongly agreed” varied slightly, but generally stated that they had a good relationship with their local government, which respected their needs and autonomy.

### Local Leader Support

We asked the courts whether local leaders support their court. Overall, 84.27% either “strongly agreed” or “somewhat agreed,” while 15.73% either “somewhat disagreed” or “strongly disagreed.”

Overall, most responses tracked pretty closely with the responses above, with occasional variation. Some comments were in relation to concerns specific to their court (such as the local government not understanding the court’s need for new facilities). Others noted that local leaders were open to listening to the needs of the court. Some, however, noted that local leaders’ bias affected their court; for example, one court reported that “most political leaders are strongly conservative and support the court only to the extent that they perceive the judge to be also.” Another reported that local government leaders, including the police chief, are pushing to cut court funding without understanding the effect this would have on access to justice for the city’s citizens. Finally, some noted how local leaders didn’t understand that increasing funding for law enforcement results in increased filings and, in turn, a need to increase court funding as well.

### Other Branches of Government Understanding of Court Needs & Operations

We asked the courts whether the other branches of government understand their court’s needs and operations. Overall, 80% either “strongly agreed” or “somewhat agreed,” while 20% either “somewhat disagreed” or “strongly disagreed.”

Again, the responses here usually tracked those of the prior two questions. Virtually all the comments dealt with the local government not being well-informed on what the court does and needs. For example, one commented that local leaders don’t understand what their court does, and have no interest in learning more about the court and decline invitations to visit; another said that “education of the other branches of government is an ongoing operation”; yet another stated

that the “only reason I didn’t note strongly agree is that sometimes education in this area is needed.” So it appears that lack of understanding of what the court does is a concern of many courts (even among some of those in the “agree” category).

### *Ideas for Further Study or Action*

The answers to the three questions above largely overlapped (some courts even replied in the latter two questions to refer to their comment to question 14). But most of the concerns seemed to revolve around the fact that the local government doesn’t understand what the court does and why their needs are important. This concern seems to be especially prevalent in the context of funding from local government. It may be that cutting many court programs actually cost the county or municipality money in the long run; for example, cutting court support staff may save money in the short term, but could result in more incorrect filings, more continuances, and more court delays, all of which result in costs that add up over a period of time. It might be beneficial to look into conducting a cost-benefit analysis of certain court functions, or to see if similar studies have been done elsewhere. However, considering that every court is different, and that certain costs and benefits may be difficult to quantify monetarily, this could be a time-intensive project.

## **GRANT INFORMATION AND PRIORITIZATION OF POTENTIAL FUNDING AREAS**

*Access to information about available grants was noted as a possible funding source to address security concerns for many respondents.*

### Information and Priorities

We asked the courts whether it would be helpful for them to receive information about grants to rural courts for courthouse facilities. We also asked the courts what improvements would be prioritized if they received grants or loans to improve courthouse facilities.

In terms of information, 86.67% of responders would like to receive information about grants to rural courts, while 13.33% do not want to receive such information. In terms of prioritizing spending of potential grants or loans, we asked the courts to select any and all areas they would improve. Improvement to security was the most common priority at 78.75%, followed by improvements to courtrooms at 53.75%, improvements to clerk’s offices at 36.25%, improvements to client and witness meeting rooms at 35%, and improvements to jury rooms at 27.5%. The information gathered from this question unfortunately does not show what improvements are more important to rural courts when compared to others; it only shows what improvements were more commonly requested (we did not ask the courts to prioritize the various improvements, only to select those that applied to them). But based on the information received in this question, and the responses elsewhere in the survey, we do have pretty good insight into what are the areas the courts would most like to see improved. And from the survey as a whole it appears that security is the most common and highly prioritized area for improvement amongst rural courts.

### *Ideas for Further Study or Action*

The large majority of the courts surveyed would like to receive information about grants to rural courts. We could provide them with that information or refer them to entities that may know about potential grants. In terms of the various areas of improvement, we could try to gather information on what areas rural courts prioritize over others, but again, based on the totality of the information received in the survey, we were able to get a pretty good idea as to the areas the courts would like to see improved.

## **CHALLENGES POSTED BY RURAL CHARACTERISTICS**

### Rural Challenges and Transportation Issues

We asked the courts whether the rural characteristic of their court presented any challenges. We also asked whether a lack of local transportation service impacted their ability to provide services. For the most part, the answers to these questions largely supplemented the information provided elsewhere in the survey. The responders often commented that their rural characteristic resulted in a lack of CD, DV, and MH resources, or that service providers were located far away from many court users. Many also noted the lack of proper court and jail facilities. Some also said that the rural nature of their court has resulted in perception issues with the public; that some users assume that service will be poor because it is a rural court, while other people don't understand that the police and the court are two different entities with different functions and needs. Finally, one court said that there was a lack of support for rural courts from Olympia, both from the legislature and the Supreme Court. The clear perception is that these are issues specific to rural courts.

Many courts noted that transportation is an issue in providing services to the public. They reported that there is often a lack of bus routes to more isolated areas, and this lack of adequate transportation service has resulted in many people being late for or missing court appearances. One court further noted that this problem is only compounded for low-income users that don't have access to a car. Furthermore, many stated that inadequate transportation isn't just an issue in accessing the courthouse; it is an issue for many service providers that are located remotely as well. However, many responders stated that transportation was not a problem for people accessing their court.

### *Ideas for Further Study or Action*

Most of the issues raised in these comments overlap with the prior sections of this report. However, lack of adequate transportation was a common concern for many courts. This issue is certainly difficult to address fully, but certain technologies and practices, such as conducting hearings by phone or via videoconference, may be able to mitigate the challenges posed by inadequate transportation services. We could therefore look into what technology resources could help courts facing transportation problems.

## CONCLUSION

The most significant issues for rural courts appear to be courthouse security, a lack of courthouse facilitators, video-conferencing and access to information about grants available for courthouse facilities. Our sub-committee recommends that these issues be considered by the BJA, and recommendations made as to the priority of addressing these concerns.

### Appendix – Rural Courts Survey – Summary Data

Participants:

#### **Public Trust & Confidence Committee**

Justice Mary Fairhurst, Chair  
Ms. JulieAnne Behar, Member  
Judge Bill Bowman, Member  
Judge James Docter, Member  
Barbara Fox, Member  
Honorable Kay Holland, Member  
David Johnson, Member  
Honorable Michael Killian, Member  
Kay Newman, Member  
Dennis Rabidou, Member  
Andy Sachs, Member  
Judge Laurel Siddoway, Chair  
Dr. Marion Smith, Member  
Judge Elizabeth Stephenson, Member  
Shirley Zimmerman, Member  
Margaret Fisher, Coordinator

#### **Rural Courts Subcommittee**

Judge Laurel Siddoway, Chair  
Judge Bill Bowman, Member  
Judge James Docter, Member  
Dennis Rabidou, Member  
Dr. Marion Smith, Member  
Kirsten Barron, Member

With editorial support and drafting from Burton Eggertsen

More details on the report.

Scope – rankings relative

- Perspective
- Interpose Charts from survey



**Washington State Guide for  
Civic Observances:  
Law Day and Constitution Day**



**Board of Judicial Administration  
Public Trust and Confidence Committee**

2015

## Background

In January 2013, the Washington State Courts Public Trust and Confidence Committee formed a subcommittee to research participation in Law Day and Constitution Day in Washington State. The Law and Constitution Days Subcommittee compiled the following information as a guide providing access to resources and ideas for those wishing to celebrate Law Day and Constitution Day. This guide primarily references other organizations and government agencies who do work with these two federal observances.

After the surveys were completed, the Subcommittee added two related observances to this guide: Washington State’s Temperance and Good Citizenship Day and the federal Bill of Rights Day.

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## For more information

Please see the Public Trust and Confidence Committee website:  
[https://www.courts.wa.gov/programs\\_orgs/pos\\_bja/?fa=pos\\_bja.ptc](https://www.courts.wa.gov/programs_orgs/pos_bja/?fa=pos_bja.ptc)  
or contact the Administrative Office of the Courts (360) 753-3365.

Thanks to Subcommittee members:

Justice Mary Fairhurst

Chair, JulieAnne Behar

Bill Bowman

Kay Newman

Sharon Vance.

And a big thank you to Cindy Phillips and Mara Machulsky for editing and formatting.



## Survey Description and Results

The Law and Constitution Day Subcommittee distributed a survey to the federal, state, local, county, and specialty bar associations around Washington State. The goal of the survey was to learn about the participation of these groups in Constitution Day and/or Law Day. The following tables reflect the responses received by the Subcommittee.

The first table reflects the initial round of survey responses. The initial survey was sent close to Constitution Day, so the Subcommittee felt it was important to follow up with a second survey on the Law Day information that was received. The second survey was sent to respondents that indicated they do participate in Law Day to ask more specifically about their celebration, and if the information had changed since the last survey. The second table reflects this second follow-up survey that the Subcommittee distributed.

The Subcommittee realizes that much more may be occurring in Washington State for these observances than was reported. However, it is hoped that these results may inspire groups to take an active role in bringing civic education to students throughout the State.



## Law Day and Constitution Day Survey Responses

Organization	Do you hold any events for Law Day or Constitution Day?	If yes, what type of event / celebration are you having this year (2013)?	Do you know of other events? If yes, what are they?
Adams County Bar Ass'n	No	N/A	N/A
American Immigration Lawyers Ass'n	No , but we have done an amazing amount of pro bono work this year, in conjunction with various nonprofits. Our clinics on behalf of undocumented youth have had over 5,000 attendees, and between 200-300 attorney volunteers. We've held several naturalization clinics, and have four clinics scheduled for April 27 in Moses Lake, Vancouver, Tacoma, and Mount Vernon.	Nothing planned as an organization. We do have many members who participate in local clinics as volunteers, organized by local bar associations. We frequently do this for the Skagit Bar Association, though will not be this year, due to other commitments.	Skagit County Bar Ass'n has a clinic, lunch and providing award; Whatcom County Bar/ Law Advocates does something similar; and I presume King and Snohomish are also having activities.
Benton/Franklin County Bar Ass'n	Yes, Law Day	We are presenting to 17 local service clubs.	N/A
Chelan/Douglas County Bar Ass'n	Yes, Law Day	On May 3, Justice Fairhurst is speaking. We will be giving pro bono and professionalism awards to local attys and non attys and offer CLE credits.	N/A
Federal Bar Ass'n	Yes, Law Day Yes, Constitution Day	The Federal Bar Ass'n is hosting a Youth Law Day at USDC for the fall, geared toward underprivileged high school students For Constitution Day, there will be events at USDC on Sept. 17 for Seattle and Sept. 18 for Tacoma intended for elementary children. Both programs include tours, visits with Marshals, lock ups, and mock trials.	N/A
GLBT Bar Ass'n of Washington	No	N/A	N/A



Organization	Do you hold any events for Law Day or Constitution Day?	If yes, what type of event / celebration are you having this year (2013)?	Do you know of other events? If yes, what are they?
King County Bar Ass'n	No	N/A	There is an annual event by trial lawyers. American Bar Ass'n tries to generate interest by local bars with promotional materials.
Latino/a Bar Ass'n of Washington	No	N/A	N/A
Spokane County Public Defenders	No	N/A	Yes, Spokane County Bar has city-wide project including sending speakers to local schools and ceremony for new U.S. citizens.
Spokane Municipal Court	Yes, Law Day	We have an essay contest for school age children (K-12) on Martin Luther King, Jr.'s "I had a dream" speech and host an open house.	N/A
Stevens County Bar Ass'n	No, I don't believe there are any official activities for either of those events by the Stevens County Bar Ass'n. However, a contingency of our county bar association often meets informally on various holidays or days of recognition such as this at a local restaurant. The next scheduled gathering of the Stevens County Bar Association is May 9 for a CLE presentation.	N/A	N/A
Thurston County Bar Ass'n	Yes Law Day	We host an annual Law Day Speech Scholarship Contest with West Olympia Rotary. This year's (2013) speech topic will center on the issue of "Gun Violence in America" and the best legal, social and/or moral response to this issue. A law day scholarship is awarded to the top speeches.	N/A



Organization	Do you hold any events for Law Day or Constitution Day?	If yes, what type of event / celebration are you having this year (2013)?	Do you know of other events? If yes, what are they?
Thurston County Public Defenders	No, but we are planning on collaborating with ACLU-WA to host a showing of a new documentary on Public Defenders called Gideon's Army in August or September. If the efforts are successful, I will be approaching the Supreme Court for participation in a pre or post showing community discussion of public defense.	N/A	Yes, Thurston County Bar Ass'n Law Day Speech Scholarship Competition.
Whatcom County Bar Ass'n	Yes, Law Day	We are teaming up with local Volunteer Legal Project, Law Advocates. The Whatcom County Bar usually does something to commemorate Law Day, but not Constitution Day. This year we are teaming up with the local VLP, LAW Advocates, to offer separate programs at WWU and Whatcom Community College directed to student loan debt. At each location we will show the video <i>Default, The Student Loan Documentary</i> , a panel consisting of one creditor-debtor attorney and one tax attorney will make a short presentation and answer questions and then the attorneys will be available for brief individual-clinic like conferences for those who may have interest.	N/A
Washington Women Lawyers	No	N/A	N/A
Washington Association of Criminal Defense Lawyers	No	N/A	N/A



## Law Day Follow Up Survey

### Responses Update 12/18/13

Organization	Contact	Update The responses address the following questions: 1. Is the previous description of your Law Day celebration still an accurate representation? If not, please send a revised version. 2. Do we have permission to publicly share information about your event? 3. Do you have any supporting materials for the event such as photos, pamphlets, etc. that you would be willing to share?
Benton/Franklin County	Jeff Sperline	This remains an accurate description of what we are doing for 2014. We do have a new presentation focusing on the jury system/ importance of juries that will have a new PowerPoint; currently in development. We would be happy to share upon completion.
Federal Bar Ass'n of Western District of Washington	Jennifer Wellman	Due to sequestration, Youth Law Day was postponed. It is now scheduled for March 7, 2014.
Kitsap County Bar Ass'n	Matt Clucas	Our information is the same. I don't have any materials from last year. I will make sure to keep some from the 2014 celebration.
Stevens County Bar Ass'n	Mathew J.ENZLER	The information below is largely accurate, however, regarding our future meetings: our Bar Association has quarterly business meetings (March, June, September, December), with CLE luncheons in the nonbusiness meeting months. We did have two special/additional meetings this year for various special events, however Law Day was not one of them.



# Law Day Reference Sheet

Law Day is a federal observance that occurs every year on May 1. Law Day was first designated in a proclamation by President Dwight D. Eisenhower, signed February 3, 1958. Each year, the current President issues a proclamation declaring May 1 as Law Day, and today the American Bar Association sets a national theme and promotes use of this theme through supporting educational materials and lessons.

## Resources from organizations and agencies

American Bar Association—[www.americanbar.org/groups/public\\_education/initiatives awards/law day.html](http://www.americanbar.org/groups/public_education/initiatives_awards/law_day.html)

Center for Civic Education—[www.civiced.org](http://www.civiced.org)

Civic Renewal Network—[www.civicsrenewalnetwork.org](http://www.civicsrenewalnetwork.org)

Constitutional Rights Foundation Chicago—[www.crfc.org](http://www.crfc.org)

Constitutional Rights Foundation Los Angeles—[www.crf-usa.org](http://www.crf-usa.org)

iCivics—[www.iCivics.org](http://www.iCivics.org)

Library of Congress—[www.loc.gov/law/help/commemorative-observations/law-day.php?loclr=bloglaw](http://www.loc.gov/law/help/commemorative-observations/law-day.php?loclr=bloglaw)

Street Law—[www.streetlaw.org](http://www.streetlaw.org)

United States Courts—[www.uscourts.gov/educational-resources/get-inspired/annual-observances/law-day.aspx](http://www.uscourts.gov/educational-resources/get-inspired/annual-observances/law-day.aspx)

University of Cornell Law Information Institute—[www.law.cornell.edu/uscode/text/36/113](http://www.law.cornell.edu/uscode/text/36/113)



## Constitution Day Reference Sheet

Constitution Day is a federal observance that occurs every year on September 17. It commemorates the formation and signing of the U.S. Constitution on September 17, 1787.

### Legal requirements

The Federal Register mandates that “educational institutions receiving Federal funding are required to hold an educational program pertaining to the United States Constitution on September 17 of each year.” 70 FR 29727-01.

### Sources for pocket Constitutions

Copies of the pocket constitution are available through the Government Printing Office bookstore for \$1.50 each, \$112.50 for 100 copies (includes shipping).

### Resources from organizations and agencies

Center for Civic Education—<http://new.civiced.org/resources/curriculum/constitution-day-and-citizenship-day>

Civic Renewal Network—[www.civicsrenewalnetwork.org](http://www.civicsrenewalnetwork.org)

Colorado Law Constitution Day Project—[www.colorado.edu/law/sites/default/files/Presenter%20Packet%20for%20longer%20classes.pdf](http://www.colorado.edu/law/sites/default/files/Presenter%20Packet%20for%20longer%20classes.pdf)

Constitution Day games—<http://billofrightsinstitute.org/resources/educator-resources/constitution-day-resources/>

Constitutional Rights Foundation Chicago—[www.crfc.org](http://www.crfc.org)

Constitutional Rights Foundation Los Angeles—[www.crf-usa.org](http://www.crf-usa.org)

iCivics—[www.iCivics.org](http://www.iCivics.org)

Library of Congress—[www.loc.gov/law/help/commemorative-observations/law-day.php?loclr=bloglaw](http://www.loc.gov/law/help/commemorative-observations/law-day.php?loclr=bloglaw)

National Constitution Center—<http://constitutioncenter.org/constitution-day/>

State of Texas State Bar Association—Law-Related Education Department – [www.texaslre.org/lessonplans/lessonplans.php](http://www.texaslre.org/lessonplans/lessonplans.php)

Street Law—[www.streetlaw.org](http://www.streetlaw.org)

TVW—Contrasting Washington State Constitution to U.S. Constitution — [www.teachwithtvw.org/the-washington-state-constitution-module/](http://www.teachwithtvw.org/the-washington-state-constitution-module/)



WSU Library guide—<http://libguides.wsulibs.wsu.edu/constitutionday>

## Related Civic Observances

Though not originally part of the charge of the Law and Constitution Day Subcommittee, the group discovered other civic observances that align with the civic mission of Law Day and Constitution Day.

### **Temperance and Good Citizenship Day**

Temperance and Good Citizenship Day is a civic observance, established by the Washington State Legislature in 1923. The Revised Code of Washington 28A.230.150 states: "On January 16th of each year or the preceding Friday when January 16th falls on a nonschool day, there shall be observed within each public school Temperance and Good Citizenship Day."

In 1969 the original legislation was amended, allowing schools to emphasize the rights and duties of citizenship rather than focusing on temperance. The new wording included the following directive: "Annually the state superintendent of public instruction shall duly prepare and publish for circulation among the teachers of the state a program for use on such day embodying topics pertinent thereto and may from year to year designate particular laws for special observance."

In 2013 the Washington State Legislature passed a budget bill (3ESSB-5034) with a proviso directing the superintendent of public instruction to update the Temperance and Good Citizenship Day program. The proviso stipulated that public schools must provide all eligible students with the opportunity to register to vote. A link to the budget bill and proviso can be found at:

<http://leap.leg.wa.gov/leap/budget/lbns/1315Omni5034-S.SL.pdf>

### **Bill of Rights Day**

Bill of Rights Day is celebrated on December 15, and throughout the month. The organizations listed under Constitution Day and Law Day, as well as the federal courts offer new resources every year that are ready for immediate courtroom and classroom use by judges, teachers, and students. They are meant to inform, involve, and inspire citizens to appreciate and exercise the Bill of Rights in their lives.



# Appendix

## Law Day Materials

Law Day codified as 36 U.S.C. § 113 by Public Law 87-20 on April 7, 1961. The original proclamation from President Eisenhower can be found in Volume 72, Part 2, of the United States Congressional Session Laws.

Excerpt from the 2014 Law Day Planning Guide from the American Bar Association. This is based on the 2014 ABA theme “Why Every Vote Matters.”

## Constitution Day Materials

36 U.S.C. § 106 regarding Constitution Day.

Annual presidential proclamation regarding observances of Constitution Day.

An OSPI memorandum that was put out shortly before the 2011 Washington State Senate. The memo also cites the 2005 Federal Register notice.



## Judicial Remarks to Prospective Jurors<sup>1</sup>

*Directions: These updated remarks are offered as a template for those courts in which judges speak personally to prospective jurors prior to voir dire.*

On behalf of all of the judges and staff, I want to express our appreciation for your time. We know that you all have very busy lives and that being here involves some sacrifice. I want to assure you that we do everything we can to ensure that your time is used efficiently and that your experience is meaningful. Although it may not seem like it now, at the conclusion of your jury service I'm confident that you will have found it to be both positive and worthwhile. I say that not only because I'm a strong proponent of our jury system but because studies show that 75% to 99% of jurors describe their experience as a positive one.

I would like to take a few minutes this morning to share some information with you about our court, to explain why it's important for you to be here, and to let you know what you can expect during your time with us.

At \_\_\_\_\_ court we hear many different kinds of cases. While over half of jury service will involve criminal trials where the State has charged a person with a crime, you may also be called to sit on a civil case. A few examples of civil cases may be contract disputes, medical malpractice claims, motor vehicle accidents, or employment cases.

The role that you'll fill as a juror has been recognized as a vital one for hundreds of years. Thomas Jefferson identified as key rights for which the revolution was fought: freedom of religion, freedom of speech, and the right to trial by jury. Abraham Lincoln said, "The greatest service of citizenship is jury duty." And Harper Lee, the author of *To Kill a Mockingbird* wrote, "A court is only as sound as its jury and a jury is only as sound as those who make it up." Today that will be you.

If you are called to a courtroom, you will be involved in a process called "voir dire" which is a Latin phrase that originally referred to an oath taken by jurors to tell the truth. We refer to jury selection as "voir dire" because an open and honest conversation reflects the essence of the process. During the process, the judge and the attorneys will ask you a number of questions. Some of the questions may seem intrusive but the judge and the attorneys are really just trying to gather information to determine if you're the right juror for their case. If the answer to a question seems too personal, you can let the judge or the lawyer know and you may be able to provide an answer outside the

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<sup>1</sup>These remarks are a project of the Board for Judicial Administration's Public Trust and Confidence Committee, chaired by Justice Mary Fairhurst. The subcommittee consisted of Kay Newman, chair, with members King County Superior Court Judge Bill Bowman, Ms. Barbara Fox, and Ms. Kay Holland.

presence of the other jurors. I encourage you to speak up early and often throughout the process. Your participation is what makes the process work and I assure you that there are not right or wrong answers.

During the jury selection process you will also be asked if the expected duration of the trial will create an undue hardship for you. We've worked very hard to make it easier for people to serve as jurors without creating an undue hardship. We understand however that, for some of you, serving on a longer case may not be possible. Obviously, if you're facing a real hardship, the judge will release you. In considering whether to request to be excused for an undue hardship, however, please keep in mind that it's very important for us to have a diverse group of jurors. If we simply excused everybody other than those who have the time to be here, we would have a very limited make up of jurors and a skewed representation of our community. Also keep in mind that every case being heard in this courthouse is the most important case in the lives of the parties involved and consider what kind of jury you would want if you were in their shoes. There is no justice system that doesn't require some level of sacrifice from potential jurors and our system only works if you're willing to serve on a case whenever it's possible for you to do so.

Finally, as you go through the jury selection process, you will experience some delays. We strive to keep those delays to a minimum but they are an inevitable part of the process. Please be patient and understand that everyone in the jury room and the courtroom are working as hard as they can to get you into and through the jury selection process as quickly as possible.

Ultimately only a few of you will be chosen to serve on a jury. Please don't take it personally if you're not one of those few. Even if you're not ultimately seated on a jury, your service will have been very important to our court. All of you are a necessary part of our system of justice to ensure that we're able to empanel a jury in every case that goes to trial.

Trial by jury is one major way that our government is held to the principles of our constitutions. For those of you who have the opportunity to serve on a jury, you will see our system of justice in action. You will exercise authority and power as the trier of fact, evaluating the evidence of a case as it's presented to you in the courtroom. The judge will then instruct you as to the law, and you will exercise independent thought and judgment as part of a cohesive decision-making body. Jury service is a fascinating and rewarding experience, and it truly is your service that makes our system of justice work. Thank you for your commitment and for your willingness to serve our community.

# Tab 4

# **Summary Regarding Proposed General Rule for a Judicial Performance Evaluation Program**

The attached proposed General Rule would establish a comprehensive and informative judicial performance evaluation program for Washington State. The proposal has been in development for the past two decades and represents the best thinking of many outstanding legal minds. This short chronology summarizes this lengthy process.

## **Why adopt a comprehensive program of judicial performance evaluations?**

- The voters are crying out for better information.
- Judges can improve their performance through reliable feedback.
- Ratings on the specific dimensions of judging will educate voters on the qualities that should inform their votes.
- Evaluations by those who know the judge's work will promote judicial independence.
- Comprehensive ratings will help to insulate judges from well-funded single-issue attacks.

## **Who supports this?**

- The Walsh Commission concluded that “[a] process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme Court.”
- A subcommittee of the American Judicature Society developed the proposal and successfully pilot-tested the evaluation methodology with both trial and appellate judges.
- The King County Bar Association scrapped its bar poll in favor of AJS-proposed evaluations. One result is elimination of bias in the resulting ratings.

## **Why should this be a statewide program?**

- It's worked well everywhere that it has been tried, but very few local bar organizations have the resources of KCBA.
- Applying consistent criteria across the state will promote a better-qualified judiciary and public confidence in the courts as a whole.

## **Why do it by rule?**

- It's vital that everyone participate and that everyone is treated the same way.
- Judicial challengers will be required to be evaluated as well, which will promote a level playing field in judicial elections.

# Brief History of Proposed General Rule

## 1996: Initial Proposal by Walsh Commission

In March 1996, the Walsh Commission, appointed by Gov. Mike Lowry, Supreme Court Chief Justice Barbara Durham, and legislative officials, issued its final report, entitled, "*The People Shall Judge - Restoring Citizen Control to Judicial Selection.*"<sup>1</sup>

The Walsh Commission's report includes nine proposals that are "intended to give voters more information about judicial candidates increase judicial accountability, and insulate judicial candidates from political pressures."<sup>2</sup>

Proposal No. 5 of the Walsh Commission Report recommended that the Supreme Court create a judicial performance evaluation system:

Voters testified [at state-wide hearings conducted by the Walsh Commission] that they wanted more information about the performance of judges. The Commission recommends creating an objective, uniform, comprehensive method for providing voter information about judicial performance.

End-of-term reports will be used to provide information in the judicial voter pamphlet; judges may respond to the review prior to its release. Confidential mid-term reviews will provide the judges feedback for the purpose of self-improvement.<sup>3</sup>

## 1999-2006: American Judicature Society's Proposal

In 1999, following up on the Walsh Commission's recommendation, the Washington Chapter of the American Judicature Society<sup>4</sup> appointed a Judicial Evaluation Committee<sup>5</sup> to survey other states' judicial performance evaluation programs and draft a proposal for a similar program in Washington.

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<sup>1</sup> See <http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/walshreport>

<sup>2</sup> See <http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/walshCommissionFinalReport>

<sup>3</sup> See <http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.displayContent&theFile=content/walshCommissionFinalReport>

<sup>4</sup> The AJS Washington Chapter Board at that time included Justice Mary Fairhurst, Justice Faith Ireland, Judge William Baker, Judge Ronald Cox, Judge John Schultheis, U.S. Magistrate Judge Mary Alice Theiler, Charles Wiggins, Mary Wechsler and Lish Whitson.

<sup>5</sup> Members of the AJS Judicial Evaluation Committee included several judges, including Judge Sharon Armstrong, Judge William Baker, Judge Roseanne Buckner, Administrative Law Judge Robert Kingsley, Judge Terry Lukens, Judge Jean Rietschel, Judge John Schultheis, Justice Charles Z. Smith, Judge Mariane Spearman; other members included Seattle University Law School Prof. John Strait, Washington State University Prof. Nicholas Lovrich, Washington State University Prof. David Brody, Henry Lippek, Greg Miller, Richard Morry, Kristin Olson, Karen Place, John Ruhl, Leonard W. Schroeter, Gary Straus, Rowland Thompson and Mary Wechsler.

On June 8, 2005, the AJS Washington Chapter Board submitted a white paper to the Washington Supreme Court recommending that the Supreme Court should adopt, by court rule, a formal state-wide judicial performance evaluation program, which would provide information that could improve individual judges' performance, and which also would provide voters or appointing authorities information on which to make decisions about judicial candidates. A copy of the white paper is attached.

During 2005 and 2006, the Judicial Selection Coalition ("JSC") a group of bar associations, citizen organizations, judges and citizens,<sup>6</sup> through its Judicial Evaluation Committee<sup>7</sup> continued to refine the AJS's draft proposal for a state-wide judicial performance evaluation program.

## **2006: WSTLA Survey Recommends Judicial Performance Evaluation Process**

In March 2006, the Washington State Trial Lawyers Association conducted a state-wide "Judicial Elections/Selection Survey of its membership. The survey included the question: "Do you believe there is a need for a statewide, independent judicial evaluation process?" To that question 106 (68%) of the 166 respondents answered "yes."

## **2006-2008: WSBA Judicial Selection Task Force Proposal**

The WSBA formed a Task Force, chaired by former WSBA Board of Governors member Doug Lawrence, to examine and recommend whether our system of judicial selection should be modified.

A subcommittee of the Task Force was appointed to draft a judicial performance evaluation program to provide the public with judicial performance evaluations both mid-term and prior to elections. The subcommittee took the 2006 AJS draft proposal and reframed it as a proposed new court rule.

On June 6, 2008, the Task Force presented to the WSBA Board of Governors its majority and minority reports. Among other things, the majority report recommended adoption of a formal judicial performance evaluation process that was very similar to the AJS's proposal.

## **2007: KCBA Adopts and Implements AJS Proposal**

In the spring of 2007, the KCBA Board of Trustees adopted and implemented a judicial performance evaluation program for King County Superior Court judges and District Court judges, which is based upon and operates basically according to the AJS's judicial evaluation performance proposal.<sup>8</sup>

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<sup>6</sup> Members of the Judicial Selection Coalition included judges from the Washington Court of Appeals and the King County Superior Court; as well as representatives from KCBA, the WSBA, the Washington State Trial Lawyers Association, the Washington Defense Trial Lawyers, the AJS Washington Chapter, the League Women Voters of Washington; the Municipal League of King County, the University of Washington Law School, the Seattle University Law School, Gonzaga University Law School and Washington State University.

<sup>7</sup> The JSC's Judicial Evaluation Committee was chaired by Rob Mitchell (who had chaired the AJS Judicial Evaluation Committee), and participating members included W.S.U. Prof. David Brody, S.U. Law School Professor Janet Chung, Carl Forsberg, Snohomish County Bar Association President Geoffrey G. Gibbs, Judge Judith Hightower, former KCBA President Thomas E. Kelly, Jr., Pat Lessard, Henry Lippek, Gonzaga Law School Professor Rosanna Peterson, Rebecca Roe, Gonzaga Law School Professor Jennifer Sweigert and Mary Wechlser.

## 2014: AJS Presents Proposed Rule to Supreme Court

During 2008-2013, the AJS Washington Chapter Board's Judicial Evaluation Committee<sup>9</sup> reframed the judicial performance evaluation proposal into a proposed general court rule that could be presented to the Washington Supreme Court, as had been recommended originally by the Walsh Commission.

On February 5, 2014, AJS Washington Chapter's officers formally presented the proposed general court rule to the Supreme Court.

On October 20, 2014, following consideration by the Rules Committee, the Supreme Court *en banc* referred proposed general rule to the Board for Judicial Administration (BJA) for consideration.

Consisting of representatives from all levels of court, the BJA is in the best position to evaluate the proposal and recommend its adoption. The BJA is also in the best position to propose legislation to implement the rule.

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<sup>8</sup> See Ruhl, "Judicial Evaluation Program May Replace Bar Polls," *King County Bar Bulletin*, February 2007 (<https://www.kcba.org/newsevents/barbulletin/BView.aspx?Month=02&Year=2007&AID=prespage.htm>).

