

**Board for Judicial Administration
Meeting Minutes**

**February 18, 2011
Temple of Justice
Olympia, Washington**

Members Present: Chief Justice Barbara Madsen, Chair; Judge Michael Lambo, Member Chair; Judge Marlin Appelwick; Judge Rebecca Baker; Judge Stephen Brown; Judge Ronald Culpepper; Judge Deborah Fleck; Judge Janet Garrow; Ms. Paula Littlewood; Justice Susan Owens; Judge Christine Quinn-Brintnall; Judge Kevin Ringus; Judge Dennis Sweeney; Mr. Steven Toole; Judge Gregory Tripp; Judge Stephen Warning; and Judge Christopher Wickham

Guests Present: Ms. Delilah George (by phone), Judge Steven Gonzalez (by phone), Mr. Doug Klunder, Ms. Shelly Maluo, Mr. Joe McGuire, Mr. Kevin Stock (by phone), Mr. Rowland Thompson, and Ms. Kristal Wiitala

Staff Present: Mr. Charley Bates, Ms. Beth Flynn, Mr. Steve Henley, Ms. Mellani McAleenan, Mr. Rick Neidhardt, and Mr. Chris Ruhl

The meeting was called to order by Judge Lambo.

January 12, 2011 Meeting Minutes

It was moved by Judge Garrow and seconded by Judge Wickham to approve the January 12, 2011 Board for Judicial Administration (BJA) meeting minutes. The motion carried.

Proposed GR 31A

Judge Appelwick gave a brief overview of the remaining outstanding issues regarding proposed GR 31A. The issues to be decided during the meeting fell into three categories: 1) issues that were held over from the January meeting, 2) questions that came up after the January meeting and need clarification, and 3) issues that were voted on during the January meeting and the Superior Court Judges' Association (SCJA) has requested reconsideration.

Regarding records on a judge's personal computer and cell phone:

Judge Fleck moved and Judge Baker seconded to add the following wording in the comment regarding some records on laptops being chambers records: "For example, records relating to chambers activities that are stored on a judge's personally owned or workplace-assigned computer, laptop computer, cell phone, and similar electronic devices

would still be chambers records.” The motion carried with Chief Justice Madsen and Justice Owens abstaining.

Regarding shared chambers records:

It was moved by Judge Fleck and seconded by Judge Baker to add the following language regarding shared chambers records in the comment: “Chambers records do not change in character by virtue of being accessible to another chambers. For example, a database that is shared by multiple judges and their chambers staff is a ‘chambers record’ for purposes of this rule, as long as the database is only being used by judges and their chamber staff.” The motion carried with Chief Justice Madsen and Justice Owens abstaining.

Regarding monetary sanctions:

Judge Warning moved and Judge Fleck seconded that proposed GR 31A, section (B)(6) on page 13 be expanded to include a new subsection (iv), to state: “No individual judicial officers or judicial agency employees may be assessed a monetary sanction under this section (6).” The comment should be expanded to indicate that “Only a court or judicial agency may be assessed monetary sanctions. This is consistent with the approach of the Public Records Act. The monetary sanctions would be payable from state/city/county funds, absent some insurance or risk pool availability.” The motion carried with Chief Justice Madsen and Justice Owens abstaining.

Regarding the following exemptions: family court evaluation and domestic violence files when no legal action is pending, family court mediation files, and juvenile court probation’s social files:

It was moved by Judge Fleck and seconded by Judge Wickham to list the following exemptions under section (e)(1)(B) of GR 31A: family court evaluation and domestic violence files when no action is legally pending, family court mediation files, and juvenile court probation’s social files. A comment will be added stating “it is not to be construed that other files may not also satisfy requirements for exclusion.” The motion carried with Chief Justice Madsen and Justice Owens abstaining.

