

WASHINGTON STATE BAR ASSOCIATION

Small Town and Rural Committee

Small Town and Rural Committee Meeting I Virtual Only

Thursday, August 18, 2022 | 12:00 p.m. – 2:00 p.m.

Via [Zoom](#) | Meeting ID: **884 6080 9037** | Passcode: **047632** | Call-in: **888-788-0099**

AGENDA

1. Introductions, July Meeting Recaps, and Approval of July Meeting Minutes (Gov. Elect Petrasek)
2. WSBA Updates (Gov. Elect Petrasek and Julianne Unite)
3. Subcommittee Report Updates
 - a. Community, Education, and Outreach (Kari Petrasek, Chair)
 - b. Pipeline Placement Program (Laurie Powers, Chair)
 - c. Job Opportunities and Clearinghouse (Betsy Penoyar, Chair)
4. STAR Committee CLE Discussion with WSBA Staff Karen Duncan
5. Equity and Disparity Workgroup Recommendations
6. Discussion of restructuring subcommittees/meeting schedule moving forward
7. Other Business
8. Next Steps/ Conclusion
9. Adjournment

2021 - 2022 STAR Committee Meeting Schedule

October 26, 2021	Meeting: 3 – 5:00 p.m.	Virtual Only
November 18, 2021	Meeting: 12 - 2:00 p.m.	Virtual Only
January 20, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
February 17, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
March 17, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
April 21, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
May 26, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
June 16, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
July 28, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
August 18, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only
September 15, 2022	Meeting: 12 - 2:00 p.m.	Virtual Only

WASHINGTON STATE BAR ASSOCIATION

Small Town and Rural Committee Charter

Effective: July 16, 2021
as approved by the
WSBA Board of
Governors

Purpose

The WSBA Small Town and Rural (STAR) Committee is committed to strengthen and support the practice of law in the rural communities throughout Washington state. Members of the STAR Committee will work to ensure that the practice of law in rural communities is present, growing, and thriving.

Practitioners in rural communities are few and far between. Additionally, many of these practitioners are nearing retirement without a clear plan of succession for their clients, leaving a void of access to legal representation and counsel. The STAR Committee will guide policy & program development, serves as ambassadors between the WSBA and these communities, explore and advocate for creative and innovative solutions, and regularly assess the legal landscape in rural communities to determine if WSBA policy, advocacy and program development require further resource for sustainability and improvements.

The STAR Committee aligns with the authorized activities outlined in General Rule 12. More specifically, GR 12.1 (a) articulates the Washington Supreme Court’s regulatory objective to provide, in part, “meaningful access to justice. . .” while GR 12.1(d) strives for “affordable and accessible legal services.” In addition, the STAR Committee aligns with the authorized activities outlined in GR 12.2, in particular by providing “services to members and the public,” and “fostering collegiality among its members and goodwill between the legal profession and the public.”

Further, the STAR Committee furthers the WSBA mission to serve the public and the members of the Bar by providing focused attention on the unique needs of residents and members in rural areas both by improving access to legal practitioners in rural communities and outreach and development of a pipeline of younger rural residents to pursue a legal career and serve their communities.

Definition of “Rural”

For the purpose of the STAR Committee and reflective of Washington’s unique geographic and socio-geographic landscape, the definition of “rural” is as follows:

Based on the definitions produced by the U.S. Department of Agriculture Economic Research Service (ERS) and an overview of Washington county population, we focused on counties with populations of less than 50,000 and more than 2,500. These areas are considered ‘urban non-metro areas not part of larger labor markets’ by ERS. As part of the working definition, and for ease, we have termed these counties as ‘rural.’ Based upon WA county population data, we’ve pursued a hypothesis that counties with 30,000 or more as rural, but likely more

adjacent to a labor market and perhaps have a varying set of circumstances that may differ from counties that are less than 30,000.

Composition

Members of the STAR Committee should have demonstrated experience and/or interest in a thriving legal practice in Washington's rural communities. The STAR Committee will consist of 13 members and are outlined as:

- Chair (voting member)
- 2 Current or Former WSBA Board of Governors Members (voting members)
- 1 Active WSBA Member At Large (voting member)
- 4 Active WSBA Members from rural communities - see above for definition of "rural" (voting members)
- 1 Active WSBA Young Lawyer Member, as defined in WSBA Bylaws (voting member)
- 3 Law School Representatives (voting members, must be currently employed with a WA Law School which is not currently represented on the Committee.)
- 1 Active WSBA Lawyer Member currently employed with a Qualified Legal Service Provider (QLSP)(voting member).