<sup>9</sup> The AJS Judicial Evaluation Committee members included: Judge Sharon Armstrong, Judge William Baker, Judge John Bridges, Administrative Law Judge Robert Kingsley, Judge Terry Lukens, Judge Catherine Shaffer, Judge Michael Trickey and Judge Mary Yu; other members included Washington State University Prof. David Brody, Dr. Ruth Walsh McIntyre, Brian Dano, Thomas Culbertson, Joni Kerr, Henry Lippek, Richard Morry, Kristin Olson, Karen Place and John Ruhl.

**Final Draft of Proposed General Rule for  
Judicial Performance Evaluations**

**American Judicature Society  
Washington State Chapter**

**Presented to Washington Supreme Court  
February 5, 2014**

**GENERAL RULE 35. JUDICIAL PERFORMANCE EVALUATIONS**

**(a) SCOPE AND PURPOSE**

**(1) Scope.** This Rule governs the procedure for evaluating the performance of judicial officers and individuals seeking election or appointment to the bench.

**(2) Purposes.** This Rule is intended to:

(a) Facilitate self-improvement of judges and promote efforts to improve judicial performance;

(b) Provide reliable and relevant information to assist Washington voters in evaluating candidates for judicial office;

(c) Provide information to improve the design and content of continuing judicial education programs; and

(d) Protect the independence of judges in the performance of their duties.

**(b) JUDICIAL PERFORMANCE PROGRAM COMMITTEE**

**(1) Creation and Membership.** The Judicial Performance Evaluation Program will be overseen by a Judicial Performance Program Committee ("Committee") having eleven voting members. In addition, the Administrator of the Courts or his/her designee will serve as a non-voting member of the Committee. The Board of Judicial Administration will appoint two voting members of the Committee, one of whom must be a retired appellate judge and one of whom must be a retired trial level judge. Three voting members of the Committee will be appointed by the Board of Governors of the Washington State Bar Association, at least one of which must be from Eastern Washington. One of the appointees by the Board of Governors must be a law professor who has prior trial experience. Six voting members of the Committee will be appointed by the Governor. No more than three of the gubernatorial appointees may be from the same political party. If the Governor declines or fails to make appointments within 60 days after the effective date of this rule or after a vacancy occurs, the remaining members of the Committee may, by majority vote, fill the position(s). A majority of the Committee must be non-attorneys. The Committee should reflect the ethnic, economic, geographic and political diversity of this state and the members should have a demonstrated interest in civic affairs. The chair of the Committee will be chosen from its membership and will serve a one year term. The chair may be reelected to a subsequent term or terms.

**(2) Terms.** Members of the Commission will serve four year staggered terms. One of the initial appointees of the Board of Judicial Administration, one of the initial appointees of the Board of Governors and three of the initial appointees of the Governor will serve an initial two year term. No member of the Commission may

FINAL D R A F T  
As Approved by AJS Board on September 9, 2013

serve more than two consecutive terms. All terms shall start as of June 1 of the year of appointment.

**(3) Powers and Duties of the Committee.** The Committee will have the following powers and duties:

- (a) To develop and refine surveys for lawyers, judges, jurors, and pro se litigants, as provided for in this Rule;
- (b) To ensure that data collection and analysis processes are methodologically sound;
- (c) To contract with a qualified person or entity to prepare the survey forms, to process responses, and to compile statistical reports of the survey results in a manner designed to ensure the confidentiality and accuracy of the process;
- (d) To conduct a confidential evaluation midway through a judge's term of office for the purpose of improving the judge's performance;
- (e) To give each judge complete statistics from surveys and copies of written comments written on survey questionnaires as part of his/her evaluation;
- (f) To identify key areas where improvement is needed and work with the Committee on Judicial Education and Training to prioritize areas and offer required courses to meet educational needs; and
- (g) To conduct an evaluation of each judge whose term is ending, as well as each candidate for judicial office, and to disseminate the results of those evaluations to the public.

**(4) Staff.** The Administrative Office of the Courts will staff the Committee, which will include monitoring and administering the appointment process and such other duties as may be determined jointly by the Committee and the Administrative Office of the Courts.

**(5) Feedback.** After the program begins, the Committee will survey judges and judicial candidates to gather feedback about the evaluation process and how it can be improved. In addition, the Committee will compare the results of its evaluations of non-judge candidates with the results of evaluations of those candidates, if elected, and modify the survey instruments, procedures, or both used for non-judge candidates as appropriate to improve their predictive value.

**(6) Reporting.** At least annually, the Committee will submit a report to the Board of Judicial Administration summarizing its work and the feedback it has received. The report will identify any problems or limitations that have been encountered, describe

the Committee's plans to address those problems or limitations, and suggest any changes in applicable rules that the Committee believes are necessary or appropriate.

**(7) Implementation; Phasing.** This Rule will be implemented as follows:

(a) Superior Court judges and candidates for positions on the Superior Court will be subject to the provisions of this Rule immediately upon its effective date.

(b) Justices of the Supreme Court and judges of the Court of Appeals and candidates for positions on the appellate courts will be subject to the provisions of this Rule two years after its effective date.

(c) Judges of the courts of limited jurisdiction and candidates for positions on the courts of limited jurisdiction will be subject to the provisions of this Rule four years after its effective date.

**(c) CRITERIA FOR EVALUATION**

Judges should possess and demonstrate integrity, impartiality, professionalism, judicial temperament, and legal ability, as well as communication and administrative skills. To measure these qualities, the Committee will evaluate judges based on the following specific criteria:

**(1) Integrity and Impartiality.** Evaluations will determine the extent to which each judge:

(a) Treats all persons fairly, equally, and without discrimination based on race, creed, color, national origin, income, gender, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability;

(b) Conducts proceedings fairly, impartially, and with an open mind;

(c) Displays a neutral presence on the bench; and

(d) Makes decisions without considering the possibility of public criticism.

**(2) Professionalism and Judicial Temperament.** Evaluations will determine the extent to which each judge:

(a) Treats persons with whom the judge has professional contact (staff, attorneys, and, in the case of trial judges, parties, witnesses, and jurors) with courtesy and respect;

(b) Demonstrates emotional maturity and multicultural awareness;

(c) Acts with patience and self-control;

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- (d) Avoids impropriety and the appearance of impropriety; and
- (e) Acts in a manner that instills public confidence in the judiciary.

**(3) Knowledge and Understanding of the Law.** Evaluations will determine the extent to which each judge:

- (a) Understands and applies the relevant law and the rules of evidence and procedure;
- (b) When exercising discretion appreciates the importance of flexibility and common sense in ensuring just results; and
- (c) Exercises sound legal reasoning.

**(4) Communication Skills.** Evaluations will determine the extent to which each judge:

- (a) Prepares well thought out, clearly presented rulings;
- (b) Communicates effectively in a clear and logical manner while on the bench;
- (c) Is appropriately sensitive to the impact of nonverbal communications; and
- (d) In the case of trial judges, communicates with jurors regarding court procedures, their duties, and delays in the proceedings as they occur.

**(5) Administration.** Evaluations will determine the extent to which each judge:

- (a) Appropriately enforces court rules, orders, and deadlines;
- (b) Makes decisions in a prompt, timely manner;
- (c) Is punctual and prepared for court and, in the case of trial judges, maintains control over the courtroom; and
- (d) Manages his or her caseload efficiently and in a manner which meets the needs of each case.

**(d) SOURCES OF INFORMATION**

**(1) Data Collection.** Survey questionnaires approved by the Committee will be used to collect information from the following persons who have appeared before or had professional contact with the judge being evaluated:

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(a) Attorneys. All attorneys who have appeared before the judge during the six to eighteen months preceding the evaluation;

(b) Judges. All judges who, during the twelve months preceding the evaluation, have reviewed the record in a case presided over by the judge being evaluated or have had a decision reviewed by the judge being evaluated (excluding, however, colleagues on the same bench);

(c) Jurors. In the case of trial judges, all jurors who have rendered a verdict in a case during the three to twelve months preceding the evaluation; and

(d) Pro se litigants. In the case of trial judges, all litigants who have appeared pro se in a matter before the judge during the three to twelve months preceding the evaluation.

**(2) Local Conditions.** Where a range of time is set forth in this Rule, the Committee should choose an evaluation period that will likely generate a statistically valid number of responses. This evaluation period will vary depending upon local conditions. Before choosing the period of exposure for soliciting evaluations of the judges of any court, the Committee should consult with local bench and bar associations.

**(3) Nature of Questions.** Surveys distributed to non-lawyers should focus on the judge's impartiality, professionalism, and other observable behaviors and traits. Respondents who are not lawyers should not be asked about the judge's knowledge and understanding of the law.

**(4) Avoidance of Bias.** Surveys should ask respondents whether there is any reason why they cannot give a fair and impartial evaluation of the judge. If a person answers this question with anything other than an unqualified "no," that person's answers to other survey questions about the judge will not be counted.

**(e) EVALUATION PROCEDURE**

**(1) Attorneys.**

(a) Court personnel will provide the Committee with a list of attorneys who have appeared before the judge during the relevant time period, or information from which such a list can be reasonably derived, on or before February 15<sup>th</sup> of the evaluation year.

(b) The Committee or its designee will deliver to each eligible attorney a separate survey and (for mailed surveys) a postage prepaid return envelope for each judge the attorney is eligible to evaluate no later than April 15<sup>th</sup> of the evaluation year.

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(c) Attorneys will return surveys directly to a designated data evaluation center.

(d) Surveys will be confidential and anonymous except for coding used for tracking and validation.

**(2) Judges.**

(a) The Committee or its designee will ask judges to identify other judges whom they are eligible to evaluate.

(b) The Committee or its designee will deliver to each eligible judge a separate survey and (for mailed surveys) a postage prepaid return envelope for each judge that judge is eligible to evaluate no later than April 15<sup>th</sup> of the evaluation year.

(c) Judges will return surveys directly to a designated data evaluation center or other location.

(d) Surveys will be confidential and anonymous except for coding used for tracking and validation.

**(3) Jurors.**

Jurors rendering a verdict in a case will be given a survey questionnaire. As soon as possible after the jury has been discharged, the bailiff or clerk in charge of the jury will give each juror an evaluation questionnaire and a return envelope. Jurors may complete the survey in the jury deliberation room or at a later time.

**(4) Pro Se Litigants.**

(a) Pro se litigants appearing before the judge will be given an evaluation questionnaire and a return envelope.

(b) The litigants may complete the survey while they are in the courthouse or at a later time.

**(f) SELF-IMPROVEMENT PROCESS**

(1) A central component of the judicial performance evaluation program is to promote efforts to improve the performance of individual judges.

(2) To further judicial self-improvement, in addition to the average scores received in each evaluation category, the Committee will give each judge being evaluated the results for each question in the survey.

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(3) The narrative comments contained in the survey forms, which will be anonymous, will be extracted and provided to the judge for the purpose of self-improvement.

(4) All documents, tables, data, and narrative comments provided to individual judges for purposes of self-improvement will be confidential.

(5) A voluntary judicial conferencing system is encouraged. This system, which could be managed by the local bar association, would include interviews with attorneys who have appeared before the judge, as well as the preparation of a confidential written report for the judge to provide feedback on the judge's performance, including strong points and areas of needed improvement.

(6) In even-numbered years, the Committee will collaborate with the committee planning the Spring Conference of each judicial association to prepare and present a plenary session, lasting at least one hour, that addresses areas for improvement in judicial performance. This session will focus upon any weaknesses identified in the judicial performance evaluations conducted during the preceding two-year period.

**(g) EVALUATION OF NON-JUDGE CANDIDATES FOR JUDICIAL OFFICE**

**(1) Application of Rule.** If a candidate for judicial office is not currently a judge, the Committee will conduct an evaluation of that candidate as promptly as possible and publicize the results in the same manner used to publicize the results of evaluations of sitting judges who are candidates for election or reelection. If a candidate was previously a judge, and an evaluation of the candidate's performance in that role is available, the Committee may publicize the results of the previous evaluation in lieu of following the approach described in the remainder of this Part (g).

**(2) Criteria.** Non-judge candidates will be evaluated on the criteria identified in Part (c) of this rule. To the extent that these criteria require evaluation of performance while presiding in the courtroom, the Committee will, if feasible, examine the candidate's performance in analogous settings (e.g., pro tem service, service as a mediator or arbitrator), or ask evaluators to draw inferences from the settings in which they have observed the candidate.

**(3) Sources of Information.** The Committee will collect information from the following persons who have had professional contact with the candidate: judges before whom the candidate has appeared during the past three calendar years (other than the judge against whom the candidate is running); attorneys who have appeared before the candidate or have been co-counsel or opposing counsel during the past three calendar years; and other professional references supplied by the candidate, but no more than the total number of judges and attorneys from whom information is collected under the preceding provisions of this Part (g)(3).

**(4) Procedure.** If time permits, survey questionnaires will be distributed to the persons identified above. As needed, the Committee will conduct telephonic or in-

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person interviews to accelerate assembly of the information called for by the survey instruments. Names of persons to be surveyed or interviewed will be drawn from the disclosure statement prepared by the candidate for appointing authorities, updated by the candidate, as well as those persons identified pursuant to Part (g)(3). If the candidate has not already prepared such a statement, he or she will submit one to the Committee within one week after filing (or, if earlier, announcing) for judicial office.

**(5) Alternative.** If it is not feasible to use the sources of information and the procedure set forth above, the Committee may conduct a bar poll of respondents who certify that they have personal knowledge of the candidate and can fairly assess the qualities that they are evaluating.

**(h) CONFIDENTIALITY**

**(1) Necessity of Confidentiality, Generally.** Judicial performance evaluations must be conducted in strict confidence to ensure that the results are valid and based on reliable information. Disclosure of evaluation information other than in the manner permitted by this Rule would undermine the goals of the program and would reduce the free flow of information. For this reason, all records and information obtained and maintained by the Committee concerning the performance of individual judges are strictly confidential and may not be disclosed except as provided in this Rule. The Committee will take reasonable steps to safeguard the confidentiality of its records. Such records and information shall be neither admissible nor discoverable in any action of any kind in any court or before any tribunal, board, or agency.

**(2) Mid-term Evaluations.** Records and information assembled by the Committee during mid-term evaluations will constitute personal information in files maintained for elected officials.

**(3) Public Disclosure of Evaluation Results.** In election years, the Committee will release to the public the results of all evaluations of judges and judicial candidates. The Committee will determine the most appropriate format to present such information, but at a minimum will disclose to the public the average score received on each of the five criteria listed in Part (c) from each group of respondents listed in Part (d).

**(4) Completed Questionnaires.** To ensure confidentiality of respondents' answers, the Committee's agent will remove any information from the questionnaires that may identify the respondent, and retype any handwritten comments or notes, before submitting the results of the completed questionnaires to the Committee.

**(5) Disclosure of Confidential Information.** Upon a majority vote of the Committee, with the approval of the Supreme Court, the Committee may release confidential information concerning a judge in the following circumstances:

(a) An inquiry is initiated that becomes the subject of widespread concern, the

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release of information would benefit the public, and the judge signs a waiver for this purpose; or

(b) A government agency or nominating committee requests information concerning the potential appointment of a judge or former judge to another position, and the judge signs a waiver for this purpose.

**(6) Waiver by Selective Disclosure.** A judge waives confidentiality of information by disclosing confidential information relating to the judge to persons other than members of the Committee, its staff, or the judge's staff, attorneys, or advisors.

**(7) Identity of Respondents Not Subject to Exception or Waiver.** Under no circumstance may the Committee or any member of its staff release information that may identify or lead to the identification of a person providing information or making comments regarding a judge.

**(8) Written comments.** Any written comments received by the Committee are not public and will be made available only to Committee members and the judge being evaluated, except that anonymous narrative comments contained in the survey forms, with the name of the judge redacted, may be provided to the Administrative Office of the Courts for use in development of judicial education programs. Comments are solicited in an effort to provide feedback to the judge and to assist the judge in a self-evaluation process. Committee members may not reveal the contents of any comment concerning a judge being evaluated to anyone other than other Committee members and the judge.

**COMPANION RULE CHANGES (proposed new language underscored)**

**RPC 8.2(b):** A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct and of General Rule 35 concerning Judicial Performance Evaluations.

**CJC Canon 1, Comment:** Add the following new paragraph at end of first paragraph: Consistent with their duty to participate in establishing, maintaining, and enforcing high standards of judicial conduct, judges shall participate fully in judicial performance evaluations conducted under the authority of GR 35.

**White Paper on  
Judicial Performance Evaluations**

**American Judicature Society  
Washington State Chapter**

**June 8, 2005**

# **Judicial Performance Evaluations**

American Judicature Society

Washington State Chapter

June 8, 2005

## **I. Introduction**

Over the past six years, the Washington State Chapter of the American Judicature Society (“AJS”) has been working to develop an effective program of performance evaluations for Washington state judges. The AJS has examined programs used elsewhere, developed and pilot-tested evaluation instruments for both trial and appellate judges, and wrestled with practical issues of implementation. This report summarizes these efforts and asks the Supreme Court to adopt a formal evaluation program by court rule.

## **II. The Challenge**

Few things are more central to the dual task of doing justice and building public faith in the institutions of representative government than assuring that judges perform their duties with both integrity and skill. Washington has been very fortunate in the quality of its judges. But even good judges can improve their performance, and voters could benefit from having more and better information about judicial candidates.

At present, there are few tools broadly available that judges can use to evaluate and improve specific aspects of their own performance. Informal feedback mechanisms are notoriously unreliable. Voters, too, have a hard time distinguishing among judicial candidates, making them reluctant to participate in electing judges and potentially subjecting judges to single-issue attacks. Bar polls and ratings, even where available, offer only the perspective of practicing attorneys. Judicial independence, integrity, and excellence are too important for us to be satisfied with this state of affairs.

The time has come for reform. Thirty years have passed since Alaska established the first state-sponsored program to evaluate judicial performance. Twenty years ago the ABA published a set of proposed guidelines for such programs. A task force led by then-Justice Robert F. Utter undertook to develop a program for Washington, but it was never implemented. The Walsh Commission recommended in 1996 that “[a] process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme Court.” The Legislature has been considering bills that would require evaluations and recommendations for judicial appointments. In at least one other state, an evaluation system was adopted by voter initiative. The Supreme Court should act before others seize the initiative.

## **III. Measuring What Matters**

The first task that the AJS undertook was to articulate performance standards for judges. AJS believes that a judge should possess high levels of integrity and impartiality, professionalism, and legal ability, as well as excellent communication and administrative skills. Under those headings, a trial judge should strive to do the following:

Integrity and Impartiality	<ul style="list-style-type: none"> <li>• Treat all persons fairly, equally, and without discrimination based on race, gender, income, or any other bias</li> <li>• Conduct proceedings fairly, impartially, and with an open mind</li> <li>• Make decisions without consideration of public criticism</li> </ul>
Professionalism	<ul style="list-style-type: none"> <li>• Treat parties, witnesses, jurors, staff, and attorneys with courtesy and respect</li> <li>• Demonstrate emotional maturity and multicultural awareness</li> <li>• Act with patience and self-control</li> <li>• Act in a manner that instills public confidence in the judiciary</li> </ul>
Legal Ability	<ul style="list-style-type: none"> <li>• Understand and apply the relevant rules of law, evidence, and procedure</li> <li>• Appreciate the importance of flexibility and common sense in ensuring just results</li> <li>• Exercise sound legal reasoning</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Be punctual and prepared for court</li> <li>• Maintain control over the courtroom</li> <li>• Demonstrate a commitment to the improvement of the judicial system</li> <li>• Appropriately enforce court rules, orders, and deadlines</li> <li>• Make decisions and rulings in a prompt, timely manner</li> </ul>
Communication	<ul style="list-style-type: none"> <li>• Communicate in a clear and logical manner while on the bench</li> <li>• Prepare well thought out, clearly presented rulings</li> <li>• Communicate with jurors regarding court procedures, their duties, and delays in the proceedings as they occur</li> </ul>

On the appellate level, these same qualities are manifest when a judge undertakes to do the following:

Integrity and Impartiality	<ul style="list-style-type: none"> <li>• Treat all person fairly, equally, and without discrimination based on race, gender, income, or any other bias</li> <li>• Conduct proceedings and make decisions fairly, impartially, with an open mind and without consideration of public criticism</li> </ul>
Professionalism	<ul style="list-style-type: none"> <li>• Treat staff and attorneys with courtesy and respect</li> <li>• Demonstrate emotional maturity and multicultural awareness</li> <li>• Act with patience and self-control</li> </ul>

	<ul style="list-style-type: none"> <li>• Act in a manner that instills public confidence in the judiciary</li> </ul>
Legal Ability	<ul style="list-style-type: none"> <li>• Understand and apply the relevant law</li> <li>• Appreciate the importance of flexibility and common sense in ensuring just results</li> <li>• Exercise sound legal reasoning</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Demonstrate a commitment to the improvement of the judicial system</li> <li>• Appropriately enforce court rules, orders, and deadlines</li> <li>• Make decisions in a prompt, timely manner</li> </ul>
Communication	<ul style="list-style-type: none"> <li>• Prepare well thought out, clearly presented written rulings</li> </ul>

Under the guidance of Professor David C. Brody, and utilizing the ABA guidelines, the AJS developed questionnaires to measure these qualities. Pilot tests were conducted among both trial and appellate judges. In the former case, questionnaires were distributed to attorneys, witnesses, and jurors who appeared in the trial judges' courtrooms. In the case of appellate judges, questionnaires went to attorneys appearing before the appellate court and to superior court judges in the same jurisdiction. The judges who were evaluated found the results very useful; the feedback they received would not otherwise have been available to them.

Professor Brody's article summarizing his findings was the cover story in the January-February 2004 issue of Judicature. A copy of this article is attached.

#### **IV. Implementation**

Pilot testing not only validated the AJS's questionnaire-based evaluation process; it also established that a well-designed evaluation program can be carried out at reasonable cost. Nevertheless, a reliable source of on-going funding is essential: grants and volunteer labor are not sufficient to carry out an on-going, state-wide program of judicial performance evaluations.

Discussions on this topic and other practical questions of implementation yielded the following tentative conclusions:

##### **A. Administration**

AJS believes that a panel of citizens should oversee the evaluation process, and that its members should be appointed by the Supreme Court. The panel should represent the diversity of the state's peoples. It should include both attorney and non-attorney members. AJS favors including retired judges, a substantial number of well-informed lay representatives, and members of good-government groups such as AJS and the League of Women Voters. To assure continuity, members should serve staggered terms. Each participant must be committed to hard work and to achieving results. The Administrative Office of the Courts should provide staff support and oversight.

## B. Respondents

Attorneys should be asked to evaluate trial court judges before whom they have recently appeared. Because broad bar polling raises questions of familiarity and fairness, the names of attorneys to be surveyed should be collected from the clerks' records. AJS believes that jurors and appellate judges should also be contacted for evaluations of trial judges.

At the appellate level, evaluations should be solicited from attorneys who have recently appeared before the Court of Appeals and the Supreme Court. Trial judges should also be invited to evaluate appellate judges with whose work they are familiar. Court of Appeals judges should have the opportunity to evaluate Supreme Court justices, and vice versa. In each case, an evaluating judge should confirm that he or she meets the standard of familiarity required to make an informed evaluation. Asking judges on the same court to provide evaluations of one another could create collegiality issues, and therefore it seems advisable to limit judicial respondents to judges sitting on different courts.

AJS believes that, for a variety of reasons, it would not be worthwhile to solicit evaluations from witnesses, court staff, or academic commentators.

## C. Confidentiality

Respondents must be assured that their views will not be traceable to assure candid evaluations. The methods used in AJS's pilot project to collect and assemble survey responses provide such assurance. For additional protection, responses should reflect ratings on specific criteria and not include narrative comments.

A similar process of evaluation, conducted mid-term, could be a very valuable tool for judicial self-improvement. But the confidentiality required for this kind of evaluation process is likely to require legislation, given the clear public policy in this state favoring release of public records absent specific exemption. AJS believes that the citizen panel created to oversee judicial evaluations should be charged with developing a proposal for mid-term evaluations, with any necessary legislative amendments. It will be essential to work with public access proponents to craft such a proposal.

## D. Public education

A key goal of the judicial evaluation program envisioned by AJS is to provide information to the public for its consideration in judicial elections. AJS believes that evaluations for this purpose should be conducted in the first quarter of the election year, and the results should be published in the Judicial Voter Pamphlet as well as electronically. The results should list the number of responses and provide the judge's response, if offered. AJS does not favor having the evaluation panel recommend either for or against any judge. Rather, bar associations and editorial writers may interpret the results and offer recommendations if they wish.

E. Non-judicial candidates for judicial office

AJS believes that all candidates for election to the bench should be evaluated and the results of those evaluations publicly disseminated. To that end, the judicial evaluation panel should be empowered to evaluate not only judges but also candidates for judicial office who lack judicial experience. The same qualities are relevant for all candidates. In evaluating non-judge candidates, the panel should focus on the candidate's arbitration, mediation, and pro tem experience, seeking evaluations from attorneys who have appeared before or opposite the candidate and judges who have had the candidate in their courtroom.

Although candidates who are not currently part of the court system cannot be compelled to cooperate, and current filing deadlines create practical difficulties in conducting evaluations and publicizing the results, these challenges are not insurmountable. AJS believes that publicizing the evaluation process and disclosing any lack of cooperation will discourage stealth candidates. In addition, the evaluation panel can elicit and publicize information from sources not disclosed by the candidates. The end result will be an evaluation process that is fair to all participants and that promotes voter knowledge.

Respectfully submitted,

American Judicature Society, Washington State Chapter  
Mary Wechsler, President; Charles Wiggins, President-Elect  
Board Members: Judge William Baker, Judge Ronald Cox, Justice Mary Fairhurst, Justice Faith Ireland (Ret.), Robert Mitchell, Judge John Schultheis, Magistrate Judge Mary Alice Theiler, and Lish Whitson

AJS Judicial Evaluation Committee

Robert Mitchell, Chair

Members: Judge Sharon Armstrong, Judge William Baker, Professor David Brody, Judge Roseanne Buckner, Administrative Law Judge Robert Kingsley, Judge Terry Lukens (Ret.), Greg Miller, Richard Morry, Professor Nicholas Lovrich, Kristin Olson, Karen Place, Judge Jean Rietschel, John Ruhl, Judge John Schultheis, Justice Charles Z. Smith (Ret.), Judge Mariane Spearman, Gary Strauss, Professor John Strait, Rowland Thompson, and Mary Wechsler

**Board of Judicial Administration**  
**December 12, 2014**  
**Proposal for Judicial Performance Evaluation Program**

**Judicial performance evaluation programs exist in  
16 states and the District of Columbia:<sup>1</sup>**

**In 6 states, performance evaluation results are provided to voters for use in retention elections.**

- Alaska
- Arizona
- Colorado
- Missouri
- New Mexico
- Utah

**In 3 states and the District of Columbia, performance evaluation results are provided to those responsible for reappointing judges.**

- Connecticut
- District of Columbia
- New Jersey
- Vermont

**In 2 states, summary performance evaluation results (i.e., individual judges are not identified) are provided to the public to enhance confidence in the courts.**

- Hawaii
- New Hampshire

**In 5 states, performance evaluations are provided only to individual judges for the purpose of self-improvement.**

- Florida
- Idaho
- Illinois
- Massachusetts
- Rhode Island

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<sup>1</sup> Source: <http://iaals.du.edu/initiatives/quality-judges-initiative/implementation/judicial-performance-evaluation> (December 11, 2012)

# NATIONAL CONFERENCE ON EVALUATING APPELLATE JUDGES: *Preserving Integrity, Maintaining Accountability*

## POST-CONFERENCE REPORT





INSTITUTE *for the* ADVANCEMENT  
*of the* AMERICAN LEGAL SYSTEM



## *Evaluating Appellate Judges: Preserving Integrity, Maintaining Accountability* Post-Conference Report

### I. Overview

The Institute for the Advancement of the American Legal System (IAALS) at the University of Denver has worked in the area of judicial performance evaluation (JPE) from IAALS' inception in January 2006. In August 2008, IAALS convened its first conference on JPE—*Judicial Performance Evaluation: Strategies for Success*—which focused on the development, structure, and improvement of JPE programs across the nation. On August 11 and 12, 2011, IAALS convened its second national conference, this time focusing on appellate JPE, in response to the heightened profile of appellate judicial retention elections and the need for more tailored means of evaluating appellate judges and justices.

Over 70 state court judges, practitioners, academics, state JPE program coordinators from across the nation, and other leaders in the field attended the conference. The two-day discussion engaged panelists and participants on the roles and responsibilities of an appellate judge, appropriate measures and methods for evaluation, challenges and obstacles encountered in establishing and implementing JPE programs, strategies for improving existing performance evaluation programs, and the role of JPE in the growing contentiousness and politicization of appellate judicial retention elections. Conference participants engaged in an open and honest dialogue that was focused on the overarching importance of appellate JPE and the identification of concrete and meaningful improvements that can be made to the evaluation process.

In advance of the conference, IAALS administered a survey of appellate judges and justices in eight of the eleven states that have official appellate JPE processes.<sup>1</sup> The results of this survey helped to both shape the agenda for the conference and shed light on potential areas for improvement in the process. Drawing from these survey results, conference materials, and participant dialogue, this post-conference report discusses the various approaches currently in place for evaluating appellate judges and justices, and identifies themes, recommendations, and areas for future work in appellate JPE.

### II. Judicial Performance Evaluation for Appellate Judges

Judicial performance evaluation (JPE) for appellate judges and justices appears in a variety of contexts. In states where appellate judges are retained by voters (e.g., Alaska, Arizona, and Colorado) or reappointed by decision makers (e.g., Hawaii and Vermont), JPE programs provide relevant information to those making retention or reappointment decisions. JPE is also used for purposes other than retention or reappointment. In New Hampshire and Massachusetts, where state court

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<sup>1</sup> The survey is appended to the Post-Conference Report. Sixty-four appellate judges responded to the survey, from the following states: Alaska (6), Arizona (10), Colorado (10), Massachusetts (3), Missouri (10), New Mexico (6), Tennessee (4), and Utah (6), along with 9 judges who did not identify their state.

judges have life tenure (until age 70), JPE is used for the purposes of enhancing public confidence in the courts and self-improvement, respectively.

Bar associations in a number of states—for example, Florida, Iowa, and Wyoming— have established unofficial JPE programs in which judges are rated by attorneys and results are made public. In some states, independent organizations undertake evaluations that rate or evaluate judges in accordance with the organization’s mission—be it political, religious, or some other perspective. These independent evaluation efforts can co-exist with official programs. For example, the Massachusetts Judicial Branch undertakes performance evaluations of judges while the Massachusetts Bar Association conducts an independent evaluation. In Iowa, the Iowa State Bar Association conducts a statewide judicial plebiscite prior to retention elections and makes results public, while an independent organization known as Iowa Judicial Watch issues evaluations in which “ideology makes up a substantial portion of the grade.”<sup>2</sup> Similar organizations are active in Colorado and Florida. Clear the Bench Colorado identifies justices who “demonstrate a consistent pattern of deciding cases in contravention of the Colorado Constitution, established statutory law, legal precedent, & ‘rule of law’ principles,” while Florida Judicial Review “provides common sense, citizen analysis of judges [sic] decisions and promotes an independent, originalist judiciary.”<sup>3</sup>

There are also national websites that invite attorneys and other court users to rate both federal and state appellate judges.<sup>4</sup> RatetheCourts.com invites site visitors to anonymously evaluate any state or federal judge, according to survey criteria recommended in the American Bar Association’s Guidelines for the Evaluation of Judicial Performance and used by the Colorado Commission on Judicial Performance.<sup>5</sup> Its sister site, CourthouseForum.com, encourages the public “to freely and candidly post and discuss information and opinions about the nation’s courts, judiciary and cases.”<sup>6</sup> RobeProbe.com allows both lawyers and litigants to rate the performance of judges and bankruptcy trustees and identifies the “best” and “worst” judges based on those ratings.<sup>7</sup>

These examples illustrate that a variety of approaches are taken to evaluating appellate judicial performance. However, certain characteristics are common to many programs, particularly those that are state-sponsored. Surveys are usually distributed to attorneys who have appeared before the judge, as well as to court staff, clerks, and/or other judges, both at the trial or appellate level. Judges may fill out self-evaluation questionnaires and/or be interviewed by the evaluating body. In some states, a predetermined number of appellate opinions authored by the judge are reviewed, and evaluators may take into account reversals on appeal and caseload statistics.

Official JPE programs employ similar criteria in the evaluation as well. Although survey questions and evaluation guidelines differ by state, the following criteria are commonly used: legal ability, integrity and impartiality, communication skills, temperament and demeanor, and administrative performance and skills.

