| | **Board for Judicial Administration (BJA)**<br>**June 21, 2024 (9 a.m. – 12:00 a.m.)** |
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| **WASHINGTON COURTS** | Zoom Meeting |

## MEETING MINUTES

**BJA Members Present:**
Chief Justice Steven González, Chair
Judge Alicia Burton, Chair
Judge Tam Bui
Judge Kristin Ferrera
Judge Rebecca Glasgow
Judge Marilyn Haan
Judge Karl Hart
Judge Cindy Larsen
Judge Mary Logan
Terra Nevitt
Judge Rebecca Pennell
Judge Diana Ruff
Dawn Marie Rubio
Judge Michael Scott
Judge Jeff Smith
Judge Karl Williams

**Guests Present:**
Judge Andrea Beall
Elena Becker
TJ Bohl
Ashley Callan
Judge Angelle Gerl
Jessica Humphreys
Judge Carolyn Jewett

LaTricia Kinlow
Judge Kathryn Loring
Judge Lisa Mansfield
Commissioner Barbara McInvaille
Judge Sean O'Donnell
Judge Kelli Osler
Mary Rathbone
Judge Ketu Shah
Justice Debra Stephens
Judge Bernard Veljacic

**Administrative Office of the Courts (AOC) Staff Present:**
Nicole Ack
Scott Ahlf
Jeanne Englert
Scott Hillstrom
Kyle Landry
Penny Larsen
Joslyn Nelson
Stephanie Oyler
Christopher Stanley
Caroline Tawes
Lorrie Thompson

Call to Order
Chief Justice González called the meeting to order at 9:01 a.m. and welcomed the participants.

Dawn Marie Rubio announced some staffing changes at the AOC. Jeanne Englert has succeeded Cynthia Delostrinos as the Associate Director in the Office of Court Innovation. Today is Jeanne Englert's last meeting as BJA staff, and Dawn Marie Rubio expressed her appreciation for all of Jeanne Englert's work. Cynthia Delostrinos is moving to South Carolina and we will miss her. Chief Justice González said it was a privilege to work with Jeanne Englert and thanked her for her skills and work for the Judicial branch. Jeanne Englert thanked everyone for their support.

Presentation: Artificial Intelligence: Emerging Issues for Courts
Justice Stephens introduced the presentation and members of the Washington Jurisdiction Team that participated in a National Center for Safety Initiatives (NCSI) to help develop

approaches to emerging AI issues.  Members of the group included Justice Stephens, Judge Janet Chung, Judge Veronica Galvan, Judge Lisa Mansfield, Judge Sean O'Donnell, Judge Ketu Shah, Judge Jeff Smith, Judge Bernard Veljacic, Judge Allyson Zipp, Ashley Callan, and Scott Hillstrom.

Judge Veljacic reviewed the definition of AI and other relevant terms.  There are potential benefits from AI for the legal profession such as helping pro se litigants, translations, and preparing cases.  There are also limitations, for example, legal accuracy on translations.

Deep fake evidence is where trial judges will have most challenges.  There are several ways a judge may have to deal with deep fake evidence.

Judge Smith reviewed lessons that have been learned so far.  Courts must embrace change and learn how to adjust, and be proactive with a nimble mindset.  Judge Smith sees this situation as similar to how courts adapted to COVID.

The BJA can take leadership by developing a framework for the use of generative AI.  Current court rules and judicial canons may need to be reviewed to determine if they are appropriate for AI.  Evidentiary and interpreter issues will come up.  There is also racial bias inseparable from much of AI.  Using AI for document drafting, judges' opinions, and lawyers' briefs will have to be addressed.  There are examples of models that Washington could adopt, and there are articles and policies the group can send to the BJA.

Meeting participants broke into small groups to discuss the following questions:
1. What AI issues are you seeing right now
2. What are some risks of AI you would like to see addressed in court guidance?
3. What are some opportunities for courts to use AI to improve the delivery of services and access to Justice?
4. What do you see as BJA's role in this area?