WSBA Staff Liaison: Member Services and Engagement Manager or staff member in the Advancement Department, non-voting

Board of Governor Liaison: as assigned annually, non-voting.

Terms

- Chair: two-year term
- Members: three-year term

Initial Committee Terms

The first appointments to the STAR Committee should effectuate a staggered rotation of STAR Committee members. Therefore, the following terms are in place for the first appointment cycle only. All subsequent terms should adhere to the term limits stated above. STAR Committee member serving an initial term less than three years, should be considered an incomplete term. Therefore, the member is eligible to serve two subsequent complete three-year terms in WSBA Bylaws.

- 2 Active WSBA Members
1 member with two-year term, 1 member with three-year term.
- 4 Active WSBA Members from rural communities (see above for definition)
1 member with one-year term, 1 member with two years term, 2 members with three-years term.
- 3 Law School Representatives (voting, must be currently employed with a WA Law School)
- *1 member with one-year term, 1 member with two-years term, 1 member with three-years term.*

The following positions will begin as a standard term as set forth in this charter.

- Chair
- 1 Active WSBA Young Lawyer Member

- 1 Active WSBA Lawyer Member currently employed with a Qualified Legal Service Provider (QLSP).

Scope of Work

The scope of the STAR Committee's work will focus on what the WSBA is uniquely positioned to do in supporting a sustaining and thriving environment for the practice of law in Washington's rural communities. The STAR Committee will work with all relevant and interested stakeholders to collaborate where needed. The provision of direct legal services and civil legal aid to the public is outside the scope of the STAR Committee.

Measures of Success

- Increased awareness of the issues and possible solutions to address any gap in practicing members in rural communities.
- A sustainable pipeline of legal practitioners in rural communities.
- Increased numbers of legal practitioners in rural communities.
- The establishment of funding for programs and initiatives for the practice of law in rural communities.

STAR Committee Roles

1. Community Education and Outreach

Coordinated efforts to educate members and potential members about the unique needs, opportunities and benefits of a rural practice. This can include, but should not be limited to, comprehensive information on WSBA's website, features in WSBA publications, presentations at high schools, law schools and community colleges. Meetings and events, such as a summit or symposium, to highlight the issue, convene interested stakeholders to share their concerns and strategize on possible solutions.

2. Pipeline and Placement Program(s)

Develop WSBA programming, or WSBA supported/partnered programming designed to build a pipeline of practitioners in rural areas as well as an incentive program to encourage members to explore a rural practice on a time-limited or multi-year timeframe. This role should explore a possible collaboration or strategic overlap with WSBA existing and future mentorship program(s). In particular, this role will require extensive strategic planning and identification of external stakeholder support and additional funding sources. Coordinate with law schools and other stakeholders regarding economic incentives to practice in rural areas.

3. Job Opportunities and Clearinghouse

Utilize existing and future WSBA resources to support and highlight job opportunities in rural communities. This role should include making it easier, and perhaps more cost-effective, to add job postings to WSBA's service. Develop a clearing house to assist retiring members with succession planning and the buying/selling of a practice.

Committee Evaluation

The STAR Committee should conduct an assessment within five years from the date of Board of Governors' approval by 1) conducting a survey of rural practitioners to provide stakeholder feedback regarding the impact of this Committee to effectuate change in these areas, 2) assessing the scope of work to reflect impact and progress in this area and align with trends in the greater legal community, and 3) earnestly examining if the Committee is necessary to continue the scope of work.

WASHINGTON STATE BAR ASSOCIATION

Small Town and Rural Committee

Small Town and Rural Committee Meeting Minutes

Thursday, July 28, 2022, | 12:02 p.m. – 1:17 p.m.