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<sup>2</sup> IOWA JUDICIAL WATCH, <http://www.iowajudicialwatch.org> (last visited Nov. 7, 2011).

<sup>3</sup> CLEAR THE BENCH COLO., <http://www.clearthebenchcolorado.org> (last visited Nov. 7, 2011); FLA. JUDICIAL REVIEW, <http://www.floridajudicialreview.com> (last visited Nov. 7, 2011).

<sup>4</sup> One national site, The Robing Room, is limited to attorney evaluations of federal district court judges and magistrate judges. THE ROBING ROOM, <http://www.therobingroom.com> (last visited Nov. 7, 2011).

<sup>5</sup> RATE THE COURTS, <http://www.ratethecourts.com> (last visited Nov. 7, 2011).

<sup>6</sup> COURTHOUSE FORUM, <http://www.courthouseforum.com> (last visited Nov. 7, 2011).

<sup>7</sup> ROBEPROBE.COM, <http://www.robeprobe.com> (last visited Nov. 7, 2011).

The extent to which evaluation results are distributed and with what level of detail depends largely on the purpose and goals of the program. In states where JPE programs are designed to provide information to voters or other decision makers, the evaluation results are generally made available in substantial detail, although they may be initially presented in summary form with full survey results and additional information available for those interested. In New Hampshire, only summary JPE results for the evaluated court are provided to the public, and in Massachusetts, where JPE is solely for self-improvement purposes, evaluation results are provided only to the evaluated judge.

### **III. Broad Conference Themes**

#### **A. Importance of Judicial Performance Evaluation**

Conference panelists and participants affirmed the importance of JPE. As a vital component for ensuring public trust and confidence in the judiciary, JPE programs demonstrate a willingness on behalf of individual judicial officers and the judiciary as a whole to be accountable for their performance. The value of the JPE process, according to John Broderick, Jr., Dean of the University of New Hampshire School of Law, “is to make sure that the public [that judges] serve ... has confidence in the service they are giving.” Clear the Bench Colorado Director Matt Arnold echoed this sentiment: “Providing substantive information is not only important for the judges...It is absolutely critical to cementing respect for the process and respect for the rule of law.”

JPE may have an additional role in states interested in moving from contested elections to a commission-based appointment and retention election system. Sarah Walker, President of the Minnesota Coalition for Impartial Justice, described public performance evaluation as the “most critical tool in passing a comprehensive reform package.” Without this component, according to Walker, the progress made to date by the Coalition—which is working toward performance evaluation with merit selection and retention elections for all Minnesota judges—would not have been possible.

Well-designed and well-implemented evaluation programs bring transparency to the judiciary by measuring those aspects of the appellate process that are observable. After all, public trust and confidence should ultimately turn on the appearance of *how* the result was achieved, not *what* particular result was achieved. At the conference, Professor Jordan Singer of New England Law|Boston presented his research on the mind of the judicial voter, which suggests that voters are motivated primarily by procedural fairness considerations, rather than by policy preferences or case outcomes. Kansas Court of Appeals Judge Steve Leben echoed Professor Singer’s comments, telling conference participants that procedural fairness drives both litigants and citizens generally in how they think about their court system. Conference participants also agreed that performance evaluation does not pose a threat to judges’ decisional independence simply because it holds judges accountable for their work. According to the IAALS pre-conference survey, appellate judges agree, with 73 percent of respondents indicating that the evaluation process has no impact on their independence as a judge/justice. In fact, 16 percent reported that the process “enhances independence.”

Judicial performance evaluation also serves a critical educational component, by providing voters and decision makers with an essential tool for assessing judges. Of the appellate judges surveyed by IAALS, 71 percent viewed evaluation results (and recommendations, if made) as having “some influence” on voters’ decisions in retention elections and 17 percent describing them as having “a lot of influence.” Conference panelists agreed that in states where judges stand for

retention, it is vital that voters receive objective information about a judge's performance. Just as the judiciary has an obligation to the public to strive for the highest levels of quality, the public—when given the opportunity through retention elections—in turn has an obligation to promote quality by casting an educated vote. Judicial performance evaluation, according to Colorado Court of Appeals Judge Russell Carparelli, raises for the public the “expectation that they are part of the process and that they should be informed and they should seek to be informed.”

But JPE accomplishes more than simply educating voters, other decision makers, and/or the general public on the performance of individual judges and justices. It can also provide broader education on the proper role of judges and the role of the courts. This component is of growing importance, as appellate judges and justices are increasingly coming under fire for decisions in particular cases. In this respect, JPE can focus the public on the right indices of quality judicial performance, as opposed to inappropriate or non-objective standards—i.e., individual case outcomes or political ideology. According to Rebecca Love Kourlis, IAALS Executive Director, JPE “suggests to voters that they should be making decisions about judges on the basis of how well they do their job, not on the basis of one hot-button opinion.”<sup>8</sup>

Furthermore, these programs benefit the judges and justices subject to evaluation by identifying areas in which their performance is deficient. Because of ethical and professional rules that limit communication and other interaction with individuals who appear in their courtrooms, judges are often unable to get candid feedback on their performance. At the conference, Judge Leben highlighted a disconnect between how judges view their performance and how the public views judges' performance:<sup>9</sup> “We are out of touch with how we are doing in anybody else's eyes and ... the longer we are on the bench, the more we tend to grow out of touch with what regular people are thinking.” When asked about the extent to which the evaluation process had been beneficial or detrimental to their professional development, 53 percent of appellate judge respondents to the IAALS survey believed it was “somewhat beneficial” and 10 percent found JPE “significantly beneficial,” while only three percent described the evaluation process as “somewhat detrimental.” Although one out of three respondents felt that it had no effect on their professional development, JPE programs have the potential to promote subconscious improvement in judges' performance, based on the simple awareness that they are being evaluated. An analysis of the IAALS survey comments shows that the primary benefit respondents see in JPE is self-improvement, provided that the evaluations give constructive feedback on potential areas of improvement. The comments also suggest that more frequent evaluations—i.e., not just during election years—would be especially helpful for self-improvement purposes.

## **B. Need to Tailor Performance Evaluations for Appellate Judges/Courts**

Conference participants recognized that the role and responsibilities of trial and appellate judges differ in marked ways and that such differences have important implications for JPE processes.

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<sup>8</sup> *How Should Appellate Court Judges Be Evaluated?*, KUVU THE TAKE AWAY (Aug. 10, 2011), <http://soundcloud.com/nheffel/kuvos-nathan-heffel-and>.

<sup>9</sup> Citing a 2001 Justice at Stake survey of state court judges nationwide and a national population sample which found that 40 percent of the general public described courts in their state as “poor” or “fair” while none of the judges surveyed described courts as “poor” and only four percent described them as “fair.”

The essential function of both trial and appellate court judges, said Judge Russell Carparelli, is to ensure fair and impartial application of the rule of law. Where the public misperception begins, however, is with the distinction between the trial court's role of fact finding and the appellate court's function of reviewing the trial court findings and application of law to those facts. The difference in purpose and manner in which trial and appellate court judges carry out these roles also creates difficulties in the evaluation process, as judges encounter different responsibilities and expectations. For instance, the trial judge initially knows very little about a case when it comes before her, as opposed to the appellate judge who has access to the full trial record and appellate briefs. There is, therefore, a different expectation of how prepared a trial judge can and must be, as opposed to the preparation expected of an appellate judge. There is also a significant difference in a trial judge's versus an appellate judge's exposure to the parties and counsel. Over the course of the pretrial and trial process, the trial judge may have substantial interactions with parties and counsel. At the appellate level, this interaction is generally confined to an oral argument that is strictly limited in length and in which only counsel participate. This difference in exposure potentially handicaps those responsible for evaluating the demeanor and preparation of appellate judges.

Fundamentally, the work product of the trial judge and the appellate judge is different. The trial judge oversees trial proceedings, including ruling on motions, conducting hearings, settling evidentiary issues, and in the case of a bench trial, rendering a judgment. The trial judge may also have conducted case conferences, issued pretrial orders, and resolved interparty disputes, depending on the point at which the judge became involved with the case. These pretrial and trial activities comprise the trial judge's work product. The appellate judge, on the other hand, reviews the trial record and party briefs, might participate in an oral argument, and then produces a written opinion—which may or may not be published. The primary work product generated by an appellate judge or justice, therefore, is the written opinion. Although a few programs review opinions as part of a broader evaluation process, there is no general agreement as to how this review should be conducted, as will be covered in detail below. As the principle work product of appellate judges, and the primary—if not only—way in which appellate judges communicate the legitimacy of their decisions, conference participants were unanimous in expressing a need for some sort of opinion review, based upon appropriate criteria, as part of the JPE process.

There is another important institutional difference between trial and appellate judges that further complicates any review of appellate opinions. Unlike trial court judges who operate individually, appellate judges work in panels. While the written opinion issued by the court may list a primary author, the opinion itself is often a collective effort. Whereas the trial court judge acts unilaterally, thus making it appropriate to evaluate his individual performance, the line becomes more blurred with respect to the appellate judge, whose performance has both a collaborative and individual component. In this interactive working environment, court culture can play an important role in an appellate judge's performance, and understanding that culture can be a factor in the evaluation. To wit, one respondent to the IAALS survey of appellate judges commented that the evaluating body should solicit more “input from the judges as to how their opinions are formulated and the environment they are in.”

#### **IV. Recommendations for Improving Appellate Performance Evaluation**

In the IAALS survey of appellate judges and justices, a total of 62 percent of respondents described themselves as “very satisfied” (29 percent) or “somewhat satisfied” (33 percent) with the process for evaluating their performance. However, 24 percent said that they were neither satisfied nor dissatisfied, and a total of 14 percent reported being “somewhat” or “very” dissatisfied—thus

indicating that there is room for improvement in appellate judicial performance evaluation programs. With regard to specific aspects of the performance evaluation process that could be improved upon, the second most frequently given answer (by 44 percent of respondents) was “additional bases for evaluation—for example, opinion review, workload statistics, self-evaluation, etc.” IAALS drilled down on this topic both in the survey and in conference panel discussions.

## **A. Additional Bases for Evaluation**

### *Courtroom Observation*

More than three-fourths (76 percent) of respondents to the IAALS survey agreed that courtroom observation should be part of the evaluation process for appellate judges. As one respondent noted, “[i]t is not only that litigants are entitled to a fair and impartial hearing, they are also entitled to the appearance of a fair and impartial hearing. The demeanor and conduct of the judges during oral arguments is the most direct evidence of the latter.” Another respondent replied that “[b]eing part of a multi-judge appellate bench is so much different than sitting on the bench as a solo trial judge, and I think we are much less sensitive to how we are being perceived and experienced individually when part of an appellate bench.” In this sense, ongoing observation from someone without a stake in the outcome of the case could provide valuable feedback to appellate judges. On the other hand, survey respondents expressed concern that courtroom observers would mistake a lack of questions from a justice or judge during oral arguments as a lack of preparation, which has the potential to lead judges to ask questions purely for the sake of showcasing their knowledge of the case.

During the conference, Utah Judicial Performance Evaluation Commission member and retired district court judge Anthony Schofield discussed Utah’s developing program for courtroom observation. Although Utah has not yet addressed appellate courtroom observation, Judge Schofield told conference participants that it was clear to him that citizens want procedural fairness, and a courtroom observation program is well suited to spotting, understanding, evaluating, and reporting on this issue.

### *Appellate Opinion Review*

As previously mentioned, conference participants agreed that review of written opinions is an essential component of the evaluation process. Similarly, nearly nine out of ten respondents (89 percent) to the IAALS survey believed that opinion review should be part of the evaluation process. As one respondent explained, “Written opinions provide the explanation for a particular outcome and the rationale for that outcome. If a judge cannot explain the reasons for the decision, public support for the judiciary and for its impartiality tends to erode.” This point, which resonated throughout the conference, has become even more relevant in light of the rising number of self-represented parties.<sup>10</sup> Dean Broderick told conference participants, “[i]f there was ever a need to be more explanatory, more transparent—it’s now.” Judge Leben agreed that appellate opinions have to be understandable by lay readers, noting that the judiciary is a branch of government and citizens should be able to know what the courts are doing and to evaluate whether they are fair.

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<sup>10</sup> For a discussion of the substantial increase in self-represented litigants in appellate courts, see Thomas H. Boyd, *Minnesota’s Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, 6 J. APP. PRAC. & PROCESS 295 (2004).

The precise metrics for evaluating opinions and the process through which such an evaluation should occur was the topic of much debate during the course of the conference. Conference participants generally agreed upon certain criteria—e.g., whether an opinion uses simple and declarative language, is easily understood, and sets forth the reasoning and rationale for the particular outcome. Some participants proposed additional criteria, such as the approach offered by Professor Muti Gulati of Duke University School of Law. Professor Gulati and the co-authors of his article, *“Not that Smart”: Sonia Sotomayor and the Construction of Merit*,<sup>11</sup> use citation rates to appellate opinions by other courts and in law journals (along with other measures, such as authorship and publication rates) as a measure of relative performance. A possible downside to this measure, particularly among state court judges, is the fact that it depends to some extent on whether the case is on the cutting edge of the law, or simply requires the application of existing principles—which would make it less likely to achieve prominence.

Another point of discussion related to who is best suited to review opinions—e.g., non-attorneys, attorneys, law professors, and/or other judges. Considering each in turn, many participants favored review by non-attorneys, as these individuals—having no legal background or familiarity with legal terms—could provide an honest analysis of the clarity of the opinion. However, a number of the comments in the IAALS survey of appellate judges expressed concern that non-attorney evaluators would lack the requisite legal knowledge and skills to review an opinion. Attorney reviewers are better suited to assess the adequacy of the reasoning given in the opinion for the outcome; however, conference participants and judges surveyed by IAALS expressed concern with having their opinions reviewed by individuals who may have a stake in the outcome (attorneys and non-attorneys alike). One respondent to the IAALS survey suggested that it would be more helpful to have a broad-based group of attorneys review opinions, rather than only those who have appeared before the court. Conference participants agreed that law professors would be able to assess the sufficiency of the analysis and clarity, even if they were not familiar with the substantive area of law addressed in the opinion. In fact, unfamiliarity with the area of law might be preferable in order to lessen the danger that a law professor would review an opinion based on its substantive outcome. Identifying and defining the line between reviewing an opinion for clarity, structure, and adequate explanation versus reviewing an opinion on the merits—the latter of which is solely the province of a higher court—was a shared concern, regardless of who the reviewers were.

The IAALS survey of appellate judges and justices suggested another category of individuals who might be well-suited to reviewing appellate opinions—other judges, both peer and trial court judges. One IAALS survey respondent suggested that “the work of the intermediate appellate judges should be reviewed by the state supreme court, which of necessity reads all opinions and deals with the quality of the court’s analysis when considering petitions for review.” Rafael Gomez, counsel for RobeProbe.com, suggested using retired judges. Some states already tap other judges for evaluation of their peers.

No clear direction emerged from the conference as to the approaches that should be taken in evaluating appellate opinions. Accordingly, IAALS established a task force to study this issue in detail and formulate recommendations for states interested in changing an existing, or incorporating a new, system for appellate opinion review as part of the judicial performance evaluation process.

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<sup>11</sup> Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1907724](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907724).

## *Appropriate Judicial Role*

Villanova University School of Law Professor Penelope Pether spoke to conference participants about areas in which appellate judges and justices are not held appropriately accountable, and should be.<sup>12</sup> For example, inadequate screening in some courts—particularly intermediate appellate courts that grant appeal as a matter of right—may result in a certain subset of cases (e.g., cases in which the government is a defendant) being decided by court staff with little or no judicial supervision. A related practice that, in Professor Pether’s view, should be examined in evaluating appellate courts and judges is whether judges sign opinions without being familiar with the record. Pether also expressed concern about the failure of some appellate courts to adhere to jurisdictional rules for non-publication of opinions and non-precedential status. She suggested that these are largely structural issues and that courts can, and should, take on their own auditing and evaluation processes for ensuring accountability and greater transparency in these areas.

## *NCSC Appellate CourTools*

Dan Hall, Vice President of Court Consulting Services at the National Center for State Courts (NCSC), spoke to conference participants about court performance, which is one component of accountability that is particularly applicable to the appellate court context where it is more difficult to assign individual responsibility for caseload outcomes. The NCSC *Appellate CourTools* are performance indicators for measuring how appellate courts handle cases, treat those that come before them, and interact with court employees.<sup>13</sup> Hall suggested that these indicators could be applied to measure performance for individual appellate judges and justices: 1) time from case filing to disposition, 2) clearance rates of cases, 3) age of active pending caseload, 4) employee satisfaction, 5) constituent satisfaction, and 6) reliability and integrity of case files. Although surveys of ‘constituents’ and employees are already undertaken in most official JPE programs, fewer programs consider clearance rates or age of pending caseload.

## **B. Evaluation Surveys**

### *Survey Respondents*

Forty-one percent of respondents to the IAALS survey of appellate judges indicated that survey respondent groups were an aspect of the performance evaluation process that could be improved upon and should be revisited. The issue of surveying attorneys who appear before appellate judges—the most commonly surveyed respondent group in the appellate evaluation process—came up in several contexts during the conference. Participants questioned whether this respondent group was in a position to evaluate the performance of a judge objectively, given their stake in the outcome. One survey respondent noted that “[r]espondents, by definition, are usually those with strong feelings either for or against.” Echoing this concern, another IAALS survey respondent opined that “because survey respondents self-select, the data collected ... is often skewed in favor of the disgruntled people who are more likely to respond than others.” This observation may be as applicable to JPE for trial court judges as it is to appellate JPE.

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<sup>12</sup> For an example of Professor Pether’s scholarship on this topic, see *Sorcerers, Not Apprentices: How Judicial Clerks and Staff Attorneys Impoverish U.S. Law*, 39 ARIZONA STATE LAW JOURNAL 1 (2007).

<sup>13</sup> Available at [http://www.ncsconline.org/D\\_Research/CourTools/index.html#](http://www.ncsconline.org/D_Research/CourTools/index.html#).

Conference participants expressed conflicting opinions about whether attorneys appearing before appellate judges on a regular basis are a positive or negative component of performance evaluation. On the one hand, repeat players have increased exposure to appellate judges, which provides more opportunity to observe levels of preparation and demeanor. On the other hand, this increased exposure has the potential to strengthen any existing biases for or against a particular appellate judge. According to one IAALS survey respondent:

Many attorneys surveyed have appeared multiple times before a judge who is being evaluated. Their comments (either in favor of retention or against it) tend to skew the responses. Perhaps ensuring that only one response from each attorney is taken into account would help this concern.

Another IAALS survey respondent suggested that the attorney respondent pool be expanded to include all attorneys who rely on appellate opinions, rather than only those who appear before the judge.

The surveying of other judges on appellate judge performance was also raised by IAALS survey respondents. A number of respondents indicated that this group might be able to provide a valuable perspective, particularly with respect to appellate opinions. As noted, this theme arose in other parts of the conference discussion as well.

#### *Survey Response Rates*

The statistical validity of evaluation surveys was a significant concern shared by evaluated judges and JPE program coordinators alike. Just over half (52 percent) of IAALS survey respondents indicated that survey response rates were an aspect of the process that could be improved upon. Appellate judges are concerned with both low response rates to evaluation surveys and self-selection of respondents, as both issues may skew the results. Several IAALS survey respondents suggested providing evaluation survey respondents with some type of an incentive to fill out the survey, to increase the sample size and reduce the effect of potential respondent bias.

In response to this concern, Nancy Norelli, Vice President of the North Carolina Bar Association Judicial Performance Evaluation Committee, explained to conference participants that her program sought to maximize response rates by mobilizing the bar to spread the word about forthcoming JPE surveys. State Bar Counselors serving as “JPE ambassadors” emailed colleagues and local bar associations, describing the program and urging all attorneys to complete the surveys. Specialty and local bars also urged their members to complete surveys by making announcements at bar and section meetings. According to Norelli, it was critical that local attorneys, rather than JPE Committee members, conveyed this message. (It is important to note that all members of the bar are surveyed in North Carolina, whereas JPE programs in other states identify a pool of potential survey respondents based on recent interaction with the evaluated judge. IAALS is examining this issue and potential modifications.)

### **C. Dissemination of Evaluation Results**

Almost one-third (32 percent) of IAALS survey respondents felt there was room for improvement with respect to the dissemination of evaluation information to the public. Two themes emerged from the IAALS survey on this point—one relating to the format and content of the

narratives prepared by the evaluating body, and the other relating to the manner and extent to which these narratives are disseminated to the public. Some of the criticisms—sometimes conflicting—offered by survey respondents on these issues included the following:

- [T]he narrative reports seem to be somewhat formulaic (short bio, say something good, say something bad), and reading the reports in the blue book only emphasizes how formulaic they are. I think this tends to undermine their credibility.
- The narrative is so general that it fails to provide the voter with anything meaningful.
- As to report format, while the evaluation panel was plainly concerned to be even-handed in providing evaluations, the danger is that their reports became too similar across judges, and therefore appeared “boilerplate,” unpersuasive, and superficial.
- All [the narrative report] does basically is parrot the unreliable data returned by the attorneys, and throw in some subjective comments on quality of opinions which may or may not be accurate.
- [T]he narrative report places too much emphasis on raw data and scores or grades, and these ... are continually misused.

These issues were discussed in some detail during the conference. The importance of evaluation results (and recommendations, where made) is not lost on appellate judges. Over two-thirds (71 percent) of those surveyed by IAALS prior to the conference described the evaluation results as having “some influence” on voters’ decisions in retention elections while 17 percent believed they have “a lot of influence.” Based on his analysis of social science data, Professor Singer argued that what citizens (voters) want when they go to the polls is simple, straightforward information about judges, much like the information provided in JPE narratives in many states. This suggests that too much detail in these narratives might put off voters. On the other hand, it is clear that short, formulaic narratives are also not particularly useful.

With respect to disseminating JPE results widely, Jane Howell, Executive Director of the Colorado Office of Judicial Performance Evaluation, shared Colorado’s “Know Your Judge” website with conference participants. The site was designed in 2010 as an easy-to-use online tool through which voters could quickly locate the judges on their ballot and the JPE results for those judges. A public service announcement (PSA) accompanied the website and, according to Howell, “gave voters, for the first time—who might not read their Bluebook but watch TV or listen to the radio—information about judges and where to go.” Between August and October of 2010, the PSA ran 14,000 times on 35 television stations and 270 radio stations.

Availability of objective and informative judicial performance evaluation results is becoming more and more important, as retention battles are heating up around the country and tending to focus on one or a few opinions that address hot-button issues. The 2010 election cycle in both Iowa and Alaska, among other states, saw organized opposition campaigns against the retention of one or more supreme court justices based on the outcome of particular cases. Chief Justice Mark Cady, three of whose colleagues on the Iowa Supreme Court were voted out in 2010 based on a single, unanimous decision, delivered the keynote address at the conference, in which he warned that “no state should think they are immune to what occurred in Iowa.” Alaska Supreme Court Justice Dana

Fabe, who was successful in countering a retention challenge during the 2010 election cycle, told conference participants that she relied on her JPE results in defending her performance on the bench, leaving the opposition campaign to contend with the pro-retention recommendation issued by the Alaska Judicial Council. Thus, it is clear that accurate, thoughtful performance evaluation of appellate judges can, in fact, be a buffer against ideological attacks.

## **V. Conclusion**

*Evaluating Appellate Judges: Preserving Integrity, Maintaining Accountability* was a unique gathering of individuals dedicated to improving processes for evaluating the performance of appellate courts and judges. There were two clear areas of consensus, which guide IAALS in its future work. First, conference participants (and IAALS survey respondents) firmly believe that performance evaluation of appellate judges can be a key component in achieving appropriate accountability while protecting impartiality. Second, the evaluation process for appellate judges needs improvement, particularly with respect to opinion review.

Thanks to the unique perspectives of judges, academics, interested citizens, and JPE program coordinators, IAALS has identified areas of opportunity in the appellate JPE process and is working toward concrete recommendations for improving the processes used by states across the nation. Two projects stemming from the August 2011 conference are underway:

### 1) Recommendations for Appellate Opinion Review

In the wake of the conference, IAALS formed a task force to consider recommended practices for evaluating appellate opinions. The task force consists of two appellate judges, two representatives from state JPE commissions, and a law professor. The principal charge to the task force is to develop a model for opinion evaluation, in terms of how the evaluated opinions should be selected, who should evaluate the opinions, and what the evaluation criteria should be. The task force will also address ways in which opinion quality should be factored into other aspects of the evaluation process, including survey items, survey respondents, and the self-evaluation. Finally, the task force will consider how institutional differences between courts of last resort and intermediate appellate courts should be taken into account in evaluating the work of appellate judges.

### 2) Pilot Appellate JPE Projects

IAALS is working with two other national organizations to introduce pilot appellate JPE programs in a few states. Our intention is to work with bar associations and/or court administrative offices, and with the support of appellate court judges, in these states to implement our recommended practices for evaluating appellate judicial performance and providing information to retention election voters.

IAALS hopes to build on the relationships formed and the collaborations initiated at the conference in carrying out this work.



## APPENDIX

### Survey of Appellate Judges on Judicial Performance Evaluation

1. **Overall, how satisfied are you with the process for evaluating your performance?**
  - Very satisfied
  - Somewhat satisfied
  - Neither satisfied or dissatisfied
  - Somewhat dissatisfied
  - Very dissatisfied
  
2. **In your opinion, which of the following aspects of the performance evaluation process could be improved upon? (will be asked to explain)**
  - Evaluation criteria (e.g., legal knowledge, integrity, communication skills, etc.)
  - Survey respondent groups
  - Survey response rates
  - Survey instruments/questionnaires
  - Additional bases for evaluation (e.g., opinion review, workload statistics, self-evaluation, etc.)
  - Format of narrative report
  - Dissemination of evaluation information to the public
  
3. **Is courtroom observation part of the evaluation process for appellate judges in your state?**
  - Yes
  - No
  
4. **In your view, should courtroom observation be part of the evaluation process for appellate judges?**
  - Yes
  - No (will be asked to explain)
  
5. **Is opinion review part of the evaluation process for appellate judges in your state?**
  - Yes
  - No
  
6. **In your view, should opinion review be part of the evaluation process for appellate judges?**
  - Yes
  - No (will be asked to explain)

**7. To what extent has the evaluation process been beneficial or detrimental to your professional development?**

- Significantly beneficial (will be asked to explain)
- Somewhat beneficial (will be asked to explain)
- No effect
- Somewhat detrimental (will be asked to explain)
- Significantly detrimental (will be asked to explain)

**8. What impact, if any, does the evaluation process have on your independence as a judge/justice?**

- Enhances my independence as a judge/justice
- Has no impact on my independence as a judge/justice
- Undermines my independence as a judge/justice

**9. Are appellate judges in your state subject to retention elections?**

- Yes
- No

If yes, survey continues. If no, survey ends here.

Retention election states only:

**10. How much impact do you believe the evaluation results (and recommendations, if made) have on voters' decisions in retention elections?**

- A lot of influence
- Some influence
- No influence

**11. Does the evaluation report provide information that has enabled you, or would enable you if necessary, to defend yourself against attacks by special interests?**

- Yes
- No (will be asked to explain)

**12. Could the evaluation report be modified to better enable you to defend yourself, if necessary, against attacks by special interests?**

- Yes (will be asked to explain)
- No

**13. May we share your responses with your state JPE commission?**

- Yes (*will be asked what state*)
- No

**Table 10. Judicial Performance Evaluation**

Legend: ~ = Not applicable; N/S = Not stated

Note: Only those States with official judicial performance evaluations are included in this table.

	<b>Evaluating body/authorization</b>	<b>Evaluation committee</b>	<b>Evaluation procedures</b>
<b>Alaska</b>	Alaska Judicial Council/ Statutes: §22.05.100 §22.07.060 §22.10.150 §22.15.155	7 members: 3 state bar appointed attorneys, 3 non-attorneys, and the Chief Justice of the Supreme Court.	Judges are evaluated prior to retention elections. Evaluations are based on forms completed by court participants. Evaluation results are included in election pamphlets that are mailed to all registered Alaskan voters.
<b>Arizona</b>	Arizona Constitution Article 6, Section 42	30 members: includes the public, lawyers, and judges.	Evaluations based on public comment, hearings, and anonymous survey forms distributed to court participants. Court participant surveys seek evaluation of a judge's abilities and skills, including narrative comments. A factual report is issued in the judge's election year.
<b>Colorado</b>	State Commission on Judicial Performance/§13-5.5-101	10 members each: 4 attorneys, 6 non-attorneys. 4-year terms.	State Commission (for appellate judges) or District Commission (for trial judges) prepares evaluation profile on each judge standing for re-election and provides this to the public.
<b>Connecticut</b>	Judicial Performance Evaluation Program/Established by directive of the Chief Justice	The Advisory Panel consists of judges, attorneys, a law professor, and a state legislator.	Attorney and juror questionnaires are used to solicit information on the judges' courtroom performance in the areas of demeanor, legal ability, and judicial management skills. Evaluation reports are generated from the input received. The Chief Court Administrator, or designee, conducts individual interviews to aid judges in interpreting the data. Judges are also provided with self-assessment forms to assist them in assessing their own courtroom performance and placing the attorney and juror responses in perspective.
<b>District of Columbia</b>	D.C. Commission on Judicial Disabilities and Tenure/Title 11 Appx. IV433	7 members: 1 appointed by the President of the U.S., 2 (1 must be an attorney) appointed by the Mayor, 1 appointed by the City Council of D.C., 1 appointed by the Chief Judge of the U.S. District Court for D.C. All must be residents of D.C. All serve six-year terms except for the President's appointee, who serves a five-year term.	Written evaluation upon an active associate judge's request for reappointment to another fifteen-year term. Committee must determine if the judge is well qualified (automatic reappointment), qualified (subject to nomination and approval), or unqualified.
<b>Florida</b>	Joint project of the state judiciary and the Florida Bar, authorized by the Supreme Court	~	A confidential means by which attorneys can communicate perceived strengths and weaknesses of judicial performance, thereby assisting judges in eliminating weaknesses and enhancing strengths. Evaluation forms go directly to judges; no committee reviews the evaluations. Evaluations are confidential under Florida Rule of Judicial Administration 2.05(c)(4). Participation is voluntary.
<b>Hawaii</b>	Judicial Performance Committee/Supreme Court Rule 19	Supreme Court special committee on judicial performance; 13 members: 3 non-lawyers, 6 lawyers, the Administrative Director of the Courts, and 3 judges.	Attorneys complete confidential questionnaires.
<b>Idaho</b>	Magistrates Commission	Magistrates commission consists of judges, attorneys, and elected officials.	Questionnaires distributed to practicing attorneys regarding performance of magistrate judges.
<b>Illinois</b>	Planning and Oversight Committee for a Judicial Performance Evaluation Program/SCR58	Actual evaluation is contracted out (currently to Bronner Group, L.L.C., Chicago, Illinois).	Details of confidential evaluation procedure determined by contractor.
<b>Maryland</b>	Judicial Administration Section Council/State Bar Association	18 State Bar Association members.	Exit polling of attorneys.

**Table 10. Judicial Performance Evaluation**

Legend: ~=Not applicable; N/S=Not stated

Note: Only those States with official judicial performance evaluations are included in this table.

