

# **BJA COURT RECOVERY TASK FORCE**



**WASHINGTON  
COURTS**

## **MEETING PACKET**

**FEBRUARY 14, 2022  
2:00 – 4:00 P.M.**

**VIDEOCONFERENCE**



# BJA Court Recovery Task Force

February 14, 2022, 2:00 – 4:00 pm

ZOOM Meeting

## AGENDA

*The meeting is being livestreamed and recorded by TVW*

### 1. Welcome (5 minutes)

Approve December 6, 2021 Minutes (p. 3)

Chief Justice Steven González  
 Judge Judith Ramseyer  
 Judge Scott Ahlf

### 2. Statewide Updates (20 min)

Supreme Court/Court Orders  
 Association Updates

AOC

Chief Justice Steven González  
 Judge Judith Ramseyer  
 Judge Scott Ahlf  
 Dawn Marie Rubio

### 3) Roundtable Discussion and Next Steps (45 min)

December discussion groups summary (see attached) (p. 11)

Should courts continue hybrid options past the pandemic?

Is there anything that we still need to address in the next few months?

Do you know what court and community resources are available and where to locate them especially as it pertains to court policies, tutorials, remote hearings, etc.?

How do we continue stakeholder involvement past the Task Force?

For committees still working on activities: what do you need before our mandate ends in June? What do you see for the future of this work beyond CRTF?

Chief Justice Steven González

### 3. Committee Updates (30 minutes)

- Criminal Matters
  - Adult
- Child Welfare (p. 14)
- Technology Considerations

Judge Scott Ahlf  
 Amy Muth  
 Linnea Anderson  
 Dawn Marie Rubio

<ul style="list-style-type: none"> <li>• General Civil Litigation (p. 15)</li> <li>• Family Law</li> <li>• Lessons Learned</li> </ul>	Justice Debra Stephens Terry Price Judge Judith Ramseyer
<b>4. Next Steps (5 minutes)</b> <b>Summary of action items from meeting</b>	Chief Justice Steve González
<b>5. Future Meetings</b> <ul style="list-style-type: none"> <li>• May 9, 2–4:00</li> </ul>	
<b>6. Adjourn</b>	
Persons with a disability, who require accommodation, should notify Jeanne Englert at 360-705-5207 or Jeanne.englert@courts.wa.gov. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.	



**BJA Court Recovery Task Force**  
**December 6, 2021, 3:00 – 5:00 pm**

**ZOOM Meeting**

**DRAFT Meeting Minutes**

**Participants:**

Chief Justice Steven González, co-chair  
Judge Scott Ahlf, co-chair  
Judge Judith Ramseyer, co-chair  
Vivienne Alpaugh  
Linnea Anderson  
Judge Rachelle Anderson  
Justin Bingham  
Alice Brown  
Renea Campbell  
Adam Cornell  
Mike Cherry  
Dennis Cronin  
Abigail Daquiz  
Todd Dowell  
Ambrosia Eberhardt  
Jeff Even  
Laurie Garber  
Judge Jeffrey Goodwin  
William Hairston  
Jessica Humphreys  
Judge Carolyn Jewett  
Katrin Johnson  
Mike Killian  
Bob Lichtenberg  
Sophia Byrd McSherry  
Judge Rich Melnick

Ryan Murrey  
Amy Muth  
Frankie Peters  
Terry Price  
Judge Ruth Reukauf  
Juliana Roe  
Dawn Marie Rubio  
Jason Schwarz  
Larry Shannon  
Judge Jeff Smith  
Justice Debra Stephens  
Fona Sugg  
Judge Lisa Sutton  
George Yeannakis

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

J Benway  
Sarah Burns  
Jeanne Englert  
Kyle Landry  
Penny Larsen  
Caroline Tawes  
Lorrie Thompson

Call to Order

The co-chairs called the meeting to order at 3:00 p.m. and welcomed the participants.

Approval of the October 18, 2021 Minutes

The October 18, 2021 minutes were approved unanimously.

Statewide Updates

Supreme Court/Court Orders

Most of the Supreme Court Emergency Orders do not have an expiration date, and there are no plans to rescind those Emergency Orders until other rules or state orders are in place.

### Association Updates

The Superior Court Judges' Association (SCJA) is preparing for the 2022 Legislative Session and will be meeting with stakeholders and legislators. The principal requests will be for information technology and court security funding. There will also be requests for amendments to some legislation from the 2021 session.