Judge Mansfield said there needs to be more opportunities like this to talk about these issues.  The BJA can provide learning and sharing opportunities, and can look at implications for court rules.  There should be a uniform application of rules in all courts, and there needs to be guiderails on briefings.

AI may provide opportunities in language access and in providing access.  The interpreter community has some objections to using AI in courts.  There are also opportunities to use AI in in legal clinics for forms where context isn't an issue, and with basic access to and information about the legal system.

AI and facial recognition need guardrails.  It is important that the community is educated on the dangers.  There are also privacy implications and issues around who owns the content.  It could be the role of the BJA, AOC, and the National Center for State Courts to help us understand the AI products, which will protect privacy.

Justice Stephens said they will be developing guidance and resource materials, and future discussions on what BJA sees is their role.

Chief Justice González stated this might be a part of each meeting.

A summary of the small group discussions is included in these meeting minutes.

BJA Task Forces and Work Groups
Presentation: Electronic Monitoring with Victim Notification Technology
Judge Osler, co-chair on the Electronic Monitoring with Victim Notification Technology (EMVNT) Workgroup, defined EMVNT. The purpose of the Workgroup is to discuss how we can expand the use of this technology across Washington. This presentation will highlight the achievements and recommendations from the Workgroup.

Judge Osler provided background on the EMVNT. The Workgroup met over 10 months to discusses challenges and how to expand the use of this technology. Meetings included presentations from law enforcement agencies, legal advocates, and equipment vendors. The Workgroup also discussed best practices and model policies and protocols. This information is covered in the final report included in meeting materials.

This program is already implemented in Clark County. Infrastructure is different in some counties, and challenges they may face are included in the Workgroup's recommendations and best practices.

Commissioner McInvaille discussed some concerns in the application of EMVNT to civil cases. Because the burden of proof is lower in civil cases, it would be easier to order bracelets which would increase the cost. There is also concern that individuals in civil case may not be represented by counsel. There needs to be a small pilot program to look at solutions to these issues.

Jeanne Englert thanked the Workgroup. More EMVNT information is available on the BJA website. Joslyn Nelson thanked the co-chairs for their work and Jeanne Englert for guidance and for the opportunity to oversee the Workgroup. Chief Justice González thanked the Workgroup.

Presentation: Alternatives to Incarceration
The goal of the Alternatives to Incarceration Task Force was to develop alternatives that would be uniformly available across the state regardless of resources. The Task Force meets every other month. Judge Logan thanked the BJA for extending the Task Force charter for another year.

The Task Force is considering a policy proposal for the upcoming legislative session, and will have policy recommendations in the future.

1. The Task Force has will submit a budget request for $1.9 million and a .5 FTE position. The Information Gathering Workgroup learned some courts ordered electronic home monitoring and alcohol monitoring without considering indigency. The Task Force will request funding for reimbursement to courts for costs associated with electronic home monitoring, alcohol monitoring, and domestic violence and mental health assessments. They want reimbursement funding to bridge the gap, with a focus on small and rural courts.
2. The Legal Authority Workgroup plans a policy proposal. They sought feedback from judges statewide on where there are gaps on authority to order alternatives and why alternatives not being used more frequently. The proposed legislation would provide immunity for those who voluntarily engage in substance use or mental health evaluations

pretrial to incentivize participation pretrial. The Workgroup is planning to develop education materials and bench cards.

## Presentation: Remote Proceedings Workgroup

The meeting materials included the Work Group report presented by Co-Chair Judge Gerl which references the Supreme Court Orders adopting most of the court rule amendments proposed by the Work Group. Judge Gerl presented a memo outlining the budget request for a $2.2 million one-time grant program to fund courtroom technology upgrades needed for conducting hybrid proceedings.

The Workgroup's most recent survey asked about the need for funding for hybrid proceedings. Survey results were included in the meeting materials.

