



## **Board for Judicial Administration (BJA)**

**Friday, March 16, 2012 (9:00 a.m. – 12:00 p.m.)**

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

### **MEETING MINUTES**

#### **Members Present:**

Chief Justice Barbara Madsen, Co-Chair  
Judge Chris Wickham, Member Chair  
Judge Marlin Appelwick  
Mr. Stephen Crossland  
Judge Ronald Culpepper  
Judge Deborah Fleck  
Judge Janet Garrow  
Mr. Jeff Hall  
Judge Laura Inveen  
Judge Jill Johanson  
Judge Michael Lambo  
Judge Jack Nevin  
Justice Susan Owens  
Judge Kevin Ringus  
Judge Ann Schindler  
Judge Scott Sparks  
Judge Gregory Tripp

#### **Guests Present:**

Mr. Jim Bamberger  
Mr. M. Wayne Blair  
Ms. Bonnie Bush (via phone)  
Judge Harold Clarke  
Justice Mary Fairhurst  
Ms. Barb Miner  
Ms. Joanne Moore

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

Ms. Colleen Clark  
Ms. Jennifer Creighton  
Mr. Dirk Marler  
Ms. Mellani McAleenan

The meeting was called to order by Judge Wickham. Those present introduced themselves. Mr. Marler introduced Ms. Jennifer Creighton as the new Court Services Manager; she will also be the main staff support for the Trial Court Operations Funding Committee.

Judge Wickham recognized that today is Judge Schindler's last BJA meeting and he thanked her for her contributions to the BJA. Chief Justice Madsen echoed his thanks and added that Judge Schindler is now chairing the Washington State Center for Court Research. Judge Schindler said it has been a privilege serving on the BJA; she appreciates the support and understanding the BJA has shown for Court of Appeals issues.

#### February 17, 2012 BJA Meeting Minutes

**It was moved by Judge Garrow and seconded by Judge Tripp to approve the February 17, 2012, BJA meeting minutes. The motion passed.**

#### Therapeutic Courts

Judge Clarke indicated that behind Tab 2 is a resolution that was first presented to the BJA about 18 months ago. After receiving comments over several BJA meetings, today he is presenting the final draft for approval. He thanked Mr. Dick Carlson, Ms. McAleenan and the others that offered comments.

Judge Clarke continued that drug courts were started 22 years ago; we know they are effective and other therapeutic courts are modeling themselves after them. All courts interact with their local executive groups/commissioners and it will be helpful for them to have sources such as this resolution to offer them; especially if they aren't familiar with therapeutic courts.

Judge Clarke said that drug courts are singled out in the resolution because they are evidence based practices, and are known to work. As an example, Veteran's Courts are new and it will take awhile to have information to show that they are successful.

Judge Garrow said there is a draft general rule being circulated regarding ex parte communications in therapeutic courts; the DMCJA has commented that there doesn't seem to be a uniform definition of therapeutic courts (drug, mental health, DUI, Veteran's). Will DV courts be considered as a therapeutic court? She continued that consistent terminology will be helpful in the future. There is no clear criteria/definition of what constitutes a therapeutic court. By approving this resolution, is the BJA committing to creating a subcommittee(s) to accomplish the listed items at the bottom of the resolution?

Judge Clarke responded that because these courts have changed so rapidly over the last 20 years, they will be defined by practice.

There has been a lot of discussion lately regarding specialty courts during this last legislative session, particularly juvenile gang courts. Perhaps it is time for the judiciary to develop a framework and put it in statute; to start having conversations with groups such as the Association of Drug Court Professionals that Judge Clarke chairs.

Judge Culpepper asked about unified family courts. Judge Clarke responded that is a structural court, where the therapeutic courts are court ordered treatment layered with the court being very involved in the process.

Judge Clarke said he can't speak for the BJA as to what they can or can't support. His question for the BJA is if the judicial branch should support these types of courts. And if so, does the judicial branch broadly support the context of these courts?

**Judge Appelwick moved that the resolution be adopted as currently written;  
Judge Sparks seconded.**

**Judge Johanson moved to amend by substituting the word "support" for the word "commit" in the line "*BE IT FURTHER RESOLVED that the Board for Judicial Administration commits to:*"; Judge Culpepper seconded.**

Further discussion followed.