Regarding limitations on inmate requests:

It was moved by Judge Baker and seconded to include the amendments suggested on pages 9 and 10 of the draft rule in section (e)(3)(7) regarding

limitations on inmate requests. The motion carried with one member opposed and Chief Justice Madsen and Justice Owens abstaining.

Regarding research and production costs:

Judge Fleck moved and Judge Garrow seconded that the following language be added to GR 31A: “A fee not to exceed \$30 per hour may be charged for research services required to fulfill a request taking longer than one hour. The fee shall be assessed from the second hour onward.” A comment will be added stating the fee can be waived. The motion carried with 12 voting in favor, 2 opposed, and Chief Justice Madsen and Justice Owens abstaining.

Regarding a deposit for requests:

Judge Wickham moved and Judge Baker seconded that Section (g)(3) be amended to delete “ten percent of the estimated” and add “the” in place of the deleted language which would allow a deposit in an amount not to exceed the estimated cost of providing copies for a request. The motion failed with 3 in favor, 10 opposed, and Chief Justice Madsen and Justice Owens abstaining.

Regarding minutes of meetings held by judges within a court:

Judge Fleck moved and Judge Baker seconded adding the language “and staff products prepared for judicial discussion or decision making during the meeting.” to the end of section (e)(1)(B)(3). The motion carried with Chief Justice Madsen and Justice Owens abstaining

Regarding the deliberative process exemption:

There was a request to bring this back for reconsideration. The SCJA would like the exemption to apply both before and after a final decision has been made on an opinion or policy at issue.

Judge Fleck moved and Judge Baker seconded that the language “This exemption applies both before and after a final decision is made on the opinion or policy.” be added to section (e)(1)(B)(4). The motion carried with 9 in favor, 1 opposed, and Chief Justice Madsen and Justice Owens abstaining.

Regarding the definition of “chambers record”:

The SCJA requested that this issue be reconsidered. There was discussion about whether the definition of “chambers record” should be revised to include: “Chambers records include all writing between judicial officers, between judicial officers and chambers staff, and between judicial officers and court administration.”

After discussion, the decision was made to keep the definition as is.

Regarding Prospective Application:

The work group’s intention was that the rule apply to records retroactively. The SCJA is requesting that the rule be applied prospectively only.

Judge Fleck commented that the SCJA believes it is a cleaner approach to state the rule applies prospectively. Courts have a demonstrated history of responding to records requests and that will not change.

Judge Brown stated that the few comments he received about this from the District and Municipal Court Judges’ Association (DMCJA) membership were that it be prospective only. Even if it starts out as prospective only, it can be amended later to apply to all judicial administrative records.

Judge Appelwick responded that if the rule applies to prospective records, every court will need to document how records requests are currently handled because they will be applying one set of rules for records created from the effective date of the rule forward and another set of rules for records created prior to the effective date of the rule.

It was moved by Judge Culpepper and seconded by Judge Brown to adopt Alternative 2 on page 14 of the draft GR 31A which states the rule “goes into effect on July 1, 2012, and applies to records that are created on or after that date.” Records created before the effective date of the rule are to be analyzed according to “other court rules, applicable statutes, and the common law balancing test.” The motion carried with 8 in favor, 3 opposed and Chief Justice Madsen and Justice Owens abstaining.

Judge Appelwick thanked the following for their service to the Work Group: Judge Culpepper, Ms. Wiitala, Mr. Klunder, Mr. Thompson, Mr. Bates, Mr. Neidhardt and Ms. Flynn.

Judge Culpepper commented that he was impressed with Judge Appelwick’s leadership of the Work Group. Judge Appelwick responded that he really appreciated the fact that everyone was able to handle the issues with such civility and great exchange.

Judge Appelwick stated that the Work Group submits to the BJA proposed GR 31A for recommendation to the Supreme Court Rules Committee.

It was moved by Judge Appelwick and seconded by Judge Garrow to recommend GR 31A to the Supreme Court Rules Committee. The motion carried with Chief Justice Madsen and Justice Owens abstaining.

