



Access to Justice Board Meeting Agenda  
**March 23, 2018 – 10:30 AM to 12:00 PM (NOTE DIFFERENT START TIME)**  
 Washington State Bar Association, 1325 4<sup>th</sup> Ave, 6<sup>th</sup> Floor, Seattle  
**Call: 1-866-577-9294; Access: 52140#**

*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.*

4 min	<b>Welcome and Introductions</b>	Geoff Revelle		
1 min	<b>February Board Meeting Minutes</b>	Geoff Revelle	Action	pp 3-4
10 min	<b>Northwest Immigrant Rights Project Update</b>	Jorge Barón	Report	
5 min	<b>ATJ Board Staff and Chair Report</b>	Geoff Revelle and Diana Singleton	Report	
10 min	<b>Rules Committee: Comment on RALJ 9.3 and APR 8</b>	Sal Mungia	Action	pp 5-6
5 min	<b>Delivery System Committee: State Plan Implementation Update</b>	Diana Singleton	Report	
5 min	<b>Gender and Justice Liaison Report</b>	Sal Mungia	Report	
15 min	<b>Pop-Up Justice Update</b>	Aurora Martin, Miguel Willis, Claudia Johnson, Sart Rowe	Report	
10 min	<b>WSBA Board of Governors Update</b>	Kim Risenmay	Report	
5 min	<b>2019 ATJ Conference Planning Update</b>	Sal Mungia	Report	
10 min	<b>Equal Justice Coalition Update</b>	Andy Sachs	Report	

15 min **Funding Update:**

- **Office of Civil Legal Aid – Written Report** Jim Bamberger Report pp 7-15
- **Legal Foundation of Washington** Caitlin Davis

5 min **Other Updates, Upcoming Events**

All

Report

- [Alliance Communication Toolkit Webinar: Tested Civil Legal Aid Messaging – 3/27 @ 12](#)
- [NWCLC Stand Up for Consumers – 3/28 @ 5:30](#)
- [ULP Brew Review – 4/18 @ 5:00](#)

**The next ATJ Board meeting is on April 20, 2018 at the Four Points by Sheraton in Bellingham.**



## **Access to Justice Board Meeting Minutes February 23, 2018, 10:30am – 11:30am**

Washington State Bar Association, 1325 4<sup>th</sup> Ave, Suite 600, Seattle  
Call: 1-866-577-9294; Access: 52140#

**Present:** Geoff Revelle (chair), Judge Laura Bradley, Lindy Laurence, Francis Adewale, Sal Mungia, Hon. Fred Corbit, Lynn Greiner, Michelle Lucas, Hon. David Keenan, Andy Sachs and Mirya Muñoz-Roach

**Absent:** Lynn Greiner

**WSBA Staff:** Diana Singleton, Bonnie Sterken,

**Guests:** Noah Samuels, Merf Ehman, Jennifer Ortega, Jerry Kroon, Jim Bamberger, Cesar Torres, Jorge Baron, Alex Doolittle, Annie Lee, Aaron McCloud, Tom Hassle, Sam Leonard, Brendan Donckers, Amber Rush

**Minutes:** The January minutes were approved without edits.

**Chair and Staff Report:** Diana reported that the ATJ Board and Council on Public Defense are forming a joint workgroup to identify ways for the civil and criminal sides to collaborate. Diana reported that the ATJ Board will be holding its April 20 meeting in Bellingham. Diana reported that the ATJ Board is collecting applications until March 16 to fill two open spots on the Board.

**Equal Justice Coalition Chair-Elect:** Andy moved to appoint Kirsten Barron as the EJC Chair-elect. Geoff Revelle seconded the motion. The motion passed unanimously.

**Northwest Immigrant Rights Project Update:** Jorge reported on their efforts to maintain the protected status for many Salvadorians. NWIRP is taking a proactive effort on a national level to create a precedent on how these cases should be handled. NWIRP is recommending people move forward on DACA applications, but there is still uncertainty on what will happen with applications. Jorge also reported on the ongoing activity in Congress and other legislation they are tracking. Jorge addressed questions.