Some prefer the word "therapeutic" instead of "problem-solving" courts.

Judge Appelwick said that these departments and protocols exist within courts. The BJA should decide if the concepts should be supported; he believes the BJA should support them because they follow a best practices model.

**Judge Wickham called for a vote on Judge Johanson's amendment. The motion passed.**

**The motion to adopt the resolution as amended passed.**

### Budget Process

Mr. Hall directed the committee to Tab 3; Page 18, which states:

*Throughout the budget process, communications, discussions, and deliberations, shall be informed by the commonly held values of comity and a united judiciary, speaking with one voice.*

These documents illustrate the vision of how budgeting communication will proceed; the Supreme Court Budget Committee will be moving forward with this model and they hope that the BJA will support it.

Chief Justice Madsen said this was discussed at en banc; everyone has read the proposal and all affirmatively agreed to solicit input from the BJA. The Supreme Court welcomes recommendations from the BJA regarding the AOC budget.

Ms. Moore said that this method helped communication and worked well during the legislative session; conversations happened within hours of budgets being introduced.

Judge Fleck had a question about Exhibit 3. In the sentence: "Budget decisions packages must be prioritized." she suggested changing "must" to "should." She requested that the minutes reflect her concern about setting priorities that might not include something farther down the list. She also wanted to clarify the preceding paragraph: "Any budget proposal impacting the AOC budget shall be submitted to the AOC for consideration by the BJA in February or March of each year." If one of the associations presented something that affected AOC, will AOC association staff have an opportunity to address it? The response was yes.

Judge Garrow commented that it states the "budget decision package must be prioritized," is there an opportunity to see what those priorities are? Just ranking as 1, 2, 3, 4, etc. could be problematic.

Mr. Hall responded that any issues will move on to the Supreme Court Budget Committee (SCBC). If there is an opportunity to only seek funds for one or two things, and are restrained by a dollar amount, it would be helpful for the SCBC to know where the priorities are. It doesn't mean a tactical decision couldn't be made if needed.

Chief Justice Madsen said this is a very fluid process, in addition to being a narrowing process, but it is not a static process. Brainstorming should continue throughout the winter and spring as there is a better sense of the fiscal outlook.

Judge Fleck inquired if, for example, an association wanted to pursue jury pay compensation, would the BJA proceed on its previous path or would it try to develop a decision package? Chief Justice Madsen replied that the SCBC would consider AOC and BJA input, but at the end

of the day there may not resources or the energy to develop a package. If the association had its own resources to proceed, that would be fine.

For anything going forward to the legislature, does there have to be a decision package? Mr. Hall responded that there are three ways to request funding. There is the initial budget submission to the legislature, which needs to have a decision package; another approach is to go directly to the legislature; and a last approach is via policy legislation which includes a fiscal note. It is a good practice to have a decision package for any of these stages.

**Judge Fleck moved to approve the budget process; Judge Garrow seconded. The motion passed.**

#### BJA Public Trust and Confidence Committee

Justice Fairhurst presented her annual report. The Public Trust and Confidence (PT&C) Committee has completed several projects, each of which were chosen by their members. They choose a project and establish a subcommittee to work on it. The first committee meeting of 2012 will be later this month.

Completed projects include the following:

- **Spanish Editions of the Superior, District and Municipal Court Self-Represented Best Practices Handouts (2011)**  
The Spanish editions have been sent out to the courts, interpreters, facilitators, state and local bar associations and posted on the courts' website and the Northwest Justice Project's website.
- **Survey on Use of Senior Volunteers in Courts (2011)**  
The subcommittee conducted a survey of court administrators and clerks to determine how many courts were using seniors as volunteers. The survey showed that 30 percent of surveyed courts use them in a variety of capacities. No concerns were expressed about seniors replacing employees who had lost jobs. Next year the PT&C will develop a publication about using seniors as a resource.
- **Continued to Participate in the Legislative Scholars Program (2011)**  
The subcommittee supported a repetition of the 2010 BJA-approved project to add one day to the existing Legislative Scholars Program hosted by the State Legislature. The additional day provided information to teachers about how the judicial branch relates to the legislative branch, including how the judicial branch interprets legislative intent, court decisions on the State Constitution, and presentations on Washington courts and jurisdiction.
- **Handling Attacks on the Judiciary (2011)**  
The subcommittee investigated existing resources available to assist judicial officers unfairly attacked in the media. They will continue working with law schools and the WSBA.

