

Board of Judicial Policy and Administration

Supreme Court Building

Cheyenne, Wyoming

March 13, 2017

MINUTES

Present In Person:

Chief Justice Jim Burke, Justice Mike Davis, Justice Kate Fox, Justice Keith Kautz, Patty Bennett – Clerk of the Supreme Court, Julie Goyen – Chief Information Officer, Elisa Butler – Staff Attorney, Eydie Trautwein – Director of Legal Resources and Judicial Education, Kristi Racines – Chief Fiscal Officer, Lily Sharpe – State Court Administrator and Cierra Hipszky – Administrative Assistant

Present by Video Conference or Phone:

Judge John Perry, Judge John Fenn, Judge Steven Cranfill, Judge Bob Castor, Judge Wes Roberts, Judge Curt Haws and Judge Brian Christensen

Agenda Items	Summary of Discussion
Welcome	Chief Justice Burke called the meeting to order at 9:00 a.m.
Approval of Minutes	Judge Roberts moved, seconded by Judge Haws, to approve the December 12, 2016 minutes. The motion carried unanimously.
Legislative Updates Chief Justice Burke, Lily Sharpe and Kristi Racines	Budget Chief Justice Burke briefly overviewed the events of the 2017 Legislative Session with respect to the Judiciary. He thanked all of the judges and the staff who attended the session and emphasized the importance of maintaining the Judiciary's good relationship with the Legislative branch. In light of the large statewide budget cuts imposed by the Legislature, the Judiciary fared very well. Kristi Racines recounted that the Judiciary proposed nearly two million dollars in cuts, including \$250,000 from the operating expenses of district court judges. The Legislature accepted the cuts as proposed. Kristi will send an updated report of the budgets to the district courts. Court Automation Fee The Legislature increased the court automation fee from \$10 to \$25. If a municipality collects the fee, the municipality may keep \$10 of the fee to offset the costs of electronic

	<p>ticketing. The Legislature exempted State agencies from paying the increase in the fee until July 1, 2018.</p> <p>Circuit Court Judge Salary Increase Judge Haws expressed deep appreciation to all the state judges and justices for their support of the circuit judge salary increase bill. Judge Roberts reiterated the appreciation of support. The Legislature raised the salaries of circuit court judges from \$119,000 to \$125,000. Chief Justice Burke emphasized that the Legislature also learned a substantial amount about the work circuit court judges do for the State.</p> <p>Joint Judiciary Interim Topics The topics have not been finalized, but it appears they will include delineation of responsibility between counties and the State for upgrading and maintaining adequate technology in all state courtrooms, streamlining the bond schedule, evidence-based pretrial release practices and post-conviction statutory review.</p> <p>Review of other Bills Senate File 105 creates the Uniform Power of Attorney Act. Justice Kautz explained the Act codifies much of the common law with respect to a power of attorney. It specifies the agent's duties as well as protection for agents.</p> <p>Lily Sharpe updated the Board on several other bills. The update is attached (Exhibit A).</p>
<p>Prison/Bail Reform</p> <p>Judge Haws</p>	<p>Judge Haws suggested developing tools for judges to use when an offender fails to pay or cannot pay a fine, fee or other monetary portion of a sentence. The U.S. Department of Justice report on Ferguson, Missouri identifies pitfalls courts should avoid when attempting to collect money from offenders. It is important to recognize and implement best practices in this area. Judge Haws proposed creating a working group of circuit, district and municipal court judges to develop practices to implement when judges are faced with missed payments. He added it may be beneficial to ask the Judicial Ethics Advisory Committee to review and comment on the practices developed. Alternative punishment such as community service must be carefully tailored to ensure it is constitutional and ethical. The Board agreed Judge Haws should form a working group and create suggested practices for judges when an offender cannot afford to pay, or is delinquent in paying, a fine or fee or other monetary portion of a sentence.</p>
<p>Judicial Conference Reports</p> <p>Judge Skar</p> <p>Judge Christensen</p>	<p>District Court Conference The district court judges were not able to meet in December, 2016 because of poor weather. They will meet April 20-21, 2017 in Thermopolis. Judge Skar was unable to attend today's BJPA meeting, but relayed he will report on the April meeting at the next BJPA meeting, including the results of a poll as to whether W.R.Cr.P. 35 restricts a modification of probation after a year.</p> <p>Judge Fenn noted that the Joint Judiciary Committee will meet in Thermopolis on April 20-21, 2017. Since the District Court Conference is meeting in Thermopolis on the same days, the district judges are hoping to plan a meet and greet with the Joint Judiciary Committee.</p> <p>Chief Justice Burke advised that Judge Wade Waldrup has announced his retirement effective July 7, 2017. The Judicial Nominating Commission will accept expressions of</p>