	<b>Evaluating body/authorization</b>	<b>Evaluation committee</b>	<b>Evaluation procedures</b>
<b>Massachusetts</b>	Supreme Judicial Court/211§26-26b	Supreme Judicial Court and Chief Justice for Administration and Management.	Judges with four years' experience are evaluated once every 12-18 months; judges with at least four years experience are evaluated once every 18-36 months. Anonymous questionnaires are given to court participants in a representative sample of cases. Completed evaluations are made available to and discussed with judges.
<b>Michigan</b>	Supreme Court/§600.238	~	Provides for use of national trial court performance standards by trial judges.
<b>Minnesota</b>	Joint Supreme Court, Conference of Chief Judges, and Minnesota District Judges Association Committee	Trial and appellate court judges.	Joint committee offers technical assistance to judges and districts. Each judicial district has developed its own evaluation process and procedures. All evaluation processes are voluntary.
<b>New Hampshire</b>	Trial Court Administrative Judge	Administrative Judge.	Anonymous questionnaires are distributed to court staff and constituents; these are supplemented with self-assessment questionnaires. Administrative Judge reviews results with the judge under evaluation.
<b>New Jersey</b>	Judicial Performance Committee/RGA 1:35A-1	At least 6 judges, 3 attorneys, and 2 members of the public. Additional members fixed by Supreme Court. 3-year terms.	During a judge's review period of approximately nine months, anonymous surveys are sent to all attorneys who appeared before the judge and to appellate judges who have heard cases from the judge under review.
<b>New Mexico</b>	Judicial Performance Evaluation Commission/ NM Supreme Court	15 members: 8 lay persons and 7 lawyers. The Supreme Court appoints members from nominations submitted by representatives of the executive, legislative, and judicial branches.	Confidential written surveys.
<b>Puerto Rico</b>	Judicial Evaluation Commission	9 members, including a Supreme Court judge, 1 member experienced in administrative/ managerial matters, and at least 1 non-attorney. 3-year terms.	Judges are evaluated every three years based on self-evaluations and surveys of attorneys, peers, jurors, and presiding judge. Reports are discussed with judges.
<b>Rhode Island</b>	Judicial Performance Evaluation Committee	6 judges, 3 state bar members, 2 members of the public familiar with the judicial system. 2-year terms.	All judges are evaluated biannually on the basis of "acceptable, professionally recognized methods of data collection."
<b>Tennessee</b>	Judicial Evaluation Commission (expires 6/30/2007)/§17-4-201, §4-29-223	12 members: 4 state court judges, 2 non-lawyers appointed by Judicial Council, 3 lawyers appointed by Speaker of the Senate, 3 members appointed from designated organizations by Speaker of the House of Representatives.	All appellate judges are evaluated based on personal interviews, evaluation surveys, self-reported personal information, and other comments and information. A final report of less than 600 words per judge is published not less than 180 days before the qualifying deadline in a general circulation daily newspaper in specified parts of the state.
<b>Utah</b>	Utah Judicial Council with Standing Committee on Judicial Performance Evaluation/CJA R3-11, 2-10 6 §78-3-21	14 members: Chief Justice of Supreme Court, 12 members to be elected by judges of various courts, 1 member of the Board of Commissioners. 3-year terms. <sup>1</sup>	N/S
<b>Vermont</b>	Judicial Performance Evaluation Committee/Supreme Court charge and designation	Under development <sup>2</sup>	Under development <sup>2,3</sup>

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**Table 10. Judicial Performance Evaluation**

Legend: --=Not applicable; N/S=Not stated

Note: Only those States with official judicial performance evaluations are included in this table.

	<b>Evaluating body/authorization</b>	<b>Evaluation committee</b>	<b>Evaluation procedures</b>
<b>Virginia</b>	Judicial Performance Evaluation Commission/Rule of Court	8 members appointed by the Chief Justice	Confidential surveys are sent to attorneys and jurors to solicit information on judges' courtroom demeanor, perceived fairness, knowledge of the law, and clarity of decisions, as well as other areas of judicial behavior. Survey results are provided to the evaluated judge and a mentor or "facilitator" judge, and to the General Assembly at time of re-election.

Note: The following States report judicial performance evaluation programs operated independently by their state bar association: Maine, Missouri, Nebraska, Pennsylvania, South Carolina, Texas, Washington, West Virginia, and Wyoming.

**FOOTNOTES:****Utah:**

<sup>1</sup>The evaluation of judges and court commissioners is conducted by the Utah Judicial Council. The Standing Committee on Judicial Performance Evaluation (SCJPE) administers the program and recommends policies and procedures. The membership of the SCJPE consists of two lawyers, one of whom serves as chair; three members of the public; one court commissioner; and one judge from each of the five levels of court.

**Vermont:**

<sup>2</sup>A pilot program was implemented. The Judicial Performance Evaluation Committee is currently reviewing the results of the pilot program.  
<sup>3</sup>The pilot program used attorney questionnaires, litigant exit surveys, self-assessments and caseload management reports.

## **Summary of Alaska's Judicial Evaluation Process**

The state of Alaska began using retention evaluations in the late 1970's. District, Superior, Appellate, and Supreme Court jurists are subject to evaluation coordinated by the Alaska Judicial Council. The Alaska Judicial Council is a seven member non-partisan independent citizens' commission created by the Alaska Constitution. The governor subject to confirmation by the legislature appoints three non-attorney members. Three members are attorneys appointed by the Alaska Bar Association. These appointments are for staggered six-year terms, must be spread over different areas of the state, and must be made without regard to political affiliation. The chief justice of the Supreme Court serves as chairperson. The chief justice only votes when his or her vote can make a difference.

The Judicial Council screens applicants for judicial vacancies and nominates the most qualified applicants for appointment by the governor, evaluates the performance of judges and recommends whether voters should retain judges for another term. It also conducts research to improve the administration of justice in Alaska.

### **The process:**

The Judicial Council thoroughly reviews a judge's performance before each retention election. The Council surveys thousands of Alaskans including police, peace and probation officers, court employees, attorneys, jurors, social workers and those who serve as guardians ad litem for children, asking them about their experience with the judges on the ballot. Those who appear frequently before the judges rate them on a number of criteria, including their legal ability, diligence, temperament, and fairness and may submit narrative comments about the judge's performance. The Council also solicits specific feedback from attorneys who appeared before the judge in recent cases and considers the ratings and observations of the Alaska Judicial Observers, an independent, community-based group of volunteers who attend courtroom proceedings and rate a judge's performance.

Among other materials, the Council also reviews how often the judge was disqualified from presiding over a case, how often a trial judge was affirmed or reversed on appeal, whether the judge has been involved in any disciplinary proceedings, and whether the judge's pay was withheld for an untimely decision. The Council may perform detailed follow-up investigations of any potential problem areas, and may conduct personal interviews with presiding judges, attorneys, court staff, and others about the judge's performance. The Council also holds a statewide public hearing to obtain comments about judges.

Council members meet before the retention election to discuss the information gathered for these judicial evaluations, and at the conclusion of the meeting, the Council publicly votes on its retention recommendations. Four votes by Council members are necessary for the Council to recommend for or against the retention of a judge.

What follows are short descriptions of the Alaska Judicial Council process:

### **Retention Evaluation Procedures**

The legislature authorized thorough, objective reviews of each judge. These are the data items used by the Council in their evaluation.

### **Judge's Questionnaire**

Each judge is asked to fill out a short questionnaire about the types of cases handled during the previous term, legal or disciplinary matters the judge may have been involved in, and health matters that could be related to the judge's ability to perform judicial duties. The questionnaire also asks the judge to describe satisfaction with judicial work during the previous term and to make any comments that would help the Council in its evaluations.

### **Attorney & Peace Officer Surveys**

The Council employs an independent contractor to survey all active and all in-state inactive members of the Alaska Bar Association and all peace and probation officers in the state who handle state criminal cases. The survey asks about the judges' legal ability, fairness, integrity, temperament, diligence, and administrative skills.

### **Social Worker, Guardian ad Litem (GAL) and Court Appointed Special Advocate (CASA) Surveys**

The independent contractor surveys social workers and citizens who participate in helping Alaska's children as GALs and CASA volunteers. The survey is similar in content to the attorney and peace officer surveys.

### **Juror and Court Employee Surveys**

The Council surveys all jurors who have served with the judges up for retention, as well as all court employees.

### **Counsel Questionnaires**

Each judge gives the Judicial Council a list of three trials, three non-trial cases, and any other cases that the judge found significant during his or her most recent term in office. The Council sends a brief questionnaire to all of the attorneys in each case. The questionnaire asks about the judge's fairness, legal abilities, temperament, and administrative handling of the case.

### **Other Records**

Council staff reviews other public records, including conflict-of-interest annual statements filed with the Alaska Public Offices Commission and separate forms filed with the court system, court case files, and Commission on Judicial Conduct public files. The Council also reviews performance-related court data, such as the number of peremptory challenges filed against a judge, the number of times the judge recused him/herself and the number of reversals on appeal.

The Council scrutinizes performance-related data carefully, because the type of caseload or a judge's location may play a major part in the numbers of challenges or appeals and reversals. A domestic relations judge assigned 6,000 cases in one year may have more challenges (and possibly more appellate reversals) than a judge handling 1,000 criminal and civil cases. The Council investigates whether the judge has been involved in any disciplinary proceedings and whether the judge was subject to pay withholding for an untimely decision. The Council performs detailed follow-up investigations of any potential problem areas.

## **Public Hearings**

The Council holds statewide public hearings for all judges standing for retention using the legislature's teleconference network and public meeting rooms. Subject to available funding, the Council advertises these public hearings in statewide newspapers to encourage public participation. Public service announcements on radio stations encourage public participation. Public hearings give citizens a valuable opportunity to speak out about their experiences with judges. They also provide a forum in which citizens can hear the opinions of others.

## **Interviews**

Any judge may request an interview with the Council. The Council, in turn, may ask judges to speak with the Council members during the final stages of the evaluation process. Judges may respond to concerns raised during the evaluation process. The Council may conduct personal interviews with presiding judges, attorneys, court staff, and others about the judge's performance.

## **Other Publicity and Input**

The Council widely publicizes the evaluation process through frequent press releases, personal contacts with radio and television stations, speeches to public groups such as community councils and feature articles in newspapers. Alaska Judicial Observers, a non-profit organization, provides independent observations of judicial performance.

## **Dissemination of Results**

The Council meets in July to consider the information gathered and make retention recommendations. By law, the Council must make its evaluations and recommendations public at least sixty days prior to the election, and must submit materials to the Lieutenant Governor's Official Election Pamphlet. The Council's evaluation information and recommendations are summarized in the Election Pamphlet. Extremely detailed evaluation materials on each judge are available on the website, or in printed form.

## **Reports produced**

The Council produces a lengthy report (46 pages) for each judge subject to retention election. The report lists the judge/justice, the office and whether the Council found the jurist qualified. The remainder of the report provides detail of all surveys, meetings, and research.

Example:

“The Judicial Council finds Justice Stowers to be qualified and recommends unanimously that the public vote “YES” to retain him as a Supreme Court justice.”

Or

“The Judicial Council finds Judge Estelle to be unqualified and recommends unanimously that the public vote “NO” to against his retention in office.”

The Council also produces voluminously detailed technical reports about survey methodology, observer reporting, staff surveys, juror surveys, pre-emptory challenge and recusal rate data, and reviews of the work of the Council itself.

## **Pro Tem Evaluations**

Administrative Rule 23 of the Alaska Rules of Court authorizes the chief justice, or another justice designated by the chief justice, to appoint a retired judge to sit temporarily (pro tem) in any court in Alaska. Pro tem appointments may be made for one or more cases, or for a specified period up to two years. Appointments may be renewed.

Every two years, the chief justice must review the performance of all retired judges and justices who have served pro tem. The review is based upon an evaluation of the justices' and judges' performance conducted by the Alaska Judicial Council. The Council's review includes a survey of members of the bar in those judicial districts where the pro tem justices and judges have served in the past two years. The chief justice's review also includes formal performance evaluations conducted by the presiding judges under whom the pro tem justices and judges have served. At the conclusion of the review, the chief justice determines the eligibility of the retired justices and judges to continue to serve pro tem.

## **Council role in application for vacancies**

The council also conducts the application and review process for new appointments to the judiciary. When a vacancy occurs, the Council announces the replacement process and accepts applications. The Council screens all applicants using a process similar to the retention evaluation process, this includes surveys, examination of a writing sample, review of the person's work history, and other factors related to ability to serve. Once this process is complete, the Council forwards a list of two or more qualified candidates to the Governor for appointment.

## **Council staffing and budget**

The Council staff is seven people including an Executive Director, Staff attorney, research analyst, part time analyst, administrative officer, research assistant, and administrative assistant.

Contractor costs for surveying for retention evaluation last year was approximately \$14,000. These costs included administration of electronic surveys to bar members (3,057), peace and probation officers (1,652), and social service professionals (505); analysis; and report preparation. Those costs did not include mailing or printing costs for the paper surveys (some respondents prefer paper), or Council own staff time. Staff conducted and analyzed the court employee survey internally, but in the future, the contractor will also perform that function.

The core agency budget is approximately \$1.1 mil., which covers judicial selection, retention evaluation, and improvement of administration core functions. That includes the core six staff members and one "special projects" contract staff and operating expenses.



November 7, 2014

**TO:** Board for Judicial Administration Members

**FROM:** Shannon Hinchcliffe, BJA Administrative Manager

**RE:** TIMELINE FOR BJA'S INPUT ON PROPOSED SUGGESTED GR 35 –  
JUDICIAL PERFORMANCE EVALUATION

I. Procedural History

Suggested General Rule 35 was submitted by Judge Michael J. Trickey as President of the Washington State Chapter of the American Judicature Society (AJS) in January 3, 2014. Judge Trickey was invited to discuss the item at the February 2014 administrative *en banc* meeting. The Supreme Court Rules Committee met in October 2014 to consider the rule. At that meeting, the committee voted to request the BJA to consider the new suggested rule and provide feedback to the committee about the proposal.

II. Suggested Timeline Considerations

The following suggested timeline has been created to 1) allow time for vetting the proposal through separate court levels while targeting an outcome in time for the 2015 Supreme Court Rules cycle, 2) allow for the most robust discussion and compilation of input for the policy issues related to judicial performance evaluations.

The timeline takes several variables into consideration and attempts to outline a procedural roadmap which can assist in accomplishing the above objectives. Association boards generally meet monthly and follow a one month discussion, next month action format. They also generally refer rules and substantive matters to either their corresponding rules committee or an *ad hoc* workgroup for further review. After review, there is likely a report back to the board as a discussion item and then it can be moved to action the next meeting.

Other considerations include the timeline which is respective to the Supreme Court Rules Committee cycle which starts again in October. This timeline also attempts to accommodate an end result before the board membership turns over on July 1, 2015.

Memorandum to Board for Judicial Administration Members

November 7, 2014

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Organization	Suggested Schedule	Possible Action
BJA	<p><b>December 12 – Discussion item or reports and information item and presentation by rule proponents</b></p> <ul style="list-style-type: none"> <li>Define area of focus for “feedback/input” and anticipate form of the feedback (e.g. recommendations on the policy aspects vs. red-lined version of the suggested rule). The form of feedback will likely impact the timeline.</li> <li>Define BJA outreach vs. court level outreach to judicial officers for input.</li> </ul>	<ul style="list-style-type: none"> <li>Request members to review the proposal with general memberships and/or association governing bodies.</li> <li>Implement outreach steps based on decisions made in meeting.</li> <li>Request AOC to do an impact analysis on the rule</li> <li>Set tentative return date to BJA for May discussion, possibly June discussion and then August action.</li> <li>*Latest possible action date is September 2015 to make Supreme Court Rules schedule for feedback for the 2015-2016 rules cycle.</li> </ul>
	<p><b>May 15 – Discussion item</b></p> <ul style="list-style-type: none"> <li>Facilitate a discussion about all comments and recommendations from associations and judicial members, any branch partners and AOC impact statement.</li> <li>Review any recently created governance philosophies or strategic goals including Principal Policy Goals and BJA resolutions.</li> <li>Review staff briefing paper about the topic which includes information related to national treatment of the topic.</li> </ul>	<ul style="list-style-type: none"> <li>Discussion can continue for more than one month if necessary.</li> <li>BJA members will turn over for the July meeting.</li> </ul>
	<p><b>June 19, August 21 or September 18 – Action (can be taken as late as September 18)</b></p>	<p>Memorialize input/recommendation, send to Supreme Court Rules Committee.</p>
DMCJA Board	<p><b>January – Discussion/ information item at board meeting</b></p>	<p>Refer for further review.</p>
	<p><b>April – Board discussion item</b></p>	
	<p><b>May– deadline for final comments from the board</b></p>	<p>Memorialize input for distribution in May 15 BJA materials (May 8).</p>
SCJA Board	<p><b>January – Discussion/ information item at board meeting</b></p>	<p>Refer for further review.</p>
	<p><b>April – Board discussion item</b></p>	
	<p><b>May – deadline for final comments from the board</b></p>	<p>Memorialize input for distribution in May 15 BJA materials (May 8).</p>

Memorandum to Board for Judicial Administration Members

November 7, 2014

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<b>Organization</b>	<b>Suggested Schedule</b>	<b>Possible Action</b>
<b>COA</b>	<b>January – Discuss at monthly meeting</b>	<i>Outreach or further review.</i>
	<b>May - deadline for final comments from the COA</b>	<i>Memorialize input for distribution in May BJA materials (May 8).</i>
<b>Supreme Court – En Banc?</b>		

# Tab 5

**Board for Judicial Administration**  
**2015 Legislative Session**  
**AGENDA and POSITIONS before 02/10/2015 Conference Call**

Bill	Description	Date	Position	Hearings / Comments
HB 1022	<b>Bail bond agreements</b> Prohibiting general power of attorney provisions in bail bond agreements. H Rules R - <a href="#">Leg Link</a>	01/26/2015	Support	01/21/2015 at 13:30
		01/26/2015	-----	
HB 1028	<b>Court security</b> Requiring cities and counties to provide security for their courts. H Judiciary - <a href="#">Leg Link</a>	01/20/2015	Support	H- Judiciary 01/20/2015 at 10:00 Mellani signed in Pro at hearing
		01/12/2015	Under Review	Bill is the same as that proposed by DMCJA previously but is not a DMCJA request bill this year. Mellani will research why superior courts to find out why they are not included and whether there are similar provisions. BJA Leg Com will review on 1/20.
HB 1061 5174	<b>District judges, Skagit Cnty</b> Increasing the number of district court judges in Skagit county. H Exec Action - <a href="#">Leg Link</a>	01/12/2015	Request	H- Judiciary 01/13/2015 at 10:00 Judge Svaren will testify at hearing.
HB 1105 5076	<b>Operating sup budget 2015</b> Making 2015 supplemental operating appropriations. H subst for - <a href="#">Leg Link</a>	01/12/2015	Support	H- Appropriations 01/12/2015 at 15:30 Mellani will sign in pro at hearing, being as specific to the BJA requests as possible. Likewise, 1106 and capital budget.
HB 1106 5077	<b>Operating budget 2015-2017</b> Making 2015-2017 operating appropriations. H Approps - <a href="#">Leg Link</a>	01/12/2015	Support	H- Appropriations 01/12/2015 at 15:30 Mellani will sign in pro at hearing, being as specific to the BJA requests as possible. Likewise, 1105 and capital budget.
HB 1111	<b>Court transcripts</b> Concerning court transcripts. H 2nd Reading - <a href="#">Leg Link</a>	01/12/2015	Request	H- Judiciary 01/15/2015 at 13:30 Mellani will testify if someone from the Court Management Council cannot.

HB 1248	<b>Court proceedings</b> Concerning court proceedings. H 2nd Reading - <a href="#">Leg Link</a>	01/20/2015	No Position	H- Judiciary 01/21/2015 at 08:00
HB 1350	<b>Supreme crt election distr's</b> Providing for election of supreme court justices from three judicial districts. H Judiciary - <a href="#">Leg Link</a>	01/20/2015	Watch	
HB 1390 5713	<b>Legal financial obligations</b> Concerning legal financial obligations. H Judiciary - <a href="#">Leg Link</a>	02/09/2015	Watch	H- Judiciary 01/21/2015 at 08:00 New draft language is not an improvement. Retroactivity issue still not addressed. Judge Warning will speak to Rep Goodman about limiting the bill to eliminating interest.
		02/02/2015	Watch	
		02/02/2015	Watch	
		01/26/2015	Support	Not changing position at this time, DMCJA has raised some valid questions that will need answers. Re-review post Goodman meeting.
		01/20/2015	Support	
HB 1397 5308	<b>Financial reporting</b> Concerning personal financial affairs statement reporting requirements for elected and appointed officials, candidates, and appointees. H Rules R - <a href="#">Leg Link</a>	02/02/2015	Support	02/04/2015 at 08:00 Mellani will testify
HB 1481 5564	<b>Juvenile records and fines</b> Concerning the sealing of juvenile records and fines imposed in juvenile cases. H Erly Lrn/H Svc - <a href="#">Leg Link</a>	01/26/2015	Watch	H- Early Learning & Human Services 01/30/2015 at 11:00 Potential technical implementation problems.
HB 1553	<b>Opportunity restoration</b> Encouraging certificates of restoration of opportunity. H PSDPS - <a href="#">Leg Link</a>	01/26/2015	Support	02/03/2015 at 08:00
HB 1610	<b>Jury service</b> Changing jury service provisions. H Judiciary - <a href="#">Leg Link</a>	02/02/2015	Support	H- Judiciary 02/10/2015 at 10:00
		01/26/2015	Under Review	Check with Counties

HB 1885 5755	<b>Property crimes, impacts of</b> Addressing and mitigating the impacts of property crimes in Washington state. H Public Safety - <a href="#">Leg Link</a>	02/09/2015	Watch	02/11/2015 at 13:30 WAPA working on proposal. Review next week.
		02/02/2015	Watch	
HB 1943	<b>Home detention</b> Concerning home detention. H Public Safety - <a href="#">Leg Link</a>	02/09/2015	Watch	
HB 2030	<b>Supreme crt justice distrcts</b> Establishing districts from which supreme court justices are elected. H Judiciary - <a href="#">Leg Link</a>	02/09/2015	Watch	
HJR 4201	<b>Supreme crt election distr's</b> Creating election districts for supreme court judicial positions. H Judiciary - <a href="#">Leg Link</a>	01/20/2015	Watch	
HJR 4211	<b>Supreme court districts</b> Amending the Constitution to provide for supreme court districts. H Judiciary - <a href="#">Leg Link</a>	02/09/2015	Watch	
SB 5067	<b>Informants and accomplices</b> Addressing informant and accomplice evidence and testimony. S Law & Justice - <a href="#">Leg Link</a>	01/20/2015	Watch	01/20/2015 at 08:00 The DMCJA Committee is concerned that sec.3, which requires the court to caution the jury regarding certain testimony, runs afoul of Commission on Judicial Conduct Canons that require judges to refrain from commenting on the veracity of a witness in the jury's presence. BJA will watch the bill and Judge Warning will speak to the sponsor about it.
SB 5449	<b>Appeals court tax division</b> Creating a tax division of the court of appeals. S Law & Justice - <a href="#">Leg Link</a>	01/26/2015	Concerns	01/26/2015 at 09:00 trial court model at COA. Special interest in elections. space constraints. Technical implementation issues (ACCORDS/ECCMS)
SB 5564 1481	<b>Juvenile records and fines</b> Concerning the sealing of juvenile records and fines imposed in juvenile cases. S HumSer/MenHlth - <a href="#">Leg Link</a>	01/26/2015	Watch	02/05/2015 at 10:00 Potential technical implementation problems.
SB 5647	<b>Guardianship facilitators</b>	02/02/2015	No Position	02/03/2015 at 10:00

	<p>Allowing counties to create guardianship courthouse facilitator programs. S HumSer/MenHlth - <a href="#">Leg Link</a></p>			<p>Primarily SCJA issue except, possibly, the fee. SCJA may re-refer the bill to BJA after discussion. NP remains post 2/9 call.</p>
<p>SB 5713 1390</p>	<p><b>Legal financial obligations</b> Concerning legal financial obligations. S Law &amp; Justice - <a href="#">Leg Link</a></p>	<p>02/09/2015</p>	<p>Watch</p>	<p>New draft language is not an improvement. Retroactivity issue still not addressed. Judge Warning will speak to Rep Goodman about limiting the bill to eliminating interest.</p>
		<p>02/02/2015</p>	<p>Watch</p>	
<p>SB 5752</p>	<p><b>Racial disproportionality</b> Regarding information concerning racial disproportionality. S GovtOp&amp;Sec - <a href="#">Leg Link</a></p>	<p>02/09/2015</p>	<p>Watch</p>	<p>02/10/2015 at 10:00 M&amp;J Com testifying in support. BJA would like more information about AOC impact, if possible.</p>
		<p>02/02/2015</p>	<p>Refer to Com.</p>	<p>Refer to Minority &amp; Justice Commission.</p>
<p>SB 5755 1885</p>	<p><b>Property crimes, impacts of</b> Addressing and mitigating the impacts of property crimes in Washington state. S Law &amp; Justice - <a href="#">Leg Link</a></p>	<p>02/09/2015</p>	<p>Watch</p>	<p>WAPA working on proposal. Review next week.</p>
		<p>02/02/2015</p>	<p>Watch</p>	
<p>SB 5766</p>	<p><b>Home detention monitoring</b> Establishing performance requirements and measures for monitoring agencies providing home detention programs utilizing electronic monitoring. S Law &amp; Justice - <a href="#">Leg Link</a></p>	<p>02/02/2015</p>	<p>No Position</p>	<p>02/12/2015 at 08:00</p>

# Tab 6



February 6, 2015

**TO:** Board for Judicial Administration Members  
**FROM:** Judge John M. Meyer, BJA Court Education Committee Chair  
**RE:** Court Education Committee Report for February 20, 2015

I. Work in Progress

First CEC meeting occurred January 27, 2015 at the Sea-Tac office from 9:00 a.m. – 12:00 noon. AOC provided historical information on the BCE, such as the bylaws, policies and guidelines, information on each of their advisory committees, minutes and a history of their budgets. Committee members discussed ways to research different education models, what the educational needs are, and restoring funding for education over the next two years. Voted to add a Law School representative to the committee and identify how to incorporate their resources in the development and delivery of education to our courts.

Next CEC meeting will be March 2, 2015 from 9 a.m. – 12 noon at the Sea-Tac Office. The committee will join the BCE meeting from 1 p.m. – 3 p.m. in the same location.

II. Short-term goals

Research education models from around the country with a mixture of judicial education under the Administrative Office of the Courts (AZ, OH, ID) and those under Law Schools or other organizations (GA, TX).

Continue interviewing the various education committees to determine their actual educational needs and discuss ways to fund education in the future. Would like to find funding to re-instate the Judicial Education Leadership Institutes.

Review current policies, procedures and guidelines developed by the BCE and adopted by the CEC along with the advisory and special committees currently active under the BCE to determine if they need to remain active, sunsetted, or formatted in a different manner under the CEC.

Analyze the current funding model, what is paid for and why, how the funds have been allocated, and for what purpose. Need to understand how the biennial request for funding currently works and when requests for additional funding can be made.

Review current configuration of the CEC and the terms of all of the members.

### III. Long-term Goals

Work with the BJA and the other standing committees to develop a stable funding source that will allow the CEC to develop a robust education model for the judiciary and meet the goals and visions of the BJA.



February 12, 2015

**TO:** Board for Judicial Administration (BJA) Members  
**FROM:** Judge Scott Sparks, Policy and Planning Committee  
**RE:** REPORT OF POLICY AND PLANNING COMMITTEE

I. Membership

Due to changes in the membership of the Board of the District and Municipal Court Judges' Association, the membership of the Policy and Planning Committee (the Committee) will change to comport with its charter. Judge Scott Marinella of the Columbia County District Court will join the Committee, replacing Judge David Steiner who will move to the Legislative Committee.

In addition, Judge Scott Sparks will replace Judge Janet Garrow as chair of the Committee.

These changes will be memorialized in a revised Committee charter that will be submitted for approval by the BJA at a future meeting.

The present membership of the Committee, pending revision of the Committee charter, is:

Judge Scott Sparks, Chair  
Chief Justice Barbara Madsen  
Judge Kevin Korsmo  
Judge Harrold Clarke III  
Judge Janet Garrow  
Judge Scott Marinella

II. Work in Progress

- a. 2015 Strategic Initiative. The Committee will be proposing that the Board sponsor a strategic initiative for 2015. Several proposals are being considered for submission to the full BJA, with an expectation that one be selected for implementation. The potential projects are all consistent with policy direction previously endorsed by the BJA through resolutions or

other actions. The Committee is hopeful it will be able to present the proposals under consideration at the March meeting of the BJA.

- b. Strategic Planning. The Committee has been organizing its work plan for carrying out its planning responsibilities for 2015 and into 2016. Identification of stakeholders and outreach activities will take place in the coming months. The first step in outreach will be contacting a number of entities within or interested in the judicial branch, and asking them to engage with the Committee in its planning efforts. Entities will be asked to designate a single individual to serve as a liaison and participant in planning activities. BJA members are encouraged to be supportive and encourage any entities they might interact with to engage in BJA planning activities.

### III. Future Work.

The Committee will defer review of the BJA mission statement, vision statement, and Principal Policy Goals until 2016.

The BJA has directed that the Committee provide oversight of the Public Trust and Confidence Committee and the best practices responsibilities of the BJA. These items will be incorporated into the revised Committee charter.

# Tab 7

## BJA BUSINESS ACCOUNT – 2014 YEAR END SUMMARY

JANUARY – MARCH 2014			
ITEM	WITHDRAWAL	DEPOSIT	BALANCE
<b>BEGINNING BALANCE</b>			<b>\$15,061.09</b>
BOOKKEEPING SERVICES	\$150.00		
EXPENSES	\$2,649.01		
DEPOSITS		\$140.00	
<b>ENDING BALANCE</b>			<b>\$12,402.08</b>

APRIL – JUNE 2014			
ITEM	WITHDRAWAL	DEPOSIT	BALANCE
<b>BEGINNING BALANCE</b>			<b>\$12,402.08</b>
BOOKKEEPING SERVICES	\$150.00		
EXPENSES	\$900.42		
DEPOSITS		\$210.00	
<b>ENDING BALANCE</b>			<b>\$11,561.66</b>

JULY – SEPTEMBER 2014			
ITEM	WITHDRAWAL	DEPOSIT	BALANCE
<b>BEGINNING BALANCE</b>			<b>\$11,561.66</b>
BOOKKEEPING SERVICES	\$150.00		
EXPENSES	\$0.00		
DEPOSITS		\$0.00	
<b>ENDING BALANCE</b>			<b>\$11,411.66</b>

OCTOBER – DECEMBER 2014			
ITEM	WITHDRAWAL	DEPOSIT	BALANCE
<b>BEGINNING BALANCE</b>			<b>\$11,411.66</b>
BOOKKEEPING SERVICES	\$150.00		
EXPENSES	\$131.16		
DEPOSITS		\$0.00	
<b>END OF YEAR BALANCE</b>			<b>\$11,130.50</b>

DEPOSIT DATE	AMOUNT
2.21.14	85.00
3.14.14	55.00
4.8.14	55.00
5.19.14	*155.00

\*Deposit from Mellani McAleenan; refunding registration, check #3681, not attending Double Cup Event (but then plans changed and she did attend, see check #3684).