This subject covers individuals, decisions and the judicial branch. There is some information in the Presiding Judges handbook about responding to unjust criticism and some of the larger counties have staff to assist with media responses. The committee welcomes suggestions that others can use.

- **Updated Past PT&C Project: Frequently Asked Questions (2011)**  
The subcommittee examined and updated the frequently asked questions handout.

Justice Fairhurst continued that she is the state chair of iCivics, which was founded by Justice Sandra Day O'Connor. This has expanded from just the judicial branch to all three branches of government; and has also expanded from just middle schools to include grade schools and high schools.

Ms. McAleenan will send iCivics information to the BJA members.

### Legislative Report

Ms. McAleenan provided a full legislative report behind Tab 5; she noted that this was compiled before another budget was unveiled. She continued that most of the budgets appear to be good to the judicial branch, although the Legislature has not yet passed a budget.

The Legislature has been in special session for a week and their leadership is meeting with the Governor, who is threatening to veto bills until the budget is completed.

Following are some bills of interest and their status that the BJA had taken positions on during the session.

- SHB 2196 – Uniform Collaborative Law Act (did not pass)
- SHB 2357 – Sales & Use Tax for Chemical Dependency, Mental Health Treatment, Therapeutic Courts (delivered to the Governor)
- HB 2535 – Juvenile Gang Court (delivered to the Governor)
- SHB 2541 – Sealing Juvenile Records (delivered to the Governor)
- HB 2542 – Juvenile Records Access (did not pass)
- SHB 2668 – Bail Practices (did not pass)
- SSB 6025 – District Judge Retirement Age (did not pass)
- E2SSB 6284 – Civil Traffic Infractions (delivered to the Governor)
- SB 6389 – Crime Victims' Services (did not pass, but could be considered necessary to implement the budget because funding was assumed in the original Senate budget draft)
- SB 6494 – Becca/Truancy (delivered to the Governor, reduction is assumed in House budget draft)
- SB 6511 – Court Procedures for Review of Petitions for Protection Orders (did not pass, but a workgroup is being created with Judge Chris Wickham and Judge Steve Brown participating)
- ESB 6608 – Judicial Stabilization Trust Account (JSTA) Surcharge (delivered to Governor, funding is assumed in both current budget drafts)

Regarding bail practices, there is hope that over the summer some of these issues can be worked out.

The driving with license suspended 3<sup>rd</sup> degree bill that Darby DuComb from the Seattle City Attorney's Office presented to BJA did pass. It was changed significantly from the original version. The Department of Licensing will have to work with AOC regarding rulemaking to define what a moving violation is for the purposes of this law.

The JSTA bill will add an additional \$10 to all surcharges except for small claims. Both existing budgets assume that revenue will be in place. The sunset date is still July 1, 2013.

Senator Hargrove has assembled a workgroup to address protection orders; Judge Wickham and Judge Brown will participate on it.

### Study of Filing Fees

Ms. McAleenan provided a draft charter for a Filing Fee Workgroup behind Tab 6, along with a COSCA policy paper that Mr. Hall recently co-authored.

During the legislative session, the BJA Legislative/Executive Committee talked about the Judicial Stabilization Trust Account and the need to take a more comprehensive look at filing fees in Washington. The Supreme Court is interested in what additional fees are assessed locally. We need to keep current with inflation, the cost of living, and assorted indexes. Chief Justice Madsen said that the WSBA is looking at what other states are doing (especially Oregon).

Mr. Hall said that one recommendation of the Court Funding Task Force was to look at filing fees on a regular basis. He said our current system needs to be more visible and clear as to what fees are applied and where they can be found in statute. Traffic infractions can be hard to unwind and are too complicated to address in this workgroup. This workgroup would establish principles and develop guidelines, along with a screening process so in the future this Board will be able to look at them to see if there should be changes.

Ms. McAleenan added that legislators are not frequently part of our workgroups or committees, but some have shown an interest recently in this subject.