Virtual meeting via Zoom

Committee Members Present: Hunter Abell, Elizabeth Penoyer, Laurie Powers, Cindy Yeung, Kathryn Burke, Merf Ehman, Rusty McGuire, Sarah Cuellar

Committee Members Absent: Allison Foreman (Excused), Zac Byrant (Excused)

WSBA Staff: Julianne Unite – Member Services and Engagement Manager, Chelle Gegax – Member Services and Engagement Administrative Assistant, Margaret Morgan, WSBA Senior Legal Editor, Kevin Plachy – Advancement Department Manager

Public Attendees: Arielle Handforth, Governor Francis Adawale, Lauren McElroy

Introductions, May Meeting Recaps, and Approval of May Meeting Minutes (Gov. Abell)

Star Committee Chair, Governor Hunter Abell, called meeting to order at 12:02 p.m. Hunter thanked those in attendance for being present, recognizing that summer meetings are often more difficult to attend. Hunter welcomed anyone attending for their first time to introduce themselves. WSBA Senior Legal Editor, Margaret Morgan, commented that she was attending her first STAR Committee meeting and was here to assist in the discussion of the Career Center discount. Margaret also oversees the WSBA Bar News and will be able to assist in any questions pertaining to that. first time in attendance. Hunter provided a recap of the June meeting discussion. On motion by STAR Committee Member Sarah Cuellar, seconded by STAR Committee Member Betsy Penoyer, the STAR Committee by unanimous vote (8-0-0) approved the June Meeting Minutes.

WSBA Updates (Gov. Abell and Julianne Unite)

Hunter provided an update on the Board of Governors (BOG) meeting held on July 21-22, 2022, including the all-day ETHOS meeting. There was a meeting with local pierce county judiciary, discussing issues and challenges in the courtrooms in Tacoma area. The BOG had a unanimous agreement that there is no legal requirement to change as of now. The upcoming meeting on August 13, 2022, should address the 2 remaining two questions which are "If they need to change, what is the plan to do so?" and "Regardless of requirement, what is the ideal structure moving forward?". The final ETHOS meeting is scheduled for August 13, 2022, and STAR Committee members are encouraged to attend.

Julianne advised that there was a proposed budget of \$3000 for STAR Committee; to include \$1500 for job fair, and \$1500 for meeting support/travel expenses/ etc. Julianne advised

that this can be further discussed today, if needed, as there is another budget review in August before final board review in September. Hunter confirmed that the budget of \$3000 was submitted for the aforementioned items. Hunter encouraged the committee to meet in person in the upcoming fiscal year.

Julianne also commented that Kari Petrasek was the voted as incoming STAR Committee Chair for FY23/24 for a two-year term. Julianne advised that the annual summer sale for CLE is currently taking place on the WSBA CLE store. Julianne encouraged subcommittee members to consider writing a summary of their subcommittee's activities over this past fiscal year to include in the STAR Committee's annual report.

Julianne also shared a WSBA [blog post](#) relevant to the STAR Committee's scope.

Subcommittee Report Updates

Hunter provided a brief update, as discussed in meeting recap, that the STAR Committee chose to adopt and move forward with the job fair.

Community, Education, and Outreach (Kari Petrasek, Chair)

Kari Petrasek commented that as reported that the Community, Education and Outreach Committee has not met alone, as their work aligns with the Pipeline Placement Program Committee's work plan, but they did share discussion about amending the definition of "rural". The subcommittee feels that is very important in relation to the plan and goals of the STAR committee.

Pipeline Placement Program (Laurie Powers, Chair)

STAR Committee Member Laurie Powers shared that the discussions at the Pipeline Placement Program subcommittee meetings keep addressing the definition of rural, and planning of the job fair, including outreach efforts, who will be invited, and defining a target audience for employers. The committee is considering a date in March for the job fair and should have a finalized date by the next STAR Committee meeting. STAR Committee Member Cindy Yeung commented that she met with Julianne, and WSBA Communications Strategies Officer Jennifer (Jenn) Olegario, regarding the Rural Practice information session to be held in the fall. There will need to be a very clear objective and goal, and how the program will run, and it will also require marketing and outreach resources from the WSBA. To have full support of WSBA resources, this program will need to be moved to November. The program should be 90 minutes, with break out rooms, potentially divided by geographic region and practice area. The subcommittee is actively seeking keynote speaker that has experience in living in a rural area and practicing in a rural community.

Job Opportunities and Clearinghouse (Betsy Penoyar, Chair)

STAR Committee Member, Betsy Penoyar, commented that the committee did not meet, but did discuss the definition of rural regarding free posting in WSBA Journal via email. The definition of rural was defined for the purpose of the job postings within WSBA resources. Margaret shared that she is the liaison for the career center, who would extend the offer of free posting for rural employers. Margaret referred to materials in the meeting materials packet which discussed the logistics of how the discount would work. The location of job would determine if it met the definition of rural for eligibility. The discount code will be available for a period of one year since it is easier than limiting several postings. The career center will create a code, and employers wishing to post would contact a WSBA Staff to ensure that the employer met the requirements of the discount. The discount code will be posted on the landing page of the WSBA Career Center to advertise the opportunity of free

postings for rural employers. Hunter commented that it might be helpful to have a link to the STAR Committee page with this information and agreed with the in-person interaction to determine the eligibility and implementation. Sophia Byrd McSherry asked if the demographics from the redemption of the discount code would be available for other marketing resources, such as a flyer? Margaret responded that she imagined Jenn would come up with a game plan to ensure this information was available and could be pushed out to relevant community members and agreed that those using the discount should be apprised of any upcoming relevant events.

