April 22, 2014

Chief Justice Barbara A. Madsen
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929


Dear Chief Justice Madsen and President Palace:

This Report and attachments constitute the ATJ Board’s activities since the last formal Report to the Court and the BOG in May 2013.

We look forward to reporting to you on the recommendations from the ATJ Board’s evaluation; and we look forward to seeing you at the ATJ Board’s 20th Anniversary Celebration on May 15, 2014, Seattle Sheraton Hotel, 5-7 p.m.

We appreciate both the Court’s and WSBA’s continuing confidence in and support of the ATJ Board and its important work. It is a privilege to work with every one of you on the quest for equal justice.

Very truly yours,

Kirsten Barron, Chair
Access to Justice Board

cc:
Justice Mary Fairhurst
Justice Steve C. González
Justice Charles W. Johnson
Justice Jim Johnson
Justice Sheryl Gordon McCloud
Justice Susan J. Owens
Justice Debra L. Stevens
Justice Charles Wiggins
AOC Administrator Callie Dietz
WSBA President-Elect Anthony Gipe
WSBA Immediate Past President Michele D. Radosevich
WSBA Governor James W. Armstrong, Jr.
WSBA Governor Paul A. Bastine
WSBA Governor Philip Brady

WSBA Governor Daniel G. Ford
WSBA Governor Elijah Forde
WSBA Governor Bradford E. Furlong
WSBA Governor Vernom W. Harkins
WSBA Governor Robin Lynn Haynes
WSBA Governor Brian J. Kelly
WSBA Governor Kenneth W. Masters
WSBA Governor Jerry J. Moberg
WSBA Governor Barb Rhoads-Weaver
WSBA Governor Wilton S. Viall III
WSBA Governor Karen Denise Wilson
WSBA Executive Director Paula C. Littlewood
Access to Justice Board
ACCESS TO JUSTICE BOARD ANNUAL REPORT
TO THE
WASHINGTON SUPREME COURT
AND
WASHINGTON STATE BAR ASSOCIATION BOARD OF GOVERNORS
April 2014

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I. ACCESS TO JUSTICE BOARD

A. Mission

Recognizing that access to the civil justice system is a fundamental right, the Access to Justice Board works to achieve equal access for those facing economic and other significant barriers.

The Access to Justice (ATJ) Board continues to track and evaluate its progress under the directives of this Court’s 2012 Amended Order (page A-1). The ATJ Board continues to refine its mission through the mechanisms it has established to do so: Access to Justice Statement of Principles and Goals (page A-5); Revised Hallmarks of an Effective Statewide Civil Legal Services System (page A-7); the 2006 Plan for the Delivery of Civil Legal Aid to Low-Income People in Washington State (State Plan); and the ATJ Board’s annual priorities (page A-9).

B. Members and Participants

Attached is a current roster of ATJ Board members (page A-11). The Court has appointed current ATJ Board members Nicholas P. Gellert, Geoffrey G. Revelle and Breean Beggs for second three-year terms on the ATJ Board. Ishbel Dickens will begin her service as ATJ Board Chair in June 2014.

Attached is a current roster of ATJ Board Committee Chairs, ATJ Board and staff liaisons (page A-12).

Committee membership includes judges and court commissioners, administrative law judges, tribal court judges, private and government attorneys, law and public librarians, court clerks, courthouse facilitators, paralegals, members of the Alliance for Equal Justice (Alliance) (legal aid, pro bono program and specialty provider staff), law students and faculty, mediators, educators, technology specialists, Legal Aid for Washington Fund (LAW Fund) and Legal Foundation of Washington (LFW) representatives, Office of Civil Legal Aid (OCLA), staff from the Administrative Office of the Courts (AOC) and the WSBA, representatives from the Washington State Office of Administrative Hearings (OAH), disability groups and human and social service providers.

The ATJ Board also enjoys the active participation of formal liaisons from key justice system partners, including the Washington State Bar Association Board of Governors (BOG), the Administrative Office of the Courts (AOC), Seattle University School of Law’s Access to Justice Institute (ATJI), the Superior Court Judges Association (SCJA), District and Municipal Court Judges Association (DMCJA), and Office of Administrative Hearings (OAH). A complete list of liaisons is attached (page A-13).

The ATJ Board is a supporter of the Washington State Alliance for Equal Justice http://www.allianceforequaljustice.org/.

C. Meetings

The ATJ Board met eight times since the submission of its May 24, 2013 Annual Report, including the June 6, 2013 meeting with the Supreme Court. Attached are agendas from June
In an ongoing effort to foster deeper engagement with distinct communities around the state and to enhance the ATJ Board’s understanding of the civil legal aid needs of low and moderate income communities, the March 28 ATJ Board meeting featured a “listening session” – a panel of Seattle and Seattle Metro-area education professionals and community members who explored the interplay between public education and the justice system (page A-23).

On October 18, 2013 the ATJ Board hosted its sixth annual meeting of its committee chairs (page A-24).

D. Staffing and Administration

The ATJ Board and most of its committees and initiatives are staffed and administered by the WSBA. The Legal Foundation of Washington provides staff (Eric Gonzalez Alfaro) and support for the Equal Justice Coalition and staff (Eric Gonzalez Alfaro) for the ATJ Board’s Communications Committee. The King County Bar Association hosts the staff (Beth Leonard) for the Pro Bono Council with funding from the Legal Foundation of Washington. ATJ Board staff at the Washington State Bar Association includes Joan Fairbanks, Access to Justice Manager, and part-time support from Project Lead Bina Ellefsen.

The ATJ Board hosted New York University School of Law graduate Burton Eggertson during his 12-month 2013 Fellowship.

The ATJ Board is administered by the WSBA pursuant to a Memorandum of Understanding between the ATJ Board and the WSBA (page A-25). The ATJ Board Order provides that the Board “may adopt internal operational rules pertinent to [its] powers and duties.” The ATJ Board’s Operational Rules (page A-28), updated regularly, address the roles and duties of ATJ Board members, officers and committee chairs; committee structure and function; the role of staff; and other pertinent matters.

The ATJ Board has a five-member Executive Committee that develops the ATJ Board meeting agendas and performs other functions as provided in the Operational Rules.

To improve communication and facilitate the dissemination of information, the WSBA hosts e-mail lists for the ATJ Board, each of the ATJ Board’s committees and special projects, and the Washington State Alliance for Equal Justice Leadership Group. The ATJ Board’s Communications Committee has developed an online Equal Justice Newsletter http://www.allianceforequaljustice.org/ that publicizes and promotes ATJ Board initiatives.

E. ATJ Board Role in Washington State

Within Washington State, the ATJ Board is a mechanism for “expanding, coordinating, and promoting effective and economical civil legal services delivery for vulnerable low and moderate income people,” as contemplated by the Order. The ATJ Board enjoys an active role in Washington State’s justice community. Examples of this involvement since the May 2013 Annual Report include the following:
Funding for Civil Legal Aid and the Courts:

- The ATJ Board co-hosted with the Office of Civil Legal Aid (OCLA) on March 12, 2014 a meeting of Alliance leaders to discuss budget and areas of priority focus that OCLA should promote in the FY2014-2015 state biennial budget.

- LAW Fund recognized the ATJ Board for its fifth consecutive year of 100% participation in the Campaign for Equal Justice.

Court Rules:

- **Code of Judicial Conduct Rules 2.2 and 2.6:** At the request of Chief Justice Barbara Madsen, the ATJ Board developed and submitted comments to CJC 2.2 and 2.6 respecting judicial guidance for pro se parties (page A-35).

- **Technical Amendments to GR 33:** At the request of the U.S. Department of Justice, Civil Rights Division, the ATJ Board developed and submitted to the Court proposed technical amendments to GR 33 to address compliance with the Americans with Disabilities Act (ADA) (page A-60).

Support of Key Initiatives:

- **WSBA Governance Task Force:** The ATJ Board responded on behalf of the Alliance to a series of questions posed by the Task Force relating to the current structure, composition and operation of the Board of Governors (page A-66).

- **Northwest Justice Project Technology Innovation Grant (TIG).**

ATJ Forum: For the second year, the ATJ Board sponsored a Forum following the annual Goldmark Awards Luncheon. The February 21 Forum included a Supreme Court Roundtable and a Celebration of Leadership reception and program.

Participation on Boards, Task Forces and Committees: ATJ Board representatives currently serve, on the following:

- Supreme Court’s Public Trust and Confidence Committee
- Limited License Legal Technician Board
- WSBA Escalating Cost of Civil Litigation Task Force
- WSBA Mandatory Continuing Legal Education Task Force
- Supreme Court Civil Legal Needs Study Update Committee
- WSBA Council on Public Defense
- Judicial Information Systems Committee (JISC)

Recognition for Outstanding Contributions: The ATJ Board continues to nominate, and support the nomination of individuals and organizations for awards and recognition.

- The ATJ Board presented its annual 2013 awards at events appropriate to each recipient:
  - Access to Justice Partnership Award: Tenants Union of Washington
  - Access to Justice Judicial Leadership Award: Judge Laura Gene Middaugh, King County
• Access to Justice Leadership Award: Threesa Milligan, King County Bar Association Pro Bono Services
• Access to Justice Advocacy Award: Northwest Immigrant Rights Project, with special recognition to NWIRP Legal Director Matt Adams and the work of NWIRP’s Tacoma Office
• ATJ Board/WSBA Norm Maleng Leadership Award: Judge “Chip” Small, Chelan County Superior Court

• Justice Steve González, Professor Robert Chang, Judge Nicole Gaines: The ATJ Board supported their nominations as recipients of the 2013 Goldmark Leadership Award for their work on the Task Force on Race in the Criminal Justice System.

• Allison Durazzi: The ATJ Board thanked Allison for her many years of staffing and support for the ATJ Board and her significant contributions to the Board’s work.

Increased participation by ATJ Board Members in Legal Community Events: In an effort to increase awareness about the ATJ Board and its mission, the ATJ Board is committed to an ATJ Board presence at key legal community events.

Outreach to Non-Legal Communities: The ATJ Board continues working to address its dual goals of fostering deeper engagement with distinct communities around the state to increase support for access to justice and to enhance the ATJ Board’s understanding of the civil legal aid needs of low and moderate income communities across the state.

Integration with the Judiciary: The ATJ Board works to enhance collaboration and communication with the judiciary in the following ways: (1) annual meetings with the Supreme Court; (2) active recruitment of judges from all levels of state, administrative, and tribal courts for participation on the ATJ Board and on ATJ Board committees; (3) establishment of formal liaisons to the ATJ Board from the Superior Court Judges Association, the District and Municipal Court Judges Association, and the Office of Administrative Hearings; (4) establishment of a formal liaison to the ATJ Board from the Administrative Office of the Courts; (5) appointment of an ATJ Board liaison to the Board for Judicial Administration (BJA); and (6) orientation of new Supreme Court Justices.

Integration with the Organized Bar: The ATJ Board works to enhance collaboration and communication with the Washington State Bar Association and local, specialty, and minority bar associations in the following ways: (1) annual ATJ Board presentations to the BOG; (2) annual orientation of the WSBA president and new BOG members; (3) reciprocal liaisons with the BOG; (4) participation in the WSBA Diversity Stakeholder meetings; and (5) regular ATJ Board participation at key legal community events.

F. National Participation

The ATJ Board continues to be active at the national level and regularly receives inquiries from other states regarding its initiatives.

Annual Meeting of State ATJ Board Chairs and Commissions: Sponsored by the American Bar Association (ABA) and National Legal Aid and Defender Association (NLADA), the ATJ Board has participated in these meetings since their inception. Chair Kirsten Barron, Chair Elect
Ishbel Dickens and Joan Fairbanks will participate in the May 3, 2014 meeting in Portland, Oregon. The ATJ Board Chair and staff participate in regularly scheduled conference calls with state and national Access to Justice leaders on current issues.

II. SUPREME COURT-FUNDED ATJ BOARD INITIATIVES

A. Final Report on FY 2013 Funding

The Court budgeted $5,000 for the ATJ Board for FY 2013. The Administrative Office of the Courts budgeted $16,000 for FY 2013.

In an effort to further support the ATJ Board and its mission, in June 2013, the Court authorized the AOC to provide $50,000 to WSBA for support of the ATJ Board. WSBA made these funds available through the establishment of a special account to be used as needed to support the implementation of ATJ Board priorities.

**Pro Se Project ($21,000)**: Funds were used to contract with independent consultant Charles Dyer, who served as the Pro Se Project Manager until June 30, 2013.

The Pro Se Project is tasked with implementing the *Washington State Plan for Integrated Pro Se Assistance Services*. The project currently is in Step 1 of Phase 1 of the Plan, translating mandatory family law court forms into plain language format. *(See Section III.A. of this Report)*

**Equal Justice Community Leadership Academy ($50,000)**: The ATJ Board allocated these funds to Seattle University School of Law for the support and administration of year two of the Equal Justice Community Leadership Academy *(See Section III.B. of this Report)*.

B. Status of FY 2014 Funding

The Court budgeted $21,250 for the ATJ Board for FY 2014. The ATJ Board submitted a letter to the Court detailing how the funds will be allocated *(page A-69)*.

III. KEY ATJ BOARD INITIATIVES

A. Plain Language Forms

The ATJ Board/AOC/OAH Pro Se Project is tasked with implementing the *Washington State Plan for Integrated Pro Se Assistance Services*. The project currently is in Step 1 of Phase 1 of the Plan, translating mandatory family law court forms into plain language format.

The Project is working to complete the last of the 205 mandatory forms in time for the beginning of the official comment period on July 1, 2014.

The Project’s work is being implemented by dozens of volunteers in three workgroups:
• Forms Review Work Group: Three subgroups conduct the final reviews of the forms to ensure that changes comply with statutes and with style changes.
• Forms Testing Work Group: Members have been testing forms for usability with lay people and stakeholders.
• Rally Support Work Group: Members have made presentations to stakeholder groups to both educate about the new forms and to solicit comments. Since May 2013, the Work Group presented to the WSBA Family Law Section Mid-Year in July 2013 and the Family Law Executive Committee (FLEC) in July 2013. Members are scheduled to present to the Washington State Prosecutors’ Association in Spokane in May 2014 and at the April 30, 2014 Self-Represented Litigation Network (SRLN) pre-conference session of the annual American Bar Association/National Legal Aid and Defender Association Annual Conference in Portland, Oregon.

There will be a statewide training on the new plain language forms on October 13, 2014 at the WSBA Conference Center in Seattle. The target audiences include courthouse facilitators, county clerks, law librarians, pro bono programs coordinator and pro bono family law attorneys.


An article written by Judge Laura Gene Middaugh about the project’s work will appear in the May 2014 edition of NW Lawyer.

B. **Equal Justice Community Leadership Academy**

The Washington Equal Justice Community Leadership Academy (Academy) was established to create a broader, more diverse, skilled and effective community of equal justice leaders.

The Access to Justice Board in partnership with Alliance organizations is implementing training designed and facilitated by The Sargent Shriver National Center on Poverty Law. The Academy graduated its first Cohort of 28 in October 2013. The Year two Cohort has been selected and started its training in January 2014. Like the first Cohort, the members are drawn from leaders throughout the Alliance for Equal Justice as well as non-lawyers from community partners throughout the state.

The Academy consists of a year-long curriculum with online learning and four in-person retreats (2.5 days each). An Advisory Committee meets periodically to review Academy progress and effectiveness, and the Shriver Center staff refines curriculum as needed. The Shriver Center administers the online learning. Seattle University School of Law hosts the in-person retreats. Throughout the course of the Academy, Cohort members develop the seven core competencies of effective leaders: Communicating Strategic Intent, Self Awareness, Achieving Workable Unity, Systems and Strategic Thinking, Delivering on Strategic Intent, Developing New Leaders, and Fostering the Process of Renewal.

C. **Best Practices: Providing Access to Court Information in Electronic Form**

The ATJ Board has completed a one-year $20,000 American Bar Association Access to Justice Commission Expansion Grant to create a set of Best Practices for Providing Access to Court
Information in Electronic Form. Funds were used to retain consultation services from John Greacen of Greacen Associates, LLC and for project management services from ATJ Board Technology Committee member Emily McReynolds. Funds also were used to support expenses for an October 15, 2013 stakeholder meeting to solicit input on the draft best practices. The Overview of Project Methodology and Best Practices for Providing Access to Court Information in Electronic Form are included with this Report (page A-70).

IV. ATJ BOARD STANDING COMMITTEES

The ATJ Board currently oversees the work of seven active standing committees currently addressing the ATJ Board’s current priorities.

A. Communications Committee — Marc Lampson, Chair

Mission: To increase support for civil legal aid in Washington. The Committee facilitates internal communications within the Washington State Alliance for Equal Justice and external relations with the broader legal community and beyond. The goal is to build a common understanding about the lack of justice for low-income and vulnerable people and how the Alliance for Equal Justice works together to narrow the justice gap in our state.

Communications Plan: The Committee will complete its update of the 2004 Communications Plan in May 2014.

Equal Justice Newsletter: The Committee continued publication of the Equal Justice Newsletter. This newsletter facilitates both internal communications and positive external relations. Over 3,300 recipients of the Equal Justice Newsletter include the ATJ Board, EJC members, Campaign for Equal Justice donors, and Alliance organization staff and volunteers. Features include regional spotlights, interviews with staff, volunteers, and supporters, client stories, “superstar” volunteer profiles, media coverage, and an online event calendar. Copies of the Equal Justice Newsletter are archived at http://www.allianceforequaljustice.org/index.php?p=Newsletter&s=239.

The ATJ Board plans to sunset this Committee and merge its work under the Equal Justice Coalition once the Communication Plan is updated.

B. Delivery Systems Committee – Nick Gellert and Geoff Revelle, Co-Chairs

Mission: The ATJ Board established the Delivery Systems Committee (DSC) in 2010 to address the following:

- Serve as a clearinghouse and “think tank” to help monitor changes in client needs
- Establish and oversee working groups to address new and unfinished State Plan implementation
- Provide ongoing support and technical assistance for regional planning efforts
- Ensure that related legal assistance initiatives in the state are coordinated with the civil legal aid delivery system
- Monitor and assess the impact of national and state policy changes/initiatives on Washington’s civil legal aid delivery system
The DSC has focused its effort during the past year on two significant issues:

- **Services for status-ineligible clients:** The funding crisis in the recent years, in particular the loss of unrestraining IOLTA funding, has left a significant and growing gap in legal service capacity in this state for low income people who are status-ineligible. The Committee has identified the intake and service barriers, documented the problems and is beginning to address the range of options for improving and expanding service delivery to this population.

- **Pro Bono Council (PBC):** On the recommendation of the DSC, the ATJ Board established the Pro Bono Council as an ATJ Board Committee as a one-year pilot project. Funding for one full-time staff person is provided by the Legal Foundation of Washington. The PBC is hosted at the King County Bar Association. *(See Section IV.F. of this Report)*

**C. Equal Justice Coalition (EJC) – Mike Pellicciotti, Chair**

**Mission:** To ensure that people are treated equally and fairly before the law by educating policymakers and the public about the importance of civil legal aid in our communities and advocating for sufficient funding for civil legal aid in Washington.

The current focus is protecting current public funding levels for legal aid in the midst of increased demand for legal help, state budget challenges and continued funding cuts to the federal Legal Services Corporation.

**Local Funding:** The EJC was successful in efforts to restore 2014 King County funding to pre-recession levels for Eastside Legal Assistance Program, Northwest Immigrant Rights Project, TeamChild, Family Assistance Program at Solid Ground, and the Unemployment Law Project. The King County budget also included for the first time funding for the Seattle Community Law Center; and funds for an attorney for the Domestic Abuse Women’s Network (DAWN). Legal aid funding from King County has increased since 2007 to $514,000.

**State Funding:** The Legislature passed a budget in its 2013 session funding the Office of Civil Legal Aid at $23.186 million for the FY 2013-15 biennium. This is equal to the original amount appropriated for the FY 2011-13 biennium. The Legislature did not continue the $490,000 in supplemental JSTA funding received in 2012. As such, the appropriation represented a real reduction of $980,000 from the level necessary to maintain current legislatively authorized levels of service.

The Legislature appropriated $280,000 in the 2014 supplemental session to replace and upgrade the Northwest Justice Project’s aging telecommunications infrastructure.

**Federal Funding:** LSC provides federal funding to civil legal aid programs in all 50 states based on poverty population. NJP is the sole recipient of Washington State’s LSC funds and currently receives $5.6 million annually, down significantly because of significant LSC funding cuts over the last several years. The EJC continues to work with the National Legal Aid & Defender Association (NLADA) and the American Bar Association (ABA) to increase LSC funding.
As in previous years, the EJC is participating in ABA Lobby Days (April 8-20, 2014) in Washington, D.C. to meet with Washington State’s Congressional Delegation to advocate for increased federal funding for LSC. The team includes Washington Supreme Court Justice Debra Stephens, Washington State Attorney General Rob McKenna, WSBA President Patrick Palace, EJC Chair Mike Pellicciotti, Legal Foundation of Washington Executive Director Caitlin Davis Carlson, and EJC Director Eric Gonzalez Alfaro.

D.        Justice Without Barriers Committee – Judge Gregory Sypolt and Josefina Ramirez, Co-Chairs

Mission: Ensure a fully inclusive justice system by identifying and removing impediments to accessing and using the justice system, including physical, language, and communication barriers, and other barriers resulting from ineffectual and unworkable rules, complex procedures, disparate treatment, and any other obstacles that may serve as impediments to achieving equal and meaningful access to justice.

Courthouse Facilitator Expansion Subcommittee: The focus of this work is to ensure the effectiveness of courthouse facilitator programs and consider their expansion into substantive areas beyond family law. To date the Subcommittee has been gathering data, including conducting an inventory of existing courthouse facilitator services, structures, practices and systems. The Washington State Center for Court Research has agreed to conduct a fiscal impact analysis of courthouse facilitators on a per case basis. The Subcommittee is co-chaired by Jim Bamberger and Commissioner Michelle Ressa.

Administrative Justice Subcommittee:

The Administrative Justice Subcommittee is working to identify and remove barriers within the administrative system with the goal of assuring a fair process and fair result for all. ATJ Board member and Administrative Law Judge Anita Crawford-Willis is chairing the Administrative Justice Subcommittee, which is focusing in four areas:

- Good Cause Group: This group is examining the application of good cause provisions for failing to appear, to act, or respond to an action in Adult Protective Services (APS) appeals. The group is working to address the need for consistency in the application of good cause by state agencies.

- Plain Language Group: This group is looking at the issue of translating administrative court documents into plain language using as a model the work of the Pro Se Project in the translation of mandatory state court family law forms.

- Representational Accommodation Group: A Model Agency Rule on Representational Accommodation has been filed with the Code Reviser. This rule is modeled on GR 33, whose focus is to provide a procedure for notifying the court by those needing accommodation and, under certain circumstances, to provide legal representation.

- Language Access Group: This group will be conducting a training for the Attorney General’s office in late spring 2014 and for the Administrative Law Judges in August 2014 regarding challenges in the availability and effectiveness of interpreters.

Pro Se Project: (See Section III.A. of this Report)
E. **Leadership Development Committee** — Breean Beggs and Judge Lisa Atkinson, Co-Chairs

**Mission:** The Leadership Development Committee is responsible for creating and implementing a statewide leadership development plan. The Committee develops the leadership capacities of lawyers, law students and other interested persons so that they can more effectively lead the Alliance, its members and stakeholder organizations in providing civil legal aid and empowerment to Alliance clients. The Committee also recruits and recommends members for the Access to Justice Board and nominates members for the Civil Legal Aid Oversight Committee.

