

## Interbranch Advisory Committee (IAC) Meeting – June 20, 2023

Welcome from Chief Justice Steven González and Senator Pedersen

### 2023 Judicial Branch Session Debrief

#### Policy Debrief:

There were 4 pieces of Board for Judicial Administration (BJA)/Administrative Office of the Courts (AOC) request legislation that passed, 3 unchanged and one amended.

- HB 1023 – Eliminating the wiretap authorization reporting requirement to the Administrative Office of the Courts (AOC)
- HB 1102- Pay parity for retired superior court judges serving as pro tems
- SB 5003 – Adding an additional district court judge for Snohomish County district court
- SB 5128 – Jury diversity
  - Continuation of Minority and Justice Commission (MJC) jury demographic survey
  - Childcare assistance workgroup for jurors
  - Increase in Juror Pay – this was amended out in Senate Ways and Means due to the indeterminate cost.
    - We did receive funding in budget for Juror Pay Pilot Project to complete the research and gather data to better support this proposal in a future session.
      - Increasing to \$100 per day in Pierce County Superior Court – beginning sometime in 2024.
  - Increasing methods of jury summons to include email service

#### Interim Projects:

- Best Practices for Electronic Monitoring and Victim Notification Technology (EMVNT) – we (AOC) worked with Senator Wilson and Rep. Davis
  - BJA and AOC Fiscal Team will be working together to distribute funds and best practices to courts.

#### Proposals for Next Session:

- 3-4 courts will be requesting new superior court judicial positions.
- Potentially looking to do RCW 10.77 cleanup

#### Budget Debrief:

- This year the judicial branch requested \$103 million on behalf of the courts, received \$70 million of that request and \$7 million in other items and \$5 million in central service compensation impacts (statewide)
- Very successful year – \$70 million is a lot of trust in the branch
- One of the things that worked well was prioritization process
  - This helped decision makers and staff who briefed decision makers
- Highlights:
  - Fully funded IT branch infrastructure
    - Requested \$23.5 million per biennium and received \$20 million.

- Staffing and developing teams
- Funding for e-filing for superior court case management system
- Small and rural court security
- With regards to the Judicial Needs Estimate (JNE) – there was a category that was a research category this was the top priority.
  - Everything else in the research category that was funded aside from the JNE.
  - Not likely to come back in the supplemental budget, but we may have to re-tool or repackage.
- The last 3 years have been the most successful by far, after review of the last 20 years of requests.

#### Questions for Budget Debrief:

- Security for rural courts – how far is that along in determining what courts will receive funding for security?
  - We have started our application process for that and courts have started to apply. We have specific
- How does proportionality compare to past years?
  - The proportion is greater – but we have only recently begun requesting our needs in full versus cherry picking specific requests.
- Going back to JNE conversation because it is important to discuss why this is necessary.
  - AOC has come up with a model to informally supplement the JNE since it has not been funded, when courts come to us we can run the model.
  - AOC has been using an outdated methodology – objective workload model – basic inputs to outputs but does not account for complexity in the court process.
  - Facial validity concerns.
  - One way to deal with those is to change the methodology to a weighted workload/caseload model. Judges track their time, on and off the bench, to calculate the value based on number of days and hours judges have to commit to the work.
  - AOC would need to have a researcher that solely works on this data collection and analysis.
  - To begin the process, we would need to contract to establish the weighted caseload model across the state, once the initial data collection is done we can have our researcher maintain and update.
  - Not sure if AOC will be asking for this funding again in 2024, but need to figure out what can happen in the interim to more accurately calculate and understand the judicial need across the state.
- The JNE is also a priority for the Superior Court Judges’ Association (SCJA) – judges feel the effect of more work cases and administrative work.
- Is there any way for the new methodology to take into account the difference in style and variables in how judges’ function?
  - There are a lot of different ways to unpack and analyze the data once we have implemented the new methodology and have more accurate data to look at.
- Can you remind us of proposed expenditure for the JNE?
  - \$500,000

- Often in public defense we (Office of Public Defense [OPD]) are concerned with how long a case will take to resolve and there has not been a study on that. OPD has also been asked to do an hour's caseload study. This could be something that OPD and AOC work together on a proposal for caseload studies, prosecutors also need caseload studies, maybe this is something we can all work together on and combine proposals to make things more equitable for the entire system.