Julianne advised that someone from the Member Services and Engagement Team would be the one interacting with rural employers, to determine eligibility, either via email or phone.

[Discussion of Bar News rural themed issue in November 2022 – copy due by Sept. 1, 2022](#)

Margaret also shared that there was previous discussion about having a rural judge or employer as someone to feature in the Beyond the Bar Number column. Hunter commented that there were several rural practitioners in attendance today and encouraged Margaret to reach out to them for feature articles. Margaret also commented that Bar News also intends to publicize the activities and accomplishments of the STAR Committee. Laurie commented that there are several young graduates that are returning to rural communities and suggested also highlighting them for articles as well. Laurie would be a great point of contact to put MM in touch with grads.

Hunter commented on the community of Point Roberts, WA which has very limited access in and out of their community. He suggested a possible feature article on the difficulties of providing legal services in this area.

Board of Governor Francie Adwale commented on a fellow attorney who is looking to transition out of practice but is struggling with the CLE requirements and is wondering if there is an opportunity to be provided an extension on CLE reporting due to winding down his practice and trying to help transition to a younger attorney. WSBA Advancement Department Manager Kevin Plachy commented that he does not believe there is a standing extension currently but recommended that the attorney reach out to Bobby Henry or Adeline Shay in the WSBA's Regulatory Services Department and either could help the member directly.

[Discussion of recommendations by Equity and Disparity Workgroup to Board of Judicial Administration regarding remote access to the courts.](#)

Hunter commented on the Equity and Disparity Work Group, who looked at inequities and disparities in our profession, including advantages that have been acknowledged with remote access to courts because of COVID, and how to keep them to reduce inequalities regarding access to justice. Hunter advised that equity and disparity workgroup made a recommendation to keep remote access to courts, but also acknowledges that it comes with a cost as the courts work best with human interaction. Margaret left at 12:50 p.m. On page 91 of the [BOG meeting materials](#) there is a summary of the equity and disparity workgroups recommendations. Hunter recommended for committee members to read the materials in the BOG meeting materials and rediscuss at the August meeting. STAR Committee Member Kathryn Burke agreed to table until the next meeting, to allow time to review materials. Hunter will keep this topic on the agenda for the August meeting, and will remind committee members to review prior, for additional discussion. Hunter commented that he will not be in attendance for the August meeting, but Kari will chair in Hunter's absence.

Other Business

Hunter asked if any committee members had new/other business to bring forward. Laurie commented that she would like to entertain more discussion regarding the outreach and marketing for the job fair's target audience. She would like to discuss the definition of "rural" for the purpose of the job fair. Hunter commented that the definition put forth of rural for the career center discount was very limited to that purpose only and opened the floor to discuss the definition of rural pertaining to participation in the Job Fair. STAR Committee Merf Ehman commented that they felt it left out a broad number of areas, as the definition seemed centered on counties and not inclusive of small towns. Sophia commented that it is important to have criteria and definition so that not anyone can claim to be rural, but do not want so much restriction that we are creating artificial restrictions for people. Kari advised that she agreed with the comments that Sophia made regarding creating unwanted restrictions. Kari commented that she was shocked to find that Grant County had a population of over 100,000, which is very rural, but by current definition would be excluded. Also commented on towns such as Skykomish, Snohomish, Gold Bar, etc. that would meet the definition of rural as towns, but the county they belong in does not meet the definition. Hunter commented that perhaps it made sense to think of the definition to include more remote than rural. Julianne commented that this is the Small Town and Rural Committee, and that Rural has been defined but we have not defined "small town" and perhaps that needs to be discussed and documented as a committee and incorporated into the STAR Charter. Cindy provided via chat "For the purposes of the WSBA STAR Committee, the term "rural" means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which (1) has a population not in excess XXX inhabitants or not an excess of 30,000 and is lacking in professionals (attorneys)" and suggested that something similar be added to the definition. Cindy feels strongly that we should have a definition that we can all be working off consistently. For example, one definition for job fair, one definition for free job postings, etc. and thinks that the Charter definition should be revised. Kevin commented that the definition could also be dependent upon the marketing being done - example being that you would want to cast a wider net when recruiting for the job fair but could narrow down for other purposes. Feels that Cindy is on the right track by incorporating locations based on mileage to include towns that are rural but sit in counties that would not qualify as a whole.