**Equal Justice Community Leadership Academy (EJCLA):** *(Section III.B. of this Report)*

**Law School Initiatives:** The ATJ Board sunset its Law School Relations Committee in 2013 as a result of staff reductions. There will continue to be a strong focus on law students from a broader leadership development platform in the newly configured Leadership Development Committee, including the annual Alliance Summer Intern Orientation on June 23, 2014.

2013 Law School Relations Committee initiatives included:
- Annual Alliance Summer Intern Orientation hosted by Foster Pepper and co-located in Seattle and in Spokane via videoconference (June 21, 2013)
- Annual Fellowship panel, at the University of Washington School of Law (July 9, 2013)

F. **Pro Bono Council** — Terra Nevitt, Chair

**Mission:** To address the expressed challenges of the Volunteer Lawyer Programs in Washington State.

The PBC was launched and a fulltime PBC Manager hired at the end of January 2014 to address the following goals:

- serve as a forum for the VLPs to discuss and form consensus positions when possible on significant Alliance issues and communicate those positions to the ATJ Board, committees and other Alliance members;
- work as a vehicle to identify and prioritize needed training programs for VLPs (including their boards) and work with relevant stakeholders to design, obtain funding for, produce and distribute them;
- serve as a forum where ideas for collaboration and efficiencies among programs in the delivery of client and volunteer engagement/support services could be analyzed and suggestions made to the programs involved;
- serve as a catalyst and facilitator of VLP participation in regional planning and coordinated regional client service delivery efforts with other members of the Alliance; and
- collaborate with and assist LFW, Law Fund and staffed programs in identifying opportunities to effectively integrate VLP programs in multi-agency public and private grant requests.
G. **Technology Committee** – Brian Rowe, Chair

**Mission:** To increase and improve access to the justice system by promoting efficient inter-agency technology needs-assessment, planning, collaboration and evaluation.

**Online project list:** Committee members track and share information about proposed and ongoing projects using a shared online document. This model can be replicated by other ATJ Board Committees.

**Best Practices for Providing Access to Court Information in Electronic Form (See Section III.A.C. of this Report)**

**Proposed Rules on Discovery of Electronically Stored Information:** The Committee has continued working with the WSBA Court Rules Committee to adopt statewide rules that will better serve the courts, lawyers and the public, including the poor, vulnerable and pro se litigants. The Committee currently is addressing changes to CR-26.

**Court User Workgroup liaison:** The Administrative Office of the Courts established this workgroup to assist in the transitions of courts from old case management systems to the new system. Committee member Christina Kale serves on the CUWG, collaboratively working with the Committee to identify areas for improving access to the case management system for pro se litigants.

V. **CURRENT CIVIL EQUAL JUSTICE FUNDING**

The information set forth below provides the current calendar year 2014 civil equal justice funding picture. Each funding source has its own particular set of restrictions and requirements which dictate how the money is used. The multiple sources of public and private funds brought in by individual programs are not counted in the totals.

**Federal** (Legal Services Corporation): $5.8 million.

**State** (OCLA): $23.186 million for FY 2013-15 ($11.6M/year); one-time $280,000 to help the Northwest Justice Project (NJP) replace core telecommunications infrastructure (FY 2015).

**Legal Foundation of Washington** (LFW)*:
- IOLTA revenue - $1,525,738
- Class action residuals - $12,821,508**

**LAW Fund***:
- Campaign for Equal Justice - $1,573,919
- Endowment for Equal Justice (donor restricted) - $3.09 million
- Bill & Melinda Gates Foundation (restricted to operating grants) - $500,000

Annual LFW Operating Grants: $1.9M of state funding is made available through a funding partnership with OCLA and NJP to support the portion of the work of pro bono programs and specialty legal aid providers that is eligible for state funding.
Specialty Providers: Columbia Legal Services (CLS), Northwest Immigrant Rights Project (NWIRP), Unemployment Law Project (ULP), TeamChild, Seattle Community Law Center, Solid Ground – 4,425,125*:
- 17 county/regional volunteer lawyer programs – 1.26M*
- Special Home Justice grants: 9 recipients – 1st year funding - $3,265,000

*All revenue is from 2013

**$8.5 million is restricted to organizations that provide services to prisoners, their families, and those recently released

VI. NEXT STEPS

The ATJ Board will observe its 20-year anniversary with a celebration at the Seattle Sheraton Hotel on May 15, 2014 from 5:00 – 7:00 p.m.

The ATJ Board is in the process of evaluating its work over the last two decades and examining its role in this state and nationally in the ongoing challenges of improving and expanding access to the justice system for those with financial and other significant barriers. WSBA and the Supreme Court have provided funds to retain a professional consultant, John A. Tull, who will present a report and recommendations to the ATJ Board in May 2014. These recommendations will form the basis for the ATJ Board’s work into the future. The Board looks forward to discussing these developments with the Court and the Board of Governors.

Attached is a list of the ATJ Board’s significant accomplishments during its first twenty years (page A-101).
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<td>Technical Amendments to GR 33</td>
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</tr>
<tr>
<td>ATJ Board Response to WSBA Governance Task Force</td>
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<td>ATJ Board Significant Accomplishments 1994-2013</td>
<td>A-101</td>
</tr>
</tbody>
</table>
THE SUPREME COURT OF WASHINGTON

ORDER

NO. 25700-B-524

IN THE MATTER OF THE REAUTHORIZING OF
THE ACCESS TO JUSTICE BOARD

WHEREAS, the Washington judicial system is founded upon the fundamental principle
that the judicial system is accessible to all persons, which advancement is of fundamental interest
to the members of the Washington State Bar Association.

WHEREAS, responding to the unmet legal needs of low and moderate income people in Washington State and others who suffer disparate access barriers, the increasing complexity of civil legal services delivery, the importance of civil equal justice to the proper functioning of our democracy, and the need for leadership and effective coordination of civil equal justice efforts in our state, the Supreme Court in May 1994 established an Access to Justice Board and directed that the Board operate for an initial two year period.

WHEREAS, the Access to Justice Board’s initial accomplishments in the face of tremendous difficulty demonstrated the practical value of coordinated and focused leadership under the auspices of the Supreme Court and led the Court to reauthorize the Access to Justice Board for an extended five-year period;

WHEREAS, the Access to Justice Board is a national model that has proven its value in expanding, coordinating and promoting effective and economical civil legal services delivery for vulnerable low and moderate income people, has developed a track record of significant accomplishments that maximized effective use of limited resources to address the civil legal needs of an increasing poverty population, and has made great strides in enhancing access to the civil justice system in Washington State.

Now, therefore, it is hereby

ORDERED:

That the Access to Justice Board is hereby reauthorized and shall continue to be administered by the Washington State Bar Association, and is charged with responsibility to achieve equal access to the civil justice system for those facing economic and other significant barriers.
In the Matter of the Reauthorizing of the Access to Justice Board

The Access to Justice Board shall consist of ten members nominated by the Board of Governors of the Washington State Bar Association and appointed by the Supreme Court. Members are appointed based on experience in and commitment to access to justice issues. Therefore, the Board of Governors shall broadly solicit and make nominations to the Supreme Court based on experience in and commitment to access to justice issues, consistent with the needs of the Access to Justice Board, including, for example, people affiliated with the following constituencies:

- Board for Judicial Administration
- Washington State Bar Association Board of Governors
- Statewide Staffed Legal Services Programs
- Volunteer Legal Services Community
- Other Members and Supporters of the Washington State Alliance for Equal Justice.

Of these, not less than one nor more than two members of the Board shall be a non-attorney.

The membership of the Board shall reflect ethnic, gender, geographic, and other diversity. Mid-term vacancies shall be filled in the same manner as original appointments, provided however, the solicitation for nominations may be abbreviated. The appointee for a mid-term vacancy shall fill the remainder of the vacated term and shall be eligible for reappointment up to two additional terms.

If Board membership is expanded beyond nine positions, new appointments shall be for an initial two-year term, with eligibility for reappointment for one additional three-year term.

The Board shall designate one member as the chairperson of the Board who shall serve a term of two years and who shall be eligible for reappointment for one additional two-year term. An individual may continue to serve as chairperson even notwithstanding the expiration of his or her term on the Board.

Appointments shall be for a three-year term. Board members shall be eligible for reappointment for one additional term.
The Access to Justice Board shall work to:

- Establish, coordinate and oversee a statewide, integrated, non-duplicative, civil legal services delivery system that is responsive to the needs of poor, vulnerable and moderate means individuals;
- Establish and evaluate the performance and effectiveness of the civil legal services delivery system against an objective set of standards and criteria;
- Promote adequate levels of public, private and volunteer support for Washington State’s civil equal justice network;
- Serve as an effective clearinghouse and mechanism for communication and information dissemination;
- Promote, develop and implement policy initiatives and criteria which enhance the availability of resources for essential civil equal justice activities;
- Develop and implement new programs and innovative measures designed to expand access to justice in Washington State;
- Promote jurisprudential understanding of the law relating to the fundamental right of individuals to secure meaningful access to the civil justice system;
- Promote widespread understanding of civil equal justice among the members of the public through public legal education;
- Promote the responsiveness of the civil justice system to the needs of those who suffer disparate treatment or disproportionate access barriers; and
- Address existing and proposed laws, rules and regulations that may adversely affect meaningful access to the civil justice system.

The Access to Justice Board may adopt internal operational rules pertinent to these powers and duties.

The Access to Justice Board shall be funded and staffed by the Washington State Bar Association, which shall have authority to establish a budget and approve expenditures.

The Board shall file with the Supreme Court and the Board of Governors of the Washington State Bar Association an annual report outlining its work during the prior 12-month period.
In the Matter of the Reauthorizing of the Access to Justice Board

DATED at Olympia, Washington this 8th day of March, 2012.

[Signatures]

Madsen, C.F.
Johnson, J.
Cheney, J.

Humes, J.
Garréter, J.

Stephens, J.
ACCESS TO JUSTICE
STATEMENT OF PRINCIPLES AND GOALS

Justice involves the determination and realization of legal needs, rights and responsibilities and the fair resolution of disputes. Access to justice is based on the following principles and goals.

Principles

γ Access to justice is a fundamental right in a just and democratic society.

γ Access to justice requires an opportunity for meaningful participation and deliberation whenever legal needs, rights, and responsibilities are affected. Legal issues must be adequately understood, presented and timely dealt with in a fair and impartial forum.

γ Access to justice depends on the availability of affordable legal information and services, including assistance and representation when needed.

γ Access to justice requires adequate funding, resources, and support for the justice system, including the institutions and organizations that provide access to justice.

γ Equal justice under the law requires that access to justice must be available to all people. No person or group can be denied equal access to justice based on their race, ethnicity, creed, age, gender, sexual orientation, physical or mental ability, education, language or communication skills, finances, cultural background, social status, the unpopularity of their cause, or other considerations or characteristics unrelated to the merits of the legal issue at hand.

Goals

γ The judiciary and the bar must make access to justice an essential priority.

γ Adequate and sustained public and private funding must be provided to assist low- and moderate-income and other vulnerable persons who would otherwise be denied meaningful access to justice.

γ Adequate and sustained public and private funding must be provided to maintain a strong, independent judiciary and to support the institutions and organizations that provide access to justice.

γ A coordinated and comprehensive statewide system for delivering legal services must be maintained.
Available and emerging resources and technology must be used effectively and efficiently to maximize access to justice.

Justice must be provided faster, simpler, and less expensively without sacrificing quality.

Impediments to the access to justice must be prevented or removed.

The justice system must be inclusive and have the values, skills and resources necessary to meet the legal needs of a diverse and multicultural population.

The justice system must adopt an interdisciplinary and inter-professional approach and collaborate with human service providers and other persons and organizations to meet the legal and law-related needs of the public.

Public legal education must be provided to create and sustain an informed and empowered public and to build broad community support for access to justice.
I. **The Alliance for Equal Justice**

We are lawyers, judges, legal workers, volunteers and community leaders committed to the fair, effective, and inclusive administration of civil justice in Washington State. In partnership with clients and communities of low-income and vulnerable people, we work to expand meaningful access to the civil justice system and to identify and eliminate barriers that deny justice and perpetuate poverty.

II. **Our Vision**

Poverty will not be an impediment to justice. Legal barriers that perpetuate poverty and inequality will be dismantled. Laws and legal systems will be open and equally effective for all who need their protection, especially those who experience unfair and disproportionately unjust treatment due to personal or community characteristics that place them on the margins of society.

III. **Our Common Values and Commitments**

- **Inherent Right to Justice.** Justice and meaningful access to the civil justice system are inherent rights of all persons. We will work individually and collectively to ensure that the civil justice system is open, accessible, and available to protect and promote the rights of low-income, marginalized and vulnerable people to secure justice under the law.

- **Access to Our Services.** Our statewide civil legal aid system will be equitably available to all who need our services, regardless of legal status or other defining characteristics. We will affirmatively reach out to those who experience obstacles to securing our help, and will adapt our delivery systems to meet their needs.

- **Full Range of Legal Services.** We will use all legal tools at our disposal to secure just and lasting results for the low-income and marginalized individuals, families, and communities we serve.

- **Duty to Identify and Eliminate Barriers.** We will use our legal skills to identify and eliminate systems—within our own community, the justice system, and greater society—that operate to deny justice to low-income members of racial, national, ethnic and social minorities and other low-income persons who experience barriers.
due to explicit or implicit bias and other marginalizing dynamics. We appreciate the cultural, language and other differences among our clients, client communities and ourselves. We will take affirmative steps to develop and implement personal and organizational competencies and systems to bridge these differences without placing additional undue burdens on our clients.

**Duty to Identify and Serve the Most Vulnerable.** We will focus our limited resources on meeting the civil justice needs of those who are most vulnerable and/or in need.

**Meaningful and Authentic Client Engagement.** Meaningful and authentic engagement with the communities and clients we serve is essential to our work. We will learn and take direction from our clients. Where necessary, we will serve as their legal voice. Where possible, we will help and support them in speaking for and asserting/defending their own legal rights.

**Transparency and Accountability.** We will be transparent and accountable to our clients, the broader communities we serve, our Alliance for Equal Justice peers and partners and those who invest in our work.

**Effective Use of Limited Resources.** We will coordinate our efforts to maximize the impact of the limited resources entrusted to us, and to deliver the most effective and economical civil legal aid services, consistent with our common mission and core values.

**Building Relationships and Partnerships.** We will build relationships with others, including legal- and community-based organizations that work with our clients, to increase the reach and effectiveness of our work.

**Continuous Leadership Development.** We will continuously support members of our community in assuming leadership in their work with clients and client communities, in pursuing necessary change in the civil justice system, and in furthering the work of the Alliance for Equal Justice.
ACCESS TO JUSTICE BOARD

Mission Statement

Recognizing that access to the civil justice system is a fundamental right, the Access to Justice Board works to achieve equal access for those facing economic and other significant barriers.

2013-2014 Priorities

1. Continue to collaborate with key stakeholders on the implementation of the Washington State Plan for Integrated Pro Se Assistance Services (Pro Se Plan)
   - Work with the Supreme Court on the transition of the work of plain language forms translation to the Washington Pattern Forms Committee.
   - Incorporate the implementation of the Pro Se Plan into the work of the ATJ Board’s Justice Without Barriers Committee.
   - Define and develop an appropriate role for the ATJ Board and its committees in implementing the ABA’s Language Access Standards.
   - Apply the Access to Justice Technology Principles to the implementation of the Pro Se Plan.
   - Continue to monitor the implementation of the Limited Licensed Legal Technician Rule to ensure the collaboration of ATJ Board initiatives and support as appropriate.

2. Promote leadership development
   - Transition the Washington Equal Justice Community Development Leadership Academy (Leadership Academy) to Seattle University School of Law.
   - Create best practices for developing leadership and building organizational capacity for the ATJ Board and its committees and initiatives.

3. Support reduction of bias in the justice system
   - Support the Minority and Justice Commission and the Gender and Justice Commission in their efforts to reduce bias in the entire justice system by establishing reciprocal liaisons and engaging with their initiatives.
   - Create best practices for promoting inclusion, diversity and cross-difference competencies for the ATJ Board and its committees.
   - Support and collaborate with Alliance partners, WSBA and other key stakeholders on the development of an MCLE requirement for cross-difference competence.
4. Continue to oversee the evaluation, implementation and modification of the Washington Plan for the Delivery of Legal Services to Low Income People (State Plan):
   • Work with service providers to explore how CIR (Comprehensive Immigration Reform) and health care reform will affect the delivery system and help ensure that providers are coordinating and planning for these developments.
   • Explore the potential of long distance lawyering as a means of expanding legal resources from attorney-dense urban areas of the state to rural areas.
   • Support increased technology capacity for CLEAR and NJP.
   • Identify the unaddressed legal needs of status-ineligible populations and plan for the expansion of the delivery system to address these needs as resources become available.
   • As resources return to the system (through increased IOLTA proceeds and otherwise), support allocation of these resources to restore the balance of funding available for legal services to low income client.
   • Coordinate with, and support Alliance Partners to more effectively integrate pro bono services into the delivery system, including, i.e., integrating the ABA’s Pro Bono Standards into the Washington Performance Standards, training local boards of directors, and developing training for pro bono lawyers.

5. Promote increased public and private funding and support for legal aid
   • Integrate the work of the Equal Justice Coalition Committee and the Communication Committee to support improved resource development.
   • Advocate for increased funding for the courts.
   • Support and promote the update of the 2003 Civil Legal Needs Study, to be completed by December 2014.
### 2013–2014 Roster

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization/Position</th>
<th>Phone</th>
<th>Email</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hon. Lisa L. Atkinson</strong></td>
<td>Law Office of Lisa L Atkinson</td>
<td>(425) 778-2421</td>
<td><a href="mailto:Lisa_L_Atkinson@msn.com">Lisa_L_Atkinson@msn.com</a></td>
<td>May 2012-May 2015 (1st term)</td>
</tr>
<tr>
<td><strong>Ms. Kirsten Barron, Chair</strong></td>
<td>Barron Smith Daugert PLLC</td>
<td>(360) 733-0212</td>
<td><a href="mailto:kbarron@barronsmithlaw.com">kbarron@barronsmithlaw.com</a></td>
<td>May 2012-May 2015 (2nd term)</td>
</tr>
<tr>
<td><strong>Mr. Breean L. Beggs</strong></td>
<td>Paukert &amp; Troppmann, PLLC</td>
<td>(509) 232-7760</td>
<td><a href="mailto:bbeggs@pt-law.com">bbeggs@pt-law.com</a></td>
<td>May 2011-May 2014 (1st term)</td>
</tr>
<tr>
<td><strong>Hon. Anita Crawford-Willis</strong></td>
<td>Office of Administrative Hearings</td>
<td>(206) 389-3400</td>
<td><a href="mailto:anita.crawford-willis@oah.wa.gov">anita.crawford-willis@oah.wa.gov</a></td>
<td>May 2012-May 2015 (1st term)</td>
</tr>
<tr>
<td><strong>Ms. Ishbel Dickens</strong></td>
<td>Manufactured Home Owners Association of America</td>
<td>(206) 851-6385</td>
<td><a href="mailto:ishbel@mhoaa.us">ishbel@mhoaa.us</a></td>
<td>May 2013-May 2016 (2nd term)</td>
</tr>
<tr>
<td><strong>Mr. Nicholas P. Gellert</strong></td>
<td>Perkins Coie LLP</td>
<td>(206) 359-8680</td>
<td><a href="mailto:ngellert@perkinscoie.com">ngellert@perkinscoie.com</a></td>
<td>May 2011-May 2014 (1st term)</td>
</tr>
<tr>
<td><strong>Ms. Lynn Greiner</strong></td>
<td>Chihak &amp; Gustad</td>
<td>(206) 838-3320</td>
<td><a href="mailto:lgreiner@seanet.com">lgreiner@seanet.com</a></td>
<td>May 2012-May 2015 (1st term)</td>
</tr>
<tr>
<td><strong>Mr. Geoff Revelle</strong></td>
<td>Stoel Rives</td>
<td>(206) 624-0900</td>
<td><a href="mailto:ggrevelle@stoel.com">ggrevelle@stoel.com</a></td>
<td>May 2012-May 2014 (1st term)</td>
</tr>
<tr>
<td><strong>Mr. Andrew Sachs</strong></td>
<td>Wrenn Bender LLLP</td>
<td>(206) 395-7623</td>
<td><a href="mailto:asachs@wrennbender.com">asachs@wrennbender.com</a></td>
<td>May 2012-May 2015 (1st term)</td>
</tr>
<tr>
<td><strong>Dr. Marion Smith, Jr.</strong></td>
<td>Seattle Public Schools</td>
<td>(206) 252-3020</td>
<td><a href="mailto:mjsmithjr@seattleschools.org">mjsmithjr@seattleschools.org</a></td>
<td>May 2013-May 2016 (1st term)</td>
</tr>
</tbody>
</table>
ACCESS TO JUSTICE BOARD COMMITTEES
January 2014

Communications Committee
  Chair: Marc Lampson
  ATJ Board Liaison:
  Staff Liaison: Eric Gonzalez Alfaro

Delivery Systems Committee
  Co-Chairs: Nick Gellert and Geoff Revelle
  ATJ Board Liaisons: Nick Gellert, Geoff Revelle and Ishbel Dickens
  Staff Liaison: Joan Fairbanks

Equal Justice Coalition
  Chair: Mike Pellicciotti
  ATJ Board Liaison: Breean Beggs
  Staff Liaison: Eric Gonzalez Alfaro

Executive Committee
  Chair: Kirsten Barron
  ATJ Board Members: Ishbel Dickens, Nick Gellert, Breean Beggs, Geoff Revelle
  Staff Liaison: Joan Fairbanks

Justice Without Barriers
  Co-Chairs: Judge Greg Sypolt and Josefina Ramirez
  ATJ Board Liaisons: Kirsten Barron, Lynn Greiner and Hon. Anita Crawford-Willis
  Staff Liaisons: Joan Fairbanks and Bina Ellefsen

Leadership Development Committee
  Co-Chairs: Hon. Lisa Atkinson and Breean Beggs
  ATJ Board Liaisons: Breean Beggs and Hon. Lisa Atkinson
  Staff Liaison: Joan Fairbanks

Pro Bono Council
  Chair: Terra Nevitt
  ATJ Board Liaison: Geoff Revelle
  Staff Liaison: Beth Leonard

Technology Committee
  Chair: Brian Rowe
  ATJ Board Liaison: Andy Sachs
  Staff Liaison: Bina Ellefsen
The Access to Justice Board sends liaisons to other organizations, committees or entities, as follows:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Liaison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board for Judicial Administration</td>
<td>Ishbel Dickens</td>
</tr>
<tr>
<td>Civil Legal Aid Oversight Committee</td>
<td>Breean Beggs</td>
</tr>
<tr>
<td>Judicial Information Systems (JIS)</td>
<td>Joan Kleinberg</td>
</tr>
<tr>
<td>WSBA MCLE Task Force</td>
<td>Geoff Revelle</td>
</tr>
<tr>
<td>Public Trust and Confidence Committee</td>
<td>Kirsten Barron</td>
</tr>
<tr>
<td>WSBA Task Force on Escalating Costs of Civil Litigation</td>
<td>Breean Beggs</td>
</tr>
<tr>
<td>WSBA Pro Bono and Legal Aid Committee</td>
<td>Geoff Revelle</td>
</tr>
<tr>
<td>WSBA Board of Governors (BOG)</td>
<td>Geoff Revelle</td>
</tr>
</tbody>
</table>

Several other organizations opt to send liaisons to the ATJ Board, as follows:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Liaison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Office of the Courts (AOC)</td>
<td>Dirk Marler</td>
</tr>
<tr>
<td>ATJ Institute at Seattle University School of Law</td>
<td>Diana Singleton</td>
</tr>
<tr>
<td>Civil Legal Aid Oversight Committee</td>
<td>Pending</td>
</tr>
<tr>
<td>District/Municipal Court Judges Association (DMCJA)</td>
<td>Hon. Johanna Bender</td>
</tr>
<tr>
<td>Gates Scholarship Program</td>
<td>Michele Storms</td>
</tr>
<tr>
<td>King County Bar Foundation</td>
<td>Colleen Kinerk</td>
</tr>
<tr>
<td>Minority and Justice Commission</td>
<td>Cynthia Delostrinos</td>
</tr>
<tr>
<td>Minority and Specialty Bar Associations</td>
<td>Lisa Atkinson</td>
</tr>
<tr>
<td>Northwest Tribal Court Judges Association</td>
<td>Lisa Atkinson</td>
</tr>
<tr>
<td>NW Indian Bar Association</td>
<td>Lisa Atkinson</td>
</tr>
<tr>
<td>Office of Administrative Hearings</td>
<td>Chief Judge Lorraine Lee</td>
</tr>
<tr>
<td>Seattle City Attorney’s Office</td>
<td>Darby DuComb</td>
</tr>
<tr>
<td>Superior Court Judges Association (SCJA)</td>
<td>Hon. Lisa Sutton</td>
</tr>
<tr>
<td>Washington State Association of County Clerks</td>
<td>Kevin Stock</td>
</tr>
<tr>
<td>WSBA Board of Governors (BOG)</td>
<td>Dan Ford</td>
</tr>
<tr>
<td>WSBA Diversity</td>
<td>Joy Eckwood</td>
</tr>
<tr>
<td>WSBA Family Law Section Executive Committee (FLEC)</td>
<td>Vacant</td>
</tr>
<tr>
<td>WSBA Pro Bono and Legal Aid Committee</td>
<td>Will Ross</td>
</tr>
</tbody>
</table>
AGENDA

Annual Joint Meeting of the Washington Supreme Court and the Washington State Access to Justice Board

Thursday, June 6, 2013
Temple of Justice
Olympia, Washington
1:00 – 3:00 p.m.

