

# **Board of Judicial Policy and Administration**

**Supreme Court Building**

**Cheyenne, Wyoming**

**March 14, 2016**

## **MINUTES**

### **Present In Person:**

Chief Justice Jim Burke, Justice Michael Davis, Justice Kate Fox, Justice Keith Kautz, Carol Thompson, Lily Sharpe, Ronda Munger, Kristi Racines, Eugenia Charles-Newton, Julie Goyen, Tyler Garrett, Angie Dorsch, Matthew Pappalardo, Eydie Trautwein, and Becky Craig

### **Present by Video Conference or Phone:**

Judges John Fenn, Marv Tyler, Wes Roberts, Curt Haws and Bob Castor

<b>Agenda Items</b>	<b>Summary of Discussion</b>
<b>Welcome</b>	Chief Justice Burke called the meeting to order at 9:00 a.m.
<b>Legislative Update</b>	<p>Kristi Racines reviewed this year's legislative budget session. The Budget Bill imposed cuts on all state agencies. The original proposal for the Judiciary required the branch to cut \$1.1 million from its budget. The final bill, however, substantially reduced the cuts to approximately \$375,000. Each Supreme Court division and each district court received a 5% reduction in non-payroll, general fund, ongoing dollars. The district court judges each will determine where the cuts will be made. The Legislature funded all the Judiciary's IT funding requests. Kristi forecasted, however, that additional cuts will likely come next biennium. Chief Justice Burke emphasized the importance of discussing with legislators and the Joint Appropriation Committee the lean nature of court budgets. The Chief Justice also encouraged all judges to review their remaining budgets for this biennium to limit reversion of critical operating funds. Kristi Racines will be glad to assist any courts in assessing their budgets and fiscal needs.</p> <p>Lily Sharpe briefly described the following bills that may affect the Judiciary:</p> <p><b>HB0031 Uniform Securities Act</b> Repeals and recreates the Wyoming Uniform Securities Act.</p>

	<p><b>HB0058 Human Trafficking Forfeiture</b> If the state seeks forfeiture of property, the district court must conduct a forfeiture hearing after a conviction. Third parties must be given notice. The court may deny forfeiture if it is grossly disproportionate to the offense.</p> <p><b>HB0081 Drug Court Surcharge</b> Court may assess \$50 on conviction of DUI or drug offense.</p> <p><b>HB0107 Uniform Real Electronic Recording Act</b> Allows county clerks to accept electronic recordings of deeds, mortgages, conveyances, patents, certificates, instruments and like documents.</p> <p><b>HB0140 Bar Examiners</b> Updates the Board of Law Examiner statutes.</p> <p><b>SF006 Fourth Judge for Laramie County</b> Authorizes a fourth district court judge upon certification by the Chief Justice that Laramie County has additional suitable facilities for the judge, staff and a 12 person jury.</p> <p><b>SF0046 Asset Forfeiture</b> Requires the circuit court to conduct a probable cause hearing within 30 days of the seizure of property under the Wyoming Controlled Substances Act. Limits time for bringing a forfeiture action, requires notice to third parties, and district court may deny forfeiture if it is grossly disproportionate to the offense.</p> <p><b>SF0047 Juvenile Sex Offender Risk Assessment</b> If a minor is adjudicated delinquent or convicted of a registrable offense and the prosecuting attorney requests that notice be given under the registration statute, the court must conduct a risk assessment to determine who must be given notice.</p> <p><b>SF0058 Involuntary Hospitalization</b> If a court determines hospitalization is not necessary, it must consider an outpatient treatment order. The Department of Health may designate a gatekeeper to appear at the hearing.</p> <p><b>Tentative Joint Judiciary Committee Meetings:</b> April 27 &amp; 28, 2016 Rock Springs September 22 &amp; 23, 2016 Torrington November 14 &amp; 15, 2016 TBD</p>
<p><b>Courtroom Technology Equipment Committee</b></p>	<p>Chief Justice Burke discussed the importance of upgrading the technology equipment in courtrooms throughout the State. He recounted that historically, the Supreme Court has requested a limited amount of funds from the Legislature each biennium to assist with upgrades, but also asked counties to pay half the cost for IT upgrades. Typically, the Supreme Court contributed \$35,000 for each courtroom and the counties contributed an additional \$35,000. To achieve a more focused approach, the Chief appointed Justice Davis and Judges Tyler, Sharpe, Christensen and Prokos to serve on a Courtroom Technology Equipment Committee. The committee will assess the current technology in each court-</p>