Merf commented that they had been discussing career day/career fair, and wanted to discuss a [ceremonial proclamation](#) from Governor Inslee as Rural Practice day. This must be done 30 days in advance, fill out a form and must be done annual. It must be WA Resident that requests and would need to provide draft language on what the ceremonial proclamation to say. Feels that this would be helpful as an education tool for young and future attorneys. Sophia advised that if done in time, could be included in the September Bar News. Francis commented to not only request statewide, but also in towns and counties, not necessarily rural communities only, but in many places to gain awareness. Julianne asked if Hunter and Kevin thought this was something that they felt this was something that the BOG would want to review, and both commented that at minimum it should be reviewed by Julie Shenkland in the Office of General Counsel for review. Julianne also commented on the timeline of the BOG review if required, to have this be included in the November issue of the Bar News, with the BOG meeting being in September.

Next Steps/ Conclusion

Hunter encouraged subcommittees to meet between now and the August meeting. He is excited for the upcoming job fair and encouraged Laurie and her subcommittee to continue discussion regarding job fair rural definition.

Adjournment

Hunter adjourned the meeting at 1:17 pm.

DRAFT

TO: WSBA Board of Governors

CC: Terra Nevitt, Executive Director

FROM: Gov. Alec Stephens, Chair of the Equity & Disparity Work Group
Kim Sandher, Chair of the Experiences of the Justice System Subcommittee

DATE: June 28, 2022

RE: Report of the Equity & Disparity Work Group's Experiences of the Justice System Subcommittee for consideration of a Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access

DISCUSSION: Notification to the Board of Governors that the Workgroup's Proposal for a Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access was forwarded to the Washington Courts Board for Judicial Administration for their consideration.

Attached, please see background and details of the proposal that has been accepted by the Board for Judicial Administration (BJA) as one of two initiatives they will take up next year. As the BJA takes up this proposal, they will also take on the processes for stakeholder outreach and comments. As this is the beginning of the process, the Board of Governors may also decide to provide early comment to the BJA.

Background

See attached Background of the Equity & Disparity Workgroup, the members of the Workgroup and the proposal that has to the BJA along with the details of the proposal.

Stakeholder Input

Stakeholders are a part of the workgroup, but the detailed proposal also identified stakeholders that BJA should consider as it considers implementing this proposal.

Attachments

- Experiences of the Justice System Subcommittee Final Report
- Focus Topic Proposal Details-- Hybrid In-Person/Virtual Court System for Selective Continued Remote Court Access
- Equity & Disparity Workgroup Roster



WSBA

Washington State Bar Association

EQUITY & DISPARITY WORK GROUP
Experiences of the Justice System Subcommittee Final Report
to the Board of Governors
June 23, 2022

I. BACKGROUND

In June 2020 the Washington State Bar Association’s (WSBA) Board of Governors (the BOG), created the Equity & Disparity Work Group (the E&D Work Group) “to reckon with the harsh reality that laws, policies, and procedures in place in the legal system have historically led to disparate and inequitable results that disproportionately harm people of color.¹ The Washington Supreme Court’s June 4, 2020 open letter further informs the work of the E&D Work Group and the obligations of all legal practitioners in Washington State.²

With this background, the E&D Work Group was tasked with (1) reviewing rules, regulations, and laws related to the practice of law and administration of justice to identify ones that facilitate injustice; (2) soliciting feedback from stakeholders, especially marginalized communities, and (3) propose remedies the WSBA can advance pursuant to its mandate in GR 12.2.

The E&D Work Group created two subcommittees: (1) GR 12.2; and (2) Experiences of the Justice System.

Below is the final report of the Experiences of the Justice System Subcommittee of the E&D Work Group. The Subcommittee identified the focus topic of a hybrid court system for selective continued remote court access to decrease disparity and expand access to civil and criminal legal services so certain court hearings and other proceedings can continue to be access remotely post-pandemic.