I. Introductions and opening remarks

II. Updates on current ATJ Board initiatives:
   - Leadership Academy: Breean Beggs
   - Plain Language Forms: Lynn Greiner
   - Courthouse Facilitator Expansion Project: 2013 ATJ Board Fellow Burton Eggertson
   - Administrative Justice: Burton Eggertson
   - Best Practices for Electronic Access to Court Records: 2012 ATJ Board Fellow Andrew Lee

III. Discussion of Court rules:
   - Proposed Family Law Civil Rules: Kirsten Barron
   - Proposed MCLE Rule Revisions: Geoff Revelle
   - ATJ Board Comments to CJC 2.2 and 2.6: Nick Gellert

IV. Current Alliance-wide issues: Nick Gellert and Geoff Revelle

V. ATJ Board funding update: Kirsten Barron
AGENDA
Access to Justice Board
July 12, 2013
1:00 – 3:30 p.m.
Washington State Bar Association CLE Conference Center
Century Square, 1501 4th Avenue
(take escalator to the second floor)

PLEASE NOTE:
• This is new location!
• The ATJ Board will meet in Executive Session from noon – 1:00 p.m. There is no morning session.
• You are invited to a party at 3:30 immediately following the meeting to thank Allison Durazzi for her years of service to the ATJ Board and the Alliance.

1:00 – 3:30 Welcome and Introductions

*Approval of May 3, 2013 ATJ Board Meeting Minutes

ATJ Board Chair’s Report – Kirsten Barron

Funding report
Legal Foundation of Washington Executive Director Caitlin Davis Carlson
Equal Justice Coalition Director Eric Gonzalez Alfaro
Office of Civil Legal Aid Director Jim Bamberger
LAW Fund Director Naria Santa Lucia

*Discussion and approval of proposed 2013-14 ATJ Board Priorities

Status of Discussion on Information Gathering, Research, Assessment and Evaluation:
• Evaluation of ATJ Board
• Hallmarks Revision
• Data Collection
• Civil Legal Needs Study/State Planning

*Approval of 2013 ATJ Board Awards

*Legal Community Events – Kirsten Barron

*Proposed ATJ Comments to CJC 2.2 and 2.6 – Nick Gellert

ATJ Board’s Role in the WSBA Governance Task Force – Geoff Revelle

Discussion of the future of the ATJ Conference – Kirsten Barron

Update on the September Advocacy Conference – TBD

Board of Governors Report – Dan Ford

*Action
AGENDA
Access to Justice Board
September 20, 2013
11:00 a.m. – 3:00 p.m.
Washington State Bar Association
1325 4th Avenue, Rainier/Adams

The ATJ Board will meet in Executive Session from 10:00 – 11:00 a.m.

11:00 – 12:30  Welcome and Introductions

*Approval of July 12, 2013 ATJ Board Meeting Minutes

ATJ Board Chair’s Report – Kirsten Barron

*Approval of proposed allocation of Supreme Court funds – Kirsten Barron

*Ratification of ATJ Board Priorities – Kirsten Barron

*Discussion and approval of the proposed Priorities Work Plan – Kirsten Barron

*Approval of recommendations for ATJ Board evaluation – Kirsten Barron

* Approval of recommendations for October 18 ATJ Board Committee Chairs meeting – Kirsten Barron

*Discussion and approval of 2014 ATJ Board meeting schedule – Kirsten Barron

*Public Trust and Confidence Committee appointment – Kirsten Barron

*Appointment of ATJ Board liaison for September 26-27 BOG meeting – Kirsten Barron

*Ratification of Pro Bono Council – Nick Gellert

12:30 – 1:00  Lunch

1:00 – 2:00  Funding report

Legal Foundation of Washington Executive Director Caitlin Davis Carlson
Equal Justice Coalition Director Eric Gonzalez Alfaro
Office of Civil Legal Aid Director Jim Bamberger
LAW Fund Director Naria Santa Lucia

ATJ Board updates
Leadership Academy – Ishbel Dickens
ABA Best Practices Grant – Joan Fairbanks
ER 901 – Kirsten Barron
CJC 2.2 and 2.6 – Burton Eggertson
WSBA Governance Task Force – Kirsten Barron
Liaison updates
   Board for Judicial Administration – Ishbel Dickens
   Other?

2:00 – 3:00 Presentation of WSBA Diversity Plan – WSBA Diversity Manager Joy Eckwood

Status of Discussion on Information Gathering, Research, Assessment and Evaluation:
   • Hallmarks Revision – Ishbel Dickens
   • Data Collection – Andrea Axel
   • Civil Legal Needs Study – Jim Bamberger

Discussion of programming prior to and following the Goldmark Awards Luncheon on February 21, 2013 – Kirsten Barron

*Legal Community Events – Kirsten Barron

*Action needed
AGENDA
Access to Justice Board
October 18, 2013
1:00 – 3:00 p.m.
Washington State Bar Association

NOTE: The ATJ Board’s annual Committee Chairs meeting is from 9:30 – 1:00 at Stoel Rives

1:00 – 3:00
Welcome and Introductions

Presentation on the new Superior Court Case Management System – AOC Chief Information Officer Vonnie Diseth, AOC Superior Court Case Management System Project Manager Maribeth Sapinos and AOC Business Liaison Vicky Cullinane

*Approval of September 20, 2013 ATJ Board Meeting Minutes

ATJ Board Chair’s Report – Kirsten Barron

*Approval of Proposed Final ATJ Board 2014 Meeting Schedule

*Approval of Proposed 2014 Goldmark Programming – Ishbel Dickens

*Approval of Reappointment of George Yeannakis to the Committee on Public Defense

ATJ Board 20th Anniversary Celebration – Kirsten Barron

Future of ATJ Conference – Kirsten Barron

Funding report
Legal Foundation of Washington Executive Director Caitlin Davis Carlson
Equal Justice Coalition Director Eric Gonzalez Alfaro
Office of Civil Legal Aid Director Jim Bamberger
LAW Fund Director Naria Santa Lucia

ATJ Board Updates
Best Practices Summit – Geoff Revelle
Leadership Academy – Ishbel Dickens
ATJ Board Evaluation – Kirsten Barron

Liaison Updates
Board of Governors – Geoff Revelle
Board for Judicial Administration – Ishbel Dickens
Other?

*Legal Community Events

*Action Needed
AGENDA
Access to Justice Board
November 15, 2013
10:00 a.m. – 3:00 p.m.
Washington State Bar Association

NOTE: The ATJ Board will meet in executive session from 9 – 10 a.m.

10:00 – noon Welcome and Introductions

*Approval of October 18, 2013 ATJ Board Meeting Minutes

ATJ Board Chair’s Report – Kirsten Barron

*Approval of Proposed Technical Amendments to GR 33 – Hon. Anne Ellington

Presentation on the work of the WSBA Council on Public Defense (CPD) – George Yeannakis, TeamChild and Civil Legal Aid Representative to the CPD

Noon – 1:00 Lunch

1:00 – 3:00 *Approval of Proposed Amendments to CJC 2.2 and 2.6 – Nick Gellert and Burton Eggertson

*ATJ Board 20th Anniversary Celebration (May 15, 2014) – Joan Fairbanks

Funding report

- Legal Foundation of Washington Executive Director Caitlin Davis Carlson
- Equal Justice Coalition Director Eric Gonzalez Alfaro
- Office of Civil Legal Aid Director Jim Bamberger
- LAW Fund Director Naria Santa Lucia

ATJ Board Updates

- Leadership Academy – Breean Beggs
- 2014 Goldmark Day Programming – Joan Fairbanks

Liaison Updates

- Board of Governors – Geoff Revelle
- MCLE Task Force – Geoff Revelle
- WSBA Governance Task Force – Geoff Revelle
- Other?

*Legal community events

*Action Needed
AGENDA
Access to Justice Board
January 10, 2014
10:00 a.m. – 3:00 p.m.
Washington State Bar Association

**NOTE:** The ATJ Board will meet in executive session from 9 – 10 a.m.

10:00 – 11:45 Welcome and Introductions

- *Approval of November 15, 2013 ATJ Board Meeting Minutes*
- ATJ Board Chair’s Report – Kirsten Barron
- Presentation by Graduates of the First Cohort of the Equal Justice Community Leadership Academy: Members of Cohort I
- *Discussion and approval of proposed revision of the Hallmarks: Members of Cohort I*

11:45 – Noon Presentation of the ATJ Board Judicial Leadership Award to Judge Laura Gene Middaugh

Noon – 12:30 Lunch

12:30 – 2:45 Funding report

- Legal Foundation of Washington Executive Director Caitlin Davis Carlson
- Equal Justice Coalition Director Eric Gonzalez Alfaro
- Office of Civil Legal Aid Director Jim Bamberger
- LAW Fund Director Naria Santa Lucia

**ATJ Board Updates**

- Leadership Academy – Breean Beggs
- 2014 Goldmark Day ATJ Forum – Ishbel Dickens
- ATJ Board 20th Anniversary – Joan Fairbanks
- ATJ Board Evaluation – Kirsten Barron

**Liaison Updates**

- *Legal community events*

*Action Needed*
AGENDA
Access to Justice Board
March 28, 2014
10:00 a.m. – 3:00 p.m.
Washington State Bar Association

10:00 – 11:45 Welcome and Introductions

*Approval of January 10, 2014 ATJ Board Meeting Minutes

ATJ Board Chair’s Report – Kirsten Barron

*Approval of Revised Hallmarks – Ishbel Dickens

Funding report
- Legal Foundation of Washington Executive Director Caitlin Davis Carlson
- Equal Justice Coalition Director Eric Gonzalez Alfaro
- Office of Civil Legal Aid Director Jim Bamberger
- LAW Fund Director Naria Santa Lucia

ATJ Board Updates
- Equal Justice Community Leadership Academy – Breean Beggs
- ATJ Board Evaluation – Kirsten Barron
- ATJ Board’s 20th Anniversary Celebration – Kirsten Barron

Liaison Updates
- Board of Governors – Geoff Revelle
- MCLE Task Force – Geoff Revelle
- Board for Judicial Administration – Ishbel Dickens
- Other?

12:00 – 1:00 Lunch

1:00 – 3:00 ATJ Board Listening Session: Seattle and Seattle-Metro Area Education Professionals And Community Members – Facilitated by ATJ Board Member Dr. Marion Smith, Jr.

*Action Needed
AGENDA
Access to Justice Board Retreat
June 7, 2013
9:00 a.m. – 3:30 p.m.
Stoel Rives
Seattle

I. Introductions and Welcome to Dr. Marion Smith, Jr.

II. General housekeeping issues – Kirsten
   • Outcomes work being coordinated by LFW
   • WSBA support for the ATJ Board (2013 ATJ Board budget and 2013 WSBA Organizational Chart)

III. Create a plan for the evaluation of the ATJ Board (Memo re Proposed ATJ Board Evaluation and ATJ Board sample evaluations and planning documents)
   • Review and discuss ATJ Board’s progress and success/failure in complying with the ATJ Board’s Supreme Court Order (review current ATJ Board Order in the 2013 Report)

IV. Discussion of a proposed ATJ Board Strategic Plan (see Draft Massachusetts Access to Justice Commission Statement of Strategies and Objectives for 2013 in the ATJ Board sample evaluations and planning documents)

V. Review the work of the ATJ Board Committees (Committee Reports)

VI. Develop a list of immediate staffing and support needs to accommodate the reduction in staff (Memo re ATJ Board Requests for WSBA Support)

VII. Develop proposed annual ATJ Board priorities (2012-13 ATJ Board Priorities)

VIII. Discuss future funding options and opportunities for the ATJ Board
ACCESS TO JUSTICE BOARD LISTENING SESSION:

Seattle and Seattle Metro-Area Education Professionals and Community Members

March 28, 2014
1:00 – 3:00 p.m.
Washington State Bar Association

To create awareness and to deepen understanding of challenges, barriers, and issues facing scholar-practitioners and community members in K-12 public education, Dr. Marion Smith, Jr. (ATJ Board member and urban school leader) will facilitate a listening session with the Access to Justice (ATJ) Board. This session with Seattle and Seattle metro-area education professionals and community members will be the first of its kind to focus on education and the interplay between public education and the justice system anchored in the work of the Washington State Alliance for Equal Justice.

Facilitator:

Dr. Marion Smith, Jr.
School Principal, Lowell Elementary School- Seattle Public Schools

Panel Members:

Dr. Nancy Coogan
Superintendent of Schools- Tukwila School District

Jen Davis Wickens
Chief Regional Officer- Summit Public Schools

Marcus Harden
Executive Director- Accounting Career Awareness Program
Washington State Charter Schools Association- Aspiring Leaders Fellow

Sarah Pritchett
Executive Director of Schools- Seattle Public Schools

Suzanne Righi
Elementary School Teacher, Madrona K-8- Seattle Public Schools

Mike Starosky
Human Resources Consulting Principal- Seattle Public Schools

Bree Dusseault
Director of the Leadership Center- Washington State Charter Schools Association
AGENDA
Annual ATJ Board Committee Chairs Meeting
October 18, 2013
9:30 – 1:00

9:30  Welcome and Introductions

9:45  Report from Committee Chairs: Please plan to spend up to five minutes providing a very brief overview of the work of your committee, with a focus on the successes and challenges.

10:30  Update on ATJ Board Staffing and Budget – ATJ Board Chair-Elect Ishbel Dickens

10:40  ATJ Board 2013-2014 Priorities and the Delegation of Responsibilities for their Implementation – ATJ Board Member Breean Beggs

11:30  ATJ Board Evaluation: In anticipation of its 20th Anniversary in May 2014, the ATJ Board will be conducting an evaluation of its work. We are interested in your comments on focus, methodology and scope – ATJ Board Chair Kirsten Barron

12:00  Lunch with the ATJ Board

1 – 3:00  ATJ Board Meeting
MEMORANDUM OF UNDERSTANDING

Relationships

The Washington State Access to Justice Board (the “ATJ Board”), an autonomous board that reports annually to the Washington State Supreme Court and the Washington State Bar Association (“WSBA”) Board of Governors, was established in 1994 and reauthorized by an order of the Supreme Court, dated November 2, 2000 (the “Order”). The Order charges the ATJ Board with responsibility to assure high quality access for low and moderate income residents and others in Washington State who suffer disparate access barriers to the civil justice system. To that end, the Order provides that the ATJ Board shall work to:

- Establish, coordinate and oversee a statewide, integrated, non-duplicative, civil legal services delivery system that is responsive to the needs of poor, vulnerable and moderate means individuals;

- Establish and evaluate the performance and effectiveness of the civil legal services delivery system against an objective set of standards and criteria;

- Promote adequate levels of public, private and volunteer support for Washington State’s civil equal justice network;

- Serve as an effective clearinghouse and mechanism for communication and information dissemination;

- Promote, develop and implement policy initiatives and criteria which enhance the availability of resources for essential civil equal justice activities;

- Develop and implement new programs and innovative measures designed to expand access to justice in Washington State;

- Promote jurisprudential understanding of the law relating to the fundamental right of individuals to secure meaningful access to the civil justice system;

- Promote widespread understanding of civil equal justice among the members of the public through public legal education;

Working Together to Champion Justice
• Promote the responsiveness of the civil justice system to the needs of those who suffer disparate treatment or disproportionate access barriers; and

• Address existing and proposed laws, rules and regulations that may adversely affect meaningful access to the civil justice system.

The Order provides that the ATJ Board shall be administered by the WSBA, and specifically states that the ATJ Board shall be funded and staffed by the WSBA, which shall have authority to establish a budget and approve expenditures. Pursuant to this Memorandum of Understanding, the ATJ Board and the WSBA agree to the following understandings with respect to the relationships between the parties under the Order:

**Budget Considerations**

The parties agree that the ATJ Board will participate in the development of that portion of the WSBA annual budget that affects the operations of the ATJ Board. Such participation shall include:

(a) The ATJ Board’s submission to the WSBA Department of Finance and Administration of a proposed budget in the same format used by the WSBA’s own programs, together with such back-up information necessary to explain the proposed budget, or as requested in preliminary budget development. The budget submission will identify specific objectives and describe how progress will be evaluated; and

(b) The meaningful and timely opportunity for the ATJ Board to participate in WSBA’s budget discussions and in making budget adjustments.

To the extent that the ATJ Board deems it necessary to request supplemental funding from the WSBA within a budget cycle, the ATJ Board will follow the above steps; provided, that budget changes of less than 10% in a line item do not require prior approval assuming that the overall budget remains constant.

To the extent that the ATJ Board seeks funding from outside sources, it shall do so in collaboration with the WSBA. WSBA shall be the contracting and grant agent for all outside funding received by the WSBA or the Washington State Bar Foundation and earmarked for the ATJ Board. Either the WSBA or the Washington State Bar Foundation, as appropriate, shall be responsible for reporting on the use of such funds to the outside funding source. Management of the funds may be delegated to the ATJ Board. Such funds shall only be used for the purpose(s) for which they were solicited, and subject to any conditions imposed by the grantor or donor.

**Staffing Considerations**

The WSBA shall provide the ATJ Board with adequate staff to fulfill its mission. A manager-level employee with knowledge of civil access to justice issues shall be dedicated to supporting and coordinating the work of the ATJ Board with the understanding that this employee may be assigned to perform other responsibilities as a WSBA staff member. The WSBA shall also provide the ATJ Board with such other full or part-time staff as may be necessary to enable the ATJ Board to perform its
functions as set forth in the Order. Appropriate staffing levels shall be determined annually in the budget process. Staffing levels shall be monitored in good faith by both the WSBA and ATJ Board to assure that staff use complies with the parameters established in the budget. Any modifications to staffing allocations or duties shall only be made after mutual consultation between WSBA and the ATJ Board.

The ATJ Board understands that WSBA Personnel Guidelines shall apply in hiring, job classification, salary, and conditions of employment for all WSBA employees and that the WSBA Executive Director has sole authority to employ and compensate all WSBA employees. The WSBA Executive Director has sole authority to select or terminate any WSBA employee, although the ATJ Board shall have the opportunity to participate in the selection or termination of the ATJ manager. The formal job descriptions of staff assigned to work with the ATJ Board shall be available to the ATJ Board, and the ATJ Board shall have the opportunity to provide comments on those descriptions during the Annual Review process, or as necessitated by changes in functions, duties or personnel. The ATJ Board shall also have the opportunity to provide comments on the Annual Review of the ATJ manager and other WSBA staff supporting the ATJ Board.

Other Matters

The ATJ Board shall be accountable to the WSBA for proper fiscal management and for using WSBA resources to carry out the mission as specified in the Order.

In the event that an issue arises that is not addressed in the Order or this Memorandum of Understanding, the WSBA and ATJ Board will work collaboratively to resolve the issue.

Washington State Bar Association

S. Brooke Taylor
WSBA President

Date: 4-25-06

Washington State Access to Justice Board

By: Christi Cromwell

Date: 5/8/06

M. Janice Michels
WSBA Executive Director

Date: 4-28-06

Working Together to Champion Justice
Washington State Access to Justice Board

OPERATIONAL RULES

From the Order Reauthorizing the Access to Justice Board (Amended Order, March 8, 2012):

“. . . [t]he Access to Justice Board is hereby reauthorized and shall continue to be administered by the Washington State Bar Association, and is charged with responsibility to achieve equal access to the civil justice system for those facing economic and other significant barriers.”

Effective 3/9/06; amended 4/14/06, 9/18/09, 12/31/10 and 4/1/12. These rules supersede any previous policies covered herein.

I. Access to Justice Board (the “Board”)

A. Composition.*
   1. The Board shall consist of ten members, at least one and no more than two of whom shall be non-attorneys.
   2. The membership shall reflect ethnic, gender, geographic and other diversity.
   3. Recommendations for nominees to the Board shall be solicited broadly, based on experience in and commitment to access to justice issues, consistent with the needs of the Board, and including people affiliated with the Board for Judicial Administration, the Board of Governors (the “BOG”) of Washington State Bar Association (the “WSBA”), Statewide Staffed Legal Services Programs, the Volunteer Legal Services Community, and Other Members and Supporters of the Washington State Alliance for Equal Justice.

B. Qualifications.*
   1. Board members shall have a demonstrated commitment to, and familiarity with, access to justice issues.
   2. The Nominating and Leadership Development Committee may identify other desirable qualifications, which may change from year to year depending on the needs of the Board.
   3. Board members who are attorneys must be in good standing with their licensing authority(ies).

C. Term.*
   1. Board member appointments are for a three-year term, which may be extendable, by one year, in the case of the Chair.
   2. Board members are eligible for reappointment to the Board for one additional term.
   3. Mid-term vacancies shall be filled in the same manner as original appointments, provided, however, the solicitation for nominations may be abbreviated.
   4. The appointee for a mid-term vacancy shall fill the remainder of the vacated term and shall be eligible for reappointment up to two additional terms.

* These matters are addressed, in part, by the current Supreme Court Order Reauthorizing the Access to Justice Board (Amended Order March 9, 2012).
5. If Board membership is expanded beyond nine positions, new appointments shall be for an initial two-year term, with eligibility for reappointment for one additional three-year term.

D. Board member duties. Each Board member shall use best efforts to:
   1. Attend each Board meeting;
   2. Prepare for participation in Board meetings by reading the meeting materials sent before the meetings;
   3. Follow up on tasks assigned at Board meetings;
   4. Attend the annual retreat and participate in developing the Board’s annual work plan;
   5. Attend the annual Access to Justice Conference;
   6. Represent the Board at the request of the Chair; and
   7. Advance the work of the Board in at least one of the following ways:
      a. By serving as a committee chair,
      b. By serving as a liaison to a Board committee,
      c. By serving as a liaison to an outside organization, or
      d. By serving as a committee member.

