

Minutes
January 8 and 9, 2001
Board of Judicial Policy and Administration

The January 8 and 9, 2001 meeting of the Board of Judicial Policy and Administration was held in Cheyenne, Wyoming at the Supreme Court Building. Chief Justice Larry Lehman, Justice Richard Thomas, Justice William Hill, Judge Gary Hartman, Judge Jeffrey Donnell, Judge Bart Voigt, Judge Rob Denhardt, Judge Wade Waldrip, and Judge Frank Zebre attended. Absent: Judge Scott Cole. Other Judges in attendance were Judge Huber and Judge Allen. Holly Hansen, Ronda Munger, Joann Stockdale, Jim Bivona and Linda Burke also attended.

1. The meeting was called to order at 11:00 AM.
2. Preparation for Joint Appropriations Committee Hearing. Holly Hansen and Joann Stockdale briefed the Board on the Appropriations hearing, which was scheduled for 3:00 PM. During this portion of the Board meeting, the discussion focused on reviewing what would happen at the hearing, and how the process would flow. Further discussion was held on budget topics in general. In addition, there was discussion about the likelihood of having a judicial salary bill considered this session.
3. Appearance before the Joint Appropriations' Committee – 3:00 PM
4. Report from the Technology Task Force – Jim Bivona. Jim Bivona reported to the Board on the progress of the Judicial Technology Task Force. He said that the Task Force is ready to release the Request for Bids. He said they are also preparing the Memorandum of Understanding between the Supreme Court and the local governments in Johnson and Sheridan counties. The project plan is under development. It was explained that the Task Force needs the Board's approval to move forward and spend \$66,000 for the wiring in Johnson and Sheridan counties, training, help desk software, and consultant assistance. Judge Hartman moved that the Board authorize \$66,000 for the pilot project, and Judge Donnell seconded the motion. Motion carried.

At a future Board meeting, Jim will present a policy for access to public records and a mock-up of the intended website to show Board members what will be available.

In an effort spearheaded by the Governor, Wyoming received a \$25,000 grant from the National Governors' Association to begin planning for an integrated criminal justice system in the state. A delegation of representatives, which included Holly Hansen and Jim Bivona, attended a workshop sponsored by the National Governors' Association. The

Judicial Branch Task Force's goals are consistent with information presented at the workshops.

5. Report on District Court Statistics Revision. Ronda Munger reported to the Board that she has been working with the Clerks of District Court to revise their form for collecting statistical information. Ronda said that as they worked through the process, the clerks recognized that they had some questions that needed an answer from a judge. The clerks asked Ronda to approach the Board to see if it would be willing to appoint an advisory committee to work with the clerks. Chief Justice Lehman asked if there were any committees out there now that could assume the duties. Judge Voigt indicated that the district court judges could do this themselves. Judge Donnell agreed, saying that the district court judges could address this topic when they meet in April. Holly Hansen asked if the Board wanted to send a letter to Judge Brackley asking him to put this topic on the April agenda. The Board asked Ronda to send a letter to Judge Brackley.
6. Meeting with Director of DFS. Susan Lehman, the director of the Department of Family Services (DFS) requested an opportunity to speak to the Board about how DFS and the judiciary could work together for the best interests of kids. She advised the Board that she has budgeted \$1.3 million per month for court ordered treatment of children. DFS is currently spending \$1.4 - \$1.5 million per month. She said that at this rate, the department is headed for some hard times.

Ms. Lehman said she must know what the department is responsible for so she can go to the Legislature to get the necessary funding. She asked if the Board would be willing to look at Title 14 and make it clear what DFS needs to do. She asked if DFS is responsible for payment of attorneys. She indicated that DFS has not contemplated paying for attorneys. If DFS is going to have to do that, then she needs to adjust the budget request.

With regard to delinquency cases, Judge Hartman asked if the state public defender has a position on this. Ms. Lehman said the public defender's office is concerned about devoting its resources to these cases. Judge Donnell said he likes to have the Public Defender represent delinquents because the public defenders do a good job. He added that the draw back is that the public defenders are very busy.

Ms. Lehman indicated that she would like the opportunity to discuss this with the district court judges.