**Northwest Consumer Law Center Update:** Noah Samuels and two NWCLC Board members, Sam Leonard and Brendan Donckers, introduced NWCLC's new strategic plan, which was included in the materials. They summarized the history of the organization and their efforts to remain sustainable. They summarized the specific goals in the strategic plan and addressed questions.

**State Plan Process Update:** Diana reported that the Delivery System Committee has launched a workgroup, SPARC, to overview implementation efforts. SPARC's initial plans are to organize a series of resource sharing opportunities focused on each goal.

**2019 Access to Justice Conference:** Sal reported that initial planning for the 2019 ATJ Conference is underway. It will take place in June 2019 in either Vancouver or Spokane. We are soliciting planning committee volunteers.

**Office of Civil Legal Aid Update:** Jim reported on the legislative session. The bill to amend OCLA's statute has passed in the House and is likely to pass in the Senate. OCLA's budget request is also likely to pass, which will help to fund the family law automated forms project. NJP will hire a manager to oversee the forms project.

Adjourned at 11:27am

# MEMORANDUM

To: ATJ Board  
From: Salvador A. Mungia  
Date: March 9, 2018  
Re: Rules Committee Recommendations

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The ATJ Rules Committee held a meeting by telephone on Monday, March 5, 2018 to consider two proposed rule changes. Members participating were Hon. Aurora Bearse, Chris Durbin, Diana Garcia, Jaime Hawk, Hon. James Rogers, Karen Pillar, Melissa Hueslman, Nick Gellert and Salvador Mungia. Staff members present were Diana Singleton and Bonnie Sterken. The following are the Committee's recommendations.

## **A. Proposed Amendment to APR 8**

The Admission to Practice Rules govern who may practice law in the state of Washington. There is a proposal to amend APR 8 – Nonmember Lawyer Licenses to Practice Law. The proposed amendment, in a nutshell, would allow an attorney who is not a WSBA licensed attorney, but one who is licensed and in good standing in the bar of another state or U.S. territory, to appear in an Indian Child Welfare case under certain circumstances. (See attached proposed amendment.) The ATJ Rules Committee recommends that the ATJ Board support the proposed amendment with the addition of recommending to the State Supreme Court that any applicant under this provision affirm that they are familiar with the Washington State Court Rules and agree to be subject to the jurisdiction of the WSBA for purposes of their involvement with admission under the proposed amendment.

## **B. Proposed Amendment to RALJ 9.3**

There is a proposed amendment to RALJ 9.3 that would allow the superior court to not award costs to the prevailing party on appeal in criminal appeals if the trial court (the district or municipal court) had entered a finding of indigency for purposes of the appeal.

The ATJ Rules Committee first took up the issue of whether the Board should weigh in on this proposed change to criminal appeals in light of the State Supreme Court's mandate that the Board's charter deals with access to the civil justice system. Some expressed their viewpoint that commenting on this proposal is outside the scope of the ATJ Board's mandate. Others felt that this rule, which deals with financial obligations imposed by the court system, is within the scope of the Board's mandate. The Committee voted 6 to 3 that the proposed amendment is within the Board's mandate with Gellert, Mungia, and Rogers opposed.

There was a motion to recommend that the ATJ Board support the proposed amendment as written. It was moved and seconded to recommend to the ATJ Board that the sentence: When the trial court has entered an order that a criminal defendant is indigent for purposes

of appeal, that finding of indigency remains in effect unless the superior court judge determines by a preponderance of the evidence that the criminal defendant's financial circumstances have significantly improved since the last determination of indigency" Judge Rogers provided his view that the superior court should make the determination of indigency because the superior court does not have access to the lower court's record and that often the appealing defendant is pro se and will not know to bring the record with them on appeal. The motion carried 6 to 3 with Barse, Garcia, and Hawk opposed.

The Rules Committee recommends that the ATJ Board, in its support of the proposed amendment, urge that the following change be made to the above sentence: "The superior court judge will determine whether the defendant does not have the ability to pay the costs on appeal."