### DMCJA Proposed Rules

Judge Ahlf thanked Chief Justice González for the swearing-in ceremony this morning. The District and Municipal Court Judges' Association (DMCJA) is working with the SCJA on a joint proposal on CR 3.4. This joint proposal will focus on criminal proceedings, and there may be a need for a work group on civil remote proceedings. A rule proposal regarding remote appearances in criminal proceedings from the DMCJA is included in the meeting materials. The proposal may need to be moved to another rule to avoid creating a patchwork of rules. The rule's suggested effective date is September 1, 2022.

There was a brief discussion on the relationship among various rules being proposed.

### AOC

AOC staff have been meeting with legislators about the judicial branch budget requests. These meetings will continue through the legislative session. The main focus of the budget requests are to meet information technology, court security, and staffing and salary needs in the judicial branch.

Everyone over the age of 18 is now eligible for COVID-19 booster vaccinations. AOC will continue to monitor public health guidance and the impact of the pandemic on the judicial branch. At AOC, staff are considered fully vaccinated without a booster vaccination.

*Blake* contracts have been sent to counties and AOC is beginning to see reimbursement requests. So far, \$500,000 in reimbursements have been paid.

Almost all of the \$13 million in CARES funding has been distributed. There is about \$1,000 in funding remaining.

Chief Justice González said the AOC has been especially busy with additional administrative duties this year, and thanked Dawn Marie Rubio and AOC staff for keeping up and planning for the future.

Senator Pedersen has proposed SB 5490 to create an interbranch communications advisory committee. This committee would discuss issues of concern among the executive, legislative, and judicial branches with members from all three branches. Chief Justice González will formulate a response to the proposal.

### Presentation: What Does Access to the Courts Look Like in the Hybrid World?

Judge Ramseyer introduced the small group discussions. Jeanne Englert asked that a volunteer in each group take notes and e-mail those notes to her after the meeting.

### Small Group Discussions

- What have been the most successful tools or strategies to increase public access to courts as a result of COVID?
- What continues to be the biggest need to accessing court services that we haven't quite figured out?
- Consider the following comment: "Court should be seen as a service not a location." Do you agree or disagree? Why?
- If funding were not an issue, what is one thing you would change to increase public access to our courts?

Highlights of discussions are attached to the minutes.

### Committee Updates

#### Criminal Matters

The Adult Criminal Committee is seeking endorsement from the CRTF for their new court rule proposals to move forward to the Supreme Court Rules Committee. However, anyone can submit a GR 9 rule proposal through their associations. The proposed new court rules and amendments were included in the meeting materials.

**It was moved by Judge Ahlf and seconded by Dawn Marie Rubio to endorse the Adult Criminal Committee's proposed new court rule CrR/RLJ 4.11.**

There was a discussion on where in the court rules this issue should be addressed and what other rules may be impacted. There was a suggestion that the issue may be too complex and may need further discussion. Chief Justice González suggested that the CRTF empower the Adult Criminal Committee to submit the best rules to the Supreme Court Rules Committee, and the CRTF members will have the opportunity to comment on the rule.

**It was moved by Judge Ahlf and seconded by Dawn Marie Rubio to withdraw the motion on proposed new court rule CrR/RLJ 4.11. The motion passed unanimously.**

**It was moved by Chief Justice González moved and seconded by Judge Ramseyer to allow committees to submit court rules through the GR 9 process without the endorsement of the CRTF. The motion passed unanimously.**

The Adult Committee reviewed their remaining proposals and accepted comments and feedback for consideration.

Chief Justice González and Judge Ahlf thanked the Adult Criminal Committee for their work.

### Juvenile Criminal Civil

Judge Reukauf requested that this Committee be concluded unless there are other issues to address. There were no objections.

### Child Welfare

Linnea Anderson thanked the Committee members. The focus of this Committee has been wrapping up the subgroups on remote appearances and electronic signatures. The Committee is now focusing on updating the guidance for *Resuming Dependency and Fact Finding and Termination of Parental Rights Trials in Washington State*.

### Technology Considerations

Dawn Marie Rubio welcomed Judge Anderson to the Technology Committee. This Committee continues working on best practices for court and clerks' websites. They are also looking at end user feedback, automated translation of websites, and the next steps to finalize their work. The Committee also provided feedback to the Access to Justice Technology (ATJ) Committee on the ATJ Technology Plan.