¹ See [Equity & Disparity Work Group \(wsba.org\)](https://www.wsba.org)

² [Judiciary Legal Community SIGNED 060420.pdf \(wa.gov\)](#)

II. SUBMISSION TO BOARD OF JUDICIAL ADMINISTRATION.

In October 2021, the subcommittee drafted a focus topic issue statement. It outlined a vision, the justice gap issue, and identified benefits of remote access to courts, as well as considerations for courts. It also identified stakeholders and began outreach to solicit feedback from those stakeholders, which was overwhelmingly positive.

In April 2022, Terra Nevitt, who is a member of the subcommittee brought the Board of Judicial Administration (BJA) Strategic Initiative Request for Proposals to the subcommittee's attention. The BJA was in the process of determining its Strategic Initiative(s) for the next two years and asked for proposals for its next initiative. They were looking for a high priority issue for them to act on to bring about meaningful change in administrative policies, practices, or operations for the 2022-2024 period.

Given BJA was established to adopt policies and provide strategic leadership for the courts relating to the administration of justice, the subcommittee voted to submit our focus topic to BJA as a proposal. Our focus topic of a hybrid court system for selective continued remote access seemed like a timely, high priority initiative for BJA to take on given where we are at in the pandemic now. Ms. Nevitt submitted the focus topic as a proposal on April 21, 2022, and notified BJA that we were exploring the topic as well.

BJA evaluated our proposal and placed it second. BJA decided it had the capacity for two initiatives this year and voted on May 20, 2022 that our focus topic would be one of the two they move forward with.

The subcommittee and E&D Work Group consider this a success as BJA is better positioned to move this topic forward.

III. FOCUS TOPIC ISSUE STATEMENT.

A copy of the focus topic issue statement is attached.

EQUITY AND DISPARITY WORK GROUP

EXPERIENCES OF THE JUSTICE SYSTEM SUBCOMMITTEE

FOCUS TOPIC PROPOSAL

Subcommittee members: Kim Sandher (Chair), Annette Clark, Jefferson Coulter, Judge David Keenan, Jonathan Ko, Patrice Kreider-Hughes, Dr. Susan Lee, Terra Nevitt, Rebecca Stith, Patricia Sully, Mir Tariq

VISION: HYBRID COURT SYSTEM FOR SELECTIVE CONTINUED REMOTE COURT ACCESS

In an effort to decrease disparity and expand access to civil and criminal legal services, there should be a hybrid in-person/virtual court system so certain court hearings and other proceedings can continue to be accessed remotely post-pandemic.

ISSUE: JUSTICE GAP

Prior to the pandemic, nearly all hearings and other court proceedings were done in person. This sometimes resulted in inequitable access to our legal system for Black persons, other persons of color, and low-income individuals.

In particular, the over-representation of Black Americans in the criminal legal system is well-documented and rooted in America's history of racism and oppression, which continues to manifest itself. Historically, Black Codes[1], vagrancy laws[2], and convict leasing[3], all interrelated, were used to continue post-slavery control over newly freed people. Such discrimination continues today, typically in less overt ways, including through bias and disparity in enforcing seemingly race-neutral laws. For example, while drug possession and distribution rates are similar across racial and ethnic groups, Black people are arrested, prosecuted, and sentenced at a much higher rate than white people[4].

Maintaining these disparities is seriously damaging. As just two examples, a criminal conviction has negative impacts on employability and access to housing and public services, and lack of affordable childcare limits the ability of low-income women to get to court, which highlights the need for flexible court schedules and online access to court[5].

BENEFITS OF REMOTE ACCESS

In 2003, a WA Supreme Court Task Force on Civil Equal Justice Funding found that even back then, nearly half of low-income households had access to and capacity to use the Internet[6]. While the advent of smartphones has greatly increased Internet access for low-income persons in the intervening years, approximately one-quarter of households with incomes below \$30,000 have no smartphone and over 40% of such households lack broadband services or a computer at home[7]. With resources devoted

toward providing more such households with, e.g., reconditioned donated smartphones, remote proceedings would enable legal providers to reach difficult-to-serve communities, expand language access, and allow attorneys to spend more time serving clients and less time in transit to and from the courthouse. The availability of remote proceedings could mean the difference between staying in custody or returning home to family and community. It adds accessibility for people with disabilities as well.

CONSIDERATIONS

Remote proceedings can undermine attorney-client relationship, alter perceived credibility of witnesses, lead participants to disengage with the judicial process, and ultimately result in changed outcomes of the case[8].