It was then moved to recommend to the ATJ Board that the proposed amendment should include civil appeals as well as criminal appeals. That motion passed unanimously.

Accordingly, the Rules Committee recommends that the ATJ Board support the proposed change to RALJ 9.3 with two additions. (1) The third sentence be replaced with "The superior court judge will determine whether the defendant does not have the ability to pay the costs on appeal." (2) The civil appeals be included with this same change to protect indigent parties who cannot pay court costs that are awarded to the prevailing party.

SAM: sam



## Washington State Office of Civil Legal Aid

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James A. Bamberger, Director  
jim.bamberger@ocla.wa.gov

To: ATJ Board

From: Jim Bamberger, Director

Re: 2018 Legislative Session

Date: March 13, 2018

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Unfortunately, the Civil Legal Aid Oversight Committee and the ATJ Board are meeting at the same time and I cannot attend your meeting in person. In lieu thereof, please find below OCLA's report on the 2018 Legislative session.

In a return to constitutional norms, the 2018 legislative session lasted just 60 days. All major business was completed, including the adoption of supplemental operating, capital and transportation budgets. Issues in which OCLA was involved included:

**a. The FY 2019 Supplemental Operating Budget**

OCLA's FY 2019 operating budget was well received by members on both sides of the aisle in both the House and Senate. In the House, Representatives Kilduff (D-27) and Graves (R-5) circulated a letter encouraging the budget writers to fully fund our request for funding of 15 additional FTE's and \$300,000 to kick start the family law automated document assembly project (otherwise known as Technology Assisted Forms).

Two other budget issues arose during the session. First, the kinship care provider community sought to add \$80,000 to OCLA's budget to fund a statewide kinship care legal aid training and support coordinator. This amount was included in the House budget but not the Senate budget.

The second was an issue presented by the Japanese Consul General Yamada Yoichiro. He was referred to me by Sen. Pedersen and a longtime colleague, Tony Lee of Solid Ground. He expressed significant concern about the many foreign nationals (mostly women) who are married abroad or brought to the US to marry a national of this country (mail order brides) and who find themselves later in divorce proceedings without power, understanding of the laws, a social support system and many times without language fluency. Many find themselves socially, culturally, economically and physically isolated and without recourse when their husbands file divorce proceedings against them. According to the Consul General, this problem is prevalent among nationals of his country as well as Russia, Brazil, Korea and others.

The attorney for the Japanese Consulate is Naoko Inoue Shatz, a Seattle-based business attorney who has increasingly found herself representing many of these women in family law cases. To address the issue more consistently, Ms. Shatz established the non-profit International Families Justice Coalition, an organization dedicated to recruiting and training culturally and linguistically competent attorneys to represent foreign national women in family law cases here in Washington State. The Consul General asked the Legislature to appropriate a small amount of funding to OCLA to enter into a capacity development contract with the IFJC so that it would be able to hire a full time staff director and begin to address this problem. His request was well received by Republican and Democratic members in both the House and Senate. (See attached materials)

**Final Supplemental Budget Outcome:**

- \$338,000 in funding for 5 additional FTE's, reaffirming the Legislature's commitment to implement the Civil Justice Reinvestment Plan. These FTE's are funded effective January 1, 2019. This funding will carry forward into future biennia. This brings the total of the Legislature's Phase I commitment to 20 FTE's of the 90 needed to achieve "minimum access." OCLA's approach to assignment of these positions is outlined in the attached memo.
- \$300,000 in funding for the Technology Assisted Forms Project. The budget assumes the need for an additional \$250,000 in FY 2020 and a maintenance funding level of \$125,000 every year thereafter.
- \$125,000 in one-time funding for OCLA to contract with the International Families Justice Coalition

**b. Legislation to Expand the Areas of Authorized Legal Aid Activity and Direct OCLA to Periodically Assess and Report on the Unmet Legal Needs of Low-Income People in Washington State (SHB 2308).**

Following the Oversight Committee's endorsement at the December 15<sup>th</sup> meeting, bills were prefiled for the 2018 session by Representative Jinkins (HB 2308) and Sen. Pedersen (SB 6041). The bills were both heard in the respective policy committees early in session. Both passed out with the same amendment – stripping the language that would have authorized continued representation of individuals who were formerly protected by DACA and other individuals protected from removal by executive orders. Because removal of the provisions would not substantially affect the availability of client services to these individuals, OCLA did not object to the amendments.