**BJA BUSINESS ACCOUNT FIRST QUARTER 2014 DETAIL ACTIVITY**

DATE	CK #	TO	FOR	AMOUNT	CLEARED
1.17.14	3674	MELLANI MCALEENAN	EXPENSES FOR 1.16.14 BJA/LEG RECEPTION AT TOJ (PAPER, NAME BADGES, LIQUOR LICENSE)	89.27	X
1.17.14	3675	RAMBLIN' JACKS	EXPENSES (FOOD) FOR CATERING 1.16.14 BJA/LEG RECEPTION AT TOJ	2,153.70	X
1.21.14	3676	CELEBRATIONS	EXPENSES FOR BISTRO TABLES; LINENS - 1.16.14 BJA/LEG RECEPTION AT TOJ	406.04	X
1.30.14	3677	COLLEEN CLARK	JANUARY BOOKKEEPING	50.00	X
3.10.14	3678	COLLEEN CLARK	FEBRUARY BOOKKEEPING	50.00	X
3.14.14	3679	COLLEEN CLARK	MARCH BOOKKEEPING	50.00	X
				<b>\$2,799.01</b>	

Total BJA/Leg Reception costs = \$2,649.01

**BJA BUSINESS ACCOUNT SECOND QUARTER 2014 DETAIL ACTIVITY**

DATE	CK #	TO	FOR	AMOUNT	CLEARED
4.9.14	3680	MELLANI MCALEENAN	BILL SIGNING PHOTOS SB 5981 (MASON COUNTY JUDGE) AND HB1651 (JUVENILE RECORDS)	10.00	X
4.24.14	3681	2014 DOUBLE CUP CLASSIC	REGISTRATION FOR MELLANI MCALEENAN	*155.00	X
4.29.14	3682	COLLEEN CLARK	BOOKKEEPING FEES – APRIL	50.00	X
5.28.14	3683	COLLEEN CLARK	BOOKKEEPING FEES – MAY	50.00	X
6.16.14	3684	2014 DOUBLE CUP CLASSIC	REGISTRATION FOR MELLANI MCALEENAN	155.00	X
6.24.14	3685	COLLEEN CLARK	BOOKKEEPING FEES – JUNE	50.00	X
6.25.14	3686	MELLANI MCALEENAN	DOUBLE CUP EXPENSES (HOTEL AND MILEAGE) – LEGISLATIVE RELATIONS	396.24	X
6.26.14	3687	BETH FLYNN	MATS/FRAMES FOR OUTGOING BJA MEMBERS: PROCHNAU, CHURCHILL, JOHANSON, SNYDER, KRESE	184.18	X
				<b>\$1,050.42</b>	

**BJA BUSINESS ACCOUNT THIRD QUARTER 2014 DETAIL ACTIVITY**

DATE	CK #	TO	FOR	AMOUNT	CLEARED
7.24.14	3688	COLLEEN CLARK	BOOKKEEPING FEES – JULY	50.00	X
8.25.14	3689	COLLEEN CLARK	BOOKKEEPING FEES – AUGUST	50.00	X
9.26.14	3690	COLLEEN CLARK	BOOKKEEPING FEES – SEPTEMBER	50.00	X
				<b>\$150.00</b>	

**BJA BUSINESS ACCOUNT FOURTH QUARTER 2014 DETAIL ACTIVITY**

DATE	CK #	TO	FOR	AMOUNT	CLEARED
10.29.14	3691	BETH FLYNN	MAT/FRAME FOR OUTGOING BJA MEMBER – PATRICK PALACE	34.76	X
10.29.14	3692	COLLEEN CLARK	BOOKKEEPING FEES – OCTOBER	50.00	X
11.6.14	3693	MELLANI MCALEENAN	LUNCH (IT AND ELECTRONIC HOME MONITORING) w/JUDGE RINGUS AND REP. SHEA	60.55	X
11.25.14	3694	COLLEEN CLARK	BOOKKEEPING FEES – NOVEMBER	50.00	X
12.4.14	3695	BETH FLYNN	MAT/FRAME FOR OUTGOING BJA ADMINISTRATIVE MANAGER – SHANNON HINCHLIFFE	35.85	X
12.18.14	3696	COLLEEN CLARK	BOOKKEEPING FEES – DECEMBER	50.00	X
				<b>281.16</b>	

# Tab 8

## Salary Information

### Proposed 2015 and 2016 Salary Schedule

Position	Current Salary	Salary Effective 9/1/2015	Salary Effective 9/1/2016
<b><i>Executive Branch</i></b>			
Governor	166,891	171,898	173,617
Lieutenant Governor	97,000	100,880	101,889
Secretary of State	116,950	120,459	121,663
Treasurer	125,000	133,750	140,438
Auditor	116,950	120,459	121,663
Attorney General	151,718	156,270	159,395
Insurance Commissioner	116,950	121,628	124,061
Supt. of Public Instruction	127,772	132,883	134,212
Commissioner of Public Lands	124,050	130,253	132,858
<b><i>Judicial Branch</i></b>			
Supreme Court Chief Justice	172,531	182,020	185,661
Supreme Court Justices	172,531	179,432	183,021
Court of Appeals Judges	164,238	170,808	174,224
Superior Court Judges	156,363	162,618	165,870
District Court Judges	148,881	154,836	157,933
<b><i>Legislative Branch</i></b>			
Legislator	42,106	45,474	46,839
Speaker of the House	50,106	54,114	55,738
Senate Majority Leader	50,106	54,114	55,738
House Minority Leader	46,106	49,794	51,288
Senate Minority Leader	46,106	49,794	51,288

The above *Proposal* was adopted at a public meeting on January 20 and 21, 2015. The *Final* salary schedule will be adopted at a public meeting on May 13, 2015.

Information about the components of the *Proposal* follows:

#### **Executive Branch:**

3% General Wage Adjustment (GWA) to the Executive Branch in 2015 and 1% in 2016.

- 2% increase in 2015 for the Commissioner of Public Lands and 1% in 2016, based on an increased responsibility level.
- 1% increase in 2015 for the Superintendent of Public Instruction, based on an increased responsibility level.
- 4% increase in 2015 for the Treasurer and 4% in 2016, based on an increased responsibility level.
- 1% in 2015 for the Lieutenant Governor, based on an increased responsibility level.
- 1% in 2015 for the Insurance Commissioner and 1% in 2016, based on an increased responsibility level.

#### **Judicial Branch:**

3% GWA to the Judicial Branch in 2015 and 1% in 2016.

- 1% in 2015 for the Judicial Branch and 1% in 2016, to maintain working toward the benchmark of Federal Court Judges.
- 1.5% increase to the Supreme Court Chief Justice, to recognize additional responsibilities of that position.

**Legislative Branch:**

- 3% GWA to Legislators in 2015 and 1% in 2016 and additional "catch up" of 5% in 2015 and 2% in 2016.

The Final salary schedule will be adopted at a public meeting on May 13, 2015.

# Tab 9

February 13, 2015

TO: Board for Judicial Administration Members  
FROM: John Bell and Jan Nutting  
RE: **REQUESTED CHANGES TO GR 31.1**

The Supreme Court asked that the BJA review GR 31.1 (Access to Administrative Records) for suggested changes prior to GR 31.1 becoming effective. Three internal committees of the GR 31.1 Implementation Work Group have reviewed the suggestions presented for consideration. Those suggested changes to GR 31.1 which were approved by the committees are attached. Below are reasons members of the committees believed the suggested changes should (or should not) be recommended by the BJA to the Supreme Court for inclusion prior to the effective date of GR 31.1.

**(c)(1) Requiring requesters to identify themselves at the time of their requests** is neither contrary to case law nor does it hamper openness. Requiring identification is consistent with language in GR 31.1. GR 31.1(c)(7) states that a records request can be denied if the request involves potential “harassment, intimidation, threats to security, or criminal activity.” It would be difficult, if not impossible, to make this determination if the identity of the requester is unknown. The same can be said if the court or judicial agency is requesting prepayment for a large request as is allowed under GR 31.1(h)(3) and (5). It would be difficult to request and substantiate prepayment if the requestor is unknown.

**(h)(1) Preparation fees:** If a requester only wants to view the records then no copying fees will be charged; however, obtaining, locating and preparing (reviewing and redacting) the records may take substantial time and effort. Several committee members believe the requester should be charged for the time and effort required to prepare the records. Please note that this suggested change has received “mixed reviews” from different committee members as some of this proposed language is contrary to the Public Records Act (PRA), [RCW 42.56.120](#), which states, in part, “No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying.” (Emphasis added). Other committee members have pointed out that the judiciary is not bound by the PRA and it may set its own records policies as long as the policies are not contrary to case law. Charging preparation fees is not contrary to case law. Furthermore, charging “research and preparation fees” is consistent with the language of GR 31.1(h)(4), which

states a fee of \$30 an hour may be charged for “research services required to fulfill a request.” (Emphasis added). Because of the difference of opinions this change is being brought to the BJA for final decision.

**(h)(4)** The addition of “**preparation**” further clarifies that research includes preparation of documents (i.e. reviewing and redacting).

**Naming the Office of Civil Legal Aid and the Office of Public Defense.** Both are judicial agencies and should fall under (k)(1).

**(j)(5)** The addition of **date of birth as an exemption** was requested at the 2014 Presiding Judges Conference in November and brought to each internal committee for review. All the committees agreed that date of birth is a personal identifier that should be exempt from disclosure.

**(m)(1) Deletion of the words "at chambers"** was recommended by the Executive Oversight Group because "at chambers" could be taken literally and direct support to a judicial officer can occur outside of a judicial officer's chambers. All three committees approved of this deletion.

**OTHER ISSUES** that were raised during the last year:

**Courts appointing an executive branch Public Records Officer** to review GR 31.1 administrative records requests – The Committees agreed that having a judicial branch employee designated as a public records officer (PRO) is a budgetary issue, especially for the smaller courts. However, there are other concerns that need to be considered. There are serious concerns regarding an executive branch employee making disclosure decisions regarding judicial administrative records. What might be viewed as publicly accessible to an executive branch employee may not be accessible under GR 31.1 (i.e. chambers records, ethics opinions, meeting minutes among judges, etc.). Also, the point was made that allowing an executive branch PRO make disclosure decisions regarding judicial administrative records defeats the overall purpose of the rule: recognizing there is a separation of powers with regard to control of judicial administrative records. This issue is being brought to the BJA for discussion and decision.

**Non-disclosure of prior draft documents** after final documents are completed – All committees agreed draft documents are public records, unless they fall under some exemption.

**Adding court administrators to chambers staff** with regard to communications between a judge and court administrator – Saved this for BJA discussion, but each committee agreed that it is not a good idea as it was not originally in GR 31.1 and to add another disclosure exception could result in resistance from public disclosure advocates and delay the final approval and implementation of GR 31.1.

**Statewide Record Retention Schedule and Mandatory Forms** issues were raised in an email from Presiding Judge Sam Cozza, of Spokane County Superior Court. Judge Cozza made the following observations:

- 1.) We really need to have a specific retention schedule in the rule. It makes no sense for 39 different counties and 100 + municipalities to have different retention schedules. It will make everybody's life easier if the Supreme Court just tells us what we need to do to be in compliance.
- 2.) It really would be a huge help for courts and public records officers if requesters have to use mandatory forms. If you look at requests from various members of the public, it is often difficult to decipher what they are asking for, and it makes the whole process lengthier than it needs to be. If the state forms are used, it just directs courts with a little more specificity what is being sought.

Each committee agreed that the above two issues are not rule-making issues and should not be addressed in GR 31.1. Retention schedules could be set by the Supreme Court, but that would not be accomplished in the form of a court rule. With regard to mandatory forms for administrative records requests, the forms that were prepared and approved by the BJA were only meant to be used as guides as each court may have different needs and may want to edit the forms so those needs are addressed. However, it was decided that Judge Cozza's suggestions should be presented to BJA for discussion.

One final point: **A number of Committee members emphasized that it was important to refrain from making too many changes to GR 31.1.** The concern that was unanimously expressed was: Too many changes will cause delay in final approval and implementation. When GR 31(Access to Court Records) was first adopted in 2004, the Supreme Court required a one year review period. After one year a report was presented to the Supreme Court regarding any issues that arose during the first year of implementation. A few changes were made to GR 31 based on this report. A similar report could be prepared a year after GR 31.1 becomes effective. At that point, the judiciary will have had a year to determine if any major issues emerge and, if so, to address those issues with suggested modifications to GR 31.1.

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**NEW RULE**

**GENERAL RULES (GR)**

**Rule 31.1 – Access to Administrative Records**

***GENERAL PRINCIPLES***

**(a) Policy and Purpose.** Consistent with the principles of open administration of justice as provided in article I, section 10 of the Washington State Constitution, it is the policy of the judiciary to facilitate access to administrative records. A presumption of access applies to the judiciary’s administrative records. Access to administrative records, however, is not absolute and shall be consistent with exemptions for personal privacy, restrictions in statutes, restrictions in court rules, and as required for the integrity of judicial decision-making. Access shall not unduly burden the business of the judiciary.

**(b) Overview of Public Access to Judicial Records.** There are three categories of judicial records.

(1) Case records are records that relate to in-court proceedings, including case files, dockets, calendars, and the like. Public access to these records is governed by GR 31, which refers to these records as “court records,” and not by this GR 31.1. Under GR 31, these records are presumptively open to public access, subject to stated exceptions.

(2) Administrative records are records that relate to the management, supervision, or administration of a court or judicial agency. A more specific definition of “administrative records” is in section (i) of this rule. Under section (j) of this rule, administrative records are presumptively open to public access, subject to exceptions found in sections (j) and (l) of this rule.

(3) Chambers records are records that are controlled and maintained by a judge’s chambers. A more specific definition of this term is in section (m) of this rule. Under section (m), chambers records are not open to public access.

***PROCEDURES FOR ADMINISTRATIVE RECORDS***

1 **(c) Procedures for Records Requests.**

2  
3 (1) COURTS AND JUDICIAL AGENCIES TO ADOPT PROCEDURES. Each court  
4 and judicial agency must adopt a policy implementing this rule and setting forth  
5 its procedures for accepting and responding to administrative records requests.  
6 The policy must include the designation of a public records officer and ~~must~~  
7 shall require that requests from the identified individual or, if an entity, an  
8 identified entity representative, be submitted in writing to the designated public  
9 records officer. Best practices for handling administrative records requests  
10 shall be developed under the authority of the Board for Judicial Administration.

11 *COMMENT: When adopting policies and procedures, courts and judicial agencies will*  
12 *need to carefully consider many issues, including the extent to which judicial*  
13 *employees may use personally owned computers and other media devices to conduct*  
14 *official business and the extent to which the court or agency will rely on the individual*  
15 *employee to search his or her personally owned media devices for documents in*  
16 *response to a records request. For judicial officers and their chambers staff,*  
17 *documents on personal media devices may still qualify as chambers records, see*  
18 *section (m) of this rule.*

19 (2) PUBLICATION OF PROCEDURES FOR REQUESTING ADMINISTRATIVE  
20 RECORDS. Each court and judicial agency must prominently publish the  
21 procedures for requesting access to its administrative records. If the court or  
22 judicial agency has a website, the procedures must be included there. The  
23 publication shall include the public records officer's work mailing address,  
24 telephone number, fax number, and e-mail address.

25 (3) INITIAL RESPONSE. Each court and judicial agency must initially respond to a  
26 written request for access to an administrative record within five working days  
27 of its receipt, but for courts that convene infrequently no more than 30 calendar  
28 days, from the date of its receipt. The response shall acknowledge receipt of  
29 the request and include a good-faith estimate of the time needed to respond to  
30 the request. The estimate may be later revised, if necessary. For purposes of  
31 this rule, "working days" mean days that the court or judicial agency, including a  
32 part-time municipal court, is open.

33 (4) COMMUNICATION WITH REQUESTER. Each court and judicial agency must  
34 communicate with the requester as necessary to clarify the records being  
35 requested. The court or judicial agency may also communicate with the  
36 requester in an effort to determine if the requester's need would be better  
37 served with a response other than the one actually requested.

38 (5) SUBSTANTIVE RESPONSE. Each court and judicial agency must respond to  
39 the substance of the records request within the timeframe specified in the

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1 court's or judicial agency's initial response to the request. If the court or judicial  
2 agency is unable to fully comply in this timeframe, then the court or judicial  
3 agency should comply to the extent practicable and provide a new good faith  
4 estimate for responding to the remainder of the request. If the court or judicial  
5 agency does not fully satisfy the records request in the manner requested, the  
6 court or judicial agency must justify in writing any deviation from the terms of  
7 the request.

8 (6) EXTRAORDINARY REQUESTS LIMITED BY RESOURCE CONSTRAINTS.

9 If a particular request is of a magnitude that the court or judicial agency cannot  
10 fully comply within a reasonable time due to constraints on the court's or judicial  
11 agency's time, resources, and personnel, the court or judicial agency shall  
12 communicate this information to the requester. The court or judicial agency  
13 must attempt to reach agreement with the requester as to narrowing the  
14 request to a more manageable scope and as to a timeframe for the court's or  
15 judicial agency's response, which may include a schedule of installment  
16 responses. If the court or judicial agency and requester are unable to reach  
17 agreement, then the court or judicial agency shall respond to the extent  
18 practicable and inform the requester that the court or judicial agency has  
19 completed its response.

20 (7) RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION,  
21 THREATS TO SECURITY, OR CRIMINAL ACTIVITY. A court or judicial  
22 agency may deny a records request if it determines that: the request was made  
23 to harass or intimidate the court or judicial agency or its employees; fulfilling the  
24 request would likely threaten the security of the court or judicial agency;  
25 fulfilling the request would likely threaten the safety or security of judicial  
26 officers, staff, family members of judicial officers or staff, or any other person;  
27 or fulfilling the request may assist criminal activity.

28 **(d) Review of Records Decision.**

29 (1) NOTICE OF REVIEW PROCEDURES. The public records officer's response to  
30 a public records request shall include a written summary of the procedures under  
31 which the requesting party may seek further review.

32 (2) DEADLINE FOR SEEKING INTERNAL REVIEW. A record requester's petition  
33 under section (d)(3) seeking internal review of a public records officer's decision  
34 must be submitted within 90 days of the public records officer's decision.

35 (3) INTERNAL REVIEW WITHIN COURT OR AGENCY. Each court and judicial  
36 agency shall provide a method for review by the judicial agency's director,

1 presiding judge, or judge designated by the presiding judge. For a judicial  
2 agency, the presiding judge shall be the presiding judge of the court that  
3 oversees the agency. The court or judicial agency may also establish  
4 intermediate levels of review. The court or judicial agency shall make publicly  
5 available the applicable forms. The review proceeding is informal and summary.  
6 The review proceeding shall be held within five working days, but for courts that  
7 convene infrequently no more than 30 calendar days, from the date the court or  
8 agency receives the request for review. If that is not reasonably possible, then  
9 within five working days the review shall be scheduled for the earliest practical  
10 date.

11 (4) EXTERNAL REVIEW. Upon the exhaustion of remedies under section (d)(3), a  
12 record requester aggrieved by a court or agency decision may obtain further  
13 review by choosing between the two alternatives set forth in subsections (i) and  
14 (ii) of this section (d)(4).

15 (i) REVIEW VIA CIVIL ACTION IN COURT. The requesting person may use  
16 a judicial writ of mandamus, prohibition, or certiorari to file a civil action in  
17 superior court challenging the records decision.

18 *COMMENT: Subsection (i) does not create any new judicial remedies, but merely*  
19 *recognizes existing procedures for initiating a civil action in court.*

20 (ii) INFORMAL REVIEW BY VISITING JUDGE OR OTHER OUTSIDE  
21 DECISION MAKER. The requesting person may seek informal review by  
22 a person outside the court or judicial agency. If the requesting person  
23 seeks review of a decision made by a court or made by a judicial agency  
24 that is directly reportable to a court, the outside review shall be by a  
25 visiting judicial officer. If the requesting person seeks review of a  
26 decision made by a judicial agency that is not directly reportable to a  
27 court, the outside review shall be by a person agreed upon by the  
28 requesting person and the judicial agency. In the event the requesting  
29 person and the judicial agency cannot agree upon a person, the presiding  
30 superior court judge in the county in which the judicial agency is located  
31 shall either conduct the review or appoint a person to conduct the review.  
32 The review proceeding shall be informal and summary. The decision  
33 resulting from the informal review proceeding may be further reviewed in  
34 superior court pursuant to a writ of mandamus, prohibition, or certiorari.  
35 Decisions made by a judge under this subsection (ii) are part of the  
36 judicial function.

1 (iii) DEADLINE FOR SEEKING EXTERNAL REVIEW. A request for external  
2 review must be submitted within 30 days of the issuance of the court or  
3 judicial agency's final decision under section (d)(3).  
4

5 **(e) Monetary Awards Not Allowed.** Attorney fees, costs, civil penalties, or fines may  
6 not be awarded under this rule.  
7

8 **(f) Persons Who Are Subjects of Records.**

9 (1) Unless otherwise required or prohibited by law, a court or judicial agency has the  
10 option of notifying a person named in a record or to whom a record specifically  
11 pertains, that access to the record has been requested.

12 (2) A person who is named in a record, or to whom a record specifically pertains,  
13 may present information opposing the disclosure to the applicable decision  
14 maker under sections (c) and (d).

15 (3) If a court or judicial agency decides to allow access to a requested record, a  
16 person who is named in that record, or to whom the record specifically pertains,  
17 has a right to initiate review under subsections (d)(3)-(4) or to participate as a  
18 party to any review initiated by a requester under subsections (d)(3)-(4). If  
19 either the record subject or the record requester objects to informal review under  
20 subsection (d)(4)(ii), such alternative shall not be available. The deadlines that  
21 apply to a requester apply as well to a person who is a subject of a record.  
22

23 **(g) Court and Judicial Agency Rules.** Each court may from time to time make and  
24 amend local rules governing access to administrative records not inconsistent with  
25 this rule. Each judicial agency may from time to time make and amend agency rules  
26 governing access to its administrative records not inconsistent with this rule.  
27

28 **(h) Charging of Fees.**

29 (1) A fee may not be charged to view administrative records, except the requester  
30 may be charged for research required to locate or, obtain, or prepare the  
31 records at the rate set forth in section (h)(4).

32 (2) A fee may be charged for the photocopying or scanning of administrative  
33 records. If another court rule or statute specifies the amount of the fee for a  
34 particular type of record, that rule or statute shall control. Otherwise, the  
35 amount of the fee may not exceed the amount that is authorized in the Public  
36 Records Act, Chapter chapter 42.56 RCW.

Commented [A1]: Per Code Revisor, see [preface](#) "Citation to the Revised Code of Washington."

1 (3) The court or judicial agency may require a deposit in an amount not to exceed  
2 the estimated cost of providing copies for a request. If a court or judicial  
3 agency makes a request available on a partial or installment basis, the court or  
4 judicial agency may charge for each part of the request as it is provided. If an  
5 installment of a records request is not claimed or reviewed within 30 days, the  
6 court or judicial agency is not obligated to fulfill the balance of the request.

7 (4) A fee not to exceed \$30 per hour may be charged for research **and**  
8 **preparation** services required to fulfill a request taking longer than one hour.  
9 The fee shall be assessed from the second hour onward.

Commented [A2]: Additional language requested by EOW to clarify that that preparing the records (i.e. redactions, copying, etc.) can be charged.

10 *COMMENT: The authority to charge for research services is discretionary,*  
11 *allowing courts to balance the competing interests between recovering the*  
12 *costs of their response and ensuring the open administration of justice. The*  
13 *fee should not exceed the actual costs of response.*

14 (5) A court or judicial agency may require prepayment of fees.  
15  
16

#### 17 **APPLICATION OF RULE FOR ADMINISTRATIVE RECORDS**

18 This rule applies to all administrative records, regardless of the physical form of the  
19 record, the method of recording the record, or the method of storage of the record.

##### 20 **(i) Definitions.**

21 (1) "Access" means the ability to view or obtain a copy of an administrative record.  
22

23 (2) "Administrative record" means a public record created by or maintained by a  
24 court or judicial agency and related to the management, supervision, or  
25 administration of the court or judicial agency.

26 *COMMENT: The term "administrative record" does not include any of the*  
27 *following: (1) "court records" as defined in GR 31; (2) chambers records as*  
28 *set forth later in this rule; or (3) an attorney's client files that would otherwise*  
29 *be covered by the attorney-client privilege or the attorney work product*  
30 *privilege.*  
31

32 (3) "Court record" is defined in GR 31.  
33

34 (4) "Judge" means a judicial officer as defined in the Code of Judicial Conduct  
35 (CJC) Application of the Code of Judicial Conduct Section (A).  
36

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1 (5) "Public" includes an individual, partnership, joint venture, public or private  
2 corporation, association, federal, state, or local governmental entity or agency,  
3 however constituted, or any other organization or group of persons, however  
4 organized.

5  
6 (6) "Public record" includes any writing, except chambers records and court  
7 records, containing information relating to the conduct of government or the  
8 performance of any governmental or proprietary function prepared, owned,  
9 used, or retained by any court or judicial agency regardless of physical form or  
10 characteristics. "Public record" also includes metadata for electronic  
11 administrative records.

12 *COMMENT: See O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149*  
13 *(2010) (defining "metadata").*

14  
15 (7) "Writing" means handwriting, typewriting, printing, photostating, photographing,  
16 and every other means of recording any form of communication or  
17 representation including, but not limited to, letters, words, pictures, sounds, or  
18 symbols, or combination thereof, and all papers, maps, magnetic or paper  
19 tapes, photographic films and prints, motion picture, film and video recordings,  
20 magnetic or punched cards, discs, drums, diskettes, sound recordings, and  
21 other documents including existing data compilations from which information  
22 may be obtained or translated.

23 *COMMENT: E-mails and telephone records are included in this broad*  
24 *definition of "writing."*  
25

26 **(j) Administrative Records—General Right of Access.** Court and judicial agency  
27 administrative records are open to public access unless access is exempted or  
28 prohibited under this rule, other court rules, federal statutes, state statutes, court  
29 orders, or case law. To the extent that records access would be exempt or  
30 prohibited if the Public Records Act applied to the judiciary's administrative records,  
31 access is also exempt or prohibited under this rule. To the extent that an ambiguity  
32 exists as to whether records access would be exempt or prohibited under this rule or  
33 other enumerated sources, responders and reviewing authorities shall be guided by  
34 the Public Records Act, [Chapter chapter 42.56 RCW](#), in making interpretations  
35 under this rule. In addition, to the extent required to prevent a significant risk to  
36 individual privacy or safety interests, a court or judicial agency shall delete  
37 identifying details in a manner consistent with this rule when it makes available or  
38 publishes any public record; however, in each instance, the justification for the  
39 deletion shall be provided fully in writing.

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**(k) Entities Subject to Rule.**

(1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial ~~branch~~ agencies:

(i) All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;

(ii) The Superior Court Judges' Association, the District and Municipal Court Judges' Association, and similar associations of judicial officers and employees; ~~and~~

~~(iii)~~ (iii) ~~The Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense.~~

~~(iii)~~ (iv) All subgroups of the entities listed in this section (k)(1).

*COMMENT: The elected court clerks and their staff are not included in this rule because (1) they are covered by the Public Records Act and (2) they do not generally maintain the judiciary's administrative records that are covered by this rule.*

~~(2) This rule applies to the Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense.~~

~~(3)~~ (2) This rule does not apply to the Washington State Bar Association. Public access to the Bar Association's records is governed by [a proposed General Rule 12.4, pending before the Supreme Court].

~~(4)~~ (3) A judicial officer is not a court or judicial agency.

*COMMENT: This provision protects judges and court commissioners from having to respond personally to public records requests. Records requests would instead go to the court's public records officer.*

~~(5)~~ (4) 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.

~~(6)~~ (5) A person or entity entrusted by a judicial officer, court, or judicial agency with the storage and maintenance of its public records, whether part of a judicial agency or a third party, is not a judicial agency. Such person or agency may not respond to a request for access to administrative records, absent express

Commented [A3]: "judicial agencies" is used throughout so "branch" deleted to remain consistent

Commented [A4]: Requested by CWG

1 written authority from the court or judicial agency or separate authority in court  
2 rule to grant access to the documents.

3  
4 *COMMENT: Judicial e-mails and other documents sometimes reside on IT*  
5 *servers, some are in off-site physical storage facilities. This provision*  
6 *prohibits an entity that operates the IT server from disclosing judicial records.*  
7 *The entity is merely a bailee, holding the records on behalf of a court or*  
8 *judicial agency, rather than an owner of the records having independent*  
9 *authority to release them. Similarly, if a court or judicial agency puts its*  
10 *paper records in storage with another entity, the other entity cannot disclose*  
11 *the records. In either instance, it is the court or judicial agency that needs to*  
12 *make the decision as to releasing the records. The records request needs to*  
13 *be addressed by the court's or judicial agency's public records officer, not by*  
14 *the person or entity having control over the IT server or the storage area. On*  
15 *the other hand, if a court or judicial agency archives its records with the state*  
16 *archivist, relinquishing by contract its own authority as to disposition of the*  
17 *records, the archivist would have separate authority to disclose the records.*

18  
19 *Because of this rule's broad definition of "public record", this paragraph (6)*  
20 *would apply to electronic records, such as e-mails (and their metadata) and*  
21 *telephone records, among a wide range of other records.*  
22

23 **(f) Exemptions.** In addition to exemptions referred to in section (j), the following  
24 categories of administrative records are exempt from public access:

25 (1) Requests for judicial ethics opinions;

26 (2) Minutes of meetings held exclusively among judges, along with any staff;

27 *COMMENT: Meeting minutes do not always contain information that needs*  
28 *to be withheld from public access. Courts have discretion whether to*  
29 *release meeting minutes, because an exemption from this rule merely*  
30 *means that a document is not required to be disclosed. Disclosure would*  
31 *be appropriate if the document does not contain information of a*  
32 *confidential, sensitive, or protected nature. Courts and judicial agencies*  
33 *are encouraged to carefully consider whether some, or all, of their*  
34 *meeting minutes should be open to public access. Adopting a local rule on*  
35 *this issue would assist the public in knowing which types of minutes are*  
36 *accessible and which are not.*

37 (3) Preliminary drafts, notes, recommendations, and intra-agency memorandums  
38 in which opinions are expressed or policies formulated or recommended are  
39 exempt under this rule, except that a specific record is not exempt when  
40 publicly cited by a court or agency in connection with any court or agency  
41 action. This exemption applies to a record only while a final decision is pending

1 on the issue that is being addressed in that record; once the final decision has  
2 been made, the record is no longer covered by this exemption. For purposes of  
3 documents related to budget negotiations with a budgetary authority, the “final  
4 decision” is the decision by the budgetary authority to adopt the budget for that  
5 year or biennium.

- 6 (4) Evaluations and recommendations concerning candidates seeking appointment  
7 or employment within a court or judicial agency;

8 *COMMENT: Paragraph (4) is intended to encompass documents such as those*  
9 *of the Supreme Court's Capital Counsel Committee, which evaluates attorneys*  
10 *for potential inclusion on a list of attorneys who are specially qualified to*  
11 *represent clients in capital cases.*

- 12 (5) Personal identifying information, including individuals' home contact  
13 information, Social Security numbers, [date of birth](#), driver's license numbers,  
14 and identification/security photographs;

Commented [A5]: Request made at Presiding Judges  
Association...this was previously in the rule, but was removed  
before it was adopted

- 15 (6) Documents related to an attorney's request for a trial or appellate court  
16 defense expert, investigator, or other services, any report or findings submitted  
17 to the attorney or court or judicial agency by the expert, investigator, or other  
18 service provider, and the invoicing of the expert, investigator or other service  
19 provider during the pendency of the case in any court. Payment records are  
20 not exempt, provided that they do not include medical records, attorney work  
21 product, information protected by attorney-client privilege, information sealed by  
22 a court, or otherwise exempt information;

- 23 (7) Documents, records, files, investigative notes and reports, including the  
24 complaint and the identity of the complainant, associated with a court's or  
25 judicial agency's internal investigation of a complaint against the court or  
26 judicial agency or its contractors during the course of the investigation. The  
27 outcome of the court's or judicial agency's investigation is not exempt;

- 28 (8) [Reserved];

- 29 (9) Family court mediation files; and

- 30 (10) Juvenile court probation social files.

- 31 (11) Those portions of records containing specific and unique vulnerability  
32 assessments or specific and unique emergency and escape response plans,  
33 the disclosure of which would have a substantial likelihood of threatening the  
34 security of a judicial facility or any individual's safety.

- 35 (12) The following records of the Certified Professional Guardian Board:  
36

- 1 (i) Investigative records compiled by the Board as a result of an investigation  
2 conducted by the Board as part of the application process, while a  
3 disciplinary investigation is in process under the Board's rules and  
4 regulations, or as a result of any other investigation conducted by the  
5 Board while an investigation is in process. Investigative records related to  
6 a grievance become open to public inspection once the investigation is  
7 completed.
- 8 (ii) Deliberative records compiled by the Board or a panel or committee of the  
9 Board as part of a disciplinary process.
- 10 (iii) A grievance shall be open to public access, along with any response to  
11 the grievance submitted by the professional guardian or agency, once the  
12 investigation into the grievance has been completed or once a decision  
13 has been made that no investigation will be conducted. The name of the  
14 professional guardian or agency shall not be redacted from the grievance.

#### 16 **CHAMBERS RECORDS**

- 17  
18 **(m) Chambers Records.** Chambers records are not administrative records and are  
19 not subject to disclosure.

20 *COMMENT: Access to chambers records could necessitate a judicial officer*  
21 *having to review all records to protect against disclosing case sensitive*  
22 *information or other information that would intrude on the independence of*  
23 *judicial decision-making. This would effectively make the judicial officer a de*  
24 *facto public records officer and could greatly interfere with judicial functions.*

- 25 (1) "Chambers record" means any writing that is created by or maintained by any  
26 judicial officer or chambers staff, and is maintained under chambers control,  
27 whether directly related to an official judicial proceeding, the management of  
28 the court, or other chambers activities. "Chambers staff" means a judicial  
29 officer's law clerk and any other staff when providing support directly to the  
30 judicial officer at chambers.

31 *COMMENT: Some judicial employees, particularly in small jurisdictions, split*  
32 *their time between performing chambers duties and performing other court*  
33 *duties. An employee may be "chambers staff" as to certain functions, but not*  
34 *as to others. Whether certain records are subject to disclosure may depend on*  
35 *whether the employee was acting in a chambers staff function or an*  
36 *administrative staff function with respect to that record.*

37 *Records may remain under chambers control even though they are stored*  
38 *elsewhere. For example, records relating to chambers activities that are*

**Commented [A6]:** Deletion of "at chambers" is recommended by the Executive Oversight Group because "at chambers" could be taken literally and direct support to a judicial officer can occur outside of a judicial officer's chambers.