	<p>interest to fill the vacancy until March 29, 2017. The Chief asked the Board members to encourage well-qualified individuals to apply.</p> <p>Circuit Court Conference Judge Christensen stated the circuit court judges would meet in Jackson in April, 2017.</p>
<p>Judicial Branch Technology</p> <p><u>Courtroom Technology Committee</u> Members: Chief Justice Burke, Justice Davis (Chair), Judge Tyler, Judge Sharpe, Judge Christensen, and Judge Prokos</p>	<p>Update Justice Davis advised the District Court Conference approved Judges Tyler and Sharpe as the district court members of the Courtroom Technology Committee and approved the Courtroom Technology Approval Process recommended by the Courtroom Technology Committee. Justice Davis reported the Courtroom Technology Committee has approved the courtroom video standards recommended by the IT Division. The standards are on the Courtroom Technology intranet site.</p> <p>The Committee is now considering language for delineating the financial responsibility of counties and the State with respect to technology in the courtrooms. It may be necessary, however, to also have individual MOU's with counties to address specific situations. In general, the hope is that counties will provide adequate wiring to support the technology requirements adopted. The IT Department is obtaining estimates on wiring costs the counties would incur. Committee members will meet this month with the County Commissioners Association to discuss the delineation of responsibility.</p> <p>The Committee is working with the IT Division to develop a roll-out of courtroom upgrades statewide over four years. Tentatively, the counties with courtrooms that have the lowest ratings will be upgraded first. The roll-out would include the entire district to reduce mobilization costs. The Judiciary will have to request additional spending authority from the Legislature next session to accomplish this aggressive timeline.</p> <p>JVAN Judge Perry lamented he has experienced substantial difficulties with the aging JVAN equipment. Replacing the equipment should alleviate many of these issues.</p>
<p>Redaction Committee</p> <p>Justice Davis</p>	<p>Justice Davis advised the proposed committee members include himself as Chair, Judge Castano, Patty Bennett, Anne Sutton, Kerri Yarter, Shawna Goetz, Tammy Fleming, Kimberlene Wakefield and Tracy Zubrod. Chief Justice Burke will appoint these individuals and also request a public defender join the Committee. Justice Davis identified a difficulty with mandatory transcripts. Because there is no party requesting the transcript, none of the attorneys want to accept responsibility for redacting.</p> <p>Justice Davis will set up an initial meeting. Patty Bennett volunteered to reach out to the Public Defender's Office.</p>
<p>Judicial Education Committee</p> <p>Members:</p>	<p>Justice Kautz reported the committee is up and running. The committee's focus has been on judicial orientations for new judges and planning for the bar convention. The bar convention will be expanded to one and one-half days of continuing judicial education. The bar meeting will include presentations on advanced evidence for trial court judges, judicial ethics, a civil and criminal law update, working with pro-se litigants and more.</p>