Discussion followed. Should plaintiff and defense bar members, along with another appellate member be added? Do we want it to just be Washington members or should we also include members from surrounding states? Mr. Hugh Spitzer is an expert in fees and taxes and might be a good addition; also there should be more judges, maybe 26-28 members. It was requested that OPD and OCLA be added to the proposed committee membership.

Chief Justice Madsen said she would like to see a leaner committee so the work can be done more quickly.

**Judge Tripp moved to approve the concept of this workgroup and to ask Ms. McAleenan to return in April with charter specifics; Judge Culpepper seconded.**

**Judge Tripp then made a friendly amendment to allow solicitation of members by Ms. McAleenan ahead of the next meeting; Judge Culpepper seconded. The motion and the friendly amendment passed.**

### COSCA Resolutions

Ms. McAleenan said that some of the resolutions behind Tab 7 are not new to this committee. She spoke with Ms. Kay Farley (NCSC) and asked how we can support their efforts. Ms. Farley offered some suggestions.

There is a new COSCA/CCJ resolution regarding court security. Ms. McAleenan took that one and made it Washington specific. Judge Inveen also submitted a draft resolution regarding court security. Under the current BJA process, resolutions are to be drafted and sent to the Executive Committee for discussion, and readied for a vote at the following meeting. That process was not followed for these drafts.

Mr. Bamberger said there are two COSCA resolutions he would especially like to see the BJA support. One is the continued federal funding for the Legal Services Corporation and the other is in support of the reauthorization of the Violence Against Women Act. He also hopes they will communicate their support to the federal branch.

**Judge Appelwick moved to suspend the resolution process and endorse and support Resolution 1 (In Support of Continued Federal Funding for the Legal Services Corporation) and Resolution 2 (In Support of Reauthorization of the Violence Against Women Act); Judge Garrow seconded. The motion passed.**

Chief Justice Madsen said she sees this as a directive to write to our representatives in Congress and attach the resolutions.

### Court Security

This subject is again at the forefront due to the recent Grays Harbor incident. Ms. McAleenan drafted a document using the CCJ/COSCA resolution as a starting place. A colleague of Judge Inveen's also drafted one for the Board to look at. Judge Inveen also suggested that the Chief Justice might do an OpEd letter regarding court security.

Discussion followed about the draft resolutions. Judge Garrow said there is a need to include municipal courts too. General consensus was that a shorter resolution would be appropriate and there is a need to encourage support of all courts at the federal level.

Chief Justice Madsen said she had her quarterly meeting with Governor Gregoire on Monday. Part of their conversation revolved around the Grays Harbor security incident. She asked the Governor to support S.2076: Local Courthouse Safety Act of 2012 by contacting our US senators. This bill will allow the use of Homeland Security funds for courts.

**Judge Sparks moved to adopt the short court security resolution presented by Judge Inveen; Judge Ringus seconded. The motion passed.**

**Judge Tripp moved for a friendly amendment to include on Judge Inveen's resolution all branches of state and local government, including municipal courts as suggested by Judge Garrow; Judge Fleck seconded. The motion passed.**

More discussion followed. The Inside Courts website indicates that the BJA courthouse security committee has been suspended as a standing committee for three years due to budget reductions and resource constraints. Should this committee be reinstated?

Mr. Hall said that if it is in reaction to recent events, then the answer is “no” because there are still staffing issues. If BJA does decide to reinstate it, there needs to be a clear charge and set of expected activities.

Chief Justice Madsen said that even though the committee is suspended, we should still provide umbrella services to courts. We don't have the staffing and expertise at AOC to actually go out and advise courts of what to do and how to do it; but we do have the Courthouse Public Safety Standards and that link should be re-sent to all courts.

Mr. Hall suggested endorsing the COSCA Resolution 5; and encouraging our US senators to co-sponsor S.2076.

**Judge Sparks moved that the BJA endorse COSCA Resolution 5 (In Support of the Importance of Court Security); Judge Culpepper seconded. The motion passed.**

It was discussed that it is important to always address this issue at conferences.

State judges will be advised that BJA has adopted/endorsed court security resolutions and urged to contact their US senators regarding S.2076.