1 stored on a judge's personally owned or workplace-assigned computer, laptop  
2 computer, cell phone, and similar electronic devices would still be chambers  
3 records. As a further example, records that are stored for a judicial chambers  
4 on external servers would still be under chambers control to the same extent  
5 as if the records were stored directly within the chambers. However, records  
6 that are otherwise subject to disclosure should not be allowed to be moved  
7 into chambers control as a means of avoiding disclosure.

- 8 (2) Court records and administrative records do not become chambers records  
9 merely because they are in the possession or custody of a judicial officer or  
10 chambers staff.

11 *COMMENT: Chambers records do not change in character by virtue of being*  
12 *accessible to another chambers. For example, a data base that is shared by*  
13 *multiple judges and their chambers staff is a "chambers record" for purposes*  
14 *of this rule, as long as the data base is only being used by judges and their*  
15 *chambers staff.*

16 **IMPLEMENTATION AND EFFECTIVE DATE**

- 17  
18  
19 **(n) Best Practices.** Best practice guidelines adopted by the Supreme Court may be  
20 relied upon in acting upon public requests for documents.

21 **(o) Effective Date of Rule.**

- 22 (1) This rule will go into effect on a future date to be determined by the Supreme  
23 Court based on a recommendation from the Board for Judicial Administration.  
24 The rule will apply to records that are created on or after that date.

25 *COMMENT: A delayed effective date is being used to allow time for*  
26 *development of best practices, training, and implementation. The effective*  
27 *date will be added to the rule once it has been determined.*

- 28 (2) Public access to records that are created before that date are to be analyzed  
29 according to other court rules, applicable statutes, and the common law  
30 balancing test. The Public Records Act, [Chapter 42.56 RCW](#), does not apply  
31 to judicial records, but it may be used for non-binding guidance.

# Tab 10



WASHINGTON  
COURTS

# **Court Management Council (CMC) Annual Report**

## **2014**

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**Prepared for the Board for Judicial Administration**

**Submitted January 2015**



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# WASHINGTON COURTS

ADMINISTRATIVE OFFICE OF THE COURTS

**Callie T. Dietz**  
State Court Administrator

January 30, 2015

Members of the BJA:

We are pleased to present the first Court Management Council (CMC) Annual Report.

In 2014 the CMC created a charter, made important changes to its bylaws and membership, and completed a large project.

The CMC is an important contributor to the administration of justice in Washington courts. We hope the Board for Judicial Administration will continue to look to the CMC for input and assistance with matters that affect the administration of courts and clerks offices in our state.

Sincerely,

A handwritten signature in black ink that reads "Callie T. Dietz".

Callie T. Dietz  
CMC Co-Chair  
State Court Administrator  
Washington Administrative Office of the Courts

A handwritten signature in blue ink that reads "Sonya Kraski".

Sonya Kraski  
CMC Co-Chair  
Snohomish County Clerk



## **I. Background**

The Court Management Council (CMC) was created by Supreme Court order 25700-B-217 in June 1987 to serve as a statewide forum for enhancing the administration of the courts. It is uniquely comprised of non-judicial court professionals, and established to recommend policy development and facilitate statewide organizational improvements that promote the quality of justice, access to the courts, future planning, and efficiency in court and clerks' office operations statewide.

Included in, but not limited to, the CMC members' responsibilities are: 1) serving as administrative subject-matter resources in the development and implementation of judicial branch legislation; 2) providing, by majority vote, direction to the Administrative Office of the Courts on other matters affecting the administration of the courts; and 3) fostering communication among the various entities providing court administration.

The CMC focus is on issues common across court levels, and may work in partnership with other associations, committees, or work groups, depending on the project or policy under consideration.

## **II. Members**

### **2014 Court Management Council Members**

- Callie Dietz, Co-Chair, State Court Administrator
- Sonya Kraski, Co-Chair, Snohomish County Clerk
- Jeffrey Amram, Administrator, Clark County Superior Court
- Linda Baker, Administrator, Poulsbo Municipal Court
- Ronald R. Carpenter, Clerk, Supreme Court
- Suzanne Elsner, Administrator, Marysville Municipal Court
- Mike Fenton, Administrator, Thurston County Family and Juvenile Court
- Ruth Gordon, Jefferson County Clerk
- Frank Maiocco, Kitsap County Superior Court
- Pete Peterson, Administrator, Clallam County Juvenile Court
- Renee S. Townsley, Clerk/Administrator, Court of Appeals Division III

### **Administrative Office of the Courts (AOC) Staff**

- Dirk A. Marler
- Caroline W. Tawes

### **III. Summary of Activities in 2014**

#### **A. Charter and Bylaws**

In 2014, the Board for Judicial Administration (BJA) adopted the recommendation that all judicial branch committees and workgroups consider implementing a charter. CMC members Mr. Ron Carpenter (Supreme Court Clerk), Ms. Sonya Kraski (Snohomish County Clerk), Mr. Frank Maiocco (Kitsap County Superior Court Administrator), and Mr. Bob Terwilliger, (Snohomish County Superior Court Administrator), served on a work group to draft a new charter for the CMC. The CMC adopted the new charter in June 2014 and amended the existing bylaws to correspond to the charter. See Appendices A and B.

The new charter prescribed several changes, including the membership criteria. Previously, membership in the CMC consisted of the president, one board member, and one member at large from each of the following Washington State court associations: Washington State Association of County Clerks, District and Municipal Court Management Association, Association for Washington Superior Court Administrators, and Washington Association of Juvenile Court Administrators. The Court of Appeals Court Administrator/Clerks, the Clerk of the Supreme Court, and the State Court Administrator or a designee from that office also served.

According to the new charter and updated bylaws, two members are now nominated by each of their respective associations and serve two-year overlapping terms to ensure continuity of project/policy development, adoption, and implementation. Membership consists of two members from each of the same court management associations. Only one Court of Appeals Court Administrator/Clerk serves. The Clerk of the Supreme Court and the State Court Administrator or a designee also serves. The AOC continues to provide staff support for the CMC.

The State Court Administrator serves as a co-chair. The other co-chair position rotates annually among the members on July 1.

The new charter also requires an Annual Report to the BJA. Other reports or presentations may be made depending on projects.

#### **B. Meetings**

The CMC held in-person meetings every one to two months until 2008 when budget cuts required the CMC to begin meeting every other month by phone, with the exception of the joint December meeting with the BJA. The CMC meets at least quarterly, although typically meets by phone every other month.

While updating the bylaws, CMC members decided to add a second, in-person meeting to facilitate communication. The second in-person meeting is planned for April 2015.

## C. Projects

The CMC functions as an important forum for court managers to communicate and coordinate on the efficient administration of justice in their courts. In 2014, CMC members collaborated on several projects.

At the June 2009 meeting, CMC members discussed an issue that courts often struggle with: the quality of court transcriptionists' work product. The members wanted to discuss ways in which to tighten control over court transcriptionists' records, quality, and accountability. As a result, the CMC formed a subcommittee to investigate what court standards are in place and how courts in other states handle this. A broad-based CMC subcommittee, chaired by Division III Court of Appeals Clerk/Administrator Ms. Renee Townsley, reviewed standards and practices for verbatim report of proceedings. Other members of the subcommittee included:

- Ms. Peggy Bednared Director of Budget, King County District Court
- Ms. Delilah George, Administrator, Skagit County Superior Court
- Mr. David Ponzoha, Clerk, Court of Appeals Division II
- Mr. Bob Dowd, Director, King County District Court East
- Ms. Nancy Scott, Skagit County Clerk
- Ms. Deannie Nelson, Administrator, Skagit County District Court
- Ms. Kathei McCoy, Maleng Regional Justice Center Division Manager

The subcommittee was staffed by Mr. Marler and Ms. Tawes.

The subcommittee work product, the *Final Report and Recommendations for Court Electronic Recording*, was approved at the February 8, 2012 CMC meeting. An electronic copy of the report is available on *Inside Courts*.

The subcommittee also recommended changes in court rules and statutes. The next step in this process was to officially seek comment on these recommended changes from CMC member associations. Comments were reviewed by the CMC members and then recommendations for rules and RCW changes were forwarded to the BJA for discussion.

In March 2014, after four years of research and review by CMC members from multiple court levels, the CMC submitted suggested court rule amendments to the Supreme Court Rules Committee. The CMC suggested amendments to rules SPRC 3; RAP 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 9.10, 10.2, 18.9; CR 43, 80; ARLJ 13; RALJ 5.3; CRLJ 75, and suggested new rules in CR, CrR, and GR. The proposal was reviewed by the Court of Appeals Rules Committee, the Superior Court Judges' Association, and the District and Municipal Court Judges' Association before being approved by the BJA. The BJA endorsed these suggested rules as well as companion legislation that will be proposed in 2015.

The Washington State Bar Association (WSBA) Rules Committee met on September 15, 2014, and reviewed the rule changes proposed by the CMC. Ms. Townsley was able to participate in that meeting as a guest along with Presiding Chief Judge Kevin Korsmo, Chair

of the Court of Appeals Rules Committee. Ms. Townsley submitted a summary of the WSBA Rules Committee comments to the CMC.

After reviewing the comments, the CMC members were concerned about several changes suggested by the WSBA Rules Committee. The suggested change that concerned them most was the addition of “or different” to the last line of New General Rule – Official Certified Superior Court Transcripts (d). The original purpose of the rule change proposal was to gain consistency for a minimum standard of experience and qualifications for people completing verbatim reports of proceedings across the state, and the CMC felt the addition of these two words undermined the entire focus of the proposed rule changes. The CMC members submitted a letter to the WSBA Board of Governors that addressed the CMC concerns.

The Proposed Rule was published in December 2014 for comment and included the WSBA language. The CMC decided to add this topic to the February 2015 meeting agenda for further discussion.

#### **D. Court Manager of the Year Award**

First awarded in 1991, this annual award honors outstanding court managers who exemplify the leadership and ideals of their chosen profession. The CMC presents the Award each year to an individual whose leadership has been transformative on a regional or statewide basis and who has mobilized and unified people to take action for the greater good.

In early October each year, the CMC requests nominations from the court community statewide. Nominations are submitted to the CMC members, who vote for the winner. An inscribed award is presented each year at the CMC/BJA joint meeting in December.

Award recipients have been people who, apart from their noteworthy personal accomplishments, have raised the capacity of others to improve the administration of justice. Their leadership has had regional or statewide impact. A list of previous Award winners is listed in Appendix C.

Until 2010, the Award also included a scholarship to attend the National Association for Court Management conference. This was discontinued due to budget constraints.

#### **E. Discussions**

The CMC meetings provide court administrators, managers, and clerks the opportunity to discuss events or issues that concern them or their staff. The topics below were a few of those discussed at CMC meetings in 2014.

##### Jury Scam

In late 2013 and continuing into 2014, several e-mail and telephone scams occurred. Both types of contact advised the target that he or she had failed to appear for jury service and

could avoid arrest by paying a fine. Both AOC and courts around the state were contacted by residents who had received telephone calls or e-mails warning them of missed jury service.

After the concern was discussed at the CMC, AOC and several counties posted warnings on their Web sites. After discussing the problem at the February 2014 CMC meeting, Ms. Dietz contacted the National Center for State Courts (NCSC) and asked for suggestions on informing the courts and public about jury scams. NCSC representatives said this scam appears regularly and suggested posting warnings on Web sites. The AOC juror information Web page on the public site now contains a warning about the scam. Several court Web pages link to the AOC juror site.

In November 2014, CMC Co-Chair, Ms. Sonya Kraski, made the CMC members aware of additional jury scam incidents in Snohomish County, primarily targeting senior citizens. Because this is a reoccurring problem for our courts and citizens, the CMC discussed taking additional action.

The CMC wanted to do more than develop a press release and send it out to media. The first action was to contact the Attorney General's Office to make them aware of the most recent occurrences and to ask if the CMC could partner with their efforts to stop these scams. Second, Ms. Dietz contacted the Washington Pattern Instruction (WPI) Committee and asked if they would be interested in working with the CMC on this effort. The WPI was very interested and wanted a proposal for that committee's December 5, 2014, meeting.

The CMC plans to coordinate and support the WPI effort to develop a poster and some educational material on jury scams. If the project is approved by the WPI Committee, they will pay for the development and printing of the posters. The CMC plans to assist in the communications plan and send the posters to all courts and ask to have them distributed to staff or volunteers and posted throughout the community to help make people aware of the scams. The CMC will continue to discuss other publicity plans in 2015.

#### Lock Box issue

At the June CMC meeting, Mr. Marler discussed a *Wenatchee World* article about two gun rights advocates who arrived armed at courthouses in Grant and Chelan counties and demanded free lock boxes for their weapons within the courthouse building. The encounters were filmed by the gun rights advocates and posted on YouTube. Ms. Fona Sugg, judicial assistant in Chelan County Superior Court, participated in a CMC meeting and provided background information on the incident in her county.

Ms. Sugg believes that the Washington Association of County Officials (WACO) had already sent information to their members on this subject. After receiving a copy of the e-mail WACO sent, Mr. Marler felt the information was not particularly useful to courts.

Mr. Marler also reviewed RCW 9.41.300, which puts the responsibility for providing lock boxes or authorized persons to take possession of weapons on the local legislative authority, not the court, and shared this information at the next CMC meeting. The CMC discussed further action. Some of the CMC members were concerned that publicizing the issue might create more incidents. By the end of 2014, no further incidents had been reported.

## GR 17

In June 2014, Mr. Marler received an e-mail asking about a restrictive interpretation of GR 17, which authorizes facsimile transmission of filing documents. The sender of the e-mail requested consideration of an amendment that would allow acceptance of a filing by Portable Document Format (PDF) or electronic facsimiles. The CMC members agreed that broader language in the rule would be appropriate, and discussed the impact this would have on county clerks and district court clerks. Mr. Marler suggested retaining language outlining the conditions for acceptance of a traditional facsimile, but also allowing local jurisdictions to accept PDFs and electronic facsimiles. Mr. Marler asked representatives of the county clerks and district court managers whether they supported CMC working on changes to the rule.

In August, Mr. Marler reported to the CMC that he had spoken with members of the Washington State Association of County Clerks (WSACC) and the District and Municipal Court Management Association (DMCMA) about GR 17 and asked for input from both groups. There was some concern that changing the rule to accept filings by e-mail would expose the filings to a public records request. There is also an e-filing court rule that may cover this issue. The CMC members felt that, while reviewing court rules periodically is a good idea, the issue in this rule may be resolved by the Superior Court Case Management System (SC-CMS) and no action should be taken now. This rule may be reconsidered after the SC-CMS is in place.

## Past Accomplishments

The CMC has, in the past, undertaken projects to further the administration of justice in Washington State. Past CMC projects include a call for discussion/issue papers, a Washington Court Managers Institute, and creation of a Model Job Description for Court Administrators and a Model Code of Conduct for Court Employees.

The Records Management Advisory Committee (RMAC), Electronic Recording Subcommittee met during the fall of 2001 to review electronic court recording in Washington. The subcommittee's primary focus was on audio recording. While there was some discussion of video recording, the subcommittee did not address issues related to video recording. The RMAC produced a report "2002 Final Report and Recommendations for Court Electronic Recording," available on *Inside Courts*.

**APPENDIX A**  
**Court Management Council Charter**

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## Court Management Council (CMC)

### COMMITTEE CHARTER

#### I. Title

Court Management Council (CMC)

#### II. Authorization

Supreme Court Order 25700-B-217; Bylaws, adopted August 18, 1987; amended October 21, 1987; October 17, 1999; November 16, 2001; September 26, 2007, and June 30, 2014.

#### III. Purpose

The Court Management Council shall serve as a statewide forum for enhancing the administration of the courts. It is uniquely comprised of non-judicial court professionals, and established to recommend policy development and facilitate statewide organizational improvements that promote the quality of justice, access to the courts, future planning, and efficiency in court and clerks' office operations statewide.

#### IV. Policy area

Included in, but not limited to, the responsibility of the CMC is: 1) serving as administrative subject-matter resources in the development and implementation of judicial branch legislation; 2) providing, by majority vote, direction to the Administrative Office of the Courts on other matters affecting the administration of the courts; and, 3) fostering communication among the various entities providing court administration.

#### V. Expected deliverables

Project- or policy-dependent, including, but not limited to, the Board for Judicial Administration and the constituent Associations represented on the Council.

## **VI. Membership**

Membership in the Court Management Council shall consist of two members from each of the following: Washington State Association of County Clerks, District and Municipal Court Management Association, Association for Washington Superior Court Administrators, and Washington Association of Juvenile Court Administrators. One Court of Appeals Court Administrator/Clerk, the Clerk of the Supreme Court, and the State Court Administrator or a designee from that office shall also serve.

Members shall serve two year overlapping terms to ensure continuity of project/policy development, adoption and implementation.

The State Court Administrator shall serve as a co-chair. Another co-chair position shall rotate for a one year term among the following: the Washington State Association of County Clerks, District and Municipal Court Management Association, Association for Washington Superior Court Administrators, Washington Association of Juvenile Court Administrators; a Court of Appeals Court Administrator/Clerk designated by the Court Administrator/Clerks of the Court of Appeals; and the Clerk of the Supreme Court. The term shall run from July 1–June 30.

If an association member is unwilling or unable to serve as co-chair, the other association member may serve. If no Council member from the association or court level is willing and able to serve as co-chair on July 1, the co-chair duties shall rotate to the next association or court level in the cycle.

If a vacancy occurs in any representative position, the bylaws of the governing group shall determine how the vacancy will be filled.

## **VII. Term Limits**

The CMC member terms run from July 1–June 30. Terms for the members from each Association group will begin in alternate years, to ensure continuity of project/policy development, adoption and implementation.

## **VIII. Other branch committees addressing the same topic**

Project- and/or policy-dependent. Because the CMC will focus on issues of commonality across all levels of court, it is anticipated the CMC will address many of the same topics as the Board for Judicial Administration, each

Association, and other judicial branch committees, subcommittees and workgroups.

**IX. Other branch committees to partner with**

Project- and/or policy-dependent. Because the CMC will focus on issues of commonality across all levels of court, it is anticipated the CMC will partner with the Board for Judicial Administration, each Association and other judicial branch committees, subcommittees and workgroups.

**X. Reporting Requirements**

Project- and/or policy-dependent. The CMC will present an annual report to the Board for Judicial Administration.

**XI. Budget Requested**

Except to provide in-kind resources and support for projects undertaken by the CMC and travel expenses for the annual in-person meeting with the Board for Judicial Administration, no formal State budget allocation is requested.

**XII. AOC Staff Support Requested**

The State Court Administrator shall provide staff for the Council.

**XIII. Recommended Review Date**

Every three years, beginning on the adopted date of this charter.

*Date Created: August 1987*

*Duration: ongoing*

**Meeting Frequency:** There shall be regularly scheduled meetings of the Court Management Council at least quarterly, with monthly meetings during the legislative sessions. At least two meetings per year shall be held in person, with the final meeting each year held jointly with the BJA. Reasonable notice of meetings shall be given to each member. Special meetings may be called by any member of the Council. Reasonable notice of special meetings shall be given to each member.

*Adopted: 6/2014*

*Amended: Mo/Day/Year*

**APPENDIX B**  
**Court Management Council Bylaws**

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## COURT MANAGEMENT COUNCIL

### BYLAWS

#### ARTICLE I

##### Purpose

The Court Management Council shall serve as a statewide forum for enhancing the administration of the courts. Included in, but not limited to, that responsibility is: 1) serving as administrative subject-matter resources in the development and implementation of judicial branch legislation; 2) providing, by majority vote, direction to the Administrative Office of the Courts on other matters affecting the administration of the courts; 3) fostering communication among the various entities providing court administration.

#### ARTICLE II

##### Membership

Membership in the Court Management Council shall consist of two members from each of the following: Washington State Association of County Clerks, District and Municipal Court Management Association, Association for Washington Superior Court Administrators, and Washington Association of Juvenile Court Administrators. One Court of Appeals Court Administrator/Clerk, the Clerk of the Supreme Court, and the State Court Administrator or a designee from that office shall also serve. The State Court Administrator shall provide staff for the Council.

Members shall serve two-year overlapping terms to ensure continuity of project/policy development, adoption, and implementation.

#### ARTICLE III

##### Officers and Representatives

The State Court Administrator shall serve as a co-chair.

Another co-chair position shall rotate for a one year term among the following: the Washington State Association of County Clerks, District and Municipal Court Management Association, Association for Washington Superior Court Administrators, Washington Association of Juvenile Court Administrators; a Court of Appeals Court Administrator/Clerk designated by the Court Administrator/Clerks of the Court of Appeals; and the Clerk of the Supreme Court. The term shall run from July 1–June 30.

If an association member is unwilling or unable to serve as co-chair, the other association member may serve. If no Council member from the association or court level is willing and able to serve as co-chair on July 1, the co-chair duties shall rotate to the next association or court level in the cycle.

#### ARTICLE IV

##### Duties of Co-chairs

The co-chairs shall preside at all meetings of the Council, performing the duties usually incident to such office, and shall be the official spokespersons for the Council. The co-chairs shall appoint the chairs of all committees.

One co-chair may perform all duties of the chair in the absence or incapacity of the other co-chair.

#### ARTICLE V

##### Vacancies

If a vacancy occurs in any representative position, the bylaws of the governing group shall determine how the vacancy will be filled.

#### ARTICLE VI

##### Committees

Standing committees of the Court Management Council shall be established by unanimous vote. Ad hoc committees and task forces shall be established by majority vote.

Each committee shall have such authority as the Council deems appropriate.

Membership on all committees and task forces will reflect equal representation from all represented associations. Committees shall report in writing to the Court Management Council as appropriate to their charge.

#### ARTICLE VII

##### Regular Meetings

There shall be regularly scheduled meetings of the Court Management Council at least quarterly, with monthly meetings on an as-needed basis. Reasonable notice of meetings shall be given to each member.

At least two meetings per year shall be held in person, with the final meeting each year held jointly with the Board for Judicial Administration (BJA).

#### ARTICLE VIII

##### Special Meetings

Any member of the Council may call special meetings. Reasonable notice of special meetings shall be given each member.

#### ARTICLE IX

##### Quorum

Six members of the Council shall constitute a quorum.

#### ARTICLE X

##### Voting

Each member of the Court Management Council shall have one vote. An absent member can authorize a vote by proxy. A proxy shall be given to the representative or alternate from the absent member's association.

#### ARTICLE XI

##### Amendments and Repeal of Bylaws

These bylaws may be amended or modified at any regular or special meeting of the Council at which a quorum is present by unanimous vote. No motion or resolution for amendment may be considered by the Council unless a copy of the proposed motion or resolution has been given to each member at least thirty (30) days prior to the meeting at which such proposed motion or resolution is to be considered.

APPROVED: August 18, 1987  
AMENDED: October 21, 1987  
AMENDED: October 17, 1999  
AMENDED: November 16, 2001  
AMENDED: September 26, 2007  
Amended: June 2014

**APPENDIX C**  
**Court Manager of the Year Criteria**  
**And Previous Recipients**

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**COURT MANAGEMENT COUNCIL**  
**COURT MANAGER OF THE YEAR AWARD—2014**

**Eligibility Rules and Selection Guidelines**

The selection of a court manager serving the courts of the state of Washington as the outstanding court manager in the state shall be in accordance with these rules adopted by the Court Management Council.

1. Consideration of nominees for the Court Management Award shall be commenced upon the filing, by a person other than the candidate, of a written nomination in the form approved by the Court Management Council. A selection committee shall be identified from among members of the Court Management Council. Any member who has been nominated for that year's award will be excluded from the selection committee.
2. A nominee for this award shall have completed at least five (5) consecutive years as court manager in a Washington State court and shall not have been retired for more than two (2) years.
3. Any person previously or currently employed by a Washington State court as the chief executive officer, administrator, clerk or manager is eligible for nomination. Nominees should have demonstrated leadership on a regional or statewide basis that is beyond the leadership expected of an individual court manager.
4. The selection committee may use various criteria to determine the award recipient including that the nominee made significant contributions to the court community in one or more of the following areas:
  - Enhancing the administration of justice in Washington's courts
  - Improving the quality of service in Washington's courts
  - Improving access to justice in Washington's courts
  - Enhancing expedition and timeliness of actions in Washington's courts
  - Promoting equality, fairness, and integrity in Washington's courts
  - Furthering independence and accountability of the judiciary
  - Instilling public trust and confidence in Washington's courts
5. The Court Management Council may revise or amend these rules and guidelines without notice to any nominator, nominee, or other person. Any change that would adversely affect a nomination the Council has begun to consider shall not be implemented while that nomination is pending.

## Court Manager of the Year Award Recipients

1991	Lee Fish, Spokane County Juvenile Court
1992	Donna Karvia, Lewis County Clerk
1993	Mimi Walsh, Snohomish County Clerk's Office
1994	<i>No award</i>
1995	Bev Bright, Pierce County Superior Court
1996	Siri Woods, Chelan County Clerk
1997	Tricia Hansen (Crozier) King County District Court <i>and</i> Madelyn Botta, Kitsap County Superior Court
1998	Jan Michels, King County Superior Court Clerk <i>and</i> Virgil Hulsey
1999	Tom Kearney, San Juan Juvenile Court
2000	Eileen Possenti, Puyallup Municipal Court
2001	Pam Springer, Skagit County District Court
2002	<i>No award</i>
2003	Harold Delia, Yakima County Superior Court
2004	Siri Woods, Chelan County Clerk
2005	Barbara Miner, King County Superior Court
2006	Richard E. Carlson, Snohomish County Superior and Juvenile Courts
2007	Richard Johnson, Court of Appeals Division I
2008	Cathy Grindle, Director of Court Technology, King County District Court
2009	Michael Merringer, Island County Superior Court, Island County Juvenile Court
2010	Sharon Paradis, Administrator, Benton County Juvenile Court
2011	N.F. Jackson, Whatcom County Superior Court
2012	Frank Maiocco, Kitsap County Superior Court
2013	Delilah George, Skagit County Superior Court
2014	Susie Parker, Lewis County Superior Court



**APPENDIX D**  
**Supreme Court Rules Committee Packet**

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March 6, 2014

Honorable Barbara Madsen  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Dear Chief Justice Madsen:

On behalf of the Court Management Council (CMC), please find enclosed suggested amendments to rules SPRC 3; RAP 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 9.10, 10.2, 18.9; CR 43, 80; ARLJ 13; RALJ 5.3; CRLJ 75, and suggested new rules in CR, CrR, and GR.

A broad-based CMC subcommittee, chaired by Division III Court of Appeals Clerk/Administrator Ms. Renee Townsley, reviewed standards and practices for verbatim report of proceedings. The enclosed proposed amendments and new rules are the product of four years of research and review on the best practices for creating, maintaining, and transmitting verbatim reports of proceedings.

The Board for Judicial Administration endorsed these suggested rules as well as companion legislation that will be proposed in 2015.

Thank you for the Court's consideration.

Sincerely,

Handwritten signature of Callie T. Dietz in black ink.

Callie T. Dietz  
Court Management Council Co-Chair  
State Court Administrator

Handwritten signature of Pat Escamilla in black ink.

Pat Escamilla  
Court Management Council Co-Chair  
Clark County Juvenile Court Administrator

cc: Justice Charles Johnson

## GR 9 COVER SHEET

**Suggested Amendments to SPRC 3; RAP 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 9.10, 10.2, 18.9; CR 43, 80; ARLJ 13; RALJ 5.3; CRLJ 75**

### **Suggested New Rules: CR, CrR, and GR**

- (A) **Name of Proponent:** Court Management Council
- (B) **Spokesperson:** Renee Townsley, Administrator/Clerk  
Court of Appeals, Division III
- (C) **Purpose:**

The Court Management Council (CMC), created by Supreme Court Order 25700-B-217 as a statewide forum for enhancing the administration of the courts, has identified opportunities to improve the quality and timeliness of transcripts that are necessary for appellate review. Current statutes and court rules lack adequate direction on the process and standards for authorizing persons to transcribe trial court records. Consequently, there is great inconsistency across the state on the qualifications and performance accountability for transcriptionists completing verbatim report of proceedings. This contributes to incomplete or inaccurate transcripts, administrative inefficiency, and delays.

With the support of the Board for Judicial Administration (BJA), the Court Management Council suggests rule amendments and new rules that will promote consistent standards and practices for the creation, maintenance, and transmission of verbatim report of proceedings. These changes are necessary to keep pace with changing technology and the increased use of electronic recordings in the trial courts.

Beginning in 2009, a CMC subcommittee consisting of representatives from all levels of court, conducted a comprehensive review of the statutes, rules, and practices that govern the verbatim report of proceedings in the courts of Washington. The CMC adopted revised guidelines for electronic recordings in 2011, and then began working on suggested changes to court rules and statutes to implement best practices. An initial draft was presented to the Board for Judicial Administration in September 2012 and referred to the judicial community for further review and comment.

The suggestions submitted to the Supreme Court are the product of input from the Washington Court Reporters' Association, Court of Appeals Rules Committee, Superior Court Judges' Association, and the District and Municipal Court Judges' Association in addition to the administrative groups that comprise the CMC (Clerk of the Supreme Court, Court of Appeals Administrator/Clerks, Washington State Association of County Clerks, Washington Association of Superior Court

Administrators, Washington Association of Juvenile Court Administrators, District and Municipal Court Management Association, and the Administrator for the Courts).

BJA endorsed these suggested changes on December 16, 2013.

- (D) **Hearing:** Not recommended.
- (E) **Expedited Consideration:** Not requested.

1 **SUGGESTED AMENDMENT**

2 **SUPERIOR COURT SPECIAL PROCEEDINGS RULES – CRIMINAL**

3 **(SPRC)**

4 **RULE 3 – COURT REPORTERS; FILING OF NOTES**

5  
6 (a) At the commencement of a capital case, the trial court will designate one or more court  
7 reporters for that case. To the extent practical, only designated reporters will report all  
8 hearings.

9  
10 (b) As soon as possible after each hearing, stenographic notes or electronic ~~the court reporter~~  
11 ~~will transmit~~ stenographic, ~~any audio or video tapes, and any other electronic data medium~~  
12 ~~containing~~ notes of the hearing will be submitted to the courtroom clerk county clerk's  
13 office.

14  
15 ~~(c) The courtroom clerk will index the notes on a records inventory, noting the date of the notes.~~  
16 ~~The courtroom clerk will have the court reporter initial the inventory log as each set of notes~~  
17 ~~is received by the courtroom clerk.~~

18  
19 ~~(d)~~ (c) The stenographic notes or electronic stenographic notes of the hearing shall be indexed  
20 and stored by the county clerk's office. ~~, any audio or video tapes, and any other electronic~~  
21 ~~data medium containing notes of any hearing shall be stored by the clerk's office in an exhibit~~  
22 ~~box labeled with the defendant's name and cause number to allow easy retrieval of notes.~~  
23 ~~Sealed notes are to be marked "SEALED" in red ink and maintained in accordance with GR~~  
24 ~~15.~~

25  
26 ~~(e)~~ (d) Court reporter notes or electronic stenographic notes of the hearing, ~~any audio or video~~  
27 ~~tapes, and any other electronic data medium containing notes of any hearing, sealed or~~  
28 ~~unsealed,~~ shall not be provided to anyone except the court reporter who produced the notes,  
29 unless a court order provides otherwise.  
30

1 (f) (e) A court reporter may withdraw the stenographic notes or electronic stenographic notes,  
2 ~~any video or audio tapes, and any other electronic data medium containing notes~~ of a hearing  
3 as required for transcription ~~upon completing a request slip.~~ The stenographic notes or  
4 ~~electronic stenographic notes, any audio or video tapes, and any other electronic data~~  
5 ~~medium containing notes~~ shall be returned to the county clerk's office at the same time the  
6 transcript is filed ~~for transmission to an~~ with an appellate court.

1 **SUGGESTED NEW RULE**

2 **SUPERIOR COURT CRIMINAL RULE (CrR)**

3 **ELECTRONIC RECORDING LOG**

4  
5 When the proceedings are electronically recorded, the court shall ensure that a written log of the  
6 proceedings is created that indicates the time of relevant events.

7  
8 The judicial officer shall call the case name and cause number of each proceeding and shall  
9 assure that all case participants identify themselves for the record.