<p>Chief Justice Burke, Justice Kautz (Chair), Judge Sullins, Judge Lavery, Judge Haws, and Judge Healy</p>	<p>Some trial judges have expressed interest assisting with future judicial education efforts and giving presentations as well. The next meeting is May 3, 2017. Circuit and District Court Conferences are encouraged to discuss and suggest any education topics they would like for the bar convention or in the future. Eydie Trautwein, Director of Legal Resources and Judicial Education, is investigating funding for judicial education and plans for next year.</p> <ul style="list-style-type: none"> • Action taken by the Board: Judge Castor moved, seconded by Justice Fox, that the Judicial Education Committee be made a subcommittee of the BJPA. The motion was unanimously approved on a voice vote.
<p>Permanent Rules Advisory Committee (PRAC)</p>	<p>Appellate Rules Justice Davis reported needed changes are currently being identified. A meeting will be held after the new Clerk of Court, Patty Bennett, has a chance to become acclimated.</p> <p>Civil Rules Justice Fox, Civil Division Chair, advised the changes to the rules went into effect March 1st.</p> <p>Criminal Rules Judge Edelman is the current chair.</p> <p>Rules of Evidence Judge Rumpke is the current chair.</p> <p>Juvenile Rules Judge Wilking is the current chair.</p>
<p>Court Security</p> <p>Ronda Munger</p>	<p>Ronda Munger provided a written report which was relayed to the Board. The State Judicial Institute is approaching the final stages of the seven new assessments. Comments have been received from the judges in each of the counties (Carbon, Converse, Hot Springs, Lincoln, Sheridan, Uinta and Washakie). It is anticipated the reports will be done by the end of March. The Court Security Commission will meet on March 22, 2017.</p>
<p>Criminal Rule Change</p> <p>Judge Haws</p>	<p>Judge Haws conveyed the circuit court judges support the attached change (Exhibit B) to the criminal rules for efficiency. Currently, if a circuit court judge travels to another district or takes a DUI call for a judge in another district, the judge is not authorized to sign a search warrant. Judge Haws proposed the Board recommend adoption of this change and send the amendment to the Criminal Rules Division of the Permanent Rules Advisory Committee.</p> <ul style="list-style-type: none"> • Action taken by the Board: Judge Haws moved, seconded by Judge Castor, to modify Rule 41(b) of the Rules of Criminal Procedure to include the word “circuit” judge. There was consensus that the rule change should be forwarded to the Criminal Rules Division of the Permanent Rules Committee for review.

<p>Access to Justice</p>	<p>Access to Justice Commission Justice Fox reminded the Board the Volunteer Reference Attorney Program is actively underway. Justice Fox suggested that access to courts should be a Continuing Judicial Education topic.</p> <p>Elder Task Force Justice Fox updated the Board on the Elder Task Force. The work of the Task Force was instrumental in proposing the power of attorney and vulnerable adults bills considered by the Legislature this session. The Task Force report is on the Supreme Court's website. Justice Fox suggested elder issues also be incorporated in ongoing judicial education efforts. Judge Roberts joined in suggesting judicial education should include education about abuse and neglect of vulnerable adults.</p>
<p>Children's Justice Project</p>	<p>Eydie Trautwein reported that CJP has not received any new information related to funding and CJP is working under the assumption that CJP will only receive 1/3 of the funding for federal fiscal year 2017 (approx. \$100,000). CJP has contingency plans in place and is focusing on updating all CJP publications and increasing trainings (including providing an ICWA presenter at the district court judges' conference in April) while full funding is still available. CJP is planning to partner with DFS to host an ICWA summit in June. There are multiple parent attorney trainings scheduled for the end of March. CJP is partnering with the AG's Office to host the Joint Symposium on Children and Youth (August 15-17th in Laramie, WY); the symposium is shaping up to be a great conference (very good presenters). The next CJP meeting is on March 23, 2017.</p>
<p>Judicial Learning Center</p>	<p>Eydie Trautwein reported the Center opened January 9th, 2017 and has received over 400 visitors (adults and children). Because there have been an influx of visits and interest, the library is partnering with the League of Women voters to assist with large groups. The JLC website will launch the end of this month. PBS will create an episode on the Center for broadcast in September. The broadcast will assist in marketing and providing information to teachers for the 2017-2018 school year.</p>
<p>Title 25 and Title 7 – Meeting with Dept. of Health</p>	<p>Judge Fenn recounted that the Chief Justice and district judges met with Department of Health Director, Tom Forslund. Director Forslund expressed continuing concern over costs to the Department for involuntary commitments. With respect to the length of time to get mental health evaluations under Title 7, Director Forslund asked judges to ensure their orders provide the Department all the current and background information necessary to conduct the evaluation. Judge Fenn provided a number of comments on the Department of Health's proposed uniform order. The State Hospital is reviewing the comments. Judge Fenn will follow up to get standard orders across the State.</p>
<p>Judicial Outreach</p>	<p>Chief Justice Burke updated the Board on Judicial Outreach.</p> <p>“You Be the Judge” “You Be the Judge” will be held in Green River and Rock Springs. Cheyenne will host</p>

	<p>one next fall.</p> <p>Girls State Justice Fox will speak at Girls State, which will be held in Cheyenne this year.</p> <p>Website The Chief encouraged judges to provide updates for the website.</p>
Other Business	Judge Roberts informed the Board with sadness that Retired District Court Judge Elizabeth “Betty” Kail passed away. Judge Kail was the first female district court judge in Wyoming. It was suggested the Judge Kail be added to the Supreme Court wall of equality.