II. Board Meetings.

A. Form of Board Meetings.
   1. Regular meetings shall be scheduled in advance.
   2. Special meetings shall be called by the Executive Committee upon notice by mail, e-mail or phone.
   3. Meetings are generally open to the public, but the Board reserves the right to meet in executive session.

B. Frequency.
   Board meetings shall be scheduled as often as necessary to conduct the Board’s business, but not less frequently than once a quarter.

C. Attendance.
   Board members may attend meetings in person or by conference call or other similar means (e.g. video link, etc.). In-person attendance is preferred.

D. Quorum.
   1. A majority of the Board members shall constitute a quorum for any meeting.
   2. Once established during a meeting, a quorum shall be deemed to continue for the remainder of the meeting.

E. Manner of Action.
   1. The Board may act upon motion or resolution adopted at a meeting.
   2. A motion or resolution shall be adopted if approved by a majority of those Board members in attendance at the time the vote takes place.
   3. There shall be no voting by proxy, mail or e-mail.

III. Board Officers.

A. Chair.
   1. Qualifications.

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1 “Committee Liaisons” are expected to communicate the Board’s expectations of the Committee and its Chair; advise and advocate for the Committee; communicate questions and concerns between the Committee and the Board; and, monitor the Committee’s work.
The Nominating and Leadership Development Committee shall identify desirable qualifications, which may change from year to year depending on the needs of the Board.

2. Selection.
Normally, the Chair-Elect shall succeed to the position of Chair at the end of the term of the predecessor. If there is a vacancy in the position of Chair during a two-year term for any reason, the Chair-Elect shall succeed to the position of Chair to serve out the term of the predecessor.

3. Term.
   a. The Chair shall serve a two-year term.
   b. Although eligible for reappointment as Chair, each Chair should serve only one full term, but may serve a longer period if serving out the term of a predecessor who left office early.

4. Duties.
The Chair shall:
   a. Serve as spokesperson for the Board;
   b. Lead Board and Executive Committee meetings; and
   c. Work to ensure that the Board’s initiatives are moving forward.

B. Chair-Elect.
1. Qualifications.
   a. Each nominee for Chair-Elect must have served at least two years on the Board.
   b. The Nominating and Leadership Development Committee shall identify desirable qualifications, which may change from year to year depending on the needs of the Board.

2. Selection.
   a. Candidates for Chair-Elect shall be nominated by the Nominating and Leadership Development Committee.
   b. Normally, the Chair-Elect shall be elected by the Board at its meeting immediately preceding the May meeting in the year of the election.
   c. If there is a vacancy in the position of Chair-Elect for any reason, a new Chair-Elect shall be nominated by the Nominating and Leadership Development Committee and elected by the Board as soon as possible to serve out the remaining term of the predecessor.

3. Term.
The Chair-Elect shall serve a two-year term, but may serve a longer period if serving out the term of a predecessor who left office early.

4. Duties.
The Chair-Elect shall:
   a. Succeed to the position of Chair upon the end of the predecessor Chair’s term or a vacancy in that position;
   b. Support the Chair;
   c. Serve as Chair when the Chair is unable to fulfill his/her obligations, including leading Board and Executive Committee meetings, if necessary
   d. Serve on the Executive Committee; and
   e. Serve as liaison to WSBA for budget and finance matters.

C. Executive Committee.
1. Membership.
The Executive Committee shall consist of the Chair, the Chair-Elect and two additional Board members selected annually by the Board. The lead staff person assigned to the Board, serving ex officio, shall also participate in Executive Committee meetings, but shall have no vote.
2. Executive Committee Meetings.
   a. Form of Executive Committee Meetings.
      i. Regular meetings shall be scheduled in advance and held
         approximately 10 days prior to each Board meeting.
      ii. Special meetings shall be called by the Chair with notice to other
         Executive Committee members.
      iii. Meetings are open to all Board members.
   b. Attendance.
      Executive Committee members may attend meetings in person or by
      conference call or other similar means (e.g. video link, etc.).
   c. Participation by Non-Board Members
      i. Executive Committee meeting dates and agenda (but not
         meeting materials) will be posted online, including deadlines for
         agenda items. Agendas will be subject to change.
      ii. Those who choose to submit agenda items may be invited to
         attend the Executive Committee meetings at which those items
         will be considered.
   d. Quorum.
      At least two of the four Board members must be in attendance during the
      entire meeting to constitute a quorum for that meeting.
   e. Manner of Action.
      i. No action may be taken by the Executive Committee except at a
         meeting with a quorum in attendance.
      ii. The Executive Committee may act upon motion or resolution
         adopted at a meeting.
      iii. A motion or resolution shall be adopted if approved by a majority
         of the quorum in attendance at the time the vote takes place.
      iv. There shall be no voting by proxy, mail or e-mail.

D. Executive Committee Duties.
The Executive Committee shall:
1. Set agendas for Board meetings;
2. Act on behalf of the Board on routine business and urgent matters, or otherwise
   as delegated by the Board; and
3. Call special Board meetings.

IV. Nominating and Leadership Development Committee.
A. Membership.
The Nominating and Leadership Development Committee shall be appointed by the
Board. It will include at least one ATJ Board member. Other members shall be drawn
from the justice community as a whole with a special effort to insure geographic diversity.
Representatives should be invited from the Board’s committees, the Leadership Group,
the WSBA’s many diversity initiatives, the law schools, and the minority bar associations.

B. Nominating and Leadership Development Committee Duties.
The Nominating and Leadership Development Committee shall:
1. Recruit potential new Board members;
2. Evaluate and recommend potential new Board members to the Board annually or
   as needed;
3. Make nominations for Chair-Elect (and, if necessary, Chair) once every two years
   (or as needed);
4. Identify new leaders for the Alliance for Equal Justice (the “Alliance”), including
   potential new Board committee chairs; and
5. Develop new leaders for the Alliance by overseeing the Board’s orientation
   program and its leadership training program.
V. Other Committees.
A. Standing committees.
The Board shall establish and maintain standing committees to help the Board accomplish its mission and to clarify and address core priorities established by the Board. The Board will, on an annual basis, review the work of each standing committee to determine whether it continues to address a core priority of the Board. The Board may dissolve a standing committee if it determines the priority has been addressed. The Board also may revise the mission of a standing committee to address changing priorities, and may establish new standing committees as necessary and appropriate.

B. Special Initiatives.
The Board may establish committees with limited life spans to address specific initiatives. The Board will appoint the chairs, provide the specific charges to the committees, and may establish time frames and reporting requirements for completing the work. In all other respects, these special initiatives committees, their chairs and committee members are subject to the same requirements as standing committees.

C. Committee chairs.
1. Qualifications.
The qualifications of committee chairs will be determined by the Board with due regard for the unique needs of each committee. Committee chairs may, but need not, be members of the Board.

2. Selection and removal.
a. Standing committees are encouraged to recommend chairs and plan for leadership succession, but the designation of standing committee chairs will be approved by the Board. In the absence of a standing committee recommendation, the Board will appoint a committee chair.
b. The Board shall appoint the chair of each special initiative.
c. Committee chairs may be removed by the Board.

3. Term.
a. Committee chairs shall serve a one-year term, which shall be renewable.
b. The Board encourages committee chairs to identify and mentor potential chairs from their respective committees (for example, by appointing a co-chair or vice-chair).
c. The Board will make resources available to assist committee chairs with leadership development and succession planning.
d. Those committee chairs who wish to step down will collaborate with the Board to identify new committee chairs by the annual Board Committee Chairs meeting.

4. Duties.
Each committee chair shall use best efforts to:
a. Provide an orientation to new committee members about the work of the committee;
b. Serve as spokesperson for the committee and its initiatives;
c. Set the agenda for each committee meeting;
d. Schedule, convene and lead committee meetings, which may be attended in person or by conference call;
e. Designate a recorder of decisions and action items for each meeting, and insure that such record is distributed to the committee members by e-mail list serve;
f. Recruit and select new committee members as needed, with the input from current committee members and, if appropriate, from the Board;
g. Include staff in logistic and strategic committee issues;
h. Direct the development and oversight of committee goals, work plans, deadlines and committee member assignments;
i. Follow up with committee members between meetings to ensure initiatives are moving forward; and
j. Prepare the committee’s annual report to the Board.

C. Committee Members.
1. Qualifications.
   Recognizing the uniqueness of each committee, member qualifications shall be established by the committee’s chair from time to time, with consideration given to the following:
   a. Committee membership should reflect ethnic, gender, geographic and other diversity to the greatest extent possible.
   b. Committee members who are attorneys must be in good standing with their licensing authority(ies).
   c. Committees should seek to include, as appropriate, laypersons from within the justice system, laypersons from outside the justice system and persons who have not previously been involved with the Board or the Alliance.
2. Selection and removal.
   a. Committee members shall be recruited and selected by the committee chair, with input from other committee members and, if appropriate, from the Board.
   b. Committee members may be removed by the committee chair.
3. Term.
   Committee member appointments are for a one-year term, which shall be renewable.
4. Duties.
   The chair will develop, direct and oversee the duties of individual committee members.

D. Committee Operating Procedures.
The Board recognizes the unique needs of each committee and to the extent possible encourages committee structure and operations that enable the committee to effectively address its mission. The Board has determined that the following operating procedures are minimally necessary:
1. No committee or its members may enter into contracts or negotiations that bind the Board or the WSBA.
2. No committee may take a formal public position on an issue or represent the Board without the approval of the Board.
3. Committee meetings shall be scheduled as often as necessary to conduct the work of the committee, but not less frequently than once a year.
4. Each committee shall prepare and submit a brief written report to the Board by March 30 of each year describing the committee’s activities during the previous 12 months and its plans for the subsequent calendar year. These reports will be incorporated into the Board’s annual report to the BOG and the Supreme Court.

VI. Other matters.
A. Staff.
1. WSBA staff shall provide professional support for the work of the Board and its committees. Specific staff assignments shall be determined on the basis of staff expertise and the needs of the Board/committee.
2. WSBA staff shall also provide the following administrative support to the Board and its committees:
   a. Committee roster maintenance;
   b. Committee e-mail list serve creation and maintenance;
c. Logistical arrangements (meeting space at WSBA, conference call numbers, beverage service, meeting notices) for committee meetings; and

d. Duplication of meeting materials.

B. Amendments.
The Board may amend these operational rules from time to time with the affirmative vote of a majority of the entire Board.

C. Other Administrative Procedures.
1. The Board shall maintain records as scheduled in the WSBA retention policy.
2. The Board shall record and maintain minutes of its meetings.
3. The Board shall prepare and deliver an annual report to the BOG and the Supreme Court.
4. The Board shall not enter into contract negotiations nor may it sign contracts.
5. The Board shall retain copies of all contracts entered into on its behalf by the WSBA.

D. Web Site.
The Board shall maintain a web page on the WSBA web site, which may include the following:
1. Board meeting minutes for the previous twelve months;
2. Annual Board reports to the BOG and the Supreme Court;
3. Key Board documents, including its authorizing order from the Supreme Court;
4. A schedule of its regular and Executive Committee meetings, which will also be posted on the WSBA legal community calendar located on the WSBA web site.

E. Policies.
The Board may adopt policies from time to time.
1. Use of ATJ Board letterhead (2-27-95): There are no restrictions on the use of ATJ Board letterhead. ATJ Board members may use ATJ Board letterhead for any purpose provided the ATJ Board has taken a position on the issue. An exception is private fundraising because judges are prohibited from soliciting money.
2. Keller rebate policy (3-20-95): Expenses associated with lobbying efforts by the ATJ Board in support of continued funding for legal aid programs — which includes letterhead — do not fall within the WSBA’s Keller rebate policy.
3. Amicus Curiae (5-15-98): In the interest of having judges continue to participate on the ATJ Board and its committees, the ATJ Board will not file amicus curiae briefs, but will refer access to justice-related issues to the Board of Governors Amicus Committee and other entities as appropriate.
4. ATJ Board endorsements of candidates for elected office (4-9-04; amended 6-9-06): (1) The ATJ Board shall not endorse candidates for elected office. (2) ATJ Board members may endorse candidates for elected office provided they do not identify themselves as Access to Justice Board members. (3) The ATJ Board chair and Chair-Elect shall not endorse candidates for elected office, even in their personal capacities.
5. ATJ Board – CPLE Memorandum of Understanding (6-11-04): The ATJ Board and CPLE entered into a Memorandum of Understanding which spells out the relationship between the two entities.
6. Guidelines Regarding Third-Party Requests for ATJ Board Support (6-1-07): The ATJ Board periodically receives requests from third parties to sponsor (or co-sponsor), support, or endorse events, initiatives, legislative or policy issues (including substantive and fiscal matters) and court rules. Guidelines and e-form can be found at http://www.wsba.org/atj/board/atjboardguidelinesforsupport.pdf.
January 7, 2014

The Honorable Barbara Madsen
Chief Justice
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: ATJ Board Comments on CJC 2.2 and 2.6

Dear Chief Justice Madsen:

You previously requested the views of the ATJ Board regarding Comment 4 to Rule 2.2 of the Washington Code of Judicial Conduct, and, in particular, you solicited the ATJ Board’s views on whether the Comment should be any more specific. After careful consideration and research, we prepared a number of proposed changes to the Comments of the CJC. We then provided these proposals to various stakeholders across the state, including the District & Municipal Court Judges Association, the Superior Court Judges Association, the Washington State Alliance for Equal Justice, and the Washington Association of County Clerks. We received spirited comments from these groups and from several individuals, and we made many changes to our proposed comments based upon their concerns and suggestions. The comments are attached.

Rule 2.2 requires a judge to uphold and apply the law and perform all duties fairly and impartially; Comment 4 as adopted by the Court currently reads:

It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

The ATJ Board reported at the time Comment 4 was adopted that 12 other states had adopted similar comments. Furthermore, we reported that Iowa and Ohio’s comments additionally provided a list of steps that judges could take when hearing cases involving self-represented litigants. Since then, at least 13 more states have approved language similar to Comment 4, with D.C. adopting expanded comments similar to those of Iowa and Ohio.

D.C. and Ohio accomplished inclusion of a list of suggested steps for judges by adding a new comment to Rule 2.6. D.C.’s comment 1A to Rule 2.6 states:

The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. Pursuant to Rule 2.2, the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some circumstances, particular accommodations for self-represented litigants may be required by decisional or other law. Steps judges may consider in facilitating the right to be heard include, but are not limited to, (1) providing brief information about the proceeding and evidentiary and foundational requirements, (2) asking neutral questions to elicit or clarify information, (3) modifying the traditional order of taking evidence, (4) refraining from using legal jargon, (5) explaining the basis for a ruling, and (6) making referrals to any resources available to assist the litigant in the preparation of the case.
The adoption of Comment 1A to 2.6 was supported by both the D.C. Access to Justice Commission and the Self-Represented Litigation Network.

We believe that the current Comment 4 to 2.2, while helpful, does not supply much guidance to judges and does not adequately address the problems pro se litigants face. Similar to what other jurisdictions have done, we recommend the adoption of a new Comment 1A to 2.6 and making minor revisions to Comment 4 of 2.2 and the CJC Preamble.

Our primary proposal is the new Comment 1A to 2.6. After incorporating the feedback we received in the vetting process, Comment 1A reads:

While a judge cannot ignore procedural mandates, substantive law, or the burden of proof, their traditional discretion and control over proceedings allow them to adopt flexible, efficient courtroom procedures that increase the likelihood a diligent self-represented litigant acting in good faith will have his or her case fairly heard on the merits with an adequate factual record. Pursuant to Rule 2.2, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should take reasonable steps to help pro se litigants in civil matters understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law.

Steps judges may take when appropriate to implement the right to be heard for pro se litigants in civil matters as required by this Rule, include but are not limited to, (1) making referrals to resources available to assist the litigant in the preparation of the case, (2) granting extensions of time to the extent consistent with the rights of all parties to a timely hearing, (3) liberally construing pleadings and allowing amendments as permitted by court rule or other legal authority, (4) explaining the basis for a ruling, (5) explaining legal concepts and refraining from using legal jargon, (6) explaining court procedures to be followed during the litigant's hearing and evidentiary and foundational requirements, (7) asking neutral questions to elicit or clarify information, (8) modifying the traditional order of taking evidence, and (9) ensuring that a settlement presented for entry as a court order is understood by all litigants.

We believe that this addition to 2.6 will better ensure access to justice for pro se litigants than Comment 4 does alone by providing greater guidance to judges. While the proposed Comment 1A goes further than D.C.'s by supplying a larger list of steps that judges may take, we also have included language that recognizes that the judge's role will remain restrained by certain limitations.

We have also proposed an addition to the Preamble. The addition is one sentence:

In their capacity as stewards of the justice system, judges have an essential role in managing the courtroom and ensuring access to justice for all who participate.

The goal here is to encapsulate the principles behind Comments 4 and 1A and affirm their importance by placing them in the Preamble. While the addition is modest, it nonetheless underlines the importance of the judge's role in ensuring that pro se litigants have meaningful access to justice.

Finally, we have made some minor changes and additions to Comment 4 of Rule 2.2. We have changed the language of "reasonable accommodations" to "appropriate steps," primarily for the sake of clarity and due to the legal implications of the term "accommodations." In addition, we added a cross-reference to Comment 1A of Rule 2.6:

It is not a violation of this rule for a judge to take appropriate steps to provide self-represented litigants an opportunity to have their matters fairly presented and heard. See Comment [1A] to Rule 2.6, which describes the judge's affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.
Thank you for consideration of this matter. Please let us know if you have any questions or if we can assist in any way.

Sincerely,

[Signature]

Kirsten Barron, Chair
Access to Justice Board

cc: Hon. Charles Johnson
    Hon. Kevin R. Korsmo
    Hon. Alan R. Hancock
    Hon. David A. Svaren
    Daniel Satterberg
    Hon. Charles Snyder
    Hon. Kimberley Prochau
    Hon. Ronald Kessler
    Hon. Brent Basden
    Hon. Carlos Velategui
    Hon. Judge Acey, Asotin Counties
    Ada Shen-Jaffe
    Jim Bamberger

Enclosures:
- ATJ Board Comments on CJC 2.2 and CJC 2.6
- Comments Received From Stakeholders Regarding Proposed Changes to CJC 2.2 and CJC 2.6
ATJ BOARD COMMENTS ON CJC 2.2 AND CJC 2.6

Draft of Preamble [1] and Comments [4] and [1A]

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. In their capacity as stewards of the justice system, judges have an essential role in managing the courtroom and ensuring access to justice for all who participate. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Comment [4] to Rule 2.2

It is not a violation of this rule for a judge to take appropriate steps to provide self-represented litigants an opportunity to have their matters fairly presented and heard. See Comment [1A] to Rule 2.6, which describes the judge’s affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.

Comment [1A] to Rule 2.6

While a judge cannot ignore procedural mandates, substantive law, or the burden of proof, their traditional discretion and control over proceedings allow them to adopt flexible, efficient courtroom procedures that increase the likelihood a diligent self-represented litigant acting in good faith will have his or her case fairly heard on the merits with an adequate factual record. Pursuant to Rule 2.2, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should take reasonable steps to help pro se litigants in civil matters understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law.

Steps judges may take when appropriate to implement the right to be heard for pro se litigants in civil matters as required by this Rule, include but are not limited to, (1) making referrals to resources available to assist the litigant in the preparation of the case, (2) granting extensions of time to the extent consistent with the rights of all parties to a timely hearing, (3) liberally construing pleadings and allowing amendments as permitted by court rule or other legal authority, (4) explaining the basis for a ruling, (5) explaining legal concepts and refraining from using legal jargon, (6) explaining court procedures to be followed during the litigant’s hearing and evidentiary and foundational requirements, (7) asking neutral questions to elicit or clarify information, (8) modifying the traditional order of taking evidence, and (9) ensuring that a settlement presented for entry as a court order is understood by all litigants.
COMMENTS RECEIVED FROM STAKEHOLDERS
REGARDING PROPOSED CHANGES TO CJC 2.2 AND CJC 2.6

Hon. Charles Snyder
President, Superior Court Judges Association

Hon. David A. Svaren
President, District and Municipal Court Judges Association

Hon. Kevin M. Korsmo
Chair, Court of Appeals Rules Committee

Hon. Alan R. Hancock
Chair, Ethics Advisory Committee

Daniel T. Satterberg
King County Prosecuting Attorney

Hon. Kimberley Prochnau
(commenting in her individual capacity)

Hon. Ronald Kessler
King County Superior Court

Hon. Brent Basden
Clallam County Court Commissioner

Hon. Carlos Velategui
King County Court Commissioner

Hon. William D. Acey
Asotin, Columbia and Garfield Counties

Ada Shen-Jaffee
Seattle University School of Law

James A. Bamberger
Office of Civil Legal Aid
October 11, 2013

Honorable Charles W. Johnson
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Dear Justice Johnson,

RE: CJC 2.2 COMMENT 4 and CJC 2.6 COMMENT 1A

Thank you for the opportunity to respond to Comment 4 to CJC Rule 2.2 and Comment 1A to CJC Rule 2.6 regarding guidance from judges to self-represented litigants. While we appreciate the spirit of the Comments, the Superior Court Judges Association (SCJA) has concerns that the Comments go too far and will create confusion, uncertainty, and inconsistency.

In brief, the Comments remove the court from being a neutral decision-maker to the precipice of giving legal advice, exposing judicial officers to ethical dilemmas, if not outright violations. The court would be required to make subjective judgments about a self-represented party’s abilities and understandings in inappropriate ways, rather than apply an objective set of evidence rules, civil rules, and other well-established court rules, and require that parties reasonably adhere to them. Although the Comments seem to be well-intended, they may set up some type of “second class” of party, those who have representation when the other party does not.

The list of nine proposed steps is especially problematic. To illustrate just a few of the problems, the first intimates that the court be aware of any resources that might be of benefit to a self-represented party. It is unrealistic to expect that the court be aware of all of the myriad of resources that might be available. It is more suitable for the court to refer to a program, such as the courthouse...
facilitator, to make such referrals. The third suggestion uses the terms “liberally” and
“freely,” which terms invite subjective and thus uneven treatment among the courts. Step
eight, which speaks to “relaxing the rules of evidence,” could mean different judicial
officers, at different show cause hearings, different motions or trial of the same matter,
applying discretionary relaxation of evidence rules on the same case in markedly different
ways. This would not be helpful to self-represented or represented litigants and would not
assist access in any productive way. It will not assist parties upon appeals, if appellate
courts view the decision through the objective lens of the evidence rules, rather than a
relaxed set of evidence rules. Would such relaxation of evidence rules at the trial courts
invite expectations that the standard upon appeal is relaxed evidence rules? The change
invites unnecessary scrutiny of trial court decisions, not certainty or finality for parties.

The current rules already give judicial officers all the room needed to make
accommodations that should be made for self-represented parties on a case-by-case
basis. The SCJA remains committed to ensuring access for all who come to the superior
courts for administration of justice in a fair, equitable, and timely manner. Rather than
assisting the court, these Comments sweep too broadly and create the potential for
unintended consequences with significant nuances. Despite the articulated goals, the bar
is being lowered at the risk of long-standing legal principles. These changes represent a
concerted effort to demean and devalue legal education. The SCJA strongly opposes
adoption of these Comments.