### **First Year IAC Debrief**

#### What went well? What can be changed moving forward?

- This committee has been very helpful with regard to opening new lines of communication and fostering a deeper understanding of the challenges that each branch faces, especially during the session.
- It felt like the budget was more successful thanks to the communication and that there were fewer unnecessary clashes on policy issues because of the stakeholdering that was able to be done.
- Overall this has been a very positive and we can continue to build the trust necessary to share perspectives directly and candidly.
- Developing relationships within the committee can make session more efficient and effective.
- The Defects and Omissions letter (resulting in SB 5087) is just one example of the valuable relationships and communication that took place within the IAC within this last year.
- This committee has been a great example of increasing communication and thereby understanding of the differences in the branches of Government.
  - Can we do more? In the spirit of increasing that understanding could we (IAC) build a program that is held in other places, in the community, to gain a better understanding of those who's feet are on the ground and doing the work. Could that help our conversations deepen and become more substantive?
- It has also been beneficial to engage with other judicial branch stakeholders.
- This first year has been a very beneficial educational experience to learn the process and also to go back and share information with associations regarding the legislative process.
- This committee has also opened up opportunities to bring legislators into the respective associations to see the work that is being done on the ground, in addition to helping associations to understand the legislative process.
- Grateful for the platform and opportunity for facetime with legislators.

#### Updates on *Blake* and LFO Refund Bureau:

- AOC is reimbursing courts for the additional extraordinary costs for processing vacations and resentencing for individuals that are affected. Second AOC is working hard to identify the individuals who are eligible for resentenced or adjusted. Third AOC is returning Legal Financial Obligations (LFO) through the refund bureau – refunding individuals going back to 1971 for vacated convictions – will be available July 1 for filing online, refunds will begin mid-August. Lastly, AOC has a strong communications team to outreach to individuals, statewide, regarding their availability to seek vacations and refunds.
- Is AOC doing this with existing staff? How are you accomplishing all of this additional work?
  - The legislature provided additional staff to make this work and happen. AOC has a dedicated team of 3 staff for *Blake* work and the LFO Refund Bureau.

- Prior to the funding in this last budget local courts were responsible for the resentencing, vacations, and refunds – utilizing court staff, clerks, etc. This funding is very helpful to relieve the extra work previously placed on those individuals.
- Traditionally this wasn't a function provided by public defense, it is not embedded into public defense case time, attorneys are volunteering their time to work through resentencing and vacations. OPD would like to work with AOC to come up with a streamlined process so we (courts/attorneys) are not having to work through one case at a time.
- Specifically, with regard to 5536 AOC is encouraging the courts to work with their local behavioral health authorities in the implementation of 5536. AOC is trying to develop the infrastructure for local courts to address the behavioral health needs that may have led to convictions.

Recommendations for Future Topics/Conversations:

- It would be helpful for us to identify a handful of issues that will be coming before the legislature and try to drill down into the positions, needs, pros/cons before the session begins. It is hard to have substantive discussions once session begins.
- Suggestion for future discussion would be interpreter shortage and funding which is a huge problem for the courts. COVID complicated this process and it is getting increasingly more difficult to find available interpreters.
  - In-person interpretation is preferred, but sometimes in the interest of time remote is better than none at all.
  - Interpreter cases take double to triple the time. This is an access to justice issue.
  - May be possible to bring in the Interpreter Commission to join a future meeting and discuss this from their perspective.
  - Immigration court also faces an issue with the interpreter shortage issue. To talk to client before hearings you have to come up with your own interpreter, interpreters are only provided in the court hearing. Cases can be decided incorrectly based on interpreter issues.
- It would be helpful for the legislature to understand or to have more of a sense of not the cases, but the policy work that is done in the judicial branch. For example, *voir dire* and if that will be able to continue remotely. What are the opportunities for public awareness of the consequential policy decisions being made, or input?
  - Remote proceedings, during the pandemic we (Supreme Court) functioned under emergency orders which suspended some court rules to allow courts to continue to function. We have an interim order still in place to allow a workgroup of judicial branch stakeholders to work on those court rules and determine if they need/should to be updated. The workgroup has been collecting and incorporating input and we will continue that process even after the recommendations have been submitted for review. We are happy to share their recommendations once received.
  - One of the issues that has been difficult for the courts is that access to justice has taken on a different definition. Remote proceedings are not only beneficial for the pandemic, but also for marginalized communities that may be triggered by coming to court. It is necessary for us to progress. We have to embrace change and support those changes to expand access to justice.

- Another issue from the civil bar is complex civil cases have gone to private dispute resolution versus public courts, this limits the expansion of our common law system. What can we do to preserve our civil justice system?

### **Judicial Branch Update**

#### The practice of law and online legal services:

- This topic is both the practice of law both by individuals and in some cases entities—sometimes Artificial Intelligence (AI), Corporations, and sometimes by individuals who are not lawyers providing services online. The way we practice has changed significantly and the acceleration of that change during the pandemic has highlighted this issue.
- In the past the unauthorized practice of law (UPL), individuals practicing without a license, was regulated by the Washington State Bar Association (WSBA), but the WSBA's role has diminished due to anti-trust concerns. So, there is a gap. The Attorney General's Office (AGO) has also been involved in some very important instances within the context of consumer who were harmed by the unauthorized practice of law or legal services.
- Our Goals:
  - Protect consumers
  - Promote innovation
  - Improve access to justice
    - We want to utilize technology and not be afraid of it—to use it intelligently as a tool.

#### Michael Cherry – Chair of Practice of Law Board (POLB) at WSBA

- POLB was created by the Supreme Court and is administered by WSBA.
  - The board is made up of 13 volunteer members, 5 of which are non-legal professionals/members of the public.
  - Question before the board: given the increasing number of non-traditional legal service providers who may be providing services to Washingtonians, how do we best protect the public who needs legal help?
- The practice of law is defined in General Rule (GR) 24
- The current process and practice of licensing law school and legal preparatory program graduates has become incomplete due the increase of service providers who have entered the market in many different shapes and forms.
- Roles and Responsibilities of the POLB:
  - Educate the public about how to receive competent legal assistance.
  - Consider and recommend to the Supreme Court new avenues for persons not currently authorized to practice law to provide legal and law-related services that might otherwise constitute the practice of law as defined by GR 24.
  - Coordinate UPL Complaints by receiving and reviewing complaints alleging UPL and forwarding to the appropriate agencies.
- POLB has taken an interest in online legal services in this due to the increased use and services available.
- Revised Code Washington (RCW) 2.48.180 outlines the definition of the unauthorized practice of law