### General Civil Litigation

This Committee is finishing comments in response to the proposal to GR 41 and Civil Rule 39 amendments. They will be meeting next week to finalize comments, and will work with the Criminal Rules Committee on language. They will have further discussions on court reporting and the court record.

### Family Law

No report.

### Lessons Learned

This Committee has concluded facilitation of the court rules project. It is up to committees to determine if any further steps are needed. Included in the meeting materials is a summary of three court user surveys administered by this Committee. The response rates were low so the reports are not statistically valid, but it gives the Committee ideas on further data collection efforts. This Committee is now turning its attention to distilling and synthesizing the work of the CRTF committees. They will follow up with each committee for a summary report.

### Next Steps

Chief Justice González and Jeanne Englert will review the meeting notes and send a summary of next steps.

Jeanne Englert will send invitations for two CRTF meetings in 2022.

There being no further business, the meeting was adjourned at 4:57 p.m.

**Motion Summary from the December 6, 2021, Meeting**

<b>Motion Summary</b>	<b>Status</b>
Approve the October 18, 2021, meeting minutes	passed
Endorse the Adult Criminal Committee's proposed new court rule CrR/RLJ 4.11.	withdrawn
Withdraw the motion on proposed new court rule CrR/RLJ 4.11.	passed
Allow committees to submit court rules through the GR 9 process without the endorsement of the CRTF.	passed

**Action Items from the December 6, 2021, Meeting**

<b>Action Item</b>	<b>Status</b>
Jeanne Englert asked that a volunteer in each small group discussion take notes and e-mail those notes to her after the meeting.	Completed



**BJA Court Recovery Task Force  
December 6, 2021**

**Presentation: What does access to the courts look like in the hybrid world?  
Judge Judith Ramseyer**

**Notes from Small Group Discussions**

**What have been the most successful tools or strategies to increase public access to courts as a result of COVID?**

- Technology — Remote hearings (Not all people have the same access to technology, so that's a challenge).
- The National Center for State Court has research on who can appear via Zoom.
- Zoom is the most significant change since the beginning of the pandemic. Everyone agreed that video access has had a huge impact of accessibility. Some members suggested that it allows people the ability to jump in & jump out of a hearing, thus reducing the time spent "in court." Others indicated Zoom is not the best for trials, where there are clear confrontation issues.
- Zoom hearings. Reiterates the necessity of leaving the courts open for people that have no access.
- Remote hearings:
  - Hybrid bridges the divide for those who would only attend virtually or in-person;
  - TCW and YouTube live stream;
  - Directions for attending court are easier for Zoom than in-person;
  - Accommodations — outdated courtroom spaces cannot accommodate. Zoom offers chat closed captioning.
- E-Filing.
- Changes in policies for all stakeholders (court rules, prosecutorial charging/bail changes, defense communication with clients, jail policies).
- Clear and published rules and procedures for remote proceedings and for accessing other parts of the court.
- Having changes, decisions, and rules be made with input of stakeholders.
- Video access (video participants, public being able to see video of proceedings).
- Willingness to experiment, spirit of innovation (trying no paper, holding testimony by phone). (However, even most successful video access strategies have drawbacks and costs other than financial; judges take on burden of managing new technology, issues with client communication, etc.).
- Purchase Chromebooks for court staff to go into the field. Chromebook allows them to access services remotely. Staff go to home or person comes to office and uses Chromebook. People come into the office a lot. Court ordered Therapeutic appointments staff goes out in the field.
- Hybrid court (in person or WebEx). Public kiosks would be good.
- Hybrid court (in person or WebEx). Libraries are good area of technology access.
- For remote hearings, it is important for rule changes for attorney appearances without their clients.