In conjunction with Ms. Lehman's presentation, Dan Wilde, from the Attorney General's Office, addressed difficult areas with which the Court Improvement Council is struggling, i.e who pays for counsel for the

parents of children in the system and who pays for detention. He said that once parental rights have been terminated, DFS has to pay. Susan Lehman wants to create a partnership with the Board, the public defenders, and the Court Improvement Council in order to get services for those in need. She said costs and payment responsibilities need to be defined. The Board also discussed meeting with educators and doctors.

7. Future of the Judicial Planning Commission. The Board discussed the future of the Judicial Planning Commission since it has served its intended functions. It was pointed out that the Board of Judicial Policy and Administration and the Judicial Technology Task Force resulted from the work of the Planning Commission. In addition, most members of the Planning Commission have been moved to some other committee. The Board decided to wait until the current legislative session ends and then to contact the appropriate legislators.

8. Old Business

- a. Five State Judicial Conference. Chief Justice Lehman reported on the conference call he had with the chief justices from Idaho, Montana, North Dakota and South Dakota. He said the other states asked Wyoming to please host the Five State one more time. As part of the discussion, the other states agreed that we could eliminate planning a program for spouses and children. Judge Huber commented that he went to the Five State in Bismarck last year and it was a quality program. After further discussion, Judge Donnell moved and Judge Voigt seconded a motion to officially notify the other four states that we will not be participating in the Five State Judicial Conference. Motion carried.

- b. Domestic Violence Training – Date Change. The Domestic Violence Training will take place in Douglas at the Law Enforcement Academy on June 21 and 22, 2001.

- c. Order Adopting Rules and Procedures Governing the BJPA.

In a discussion of “general superintending control” as used in **Rule 2**, Judge Donnell emphasized that the Board does not want to micromanage. Several agreed that “inferior courts” should be replaced by “judicial department” in Rule 2.

Judge Voigt suggested that “chairperson” in **Rules 5 & 6** should be replaced with “presiding officer” and Justice Thomas recommended revising Rule 5 to read “The chief justice is the presiding officer of the Board, and shall be responsible for presiding at meetings of the Board and serve as chief spokesperson for the Board.”

The Board discussed the issue of membership pursuant to **Rule 3** with respect to a justice of the peace member. The Board

agreed to contact the justice of the peace to see if he wants to stay on Board and if not, the Board must plan how to fill the vacancy.

Judge Denhardt asked with respect to **Rule 10** if a Board meeting is started with a quorum and a member subsequently leaves, can the Board still conduct business. Justice Thomas referred to Rule 6 and the senior judiciary member presiding in the chairperson's absence and stated once the meeting starts and establishes a quorum, a member can leave.

A general discussion concerning the following topics ensued: (1) meetings to remain open; (2) members may request items to be put on agenda and non-members may direct agenda requests to Holly; (3) meetings not to be video or audio taped; (4) publish agenda on website; (5) minutes to be approved by Board and published on Bar website; (6) agenda set five days before Board meeting; (7) rules to be approved within 10 days of Board meeting; and (8) establish definite day to review rules or annually? takes 2/3 vote of members to amend; (9) each member to have a Board book with orders, rules, and minutes; could this be indexed or electronic?

9. New Business.

- a. Criminal Rule Revisions. Karl Linde from the Supreme Court staff explained the revisions proposed by the Permanent Rules Advisory Committee.

Rule 1(b)(4)(B) – replace “county court” with “circuit court”

Rule 3 – add: (f) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for bill of particulars may be made before arraignment, within 10 days after arraignment or at such later time as the court may permit. The bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 7 – remove: (c) Bill of Particulars.

Justice Thomas and Judge Voigt suggested combining **Rules 3 and 7.**

Rule 39(a)(5)(B) - add: “however, hearsay that is probative, trustworthy and credible may be received into evidence. The Wyoming Rules of Evidence do not apply, to the dispositional stage.” Karl questioned the use of a comma after hearings (immediately before the new quote is added) and suggested that the comma be changed to a semicolon. Also, Karl suggested striking the comma after “apply.”

Rule 44(a)(2) – Judge Denhardt questioned the use of “adult” in the first sentence: “Any adult probationer or adjudged delinquent juvenile...” Judge Denhardt suggested deleting “adult”.

