



MINUTES
Access to Justice Board
March 30, 2012
9:30 – noon
Washington State Bar Association

Present: **ATJ Board members** Kirsten Barron (chair), Breean Beggs (by phone), Ishbel Dickens, Elizabeth Fry, Lynn Greiner, and Aiko Schaefer; **ATJ Board Committee members** Jorge Barón, Catherine Brown, Eric González-Alfaro, Don Horowitz, and César Torres, Deborah Perluss, Dan Gottlieb; **Liaisons** Greg Dallaire, Dirk Marler, and Dan Ford; **Guests:** Cheryl Strobert (Seattle Human Rights Commission), Katie Mosehauer (Washington Appleseed); **ATJ Board staff:** Allison Durazzi, Joan Fairbanks, Charles Dyer (contractor for the Pro Se Project) and Andrew Lee (NY University Law School Fellow).

ATJ Board Chair's report

Kirsten reported that the Supreme Court signed a revised ATJ Board Order that provides for a tenth Board member for an initial two-year term. The Court re-appointed Kirsten Barron and appointed five new members:

- Lynn Greiner, effective immediately, as she fills the seat vacated by Justice González last December;
- Hon. Lisa Atkinson, 3-year term, starting in May 2012
- Hon. Anita Crawford-Willis, 3-year term, starting in May 2012
- Geoff Revelle, 2-year term, starting in May 2012
- Andrew Sachs, 3-year term, starting in May.

Kirsten has called all the new members to welcome them. Joan and Allison will be coordinating orientations with them prior to the April 27, 2012 ATJ Board retreat.

Kirsten asked for input on the agenda for the annual meeting with the Supreme Court on April 26. She will propose discussion of the following:

- Funding for the ATJ Board
- Status of proposed rules, including the Limited License Practice Technician Rule (APR 28); the proposed Family Law Civil Rules; and proposed Comment 4 to RPC 4.4 (immigration).
- Updates on current ATJ Board key initiatives, including the Pro Se Project, Leadership Academy and the work of the Delivery Systems Committee.

ATJ Board members discussed the pros and cons of asking the Court to entertain a revision of the order to eliminate the ATJ Board nomination process by the Board of Governors and to substitute the ATJ Board as the nominating entity. Although efficiencies would be realized, some had concerns that this would compromise the ATJ Board's relationship with the BOG. Others observed there could be a continuing role for the BOG in the interview process, as is done currently. Kirsten asked Board members to think about this further.

Kirsten will provide the Board of Governors with an update on the Pro Se Project's Plain Language Forms work at its April 28 meeting. She will thank the BOG for its \$75,000 contribution to the project. She also will apprise the BOG that the ATJ Board will be providing comments directly to the Supreme Court on the proposed Family Law Civil Rules. The ATJ Board previously provided comments to the Family Law Civil Rules Subcommittee of the WSBA Local Rules Task Force, but these comments may not have been considered in the version that the BOG will approve and send to the Supreme Court.

Kirsten reminded everyone about the upcoming Office of Civil Legal Aid FY 2013-15 budget planning meeting on April 11 2012, from 9–11 am. Kirsten will facilitate the conversation.

Kirsten Barron reported that the March 28 presentation to the Supreme Court on Juvenile Justice and Racial Disproportionality was very well done. The presentation featured a panel of young people who had experienced the juvenile justice system, and whose experiences reinforced the data that was presented. The Task Force on Race and the Criminal Justice System will meet in April to make plans to move forward the recommendations.

Approval of February 24, 2012 ATJ Board Meeting Minutes

The minutes were approved as submitted.

ATJ Board Supreme Court Funding

Joan Fairbanks reported that the ATJ Board has \$5,000 from the Supreme Court and \$11,000 from AOC for the fiscal year beginning July 1, 2012. The ATJ Board will continue to receive \$5,000 annually (\$10,000) for the biennium from the Supreme Court beginning on July 1, 2013. Should the Board want additional funds, it has until the end of April to submit a request. The ATJ Board will be discussing this issue at its upcoming retreat.

Civil Legal Aid Funding Report

State: Equal Justice Coalition Director Eric González-Alfaro reported that the Washington State Legislature will soon complete the session. Indications are that there will not be any cuts to civil legal funding.

Federal: Northwest Justice Project Executive Director César Torres reported that funding for the Federal Legal Services Corporation may be cut by as much as 17%. This would be a \$1 million cut to the Northwest Justice Project. President Obama's budget seeks to restore LSC funding.