Senator Pedersen and Rep. Jinkins decided to move the House bill forward. After making its way through the required committees, the bill passed 86-12 in the House and 48-0 in the Senate. The bill was signed into law by Governor Inslee on March 9<sup>th</sup>. The law becomes effective June 9, 2018. You can find the final version of the bill [here](#).





## Washington State Office of Civil Legal Aid

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James A. Bamberger, Director  
jim.bamberger@ocla.wa.gov

To: Project Directors Meeting Group Members

From: Jim Bamberger, Director

Re: Final Supplemental Operating Budget

Date: March 7, 2018

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Today the Legislature produced a final supplemental operating budget that, among other things, funds an additional 5 FTE's effective January 1, 2019. OCLA is responsible for ensuring that supplemental funding included in the budget proviso for the Civil Justice Reinvestment Plan (CJRP) is invested consistent with representations made in the agency's budget request and legislative intent. This means that the increased CJRP funds will be targeted exclusively for increased attorney FTE's. OCLA will calculate the per-FTE funding level in relation to the fully loaded (salary, benefits, admin, support, overhead) cost for each program that receives these funds.

The question of where these new FTE's are assigned is informed by our prior discussions. As you will remember, OCLA asked for 55 FTE's in the initial FY 2017-19 budget request. Last year, the Legislature funded 15 new FTE positions, all of which were assigned to NJP and placed in areas that, according to the Client Demographics/Client Service Resource Matrix (Matrix) were most out of balance from a geographic equity perspective.

In the supplemental budget, OCLA sought funding for an additional 15 FTE attorney positions. This was intended to bring the total level of new FTE capacity achieved in the current biennium to 30 – one third of the way to closing the “minimum access” gap identified in the CJRP. Consistent with the Matrix, the State Plan, relevant King County regional client service assignments (which assign principal responsibility for governmental benefits and unemployment insurance related work to SCLC, Solid Ground and ULP) and the 2015 CLNS findings, OCLA agreed prior to session that the first 8 of these new positions would be allocated to the four specialty providers, with the remaining 7 being assigned to NJP.

Shortly following publication of the initial House and Senate budgets, the specialty providers were informed that both budgets funded an additional 5 FTE's and asked where among the four programs these 5 new FTE's should be assigned. They were also informed that, in the absence of specific contrary direction from the specialty providers, the positions would be distributed as follows: 2 FTE to SCLC for federal disability benefits work for homeless individuals; 1 FTE to

Solid Ground for state public benefits related work; 1 FTE to ULP for expanded statewide capacity and 1 FTE to TeamChild to be assigned to a location determined by that organization. Alternative suggestions were not received.

RCW 2.53.030(2) requires that all funding for civil legal aid delivery be contracted to NJP in the first instance. There are two ways to achieve the objective of pushing new state funding designated for FTE expansion to the four programs consistent with OCLA's fiscal and client service oversight responsibilities: (1) have NJP enter into an OCLA-approved subcontract with each of the designated subrecipients; or (2) increase the amount of money that NJP subcontracts to the Legal Foundation of Washington with specific conditions that LFW's grants with each of the four designated programs be increased by the amount needed to fund the fully loaded costs of the additional FTE's.

As explained in the meeting, OCLA's preferred approach is to achieve the shortest distance between our statutory management and oversight responsibilities and the recipients of these additional funds. On the other hand, in order to minimize duplicative administrative burdens and reporting requirements, both NJP and the specialty program directors expressed a preference that the funding be subcontracted through the Legal Foundation.