<p>Members: Justice Davis, Judge Tyler, Judge Sharpe, Judge Christensen and Judge Prokos</p>	<p>room throughout the state. Following the assessment, the committee will determine the level of technology each courtroom should have and will develop a plan for instituting the necessary upgrades.</p> <p>Judge Marv Tyler described the success Sublette County recently achieved in improving its district courtroom. Before the upgrades, witnesses and jurors had difficulty hearing testimony and seeing electronic evidence. The acoustics were so poor that it was difficult to understand what was said during the trials. The county commissioners appreciated the need for improved courtroom technology and approved funding for major upgrades. An experienced Utah firm designed critical upgrades. The improvement resulted in a state of the art courtroom that has already been an asset to the community. Judge Tyler pointed out, however, that many courtrooms in the state are fundamentally lacking. He expressed the need to develop standards and implement the improvements so all courtrooms meet the standards.</p> <p>Judge Haws added that the success of the project was furthered by input from Jen Petrella at the Supreme Court and the willingness of the county to fund the project. Judge Haws imparted the importance of requesting items that are critically needed in order to be good stewards of the county's funds.</p>
<p><b>Court Automation</b></p>	<p>Julie Goyen, Supreme Court Information Officer, described the following recent progress in court automation:</p> <p><b>Circuit Court</b> Funding received this Budget Session will allow the circuit courts to upgrade their case management and accounting system. The clerks will see a demonstration of the upgrade at their conference in April.</p> <p><b>District Court</b> The IT division has been testing the WyUser calendaring and scheduling module and hopes to pilot the project late this spring. E-filing will be the next major step in the process and the division will strive to make substantial progress over the next year.</p> <p><b>Jury Management</b> The IT division is seeking proposals for a new jury management system. There will be onsite demonstrations from five vendors. Three district court and two circuit court clerks will assist with selecting a vendor.</p>
<p><b>Website Revamp</b></p>	<p>The Chief Justice advised that a major revamp is underway for the Supreme Court website. The goal of the site change is to create a statewide Judicial branch website. Tyler Garrett, law clerk to Justice Davis, along with other staff, have diligently labored to create an informative and vibrant site. The home page will display the court jurisdictions as the pillars of the Judiciary. There will be a pull-down menu under each jurisdiction. The website will be user-friendly and employ intuitive logic for ease of use.</p> <p>Judge Fenn and Judge Harrington have been contacted for content on the district and circuit court web pages. Tyler hopes to move forward quickly and go live with the new website by July 1. Justice Davis stressed that the site will be for the entire Judicial branch. He</p>