Sincerely,

Charles Snyder
President Judge, SCJA

cc: SCJA Board of Trustees
    Ms. Kirsten Barron, ATG Board Chair
    Ms. Nan Sullins
    Ms. Janet Skreen
District and Municipal Court Judges’ Association

October 4, 2013

Honorable Justice Charles W. Johnson
Supreme Court Rules Committee
Temple of Justice
PO Box 41174
Olympia, WA 98504-1174

Dear Justice Johnson:

Re: Proposed Amendments to Judicial Canons

Justice Charles Johnson requested that the District and Municipal Court Judges’ Association (DMCJA) Board review and provide comment on proposed amendments to the Judicial Canons promulgated by the Access to Justice Board (ATJ). The ATJ is proposing two amendments to the Canons and one entirely new Comment to an existing Canon. These changes are designed to codify the judicial obligation to provide a meaningful hearing for pro se litigants and to provide some “cover” to judges who make reasonable accommodations for pro se litigants.

The DMCJA Board agrees that access to the courts for pro se litigants is essential, and that judges play a central role as stewards of and gatekeepers to the justice system. We are concerned, however, that the amendments as proposed are overly prescriptive and may require judges to take actions in violation of countervailing ethical and legal requirements.

Before addressing the proposed amendments, the DMCJA Board wishes to stress that the current Rule 2.2 already has four existing Comments, and the current Rule 2.6 contains two sub-parts and has three existing Comments. In considering any amendments or additional Comments, it is important that any new language not be inconsistent with nor in conflict with the language of the current Rules and Comments. The DMCJA Board provides the following comments to the Supreme Court Rules Committee regarding the proposed amendments:

i. Preamble [1] and Comment [4] to Rule 2.2

We do not have any objection to the minor changes proposed to these two sections of the Canons. Our concerns lie with Comment [1A] to Rule 2.6.

ii. Comment [1A] to Rule 2.6

a. Mandatory vs. permissive language
Honorable Charles W. Johnson  
October 4, 2013  
Page 2

Comment [1A] to Rule 2.6 as drafted instructs judges as to the actions they "should" take when presiding over a case involving one or more pro se litigants. See Comment [1A] to Rule 2.6, line 3. We are concerned that many of the actions proposed would be ethically or legally impossible. We strongly believe that this Comment, if adopted, should identify the steps that judges "may" take in appropriate circumstances when interacting with pro se litigants.

b. The Comment is not necessary

Comment [1A] to Rule 2.6 is entirely new. It is prescriptive in nature, and many of the actions required would be – in some circumstances – ethically or legally impossible. We recognize that there is an on-going need for judicial education on the difficult topic of interacting with pro se litigants. However, codifying what is in essence a list of best practices into a prescriptive mandate is not helpful to the bench where the accommodations listed will often be impossible to implement.

c. The appearance of partiality

Proposed Comment [1A] recognizes that "[a] judge cannot level the playing field for self-represented litigants or ignore procedural mandates, substantive law, or the burden of proof." See Comment [1A] to Rule 2.6, lines 1-2. We agree that these disclaimers belong in any rule addressing our obligations when interacting with pro se litigants. However, we believe that the Comment should additionally recognize that judges cannot take actions that amount to partiality or that create the appearance of partiality. We propose the addition of language to that effect. We are concerned that the proposed Comment, if adopted, may require us to elevate the rights of pro se litigants over the rights of represented parties.

d. Impermissible activities

Some of the enumerated accommodations in paragraph 2 of Comment 1[A] may require us to take action from the bench that is otherwise impermissible. For example:

- Item (5) requires judges to explain legal concepts from the bench;
- Item (6) requires judges to explain the rules of evidence;
- Item (8) requires judges to modify the rules of procedure and evidence; and
- Item (9) requires judges to oversee the fairness of settlement agreements.

Please let me know if you have any questions.

Sincerely,

Judge David A. Svaren  
President, DMCJA Board

cc: Judge Janet Garrow  
Nan Sullivan, AOC  
Shannon Hinchcliffe, AOC
September 18, 2013

Honorable Charles W. Johnson  
Associate Chief Justice, Washington Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Proposed changes to CJC 2.2 Comment 4

Dear Justice Johnson:

At the direction of Presiding Chief Judge Stephen Dwyer, the Court of Appeals Rules Committee (with some members missing) met to discuss the suggested changes to CJC 2.2 Comment 4 and the proposed Comment 1A to CJC 2.6 outlined in your letter of July 17, 2013. PCJ Dwyer has requested that I write you on behalf of our Rules Committee.

The Rules Committee was unanimously of the opinion that the proposed changes to Comment 4 were appropriate and should be adopted. The Rules Committee also unanimously recommended that the proposed Comment 1A not be adopted. Our concerns with that proposal focused on the second paragraph and, in particular, the use in the first sentence of the word “should,” which would appear to mandate that judges take steps to assist pro se litigants rather than merely authorize judges to provide assistance.

If the court is inclined to enact Comment 1A, then our committee believes that several amendments are appropriate. For the reasons just noted, the word “should” in the first sentence of the second paragraph should be changed to “may.” We also recommend that (1) be amended by requiring referrals be made to “known resources” rather than impose a duty on judges to seek out resources. We believe (5) should be amended to delete the language “explaining legal concepts and” from the subsection. Explaining legal concepts could conceivably impose a significant burden on a judge. Finally, we recommend that subsections (3), (7), (8), and (9) be deleted in their entirety. Subsection (3) would require amendment of CR 15 and CRLJ 15 with potential ramifications for all civil litigation. The other subsections, in the committee’s view, could place the judge in the position of actively aiding a party rather than presiding neutrally over the courtroom.
Justice Charles Johnson  
September 18, 2013

Thank you very much for your attention to this matter. If you should have any questions, please do not hesitate to contact me.

Sincerely yours,

[Signature]

Kevin M. Korsmo  
Chief Judge, Division Three  
Chair, Court of Appeals Rules Committee

KMK:sh

c:  Honorable Stephen J. Dwyer
September 6, 2013

The Honorable Charles W. Johnson
Washington Supreme Court
Temple of Justice
Post Office Box 40929
Olympia, WA 98504-0929

Re: Ethics Advisory Committee comments on proposed changes to Code of Judicial Conduct Preamble and Comment [4] to Rule 2.2, and the proposed addition of Comment [1A] to Rule 2.6

Dear Justice Johnson:

The Ethics Advisory Committee has been asked for its comments on the above-referenced proposed changes to the Code of Judicial Conduct. We thank the Supreme Court Rules Committee for the opportunity to provide comments.

The committee appreciates the salutary purpose of providing access to justice for all persons, whether they are represented by attorneys or acting pro se. We further appreciate the good work that has been done by the Access to Justice Board in an effort to further this worthy goal.

After due consideration, however, the consensus of the committee is that the code already provides judicial officers with the ability to administer their courts in such a manner as to provide access to justice for all within the bounds of the law. For example, Comment [4] to Rule 2.2 already provides that “[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

The committee’s principal concerns relate to the new proposed Comment [1A] to Rule 2.6. This rather lengthy proposed comment provides that judges should take steps “when appropriate” to help pro se litigants “acting in good faith” to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. The proposed comment specifically outlines nine such steps that judges should take.
The committee is concerned that while the comment speaks in terms of steps a judge “should” take, that failure to take such steps could open the door to potential disciplinary action under Rule 2.6(A), which provides that a judge “shall” accord to every person who has a legal interest in a proceeding to be heard according to law.

The proposed comment states that a judge should determine the appropriateness of taking the suggested steps and whether a pro se litigant is acting in good faith, which can be problematic. This would, in effect, add another level of review to cases involving pro se litigants and could call into question the judge’s impartiality.

More specifically, some of the suggested steps seem to place undue emphasis on how judges should make discretionary decisions that judges are already called upon to make, and it is not appropriate to direct the judge to exercise discretion in any particular manner. Rather, a judge must make such discretionary decisions on a case-by-case basis, based upon the facts of the particular case.

Of particular concern is the statement that judges should relax the formal rules of procedure and evidence. The rules of evidence “govern proceedings in the courts of the state of Washington.” ER 101. They are mandatory. In the face of a proper objection, judges must apply the rules of evidence and have no discretion to disregard them. While the proposed comment states that judges should relax the formal rules of procedure and evidence “to the extent consistent with the rights of all parties to the litigation,” it is nevertheless improper to suggest the judges can disregard the rules of evidence.

The committee is concerned that judges may give the appearance of partiality if they routinely or frequently take the steps recommended in the proposed comment. Judges already take many of the steps recommended when appropriate in the context of particular cases, but to formalize the need to do so in every case is problematic.

The committee is also concerned that some of the recommendations come close to urging judges to practice law, in effect. Explaining legal concepts and the rules of evidence from the bench, modifying the rules of procedure and evidence, and overseeing the fairness of settlement agreements may, in some instances, cross the line from informal assistance to the practice of law.

It is important to note that the proposed comment makes no distinction between criminal cases and civil cases and between bench trials and jury trials. These distinctions are crucial. While judges in civil bench trials have a fair amount of latitude and discretion to manage cases to ensure fairness to pro se litigants, their authority in jury trials is limited by our state constitution’s prohibition against commenting on the evidence, among other things.

Application of the principles in the proposed comment in criminal jury trials is even more problematic. The common experience of trial judges is, sadly, that many criminal defendants who elect to represent themselves do so for improper reasons and to place as many burdens as possible on judges, attorneys, victims, witnesses, and others. Taking the
steps recommended in the proposed comment for such persons would be the opposite of furthering justice.

Moreover, trial judges have been consistently admonished by the appellate courts that persons who represent themselves are to be held to the same standards as attorneys, and must adhere to mandatory rules of procedure and evidence. The colloquy recommended for use by judges in determining whether a criminal defendant has validly waived his or her right to counsel is replete with such admonitions. Trial judges must follow precedent, and to take the steps recommended in the proposed rule would in many instances to contrary to case law.

In summary, while we recognize the need to continue to find ways to further access to justice, the proposed changes to the code would create more problems than they would solve. Judges have ample authority to further access to justice under the existing code.

The committee recommends that the proposed changes not be adopted.

Very truly yours,

[Signature]

Alan R. Hancock
Island County Superior Court Judge
Chair, Ethics Advisory Committee

Copies: Hon. Linda Lau
Judge, Court of Appeals, Division One

Hon. Vicki Hogan
Judge, Pierce County Superior Court

Hon. Joshua Grant
Judge, Lincoln County District Court

Hon. Jeffrey Goodwin
Judge, Snohomish County District Court

Brad Furlong
Attorney at Law

Callie T. Dietz
Administrator of the Courts

Nan Sullins
Attorney at Law, Administrative Office of the Courts
September 10, 2013

Kirsten Barron, Chair
Access to Justice Board
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Proposed Addition to Comment to Rule 2.6 of the Code of Judicial Conduct

Dear Ms. Barron,

The King County Superior Court forwarded the ATJ Board’s proposed addition to the Comment to Rule 2.6 of the Code of Judicial Conduct to me. I understand that you are seeking feedback on your proposal from key stakeholders.

The King County Prosecuting Attorney’s Office has no objection to reasonable accommodations for pro se civil litigants so that they are allowed to have their matters heard fairly on their merits. However, we have grave concerns about one portion of the proposed addition to the Comment to Rule 2.6:

(8) modifying the traditional order of taking evidence and – to the extent consistent with the rights of all parties to the litigation – relaxing the formal rules of procedure and evidence,

The Rules of Evidence are not mere formalities of trial. They are designed to ensure that only evidence that is relevant, reliable and not unduly prejudicial is admitted at trial. As such, they enhance the truth-seeking function of the trial. Any relaxing of the evidence rules would necessarily diminish the truth-seeking function of the trial.

We believe that proposed subsection (8) to the Comment is ill-advised. The term “relaxing” is vague and would invite disparate and random results. It is, moreover, confusing and unhelpful to trial court judges to encourage them to relax the evidence rules when, in fact, they are required to apply the rules of evidence to all actions and proceedings in the courts of the state of Washington, pursuant to ER 1101(a).

It is not uncommon for trial court errors in the admission of evidence to lead to reversal on appeal. Encouraging judges to commit reversible error is certainly not in any litigant’s interest. Relaxing the rules of evidence such that irrelevant, prejudicial or unreliable evidence may be admitted at trial when offered by pro se litigants is not in the interest of justice.

In addition, I would note that the comment would appear to apply equally to civil pro se litigants and criminal pro se litigants. However, these two groups are quite different. Criminal defendants are provided counsel when they cannot afford counsel. No criminal defendant is forced to proceed without counsel due to lack of resources. Pro se defendants in criminal cases
have voluntarily and knowingly waived their right to counsel at public expense. Case law clearly establishes that the laws of evidence will not be relaxed for criminal pro se defendants. Indeed, appellate opinions require trial courts to engage in a lengthy colloquy with defendants indicating that they wish to waive their constitutional right to counsel, and that colloquy, which was taken from the Bench Book for United States District Court Judges, includes the following advisement:

Are you familiar with the . . . Rules of Evidence?
You realize, do you not, that the Rules of Evidence govern what evidence may or may not be introduced at trial and, in representing yourself, you must abide by those rules? 

In sum, the proposed change to the comment runs afoul of established case law, at least as it applies to pro se criminal defendants.

Thank you for seeking input.

Sincerely,

Daniel T. Satterberg
PROSECUTING ATTORNEY
Comment Received from Judge Prochnau:

My comments, which represent only my personal views and not that of the SCJA or my court, are attached.
[Kimberly prochnau]

Superior Court for the State of Washington
In and for the County of King

Judge Kimberley Prochnau
Department 7

King County Superior Court
516 Third Avenue, E-201
Seattle, WA 98104
206-477-1367

RE: Proposed Changes to Comments to CJC 2.2 and 2.8 and to Preamble

This is in response to the request for feedback with regards to the ATJ Board’s proposed changes to the Code of Judicial Conduct. It is indeed a worthy endeavor to ensure that the Code of Judicial Conduct is not a barrier to making the court system more transparent and open, to inspiring greater public confidence, and to increasing the likelihood of fair and just results for all litigants, whether represented or self-represented.

From comments I have heard when presenting, as well as attending seminars, on the topic of Self-Represented Litigants, I have been surprised at a wide variety of opinions voiced by judges on what they can and should do with regards to self-represented litigants. Greater clarity with regards to CJC 2.2 and 2.8 would be helpful.

However, before modifying the CJC or comments as to various sections, we need to recognize that the steps a Judge can or should take to help self-represented litigants vary depending on the type of proceeding and that such “help” even if well-intentioned can run afoul of other important values. For example, while a judge in a civil or family law bench trial may be more proactive at asking clarifying questions (if for no other reason to ensure that they understand the evidence before rendering a decision), the State Constitution’s prohibition on commenting on the evidence, of course, means that the judge must be much more constrained in front of a jury, whether civil or criminal. In fact, appellate decisions have reversed judges who have gone too far in assisting pro se litigants in front of a jury. Edwards v LeDuc, 157 Wn. App. 455 (Div. II, 2010). There are sound reasons for interpreting the Constitutional prohibition in a conservative manner. Even “neutral questions” can be read by jurors as a comment on the evidence or more specifically a signal as to how the judge feels about a particular witness. I am sure most, if not all, trial
court judges would agree that jurors really do watch for cues from judges as to how to evaluate evidence. Even body language can affect the jurors’ attitude of a witness.

Furthermore, while judges obviously have an ethical duty to make sure that litigants have counsel where the right to counsel at public expense exists and that the judge only accept a waiver that is knowing and voluntary, query what ethical obligations judges have to assist self-represented litigants in criminal proceedings. After all, if the goal is to ensure the right to a fair trial, that goal is almost always better served by making sure that the litigant who can reasonably access an attorney does so. While judges, if for no other reason than to make the trial flow more smoothly, should provide some information to a self-represented criminal defendant on the courtroom process outside the presence of the jury, we do not want to hull criminal defendants into forgoing their right to an attorney because they think that the judge will be their mentor during the trial. Nor is it necessarily fair to the State (or the victim) for the Judge to be attending to the Defendant’s needs during the trial.

On the other hand, in a bench trial where the Judge has certain parens patriae duties, such as a family law case, judges can be more active in asking questions and making sure that the court has adequate information to protect the best interests of the children and to divide the marital property fairly and equitably. Certainly we should spend more time on making sure the litigants understand the process (although this is normally more effective if it is not done by the judge on the day of trial, but through the use of court facilitators, self-help materials and the like.)

The addition to the Preamble is problematical inasmuch as it uses a catch-phrase “access to justice”; however, this phrase is not defined in the Code of Judicial Conduct. We should not be telling judges they have an obligation to facilitate, much less guarantee, a right that is not defined. Is it the right to be heard? CJC 2.6 already requires each judge to accord that right according to law to every person who has a legal interest in the proceeding, whether represented or not. Note that this doesn’t mean an unfettered right to present any information, unfettered by the rules of evidence or procedure. This addition should be deleted unless the proponents are able to define “access to justice” for these purposes and limit the definition to those steps that a judge can reasonably take and should take in accordance with the law.

The existing Preamble to the Code of Judicial Conduct states that the Comments to the Canons are to serve two functions: to provide; 1) guidance regarding the purpose, meaning and application of the Rules and 2) to identify aspirational goals for judges. Unfortunately, the proposed comments provide little guidance to judges, given that each “step judges should take” is modified by the term “when appropriate” without any explanation as to when such a step is appropriate, or even distinguishing with respect to the type of proceeding. Depending on the context, some of the “steps judges should take” may be appropriate aspirational goals such as making referrals and explaining legal concepts and procedures although they need to be balanced with other goals such as timeliness and judicial economy. (I would argue that waiting until the hearing to try to explain trial procedures if much less helpful than making sure that there is good information on resources and procedures available to litigants before the hearing. For example, King County Superior Court’s “What about the Children” informational seminar helps parents settle their divorces without going to trial and provides them with both social service and legal resources. These programs aren’t free, however, and depend on the public’s support, including access to justice advocates.

Some of the steps advocated in the proposed comments, however, are inconsistent with other values and laws or phrased in such a way as to be potentially misleading. For example, The Rules of Civil Procedure already require that pleadings be liberally construed. Is the proposed comment “liberally construing pleadings” intended to set forth a different rule for self-represented litigants? What is meant by the admonition that we should “grant extensions of time consistent with all parties’ right to a timely hearing”? Does that mean that the Supreme Court should extend the time for appeal when the appeal is
filed by a self-represented litigant? Does that mean trial courts should give additional time on a busy motions calendar for self-represented litigants, even though other cases will have to be continued?

The comments also give the false impression that the court only need be concerned with taking special steps for self-represented litigants. After all, the ultimate goal is not to teach self-represented litigants or to accommodate their special needs but to give everyone a chance to have their matter heard fairly and according to the law. A victim of domestic violence who has managed to borrow a few dollars to pay an attorney to appear at one hearing may be very disadvantaged if the judge is forced to continue her hearing because calendar time is used to educate self-represented litigants. The litigant who has a hard-working, dedicated pro bono lawyer may do better than a litigant whose private pay lawyer has exhausted their retainer or is less experienced. And a self-represented litigant who is savvy and has ample time to file motions and come to court may do better than the litigant who can’t afford to take time away from work.

The suggestion that we “modify the rules of evidence” on a case-by-case basis is very concerning. Hopefully the commentators meant to indicate that the Court is not required to interpose its own objections where neither party objects to evidence that would be ordinarily inadmissible. However, the comment as stated appears to suggest there would be circumstances where we should decline to apply the rules of evidence even over a party’s objection. This is not consistent with the ethical precept that we shall comply with the law and decide matters impartially. Should a judge follow this suggestion and decide on a case by case basis as to whether the Rules of Evidence should be applied, query how litigants are to be expected to prepare for trial not knowing whether hearsay will be admissible, for example.

Making our courts fairer, more transparent, and responsive to the needs of all participants is an important endeavor. We, however, endanger public trust in the fairness and impartiality of our system by suggesting that we have an ethical obligation to vary our procedures and rules on a case by case basis without any objective standards to guide us.

While more education and clarity as to ethical standards for judicial officers would be helpful, I would also argue that litigants, whether self-represented or not, are far more likely to receive a fair hearing on the merits, if trial courts have adequate and stable funding. If one judicial officer must hear an average of 15 hearings per day, due to lack of funding for additional judicial officers, than very little education or assistance to pro se litigants is going to happen on that calendar. In well-funded counties, resources such as early resolution case managers, social workers, and facilitators do far more to ensure a fair and appropriate resolution of a family law case, than the judge trying to teach the stressed out self-represented litigant on the day of trial how to put on their case.

Thank you for giving me the opportunity to comment.

Sincerely,

Kim Prochnau
King County Superior Court Judge
Comment Received from Judge Kessler:

Mr. Eggertsen:

With regard to the proposed changes to CJC rules 2.2 & 2.6, I suggest that they are problematic with respect to criminal defendants appearing pro se. While I support the concept that judges provide some assistance to unrepresented criminal defendants, at least with respect to navigating a sometimes complex system, the suggestion that a judge could relax the rules of evidence is a bad idea. When a judge relaxes the rules for one party, it is likely that the judge will relax them for all parties. The result, then, is to further disadvantage the accused. The colloquy a court is obliged to engage in before a criminal defendant may waive his or her right to counsel is intended, in part, to dissuade; see, e.g., State v. Christensen 40 Wn.App. 290, 297, 698 P.2d 1069, 1073 (1985). Leaving one with the impression that self-representation may result in legal advantages is unfair. I urge the ATJ Board to modify the proposal to apply only to civil cases.

Ronald Kessler
Chief Criminal Judge
King County Superior Court
Comment Received from Commissioner Basden:

In response to the request for comments about the proposed changes to these rules, I would say the following:

I think a lot of this is already being done, and so changing the rule / providing the comments is an excellent step in that it provides some protection for judges. My experience in dealing with an endless stream of pro se litigants on family law issues teaches me that there has to be some accommodations like these described. I don’t know if it would be appropriate, but other very practical approaches that might be mentioned in the comments would be for a judge to take step that s would include the following:

1. Informing pro se litigants of what documents need to be presented to the court;

2. Providing pro se litigants a document which describes what types of information should be included in declarations provided to the court;

My other comment is that I have some concern with the included language that describes a “judges affirmative role....” I think that there is a difference in removing barriers to being able to help, and switching to creating an affirmative obligation to modify procedures, practices, etc.

Commissioner Brent Basden

Clallam County Superior Court
Comment Received from Commissioner Velategui:

evidentiary and foundational requirements. And do we advise one of two lawyers in a trial how to address hearsay objections? and what the rules of evidence are? Or how to use them? and if we do not give the Pro Se information are we guilty of ignoring their right to a fair trial? I see this rule as a nightmare that places the Judicial officer in the position of advising a party or even a stupid lawyer on how to try their case. Relaxing the rules of evidence? and do we do that for two lawyers in the middle of a med mal case? And making sure a settlement is fair? and do we protect the lawyer from an overreaching pro se who can manipulate the lawyers client?

Save me from all this please
Comment Received from Judge Acey:

Long over due. Fantastic. Thank you.

J. Bill Acey, Hells Canyon Circuit
Asotin, Columbia and Garfield Counties
Comment Received from Ada Shen-Jaffe:

A few notes from a super-quick read:

Should not use "men and women" as transgendering people cannot identify with one or other in an imposed duality, suggest instead using something like "persons";

This lacks any affirmative reference to obstacles and barriers including lack of resources (poverty), educational attainment, linguistic, cultural, physical, mental, immigration status (fear of deportation), fear for personal safety (domestic violence or other abuse cases), fear of disparate treatment/bias due to age, disability whether physical or mental, religion, race and ethnicity, social class, sexual orientation, membership in an indigenous group, nationality or gender, as well as other obstacles and barriers. It would be much stronger as an equal justice piece if these obstacles and barriers could be expressly acknowledged as factors to be affirmatively managed by judicial officers and the justice system.

My 2 cents. A
First Comment Received from Jim Bamberger:

Thanks Burton. This is an important initiative. Kudos to the ATJ Board for taking it on.