- To additional elements discussed in UPL cases that are not defined in statute of GR 24 – Fee or harm
- Last year the POLB referred approximately 24 cases to other agencies for their investigation and action.
- The AGO had 50 UPL complaints last year.
- POLB is working to become the clearinghouse for UPL data.
- Who can practice law in WA?
  - Lawyers
  - Limited License Legal Technicians (LLTs)
  - Limited Practice Officers (LPOs)
- Key point: the profession is still just discussing authorizing people.
- New Legal Entrants
  - Online Legal Service Providers
    - To legal professionals as research tools
    - To the general public/consumers seeking legal assistance.
  - Better informed consumers
    - More access to legal information, both accurate and inaccurate.
- A market ripe for disruption:
  - This is in part due to the access to justice gap – it is hard to quantify this gap and the progress or lack of progress being made.
  - Marketplace imbalance
    - Consumer vs. Legal Professionals able to handle cases.
  - POLB is also concerned about spontaneous deregulation
    - When companies offer services in an existing market that is ready for disruption (ready for cheaper and different legal services) the changes may happen to fast for the appropriate government agencies to make sure that consumers are protected.
- POLB is working to create framework for the regulation of legal services
  - Data-driven regulatory reform.
  - Based on scientific method
  - Allows for thorough evaluation of a new or proposed change to a legal regulation.
  - Data analysis ensures the proposed reform has worthwhile effect.
- Impact on Access to Justice vs. Risk to consumers
  - What is the risk to the consumer?
    - Looking at current time frame and future period of time.
- Creating a Level Playing Field
  - All participants in the legal market should be bound by rules:
    - Competency
    - Confidentiality
    - Conflict Checks
    - Communication
    - IOLTA Accounts
- Other options to address the problem
  - Do nothing vs. Expand Traditional Regulation
    - Expanding Traditional Regulation:

- Define path to authorization (licensure) that parallels current process for people
    - This would require drafting rules and competency tests, approving and propagating rules, monitoring and discipline (but based on anecdotal experience as opposed to POLB data driven approach).
- Recommendation to the Court
  - Begin implementation of data-driven legal regulatory reform, surrounded by the correct set of guardrails to minimize risk of harm to consumers.
  - Analyze operational data on an on-going basis to adjust the guardrails around the processes.
  - Use money collected in fees from participants in the data-driven legal regulatory reform to pay for the process, with licensure monies supporting ongoing monitoring and access to justice programs.

Questions:

- How is the data collected? Is each service provider required to collect or report?
  - It is a function of both – with each participant that is going to be licensed we (POLB) would sit down with service providers, with on-going collection of data every 90 days – we would determine data based on what the service provider is doing and the perceived risk.
- To clarify regarding non-traditional service providers: this is vast – there are a lot of efficient and effective ways to partner with programs in place. We already have 2-3 years of information that the POLB can already look at if we are able to move forward. This is something that is already happening and we are seeing good potential in civil legal aid. It shouldn't be riskier for them to provide good and competent services.
- It might be difficult to ask the bar to use their dues to subsidize their competitors (online legal service providers). What would the startup cost be and who would pay it? Also, who would be in charge of deciding participants?
  - We (POLB) believe that participants should pay a fee to participate. We would like to create a Board to run this process and they would serve as auditor to make sure procedures/processes are being followed and met. Our models project that with the right license fees, we could in theory recover our costs and potentially even make money for access to justice work. Funding is still an issue to start and we would potentially need seed money to start.
- Would this look like the LegalZoom model with the requirements that the AGO reached with them?
  - Not exactly, because each service is offering specific/custom services, we (POLB) really feel that we would have key definitions and custom crafted work so their license would essentially be a revocable court order, customized for each individual provider, to ensure that we are able to monitor their work and maintain consistency.
- Is this your assessment that the Court has the legal authority to do without additional legislation, or would there be a need for legislation as well?
  - We (POLB) believe the court does have that authority – I do not think it would not hurt us to work together with the legislature, governor's office, AG's Office, and Court to ensure we do not need revise court rules and legislation, and do so if necessary.
- There has also been a recommendation that UPL as per say violation of the consumer protection act – do you support that proposal or do you have a view on it?