Actions taken by the Board:

1. Approval of the Judicial Education Committee as a subcommittee of the BJPA
 - a. Initial Committee Members: Chief Justice Burke, Justice Kautz (Chair), Judge Sullins, Judge Lavery, Judge Haws, and Judge Healy
2. Approval of the modification of Rule 41(b) of the Rules of Criminal Procedure to include the word “circuit” judge. There was consensus that the rule change should be forwarded to the Criminal Rules Division of the Permanent Rules Advisory Committee for review.

Action Items:

1. Kristi Racines will send updated budgets to the district court judges.
2. Judge Haws will form a working group of circuit and district court judges to develop tools for judges when an offender fails to appear or pay a fine, fee or other monetary portion of a sentence.
3. Judge Skar will report on the April meeting at the next BJPA meeting, including a poll as to whether W.R.Cr.P. 35 restricts a modification of probation after a year.
4. Judge Christensen will report on the April meeting of the circuit court judges.
5. Chief Justice Burke will appoint members of the Redaction Committee by order.
6. Court Administration will forward the modification of Rule 41(b) of the Rules of Criminal Procedure to the Criminal Division of the Permanent Rules Committee for review.
7. Court Administration will follow up with the Department of Health on Title 7 uniform orders.

Board Directives:

1. Chief Justice Burke asked the Board to encourage well-qualified individuals to apply for the open judgeship.

Committee Notifications:

1. Courtroom Technology Committee
 - a. Judges Tyler and Sharpe were selected by the District Court Conference as members of the Courtroom Technology Committee.
 - b. The District Court Conference approved the Courtroom Technology Approval Process recommended by the Courtroom Technology Committee.

Schedule of Future Events

Chief Circuit Court Clerks' Meeting (Casper) – April 19-21, 2017
District Judges' Conference meeting (Thermopolis) – April 20-21, 2017
Circuit Judges' Conference meeting (Jackson) – April 26-28, 2017
BJPA Meeting – June 12, 2017

Approved by email on April 20th, 2017

**2017 Legislation
Judicial Branch Review
March 2017**

HOUSE BILLS

HB0015 Sex offender registration fees and penalties.
Judiciary

- Requested by AG
- Adds subsections to the sex offender registration statute 7-19-310
- Initial fee: \$120 state & \$25 county
- At each registration after: \$25 state & \$ 6.25 county
- Must submit to DCI for indigency finding
- The determination is subject to judicial review
- Failure to pay the fee is a misdemeanor (\$750/6 months jail)

HB0017 Adult protective services.
Judiciary

- Allows court to extend the 72 hours emergency protective services for abused or neglected vulnerable adults for 30 days if necessary to remove the emergency (35-20-107)
- Purpose: To decrease the likelihood for involuntary commitments under Title 25

HB0032 Ski Safety Act.
Travel

- This act is all about summary judgment
- Carves skiing out of the Wyoming Recreation Safety Act
- Defines “inherent risk” for skiing – includes
 - Man-made snow
 - Bare spots and stumps
 - Colliding with man-made structures
 - Colliding with other skiers UNLESS ACTION IS BROUGHT BY A SKIER
- Skiers are presumed to have seen and understood the signs
- Expressly assume the inherent risks of skiing
- Violations of act are constitute evidence of negligence

EXHIBIT A

HB0041 Court ordered placements-age restrictions.

Education

- Allows DFS to pay residential and treatment costs for kids 5–21 (before 6 - 18)

HB0087 Pownall

Return of victim's property held as evidence.

- Doesn't do much
- Allows prosecutor to return a victims property if photographs will be admissible in lieu of the evidence

HB0114 Pownall

Service Animals.

- Service animals now includes miniature ponies in any place of public accommodation
- It's a misdemeanor to lie about a service animal

HB0124 Greear

Uniform Trust Code Amendments.