In a nutshell, I agree with Ada’s points.

If we are to adequately address the role of judicial officers in helping ensure fair outcomes in cases involving unrepresented litigants, it is important that we expressly empower such officers to develop means to address the multitude of barriers that unrepresented individuals experience in securing a just outcome — including those embedded into a system that assumes literacy, English language competency, mental/developmental capacity and conformity with dominant cultural norms.

The ATJ Board is well positioned to offer language that raises the bar for judicial officers to facilitate proceedings in ways that promote just outcomes in cases where low income people (who are disproportionately minority, women, disabled, illiterate, without legal status, etc.) attempt to represent themselves in complex judicial proceedings. I encourage the Board to do so.

Jim

James A. Bamberger, Director
Office of Civil Legal Aid
PO Box 41183
Olympia, WA 98507
360-704-4135
360-280-1477 (cell)
November 25, 2013

Hon. Barbara A. Madsen, Chief Justice
Supreme Court of Washington
Temple of Justice
PO Box 40949
Olympia, WA 98504-0949

RE: Technical Amendments to GR 33

Dear Chief Justice Madsen:

In 2007, the Access to Justice Board (ATJ Board) recommended, and the Supreme Court adopted, GR33. The rule sets forth procedures for handling requests for accommodation from persons with disabilities. The rule was part of a concerted effort that included the Guide for Courts and considerable outreach work. In 2011 the Supreme Court adopted technical amendments proposed by the ATJ Board for modifications to the procedures, which included a bifurcated approach incorporating a less strenuous test for denial of requests made late in the proceedings.

In 2012, representatives from the Civil Rights Division of the Department contacted the ATJ Board’s Justice Without Barriers (JWB) Committee – the original drafters of GR 33 — with the concern that the bifurcated process in the 2011 amendment may not satisfy the Americans with Disabilities Act (ADA). They had other minor concerns as well. They requested that the rule be modified to more perfectly reflect the requirements of the Americans with Disabilities Act. The JWB Committee was persuaded that minor revisions would be appropriate, and engaged with the DOJ in a series of meetings and drafts that resulted in a set of proposed technical amendments with no substantive changes. The ATJ Board considered and approved the technical amendments to GR 33 at its November 15, 2013 meeting.

The proposed technical amendments to GR 33 are enclosed. I have checked with the Washington State Bar Association’s Court Rules Committee to verify that this request can go directly to the Court.

The ATJ Board respectfully requests your approval.

Thank you.

Sincerely,

Kirsten Barron, Chair
Access to Justice Board

Cc: Hon. Charles Johnson, Chair
    Supreme Court Rules Committee

Encl.
GR 9 COVER SHEET

Suggested Change

GENERAL RULE 33
Requests for Accommodation by Persons with Disabilities

Submitted by the Washington State Access to Justice Board

A. **Name of Proponent:** Washington State Access to Justice Board

B. **Spokespersons:**

Kirsten, Barron, Chair, Washington State Access to Justice Board, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539 (telephone 360-733-0212)

Hon. Anne Ellington, Member, Access to Justice Board Justice Without Barriers Committee, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539 (telephone 206-390-1750)


C. **Purpose:** The proposed technical amendments to GR33 are intended to more perfectly reflect the requirements of the Americans with Disabilities Act (ADA). In 2007 the ATJ Board approved, and the Supreme Court adopted, GR33. The rule sets forth procedures for handling requests for accommodation from persons with disabilities. In 2011, after questions were raised by court clerks about the procedures for handling orders, the ATJ approved, and the Supreme Court adopted, an amended rule. In 2012 the Civil Rights Division of the U.S. Department of Justice (DOJ) contacted the ATJ Board to express concerns, including that the bifurcated process in the 2011 amendment did not satisfy the ADA. The original drafters of GR 33 engaged with the DOJ in a series of meetings and drafts, resulting in the proposed amended rule. The amended rule was approved by the ATJ Board on November 15, 2014. The proposed amendments are technical in nature, as no substantive changes are proposed.

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

F. **Supporting Material:** Suggested rule amendment.
GR 33

Requests for Accommodation by Persons with Disabilities

(a) Definitions. The following definitions shall apply under this rule:

(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability, and may include but is not limited to:

(A) making reasonable modifications in policies, practices, and procedures;

(B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and

(C) as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability.

(2) "Person with a disability" means a person with a sensory, mental or physical disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101-12213), the Washington Law Against Discrimination (RCW 49.60 et seq.), or other similar local, state, or federal laws.

(3) "Proceeding Applicant" means any lawyer, party, witness, juror, or any other individual who is participating in any proceeding before any court.

(4) "Public Applicant" means any other person seeking accommodation.

(b) Process for Requesting Accommodation.

(1) Persons seeking accommodation may proceed under this rule. Local procedures not inconsistent with this rule may be adopted by courts to supplement the requirements of this rule. A disputed or denied request for accommodation is automatically subject to review under the procedures set out in subsections (d) and (e) of this rule. Requests. Requests for aids, modifications and services will be addressed promptly and in accordance with the ADA and the Washington State Law Against Discrimination, with the objective of ensuring equal access to courts, court programs, and court proceedings.

(2) Timing. Requests should be made in advance whenever possible, to better enable the Court to address the needs of the individual.

(3) Local Procedures Allowed. Local procedures not inconsistent with this rule are encouraged. Informal practices are appropriate when an accommodation is clearly needed and can be easily provided.
(4) Procedure. An application requesting accommodation should be made on or may be presented ex parte in writing, or orally and reduced to writing, on a form approved by the Administrative Office of the Courts, and may be presented ex parte in writing, or orally and reduced to writing, to the presiding judge or officer of the court or his or her designee.

(5) Content. An application for accommodation—The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the applicant person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be sealed automatically accessible only to the court and the person requesting accommodation unless otherwise expressly ordered. The court may order that such information be sealed if it has not previously automatically been sealed.

(4) An application for accommodation should be made as far in advance as practical.

(c) Consideration and Decision. A request for accommodation shall be considered and acted upon as follows:

(1) Considerations. In determining whether to grant an accommodation and what accommodation to grant, the court shall:

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.), RCW 49.60 et seq., and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

(2) If an application for accommodation by a proceedings applicant is submitted five (5) or more court days prior to the scheduled date of the proceeding for which the accommodation is sought, and if the applicant otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impossible for the court to provide the requested accommodation on the date of the proceeding; and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(3) If an application for accommodation by a proceedings applicant is submitted fewer than five (5) court days prior to the scheduled date of the proceeding for which the accommodation is requested, and if the
applicant—otherwise is entitled under this rule to the accommodation requested, the accommodation shall be provided unless:

(A) it is impractical for the court to provide the requested accommodation on the date of the proceeding, and

(B) the proceeding cannot be continued without prejudice to a party to the proceeding.

(4) If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court must offer the applicant an alternative accommodation.

(2) Determination. A request for accommodation may be denied only if:

(d) Denial: Proceedings Applicants. Except as otherwise set forth in subsection (c)(2) or (c)(3) of this rule, an application for accommodation by a proceedings applicant may be denied only if the court finds that:

(1)(A) the applicant person requesting application has failed to satisfy the substantive requirements of this rule; or

(2)—the requested accommodation would create an undue financial or administrative burden;

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party; or

(C) permitting the applicant to participate in the proceedings with the requested accommodation would create a direct threat to the health or well being of the applicant or others.

(3)—the requested accommodation would fundamentally alter the nature of the court service, program, or activity; or

(4) permitting the applicant to participate in the proceeding with the requested accommodation would create a direct threat to the health or safety or well being of the applicant or others.

(D) the requested accommodation would create an undue financial or administrative burden for the court; or would fundamentally alter the nature of the court service, program or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the Court shall nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Court.
(e) Decision: Proceedings Applicants. The court shall, in writing or on the record, inform the applicant person requesting an accommodation and the court personnel responsible for implementing accommodations that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. The written decision shall be entered in the proceedings file, if any, in which case the Court shall determine whether or not the decision should be sealed. If there be no proceedings filed the decision shall be entered in the court's administrative files, with the same determination about filing under seal. If the court denies a requested accommodation pursuant to subsection (d) of this rule, the decision shall specify the reasons for the denial. If a requested accommodation is not provided by the court under subsection (c)(2) or (c)(3) of this rule, the court shall state:

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(1) the facts and/or circumstances that make the accommodation impossible under subsection (c)(2) or impractical under subsection (c)(3); and

(2) the reasons why the proceeding cannot be continued without prejudicing a party to the proceeding.

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(f) Decision: Public Applicants. A public applicant should be accommodated consistent with the Americans with Disabilities Act of 1990 (42 USC §§12101-12213) and the Washington Law Against Discrimination (RCW 49.60 et seq). The applicant shall, orally or in writing, be informed that the request for accommodation has been granted or denied. If requested, a written statement of reasons for denial shall be provided.

(4) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of his or her right to file an ADA complaint with the United States Department of Justice Civil Rights Division.

Comment

[1] Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

[2] Supplemental informal procedures for handling accommodation requests may be less onerous for both applicants and court administration. Courts are strongly encouraged to adopt an informal grievance process for public applicants whose requested accommodation is denied.

[Adopted effective September 1, 2007; amended effective December 28, 2010.]
MEMORANDUM

TO:   Rima Alaily, Chair  
WSBA Governance Task Force

FR: Kirsten Barron, Chair  
Washington State Access to Justice Board (ATJ Board)

RE: ATJ Board Responses to Questions Posed by the WSBA Governance Task Force

DA: November 5, 2013

Introduction:

The WSBA Governance Task Force asked the Access to Justice Board (ATJ Board) to circulate a set of questions to the Washington State Alliance for Equal Justice (Alliance) community and solicit their responses. We circulated the questionnaire to all of the members of the Alliance in early August 2013 and asked for responses by September 30. We received no responses.

The lack of responses was not unexpected. It partially reflects that Alliance members are overworked and underfunded, meaning it is difficult to get their attention on an issue such as this. The ATJ Board believes it also likely reflects a feeling by Alliance members of being disconnected from the WSBA and that the WSBA is not important to Alliance members or significantly involved in the missions that they serve (with some exceptions, including WSBA’s support of the Plain Language Forms Project and the Campaign for Equal Justice). Given the public service and consumer protection responsibilities the WSBA has to the public and the low income clients served by the Alliance, the WSBA is and should be very important to the Alliance members and their clients. The perception that the WSBA is not very involved or engaged is at least partially incorrect as the WSBA has and does engage in activities that positively impact low income clients. However, the ATJ Board believes that the WSBA could do more to serve the public by increasing access to justice efforts, fighting bias in our legal system and supporting additional initiatives that increase access to justice for the individuals and communities served by the Alliance.

To the extent the WSBA governance structure impacts actions taken by the WSBA relating to the justice system, it is relevant and important to Alliance members. The following responses to the specific questions offered by the ATJ Board reflect that point of view. The responses were generated at a recent ATJ Board meeting, which proved effective in generating discussion and soliciting comments.

Role of the BOG vis a vis the ATJ Board:

Question:

What changes could result in a more productive relationship between the BOG and the Access to Justice Board and Access to Justice Community (Limited Licensed Legal Technicians Board; Limited Practice Officers Board; Practice of Law Board; Disciplinary Board)?

Response:

We are not sure as to what, if any, changes in the governance structure would improve the relationships. The ATJ Board believes that it generally has good relationships with the members of the Board of Governors and that the WSBA staff are supportive and helpful. It is important that the BOG be very diverse and be representative in terms of race, gender, economic background and age of the population at large. Election by BOG members in Congressional districts has resulted in a significant lack of diversity. Most members are white, middle-aged men and for the most part are from economically prosperous backgrounds. The addition of appointed positions has improved the diversity of the BOG, and these gains should not be lost in whatever changes might be made.
Selection Process for Governors:

**Question:**
What concerns, if any, do you have if the current electoral system for selection were eliminated or its role reduced (i.e., a minority of Governors are elected)?

**Response:**
Having a minority of Governors elected is not a priority or concern of the ATJ Board or the Alliance Community. It might be an improvement. Our view is that the public service obligations of the WSBA are more important than its trade organization role and that the BOG and the selection process for the BOG should reflect this. The recent referendum in which a minority of members was able to significantly defund the WSBA and put its public service functions at risk points out a deficiency in the current system. We do not have specific recommendations about how to fix this problem but the public service programs and obligations should not be subject to being rolled back by a WSBA membership vote.

Composition of the BOG:

**Experience.** The Task Force is interested in encouraging individuals who have experience with the WSBA or board service to serve on the BOG. One way to do so would be to impose minimum qualifications for other public or nonprofit service on the BOG. Currently, under the WSBA Bylaws, any Washington State licensed attorney may run, be elected, and serve as a member of the BOG. What concerns would you have if there were additional requirements or minimum qualifications imposed in one or more of the following areas?

**Question:**
Minimum years of practice?

**Response:**
This would make the BOG less diverse and the ATJ Board would oppose this.

**Question:**
Experience with the WSBA?

**Response:**
For the same reasons as above we think this would not be appropriate.

**Question:**
Experience serving on a board of directors (public, private, non-profit or for-profit)?

**Response:**
This would be good to have but should not be required. Candidates from historically underrepresented groups would tend not to have this experience though this is changing over time.

**Non-Attorneys.** Per the WSBA Bylaws only Washington State licensed attorneys may be elected and serve as members of the BOG.

**Question:**
Some state bar associations include public, non-lawyer members on their governing board. Should the BOG include such members?

**Response:**
Yes. The WSBA serves the public in many ways. The public should be represented on the BOG.
Question:
The WSBA regulates Limited Professional Officers (LPOs) and, accordingly, they must pay annual licensing fees. In short order, the WSBA will regulate Limited Licensed Legal Technicians (LLLT). These individuals will also be required to pay annual licensing fees. Should members of these groups be permitted to serve as BOG members? Why or why not?

Response:
Since we support non-lawyer representation on the BOG, the answer to this question is yes. However, we do not think having LPOs or LLLT’s on the BOG is something to emphasize or particularly encourage. There are not many LPOs and no LLLTs and there will likely never be a large group of either. Also, they are licensed to do specific, limited legal tasks, so they do not have a particularly broad knowledge of the WSBA or what lawyers do. They also do not have any particular knowledge of or connection to the public service obligations of the WSBA. It is fine but not important to have them represented on the BOG.

Diversity. The BOG is composed of 15 Governors. Twelve Governors are elected, one per Congressional district, thereby ensuring geographical diversity. Three Governors are elected by the BOG itself. These “at-large” positions are designed to ensure racial and ethnic diversity.

Question:
Is geographic diversity important for the BOG? Why or why not?

Response:
The BOG should be geographically diverse. We do not have an opinion as to whether selection by Congressional district is the best way to achieve this. Selection by Congressional district means that there is an imbalance among lawyers in terms of representation with the large concentration of lawyers in King County. We have no opinion about whether or not this imbalance is inappropriate.

Question: Are there other dimensions of diversity that are more important or should be taken into consideration?

Response:
The type of diversity encouraged by our anti-discrimination laws and anti-bias efforts is far more important than geographic diversity.

Question: Are there alternative means to ensure racial and ethnic diversity on the BOG?

Response:
We don’t know. More appointed seats should be considered. Perhaps the Washington Supreme Court should select some BOG members.

Question: What concerns, if any, do you have if the majority of governors are appointed (as opposed to elected)?

Response:
This would not be of concern to the ATJ Board and could be an improvement over the current system.
February 14, 2014

Chief Justice Barbara A. Madsen
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

RE: FY 14 ATJ Board Funding from the Supreme Court

Dear Chief Justice Madsen:

Thank you for including $21,500 in the Supreme Court’s FY 14 budget for the Access to Justice Board. We are very grateful for these funds, and propose to use them as follows prior to June 30, 2014. These initiatives total only $20,000 because we left ourselves a small window in the event we have under-estimated expenses.

Access to Justice Forum: The ATJ Board is again hosting an ATJ Forum following the Goldmark Awards Luncheon on February 21, 2014. The forum includes a Supreme Court Round Table and a Celebration of Leadership (reception and recognition of the Equal Justice Community Leadership Academy and the awarding of the Rainier Cup). The Legal Foundation of Washington is paying for the room rental for both events and the food for the reception. As we did last year, the ATJ Board is paying for the microphones and AV support for both events. The estimated cost is $2,000.

ATJ Board Evaluation: We have contacted with John Tull for $10,000 ($2,000 of which is travel). The evaluation has taken up much more of John’s time than he anticipated given the broad range of issues and extensive evaluation instrument that we have developed through multiple drafts. Moreover, John now plans to spend five days in Washington (four in March and one in April) conducting focus groups, interviewing individual stakeholders and meeting with the ATJ Board. The Washington State Bar Association already has contributed $10,000 for the evaluation. John estimates his additional time at $5,000.

Living History Project: This is an interactive website that tells the story of the Access to Justice Movement in Washington State and which will be updated annually by members of the Equal Justice Community Leadership Academy. The ATJ Board committed to this project in 2009 and had been utilizing University of Washington Information School (ISchool) students for the initial development phases. The project has languished because of an inability to attract qualified students, and the press of other initiatives. The ATJ Board plans to contract with a web designer to complete the project by June 30, 2014 for an estimated cost of $10,000.

Civil Legal Needs Study: The ATJ Board will contribute $3,000 to the cost of developing the update to the 2003 Civil Legal Needs Study.

Please contact me if you have any questions regarding these proposed expenditures.

Thank you.

Kirsten Barron, Chair
Access to Justice Board

Cc: Ramsey Radwan, Director, AOC Management Services Division
Paula Littlewood, WSBA Executive Director
ATJ Board
BEST PRACTICES
PROVIDING ACCESS TO COURT INFORMATION IN ELECTRONIC FORM

OVERVIEW OF PROJECT METHODOLOGY

In December 2012 the American Bar Association Fund for Justice and Education awarded the Washington State Access to Justice Board a $20,000 Access to Justice Commission Expansion Grant to develop best practices for providing access to court information in electronic form. (Best Practices attached)

The ATJ Board’s experience developing the Washington State Access to Justice Technology Principles (ATJ Technology Principles, adopted by the Washington Supreme Court in 2004) uniquely qualified it to tackle the issue of best practices for electronic court records. Indeed, this project is part of the ATJ Board’s continuing efforts to implement the ATJ Technology Principles, as directed by the state Supreme Court.

A. Planning

The initial step in the planning process was to convene an advisory committee, which included the Access to Justice Board Manager and current and past chairs and several members of the ATJ Board Technology Committee. With the assistance of national consultant Richard Zorza, the advisory committee identified and invited John Greacen of Greacen & Associates to provide technical consultation for the project. As a former court clerk, John has expertise developing systems for improving access to the courts for self-represented litigants. He has evaluated programs to assist self-represented litigants in Alaska, Arizona, Arkansas, California, Florida, Maryland, Minnesota, and Virginia, and was a consultant to the Florida and Utah judicial branch committees in the development of their strategic plans for providing assistance to self-represented litigants.

The advisory committee then identified and invited Emily McReynolds, a current ATJ Board Technology Committee member, to serve as the project manager. In addition to her legal training, she previously worked as a grant coordinator for both a philanthropy consulting firm and a corporate social responsibility nonprofit.

The advisory committee defined its initial task as the evaluation of existing electronic filing arrangements and records systems, and developed key considerations for an accessible system which include:

- examining the cost barriers to widespread usage;
- understanding the business model of the third party provider;
- ensuring that information can travel between and among discrete data management systems via robust data exchange systems; and
- ensuring that information about accessing and using these systems, as well as any fee waiver information, is published in a way that meets some acceptable standard of public visibility and easy access and usage.
B. Outreach and Surveys

Necessary to the success of the project was building and fostering collaboration with key stakeholders.

The advisory committee drafted a survey to engage the Washington Association of County Clerks (WACC). The survey was developed with the input of John Greacen, Emily McReynolds and the current and immediate past chairs of the ATJ Board’s Technology Committee Brian Rowe and Hon. Don Horowitz (ret.). The survey was conducted through an e-mail request to Washington’s thirty-nine county clerks. Initially only ten clerks responded. Follow-up e-mails and phone calls improved the response rate, but the involvement of the WACC President Sonya Kraski was critical in ultimately achieving an impressive thirty-three of thirty-nine responses.

In an effort to strengthen support for the project, the advisory committee expanded its membership by adding WACC President Sonya Kraski and County Court Facilitator Connie Mayer.

Callie Dietz, Washington State Court Administrator, provided the consultant with contact information for all state court administrators in the United States for the purpose of his conducting a survey to collect information on information access policies and processes in other states. This led to the development of a survey of states with elected clerks of court and statewide court case management systems (whether or not the systems were implemented in every court in the state). Nineteen of twenty-four states having these characteristics responded. Callie Dietz also was very helpful in supporting the ATJ Board’s request for technical assistance for this project through the Center on Court Access to Justice for All at the National Center for State Courts.

Based on all this information, John Greacen prepared a first draft of the “black letter” Best Practices. The one page “black letter” Best Practice statements were reviewed and revised by the advisory committee. A proposed draft with comments was in turn presented for review at the October 15, 2013 stakeholder meeting.

C. Stakeholder Meeting

The October 15, 2013 stakeholder meeting was convened to solicit input from key stakeholders on the draft Best Practices. Facilitated by John Greacen, participants reviewed data collected during the project and then engaged in in-depth discussions on each proposed principle set forth in the draft. During the four-hour meeting, participants were both candid and helpful in their comments, which in turn informed the final draft of the Best Practices. A list of attendees follows:

Attendees:

- Rita Dermody – King County Law Librarian
- Connie Mayer – Kitsap County Court Facilitator
- Threesa Milligan – King County Bar Association, Pro Bono Services Director
- Vonnie Diseth – Director, Information Services Division, Administrative Office of the Courts
- Dirk Marler – Director, Judicial Services Division, Administrative Office of the Courts
- Geoff Revelle – Washington State Access to Justice Board
- Sonya Kraski – Snohomish County Clerk and President of the Washington Association of County Clerks
- Peggy Semprimoznik – Lincoln County Clerk
Michael Killian – Franklin County Clerk
Donald Horowitz – Former Superior Court Judge and past Chair of the ATJ Board Technology Committee
Brian Rowe – Project Coordinator for the Legal Services National Technical Assistance Project (LSNTAP), Chair of the ATJ Board Technology Committee
Joan Fairbanks – Access to Justice Board Manager
Emily McReynolds – Best Practices Project Manager
John Greacen – Best Practices Technical Consultant

D. Final Drafting and Work Product

Following the stakeholder meeting, the advisory committee continued to edit and refine the draft Best Practices. Drafts also were shared with members of the ATJ Board Technology Committee and staff at the Administrative Office of the Courts.

The structure of the final Best Practices document is designed to maximize the utility of this project both for the State of Washington and for other states. Each Best Practice “black letter” statement is followed by a general commentary with general applicability and a second commentary discussing its applicability within Washington. Therefore, both the process and the results of the project should provide insights for other states seeking to use or replicate Washington State’s Best Practices for Providing Access to Court Information in Electronic Form.

A report on the state level survey results has been provided to the National Center for State Courts for inclusion in its knowledge databases relating to current court information access practices.

attachment
Washington Access to Justice Board¹

Best Practices

Providing Access to Court Information in Electronic Form

Introduction to the Best Practices

These Best Practices are the result of a project of the Washington Access to Justice (ATJ) Board, an entity created by the Washington Supreme Court to recommend policies and actions to maximize access to justice within the state. This project was supported by the American Bar Association with funding from the Public Welfare Foundation. The project has benefitted from a broad-based advisory committee composed of County Clerks, representatives of the Administrative Office of the Courts, a family court facilitator, representatives of the Washington State Bar, members of the ATJ Board’s Technology Committee, and two consultants.