The Board further suggested to revise the first sentence by replacing “for which violation incarceration is a practicable possibility” with “for which violation incarceration is provided by law, ...” The Board accepted the other proposed revisions.

Rule 46.4(a) – The Board agreed to change the name of this paragraph from “Failure to Appear” to “Contempt.” The Board had no comments concerning the rest of the proposals for Rule 46.4.

Rule 48 – The Board suggested changing the name of this rule from “Dismissal” to “Dismissal; Speedy Trial.”

Rule 48(b)(4) - The Board first discussed deleting the word “not” to make the sentence read: “Continuances exceeding 180 days from the date of arraignment may be granted....” Justice Thomas suggested: “Continuances not exceeding 360 days from the date of arraignment may be granted.....”

b. Appellate Rule Revisions.

Rule 1.01(c) – The Board agreed to change “an electronic copy of the brief, petition, motion or other document shall also be filed in the court by means of a 3.5 inch disk or an attachment to e-mail” to “an electronic copy of the brief, petition, motion or other document shall also be transmitted by means of a 3.5 inch disk in a format specified by the clerk of the appellate court.”

Rule 7.01(f) – The Board agreed to delete “which may be preceded by a summary” and the new sentence to read: “An argument setting forth:” The Board further agreed to insert (f)(3) “An argument may be preceded by a summary.”

Rule 12.09 – This rule requires the district courts to make findings on record with respect to the six factors laid out in the rule.

Rule 13.01 – The Board did not comment on this rule.

Judge Waldrip moved that the criminal and appellate rules as proposed and amended be adopted. Judge Voigt seconded the motion and all were in favor.

c. Proposed Rule for Records Check in the District Court. The Board decided to change the word “record” to “records” in each case to avoid the charge of \$5.00 for each file and to change the word “may charge a fee” to “shall charge a fee.” Judge Donnell moved to adopt the rule with the above changes, and Judge Zebre seconded the motion. Justice Hill amended Judge Donnell’s motion by moving that the circuit rule match our amendment. Judge Zebre seconded the motion and all were in favor.

- d. Request to Review Small Claims and Civil Case Files in Circuit and JP Courts – Email and Letter from Judge Skar. After discussing the staffing and security problems inherent in providing access to multiple case files, the Board decided that Holly Hansen would advise Judge Skar that a county attorney will request the AG's opinion.
 - e. Garnishment Forms for Circuit Courts – Holly Hansen & Judge Denhardt. Judge Denhardt volunteered to coordinate with Judge Edwards and one other circuit court judge to settle on language of forms. In addition, Judge Denhardt suggested that district and circuit court judges should also review.
 - f. Judicial Retirement Question – Holly Hansen. Holly Hansen asked the Board for clarification of an issue relating to survivor benefits under the judicial retirement plan for Supreme Court justices and district court judges that was in effect prior to July 1, 1998. The Board indicated that if a judge has selected one of the survivor options and then subsequently divorces the survivor, the survivor who has been divorced is not entitled to a benefit upon the judge's death.
 - g. Judicial Status of Judges Who Seek Elected Office – Judge Hartman. The Board discussed the judicial status of judges who seek office. Although it was not determined whether a sitting judge must step down if said judge files for an office, the Board suggested looking at the court rules and possibly appointing a committee.
10. Other Business.
- a. Video Arrangements. Judge Waldrip brought up technological capabilities which would allow the court to communicate with prisoners via video cameras and telecommunications equipment. The security and budget considerations were discussed. Chief Justice Lehman volunteered to contact the federal judges regarding their support of the idea.
 - b. New Membership on Board. The Board agreed to discuss new membership at the March Board meeting, specifically orientation or training, briefing or Board book, mentoring by retiring member, and attend meeting before becoming active on Board.
 - c. Next Board Meeting. The next Board meeting scheduled for March 22 and 23, 2001 in Lander was canceled. The Board will be advised of the new meeting date and time.

11. Pending Items.
 - a. Jury Trial Request in Domestic Violence Case – Judge Denhardt.
 - b. Taking and Filing Oath of Office after Retention Vote.
12. Adjournment.