- The Uniform Trust Code provides that interested persons may enter into nonjudicial settlement agreements to resolve matters related to a trust and request a court intervene in the administration of a trust
- Bill defines "interested person" to be a qualified beneficiary
- Authorizes trustee to make mandatory distributions from a trust pursuant to the trust

HB0125 Greear

Sealing of trust documents.

- The bill requires a court to seal trust documents filed with the court

HB0137 Biteman

Guns in governmental and legislative meetings on public property. **VETOED BY GOVERNOR**

- Bills adds to the confusion of the concealed carry statutes
- Allows persons with permits to carry a concealed weapon at governmental and legislative meetings on public property

- Does not change the prohibition that guns may not be brought into courtrooms or jails
- BUT – says that the act does not allow carrying concealed weapons where otherwise prohibited by federal law or regulation or state law

State law allows cities to regulate the possession of firearms

6-8-401

Except as authorized by [W.S. 15-1-103\(a\)\(xviii\)](#), no city, town, county, political subdivision or any other entity shall authorize, regulate or prohibit the sale, transfer, purchase, delivery, taxation, manufacture, ownership, transportation, storage, use, carrying or possession of firearms, weapons, ...

15-1-103(a)(xviii) Cities and towns may:

(xviii) Regulate, prevent or suppress riots, disturbances, disorderly assemblies or parades, or any other conduct which disturbs or jeopardizes the public health, safety, peace or morality, in any public or private place;

HB0153 Jennings Parental rights.

- Creates 14-2-206
- Provides the right of parents to the care, custody and control of their children is fundamental and resides first in the parent
- Provides that the state may not infringe this right without demonstrating its action is the least restrictive means to address a compelling state interest

HB0156 Barlow Involuntary commitment-emergency detention amendments.

- Deals with the 109 emergency hearings
- Allows a person to be detained under 109 by an ex parte court order
- Requires a re-examination every 48 hours until the hearing if person is detained after the preliminary examination
- The person can be kept in an appropriate “care setting”
- Treatment be in the least restrictive and most therapeutic setting available

HB0161 Divorce-residency.

Pelkey

- Amends the residency requirements in a divorce to allow either party's residency to meet the 60-day residency requirement

HB0192 Court automation fee-2.

Nicholas, B.

- Increases \$10 court automation to \$25
- Modifies a provision related to fees for docketing civil matters in district court to be consistent with the Wyoming Rules for Fees and Costs for District Courts
- Existing law authorizes cities and towns to prescribe by ordinance a \$10 court automation fee as a cost to be paid by every person guilty of a violation of a city or town ordinance
 - Up to one-half of the fee may be retained by the city or town for the purpose of defraying costs and expenses related to an electronic citation system
 - This act increases the court automation fee to \$25 and specifies up to \$10 of the fee may be retained for purposes of the electronic citation system
- Specifies that state agencies that are a party to legal proceedings shall not be subject to any court automation fee increase until July 1, 2018

HB0197 Marihuana and THC products policy reform act.

Olsen

- Died in JJC

HB0238 Nude image of a minor disseminated or possessed by a minor.

Connolly

- Sexting – by minor of minor
- Creates 3 levels of offenses for sexting
 - Possession – status offense - \$250 fine
 - Dissemination - \$500 fine & 3 mos in juvenile detention facility
 - Dissemination with intent to intimidate - \$750 fine & 6 mos in jail

HB0262 Penitentiary Savings Fund.

Harshman

- In 2019 – will place funds in an account (1/2 of state investments and projects account) until fund reaches 250 million
- SIPA (Strategic Investments and Project Account) was created to allow capital gains to be used for capital construction
- This creates an account within SIPA to go towards penitentiary savings
- Will fill up at \$40 million/year

SENATE FILES

SF0027 Archiving and digital records.

Travel

- We will study this bill with the Court Automation committee to create solutions for archiving court records

SF0032 Peace officer recordings.

Judiciary

- Audio and video recordings from dash cameras and body cameras will only be available to law enforcement, for government business use or as ordered by a court
- Bill is confusing – as they *MAY* be given to the person in interest (or if involves deadly force, a complaint, in public interest?)

SF0053 Veterans preference.

