

Kitsap County District Court
State of Washington



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COURT ADMINISTRATOR

September 17, 2020

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

[Sent via email to supreme@courts.wa.gov]

Re: Comment in Opposition to Proposal to Amend JISC Rule 13

Greetings—

We oppose the proposal to amend JISC Rule 13, specifically subsection (h) which grants authority to the JISC to impose “sanctions” on the Administrative Office of the Courts (“AOC”), a Const. Art. IV, §1 court, its presiding judge or court administrator.

We do not think the JISC has statutory authority to sanction the AOC, nor constitutional authority to sanction any Art. IV court or its personnel. Proposed JISC Rule 13(h) reads –

Any unresolved disputes arising from this rule may be referred to the JISC for resolution, including possible sanctions.

What Is The JISC? The JISC is a legislatively-created body, as established by court rule, which “shall determine all matters pertaining to the delivery of services available from the judicial information system.” RCW 2.68.010. While the legislation grants the JISC the authority to establish a fee schedule and to enter contracts, the JISC has not been granted statutory authority to sanction any entity or person.

The JISC Does Not Have Judicial Power. The JISC currently has 17 members. Six are judicial officers. The remaining members include law enforcement, a prosecutor, an attorney, a probation

officer, the administrator for AOC, and several court administrators or clerks. Art. IV, §1 grants judicial power only to courts created by the constitution.¹ Since the JISC lacks judicial power, it lacks the authority to sanction the AOC or an Art. IV court or its personnel.

The JISC Does Not Have Authority To Sanction An Art. IV Court Or Personnel. No Washington authority could be found in support of the proposition that the JISC has the power to sanction an Art. IV court or its personnel. This is not surprising since the legislature's authority to create an unelected and appointed administrative body with power over an Art. IV court would be a substantial violation of the separation of powers doctrine which is embedded into our constitution.²

Only the Supreme Court has authority to sanction an Art. IV judicial officer.³ Only a presiding judge has authority to sanction its court's administrator.⁴

While the Supreme Court has constitutional authority to sanction a judicial officer, and has repeatedly done so where necessary, it is questionable whether even the Supreme Court has the power to "sanction" an Art. IV court. Research should be conducted by the JISC and provided to its members and the public in support of its proposed concept that the JISC has the power to sanction an Art. IV court.

What Is A Sanction? The proposal does not define the term "sanction." The lack of a definition provides no guidance to the JISC nor to the potentially sanctioned entity. At a minimum to avoid arbitrary results, the word "sanction" must be defined to spell out the exact parameters of the JISC power to impose sanctions.

What Is The Initial Process? The proposal does not define the process. Does a JISC member submit a motion for sanction to the JISC? Is the sanction target provided notice? Does the JISC vote to authorize the motion to go forward? When is the sanction target notified? Presumably, if the sanction target is an Art. IV court or personnel, the court or personnel would have the right to be represented by counsel.

Who Prosecutes The Sanction Motion? Given the quasi-judicial nature of the imposition of sanctions, may an AOC staff member or other JISC member prosecute the sanctions motion? Must the prosecutor be an attorney to avoid the unlawful practice of law?

¹ See e.g. *Mills v. W. Washington Univ.*, 170 Wn.2d 903, ¶¶ 20-21 (2011) (term "judicial power" in Art. IV, §1 does not embrace the quasi-judicial power exercised by administrative and executive bodies). The JISC does not appear to be an "agency" as defined by the Administrative Procedure Act because it is a legislative and judicial branch body. RCW 34.05.010(2).

² See *State v. Rice*, 174 Wn.2d 884, ¶28 (2012) (legislature lacks constitutional authority to interfere with the core functions of the executive branch).

³ Const. Art. IV, §31 (creating Commission on Judicial Conduct). But see Const. Art. V (impeachment) and RCW 29A.56.110 – .270 (recall).

⁴ GR 29(f)(5)(c).

May An Art. IV Court Or Personnel Move For Sanctions? JISC 13 exists to provide guidance to a local court and the AOC when a local court intends to establish or replace an alternative electronic court record system in lieu of a statewide system.⁵ Presumably subsection (h), which authorizes any unresolved disputes to be “referred” to the JISC for sanctions, includes the authority of an Art. IV court to seek sanctions against the AOC. Since an Art. IV court seeking sanctions against the AOC may not be a member of the JISC, the process for a non-JISC member to seek sanctions needs to be included in the proposed rule.

What Does The Sanctions Caption Look Like? JISC v. Art. IV Court and Presiding Judge?

What Does The Trial Look Like? Does the JISC chair or her designee preside over the trial? Who is the final decisionmaker? The chair? The JISC membership, and if so by simple majority or a supermajority? What is the standard of proof? Preponderance of the evidence? Clear, cogent and convincing evidence? Do the evidence rules apply? Which procedural civil rules apply? CRs if a superior court is the defendant? CRLJs if a court of limited jurisdiction is the defendant? Do the civil discovery rules apply? If not, why not?

Is There An Appellate Process? Presumably, a sanctioned Art. IV court or its personnel would have the right to appeal an unfavorable JISC decision to an Art. IV court. Which court would hear the appeal? What is the appellate standard of review?

Conclusion. The Comments to the JISC 13 proposal are correct. Early and frequent communication between the AOC and the local court is critical. While differences of opinion will certainly arise, the AOC and any local court will be acting in good faith to effectuate a successful result. When a dispute cannot be resolved, the JISC exists to guide the AOC and local court towards an equitable outcome for all.

This appears to be the first time a court rule is being proposed which would allow the AOC or an Art. IV court or its personnel to be sanctioned by a legislatively-created administrative body. There are simply far too many unanswered constitutional and procedural questions to enact JISC 13(h) as it is currently proposed.

/s/ Signed Electronically
JEFFREY J. JAHNS, Presiding Judge

We concur –

/s/ Signed Electronically
MARILYN G. PAJA, Judge

/s/ Signed Electronically
CLAIRE A. BRADLEY
Assistant Presiding Judge

/s/ Signed Electronically
KEVIN P. KELLY, Judge

⁵ Proposed JISC Rule 13 Preamble.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: Comment to Proposal to Amend JISC Rule 13
Date: Thursday, September 17, 2020 2:15:30 PM
Attachments: [Comment to Proposal to Amend JISC 13.pdf](#)

From: Jeffrey J. Jahns [mailto:JJahns@co.kitsap.wa.us]
Sent: Thursday, September 17, 2020 1:24 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Marilyn Paja <MPaja@co.kitsap.wa.us>; Claire A. Bradley <CABradle@co.kitsap.wa.us>; Kevin P. Kelly <KKelly@co.kitsap.wa.us>; Clint Casebolt <ccasebol@co.kitsap.wa.us>
Subject: Comment to Proposal to Amend JISC Rule 13

Greetings:

Kitsap County District Court's comment to the proposal to amend JISC Rule 13 is attached.

Jeffrey J. Jahns

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