If we can do so without compromising the agency's management and oversight responsibilities, OCLA will defer to the programs' preferred approach. We have previously suggested to LFW an earmarking approach for new FTE positions funded by the Legislature and assigned to programs other than NJP (alternative 2 above). If this approach is acceptable to LFW, we will proceed to amend the NJP-LFW subcontract accordingly. If not, direct subcontracting will be the remaining option.

OCLA will be discussing this directly with NJP and the Legal Foundation shortly.

## Urgent Action Needed: Protection of the Rights of Disadvantaged Foreign Spouses in Washington State

March 9, 2018

### **Q: In what way are foreign nationals disadvantaged in in their divorce proceedings in WA ?**

A: There are many and increasing number of foreign nationals who are subject to divorce proceedings in WA (U.S.). When they are divorced without support and legal advice, they are at increased risk of being unable to protect themselves and their rights under the law. Often they have little to no understandings of the legal process and/or their rights under the law. Their language and cultural barriers, economic disparities with their American spouse, in addition to the lack of resources, often exacerbate the problems. Particularly after divorce, these foreign spouses often experience the isolation from the society. They usually do not have their families nearby to support them and their children. They have little to no skills to go into the local workforce. They have little to no money, but are required to support their children in WA (U.S.) because WA has jurisdiction over the children who lived in WA during their marriages and/or were born in WA.

For example, a typical divorce case between a Japanese spouse and an American spouse develops as follows:

- After a US husband and Japanese wife come to the US, their relationship for some reason breaks apart. In the process, these cases have a disproportionately higher rate of aspects of DVs (physical, verbal, economic coercion, etc). The wife usually does not speak English very well. She normally stays home as a house wife with their children, relying solely on her husband's income. The wife is usually unfamiliar with the US legal system or their rights under the US/WA law (fair share of husband's income and wealth). When the husband decides to divorce from his wife, he drafts divorce papers and requests that the wife sign them. If she does not sign them, he tells his wife that he would fight over the custody of the children, knowing that she wants to live with the children. Because the wife lacks basic knowledge about what she is entitled to under the law, she often ends up signing the papers, which puts her in an untenable position.
- A wife experiences DV at home. Yet, her husband often reports to the police or law enforcement officers that his wife is violent. By manipulating the facts, the

husband put his wife in jail or has the law enforcement officers investigate his wife instead of himself (the actual offender). Such experience prevents the wife from seeking any further help from others.

- A wife sometimes insists that she desires to receive a share of the community property during the divorce proceeding. However, the husband at that stage does not want to give any part of his income/wealth to the wife. The husband capitalizes on the desire of the wife to take the custody of their children and compels her to sign a divorce settlement. Panicked about possible loss of parental custody, confused by legal terminology and access to a competent attorney impeded, she signs the document, thereby renouncing her rights to the community assets in exchange for the child's custody.
- When a wife appears in court without counsel or with counsel who is not able to have effective communication with the wife, the wife's case could be prejudiced by the judges or the attorneys. The wife's misunderstanding about the legal system could make the wife appear intransigent to the attorney(s) as well as the judges. This can impair the client's ability to agree on a positive course of action.
- After divorce, a wife instantly faces a financial problem, with no job and with children to look after. She feels wronged, but it is too late when she retains an attorney with the divorce document (she does not have the financial resources to pursue the case through court in order to prove that she was deliberately misled into signing an unfair settlement).
- In many cases the wife and children fall instantly into financial problems. A majority of such wives fall into depression and/or end up relying on food stamps, subsidized medical services etc. for their lives. They have a great danger of falling into homelessness. Their destitution often leads to prostitution as the only means to support herself and children.

**Q: Are there many such cases ?**

A: The attorney of Consulate General of Japan says her office receives 100-200 phone calls annually from distressed Japanese wives (but there are likely many more cases not reported). **The problem of unjust divorce is widespread among foreign nationals as well.** According to anecdotal reports from other consular officers, the problem is wide spread across many sectors of the immigrant community. (The Consul General of Russia reported it is a huge problem with Russian women. The Brazilian Honorary Consul says it is a very serious problem for their nationals in WA. Consuls of many

other countries agree the problem is serious.) However, Japanese Consulate's attorney can only work on 15-20 such cases a year on a pro bono or a low bono basis. The number of the cases where needs are not being met is substantially high among many foreign wives.