Chief Justice González said the remaining proposed court rule changes are close to being completed, and it is likely that the emergency orders implemented during the pandemic will be lifted by August. There will need to be an evaluation of what needs to be addressed now that the rules have been approved.

## Standing Committee Reports

### Court Education Committee (CEC)

The CEC budget request summary was included in the meeting materials. The education decision package requests a budget increase for all in-person education conferences, for court technology and online education support, and various education programs on specific topics. The decision package is currently being reviewed.

### Legislative Committee (LC)

Policy requests are due July 12, 2024. Chief Justice González reminded the participants there have been changes to legislative leadership which will affect committee membership and our interactions with the committees.

There will be a survey next month to provide feedback on the Interbranch Advisory Committee.

There will be work on the BJA charter this summer and an opportunity for comments at the September BJA meeting.

### Policy and Action Committee (PAC)

The PAC is working on the implementation plan for the equity assessment tool (EAIT) pilot project, presented at the last BJA meeting. BJA committee staff members met with Michael Roosevelt last week for a workshop on implementing the EAIT in their committees. Their goal is to play a role in implementing and rolling out the tool. The PAC is also working with the Gender and Justice Commission staff on ideas to develop a comprehensive workplace harassment program consistent with the survey recommendations, rather than a one-time training.

### Budget and Funding Committee (BFC)

The BFC is beginning to analyze what budget packages will go forward. Budget requests are due June 28, 2024. Judge Logan said it has been a pleasure working with Christopher Stanley.

Christopher Stanley said the legislative budget is tight and he encouraged moderation in budget requests.

BJA Member Updates
Superior Court Judges' Association (SCJA)
The SCJA held their long range planning meeting. Priority areas include a focus on several subjects, and continued efforts on pro se litigants.

1. Law clerks. Superior court judges have limited access to legal support staff, although some use the legal support staff at AOC.
2. Judicial education. There has been significant turnover on the bench. New and sustainable funding is need for in-person events, full reimbursement for pro tem coverage, and additional in-person programming in 2025. They hope to have trainings on protection orders, family law, and access to justice, one in eastern Washington and one in western Washington.
3. Implementation of new laws. Court resources are needed for implementation of new laws for a quicker response.
4. Courthouse security improvement, including the safety of judicial officers and their families. They are working with the BJA court security committee and others in this area.
5. Juvenile justice. They are seeking opportunities for judicial leadership and input into judicial justice services.
6. Improving public relations and communication, media outreach, and civics education. They are coordinating with the Bench Bar Press Committee to develop communication products for courts. This is also an access to justice issue.

Judge Ferrera reviewed the SCJA mission and goals, and the new SCJA officers. Judge Cindy Larsen is the President-Elect, and Judge Samuel Chung is the Immediate Past-President.

SCJA President-elect Judge Cindy Larsen introduced herself.

District and Municipal Court Judges' Association (DMCJA)
The DMCJA just finished their spring conference. It was a good education experience. Topics included security, AI developments, and judicial independence. Judge Charles Short was awarded the David Steiner Leadership Award. The DMCJA has new officers. Judge Karl Williams will be the new DMCJA President, Judge Anita Crawford-Willis became President Elect, and Judge Jeff Smith became Immediate Past-President.

The DMCJA Diversity Committee is working on pro tem training in collaboration with the Washington State Bar Association (WSBA). The last cycle was successful. The Diversity Committee also held discussions on translating forms, and learned more about the interpreter reimbursement program. They plan to use the resource more widely.

The Public Outreach Committee will hold *You've Been Served* this fall, an event for state and local legislators to visit courthouses around the state. It is a good way to build relationships with the legislators in your district.

The Legislative Committee will be reviewing legislative proposals and narrowing the list. They are looking at two decision packages on procedural fairness and contracting a retired judge for onboarding. They are also having conversations with the National Center for State Courts on an executive coaching program, a train the trainer program on judicial mentoring.

Judge Beall will be the DMCJA representative on BJA, taking over for Judge Logan.