#### Other Business

Chief Justice Madsen said that Justice Owens is their representative to the Secretary of State's Medal of Valor Committee. The Medal of Valor is a heroic recognition and Chief Justice Madsen is nominating Judge Edwards (Grays Harbor) for this honor, she hopes that the BJA will endorse this nomination. Ms. McAleenan will draft a letter for the April meeting regarding this nomination (closing date is August 12, 2012).

The next meeting will be April 20, 2012, beginning at 9:00 a.m. at the AOC SeaTac Office.

There being no further business, the meeting was adjourned.

**Recap of Motions from March 16, 2012 meeting**

<b>Motion Summary</b>	<b>Status</b>
February 17 BJA Meeting Minutes	Passed
Adopt the therapeutic courts resolution with the word "support" substituted for the word "commit" in the line <i>BE IT FURTHER RESOLVED that the Board for Judicial Administration commits to;</i>	Passed
Approve the budget process as submitted	Passed
Approve the concept of a workgroup to study filing fees with a charter coming back for approval in April and the solicitation of members prior to the April meeting.	Passed
Endorse and support Resolution 1 (In Support of Continued Federal Funding for the Legal Services Corporation) and Resolution 2 (In Support of Reauthorization of the Violence Against Women Act).	Passed
Adopt the short court security resolution presented by Judge Inveen with the inclusion of the wording, "all branches of state and local government, including municipal courts" as suggested by Judge Garrow.	Passed

**Action Items updated for March 16, 2012 meeting**

<b>Action Item</b>	<b>Status</b>
<u>February 17, 2012 Meeting Minutes</u> <ul style="list-style-type: none"> <li>Send the approved minutes to Camilla Faulk for the En Banc binders</li> <li>Post the approved minutes online</li> </ul>	Done  Done
<u>Therapeutic Courts Resolution</u> <ul style="list-style-type: none"> <li>Revised the resolution to include the word change suggested by Judge Johanson (the word "support" be substituted for the word "commit" in the line, BE IT FURTHER RESOLVED that the Board for Judicial Administration commits to:)"</li> <li>Post on the BJA Web site</li> </ul>	Done  Done
<u>Budget Process</u> <ul style="list-style-type: none"> <li>The BJA approved the budget process. Final document sent to Ramsey Radwan</li> </ul>	Done
<u>Public Trust and Confidence Committee</u> <ul style="list-style-type: none"> <li>Mellani will send iCivics information to the BJA members</li> </ul>	Done
<u>Study of Filing Fees</u> <ul style="list-style-type: none"> <li>The BJA approved the concept of creating a committee to study filing fees.</li> <li>Mellani given authority to solicit members for the committee</li> <li>Mellani to bring charter specifics back during the April meeting</li> </ul>	In Progress  On April agenda

Action Item	Status
<p><u>CCJ/COSCA Resolutions</u></p> <ul style="list-style-type: none"> <li>• BJA endorsed the CCJ/COSCA resolutions 1 (funding for the Legal Services Corporation) and 2 (reauthorization of the Violence Against Woman Act). Add endorsed by BJA and date and upload to BJA Web site.</li> <li>• Mellani will draft resolutions 3 &amp; 4 “BJA style” and bring back to April meeting</li> <li>• Mellani will write letters to Congress regarding the resolutions that were adopted</li> </ul>	<p>Done</p> <p>On April agenda</p> <p>Done</p>
<p><u>Court Security</u></p> <ul style="list-style-type: none"> <li>• The BJA approved Judge Inveen’s court security resolution with the inclusion of all branches of state and local government, including municipal courts as suggested by Judge Garrow. Revised resolution and posted online.</li> <li>• The BJA endorsed CCJ/COSCA Resolution 5 (importance of court security). Revised resolution to show BJA endorsement and date and posted online.</li> <li>• Notify judges (via coauthored letter from Wickham/Madsen) that the BJA has adopted/endorsed court security resolutions and urge them to contact their congressional senators to sponsor the bill.</li> <li>• Mellani will draft letter regarding Judge Edwards’ nomination for the Medal of Valor and bring back to the April meeting.</li> </ul>	<p>Done</p> <p>Done</p> <p>On April agenda</p>
<p><u>Race and Criminal Justice Recommendations</u></p> <ul style="list-style-type: none"> <li>• Hold over to the April meeting</li> </ul>	<p>On hold for now</p>