**Q: Why does WA need to support "foreign" nationals who are in divorce proceedings?**

A: Those foreign nationals are forced to stay or reside in Washington State even after divorce, due to the fact that they have the children born and/or raised in Washington State.

First, **the other major victims of these situations (other than the foreign born spouses) are their children who are often Americans.** Children in these situations experience a range of negative effects from this lack of representation for foreign spouses. This includes loss of access to the father's economic support or wealth that is their mother's legal due under the state law. The children can also suffer from loss of access to the mother by virtue of geographic separation in differing countries, or (if the foreign mother attempts to stay and work in America) the mother being economically disadvantaged and impoverished because she chooses to stay close to her American children rather than return to a country where she can make a positive living economically.

**Considering the high risk of wives and children falling destitute and/or homeless, it is a better social policy to help the foreign nationals so that they can address their family law problems before they become additional burden on the state's social welfare resources.**

Also, particularly in the Seattle area, it is becoming a diverse region with Tech Companies such as Microsoft and Amazon that employ many foreign nationals with the increasing number of foreign nationals working in the region with technical work visas only. Those foreign nationals often have spouses from their countries, and their status to remain is only based on the marriage and the working spouse status. Accordingly, it is expected that there will be an increasing number of interracial/international divorce matters. Supporting these foreign nationals who are subject to divorce proceedings will indirectly help its economy grow by supporting the businesses that are operated in WA internationally.

Finally, Washington's reputation as a foreigner-friendly, fair and just state, may eventually suffer if these trends cannot be addressed. In many cases they have made

a courageous leap into an unknown land, sacrificing the comfort and security at home. The state should empower them so that they can defend their rights, and such empowerment will add to Washington's reputation as an international leader.

**Q: Are the consular offices helping them? They should be the one to help them more.**

A: The consular offices are already helping these foreign nationals, providing consular assistance and advice. However, they cannot assist them financially in a civil legal case. Foreign governments do not allocate funds to consular offices to assist their nationals in foreign court proceedings.

**Q: What actions are needed to protect these foreign wives?**

A: There are four main areas to prevent the abuse of these foreign nationals: prevention through enhanced social awareness, legal countermeasures to restore their rights, familiarization of judges with this problem, and a change in the divorce procedure in the state law.

First, the number of victimized foreign wives needs to be reduced. Raising social awareness of this problem will help prevent its occurrence. Institution with significant numbers of potential victims, such as big corporations and the military services, should be informed as well as encouraged to address the issue among their employees: after all, it is most likely their past overseas assignment that brought those wives to Washington State, and the employee's performance will negatively be impacted if his family situation gets nasty. Media can play a significant role in bringing attention to this wide-spread social ill.

Second, the husbands and their attorneys that help impose unfair divorce conditions should be countered and deterred, so that foreign wives could receive their rightful due. What these disadvantaged nationals need most is affordable, and culturally and linguistically competent legal representation. The **International Families Justice Coalition (IFJC)**, a non-profit organization, established by two attorneys (including the general counsel of the Consulate General of Japan), is the only current non-profit focused on 1) maintaining a list of linguistically and culturally competent attorneys, 2) training those attorneys as well as judges on the issues, and 3) providing direct representation to qualified indigent or distressed persons in divorce proceedings. In March 2018, WA state legislature has approved funding to help IFJC reinforce capacity. Such services as provided by IFJC should be more widely available to foreign wives. By

facing more robust resistance from wives supported by competent attorneys, potential abusers will be expected to change their attitude.

Third, judges should be more informed of this problem. Their training courses should include the study of such cases to avoid favoring the claims of US husbands over those of foreign wives.

Fourth, state laws on divorce procedure should be reviewed to provide better protection of foreign wives. Mandating arbitration by neutral attorneys before finalizing divorce terms may be an option.