AOC
AOC is focusing internally on building infrastructure, with more focus on external stakeholders in the future.  Dawn Marie Rubio reviewed the 2023–25 budget, including pass through funds and AOC operations.  AOC now has 440 FTEs.

She also reviewed projects and initiatives of note including the Hope Card program; pretrial services pilots and webinars; the *Blake* refund bureau and the soon-to-be centralized vacate process; the courthouse security consultant; the CLJCMS implementation; and many others.  AOC is working on strategic planning.

Washington State Bar Association (WSBA)
Terra Nevitt introduced Mary Rathbone, the WSBA Board of Governors' President.  Sunitha Anjilvel is the current acting president, and will continue this role in October.  Hunter Abell is on a leave of absence.  Francis Adewale will become the WSBA president in October 2025.

Terra Nevitt highlighted areas of focus and strategic priorities that include threats and opportunities of technology: supporting legal professionals (proposing rule changes and guidance on education to legal professionals); and how to regulate the practice of law when it comes to technology.  Other focuses include member wellbeing; rural practice, and improving the experience of belonging.  There are intersections among these topics.  There is a critical lack of legal practitioners in rural areas.

Other topics that are being discussed are alternative pathways to licensure (adopted in concept).  The Bar exam is not going away.  There will be a task force formed to propose new rules, procedures, and best practices for these pathways.  This might take a few years.

There are also new public defense standards that were approved by the WSBA Council of Public Defense.  There is concern about the cost of implementation and lack of attorneys.

There will be public hearings on the proposed public defense standards.

Motions

**The May 17, 2024, meeting minutes were approved by consensus.**

Each year the BJA Board reviews and approves BJA committee chairs and memberships.  Jeanne Englert thanked Judge Scott for chairing the Legislative Committee, and welcomed Judge Glasgow into the role.  She thanked Judge Pennell for chairing the CEC and thanked Judge Bui for chairing the CEC again.  She thanked Judge Logan for chairing the BFC, and Judge Ruff for stepping into the role.  Judge Jewett will be on the PAC, and Judge Scott will return to chair the PAC.

**It was moved by Chief Justice González and seconded by Judge Haan to approve the BJA Committee Chairs and members  The motion passed unanimously.**

Information Sharing
June 14 Interbranch Advisory Committee
The upcoming Interbranch Advisory Committee meeting dates were included in meeting materials.

The BJA Court Security Committee will ask for legislative changes affecting the address confidentiality program.  The changes will allow judges to proactively request their name and personal information be removed from voting records and county assessors' records rather than waiting until they are threatened.  Chief Justice González thanked Kyle Landry and the Office of the Secretary of State for working on this proposal.

Judge Bui thanked Judge Pennell for her thoughtful leadership and her work on education.

Adjourn
The meeting adjourned at 11:46 a.m.

**Recap of Motions from the June 21, 2024 Meeting**

| Motion Summary | Status |
|---|---|
| Approve the March 15, 2024 meeting minutes. | passed |
| Approve the BJA Committee Chairs and members | passed |

**Action Items from the June 21, 2024 Meeting**

| Action Item | Status |
|---|---|
| May 17, 2024 BJA Meeting Minutes<br>• Post the minutes online<br>• Send minutes to the Supreme Court for inclusion in the En Banc meeting materials. | Done<br>Done |

# Board for Judicial Administration (BJA)
**June 21, 2024 (9 a.m. – 12:00 a.m.)**
**Artificial Intelligence: Emerging Issues for Courts**

*Small group discussions*
Meeting participants broke into small groups to discuss the following questions:
5. What AI issues are you seeing right now
6. What are some risks of AI you would like to see addressed in court guidance?
7. What are some opportunities for courts to use AI to improve the delivery of services and access to Justice?
8. What do you see as BJA's role in this area?

*Justice Debra Stephens*

Everyone in Scott and my small group said they learned new information and appreciated having the space to talk about risks/rewards and how BJA can be involved.