Transportation

- Gives veterans preference to surviving spouses
- Requires veterans preference to be given at the initial interview
- Preference is 5%; 10% if there is a service connected disability

SF0081 Circuit court judges salaries.

Christensen

- Increases the annual salary of each circuit court judge by \$6,000, from \$119,000 to \$125,000

SF0105 Uniform Power of Attorney Act.

Scott

- This act adopts the Uniform Power of Attorney Act, which is model legislation regulating powers of attorney for persons in case of future incapacity
- The act specifies applicability, durability, validity and termination of powers of attorney
- The act establishes requirements for execution of powers of attorney and provides for nomination or designation of agents in a power of attorney - defines agent to mean a person granted authority to act for another under a power of attorney
- The act specifies what specific and general authority may be granted to agents under a power of attorney, including authority with respect to real property, tangible personal property, stocks and bonds, commodities and options, banks and other financial institutions, the operation of entities or businesses, insurance and annuities, estates, trusts and other beneficial interests, claims and litigation, personal and family maintenance, benefits from governmental programs or civil or military service, retirement plans, taxes and gifts
- The act provides for reimbursement, compensation, liability, exoneration and resignation of agents and specifies duties of agents
- The act provides for acceptance of and reliance on acknowledged powers of attorney
- The act provides forms to use to create powers of attorney and agent's certifications
- The act specifies that powers of attorney properly executed and valid on January 1, 2018 shall remain

**SF0107
Perkins**

Probate code amendments.

- For summary probate procedures - estates valued less \$200,000.00
- This act amends the summary procedure in three ways:
 - Allows notice to be sent to the agent or attorney of an interested party.
 - Amends the time to file objections to twenty 20 days after notice by mail or 30 days after notice by publication
 - An untimely objection is barred
- The act also amends the notice provisions applicable to regular probate procedure
 - Allows notice to be sent to the agent or attorney of an interested party
 - Narrows the prerequisites to the issuance of a final decree of distribution to either a finding by the court that no inheritance or estate taxes are chargeable against the estate or that all taxes and interest have been paid

SF0115
Christensen

Malicious cruelty to animals.

- Expands the acts that constitute the felony of aggravated cruelty to animals
- Includes cruelty if a person shoots, poisons or otherwise intentionally acts to seriously injure or destroy any livestock or domesticated animal owned by another person while the animal is on property where the animal is authorized to be present
- Exempts from accepted agricultural and industry livestock practices, rodeo events, and the hunting, capture or destruction of predatory animals or wildlife

SF0133
Hastert

Postmortem despoiling penalties.

- Increases the penalty limits for dissection or mutilation of a dead human body
- Imprisonment for up to 3 years and \$5,000, to imprisonment for up to 5 years and \$10,000
- Creates a felony crime if a person mutilates a dead human body or disposes of a dead human body in a hidden, undisclosed or transient location for the purpose of concealing a felony
- Imprisonment up to 10 years, and \$10,000.00

SF0142
Scott

Title 25 – payment reform.

- Allows the Department of Health to contract with mental health and substance use treatment programs
- Purpose: to reduce the demand for involuntary commitments
- Bill was substantially watered down
 - Initially required:
 - Encouraging the gatekeeper to coordinate involuntary commitment-related care
 - diversion services
 - assist with short term and long term housing

- help vulnerable persons receive all needed welfare services, prescription drugs, outpatient and inpatient behavioral health services
- provide monitoring of clients to assure medication compliance
- cooperate with the State Hospital and designated hospitals for effective discharge planning
- Assist with insurance premiums to provide health coverage that would otherwise be paid by the State.
- Allow the expenditure of up to 25% of the funding appropriated for Title 25 involuntary commitments for program operation

SF0154 Sex offender registration-accessories.

Hastert

- Adds accessory before the fact to registerable offenses and human trafficking
- Amends the definition of "offender" for purposes of sex offender registration to include persons convicted as an accessory before the fact for an offense for which registration is required

Wyoming Rules of Criminal Procedure

Rule 41. Search and Seizure

(b) Authority to issue warrant. Upon the request of the attorney for the state or a federal, state, or local peace officer, a search warrant authorized by this rule may be issued by a judicial officer. If issued by a judicial officer other than a district or circuit judge it shall be by a judicial officer for the jurisdiction wherein the property sought is located.

EXHIBIT B