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.2 -- VERBATIM REPORT OF PROCEEDINGS**

4

5 (a) Transcription and Statement of Arrangements. If the party seeking review intends to provide  
6 a verbatim report of proceedings, the party should arrange for transcription of and payment  
7 for an original and one copy of the verbatim report of proceedings within 30 days after the  
8 notice of appeal was filed or discretionary review was granted. ~~If the proceeding being~~  
9 ~~reviewed was recorded on videotape, transcription of the videotapes shall be completed by a~~  
10 ~~court approved transcriber in accordance with procedures developed by the Office of the~~  
11 ~~Administrator for the Courts. Copies of these procedures are available at the court~~  
12 ~~administrator's office in each county where there is a courtroom that videotapes proceedings~~  
13 ~~or through the Office of the Administrator for the Courts.~~ The party seeking review must file  
14 with the appellate court and serve on all parties of record and all named court reporters or  
15 authorized transcriptionists a statement that arrangements have been made for the  
16 transcription of the report and file proof of service with the appellate court. The statement  
17 must be filed within 30 days after the notice of appeal was filed or discretionary review was  
18 granted. The party must indicate the date that the report of proceedings was ordered, the  
19 financial arrangements which have been made for payment of transcription costs, the name  
20 of each court reporter or authorized transcriptionist ~~other person authorized~~ to prepare a  
21 verbatim report of proceedings ~~who will be preparing the transcript~~, the hearing dates, and  
22 the trial court judge. If the party seeking review does not intend to provide a verbatim report  
23 of proceedings, a statement to that effect should be filed in lieu of a statement of  
24 arrangements within 30 days after the notice of appeal was filed or discretionary review was  
25 granted and served on all parties of record.

26

27 (b) Content. A party should arrange for the transcription of all those portions of the verbatim  
28 report of proceedings necessary to present the issues raised on review. A verbatim report of  
29 proceedings provided at public expense will not include the voir dire examination or  
30 opening statement unless so ordered by the trial court. If the party seeking review intends to

1           urge that a verdict or finding of fact is not supported by the evidence, the party should  
2           include in the record all evidence relevant to the disputed verdict or finding. If the party  
3           seeking review intends to urge that the court erred in giving or failing to give an instruction,  
4           the party should include in the record all of the instructions given, the relevant instructions  
5           proposed, the party's objections to the instructions given, and the court's ruling on the  
6           objections.

7  
8           (c) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less  
9           than all of the verbatim report of proceedings, the party should include in the statement of  
10          arrangements a statement of the issues the party intends to present on review. Any other  
11          party who wishes to add to the verbatim report of proceedings should within 10 days after  
12          service of the statement of arrangements file and serve on all other parties and the court  
13          reporter or authorized transcriptionist a designation of additional parts of the verbatim report  
14          of proceedings and file proof of service with the appellate court. If the party seeking review  
15          refuses to provide the additional parts of the verbatim report of proceedings, the party  
16          seeking the additional parts may provide them at the party's own expense or apply to the  
17          trial court for an order requiring the party seeking review to pay for the additional parts of  
18          the verbatim report of proceedings.

19  
20          (d) Payment of Expenses. If a party fails to make arrangements for payment of the costs of the  
21          verbatim report of proceedings at the time the verbatim report of proceedings is ordered, the  
22          party may be subject to sanctions as provided in rule 18.9.

23  
24          (e) Title Page and Table of Contents. The court reporter or other authorized transcriber shall  
25          include at the beginning of each volume of the verbatim report of proceedings a title page  
26          and a table of contents.

27  
28           (1) The title page should include the following:

29  
30           (A) Case name,

1 (B) Trial court and appellate cause numbers,

2

3 (C) Date(s) of hearings,

4

5 (D) Trial court judge(s),

6

7 (E) Names of attorneys at trial,

8

9 (f) Form

10

11 (1) Generally. The verbatim report of proceedings shall be on 8-1/2-by 11-inch paper. Margins

12 shall be lined 1-3/8 inches from the left and 5/8 inches from the right side of each page.

13 Indentations from the left lined margin should be: 1 space for "Q" and "A"; 5 spaces for the

14 body of the testimony; 8 spaces for commencement of a paragraph; and 10 spaces for

15 quoted authority. Typing should be double spaced except that comments by the reporter

16 should be single spaced. The page should have 25 lines of type. Type must be pica type or

17 its equivalent with no more than 10 characters an inch.

18

19 (2) Volume and Pages.

20

21 (A) Pages in each volume of the verbatim report of proceedings shall be numbered

22 consecutively and be arranged in chronologic order by date of hearing(s) requested on the

23 statement of arrangements submitted by each court reporter or transcriptionist.

24

25 (B) Each volume shall include no more than 200 pages. The page numbers should start with

26 page 1 and continue to 200, as needed, regardless of how many hearing dates are included in

27 the volume. The second volume and subsequent volume page numbers should start with the

28 next page number in sequence where the previous volume ended. The volumes shall be

29 either bound or fastened securely.

30

31 (3) Copies. The verbatim report of proceedings should be legible, clean and reproducible.

32

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.3 – NARRATIVE REPORT OF PROCEEDINGS**

4

5 The party seeking review may prepare a narrative report of proceedings. A party preparing a  
6 narrative report must exercise the party's best efforts to include a fair and accurate statement of  
7 the occurrences in and evidence introduced in the trial court material to the issues on review. A  
8 narrative report should be in the same form as a verbatim report, as provided in rule 9.2(e) and  
9 (f). If any party prepares a verbatim report of proceedings, that report will be used as the report  
10 of proceedings for the review. A narrative report of proceedings may be prepared if either the  
11 court reporter's notes or the electronic recording ~~the videotape~~ of the proceeding being reviewed  
12 are lost or damaged.

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.4 – AGREED REPORT OF PROCEEDINGS**

4

5 The parties may prepare and sign an agreed report of proceedings setting forth only so many of  
6 the facts averred and proved or sought to be proved as are essential to the decision of the issues  
7 presented for review. The agreed report of proceedings must include only matters which were  
8 actually before the trial court. An agreed report of proceedings should be in the same form as a  
9 verbatim report, as provided in rule 9.2(e) and (f). An agreed report of proceedings may be  
10 prepared if either the court reporter's notes or the electronic recording videotape of the  
11 proceeding being reviewed are lost or damaged or if the appellate court in a civil matter requests  
12 the parties to file an agreed report of proceedings.

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.5 – FILING AND SERVICE OF REPORT OF PROCEEDINGS —**  
4 **OBJECTIONS**

5  
6 (a) Generally. The party seeking review must file an agreed or narrative report of proceedings  
7 with the ~~clerk of the trial~~ appellate court within 60 days after the statement of arrangements is  
8 filed. The court reporter or ~~person~~ transcriptionist authorized to prepare the verbatim report of  
9 proceedings must file it in the appellate court within 60 days after the statement of  
10 arrangements is filed and all named court reporters or authorized transcriptionists are served.  
11 ~~If the proceeding being reviewed was recorded on videotape, the transcript must be filed by~~  
12 ~~the transcriber with the clerk of the trial court within 60 days after the statement of~~  
13 ~~arrangements is filed and all named court reporters are served. The party who caused a report~~  
14 ~~of proceedings to be filed should at the time of filing the report of proceedings serve notice~~  
15 ~~that the report of proceedings has been filed and file proof of the service on all parties.~~

16  
17 (1) A party filing a brief must promptly forward a copy of the verbatim report of proceedings  
18 with a copy of the brief to the party with the right to file the next brief. If more than one  
19 party has the right to file the next brief, the parties must cooperate in the use of the report  
20 of proceedings. The party who files the last brief should return the copy of the report of  
21 proceedings to the party who paid for it.

22  
23 (2) If the transcript was computer-generated, one diskette or compact disk (using PDF  
24 searchable ASCII-format with hard page returns) shall be filed with the original verbatim  
25 report of proceedings and a second diskette or compact disk shall be provided to the party  
26 who receives the verbatim report of proceedings. The computer PDF file may be  
27 electronically filed with the appellate court in lieu of the disk copy in accordance with the  
28 court’s filing procedures. The party who files the last brief should return the diskette or  
29 compact disk to the party who paid for the verbatim report of proceedings.  
30

1 (b) Filing and Service of Verbatim Report of Proceedings. If a verbatim report of proceedings  
2 cannot be completed within 60 days after the statement of arrangements is filed and served,  
3 the court reporter or authorized ~~person~~ transcriptionist shall, no later than 10 days before  
4 the report of proceedings is due to be filed, submit an affidavit to the party who ordered the  
5 report of proceedings stating the reasons for the delay. The party who requested the  
6 verbatim report of proceedings should move for an extension of time from the appellate  
7 court. The clerk will notify the parties of the action taken on the motion. When the court  
8 reporter or authorized ~~person~~ transcriptionist files the verbatim report of proceedings, a  
9 copy shall be provided to the party who arranged for transcription and either the reporter or  
10 authorized ~~person~~ transcriptionist shall serve and file notice of the filing on all other parties  
11 ~~and the appellate court~~. The notice of filing served ~~on the appellate court~~ shall include a  
12 declaration that (1) the transcript was computer generated and a PDF searchable ASCH  
13 diskette or compact disk was filed or (2) the transcript was not computer generated. Failure  
14 to timely file the verbatim report of proceedings and notice of service may subject the court  
15 reporter ~~or video transcriber~~ or authorized ~~person~~ transcriptionist to sanctions as provided  
16 in rule 18.9.

17 (c) Objections to Report of Proceedings. A party may serve and file objections to, and propose  
18 amendments to, a narrative report of proceedings or a verbatim report of proceedings  
19 within 10 days after receipt of the report of proceedings or receipt of the notice of filing of  
20 the report of proceedings with the appellate court. If objections or amendments to the report  
21 of proceedings are served and filed, any objections or proposed amendments must be heard  
22 by the trial court judge before whom the proceedings were held for settlement and  
23 approval, except objections to the form of a report of proceedings, which shall be heard by  
24 motion in the appellate court. The court may direct ~~a party or a~~ official reporters or  
25 authorized ~~transcriber~~ transcriptionists to pay for the expense of any modifications of the  
26 proposed report of proceedings. The motion procedure of the court deciding any objections  
27 shall be used in settling the report of proceedings.

28  
29 (d) Substitute Judge May Settle Report of Proceedings. If the judge before whom the  
30 proceedings were held is for any reason unable to promptly settle questions as provided in

1 section (c), another judge may act in the place of the judge before whom the proceedings  
2 were held.

3

4

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.8 – TRANSMITTING RECORD ON REVIEW**

4  
5 (a) Duty of Trial Court Clerk. Except as provided in section (b), the clerk of the trial court shall  
6 send the clerk's papers and exhibits to the appellate court when the clerk receives payment  
7 for the preparation of the documents, ~~and shall send the verbatim report of proceedings to~~  
8 ~~the appellate court at the end of the objection period set forth in rule 9.5.~~ The clerk shall  
9 endorse on the face of the record the date upon which the record on review is transmitted to  
10 the appellate court.

11  
12 (b) Cumbersome Exhibits. The clerk of the trial court shall transmit to the appellate court  
13 exhibits which are difficult or unusually expensive to transmit only if the appellate court  
14 directs or if a party makes arrangements with the clerk to transmit the exhibits at the  
15 expense of the party requesting the transfer of the exhibits. No weapons, controlled  
16 substances, hazardous items, or currency shall be forwarded unless directed by the  
17 appellate court.

18  
19 (c) Temporary Transmittal to another Court. If the record or any part of it is needed in another  
20 court while a review is pending, the clerk of the appellate court will, on the order or ruling  
21 of the appellate court, transmit the record or part of it to the clerk of that court, to remain  
22 there until the purpose for which it is transmitted has been satisfied or until the clerk of the  
23 appellate court requests its return.

1                                   **SUGGESTED AMENDMENT**

2                                   **RULES OF APPELLATE PROCEDURE (RAP)**

3                                   ~~**RULE 9.9 – CORRECTING OR SUPPLEMENTING REPORT OF**~~  
4                                   ~~**PROCEEDINGS BEFORE TRANSMITTAL TO APPELLATE COURT**~~

5  
6   ~~The report of proceedings may be corrected or supplemented by the trial court on motion of a~~  
7   ~~party, or on stipulation of the parties, at any time prior to the transmission of the report to the~~  
8   ~~appellate court. The trial court may impose the same kinds of sanctions provided in rule 18.9(a)~~  
9   ~~as a condition to correcting or supplementing the report of proceedings after the time provided in~~  
10 ~~rule 9.5.~~

1 **SUGGESTED AMENDMENT**

2 **RULES OF APPELLATE PROCEDURE (RAP)**

3 **RULE 9.10 – CORRECTING OR SUPPLEMENTING RECORD ~~AFTER~~**  
4 **~~TRANSMITTAL TO APPELLATE COURT~~**

5  
6 If a party has made a good faith effort to provide those portions of the record required by rule  
7 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or  
8 modify a trial court decision or administrative adjudicative order certified for direct review by  
9 the superior court because of the failure of the party to provide the appellate court with a  
10 complete record of the proceedings below. If the record is not sufficiently complete to permit a  
11 decision on the merits of the issues presented for review, the appellate court may, on its own  
12 initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and  
13 exhibits or administrative records and exhibits certified by the administrative agency, or (2)  
14 correct, or direct the supplementation or correction of, the report of proceedings. The appellate  
15 court or trial court may impose sanctions as provided in rule 18.9(a) as a condition to correcting  
16 or supplementing the record on review. The party directed or permitted to supplement the record  
17 on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of  
18 arrangements as provided in rule 9.2 within the time set by the appellate court.

1 **SUGGESTED AMENDMENT**  
2 **RULES OF APPELLATE PROCEDURE (RAP)**  
3 **RULE 10.2 – TIME FOR FILING BRIEFS**  
4

5 (a) Brief of Appellant or Petitioner. The brief of an appellant or petitioner should be filed with  
6 the appellate court within 45 days after the report of proceedings is filed in the ~~trial~~  
7 appellate court; or, if the record on review does not include a report of proceedings, within  
8 45 days after the party seeking review has filed the designation of clerk's papers and  
9 exhibits in the trial court.

10  
11 (b) Brief of Respondent in Civil Case. The brief of a respondent in a civil case should be filed  
12 with the appellate court within 30 days after service of the brief of appellant or petitioner.  
13

14 (c) Brief of Respondent in Criminal Case. The brief of a respondent in a criminal case should  
15 be filed with the appellate court within 60 days after service of the brief of appellant or  
16 petitioner.  
17

18 (d) Reply Brief. A reply brief of an appellant or petitioner should be filed with the appellate  
19 court within 30 days after service of the brief of respondent unless the court orders  
20 otherwise.  
21

22 (e) [Reserved; see rule 10.10]  
23

24 (f) Brief of Amicus Curiae. A brief of amicus curiae not requested by the appellate court  
25 should be received by the appellate court and counsel of record for the parties and any  
26 other amicus curiae not later than 30 days before oral argument or consideration on the  
27 merits, unless the court sets a later date or allows a later date upon a showing of particular  
28 justification by the applicant.

29  
30 (g) Answer to Brief of Amicus Curiae. A brief in answer to the brief of amicus curiae may be  
31 filed with the appellate court not later than the date fixed by the appellate court.

1 (h) Service of Briefs. At the time a party files a brief, the party should serve one copy on every  
2 other party and on any amicus curiae, and file proof of service with the appellate court. In  
3 a criminal case in which the defendant is the appellant, appellant's counsel shall serve the  
4 appellant and file proof of service with the appellate court. Service and proof of service  
5 should be made in accordance with rules 18.5 and 18.6.

6 (i) Sanctions for Late Filing and Service. The appellate court will ordinarily impose sanctions  
7 under rule 18.9 for failure to timely file and serve a brief.

8

1 **SUGGESTED AMENDMENT**  
2 **RULES OF APPELLATE PROCEDURE (RAP)**  
3 **RULE 18.9– VIOLATION OF RULES**  
4

5 (a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party  
6 or counsel, or a court reporter or ~~other~~ authorized ~~person~~ transcriptionist preparing a verbatim  
7 report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal,  
8 or fails to comply with these rules to pay terms or compensatory damages to any other party  
9 who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

10 The appellate court may condition a party's right to participate further in the review on  
11 compliance with terms of an order or ruling including payment of an award which is ordered  
12 paid by the party. If an award is not paid within the time specified by the court, the appellate  
13 court will transmit the award to the superior court of the county where the case arose and  
14 direct the entry of a judgment in accordance with the award.

15 (b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days'  
16 notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2)  
17 except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a  
18 notice of appeal, a notice for discretionary review, a motion for discretionary review of a  
19 decision of the Court of Appeals, or a petition for review. A party may object to the ruling of  
20 the commissioner or clerk only as provided in rule 17.7.

21 (c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review  
22 of a case (1) for want of prosecution if the party seeking review has abandoned the review, or  
23 (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3)  
24 except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of  
25 discretionary review, a motion for discretionary review of a decision of the Court of Appeals,  
26 or a petition for review.

27 (d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may  
28 object to the ruling of a commissioner or the clerk only as provided in rule 17.7.  
29  
30

1 **SUGGESTED AMENDMENT**  
2 **SUPERIOR COURT CIVIL RULES (CR)**  
3 **RULE 43 -- TAKING OF TESTIMONY**  
4

5 a) Testimony.  
6

7 (1) Generally. In all trials the testimony of witnesses shall be taken orally in open court,  
8 unless otherwise directed by the court or provided by rule or statute. For good cause in  
9 compelling circumstances and with appropriate safeguards, the court may permit  
10 testimony in open court by contemporaneous transmission from a different location.  
11

12 (2) Multiple Examinations. When two or more attorneys are on the same side trying a case,  
13 the attorney conducting the examination of a witness shall continue until the witness is  
14 excused from the stand; and all objections and offers of proof made during the  
15 examination of such witness shall be made or announced by the attorney who is  
16 conducting the examination or cross examination.  
17

18 (b) and (c) (Reserved. See ER 103 and 611.)  
19

20 (d) Oaths of Witnesses. [UNCHANGED] (d) Oaths of Witnesses.  
21

22 (1) Administration. The oaths of all witnesses in the superior court  
23

24 (A) shall be administered by the judge;  
25

26 (B) shall be administered to each witness individually; and  
27

28 (C) the witness shall stand while the oath is administered.  
29

1 (2) Applicability. This rule shall not apply to civil ex parte proceedings or default divorce  
2 cases and in such cases the manner of swearing witnesses shall be as each superior court  
3 may prescribe.  
4

5 (3) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken,  
6 a solemn affirmation may be accepted in lieu thereof.

7 (e) Evidence on Motions.  
8

9 (1) Generally. When a motion is based on facts not appearing of record the court may  
10 hear the matter on affidavits presented by the respective parties, but the court may direct  
11 that the matter be heard wholly or partly on oral testimony or depositions.  
12

13 (2) For injunctions, etc. On application for injunction or motion to dissolve an injunction or  
14 discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall  
15 designate the kind of evidence to be introduced on the hearing. If the application is to be  
16 heard on affidavits, copies thereof must be served by the moving party upon the adverse  
17 party at least 3 days before the hearing. Oral testimony shall not be taken on such  
18 hearing unless permission of the court is first obtained and notice of such permission  
19 served upon the adverse party at least 3 days before the hearing. This rule shall not be  
20 construed as pertaining to applications for restraining orders or for appointment of  
21 temporary receivers.  
22

23 (f) Adverse Party as Witness.  
24

25 (1) Party or Managing Agent as Adverse Witness. A party, or anyone who at the time of the  
26 notice is an officer, director, or other managing agent (herein collectively referred to as  
27 "managing agent") of a public or private corporation, partnership or association which is  
28 a party to an action or proceeding may be examined at the instance of any adverse party.  
29 Attendance of such deponent or witness may be compelled solely by notice (in lieu of a  
30 subpoena) given in the manner prescribed in rule 30(b) (1) to opposing counsel of record.  
31 Notices for the attendance of a party or of a managing agent at the trial shall be given not  
32 less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and

1 court holidays). For good cause shown in the manner prescribed in rule 26(c), the court  
2 may make orders for the protection of the party or managing agent to be examined.  
3

4 (2) Effect of Discovery, etc. A party who has served interrogatories to be answered by the  
5 adverse party or who has taken the deposition of an adverse party or of the managing  
6 agent of an adverse party shall not be precluded for that reason from examining such  
7 adverse party or managing agent at the trial. Matters admitted by the adverse party or  
8 managing agent in interrogatory answers, deposition testimony, or trial testimony are not  
9 conclusively established and may be rebutted.  
10

11 (3) Refusal To Attend and Testify; Penalties. If a party or a managing agent refuses to  
12 attend and testify before the officer designated to take his deposition or at the trial after  
13 notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party  
14 may be stricken and judgment taken against the party, and the contumacious party or  
15 managing agent may also be proceeded against as in other cases of contempt. This rule  
16 shall not be construed:  
17

18 (A) to compel any person to answer any question where such answer might tend to  
19 incriminate him;  
20

21 (B) to prevent a party from using a subpoena to compel the attendance of any party or  
22 managing agent to give testimony by deposition or at the trial; nor  
23

24 (C) to limit the applicability of any other sanctions or penalties provided in rule 37 or  
25 otherwise for failure to attend and give testimony.  
26

27 (g) Attorney as Witness. If any attorney offers himself as a witness on behalf of his client and  
28 gives evidence on the merits, he shall not argue the case to the jury, unless by permission of  
29 the court.  
30

1 (h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing  
2 which was reported is admissible in evidence at a later trial, it may be proved by the certified  
3 transcript thereof ~~duly certified by the person who reported the testimony.~~  
4

5 (i) (Reserved. See ER 804.)  
6

7 (j) Report of Proceedings in Retrial of Nonjury Cases. In the event a cause has been remanded  
8 by the court for a new trial or the taking of further testimony, and such cause shall have been  
9 tried without a jury, and the testimony in such cause shall have been taken in full and used as  
10 the report of proceedings upon review, either party upon the retrial of such cause or the  
11 taking of further testimony therein shall have the right, provided the court shall so order after  
12 an application on 10 days' notice to the opposing party or parties, to submit said report of  
13 proceedings as the testimony in said cause upon its second hearing, to the same effect as if  
14 the witnesses called by him in the earlier hearing had been called, sworn, and testified in the  
15 further hearing; but no party shall be denied the right to submit other or further testimony  
16 upon such retrial or further hearing, and the party having the right of cross examination shall  
17 have the privilege of subpoenaing any witness whose testimony is contained in such report of  
18 proceedings for further cross examination.  
19

20 (k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written  
21 questions directed to witnesses. Counsel shall be given an opportunity to object to such  
22 questions in a manner that does not inform the jury that an objection was made. The court  
23 shall establish procedures for submitting, objecting to, and answering questions from jurors  
24 to witnesses. The court may rephrase or reword questions from jurors to witnesses. The  
25 court may refuse on its own motion to allow a particular question from a juror to a witness.  
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**SUGGESTED AMENDMENT**  
**SUPERIOR COURT CIVIL RULES (CR)**  
**RULE 80 -- COURT REPORTERS**

(a) (Reserved.)

(b) Electronic Recording. ~~In a~~ Any civil or criminal proceedings may be recorded electronically ~~electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony and other oral proceedings~~ in lieu of or supplementary to causing shorthand or stenographic notes thereof to be taken. ~~In all matters~~ The use of such devices shall rest within the sole discretion of the court.

(c) ~~Recording Proceedings in Superior Court by Means of Videotape.~~ All superior courts that elect to use video equipment to record proceedings shall comply with courtroom procedures published by the Office of the Administrator for the Courts. The judicial officer shall assure that all case participants identify themselves for the record.

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**SUGGESTED NEW RULE**  
**SUPERIOR COURT CIVIL RULES (CR)**  
**ELECTRONIC RECORDING LOG**

When the proceedings are electronically recorded, the court shall ensure that a written log of the proceedings is created that indicates the time of relevant events.

The judicial officer shall call the case name and cause number of each proceeding and shall assure that all case participants identify themselves for the record.

1 **SUGGESTED AMENDMENT**

2 **ADMINISTRATIVE RULES FOR COURTS OF LIMITED JURISDICTION**

3 **(ARLJ)**

4 **RULE 13 -- LIMITED JURISDICTION COURTS ARE REQUIRED TO**  
5 **RECORD ALL PROCEEDINGS ELECTRONICALLY**

6  
7 a) Generally. All limited jurisdiction courts shall make an electronic record of all proceedings  
8 and retain the record for at least as long as the record retention schedule dictates. The judicial  
9 officer shall assure that all case participants identify themselves for the record in keeping with  
10 RALJ 5.2(a).

11  
12 b) Nonelectronic Record in Emergency. In the event of an equipment failure or other situation  
13 making an electronic recording impossible, the court may order the proceeding to be recorded by  
14 nonelectronic means. The nonelectronic record must be made at the court's expense, and in the  
15 event of an appeal, any necessary transcription of the nonelectronic record must be made at the  
16 court's expense.

1 **SUGGESTED AMENDMENT**

2 **ADMINISTRATIVE RULES FOR COURTS OF LIMITED JURISDICTION**

3 **(ARLJ)**

4 **RULE 5.3 -- LOG**

5  
6 The judge of the court of limited jurisdiction shall cause a written log to be maintained separate  
7 from the recording indicating the location on the electronic record of relevant events in the  
8 proceedings, including but not limited to the beginning of the proceeding, the beginning and  
9 ending of the testimony of each witness, the decision of the court, and the end of the proceeding.

10 The judicial officer shall assure that all case participants identify themselves for the record.

1 **SUGGESTED AMENDMENT**

2 **CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)**

3 **RULE 75 – RECORD ON TRIAL DE NOVO**

4  
5 (a) Scope of Rule. This rule applies only to proceedings which are not subject to appellate review  
6 under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The proceedings  
7 to which those rules apply are defined by RALJ 1.1.

8  
9 (b) Transcript; Procedure in Superior Court; Pleadings in Superior Court. Within 14 days after  
10 the notice of appeal has been filed in a civil action or proceeding, including a small claims  
11 appeal pursuant to RCW 12.40, the appellant shall file with the clerk of the superior court a  
12 transcript of all entries made in the docket of the court of limited jurisdiction relating to the  
13 case, together with all the process and other papers relating to the case filed in the court of  
14 limited jurisdiction which shall be made and certified by such court to be correct upon the  
15 payment of the fees allowed by law therefor, and upon the filing of such transcript the  
16 superior court shall become possessed of the cause, and shall proceed in the same manner, as  
17 near as may be, as in actions originally commenced in that court, except as provided in these  
18 rules. The issue before the court of limited jurisdiction shall be tried in the superior court  
19 without other or new pleadings, unless otherwise directed by the superior court.

20  
21 (c) Small Claims Appeals; Trial De Novo on the Record. Small claims appeals pursuant to RCW  
22 12.40 shall be tried by the superior court de novo on the record. Within 14 days after the  
23 notice of appeal has been filed in a small claims proceeding, appellant shall cause to be filed  
24 with the clerk of the superior court make necessary arrangements with the district court to  
25 directly transmit a verbatim electronic recording of the trial and of the matter in district court  
26 and any exhibits from the trial to the clerk of the superior court. The electronic recording  
27 shall be made and certified by the district court to be correct upon the payment of the fees  
28 allowed by law therefor.

1 (d) Transcript; Procedure on Failure To Make and Certify; Amendment. If upon an appeal being  
2 taken the court of limited jurisdiction fails, neglects or refuses, upon the tender or payment of  
3 the fees allowed by law, to make and certify the transcript, the appellant may make  
4 application, supported by affidavit, to the superior court and the court shall issue an order  
5 directing the court of limited jurisdiction to make and certify such transcript upon the  
6 payment of such fees. Whenever it appears to the satisfaction of the superior court that the  
7 return of the court of limited jurisdiction to such order is substantially erroneous or defective  
8 it may order the court of limited jurisdiction to amend the same. If the judge of the court of  
9 limited jurisdiction fails, neglects or refuses to comply with any order issued under the  
10 provisions of this section he may be cited and punished for contempt of court.

11

1 **SUGGESTED NEW RULE**

2 **GENERAL RULE (GR)**

3 **NEW RULE -- OFFICIAL CERTIFIED SUPERIOR COURT**

4 **TRANSCRIPTS**

5  
6 (a) Definitions.

7 (1) “Authorized Transcriptionist” means a person approved by a Superior Court to prepare an  
8 official verbatim report of proceedings of an electronically recorded court proceeding.

9 (2) “Certified Court Reporter” means a person who meets the standards outlined in RCW  
10 18.145.080.

11 (3) “Mentorship” means a professional relationship between an experienced, authorized  
12 transcriptionist or a certified court reporter and another transcriptionist for the purpose of  
13 providing guidance, encouragement, and professional advice.

14  
15 (b) Official court transcripts may be completed and filed by 1) an official court reporter  
16 employed by the court or other certified court reporter; or 2) a court employee with job  
17 responsibilities to transcribe a report of proceedings; or 3) an authorized transcriptionist who  
18 has been placed on a list by the jurisdiction conducting the hearing to be transcribed.

19  
20 (c) Each court will determine who has the authority to add and remove an authorized  
21 transcriptionist from their respective jurisdiction’s approved list.

22  
23 (d) The minimum qualification to become an authorized transcriptionist in order to complete and  
24 file an official certified court transcript from electronically recorded proceedings is  
25 certification as a court reporter or certification by AAERT (American Association of  
26 Electronic Reporters and Transcribers) or proof of one year of supervised mentorship with a  
27 certified court reporter or an authorized transcriptionist. Proof of one year of supervised  
28 mentorship may be waived by the Superior Court if a person has completed one year of  
29 demonstrated ability within six months of the rule effective date. Courts may require  
30 additional qualifications at their discretion.

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(e) The certified court reporter or authorized transcriptionist shall attach to the official transcript filed with the court a certificate in substantially the following form:

“I certify (or declare) under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a transcriptionist on the authorized list for the jurisdiction in which this hearing was held;
2. I received the electronic recording directly from the trial court conducting the hearing;
3. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
5. I have no financial interest in the litigation.

(Date and Place) \_\_\_\_\_ (Signature)”

**COURT MANAGEMENT COUNCIL  
Suggested Court Rules Changes  
January 2014**

**Superior Court Special Proceedings Rules — Criminal**

SPRC 3 – Court Reporters; Filing of Notes

**Rules of Appellate Procedure**

RAP 9.2 – Verbatim Report of Proceedings

RAP 9.3 – Narrative Report of Proceedings

RAP 9.4 – Agreed Report of Proceedings

RAP 9.5 – Filing and Service of Report of Proceedings – Objections

RAP 9.8 – Transmitting Record on Review

~~RAP 9.9 – Correcting or Supplementing Report of Proceedings Before Transmittal to Appellate Court~~

RAP 9.10 – Correcting or Supplementing Report of Proceedings Before Transmittal to Appellate Court

RAP 10.2(a) – Time for Filing Briefs

RAP 18.9 – Violation of Rules (Concerns Court Reporters w/ respect to verbatim reports)

**Superior Court Civil Rules**

CR 43(h) – Taking of Testimony

CR 80 – Court Reporters

**Rules for Courts of Limited Jurisdiction**

ARLJ 13 (a)

ARLJ 5.3

CRLJ 75 (c)

**New Rules Recommended by Subcommittee**

New Superior Court Criminal Rule – Electronic Recording Log

New Superior Court Civil Rule – Electronic Recording Log

New General Rule – Official Court Transcripts

Suggested Rule change	Brief explanation
<p><b>SPRC 3</b> <b>Court Reporters; Filing of Notes</b></p> <p>(a) [UNCHANGED]</p> <p>(b) As soon as possible after each hearing, <u>stenographic notes or electronic</u> <del>the court reporter will transmit stenographic, any audio or video tapes, and any other electronic data medium containing notes of the hearing</del> <u>will be submitted to the courtroom clerk county clerk's office.</u></p> <p><del>(c) The courtroom clerk will index the notes on a records inventory, noting the date of the notes. The courtroom clerk will have the court reporter initial the inventory log as each set of notes is received by the courtroom clerk.</del></p> <p><del>(d) (c) The stenographic notes or electronic stenographic notes of the hearing shall be indexed and stored by the county clerk's office. ; any audio or video tapes, and any other electronic data medium containing notes of any hearing shall be stored by the clerk's office in an exhibit box labeled with the defendant's name and cause number to allow easy retrieval of notes. Sealed notes are to be marked "SEALED" in red ink and maintained in accordance with GR 15.</del></p> <p><del>(e) (d) Court reporter notes or electronic stenographic notes of the hearing, any audio or video tapes, and any other electronic data medium containing notes of any hearing, sealed or unsealed, shall not be provided to anyone except the court reporter who produced the notes, unless a court order provides otherwise.</del></p>	<p><b>Purpose:</b> Clarify all court reporter stenographic notes, paper or electronic, must be filed with the Clerk.</p>

Suggested Rule change	Brief explanation
<p>(f) (e) A court reporter may withdraw the stenographic notes <u>or electronic stenographic notes</u>, <del>any video or audio tapes, and any other electronic data medium containing notes</del> of a hearing as required for transcription <del>upon completing a request slip</del>. The stenographic notes <u>or electronic stenographic notes</u>, <del>any audio or video tapes, and any other electronic data medium containing notes</del> shall be returned to the <u>county</u> clerk's office at the same time the transcript is filed <del>for transmission to an</del> <u>with an</u> appellate court.</p>	

<p><b><u>NEW RULE RECOMMENDED</u></b></p> <p><b>New Superior Court Criminal Rule (CrR) – Electronic Recording Log</b></p> <p><u>When the proceedings are electronically recorded, the court shall ensure that a written log of the proceedings is created that indicates the time of relevant events.</u></p> <p><u>The judicial officer shall call the case name and cause number of each proceeding and shall assure that all case participants identify themselves for the record.</u></p>	<p><b>Purpose:</b> Provides the judicial officer presiding over an electronically recorded proceeding has a responsibility to help ensure an adequate record.</p>
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**RAP RULE 9.2****Verbatim Report of Proceedings**

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 days after the notice of appeal was filed or discretionary review was granted. ~~If the proceeding being reviewed was recorded on videotape, transcription of the videotapes shall be completed by a court-approved transcriber in accordance with procedures developed by the Office of the Administrator for the Courts. Copies of these procedures are available at the court administrator's office in each county where there is a courtroom that videotapes proceedings or through the Office of the Administrator for the Courts.~~ The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters or authorized transcriptionists a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or authorized transcriptionist ~~other person authorized to prepare a verbatim report of proceedings who will be preparing the transcript~~, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

**Purpose:**

- Eliminates the requirement that video transcription conform to AOC developed procedures. By providing a process for authorizing transcriptionists and other standards described here, this requirement is no longer necessary.
- Requires that transcripts be arranged in chronological order.
- Clarifies page numbering requirements.