The Equal Justice Coalition is coordinating a trip to Washington, D.C. on April 16-17, 2012 to visit Washington's congressional delegation. Attending will be Seattle attorney and LSC Board member Harry Korel; EJC Chair Stan Bastian; NJP Executive Director César Torres; WSBA President Steve Crossland; Chief Justice Barbara Madsen; LFW Executive Director Caitlin Davis Carlson; and EJC Direct Eric González-Alfaro.

Proposed ATJ Board Co-Sponsorship of *The Twenty First Century Access to Justice Law Library: Vision, Deployment and Assessment* (A report prepared by Richard Zorza)

The ATJ Board members approved the request to co-sponsor this report. Joan will follow up with the Chicago Bar Foundation.

Charles Dyer reported that this report is thorough and comprehensive, and is meant to say “here are needs, and some things that can be done.”

Don Horowitz said many of the suggestions in the report are already in place at the King County Public Law Library. He recommends inviting King County Law Librarian Rita Dermody to present at a future ATJ Board meeting.

César Torres reported that the Northwest Justice Project now has a YouTube channel and is posting videos. NJP’s technology staff is beginning to develop trainings for public computing centers. These are additional resources that can be used by law libraries.

WSBA Pro Bono and Legal Aid Committee (PBLAC) proposal for expansion of MCLE Rule 103 (awarding MCLE credits for pro bono work)

Board of Governors member Dan Ford reported on this initiative, which is an effort to increase pro bono participation. Under the current rule attorneys can earn, annually, up to four hours of continuing legal education credit for pro bono work plus two hours of credit for training under the auspices of a Qualified Legal Services Provider. PBLAC would like to expand this rule to award up to 27 credits for pro bono representation and three hours for training over the course of three years. Some of these would be ethics credits. PBLAC will be making an initial presentation in May to the Mandatory Continuing Legal Education Board. The goal is to convince the MCLE Board that experiential learning is as valuable as classroom learning. The ATJ Board voted to support the proposal and will send a letter.

Legal Community Legal Events

ATJ Board members will attend the following events, in addition to those already noted in the memo:

May 4, 2012: Northwest Immigrant Rights Project Annual Gala, EMP Seattle. Lynn Greiner.

April 17, 2012: UW Law School’s Law Women’s Caucus Awards Ceremony, Ishbel Dickens.

April 18, 2012: SU Law School’s 5th Annual Celebration of Social Justice. Ishbel Dickens.

Betty Fry announced the Northwest Indian Bar Association’s annual auction takes place June 7 at Seattle University Law School.

Update on Civil Right to Counsel Movement

Deborah Perluss, Director of Advocacy/General Counsel, Northwest Justice Project and Katie Mosehauer, Washington Appleseed, presented information about the ongoing work in the movement to create a right to counsel in civil proceedings (aka “civil right to counsel” or “CRTC”).

Deborah Perluss outlined recent development in the civil right to counsel movement, including court decisions, resolutions, pilot projects, and other initiatives.

Deborah said that the courts have not been friendly toward the idea of civil right to counsel, citing some recent decisions that did not grant right to counsel in civil matters (*Turner v Rogers*, which allows a person to be held civil contempt for up to a year without counsel; *Bellevue School Dist. v. E.S.*, children

held in truancies contempt don't have a right to counsel). She noted one recent success in the decision asserting right to counsel for immigrant detainees with mental disabilities (*Franco v. Napolitano*).

Several state access to justice commissions and boards have passed resolutions supporting the America Bar Association Resolution urging jurisdictions to recognize and implement a civil right to counsel for low income persons in adversarial proceedings affecting basic human needs (these state commissions are: Arkansas, Hawaii, Maryland, Massachusetts, North Carolina, and Wisconsin). Additionally, several states have engaged studies, debates, reports, and other activities as they consider the issue.

Deborah described several pilot projects, noting that some are in the planning stages and a few are currently underway. She highlighted a completed project comparing two studies that took place in Boston, Massachusetts.

In Boston, two pilots took place in different housing court systems, one traditional and one specialized. Both were randomized studies, data driven and with statistically significant samples. All litigants were provided some level of limited assistance and treatment group was offered full representation while the control group was not. The conclusion of the study was that if extensive legal assistance and support for resolution short of judicial proceeding is available and people in system are knowledgeable of law, then less than full representation may be adequate. But in traditional setting, full representation changes the outcome. Both studies confirm that extensive assistance from lawyers is essential to helping tenants preserve their housing.

Deborah also discussed ongoing initiatives of the National Coalition for a Civil Right to Counsel. In Washington state, the movement includes monitoring pending cases that seek clarity of when counsel is to be provided in juvenile court proceedings or parents in proceedings incidental to dependency proceedings; for persons with disabilities in any proceedings; for administrative proceedings, and other particularly compelling proceedings. Washington state civil right to counsel advocates continue working with Washington Appleseed, and documenting examples of the harm done to unrepresented people in our courts, especially when one party is represented and the other is not.