## What continues to be the biggest need to accessing court services that we haven't quite figured out?

- One issue with Zoom is the unequal access to the platform. Indigent defendant (especially the homeless) struggle to use Zoom because of lack of access to technology.
- Size of documents — reading documents on a small device not the same as a computer.
- Technology assistance for those who are vulnerable.
- Assistance could be provided by providing stands for telephones, adding training for librarians, and creating a YouTube video for technology instruction.
- Exchanging documents — families do not know how and need assistance,
- Size of technology device, moving screen, number of people to see varies if you are on a phone, cracked screen etc.
- Lack of access to technology for everyone, particularly in rural areas,
- Lack of information to court-user about how to access the court remotely,
- Funding for technology changes.
- Helping people access the courts and the tools needed to access the court:
  - Confusion among various court orders;
  - Translating a complicated system to plain language.
- Access to technology/internet for members in the community .
- Not all problems can be solved by throwing money at it.
- Communications — how people access the platforms, how do people figure out how to use it, people need to be able to show up and interact with people. Don't want reduce in person access just because it's possible.
- Access to clients, prisoners especially but also on civil; hard to judge credibility.
- No systematic way of getting user experience incorporated in the planning stage.
- Clerk's Offices vary in ability/willingness to help self-represented litigants.
- Differences in jurisdictions – magnified by new processes. Maybe need more unified communication strategy, uniform ways to access.
- Confidentiality and confidential access to attorneys.
- Human contact really does make our system go. And communicates respect, technology is lacking in that regard.
  - Technology needs to work for users.
- People driving while doing zoom.
- E-filing would increase access. Parties still have to come in to file.
- Electronic Judge's copies would be helpful. There are safety issues, and virtual has helped with that. Zoom, unsure if participants are safe and not being intimidated in court.
- Lack of broadband. Even the courtroom doesn't have reliable broadband access.
- It is important to have a frequently asked questions document on a web site.
- It is difficult for court customers to keep up with different court practices, and a good goal would be to have more consistency on court websites. Not all court webpages are translated and it may not be advisable to rely on automated translations.
- There is concern about court security. It's safer to have hybrid operations if there is no court security.

**Consider the following comment: “Court should be seen as a service not a location.” Do you agree or disagree? Why?**

- Our group felt neither term fits. Court should be where justice is achieved, not simply a physical location.
- New GR for remote jury selection.
- Location in rural areas.
- Both – different for a criminal defendant and someone with a small claim. For a juror or others, it may just be a location
- “I lean towards parent choice and option to attend remotely, even after the pandemic!”
- 90% appear by zoom. Arraignments low show rate. After that people do okay.
- You have to have both a service and a location. Service better with remote opportunities, but location has to be maintained. Concerns about jury trials remotely or other sensitive situations.
- Location makes a big difference. Virtual makes that a lot easier.

**If funding were not an issue, what is one thing you would change to increase public access to our courts?**

- Presentation of evidence and/or trials could be improved. If cost is no object, we should learn from the federal court’s use of technology. One member of our group indicated that if money is no object, we should use funds to invest in services and/or preventative measure, rather than the system. Another person said one thing isn’t enough. These are systematic issues!
- Librarian — zoom rooms to access hearings. Train librarians.
- YouTube video for tech issues and directions for attending virtual courts.
- Virtual lobby to connect with professionals/ manage the waiting room.
- Need more attorneys, particularly in rural areas:
  - Guardianships
  - Legal aid
  - Defense counsel
  - Interpreters
  - Navigators
  - Judges
  - Courtrooms
- Investment in uniform IT approach.
- If cost were truly no object — more investment in legal staff who could help direct users where to go/how to access court.
- Representation for litigants.
- Centralized streaming service for court proceedings (streamed to, managed, secure).
- E-filing (state paid)/unified system to access files/hearing info.
- Universal broadband.
- ADA access funds for attorneys for individuals with cognitive impairment. Would like every court to have its own IT dept.

**BJA Court Recovery Task Force  
12.06.2021**

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Judge Judith Ramseyer**

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**Court Recovery Task Force  
Child Welfare Committee Report  
February 14, 2022**

**Progress on Goals and Activities**

**Short Term Goals**

- Child Welfare Committee is forming two workgroups:
  - a. Drafting new Juvenile Court Rule for child welfare virtual and hybrid hearings;
  - b. Updating best practice guidelines for virtual dependency practice.
- Establishing work group leads
- Establish project completion timeline

**Long Term Goals:**

a. Drafting guidance for further court recovery considerations by drafting a new Juvenile Court Rule to address the unique situations child welfare proceedings pose with the need for flexibility in virtual and hybrid hearings.

b. Expand the Guidance for [Resuming Dependency and Fact Finding and Termination of Parental Rights Trials in Washington State](#). This reference tool was created early in the pandemic prior to the formation of Court Recover Taskforce. There have been considerable lessons learned by the Child Welfare Committee and the committee sees a need to add several additional sections that reflect the knowledge gained at this stage of the pandemic. Essentially, utilizing this document as the model to build upon.