(b) Content. [UNCHANGED]

(c) Notice of Partial Report of Proceedings and Issues. If a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter or authorized transcriptionist a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

(d) Payment of Expenses. [UNCHANGED]

(e) Title Page and Table of Contents. [UNCHANGED]

(f) Form

(1) Generally. [UNCHANGED]

(2) Volume and Pages.

(A) Pages in each volume of the verbatim report of proceedings shall be numbered consecutively and be arranged in chronologic order by date of hearing(s) requested on the statement of arrangements submitted by each court reporter or transcriptionist.

<p>(B) Each volume shall include no more than 200 pages. <u>The page numbers should start with page 1 and continue to 200, as needed, regardless of how many hearing dates are included in the volume. The second volume and subsequent volume page numbers should start with the next page number in sequence where the previous volume ended.</u> The volumes shall be either bound or fastened securely.</p> <p>(3) Copies. [UNCHANGED]</p>	
<p><b>RAP RULE 9.3</b> <b>Narrative Report of Proceedings</b></p> <p>The party seeking review may prepare a narrative report of proceedings. A party preparing a narrative report must exercise the party's best efforts to include a fair and accurate statement of the occurrences in and evidence introduced in the trial court material to the issues on review. A narrative report should be in the same form as a verbatim report, as provided in rule 9.2(e) and (f). If any party prepares a verbatim report of proceedings, that report will be used as the report of proceedings for the review. A narrative report of proceedings may be prepared if either the court reporter's notes <u>or the electronic recording</u> <del>the videotape</del> of the proceeding being reviewed are lost or damaged.</p>	<p><b>Purpose:</b> Modernizes language to “electronic recording” instead of “videotape”.</p>
<p><b>RAP RULE 9.4</b> <b>Agreed Report of Proceedings</b></p> <p>The parties may prepare and sign an agreed report of proceedings setting forth only so many of the facts averred and proved or sought to be proved as are essential to the decision of the issues presented for review. The agreed report of proceedings must include only matters which were actually before the trial court. An agreed report of proceedings should be in the same form as a verbatim report, as</p>	<p><b>Purpose:</b> Modernize language to reflect that an agreed report may be prepared if the electronic recording is lost or damaged, expanding beyond merely lost or damaged court reporter’s notes.</p>

<p>provided in rule 9.2(e) and (f). An agreed report of proceedings may be prepared if either the court reporter's notes or the <u>electronic recording videotape</u> of the proceeding being reviewed are lost or damaged <u>or if the appellate court in a civil matter requests the parties to file an agreed report of proceedings.</u></p>	
<p><b>RAP RULE 9.5</b>  <b>Filing And Service Of Report of Proceedings — Objections</b></p> <p>(a) Generally. The party seeking review must file an agreed or narrative report of proceedings with the <del>clerk of the trial</del> <u>appellate</u> court within 60 days after the statement of arrangements is filed. The court reporter or <del>person</del> <u>transcriptionist</u> authorized to prepare the verbatim report of proceedings must file it <u>in the appellate court</u> within 60 days after the statement of arrangements is filed and all named court reporters <u>or authorized transcriptionists</u> are served. <del>If the proceeding being reviewed was recorded on videotape, the transcript must be filed by the transcriber with the clerk of the trial court within 60 days after the statement of arrangements is filed and all named court reporters are served. The party who caused a report of proceedings to be filed should at the time of filing the report of proceedings serve notice that the report of proceedings has been filed and file proof of the service on all parties.</del></p> <p>(1) [UNCHANGED]</p> <p>(2) If the transcript was computer-generated, one diskette or compact disk (using <u>PDF searchable ASCII-format with hard page returns</u>) shall be filed with the original verbatim report of proceedings and a second diskette or compact disk shall be provided to the party who receives the verbatim report of proceedings. <u>The computer PDF file may be electronically filed</u></p>	<p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• As an efficiency, the transcript will now be filed with the appellate court rather than the clerk of the trial court.</li> <li>• Changes obsolete references to disk formats for computer generated transcripts</li> <li>• Add references to transcriptionists where appropriate.</li> </ul>

with the appellate court in lieu of the disk copy in accordance with the court's filing procedures. The party who files the last brief should return the diskette or compact disk to the party who paid for the verbatim report of proceedings.

(b) Filing and Service of Verbatim Report of Proceedings. If a verbatim report of proceedings cannot be completed within 60 days after the statement of arrangements is filed and served, the court reporter or authorized ~~person~~ transcriptionist shall, no later than 10 days before the report of proceedings is due to be filed, submit an affidavit to the party who ordered the report of proceedings stating the reasons for the delay. The party who requested the verbatim report of proceedings should move for an extension of time from the appellate court. The clerk will notify the parties of the action taken on the motion. When the court reporter or authorized ~~person~~ transcriptionist files the verbatim report of proceedings, a copy shall be provided to the party who arranged for transcription and either the reporter or authorized ~~person~~ transcriptionist shall serve and file notice of the filing on all other parties ~~and the appellate court~~. The notice of filing served ~~on the appellate court~~ shall include a declaration that (1) the transcript was computer generated and a PDF searchable ASCII diskette or compact disk was filed or (2) the transcript was not computer generated. Failure to timely file the verbatim report of proceedings and notice of service may subject the court reporter ~~or video transcriber~~ or authorized ~~person~~ transcriptionist to sanctions as provided in rule 18.9.

(c) Objections to Report of Proceedings. A party may serve and file objections to, and propose amendments to, a narrative report of proceedings or a verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings with the appellate court. If

<p>objections or amendments to the report of proceedings are served and filed, any objections or proposed amendments must be heard by the trial court judge before whom the proceedings were held for settlement and approval, except objections to the form of a report of proceedings, which shall be heard by motion in the appellate court. The court may direct <del>a party or a</del> <u>official</u> reporters or authorized <del>transcriber</del> <u>transcriptionists</u> to pay for the expense of any modifications of the proposed report of proceedings. The motion procedure of the court deciding any objections shall be used in settling the report of proceedings.</p> <p>(d) Substitute Judge May Settle Report of Proceedings. [UNCHANGED]</p>	
<p><b>RAP RULE 9.8</b> <b>Transmitting Record on Review</b></p> <p>(a) Duty of Trial Court Clerk. Except as provided in section (b), the clerk of the trial court shall send the clerk's papers and exhibits to the appellate court when the clerk receives payment for the preparation of the documents, <del>and shall send the verbatim report of proceedings to the appellate court at the end of the objection period set forth in rule 9.5.</del> The clerk shall endorse on the face of the record the date upon which the record on review is transmitted to the appellate court.</p> <p>(b) Cumbersome Exhibits. [UNCHANGED]</p> <p>(c) Temporary Transmittal to another Court. [UNCHANGED]</p>	<p><b>Purpose:</b> Strikes the duty of the trial court clerk to send the verbatim report of proceedings to the appellate court. This provision is no longer necessary if the transcripts are filed directly with the appellate court.</p>

<p><b><del>RAP RULE 9.9</del></b>  <b><del>Correcting or Supplementing Report of Proceedings</del></b>  <b><del>Before Transmittal to Appellate Court</del></b></p> <p><del>The report of proceedings may be corrected or supplemented by the trial court on motion of a party, or on stipulation of the parties, at any time prior to the transmission of the report to the appellate court. The trial court may impose the same kinds of sanctions provided in rule 18.9(a) as a condition to correcting or supplementing the report of proceedings after the time provided in rule 9.5.</del></p>	<p><b>Purpose:</b> A rule on correcting or supplementing reports of proceedings before transmittal to the appellate court is no longer necessary because the reports will now be filed directly with the appellate court.</p>
<p><b>RAP RULE 9.10</b>  <b>Correcting or Supplementing Record after Transmittal to Appellate Court</b></p> <p>If a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits or administrative records and exhibits certified by the administrative agency, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court <u>or trial court</u> may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review. The party directed or permitted to supplement the record on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of arrangements as provided in rule 9.2 within the time set by the appellate court.</p>	<p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• Corrects title to reflect that the record will no longer be filed in the trial court</li> <li>• Clarifies that the trial court would have the authority to impose sanctions on remand to address deficiencies with a verbatim report of proceedings.</li> </ul>

<p><b>RAP RULE 10.2(a)</b> <b>Time for Filing Briefs</b></p> <p>(a) Brief of Appellant or Petitioner. The brief of an appellant or petitioner should be filed with the appellate court within 45 days after the report of proceedings is filed in the <del>trial</del> <u>appellate</u> court; or, if the record on review does not include a report of proceedings, within 45 days after the party seeking review has filed the designation of clerk's papers and exhibits <u>in the trial court</u>.</p> <p>(b) Brief of Respondent in Civil Case. [UNCHANGED]</p> <p>(c) Brief of Respondent in Criminal Case. [UNCHANGED]</p> <p>(d) Reply Brief. [UNCHANGED]</p> <p>(e) [Reserved; see rule 10.10] [UNCHANGED]</p> <p>(f) Brief of Amicus Curiae. [[UNCHANGED]</p> <p>(g) Answer to Brief of Amicus Curiae. [UNCHANGED]</p> <p>(h) Service of Briefs. [UNCHANGED]</p> <p>(i) Sanctions for Late Filing and Service. [UNCHANGED]</p>	<p><b>Purpose:</b> Time for filing briefs runs from the time the report of proceedings is filed in the appellate court, reflecting the previous CMC recommended changes.</p>
<p><b>RAP RULE 18.9</b> <b>Violation of Rules</b></p> <p>(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or <del>other</del> authorized <del>person</del> <u>transcriptionist</u> preparing a verbatim report of</p>	<p><b>Purpose:</b> Adds transcriptionist to the persons subject to sanctions.</p>

<p>proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.</p> <p>(b) Dismissal on Motion of Commissioner or Clerk. [UNCHANGED]</p> <p>(c) Dismissal on Motion of Party. [UNCHANGED]</p> <p>(d) Objection to Ruling. [UNCHANGED]</p>	
<b>SUPERIOR COURT CIVIL RULES</b>	
<p><b>CR 43(h)</b></p> <p>(a) Testimony. [UNCHANGED]</p> <p>(b) and (c) (Reserved. See ER 103 and 611.) [UNCHANGED]</p> <p>(d) Oaths of Witnesses. [UNCHANGED]</p> <p>(e) Evidence on Motions. [UNCHANGED]</p> <p>(f) Adverse Party as Witness. [UNCHANGED]</p> <p>(g) Attorney as Witness. [UNCHANGED]</p>	<p><b>Purpose:</b> When reported testimony is admissible in a later proceeding, it may be proved by a certified transcript. A transcriptionist may so certify. This is no longer limited to a transcript certified by the reporter.</p>

<p>(h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the <u>certified</u> transcript thereof <del>duly certified by the person who reported the testimony.</del></p> <p>(i) (Reserved. See ER 804.) [UNCHANGED]</p> <p>(j) Report of Proceedings in Retrial of Nonjury Cases. [UNCHANGED]</p> <p>(k) Juror Questions for Witnesses. [UNCHANGED]</p>	
<p><b>CR 80</b> <b>Court Reporters</b></p> <p>(a) (Reserved.) [UNCHANGED]</p> <p>(b) Electronic Recording. <del>In a</del> Any civil or criminal proceedings <u>may be recorded electronically</u> <del>electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony and other oral proceedings in lieu of or supplementary to causing shorthand or <u>stenographic</u> notes thereof to be taken. In all matters</del> ¶ The use of such devices shall rest within the sole discretion of the court.</p> <p>(c) <del>Recording Proceedings in Superior Court by Means of Videotape.</del> All superior courts that elect to use video equipment to record proceedings shall comply with courtroom procedures published by the Office of the Administrator for the Courts. <u>The judicial officer shall assure that all case participants identify themselves for the record.</u></p>	<p><b>Purpose:</b></p> <ul style="list-style-type: none"> <li>• Audio or video recordings may use devices and methods at the discretion of the court. AOC is no longer required to approve equipment or courtroom procedures.</li> <li>• Judicial officers are to assure that participants identify themselves for the record to assure an adequate record.</li> </ul>

<p><b><u>NEW RULE RECOMMENDED</u></b></p> <p><b>New Superior Court Civil Rule — Electronic Recording Log</b></p> <p><u>When the proceedings are electronically recorded, the court shall ensure that a written log of the proceedings is created that indicates the time of relevant events.</u></p> <p><u>The judicial officer shall call the case name and cause number of each proceeding and shall assure that all case participants identify themselves for the record.</u></p>	<p><b>Purpose:</b> In order to ensure that an adequate record is kept and that key portions can be located, the rule clarifies the role of the judicial officer in ensuring that a log is maintained and that cases and participants are identified in the record.</p>
<p><b>ARLJ 13</b>  <b>Limited Jurisdiction Courts are Required to Record All Proceedings Electronically</b></p> <p>a) Generally. All limited jurisdiction courts shall make an electronic record of all proceedings and retain the record for at least as long as the record retention schedule dictates. <u>The judicial officer shall assure that all case participants identify themselves for the record in keeping with RALJ 5.2(a).</u></p> <p>b) Nonelectronic Record in Emergency. [UNCHANGED]</p>	<p><b>Purpose:</b> In order to ensure that an adequate record is kept and that key portions can be located, the rule clarifies the role of the judicial officer in ensuring that a log is maintained and that cases and participants are identified in the record.</p>
<p><b>ARLJ RULE 5.3</b>  <b>Log</b></p> <p>The judge of the court of limited jurisdiction shall cause a written log to be maintained separate from the recording indicating the location on the electronic record of relevant events in the proceedings, including but not limited to the beginning of the proceeding, the beginning and ending of the testimony of each witness, the decision of the court, and</p>	<p>Purpose and comments are the same as ARLJ 13 above.</p>

<p>the end of the proceeding. <u>The judicial officer shall assure that all case participants identify themselves for the record.</u></p>	
<p><b>CRLJ 75(c)</b>  <b>Record on Trial De Novo</b></p> <p>(a) Scope of Rule. [UNCHANGED]</p> <p>(b) Transcript; Procedure in Superior Court; Pleadings in Superior Court. [UNCHANGED]</p> <p>(c) Small Claims Appeals; Trial De Novo on the Record. Small claims appeals pursuant to RCW 12.40 shall be tried by the superior court de novo on the record. Within 14 days after the notice of appeal has been filed in a small claims proceeding, appellant shall <del>cause to be filed with the clerk of the superior court</del> <u>make necessary arrangements with the district court to directly transmit</u> a verbatim electronic recording of the trial and <del>of the matter in district court and any exhibits from the trial to the clerk of the superior court</del>. The electronic recording shall be made and certified by the district court to be correct upon the payment of the fees allowed by law therefor.</p> <p>(d) Transcript; Procedure on Failure To Make and Certify; Amendment. [UNCHANGED]</p>	<p><b>Purpose:</b> Appellant will arrange with the district court to transmit the recording and exhibits in a small claims case to the superior court.</p>

**NEW RULE RECOMMENDED**

**New General Rule — Official Certified Superior Court Transcripts**

(a) Definitions.

- (1) “Authorized Transcriptionist” means a person approved by a Superior Court to prepare an official verbatim report of proceedings of an electronically recorded court proceeding.
- (2) “Certified Court Reporter” means a person who meets the standards outlined in RCW 18.145.080.
- (3) “Mentorship” means a professional relationship between an experienced, authorized transcriptionist or a certified court reporter and another transcriptionist for the purpose of providing guidance, encouragement, and professional advice.

(b) Official court transcripts may be completed and filed by 1) an official court reporter employed by the court or other certified court reporter; or 2) a court employee with job responsibilities to transcribe a report of proceedings; or 3) an authorized transcriptionist who has been placed on a list by the jurisdiction conducting the hearing to be transcribed.

(c) Each court will determine who has the authority to add and remove an authorized transcriptionist from their respective jurisdiction’s approved list.

(d) The minimum qualification to become an authorized transcriptionist in order to complete and file an official certified court transcript from electronically recorded proceedings is certification as a court reporter or certification by AAERT (American Association of

**Purpose:** Establish the qualifications for persons authorized to create official transcripts of recorded superior court proceedings.

As originally proposed, this rule also applied to courts of limited jurisdiction. DMCJA commented: “Because of the access to justice issues implicated for courts of limited jurisdiction, we oppose this rule to the extent it would apply to courts of limited jurisdiction. We do not oppose the implementation of a RAP that would contain this provision.” The new version applies to superior courts only.

Electronic Reporters and Transcribers) or proof of one year of supervised mentorship with a certified court reporter or an authorized transcriptionist. Proof of one year of supervised mentorship may be waived by the Superior Court if a person has completed one year of demonstrated ability within six months of the rule effective date. Courts may require additional qualifications at their discretion.

(e) The certified court reporter or authorized transcriptionist shall attach to the official transcript filed with the court a certificate in substantially the following form:

“I certify (or declare) under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a transcriptionist on the authorized list for the jurisdiction in which this hearing was held;
2. I received the electronic recording directly from the trial court conducting the hearing;
3. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
5. I have no financial interest in the litigation.

(Date and Place) \_\_\_\_\_ (Signature)”

# Tab 11

BOARD FOR JUDICIAL ADMINISTRATION RULES (BJAR)

TABLE OF RULES

Rule

Preamble

- 1 Board for Judicial Administration
- 2 Composition
- 3 Operation
- 4 Duties
- 5 Staff

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BJAR  
PREAMBLE

The power of the judiciary to make administrative policy governing its operations is an essential element of its constitutional status as an equal branch of government. The Board for Judicial Administration is established to adopt policies and provide strategic leadership for the courts at large, enabling the judiciary to speak with one voice.

[Adopted effective January 25, 2000.]

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BJAR 1  
BOARD FOR JUDICIAL ADMINISTRATION

The Board for Judicial Administration is created to provide effective leadership to the state courts and to develop policy to enhance the administration of the court system in Washington State. Judges serving on the Board for Judicial Administration shall pursue the best interests of the judiciary at large.

[Amended effective October 29, 1993; January 25, 2000.]

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BJAR 2  
COMPOSITION

- (a) Membership. The Board for Judicial Administration shall consist of judges from all levels of court selected for their demonstrated interest in and commitment to judicial administration and court improvement. The Board shall consist of five members from the appellate courts (two from the Supreme Court, one of whom shall be the Chief Justice, and one from each division of the Court of Appeals), five members from the superior courts, one of whom shall be the President of the Superior Court Judges' Association, five members of the courts of limited jurisdiction, one of whom shall be the President of the District and Municipal Court Judges' Association, two members of the Washington State Bar Association (non-voting) and the Administrator for the Courts (non-voting).
- (b) Selection. Members shall be selected based upon a process established by their respective associations or court level which considers demonstrated commitment to improving the courts, racial and gender diversity as well as geographic and caseload differences.
- (c) Terms of Office.
  - (1) Of the members first appointed, one justice of the Supreme Court shall be appointed for a two-year term; one judge from each of the other levels of court for a four-year term; one judge from each of the other levels of court and one Washington State Bar Association member for a three-year term; one judge from the other levels of court and one Washington State Bar Association member for a two-year term; and one judge from each level of trial court for a one-year term. Provided that the terms of the District and Municipal Court Judges' Association members whose terms begin on July 1, 2010 and July 1, 2011 shall be for two years and the terms of the Superior Court Judges' Association members whose terms begin on July 1, 2010 and July 1, 2013 shall be for two years each. Thereafter, voting members shall serve four-year terms and the Washington State Bar Association members for three-year terms commencing annually on June 1. The Chief Justice, the President Judges and the Administrator for the Courts shall serve during tenure.
  - (2) Members serving on the BJA shall be granted equivalent pro tempore time.

[Amended effective October 29, 1993; February 16, 1995; January 25, 2000; June 30, 2010.]

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BJAR RULE 3  
OPERATION

(a) Leadership. The Board for Judicial Administration shall be chaired by the Chief Justice of the Washington Supreme Court in conjunction with a Member Chair who shall be elected by the Board. The duties of the Chief Justice Chair and the Member Chair shall be clearly articulated in the by-laws. Meetings of the Board may be convened by either chair and held at least bimonthly. Any Board member may submit issues for the meeting agenda.

(b) Committees. Ad hoc and standing committees may be appointed for the purpose of facilitating the work of the Board. Non-judicial committee members shall participate in non-voting advisory capacity only.

(1) The Board shall appoint at least four standing committees: Policy and Planning, Budget and Funding, Education, and Legislative. Other committees may be convened as determined by the Board.

(2) The Chief Justice and the Member Chair shall nominate for the Board's approval the chairs and members of the committees. Committee membership may include citizens, experts from the private sector, members of the legal community, legislators, clerks and court administrators.

(c) Voting. All decisions of the Board shall be made by majority vote of those present and voting provided there is one affirmative vote from each level of court. Eight voting members will constitute a quorum provided at least one judge from each level of court is present. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

[Adopted effective January 25, 2000; amended effective September 1, 2014.]

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BJAR 4  
DUTIES

(a) The Board shall establish a long-range plan for the judiciary;

(b) The Board shall continually review the core missions and best practices of the courts;

(c) The Board shall develop a funding strategy for the judiciary consistent with the long-range plan and RCW 43.135.060;

(d) The Board shall assess the adequacy of resources necessary for the operation of an independent judiciary;

(e) The Board shall speak on behalf of the judicial branch of government and develop statewide policy to enhance the operation of the state court system; and

(f) The Board shall have the authority to conduct research or create study groups for the purpose of improving the courts.

[Adopted effective January 25, 2000.]

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BJAR 5  
STAFF

Staff for the Board for Judicial Administration shall be provided by the Administrator for the Courts.

[Adopted effective January 25, 2000.]

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## **BOARD FOR JUDICIAL ADMINISTRATION BYLAWS**

### **ARTICLE I**

#### **Purpose**

The Board for Judicial Administration shall adopt policies and provide leadership for the administration of justice in Washington courts. Included in, but not limited to, that responsibility is: 1) establishing a judicial position on legislation; 2) providing direction to the Administrative Office of the Courts on legislative and other administrative matters affecting the administration of justice; 3) fostering the local administration of justice by improving communication within the judicial branch; and 4) providing leadership for the courts at large, enabling the judiciary to speak with one voice.

### **ARTICLE II**

#### **Membership**

Membership in the Board for Judicial Administration shall consist of the Chief Justice and one other member of the Supreme Court, one member from each division of the Court of Appeals, five members from the Superior Court Judges' Association, one of whom shall be the President; five members from the District and Municipal Court Judges' Association, one of whom shall be the President. It shall also include as non-voting members two members of the Washington State Bar Association appointed by the Board of Governors; the Administrator for the Courts; and the Presiding Chief Judge of the Court of Appeals, the President-elect judge of the Superior Court Judges' Association and the President-elect judge of the District and Municipal Court Judges' Association.

### **ARTICLE III**

#### **Officers and Representatives**

The Chief Justice of the Supreme Court shall chair the Board for Judicial Administration in conjunction with a Member chair. The Member chair shall be elected by the Board and shall serve a two year term. The Member chair position shall be filled alternately between a voting Board member who is a superior court judge and a voting Board member who is either a district or municipal court judge.

### **ARTICLE IV**

#### **Duties of Officers**

The Chief Justice Chair shall preside at all meetings of the Board, performing the duties usually incident to such office, and shall be the official spokesperson for the Board. The Chief Justice chair and the Member chair shall nominate for the Board's approval the chairs of all committees. The Member chair shall perform the duties of the Chief Justice chair in the absence or incapacity of the Chief Justice chair.

### **ARTICLE V**

#### **Vacancies**

If a vacancy occurs in any representative position, the bylaws of the governing groups shall determine how the vacancy will be filled.

## **ARTICLE VI** **Committees**

Standing committees as well as ad hoc committees and task forces of the Board for Judicial Administration shall be established by majority vote.

Each committee shall have such authority as the Board deems appropriate.

The Board for Judicial Administration will designate the chair of all standing, ad hoc, and task force committees created by the Board. Membership on all committees and task forces will reflect representation from all court levels. Committees shall report in writing to the Board for Judicial Administration as appropriate to their charge. The Chair of each standing committee shall be asked to attend one BJA meeting per year, at a minimum, to report on the committee's work. The terms of standing committee members shall not exceed two years. The Board for Judicial Administration may reappoint members of standing committees to one additional term. The terms of ad hoc and task force committee members will have terms as determined by their charge.

## **ARTICLE VII** **Executive Committee**

There shall be an Executive Committee composed of Board for Judicial Administration members, and consisting of the co-chairs, a Judge from the Court of Appeals selected by and from the Court of Appeals members of the Board, the President Judge of the Superior Court Judges' Association, the President Judge of the District Municipal Court Judges' Association, and non-voting members to include one Washington State Bar Association representative selected by the Chief Justice, President-elect judge of the Superior Court Judges' Association, President-elect judge of the District and Municipal Court Judges' Association and the Administrator for the Courts.

It is the purpose of this committee to consider and take action on emergency matters arising between Board meetings, subject to ratification of the Board.

The Executive Committee shall serve as the Legislative Committee as established under BJAR 3(b)(1). During legislative sessions, the Executive Committee is authorized to conduct telephone conferences for the purpose of reviewing legislative positions.

## **ARTICLE VIII** **Regular Meetings**

There shall be regularly scheduled meetings of the Board for Judicial Administration at least bi-monthly. Reasonable notice of meetings shall be given each member.

## **ARTICLE IX** **Special Meetings**

Special meetings may be called by any member of the Board. Reasonable notice of special meetings shall be given each member.

## **ARTICLE X** **Quorum**

Eight voting members of the Board shall constitute a quorum provided each court level is represented.

## **ARTICLE XI** **Voting**

Each judicial member of the Board for Judicial Administration shall have one vote. All decisions of the Board shall be made by majority vote of those present and voting provided there is one affirmative vote from each level of court. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

## **ARTICLE XII** **Amendments and Repeal of Bylaws**

These bylaws may be amended or modified at any regular or special meeting of the Board, at which a quorum is present, by majority vote. No motion or resolution for amendment may be considered at the meeting in which they are proposed.

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Amended 5/17/02  
Amended 5/16/03  
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## BOARD FOR JUDICIAL ADMINISTRATION

### PROCESS AND GUIDELINES FOR RESOLUTION REQUESTS

The Board for Judicial Administration (Board) was established to adopt policies and provide strategic leadership for the courts at large, enabling the Washington State judiciary to speak with one voice. To fulfill these objectives, the BJA may consider adopting resolutions on substantive topics relating to the administration of justice.

Resolutions may be aspirational in nature, support a particular position, or serve as a call to action. Resolutions may support funding requests, but do not stand alone as a statement of funding priorities or indicate an intent by the Board to proactively seek funding. Resolutions are not long-term policy statements and their adoption does not establish the Board's work plan or priorities.

The absence of a Resolution on a particular subject does not indicate a lack of interest or concern by the Board in regard to a particular subject or issue.

In determining whether to adopt a proposed resolution, the Board shall give consideration to the following:

- Whether the Resolution advances the Principal Policy Objectives of the Judicial Branch.
- The relation of the Resolution to priorities delineated in existing strategic and long range plans.
- The availability of resources necessary to properly act upon the resolution.
- The need to ensure the importance of resolutions adopted by the Board is not diluted by the adoption of large numbers of resolutions.

In order to ensure timely and thorough consideration of proposed resolutions, the following guidelines regarding procedure, form and content are to be followed:

- Resolutions may be proposed by any Board member. The requestor shall submit the resolution, in writing, with a request form containing a brief statement of purpose and explanation, to the Associate Director of the Board for Judicial Administration.
- Resolutions should not be more than two pages in length. An appropriate balance must be struck between background information and a clear statement of action. Traditional resolution format should be followed. Resolutions should cover only a single subject unless there is a clear and specific reason to include more than one subject. Resolutions must be short-term and stated in precise language.

- Resolutions must include a specific expiration date or will automatically expire in five years. Resolutions will not be automatically reviewed upon expiration of their term, but may be reviewed upon request for reauthorization. Resolutions may be terminated prior to their expiration date as determined by the Board.
- The Associate Director shall refer properly submitted resolutions to appropriate staff, and/or to an appropriate standing committee (or committees) for review and recommendation, or directly to the Board's Executive Committee, as appropriate. Review by the Board's Executive Committee will precede review by the full Board membership. Such review may be done via e-mail communication rather than in-person discussion when practical. Resolutions may be reviewed for style and content. Suggestions and comments will be reported back to the initiating requestor as appropriate.
- The report and recommendation of the Executive Committee shall be presented to the BJA membership at the next reasonably available meeting, at which time the resolution may be considered. Action on the proposed resolution will be taken in accordance with the BJAR and bylaws. The Board may approve or reject proposed resolutions and may make substantive changes to the resolutions.
- Approved resolutions will be numbered, maintained on the Board for Judicial Administration section of the Washington Courts website, and disseminated as determined by the Board for Judicial Administration.

**PRINCIPAL POLICY OBJECTIVES  
OF THE WASHINGTON STATE JUDICIAL BRANCH**

1. **Fair and Effective Administration of Justice in All Civil and Criminal Cases.** Washington courts will openly, fairly, efficiently and effectively administer justice in all criminal and civil cases, consistent with constitutional mandates and the judiciary's duty to maintain the highest level of public trust and confidence in the courts.
2. **Accessibility.** Washington courts, court facilities and court systems will be open and accessible to all participants regardless of cultural, linguistic, ability-based or other characteristics that serve as access barriers.
3. **Access to Necessary Representation.** Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interest at stake in civil judicial proceedings should have meaningful access to counsel.
4. **Commitment to Effective Court Management.** Washington courts will employ and maintain systems and practices that enhance effective court management.
5. **Appropriate Staffing and Support.** Washington courts will be appropriately staffed and effectively managed, and court personnel, court managers and court systems will be effectively supported.

# BOARD FOR JUDICIAL ADMINISTRATION

## RESOLUTION REQUEST COVER SHEET

(INSERT PROPOSED RESOLUTION TITLE HERE)

SUBMITTED BY: (INSERT NAME HERE)

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(1) **Name(s) of Proponent(s):**

(2) **Spokesperson(s):** (List who will address the BJA and their contact information.)

(3) **Purpose:** (State succinctly what the resolution seeks to accomplish.)

(4) **Desired Result:** (Please state what action(s) would be taken as a result of this resolution and which party/-ies would be taking action.)

(5) **Expedited Consideration:** (Please state whether expedited consideration is requested and, if so, please explain the need to expedite consideration.)

(6) **Supporting Material:** (Please list and attach all supporting documents.)