Attorney-client Relationship: The opportunity for communication and strategizing between attorneys and clients can be reduced prior to, during, and after court proceedings when they are not together in person. This could hinder the attorney’s ability to get needed information to make the strongest possible case for their client and the client’s ability to ask questions. The technology needs to allow confidential attorney-client communication during proceedings and there should be procedures to facilitate such communication. Judges would also need to go to greater lengths to ensure parties appreciate the significance of proceedings and their options for relief.

No One-size-fits-all¹: There is no one-size-fits all approach because courts hear a broad range of cases where remote proceedings will likely pose very different challenges, benefits, and trade-offs. Factors include complexity of a case, time-sensitivity, stakes of a win or loss, type of factfinding required, whether there are detained individuals involved or pro se individuals.

Pro Se Parties: A large portion of civil parties are unrepresented. Not only are they unfamiliar with the court system, but they are also disproportionately likely to have computer literacy. This means extra steps need to be taken to ensure they can navigate the new system – with additional support or prioritizing opportunities for in-person services.

Remote Pro Bono Services: Continued access to in-court legal support programs should be prioritized because the justice gap is narrowed through innovations such as, for example, legal help-desks that give advice to unrepresented parties and programs that station pro bono counsel in courthouses to provide on-the-spot limited representation. Remote versions of these programs should be prioritized, and extra steps should be taken to publicize these resources and identify parties and other individuals who might benefit from them. Court facilitators seem to be helping in Washington where they are available - they already help pro bono parties in family law and guardianship matters in participating counties[9].

Technology Glitches: Even mundane glitches could have substantial impact on fairness of court proceedings. For example, poor video and sound quality can disrupt cases to the point where due process

¹ Since this document was developed, subcommittee members have been conducting initial outreach to stakeholders. Several stakeholders have noted that the consent of the individual whose liberty or wellbeing is at stake must be a criteria for remote and hybrid proceedings. Note by Terra Nevitt (4/21/22).

issues may arise. Courts must have a plan in place to respond to when a party cannot be heard, cannot hear, especially at a critical juncture in their case. This might mean on-call technical support for staff and the public who might be using the system for the first time. Party interests need to be placed above efficiency and case conclusion so that parties are not penalized for technological difficulties. Guidelines may be needed to determine when a proceeding has failed to meet a minimum level of technical quality to be considered fair.

Technology Impacts: Credibility or other fact finding can be impacted by how defendants, witnesses, or parties appear on screen, including their backdrop, lighting, and sound. Standards should be considered to ensure technology doesn't unfairly disadvantage litigants. This might require establishing access points for people without quality technology at home or where a witness can go to avoid the concern of witnesses being coached or reading from a script.

Barriers for People with Disabilities. While remote access could add accessibility for people with disabilities, it could also present a barrier for people with audio/visual disabilities.

Persistent Digital Divide: There are large disparities in access to technology by income, race, and geography. People with disabilities may also face obstacles. For example, studies show in the use of remote education platforms, Black and Latino students, English language learners, and students facing housing instability accessed remote technology at reduced rates in some districts. Thus, any proposals should be flexible and understanding that substantial populations, especially historically marginalized communities, may not easily transition to remote proceedings or may have difficulty using resource-intensive technology like video.

Remote Service Quality: Services like remote interpreter services need to be of sufficient quality. Court administrators have reported non-English speakers have a more difficult time understanding and communicating with remote interpreters, which the Washington Supreme Court has taken steps to address^[10].

Sensitive Cases: Some types of cases may require a cost benefit analysis and some aspects of a case might be too crucial or sensitive to conduct remotely. They may be resolved by requiring meaningful consent of all parties to move forward.

Evidence: Documentary and other evidence could be more difficult to present, and examining witnesses and determining the reliability of witness testimony could be diminished.

Constitutional Rights/Privacy: These rights need to be factored in, especially for criminal cases. The public has a right to hearings, but it might be difficult to seal a proceeding that was previously streamed to the public. It is also a concern that people could record proceedings with their phone and information could be used to, for example, deny a person a job or housing.

Type of Cases: Categories of cases should be evaluated separately to strike the right balance. For example, an uncontested divorce will raise different fairness considerations than an eviction from someone's home.

Type of Hearings: The cases would also need to be context-specific and judges would need to be cautious depending on the types of hearings and the stakeholders most impacted by reliance on remote-access technology. For example, a status conference will have different considerations than an evidentiary hearing.