As I mentioned in closing, let's compile brief notes from our small groups, so that the BJA team can include those with the minutes.  Probably the most efficient way to do that is to simply respond to this email string, and then Penny, Caroline or Jeanne can capture and compile the notes.

Here is a summary from my small group discussion (group 6):

1. Seeing now: some language interpretation assistance (e.g. front counter); lawyers are likely using in briefing/arguments; concerns about evidence authentication.
2. Areas for guidance: look at rules that may need to be updated (e.g. authentication of evidence); limits on use of AI as substitute for judicial decision making.
3. Opportunities: avatar/assistants for SRLs or front desk questions; assist in family law form completion, given limited number of courthouse facilitators; information sorting/summation and development of trainings/court education resources; language access for court users.
4. BJA role: convene work group with court professionals and users, along with IT/computer science experts.

*Judge Jeffrey Smith*

Ashley and I co-lead a group.  Here are the take-aways from our discussion.  Ashley…feel free to add anything else.

1. A suggested overall goal for BJA would be to develop criteria (guardrails) for where and when AI may be used in our court system.
2. Interpreter issues are seen as a significant area for attention related to AI (i.e., interpreter function with the clerks' office vs. in court interpretation, etc.)
3. There may be IT security issues that need to be put into place.
4. An analysis of court rules may be a good place to begin.

*Judge Ketu Shah*

Here are our notes from our group which Penny was a part of and may supplement:

1. Questions about who owns the data and the privacy issues related to that issue
2. BJA can help with recommendations of vendors that can protect our data and provide useful tools; AOC and NCSC may be better suited for that vetting.
3. BJA can help with educating our bench and having them more comfortable around the reliability of the technology like today's session which helped lower the fear temperature.
4. Folks are considering developing internal policies on how to use AI for a variety of functions including meeting minute summaries, developing outlines for memos, for legal research, and legislative analysis. It can be a first step in drafting but ultimately the person relying on the information provided by AI needs to verify its authenticity.
5. WSBA has a task force on AI and there may be ways for BJA and WSBA to collaborate.
6. Can BJA help with rule-making to create guidelines?
7. Worry about deep fakes, but perhaps current rules and professional responsibility can counter that.
8. How do we deal with the "liar's dividend" especially when there are unequal resources between the parties and what does that mean for access to courts?

*Judge Lisa Mansfield*

I really enjoyed the presentations today! I also relished participating in today's small group. I underscore my earlier comment that we need *more time* to have these sorts of informal discussions as they generate much material for further thought, discussion, and action.

I led a group today that included Judge Glasgow, Trish Kinlow and Kristin Ferrara. Someone else joined very late in the discussion and I am sorry not to be able to recall her name.

1. We discussed the opportunities of AI to assist LEPs with Access to Justice by interpreting FAQs and logistical questions as well as Pattern Forms used in legal clinic appointments. It was noted that there are times when interpreters have refused to appear in person or have cancelled at the last minute. AI interpretation may be a viable substitute in these cases.

   We also discussed the importance of human interpreters regarding more substantive legal discussions which would encompass more nuance and context.

2. Additionally, concerns arose about mistakenly relying on hallucinating AI in legal research such that a nonexistent case could be cited in a briefs or memoranda. A need for employment standards around this issue was discussed.

3. Privacy concerns regarding AI were noted as well as serious concerns surrounding deep fakes and qualification of AI experts.

4. Also noted were the need for regulatory guardrails regarding AI and emotion recognition/physiognomy. (I sent Scott Hillstrom some articles and resources about these issues today. I'm not sure if they made it into the chat, but I'm happy to supply them again.)

5. The need for BJA to help with local rules surrounding AI was noted as well as a need for uniform application of AI regulations in all Washington Courts.