- AGO has been our greatest advocated in handling the UPL. They have tremendous resources to conduct investigations. And yes, the POLB does support that recommendation. The recommendation came a couple years ago and we (POLB) are currently working through it again and making sure there are no changes necessary, once we have completed that review we will bring forward to the Court as a recommendation.
- The original proposal for this recommendation was drafted by Doug Walsh who was with the Consumer Protection section of the AGs Office, when he was Chair of the POLB.
- What are other states doing in this regard?
  - The UK has been doing this work for 2-3 years, it is also big in Canada. Their Bar Associations are doing the work.
  - In the US, Utah is running a sandbox, it is considerably different than Washington's POLB recommendation, they are not leveling the playing field in any way. Utah is managing risk in a way that is less involved. They are not quantifying this.
  - Arizona also has essentially struck their rules as to who can invest in a law firm and who can invest in a law firm, exploring alternative business structures. Allowing non-attorneys as investors in law firms.
  - POLB meets monthly with other states that are doing this work to exchange information and ideas.

#### **Legislative Update**

- The upcoming year is a short session and election year. Normally we (legislature) would only have tweaks to the budget that we just passed. Not a year to make big leaps forward in terms of funding. Another change in the Senate is that the Ways & Means chair is leaving and Senator Robinson will likely be taking over. She has a lot of experience with the budget process.
- From a policy perspective the short session is very quick. As a practical matter policy matters need to be done in advance of session beginning.
- If you are not ready before session starts you are already behind. Bills can be pre-filed in December and recommend utilizing that.

#### **Executive Branch Update**

- Executive branch is already working on request legislation and decision packages for coming session. We know that short session is a sprint the whole time.
- One issue – driving records that are maintained by Department of Licensing (DOL) and sealing orders related to juvenile driving adjudications
  1. DOL has been having issues getting the courts to send sealing records directly to DOL. AOC has been very helpful. Grateful to AOC for helping DOL get those orders.
  2. When a juvenile is adjudicated for a traffic offense there are often restrictions or requirements placed on juvenile license. DOL will frequently receive and order that does not include the continued requirements/restrictions. If record sealed then restrictions are not able to be monitored.
    - a. Example: Ignition Interlock Device (IID)
- Legislative fix is coming regarding the above issue for juvenile driving adjudications and sealing orders. Orders need to be very clear in how to deal with ongoing restrictions or requirements.



- AGO has had ongoing issue regarding payment for the representation of superior court judges when they get sued. If Court of Appeals (COA) is sued they are a state agency they have a billing code. District and municipal court judges are handled or represented locally by county. Superior courts are different though represented by either county prosecutor or AGO. AGO often incurs the cost but has no way of billing or being reimbursed for representation.
- Additionally, some of the superior court presiding judges are seeking AGO advice on operational issues and then saying AOC can pay for it, but AOC does not have a budget or way to bill for this.

### **Committee Member Updates**

- SCJA recently had long range planning, and identified priorities they will be focusing on in 2023-24:
  - New:
    - Preserve and enhance judicial resources
    - Sustainable education resources and staffing
    - Tech Resources – CARES act funding was very beneficial and helpful during the pandemic but there are continued needs to education and updates.
    - Studying ways to provide law clerk/ staff attorney support to superior court judges – variation around the state but most superior court judges do not have those resources.
    - Looking at being real leaders in coordinating with judicial stakeholders in juvenile justice
    - Improving Access to the court by court appointed professionals (attorneys) – this is a serious issue, outreaching to law schools and high schools for next generations of the legal profession.
    - Increase superior court judicial positions.
  - Continuing issues:
    - Addressing systemic racism
    - Workgroup working on delivery of services to self-represented litigants
    - Working closely with AOC, BJA, and the legislature on policy issues for the SCJA
    - Work life balance
- Access to Justice board would like to invite everyone to their conference in Tacoma at the end of September.
  - Begins 9/28
- Supreme Court
  - Thanks to DES for keeping the Temple of Justice renovation project on track.
  - Workgroup working on process for becoming a lawyer and will have report with recommendation soon.
  - Justices are working to outreach with new and potential law students to bring diverse students and students from rural areas into the practice of law.
  - Civil Legal Needs Study – about time to start that process again for this decade, will be reaching out to begin collecting that data.