Court Resources: Court dockets were full prior to the pandemic and became significantly backlogged because of the pandemic, but the allocated resources are the same or fewer, especially because of tax revenues reduced by the pandemic. Not all courts have access to or the budget for optimum remote-access technology. Some state courts still do not allow e-filing of documents or even telephonic hearings, although this may improve soon[11].

Lack of Uniform Court System: There is little to no uniformity among courts and court operations in Washington.

STAKEHOLDERS:

Members of communities most likely to suffer if remote proceedings go poorly:

- Communities of color
- Immigrant communities
- Communities of people with disabilities
- Communities that don't have access to technology
- Low-income communities

Community advocates

Public defenders and prosecutors

Civil legal service providers

Tenant representatives

Survivors of domestic violence

Public health experts

Disability rights advocates

Court employees

RESOURCES:

Washington Courts Gender and Justice Commission

Washington Race Equity & Justice Initiative

Benefits Law Center

Black Alliance of Thurston County

Center for Children & Youth Justice

Columbia Legal Services

Communities Rise

Council on Public Defense

Cowlitz-Wahkiakum Legal Aid

District and Municipal Court Judges Association

Resolution Washington

Eastside Legal Assistance Program

Endowment for Equal Justice

Fair Work Center

JustLead Washington

King County Prosecuting Attorney's Office

Lavender Rights Projects

Legal Counsel for Youth and Children

Legal Foundation of Washington

Legal Voice

Northwest Consumer Law Center

Northwest Immigrant Rights Project

Northwest Justice Project

Office of Civil Legal Aid

Civil Legal Aid Oversight Committee

QLaw Foundation of Washington

QLaw Association of WA

Racial Justice Consortium

Seattle University School of Law

Solid Ground

Spokane Community Against Racism (SCAR)

Superior Court Judges Association

TeamChild

Thurston County Volunteer Legal Services (TCVLS)

University Legal Assistance

Washington Defender Association

Washington State Access to Justice Board

Washington Court Management Association

Washington State Human Rights Commission

Washington State Office of Public Defense

Washington State Pro Bono Council

Washington State House of Representatives

Administrative Office of the Courts

Social and Economic Sciences Research Center, Washington State University

[1] Under such Codes, a Black person could not vote, testify in court, serve on juries, or exercise many other rights enjoyed by white persons. See, e.g. Texas Black Codes, https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=3681

[2] Vagrancy laws targeted newly freed Black persons, which meant, for example, that any Black person who could not prove he or she worked for a white employer could be arrested, convicted, and forced into dangerous labor conditions. See, e.g., Slavery by Another Name History Background, https://bento.cdn.pbs.org/hostedbento-prod/filer_public/SBAN/Images/Classrooms/Slavery%20by%20Another%20Name%20History%20Background_Final.pdf.

[3] This was a system of incarceration administered by both state governments and private industry, which allowed enslavement of people who had been convicted of a “crime” – such as “walking without a purpose” or “walking at night”, disorderly conduct, keeping and visiting disorderly houses, drunkenness, etc. See, e.g., Convict Leasing <https://eji.org/news/history-racial-injustice-convict-leasing>

[4] Race, Mass Incarceration, and the Disastrous War on Drugs (2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>

[5] Washington Courts Gender and Justice Commission 2021: How Gender and Race Affect JusticeNow: https://www.courts.wa.gov/subsite/gjc/documents/GJ_Study_Fact_Sheet_English.pdf

[6] The Washington State Civil Legal Needs Study (2003), <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>

[7] Digital divide persists even as Americans with lower incomes make gains in tech adoption (2021), https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final_0.pdf

[8] Principles for Continued Use of Remote Court Proceedings (2020), https://www.brennancenter.org/sites/default/files/2020-09/Principles%20for%20Continued%20Use%20of%20Remote%20Court%20Proceedings%20final_0.pdf

[9] Courthouse Facilitators, https://www.courts.wa.gov/committee/?fa=committee.home&committee_id=108

[10] *In the Matter of the Suggested Amendment to GR 11.3—Remote Recording*, Order No. 25700-A-1325 (Wash. 2020), https://www.courts.wa.gov/court_rules/adopted/pdf/25700-A-1325.pdf^[r1]

[11] Statewide Electronic Filing is on the Way to Washington Courts (2021), <https://nwsidebar.wsba.org/2021/03/17/statewide-electronic-filing-is-on-the-way-to-washington-courts>