I look forward to a continued emphasis on AI in our justice system so we all can become more conversant and comfortable meeting the coming challenges and opportunities that AI will bring us.
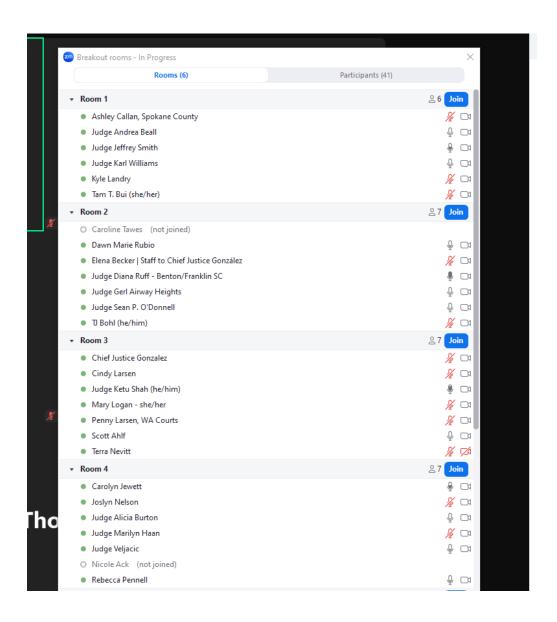
*Judge Bernard Veljacic*

Notes from my group:

- There's some anxiety over simply knowing whether or not they are seeing something produced by AI.
- The AI available right now is not accurate, so things must be proof-read, but there's not always someone to do that if litigant is SRL.
- For translation services, AI could be helpful. The need to check translation accuracy in legal proceedings gives rise to a need to make a record of the translation (or interpretation). If one is using AI perhaps preservation of the inputs and outputs is needed.
- Deep fakes are a concern. Some want to see people testify in person as a cure to the concern about deep fakes. Then again, we have to keep in mind that those with disabilities may present differently. That doesn't mean they are any less credibility.
- It would be good if there was a trusted provider for AI guided fillable forms, versus leaving these developments to private industry.

*Penny Larsen*

- Questions about who owns the data and the privacy issues related to that issue
- BJA can help with recommendations of vendors that can protect our data and provide useful tools; AOC and NCSC may be better suited for that vetting.
- BJA can help with educating our bench and having them more comfortable around the reliability of the technology like today's session which helped lower the fear temperature.
- Folks are considering developing internal policies on how to use AI for a variety of functions including meeting minute summaries, developing outlines for memos, for legal research, and legislative analysis. It can be a first step in drafting but ultimately the person relying on the information provided by AI needs to verify its authenticity.
- WSBA has a task force on AI and there may be ways for BJA and WSBA to collaborate.
- Can BJA help with rule making to create guidelines?
  a. Consider creating a policy that outlines a tiered allowance of AI, starting with AI tools that are the safest/less risky that produce the most benefit, like notes/transcripts, etc.
- Worry about deep fakes, but perhaps current rules and professional responsibility can counter that.
- How do we deal with the "liar's dividend" especially when there are unequal resources between the parties and what does that mean for access to courts?
  b. Some of the rules proposed by the RPWG addressed verifying identities of deponents, witnesses, jury members, but with changing facial recognition technology, this issue may need further rule amendments in the future.

Scott ...
Terra Nevitt

Room 4                                                    7   Join
Carolyn Jewett
Joslyn Nelson
Judge Alicia Burton
Judge Marilyn Haan
Judge Veljacic
Nicole Ack   (not joined)
Rebecca Pennell

Room 5                                                    7   Join
Christopher Stanley   (not joined)
Judge Lisa Mansfield
Judge Rebecca Glasgow, she/her
Kristin Ferrera, SCJA, Chelan
LaTricia Kinlow
Lorrie Thompson   (not joined)
Mary M. Rathbone

Room 6                                                    7   Join
Jessica Humphreys  AWSCA Yakima County
John Hart
Judge Michael Scott
Judge Osler
Justice Debra Stephens
Katie Loring (she/her)
Scott Hillstrom

Options                                    Broadcast    Close all rooms