

Proposed Bylaw Amendments for 2004 Annual Conference

The Bylaws Committee, at the request of the Executive Committee, proposes the following amendments to the Bylaws of the American Judges Association (underlined text to be added).

Article VII BOARD OF GOVERNORS

Sec. 7. DISTRICTS

District XII: Washington, Oregon, Idaho, Montana, Alaska, British Columbia, Northwest Territories, Nunavut, Yukon Territory.

Rationale:

Nunavut was created April 1, 1999, as a follow-on to the Nunavut Land Claims Agreement, the largest Aboriginal land claims settlement in Canadian history. The newest Canadian Territory, Nunavut is nearly one-fifth the size of Canada. It comprises much of the Arctic area of Canada and has its own government for the approximately 29,000 Inuit and non-Inuit residents. As it is legally a territory of Canada, it should be included in a district. Based upon population and composition, it is appropriate to place it in District XII with the Northwest Territories and the Yukon Territory.

Article VIII OFFICERS

Sec. 5 DUTIES

(b) President-Elect. The President-Elect shall:

In the absence, incapacity or illness of the President, either as certified by a majority vote of the Executive Committee or upon the written

request of the President, preside at meetings of the General Assembly, Board of Governors, and/or Executive Committee. The duration of these duties shall be specified either in the President's written request or by the Executive Committee.

Perform such administrative functions as may be directed by the President and/or the Board of Governors.

Assist the President in facilitating and coordinating the activities of the Association committees.

Serve as Chairperson of the Conference Education Committee.

Rationale:

The Bylaws (Article VII, Section 5 (a)) currently state, "The President shall: Preside at all meetings of the membership of the General Assembly, Board of Governors and Executive Committee." No provision exists for any other officer of the Association to preside at any of these meetings in the absence of the president. While this was not a problem for many years, the issue arose a year ago at the midyear meeting when the president was unable to be present for one day of meetings. In retrospect, it is surprising the issue never arose previously, given potential serious illnesses, accidents, and travel delays. The proposed amendment clarifies who can preside in the absence of the president, and under what circumstances.

Respectfully submitted,
James E. Heupel
Chairman, Bylaws Committee

Blakely v. Washington: Implications for State Courts, *continued*

Generally, *Blakely* appears to apply to upward departures/enhancements from presumptive sentencing schemes. The majority in the case noted that the test is whether the jury has found "all the facts 'which the law makes essential to the punishment.'"

Areas of court management and the legal process that might feel the effects most strongly are plea and charge bargaining, juries, and court budgets. Potential solutions for states faced with *Blakely* issues include bifurcation, waiver, voluntary (as opposed to mandato-

ry) guidelines, and amending of guidelines to be less calibrated and with wider ranges.

The U.S. Supreme Court has already added two *Blakely*-related cases to its docket for October 4, 2004: *United States v. Booker*, No. 04-104, and *United States v. Fanfan*, No. 04-105.

The KIS memo includes state activity, lists of tables and other resources, and state-by-state information about various factors that could be affected under *Blakely*. Find the memo online at http://www.ncsconline.org/WC/Publications/KIS_SentenBlakely.pdf. 