**Challenges**

Scheduling challenges with our volunteer committee members and crisis fatigue at all levels.

**Data Collection Efforts**

One member of the committee is also charged with collecting COVID-19 reponse data from courts across the state as part of her position with the Administrative Office of the Courts. As she learns information that may impact our work on the committee, she will share what she learns with the group.

**Local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end**

The committee has expressed concerns with losing flexibility when emergency orders end. The system has changed rapidly under crisis conditions and it may take time to realign rules, policies, and practices with our evolving system.

## General Civil Litigation Committee – Report to CRTF for February 2022

### *Committee Members:*

Justice Debra Stephens, Chair  
Judge Tim Ashcraft  
Judge Lisa Mansfield  
Judge Rich Melnick (ret.)  
Judge Bruce Weiss  
Vivienne Alpaugh  
Alice Brown  
Michael Cherry, Practice of Law Board  
Colleen Durkin Peterson  
P.J. Grabicki  
Noah Jaffe  
Ray Kahler  
Chris Love  
Luke Phifer

### **Committee meeting recap / Updates:**

Committee submitted formal comments to proposed CR 39 amendments and new GR 41. Emphasize that remote proceedings rules must recognize there are different needs in different parts of the state. Technology access differs, as does court staffing. Flexibility is important for improving access to justice.

Both plaintiff and defense members generally favor allowing at least some remote witnesses at trial, especially expert witnesses. This has resulted in cost savings and efficiencies. Members report that medical experts who would not have been able to testify live were able to do so because of remote option.

Some early indications that verdicts resulting from fully remote trials fall outside prior norms, e.g. some members report that verdict amounts seem to be higher. Some members report that jurors who have participated remotely in King County like that option. Gathering and assessing data would be helpful because it is hard to know what impact remote proceedings have on outcomes without further research.

Committee favors allowing the option of automated transcription services (e.g. StoryCloud) for depositions. Subgroup chaired by Alice Brown is working on proposing process to allow for admission of such transcripts by parties' stipulation, which may or may not require any modification to civil rules. To date, members have not had a trial judge reject the parties' stipulation.

As automated transcription technology improves, there may be an opportunity to more broadly examine rules about transcription, e.g. what it means to make a record in court. But, that extends beyond the scope of this committee's work.



Different subgroup is looking at arbitration rules, to include local rules addressing discovery, strike lists, etc. Ray Kahler met with other attorneys who do a fair amount of arbitration in Western Washington counties. Discovery processes vary. King County leaves it to the discretion of the arbitrator. In all counties, arbitrators have the ability to allow for more discovery. Pierce County has a set of local arbitration rules that many favor.

One issue that comes up concerns the strike lists, including in cases with multiple defendants. Some counties provide each defendant the same number of strikes; some balance between a single plaintiff and multiple defendants. General interest in making the process fair and functional.

Members of subgroup represent plaintiff and defense bars. General sense of support for allowing more discovery in arbitration. Current rule doesn't allow plaintiff to get insurance limits, or defense to access medical records. From Defense standpoint, Alice reached out to WDTL membership and did not hear one negative comment to a rule change to allow discovery along the lines of the Pierce County rules. Can depose not just the parties, but also have access to expert discovery. With every county doing it their own way (and often each arbitrator does it their own way), this makes it difficult to resolve cases, which leads to more de novo trials and undermines the value of arbitration.

As a follow up to the January 2022 GCLC meeting, subgroup will meet again and propose next steps to address arbitration procedures, including whether statewide rules would be helpful. Any proposal will be vetted with interested bar and court associations.

At January 2022 meeting, Michael Cherry, Chair of Supreme Court's Practice of Law Board, provided brief overview of regulatory sandbox proposal the board has been developing and will be sending to the court. The model follows positive experiences in other states, most notably Utah. The regulatory body looks at certain business practices / software services, asking should they be effectively licensed to practice law. Examples: HelloDivorce, Boundless, FairShake. Operating online. Not just a Washington issue, no state defines the unlicensed practice of law well. In WA, LegalZoom has operated for years with the agreement with the Attorney General. Following Utah the Washington proposal would create a regulatory laboratory, where applicants can seek approval to operate for two years while impact is measured. The key is that the alternative models for delivering legal services would not be operating unregulated. The Lab crafts a set of regulations that apply to that particular operation. Measures consumer harms and benefits.

Committee will meet again in early March, date tbd depending on when arbitration subgroup is able to meet.