The project has been informed by and conducted pursuant to the Washington State ATJ Technology Principles adopted by order of the Washington Supreme Court on December 3, 2004; the Principles and the order adopting them are set forth in full as appendices to this document. Principle 6 is entitled “Best Practices” and reads as follows:

To ensure implementation of the Access to Justice Technology Principles, those governed by these principles shall utilize "best practices" procedures or standards. Other actors in the justice system are encouraged to utilize or be guided by such best practices procedures or standards.

The best practices shall guide the use of technology so as to protect and enhance access to justice and promote equality of access and

¹ The ATJ Board does not intend, by its acceptance and publishing of this report, to communicate agreement with or to endorse any legal opinions that may be set forth in the report, including as the breadth or applicability of existing rules or regulations relating to the availability of requesting or obtaining fee waivers."
fairness. Best practices shall also provide for an effective, regular means of evaluation of the use of technology in light of all the values and objectives of these Principles.

To understand these Best Practices, it is important to understand the context within which the underlying issues play out in the state of Washington. The judicial branch in Washington is not unified. The Washington state trial courts consist of several jurisdictional layers – the general jurisdiction Superior Courts, the limited jurisdiction District Courts, and locally created Municipal Courts. Local courts have leeway to set their own course within the broad context of policies and rules established by the Washington Supreme Court. The recordkeeping function of the Superior Court is performed by the County Clerk who serves “by virtue of his (or her) office” as clerk of the Superior Court. Most County Clerks are elected officials. District and Municipal Court staff are employees of the court they serve.

For thirty-five years, the state judiciary has operated a statewide information system known as SCOMIS which County Clerks use to enter information on all Superior Court cases. SCOMIS serves as an index to all cases in the state but lacks modern case management and calendaring functionality. The state judicial branch has attempted several times over the past decade to procure or develop a modern replacement for SCOMIS. None of those efforts has succeeded. During 2013, the Administrative Office of the Courts entered into a contract with Tyler Technologies to license its Odyssey case management system for use by Washington’s trial courts.

Using a statewide advisory committee structure and with the involvement of Tyler Technologies, the Washington state judicial branch is currently designing the details of the Odyssey implementation for Washington state and developing processes and practices for the new system that must conform to and advance Washington law and Supreme Court Rules and policies. That process is addressing some of the issues addressed in these Best Practices.

The Best Practices have been informed in substantial part by information gathered through two surveys. One was of all County Clerks within the state

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2 Washington Constitution, Article IV, Section 26 (parenthetical added).

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of Washington, asking their current processes for providing access to court
information in electronic form. Thirty of the thirty-nine Washington County
Clerks responded to the survey. The other survey was of state court
administrators in twenty-four other states that have elected clerks of court
and statewide court case management systems procured for all courts in the
state (although the statewide systems are not used by all courts in eight of
the states surveyed). Nineteen of the twenty-four states surveyed provided
the requested information.

This document is constructed in three parts: “black letter” statements of a
Best Practice, followed by commentary that explain the statements in
general terms that are intended to have wide applicability (captioned
General Commentary), followed by application of the principle within the
state of Washington (captioned Application in Washington). All of the “black
letter” statements are set forth in a single place at the beginning of the
document. They are then repeated with the two types of commentary
included.

As noted above, the implementation in Washington of many of the issues
addressed in the Best Practices remains unresolved. It is not the intent of
this Best Practices document to legislate or direct how those matters should
be resolved, but rather to present principles, information and suggestions
bearing on their resolution.

Best Practices

1. Court obligation to provide access to court information in
electronic form

To the extent that a court maintains its public records and
documents in electronic form, it should provide all court users
access to that information, to the extent it is feasible, in the way
that is most convenient for the user. This principle does not apply to
records and documents protected by “practical obscurity” policies.

2. Implementation of security and privacy software features and
procedures that ensure compliance with policies set forth in statutes
and court rules

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Systems implemented to provide public access to court electronic records and documents must ensure the security and privacy of those records, preventing unauthorized access to non-public court records.

3. Single point of access to court information and documents for an entire state

Court users should be able to conduct a search for relevant information on a single site for records for an entire state.

4. Access to documents through docket

Although this may not be the only means of access to them, court users should be able to access court documents directly from the court’s docket.

5. Ease of use

The processes for accessing court information should be easy to use for both infrequent and frequent users. Ease of use includes:

   a. Intuitive interfaces
   b. Easy to understand terminology to assist in the search function
   c. Language translation capability, to the extent feasible and affordable
   d. Ability to search for cases and documents using party name or case number, with initial screening for case type
   e. Ability to verify that a person whose records are found is the person for whom information is sought
   f. Easy to manage password function
   g. Availability of both individual and corporate accounts

6. Reasonable access fees

Fees charged for access to electronic court information should be as low as possible, should be reasonably related to the cost of
maintaining and providing access to the information, and should not serve as a barrier to court user and/or public access to such information. These principles should apply whether access services are provided by a public entity or by a contractor operating a system on behalf of a public entity. Such fees should be uniform across a state, set at the state level by legislation, court rule, or court policy.

7. Opportunity to verify the identity of a document before having to pay for it.

If fees are charged for access to or downloading of a document, a user should be provided with some means of verifying that the document to be accessed is the document the user desires before purchasing a copy of the document.

8. Exclusion of certain entities from payment of fees

No fee should be charged to legal services programs, pro bono attorneys working with a legal services program, public defenders, court-appointed attorneys, or public entities.

9. Waiver of fees for persons of limited means

If a general fee system is in place, fees should be waived for persons of limited means. The administration of the fee waiver process is as simple as possible for persons seeking access to court information, through implementation of these practices:

- Court users are informed of the availability of fee waiver on the website through which access is provided and how to find and use the fee waiver process
- Court users are again informed of the availability of fee waiver in the course of the process of requesting access to a court record – at the point that arrangement for payment of a fee is made
- The fee waiver application is as easy as possible to complete
• Court users are provided with a means for estimating whether they are eligible for fee waiver
• If a filing fee waiver has been approved in a case, it applies automatically to the payment of electronic court record access fees by the party for whom the filing fee waiver has been approved, for documents in that case.
• If a fee waiver is denied the court user is informed of the reasons for denial and the availability of appeal or any other remedy.

Best Practices and Commentary

1. Court obligation to provide access to court information in electronic form

To the extent that a court maintains its public records and documents in electronic form, it should provide all court users access to that information, to the extent it is feasible, in the way that is most convenient for the user. This principle does not apply to records and documents protected by “practical obscurity” policies.

General Commentary

As of the time of this best practices document, most courts use automated case management information systems to maintain their docket\(^3\) of filings and actions taken in a case. They are increasingly maintaining all documents filed in a case in electronic form. The best practice is for a court to make this information available to its users through an automated, online access process. Such a process is initiated and controlled by the user; court staff are not involved in individual information look ups or downloads by court users.

This policy applies only to “public” records. Many court documents, and some court dockets, are confidential (“sealed”). Confidential documents are available only to judges and their direct staff, designated court staff, and

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\(^3\) Many courts refer to this resource as a “register of actions.” Washington courts use the term “docket.”
authorized attorneys and parties. Federal law limits access to certain personally identifying information, such as social security and bank account numbers. Court rules prevent access to trade secrets and other privileged information. Privacy policies adopted by many state court systems also restrict access to broad categories of court records, such as those in cases involving juveniles, mental commitments, guardianships and conservatorships. All of these restrictions apply to access to court records in electronic form. While most of these non-public records are maintained electronically, access to them is limited to persons authorized to view them; they are not available to the public.

A number of states restrict remote, online access to certain categories of public court records that may be obtained at a courthouse. A typical provision requires persons seeking information in a family law case to obtain the information at the courthouse where the case is or was pending. The access may be through an automated system – typically a public access terminal in the court clerk’s office or waiting area. This policy preserves the “practical obscurity” of these records. Anyone can access them because they are a matter of public record; but s/he must go to the courthouse to obtain them, as was the case before the advent of electronic court documents. Persons intent on obtaining information in particular cases may do so, but the information is not available to persons who are simply curious and would like to search for the information online.

Some court records begin as a public record but are later made confidential. One example is an adult criminal record sealed after the fact by an order of expungement. Another is a criminal charge that is handled through a deferred prosecution program – the offender is placed on a form of informal probation; if s/he does not reoffend within the informal probation period, the charge is treated as if it had never happened.4 The problem with this information is not with official databases, which are modified upon entry of an expungement order or completion of a deferred prosecution program. Rather, the problem is with private databases (such as credit reporting and background investigation companies) and online indices (like Google), into which

4 Drug court programs operate on one or the other of these approaches – suspending prosecution on a criminal charge pending attempted completion of a drug court program or entry of a guilty plea to the charge, which is expunged upon successful completion of drug court.
which information was entered at a time it was public. Even after a court record has been sealed pursuant to court order, the information remains available in these private databases. All that the courts can do is to require entities that routinely obtain court information in bulk form to update their databases periodically to reflect current court data. However, in reality, these private databases are often not updated and this is vexing for the courts, and particularly so for the parties affected.5

These best practices require courts to protect the privacy of non-public information. But most court information is public. The best practice is to allow all users of court records to access all public information online – both for viewing and for downloading. There are many outside users of court records – attorneys, parties (some of whom are self-represented), credit reporting services, services that conduct background checks on potential employees, and other commercial users and resellers of court information, researchers, the press, and members of the public. Access by attorneys and self-represented parties is essential for them to gain access to the court and to its remedies. However, access by other users also serves important societal values – such as freedom of the press and the free flow of commerce through reliable credit information. And it is a basic tenet of an “open” court system that members of the public are entitled to information about court proceedings without having to justify their interest.6

5 North Carolina has a unique process. Its criminal data extract provides only demographic information on the criminal defendant and a list of case numbers associated with that defendant. Access to more detail about the case is available only from the online access – which insures that the data obtained is current. However, court users can nonetheless record the data disclosed by the online access, which may be changed by subsequent court sealing or expungement orders.

6 The Preamble to the ATJ Technology Principles states as follows: "This statement presumes a broad definition of access to justice, which includes the meaningful opportunity, directly or through other persons: (1) to assert a claim or defense and to create, enforce, modify, or discharge a legal obligation in any forum; (2) to acquire the procedural or other information necessary (a) to assert a claim or defense, or (b) to create, enforce, modify, or discharge an obligation in any forum, or (c) to otherwise improve the likelihood of a just result; (3) to participate in the conduct of proceedings as witness or juror; and (4) to acquire information about the activities of courts or other dispute resolution bodies. (Underlining added for emphasis).
“Screen scraping” technologies enable commercial information resellers to use public record look-up systems to download information for their databases. It is possible to block these processes, such as requiring a user to recognize and enter digits and numbers that are shown in a form that is not machine-readable. Courts take different positions on implementing such blocking technology. The best practice is to provide commercial users with customized reports or unique access through application programming interfaces so that courts can know who is accessing their information, can implement effective database updating requirements, and, when appropriate, generate revenue to support their technology applications from this source.

Courts realize practical benefits from making their records conveniently available online. The major court savings is in the form of staff time that is no longer required to respond to telephonic and in-person requests for information from court files. A secondary savings arises from the reduced need to make copies of such records, including certified copies. Even though courts are authorized to charge for such copying services, the fees received rarely cover the true costs of providing the service.

Although the best practice calls for courts to provide maximally convenient online access to electronic court records for all users, there are valid reasons for providing different access policies and processes for some users. Most states and urban areas have integrated criminal justice information sharing procedures to enhance public safety and efficient criminal case processing. These information sharing processes typically involve custom data exchanges and do not rely on public access processes. Courts are also justified in providing attorneys as well as self-represented litigants with online access to court records that are otherwise the subject of “practical obscurity” policies. Current thinking on access to justice in civil cases, particularly in family law cases, focuses on the importance for self-represented litigants to be able to obtain affordable unbundled (limited scope) legal representation from both legal services and private bar attorneys. Courts are adopting rules to encourage attorneys to provide such

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7 Often referred to by courts and attorneys as “pro se” or “pro per” litigants – from the Latin phrase appearing “in propria persona.” Use of such terminology is discouraged in most court systems today because it simply confuses the very persons to whom it refers.
representation. Allowing attorneys online access to family court records, despite “practical obscurity” policies, would facilitate and reduce the cost of such practice.

Implementation of this best practice requires a significant investment on the part of a court system – in terms of resources invested in the development of policies to govern access processes, in the development and maintenance of automated systems to implement them, and in monitoring and improving the services provided. Most commercial off-the-shelf court case management information systems contain document management applications to support public access both to docket information and to court documents maintained in electronic form. And revenues generated from these systems generally more than cover the costs of implementation. But the systems must be paid for before the revenue can be generated. Consequently, the Best Practice contains a caveat that while features necessary to provide meaningful access are required, other particular features that maximize user convenience, while highly desirable, must be balanced against both the technical and fiscal feasibility of implementing and maintaining them.

Application in Washington

The policy background within Washington State for these issues are established by Washington Supreme Court General Rules 31\(^8\) and 22\(^9\). These general rules do not apply the “practical obscurity” principle to any categories of Washington court records. However, the Judicial Information Systems Committee in September 2013 added Section V to its Data Dissemination Policy prohibiting the electronic dissemination of juvenile offender records.\(^{10}\) General Rule 30 governing electronic filing includes

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\(^8\) General Rule 31 authorizes public access to court records that are not otherwise restricted by law, court rule, or court order, places responsibility for redacting personally identifiable information on the party or attorney filing a document, and requires persons obtaining “bulk records” to enter into a contract with the state court system or local clerk of court for such access.

\(^9\) GR 22 applies to family law and guardianship cases and restricts access to financial source documents, personal health records, confidential reports and unredacted judicial information system database reports used in making judicial determinations to judges and court staff, parties in a case and attorneys of record in those cases.

\(^{10}\) [http://www.courts.wa.gov/datadis/?fa=datadis.policyDiss#V](http://www.courts.wa.gov/datadis/?fa=datadis.policyDiss#V)
provisions concerning the processes to be used for electronic collection of filing fees, and requires waiver of filing fees for electronic processes consistent with those in non-electronic filing processes. General Rule 34 governs waiver of filing fees and surcharges in civil matters on the basis of indigency and sets the standards for indigency to be used by all judicial officers in reviewing fee waiver applications.

As of the time of this best practices document, 38 of the 39 counties use SCOMIS to maintain their docket of filings and actions taken in a case. The County Clerks are increasingly maintaining all case documents in electronic form in independent document management systems.

The Washington judicial branch has provided public access to publicly available information in SCOMIS from the judicial branch website. Roughly half of Washington’s counties currently provide access to superior court electronic court records. Nineteen of the thirty counties who responded to our survey report that they currently maintain some or all of their court records in electronic form and allow court personnel, attorneys and the public to access them. Five other counties have plans to implement electronic documents and public access to them some time in the future. Seventeen counties use a private vendor called Clerk ePass to provide access to online copies of their electronic documents, including certified copies. Other means used to provide access to electronic documents are through a vendor called LibertyNet, the use of LaserFische accessible from the county website, the digital archives at the Washington Secretary of State’s Office, and the use of public kiosks in the County Clerk’s office.

2. Implementation of security and privacy software features and procedures that ensure compliance with policies set forth in statutes and court rules

Systems implemented to provide public access to court electronic records and documents must ensure the security and privacy of those records, preventing unauthorized access to non-public court records.
General Commentary

Public access processes must not compromise the security of any court records, nor the confidentiality of court records that are not available to the public. Commercially available software is now available that provides sophisticated “role based” security – the extent of one’s access depends on one’s role in the justice process and in a particular case. Nonetheless, these processes require vigilant monitoring and require that court users maintain the confidentiality of their personal access codes. Maintenance of secure systems is the responsibility of a specified database manager or management group in any automated system.

Application in Washington

Our survey did not ask about the security features of current electronic access processes in Washington State.

3. Single point of access to court information and documents for an entire state

Court users should be able to conduct a search for relevant information on a single site for records for an entire state.

General Commentary

Requiring users to conduct searches on multiple websites within a state is time consuming, inefficient, and, in some cases, so burdensome that it constitutes a bar to effective access to those records.

Constructing a mechanism by which court records for an entire state can be accessed from a single site is a relatively straightforward technical effort with today’s powerful search engine technologies. The easiest way to provide this form of access is to maintain all records in a single database. Fourteen states with elected clerks of court and statewide case management systems that responded to our survey provide access to court docket information in this manner. Two additional states plan to create such a statewide database in the near future. North Carolina is a special case; the
North Carolina legislature in 1997 authorized the Administrative Office of the Courts to manage electronic distribution of and access to clerks’ records through non-exclusive licensing agreements for remote public access.

Three states have similar systems for access to electronic court documents. One of them is North Dakota, an Odyssey system user. The other two are Nebraska and New York. Two other states – Kentucky and West Virginia – plan to institute such statewide access in the future.

However, that is not the only way in which to accomplish the objective of a single point of access. It is also possible to create links to multiple case management and document management systems for access to particular records. No state that responded to our survey currently uses such a process for access to electronic court documents although North Carolina uses that process for access to court docket information.

Access is rarely provided from a production database; it is typically provided from a redundant database that also serves as part of a system’s security infrastructure. Use of a source other than a production database necessarily means that there will be some time lag between the entry of data and documents into official court record systems and their availability to the public. One approach is to perform backups to the public access site overnight, which can result in a lag of as much as a full work day for information entered in the morning. An access website should disclose the lag time to users so that they can accurately understand the currency of the information they obtain from a search.

Application in Washington

Washington currently provides a single point of access to SCOMIS court docket information. The state has not yet decided whether or how to provide a single point of access to court documents in electronic form.

4. Access to documents through docket

Although this may not be the only means of access to them, court users should be able to access court documents directly from the court’s docket.
General Commentary

Accessing a court docket is the way that judges and court staff learn that an electronic court document exists. Being able to “click” on the document name or on an icon symbolizing the existence of an electronic document is the only acceptable means of accessing court documents for persons working in the court. Document management systems that do not use the court docket as the index to the document images are inefficient and irritating for court personnel. They require a judge or court staff to review the docket to learn of the existence of a document and then review a different index of electronic documents to locate and access that document. Such processes have the same effect on other users of court information.

Access through the court docket is a logical way for users of court information to access electronic court documents. Finding a case involving the person of interest and locating the document within the case docket is the most typical progression for most persons trying to locate a court document. However, this is not the process that bulk data users prefer. They prefer a download of all information relevant for their databases for a specific time period (for instance, information concerning all cases filed or disposed of during the last calendar month).

It may be that court users would prefer a different access process that would allow them to search directly for relevant documents without having to review a court docket – a process that works more like a modern web search engine. Court systems and their automated systems vendors should remain open to satisfying changing customer desires in this regard.

Application in Washington

The Odyssey application uses the court docket as the index to electronic court documents.

5. Ease of use

The processes for accessing court information should be easy to use for both infrequent and frequent users. Ease of use includes:
a. Intuitive interfaces
b. Easy to understand terminology to assist in the search function
c. Language translation capability, to the extent feasible and affordable
d. Ability to search for cases and documents using party name or case number, with initial screening for case type
e. Ability to verify that a person whose records are found is the person for whom information is sought
f. Easy to manage password function
g. Availability of both individual and corporate accounts

General Commentary

Design of court information access processes must take into account the needs of infrequent users, such as self-represented litigants who will likely have only one case in their lifetime and members of the press and public trying to find information on a single case or person, and frequent users, such as attorneys, public agencies (such as law enforcement, probation, corrections, child protection services, and child support enforcement entities), and commercial data resellers. A process that is simple enough for an infrequent user will prove cumbersome for a frequent user. Court information access processes must meet the needs of all users – requiring the development and support of multiple access portals. User accounts should be available in both individual and corporate or agency forms for the same reason.

Access paths must comply with a number of “ease of use” principles.

All interfaces must be intuitive and presented in language understandable by the intended users of the interface. For infrequent users, all instructions and information descriptions should be in plain English understandable at a third grade reading level. While it may be infeasible in many jurisdictions to provide multiple language translation services for all court documents, it should be feasible to provide user interfaces in the principal languages of the community served by a court. This feature would allow interested persons to locate and identify relevant documents – for which they would be obliged to find their own translators.
Court jargon – such as case type and document type descriptors – should be translated into plain English or presented together with a glossary of terms allowing a user to navigate a court docket. Courts face special problems with simplification of terms when obscure language is contained in state statutes.¹¹

Users should be able to conduct searches using either party name (including corporate or business name) or case number. They should have a means of verifying that a person or entity located (James Jones or Smith Corporation) is the James Jones or Smith Corporation about whom they are seeking information. Ability to verify address and date of birth for a party are helpful in this regard.

Court information access processes should also support straightforward user name and password functions – functions that do not require the user to change their passwords repeatedly. For instance, some courts allow attorneys to use their bar number as their user name and their last name as their password.

Application in Washington

It is not clear the extent to which Odyssey access processes are consistent with these principles.

6. Reasonable access fees

Fees charged for access to electronic court information should be as low as possible, should be reasonably related to the cost of maintaining and providing access to the information, and should not serve as a barrier to court user and/or public access to such information. These principles should apply whether access services are provided by a public entity or by a contractor operating a system on behalf of a public entity. Such fees should be uniform across a state, set at the state level by legislation, court rule, or court policy.

¹¹ For instance, the Washington state legislature has renamed “divorce” as “dissolution” – a term not in widespread use among the general public.
General Commentary

Research conducted for this best practices project shows that court systems with statewide case management systems and elected clerks of court employ a wide range of fee structures and fee amounts for accessing court information. Our survey addressed three different types of fees – fees for accessing court docket information about the events and filings in a case, fees for accessing court documents maintained in electronic form, and fees for filing documents electronically. Fee structures are very different for access to court docket information and for access to court documents and electronic filing. Most states do not charge for the former – to the extent that the information is provided from a statewide aggregated resource.12 Nebraska, North Carolina, and Wisconsin are exceptions, as outlined below.

Nebraska provides access to court electronic documents through its docket information access process. It charges for access to each case record, which includes both the docket and document information for that case. Users who plan frequent access can subscribe to the service and receive monthly bills for their use. They are charged $1.00 per case accessed; this charge includes access to all PDF document images in the case. There are two other payment options: “Bulk rate” users can make searches of unlimited numbers of cases per month for a single $300.00 monthly charge; persons only seeking access to cases for a single individual can pay $15 by credit card for each name search and can view up to 30 case records identified by the search (but cannot access documents associated with the case through this process).

North Carolina provides access to basic criminal and civil case information free from public terminals in each courthouse. But if a user wants access to that data online, it pays a $495 set up charge which includes two user IDs (additional user IDs cost $70 each). It then also pays a charge of 21 cents per transaction for access to case information. North Carolina also provides eight tailor-made data extracts, such as a monthly output of criminal case

12 In a number of the 24 states surveyed, statewide docket information is available for only some case types or court types, or only for counties that use the statewide case management system. In those states, some local clerks of court often have their own processes for providing access to information not available through the statewide system, often with some sort of charge.
data (for $478 per month), an historical compilation of demographic information on all criminal defendants in the state database ($1,948), a daily demographic extract on new criminal defendants ($312 per month), and historical and weekly extracts of evictions and tax lien cases (from $2,839 for the historical evictions data to $365 per month for the monthly tax lien data extract).

Wisconsin offers a SOAP application allowing users to conduct bulk record searches for $500 per month or $5,000 per year.