Katie Mosehauer, Director of Washington Appleseed, discussed its work with the National Coalition for a Civil Right to Counsel to evaluate studies on pilot projects. Washington Appleseed is working to develop a how-to manual to assist jurisdictions in setting up effective pilot projects. Stakeholders in Pierce County have declined a National Coalition for a Civil Right to Counsel invitation to host a pilot site due to concerns it would create too much work for court commissioners.

The ATJ Board thanked them for continuing to work on this issue.

ATJ Board Updates:

ATJ /Bar Leaders Conference: Conference Manager Allison Durazzi reported that registration will open next week. The Conference theme is "Our New Economic Reality: The Legal Profession's Role," and takes place June 8-10, 2012 in Yakima WA. Several WSBA staff are facilitating the conference, so Alliance partners may be working with Pamela Wuest (scheduling meeting rooms and hotel) or Angie Maddox (workshop curriculum development). Alliance partners may also contact Allison for information or assistance. The Keynote address is being provided by Dean John Broderick, University of New Hampshire Law School. He is also participating in the Saturday plenary.

ATJ Board Delivery System Committee: Committee Co-Chair Dan Gottlieb reported that more than 90 Alliance members participated in the conversation after the Legal Foundation of Washington's Goldmark Award Luncheon in February. The Delivery System Committee formed three workgroups to develop recommendations to address issues raised during the discussion:

1. Rethinking pro bono from a client service perspective.
2. Communication/collaboration/consolidation across the Alliance from a client service/best practices perspective.
3. Building partnerships with other legal and non-legal entities in creative ways to address unmet client needs and to address systemic issues that move and/or keep people in poverty.

One of the goals is to recruit workgroup participants from outside the Delivery System Committee. He noted that each workgroup is free to define its own structure, but has been tasked with identifying one or two measurable goals that can be shared at the ATJ Conference in June during the Sunday morning plenary. The workgroup co-chairs are in communication with each other, and he encouraged anyone who wishes to be a part of a workgroup to contact him or Joan.

Pro Se Project: Project Co-Chair Lynn Greiner reported that the Project continues to move forward on its task of converting mandatory family law forms into plain language format. Northwest Justice Project staff attorney Lori Garber was granted time to work on the reviewing the forms during the next few months. Over 140 forms will be converted by the end of September 2012. Forms testing will be conducted in Whatcom County. University of Washington School of Law extern Ashley McDonald and ATJ Fellow Andrew Lee have been working on an article for the Seattle Journal for Social Justice.

Electronic Access Project: ATJ Board Fellow Andrew Lee reported that he is working to expand Mike Katell's preliminary report from last year about fees charged for electronic access to court records. There may be significant implications from the Supreme Court action on GR 34 review, and the Technology Committee is hopeful that the case will determine how GR 34 impacts fees for electronic records. While that is under review, Andrew is focusing on how counties have been in implementing these systems with respect to the ATJ Technology Principles, with an eye for best practices. Andrew's fellowship is extended till the end of the year.

Proposed CR 34 (electronic discovery): Don Horowitz reported that the WSBA Rules Committee and the ATJ Board Technology Committee will jointly ask the ATJ Board at its June 8, 2012 meeting to take a position on proposed CR 34 language about which the two entities cannot agree. If the ATJ Board agrees with the Technology Committee's version, the chair of the WSBA Rules Committee has agreed to ask his Committee to adopt the language. If the ATJ Board supports the Rules Committee version, the Technology Committee will acquiesce to its proposed language.

Liaison Updates

Civil Legal Needs Work Group member Greg Dallaire said that it is looking at the Code of Judicial Conduct, specifically a comment to Rule 2.2. He noted in some states this comment encourages judges to serve as more of a facilitator and less of a referee when litigants are self-represented.

The Office of Civil Legal Aid will be updating the *Washington State Civil Legal Needs Study*. The ATJ Board Executive Committee recommended some potential participants for OCLA's Scoping Group for the proposed update.

The NW Tribal Court Judges Association is reconvening after a long hiatus. Its mission is to provide training for tribal court judges and clerks.

The WSBA Moderate Means Program is having a press conference next Tuesday at 11:30 am at WSBA offices, as part of the effort to promote the program and encourage moderate means attorneys to sign on.

César Torres acknowledged ATJ Board member Betty Fry for her work in handling pro bono cases at the OMAK office of NJP.

Next Meeting

Friday, June 8, 2012 (In conjunction with the Annual Access to Justice/Bar Leaders Conference in Yakima)