BJA Resolution Guidelines

Ms. McAleenan created the "Process and Guidelines for Resolution Requests" along with the "Resolution Request Cover Sheet" for the BJA's review. The process includes vetting by the BJA Executive Committee prior to the resolution being brought to the full BJA.

Judge Ringus moved and Judge Baker seconded that the BJA approve the guidelines and process as submitted. The motion carried.

Diversifying the Bench Guidebook

Judge Fleck reported that she has sought and received co-sponsorship of the Diversifying the Bench Guidebook from virtually every bar association, judicial branch association and law school with very heartfelt interests in the guidebook. She would like the BJA to co-sponsor the guidebook.

It was moved by Judge Fleck and seconded by Judge Wickham that the BJA co-sponsor the Diversifying the Bench Guidebook. The motion carried.

Legislative Update

Ms. McAleenan distributed a list of the positions the BJA has taken on bills during the legislative session. She also distributed information about the legislative dinners. The costs were lower this year than in previous years and the dinners were well attended. Ten more legislators attended this year compared to the previous time dinners were held. During the dinners they had a great opportunity to discuss the BJA's legislative agenda.

Yesterday was the cutoff for policy bills in the House and Monday is cutoff for the Senate. Bills not making it out of policy committees are dead. Some bills with substantial fiscal notes are now in fiscal committees.

Ms. McAleenan gave an update on the BJA request legislation and the budget negotiations.

Proposed Salary Schedule

Chief Justice Madsen reported that Tab 5 contains the 2011-12 Salary Proposal from the Washington Citizens' Commission on Salaries for Elected Officials. This is the proposal they will go forward with across the state for their public hearings. There is no change in the salaries from the current salaries.

Chief Justice Madsen, Judge Sweeney, Judge Warning, and Judge Brown made a presentation to the Salary Commission a few weeks ago which was well received.

Washington State Bar Association

Mr. Toole reported that the Washington State Bar Association (WSBA) is working on the GR 12.4 issue and discussed it at the Board of Governors (BOG) meeting in Olympia. They suggested a few revisions and Mr. Toole is hoping it will be on the March 18 BOG meeting agenda.

Ms. Littlewood said the WSBA has close to 200 lawyers signed up for the Moderate Means Program and they are still recruiting. The Seattle University School of Law is gearing up for client intake. They will most likely start out handling CLEAR referrals to get their feet wet and then go for a big launch.

Reports from the Courts

Supreme Court: Justice Owens reported that the Supreme Court made a seamless transition with Justice Charlie Wiggins.

Court of Appeals: Judge Quinn-Brintnall said the appellate court judges are having a one-day education session in place of their spring conference.

Superior Courts: Judge Warning stated that the SCJA approved, and the DMCJA reviewed, a rule for pro se defendants. It is now in the hands of the Supreme Court. Legislators are interested in it and the rule has been distributed to them.

Courts of Limited Jurisdiction: Judge Brown reported that the DMCJA is trying to deal with legislative issues that keep popping up. The Education Committee is asking for assistance to put on their spring conference due to budget cuts to the Board for Court Education.

Association Reports

District and Municipal Court Administrators: Mr. McGuire reported that there will be a line staff conference in Yakima next month. They have half as many attendees as

their last conference. The money is not out there and it is a disappointment that courts are not able to send staff to the training.

Juvenile Court Administrators: Ms. Maluo thanked Judge Warning and Judge Fleck for being champions of the Washington Association of Juvenile Court Administrators (WAJCA). The WAJCA is trying to educate legislators regarding Becca funding. The achievement gap will probably widen if Becca funding is eliminated.

Other Business

BJA Account Update: Ms. McAleenan reported that the BJA account was closed out for 2010 with a balance of about \$16,000 and the biggest expense in 2010 was the legislative dinners.

There being no further business, the meeting was adjourned.