Relatively few of the states surveyed have progressed to statewide electronic court records systems available online. Of the nineteen states that responded, only two – Nebraska and New York (for some case types) currently provide statewide online access to electronic documents. Three states – North Carolina (for its e-filing pilots), North Dakota, and Wisconsin – provide online access to electronic documents for attorneys (and, in Wisconsin, for parties) for cases in which they have entered an appearance; these states do not provide online access to the public. Two other states – Arizona and Arkansas – provide public access to electronic documents, but only in those counties in which e-filing has been implemented. In nine states\(^\text{13}\) the initiative for creating electronic documents – generally by scanning documents filed in paper form – has been at the local level; in these states online access to electronic documents is available in a few counties but not statewide. In Arkansas, the electronic records process has been provided through a statewide automated system, but the decision whether to provide online access to documents resides with each county clerk. The remaining four states that responded to the survey have no current online electronic document access processes. Access to electronic documents is available in a number of these states through public terminals in courthouses.

Seven of the states with no current online access, or online access in only a few counties, are planning to develop and implement systems that will provide online access to electronic court documents to the public through

\(^{13}\) Arizona, Idaho, Maryland, Michigan, Nevada, Pennsylvania, South Carolina, Virginia, and West Virginia.

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statewide applications. An eighth state (Montana) is planning a system of statewide online access for attorneys only.

Fees for access to court documents in electronic form vary significantly and are often related to fees charged to file a document through an e-filing application. North Dakota (whose e-filing system was provided by a vendor but operated by the state court system) does not charge an e-filing fee and provides free access to electronic court documents (which are available only to attorneys). North Carolina charges a training fee of $50 for each attorney participating in its pilot e-filing system, plus a convenience fee for use of a credit card for paying filing fees (which goes to the credit card vendor, not to the court system) but does not charge for viewing documents filed electronically.

Wisconsin charges $5 per case for e-filing of all documents in a case; e-filing users have access to all documents in their case. Wisconsin does not allow public access to electronic documents. Wisconsin built and operates its own electronic filing and records system.

Arkansas (whose e-filing system was similarly provided by a vendor but operated by the state court system) charges a one-time $100 registration fee to persons participating in the e-filing system. Like Wisconsin, Arkansas’ e-filing system, which is in operation in only one county, charges $20 per case, but only for cases for which a filing fee is required.

Michigan has six current electronic filing pilots. Each pilot uses an e-filing vendor, but different commercial e-filing vendors serve different counties. One pilot charges $4 per document filed electronically or $7 if the filer uses electronic service as well as electronic filing; the other five pilots charge $5 and $8 per filing.

Arizona also uses a commercial electronic filing vendor. It charges both e-filing fees and fees for viewing electronic court documents. Its e-filing fees are $6 per document filed; $5 goes to the e-filing vendor and $1 to the state court system. Its document access fees have several tiers: access to a document can be obtained for $10 paid by credit card; frequent users can

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14 Arizona, Idaho, Kentucky, Maryland, Massachusetts, Oklahoma, and West Virginia.
subscribe at various rates, e.g., 20 documents for $80; for the highest volume users, rates are roughly $2 per document.

Nebraska’s fee system has been described previously.\textsuperscript{15} There are three processes – all based on a name search in the case management information system. Persons conducting an individual name search are charged $15 per search and are entitled to view case details (but not documents) in up to 30 cases reported in the name search. Subscribers get free name searches but pay $1 per case to view case details, including all electronic documents. Bulk subscribers avoid the per case viewing fee; they get access to unlimited name searches and all of the documents in those cases for a $300 monthly subscription fee.

By contrast, the federal court system’s\textsuperscript{16} electronic filing is free. Access to electronic court documents is through its PACER application. A party to a case receives free access to all filings in that case; however, if the party or attorney does not download the document for its future use when it is provided automatically, s/he is charged for subsequent access to the document. PACER charges $.10 per page, with a cap of $3 per document. Fees of $15 or less per quarter are waived.

Recognizing that the survey for this project was addressed to less than half the states, the results nonetheless suggest some conclusions. Systems operated by commercial electronic filing vendors appear to cost filers far more than systems operated by state court systems (compare North Dakota with no fees, North Carolina with only a one-time $50 training fee per user, Wisconsin with a $5 fee per case, Nebraska with no e-filing fees and a name search based access to information and records fee system, and Arkansas with a one-time registration fee per user and a $20 per case fee with Arizona and Michigan whose commercial e-filing vendors charge fees of $5 to $8 per document filed). Wisconsin reports that its $5 per case fee pays for the

\textsuperscript{15} Nebraska did not answer the question concerning use of an e-filing vendor. It appears that Nebraska operates its own e-filing and electronic records system since its fee system is unlike any used by an e-filing vendor.

\textsuperscript{16} Federal court clerks are appointed by the court; they are not independently elected officials. Consequently, the federal courts are not comparable to the 24 state court systems surveyed.

Washington ATJ Board Best Practices
support, maintenance and upkeep of its internally developed electronic filing system by its IT department.

The best practice is to charge fees for access to court electronic information that are:

- as low as possible,
- reasonably related to the cost of providing the service,
- in no event so high as to constitute a barrier to court user and public access to court information,
- uniform throughout a state, and
- established according to these principles whether services are provided by a public entity or by a contractor operating an access service on behalf of a public entity.

The processes that result in the lowest fees are those that charge no fees, charge only one-time registration or training fees, or charge fees on a per case basis. The processes that result in the highest fees are those using commercial e-filing vendors who charge fees on a per filing basis.

Wisconsin’s example suggests that a modest per case fee, coupled with a bulk user convenience fee for access to information in electronic form, will generate sufficient income to support and maintain statewide e-filing and electronic records systems. The experience of the federal courts provides support for that point of view.

It appears relatively obvious that policies by which courts share in commercial vendor e-filing fees are receiving revenues unrelated to the cost of providing the service.

To our knowledge, no research has been done to determine what fee level would constitute a barrier to user and public access. However, keeping this principle in mind when determining access fees should contribute to sound court system decisions on fee issues. A one-time registration fee of $50 to $100 dollars for access to electronic filing and electronic record access provides very inexpensive access for frequent court users such as attorneys and information resellers. However, this practice creates a significant barrier for self-represented litigants desiring to present one case to the courts. It
would be advisable to waive the one-time fee for self-represented litigants or for having a much lower fee applicable to them. Having adequate exclusion and fee waiver processes, as discussed below, will be also be relevant to ensuring that access fees do not become a barrier to access to information and thus meaningful access to justice for court users or for members of the public.

It is also a best practice to have uniform access fees across a state. The survey disclosed that uniform fees are currently set at the state level, or will be made that way for future systems, in ten states. They are made at the local level in two states. One state makes fee decisions at the state level, but the fees vary from county to county. In four states, some fees are set at the state level and others are set at the local level.

The survey information suggests that access fees differ markedly when they are provided by contractors rather than by public entities themselves.

**Application in Washington**

Access fees in Washington are currently set at the local level, and vary from county to county.

King County’s award-winning e-filing system is mandatory for attorneys (unless the requirement is waived) and recommended for other court users. There is no charge for filing documents electronically. The County Clerk’s ECR Online application provides access for viewing, printing and saving documents in certain case types filed since 2004 for $.15 per page. Users are required to establish a declining balance account in order to use the system.

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17 Two states do not currently have policies on this issue.
18 2007 Innovation in American Government Award from the John F. Kennedy School of Government at Harvard University.
19 Criminal cases, civil cases other than petitions for domestic violence or antiharassment protection orders, and probate cases, except for guardianship cases. See Local General Rule 31, Access to Court Records.
Pierce County\textsuperscript{20} charges a $25 set up fee to subscribe to its electronic data base. The cost of subscriptions for unlimited access to public electronic court records is $150 per year or $25 per month for attorneys and $150 per year for non-attorneys. Access to all documents in a single case for non-subscribers (for an attorney, a party, or a non-party) costs $25. Chapter 4.119 of the Snohomish County Code limits the access fees the County Clerk may charge to “the costs of providing access to electronic superior court records and maintaining, enhancing, and operating said service.”\textsuperscript{21}

A number of counties use ClerkePass – a commercial service – which charges a $4 convenience fee for each case accessed, plus $.25 per page for access to electronic court documents.

A number of County Clerks send their electronic court records to the digital archives at the Secretary of State’s office, where they can be accessed online. The fee for access is $1 per document plus $0.25 per page.

Fees to be charged in Washington in the future have not yet been set and will depend on the configuration of a future access to electronic court information process.

7. Opportunity to verify the identity of a document before having to pay for it.

If fees are charged for access to or downloading of a document, a user should be provided with some means of verifying that the document to be accessed is the document the user desires before purchasing a copy of the document.

General Commentary

Arizona’s access process allows the user to view $\frac{3}{4}$ of the first page of a document before deciding to pay for access to the full document for review.

\textsuperscript{20} Pursuant to Pierce County Ordinance No. 2005-85, incorporating Code Chapter 2.08. These code sections are attached as an appendix.
\textsuperscript{21} Chapter 4.119 is attached to these Best Practices as an appendix.
or downloading. This practice, or a similar one, should be a best practice for access processes for which a fee is imposed. The purchaser should be able to ensure that what s/he is buying is what s/he wishes to buy.

A number of states provide free access to the court docket or register of actions for public cases and public documents in those cases. While the docket sets forth the full title of the document as used by the filer (including a judge filing an order or a court clerk filing a notice), that title is not necessarily sufficient for an unsophisticated user to ensure that the document is the one s/he is seeking.

Application in Washington

The Washington Secretary of State’s Digital Archives, to which a number of County Clerks send copies of their records, provides free access to the top half of the first page of a document for this purpose.

The state court system has not yet addressed this issue in its design of a statewide access to court electronic information process.

8. Exclusion of certain entities from payment of fees

No fee should be charged to legal services programs, pro bono attorneys working with a legal services program, public defenders, court-appointed attorneys, or public entities.

General Commentary

Three states responding to our survey reported that public entities are exempt from paying access fees. In Nebraska, any entity may petition to be exempt from payment of access fees; half of all access requests filled in the state each year are free. Only one state reported that it requires public entities to pay access fees; Arkansas’ $100 registration fee is applied to each individual user regardless of that person’s employer. Many states responding to the survey have not yet established policies on these issues.

Waiver of fees for court-appointed and pro bono attorneys presents a technical challenge not presented by waiver for public entities and their...
employees. Waivers for entities apply to any information request made by an employee of the entity. Waivers for court-appointed and pro bono attorneys apply only for access to documents in a specific case on behalf of the party represented for free or at state expense in that case. Programming an application to record and apply a case-by-case fee waiver determination is harder than those that apply to an attorney or party generically. Nevertheless, the Best Practice is to exclude attorneys in these categories from paying access fees in recognition that these forms of representation are clearly a form of public service; performance of such public service should be encouraged in every way possible, including by waiver of electronic access fees.

Application in Washington

Washington does not yet have a statewide policy on this issue. General Rule 34 calls for the automatic waiver of filing fees and other surcharges, the payment of which is required to gain access to the court system for persons represented by Qualified Legal Services Providers. But while this rule does not apply to other public entities and General Rule 34 does not apply to fees charged for access to court information, it should be considered as a model adaptable to this situation.

Snohomish County does have such a policy, set forth in Chapter 4.119 of the Snohomish County Code (included as an appendix to these Best Practices). The Snohomish County policy is both broader and narrower than the recommended Best Practice. It authorizes the County Clerk to exempt “employees of not-for-profit organizations or corporations whose primary purpose is to provide access to justice for the poor and infirm” which empowers the County Clerk to waive electronic access fees for organizations such as domestic violence advocates and the Public Defenders’ Association. The Snohomish County policy does not apply to court-appointed attorneys who do not meet the above criteria.

The Pierce County Code exempts all Government Subscribers, defined as “any federal, state, local governmental entity or non-profit legal services, legal aid, or pro bono agency which registers as such with the Clerk.” Government Subscribers are not exempt from the $25 set up fee.
9. Waiver of fees for persons of limited means

If a general fee system is in place, fees should be waived for persons of limited means. The administration of the fee waiver process is as simple as possible for persons seeking access to court information, through implementation of these practices:

- Court users are informed of the availability of fee waiver on the website through which access is provided and how to find and use the fee waiver process
- Court users are again informed of the availability of fee waiver in the course of the process of requesting access to a court record – at the point that arrangement for payment of a fee is made
- The fee waiver application is as easy as possible to complete
- Court users are provided with a means for estimating whether they are eligible for fee waiver
- If a filing fee waiver has been approved in a case, it applies automatically to the payment of electronic court record access fees by the party for whom the filing fee waiver has been approved, for documents in that case
- If a fee waiver is denied, the court user is informed of the reasons for denial and the availability of appeal or any other remedy.

General Commentary

Ten states responding to our survey have, or plan to have, a fee waiver process in place for its e-filing and electronic information access processes. No state reported that it has declined to implement such a practice. A number of states do not yet have policies on fee issues for electronic court record access.

For a fee waiver process to be effective in eliminating the possibility that access fees will become a barrier to access to court electronic information, a number of specific practices must be followed:
• The availability of fee waiver is prominently announced on the website through which access is provided, so that persons interested in obtaining court information in electronic form are told of the availability of waiver for persons of limited means whenever fees are mentioned. They are also told where and how to access the fee waiver process.

• The option to prepare and submit a fee waiver application is a prominent alternative to the payment of access fees by credit card or otherwise – and provided to the user at the same point in the process for requesting access to court information that payment is requested.

• The fee waiver application itself is as easy as possible. State policies should allow persons to qualify for fee waiver automatically if they are recipients of public benefits. The financial information required for a fee waiver for a person not receiving public benefits should be as limited and straightforward as possible. The fee waiver application should be an electronic form provided by the access application at the time payment is requested, fillable online and submitted automatically, without pre-payment of the fee, at the time the request for access to information is made. Court action on the fee waiver request, if not automated, should be as quick as feasible. The requester should receive email or text message notification of the action taken on the fee waiver application.

• The fee waiver requester should receive immediate feedback from the access request system whether the information entered into a fee waiver request is likely to result in a fee waiver. The requester can then choose to pay the access fee rather than proceed with an application that will be rejected, or add additional information providing grounds for making an exception to the court’s standard fee waiver policy.

• If a filing fee has already been waived, all electronic access fees are waived automatically for that party in that case, and this policy is applied automatically during the access request process to a person requesting access to court information whose filing fee has been waived, and the person is promptly and clearly told that has happened.

• If a filing fee is denied, the user receives information on the reason(s) for denial and the availability of appeal or any other avenue available to the user to obtain a different decision.
These policies have significant technical implications for the development of automated court applications needed to implement them. The processes described above require considerable automation sophistication. It is not reasonable to expect that courts can implement them without the support of automated applications. The inclusion of the phrase “as possible” in the second sentence of this Best Practice is intended to recognize that issues of technical and fiscal feasibility may require postponement of the implementation of some of the features of a complete fee waiver process.

Application in Washington

The Pierce County ordinance recognizes that the per case fee for access to court electronic documents can be waived, and provides that General Rule 30.6(b) will apply with respect to waiver of litigant case subscriber and setup fees. That is probably a reference to current General Rule 30(e)(2) which provides that electronic filing fees will be waived whenever non-electronic filing fees would be waived.

Washington’s General Rule 34 governs waiver of filing fees and surcharges in civil matters on the basis of indigency and sets the standards for indigency to be used by all judicial officers in reviewing fee waiver applications. The Washington rule provides that persons receiving various forms of public benefits are automatically entitled to fee waiver. However, the rule does not presently apply to fees charged for access to electronic court information. The rule also does not contain all the specific implementation practices recommended in these best practices. They will have to be addressed as Washington’s statewide electronic filing and access to electronic court information processes are developed.
WASHINGTON STATE ACCESS TO JUSTICE BOARD

Significant Accomplishments

(1994 – 2014)

Recognizing that access to the civil justice system is a fundamental right, the Access to Justice Board (ATJ Board) works to achieve equal access for those facing economic and other significant barriers. Every aspect of the Board’s work has a direct impact on the elimination of bias and barriers in the justice system. A body with no formal power or authority, the ATJ Board has nevertheless established itself as a permanent fixture in Washington State’s civil equal justice landscape. The ATJ Board, in collaboration with its many partners in the Washington State Alliance for Equal Justice, has accomplished much during its first twenty years. Its current initiatives expand on these accomplishments, described below.

1. **Unifying Vision, Values and Planning:** The ATJ Board is the primary planning body for all matters relating to the delivery of civil legal aid services in Washington State. It has adopted a vision and set of unifying core values (the Washington State Alliance for Equal Justice Hallmarks) in which all initiatives are grounded. Its State Plan details the design, organization, and support of a non-duplicative, integrated, efficient and effective legal aid delivery system. Its State Plan and Performance Standards create common expectations for all organizations involved in legal aid delivery and guide decisions regarding the investment and allocation of funding.

2. **Public and Private Funding for Civil Legal Aid:** The Equal Justice Coalition, a committee of the ATJ Board administered by the Legal Foundation of Washington, has worked since 1995 to successfully defend and expand state and federal legal aid funding in concert with other justice system funding initiatives and justice system partners, including the Washington State Office of Civil Legal Aid and the Washington State Bar Association. The ATJ Board worked for years to unify private legal aid fundraising efforts under a single umbrella. Those efforts are now successfully being implemented through the Campaign for Equal Justice, managed by Legal Aid for Washington Fund (LAW Fund).

3. **Technology Infrastructure and Support:** The ATJ Board has worked to ensure the existence of a uniform technology platform that ties all legal aid providers together in a seamless system. Recently, the ATJ Board was instrumental in creating JusticeNet, a dedicated system and innovative model of building broadband communications infrastructure in underserved areas of the state. The ATJ Board provides ongoing support for network-wide technology systems development efforts, and ensures consistent and inclusive coordination of technology initiatives between Alliance members and other key stakeholders, including the Office of the Administrator of the Courts.

4. **Coordination With and Integration Into the Judicial Branch:** The ATJ Board has been successful in securing heightened judicial branch awareness of civil legal aid as a core judicial branch function and promoting coordinated efforts with key judicial branch entities on technology, judicial and public legal education, and in defending and expanding resources available to meet the civil legal needs of low income Washingtonians. A notable example is the establishment of the Office of Civil Legal Aid (OCLA) as a separate and independent agency in the judicial branch.

5. **Quantifying Unmet Civil Legal Needs and the Cost of Addressing These Needs:** The Supreme Court’s Task Force on Civil Equal Justice Funding was established at the request of the ATJ Board and staffed in large measure by the ATJ Board. The Task Force produced this state’s first comprehensive Civil Legal Needs Study in 2003 and published a report making a series of recommendations relating to the amount, administration and oversight of state legal aid funding. These reports served as the catalyst for substantial increases in state funding and for the passage of legislation creating an Office of Civil Legal Aid.
6. **Building a Sense of Community and Commitment to the Cause of Civil Equal Justice:** For seventeen years, the ATJ Board hosted its annual Access to Justice Conference in conjunction with the WSBA Bar Leaders Conference. In recent years, the conference built its theme and programming around current and cutting edge topics, which in turn has generated concrete actions to address these issues (e.g., immigration reform, eliminating bias in the justice system). The conference also served as an opportunity for networking and the sharing of information and expertise, and for building community throughout the state among supporters of access to justice. Although WSBA no longer provides funding for the Conference, the ATJ Board continues to build community through involvement in justice system activities, through its own committee initiatives and by building and expanding community through leadership development.

7. **Leadership Development – Bridging Divides and Strengthening the Delivery System:** After many years of actively promoting leadership development in this state to address cultural and organizational gaps between legal aid and pro bono providers, expand coordination and planning at the regional level, and empower a new and expanded community of program leaders throughout the state, the ATJ Board, in partnership with Alliance organization, launched the Washington State Equal Justice Community Leadership Academy (EJCLA) in 2013. With training designed and facilitated by The Sargent Shriver National Center on Poverty Law, EJCLA is designed to create a broader, more diverse, skilled and effective community of equal justice leaders prepared to build and protect this state’s values-driven state justice community into the future. Drawn from Alliance programs and community partners throughout the state, the first 28 member Cohort graduated in October 2013 and the second year Cohort will graduate in October 2014.

8. **Inclusion, Diversity and Cross Difference Competency:** Recognizing the need for the legal aid delivery system to be responsive and accountable to the needs of a diverse client population, and the corresponding responsibility of legal aid providers and support entities to be inclusive, diverse and culturally competent, the ATJ Board has over the years sponsored and promoted training and initiatives on concepts of inclusion, diversity and cross-difference competence as a justice system imperative. The ATJ Board integrates these principles into all aspects of its work, including the recruitment of volunteers and its priority-setting process. Examples of this include the ATJ Board’s work to address complex access issues facing persons with disabilities through court rules and judicial education; and the development and implementation of recommendations on immigration and civil rights.

9. **ATJ Technology Principles (Technology Bill of Rights):** The ATJ Board was the initiator, host and sponsor of the nationally recognized effort to develop core principles and values that are designed to ensure that the development, implementation and adaptation of technology systems are carried out in a manner that ensures full inclusion of all members of society. The ATJ Board’s Technology Bill of Rights project (TBoR) led to the development of the Access to Justice Technology Principles that were adopted by the Washington Supreme Court in 2004 and that are in the process of being implemented statewide and nationally.

10. **Unifying the Access to Justice Message:** The ATJ Board has developed a unifying brand for all civil legal aid related activities in Washington State. This brand – the Alliance for Equal Justice – binds all providers in the state under a common banner and establishes expectations for coordination, messaging and communications. The Alliance banner expands understanding of and support for all legal aid related efforts, from resource development to expanded delivery services.

11. **Improving Access for Pro Se Litigants:** In collaboration with the Administration Office of the Courts, the Office of Administrative Hearings, the Washington State Bar Association, civil legal aid providers, court clerks and judges, the ATJ Board is coordinating the implementation of a long-term and visionary plan for institutionalizing support for individuals who are unable to obtain counsel in state court or before administrative agencies. Phase 1 of the project is nearly complete, which is to convert mandatory family law forms into plain language format.

12. **Establishing Public Legal Education as a Core Access to Justice Principle:** The ATJ Board helped to launch the Council on Public Legal Education, which was, until recently, hosted by the
Washington State Bar Association. A primary focus was educating young people regarding their legal rights and responsibilities by championing the need for strong civics education in the schools.

13. **Coordinating Law School Participation in the Alliance**: The ATJ Board has worked to ensure that every law student in the state has an understanding of the importance of public interest law, familiarity with the Alliance for Equal Justice community, an opportunity to work with Alliance members in some capacity as a student, an appreciation for the work that is being done on behalf of low-income clients, and a commitment to support the Alliance’s work in some capacity after law school. These efforts have generated significant law school, law student and law school faculty participation in the work of the ATJ Board throughout the Alliance.

14. **Incubator for New Initiatives**: The ATJ Board serves as the research and development component for initiatives to promote and expand access to the justice system for low and moderate income people. Examples include: Uniform Courthouse Facilitator Rule, rules on Unbundled Legal Services, standards adopted by the Board of Governors regarding fee for service telephone provider legal aid services; development of a pilot project for low fee services (GAAP) which had led to the development of the WSBA Moderate Means Program; amendments to CR 23 (cy pres); GR 33 (accommodation of persons with disabilities); *Ensuring Equal Access for People with Disabilities – a Guide for Washington Courts*; Access to Justice Technology Principles; JusticeNet; plain language mandatory forms; and the development of best practices for electronic access to court records.

15. **Setting the National Standard**: The ATJ Board is a recognized national model for effective, integrated statewide legal aid planning and the development of a broad and inclusive statewide justice community. While first in the nation, there are now ATJ coordinating entities in nearly three-quarters of the states. Recognizing the success of the Washington experience, effective statewide planning and coordination has become a requirement for receipt of funding from the federal Legal Services Corporation. The ATJ Board has published a model planning guide which is used by state civil legal aid planning entities across the nation.