	<p>encouraged district and circuits courts to take advantage of this opportunity to create a working site that helps attorneys and public users. The Chief agreed this is an exciting project and a team effort. The Judiciary has been doing a lot of work and this is an opportunity to display that work.</p>
<p><b>Court Security Commission</b></p>	<p>Ronda Munger reviewed the status of the court security grants. Crook County has begun making security improvements. Niobrara and Platte Counties have been awarded funding and are moving forward with planning improvements. Big Horn County will submit a grant application to SLIB soon. Weston County is still considering new court locations, and Park County Commissioners have not decided whether they will provide matching funds. Ronda also informed the Board that a State Justice Institute grant application was submitted in February. The grant requested \$50,000 for additional court security assessments. We received notice that the grants will be awarded in mid-May.</p>
<p><b>Children's Justice Project</b></p>	<p>Eydie Trautwein provided the following update on the Children's Justice Project.</p> <p><b>The Children's Justice Conference</b>  This year's conference will be held June 22-24th in Casper at the Ramkota. Interested judges and staff are encouraged to register through the CJP website. Educational pre-conferences will be conducted on June 22nd for GALs, DFS, parent attorneys and prosecutors.</p> <p><b>Time to Permanent Placement</b>  CJP continues to track "time to permanent placement" in abuse and neglect cases. Timeliness trend data will be gathered in April for the first 6 months of fiscal year 2016. Eydie will let districts know if their times exceed the statewide baseline of 288 median days.</p> <p><b>Legislation</b>  House Bill 118 was passed this session and takes effect immediately. The bill affects abuse/neglect, CHINs and delinquency proceedings under Title 14. CJP will prepare a summary of the bill and circulate it to district court judges and prosecutors. CJP will also update hearing checklists to help judges comply with the new requirements.</p> <p><b>DFS and DOC Budget Cuts</b>  Directors Steve Corsi and Bob Lampert submitted letters outlining how their agency budget cuts impact the courts. The DFS letter is the most significant to CJP and juvenile courts. There will be no funding for UAs and ankle monitors as sanctions in CHINS and delinquency cases.</p> <p><b>Abuse and neglect cases and Federal audits</b>  The State will be audited in May on Federal IV-E funds. These audits happen every 3 years. District court judges may be contacted if the required language is not found in court orders. Orders that do not include the required provisions and untimely hearings can result in the loss of funds by DFS or penalties. This year, a loss of funds would be very difficult for DFS to absorb.</p>

	<p><b>Child and Family Services Review</b></p> <p>The State will undergo a child welfare audit in July. These audits occur every 6 years. Abuse/neglect, CHINS and delinquency court cases from Cheyenne, Casper, Cody and Powell will be reviewed. District court judges may be contacted if a court case fails review because of untimely court hearings, long times to permanent placements, and lack of case plans.</p>
<b>Judicial Learning Center</b>	<p>Eydie Trautwein detailed exciting progress for the Learning Center. The Legislature appropriated an additional \$100,000 in matching funds for completion of the Center. Construction space has been completed and a company has been selected to develop the exhibits. The grand opening is tentatively set for November 15, 2016. The next Judicial Learning Center Advisory Board meeting is Monday, April 11<sup>th</sup>, at 10:00 a.m. The Center was patterned after the Colorado Center, and the original plan was to hire the exhibit vendor used by Colorado. Because the vendor's bid was higher than expected, a local company was selected. The Chief Justice offered that the new company intends to improve the exhibits and will prepare the content for the exhibits in a form that can be shared with schools.</p>
<b>State Law Library</b>	<p>Eugenia Charles-Newton reported that Westlaw Advance has replaced Westlaw traditional. There are tutorials available on Westlaw. If anyone has questions or needs help, just call the library and the librarian will be happy to help.</p>
<b>Access to Justice Commission Update and Guardianship Packets</b>	<p>Angie Dorsch informed the Board on recent work completed by the Access to Justice Commission and on updates to the guardianship packets.</p> <p><b>Access to Justice Commission</b></p> <p>The Access to Justice Commission (AJC) working groups are moving forward with various projects. The Communications Working Group developed a marketing plan and the plan was approved by the AJC. The working group is now implementing the plan and creating two client videos.</p> <p>The Delivery Working Group is implementing a Volunteer Reference Attorney project. The project will place volunteer attorneys in courthouses several times per month to provide legal information and resources to pro se litigants. Justice Fox commented that this should take some of the burden of dealing with pro se litigants off of the clerks of court. The district courts in Cheyenne have provided space for the project in the courthouse. After piloting the project in Cheyenne, the working group will attempt to expand it to other areas of the state.</p> <p>The Legislation/Law Improvement Working Group, after receiving direction from the AJC and Justice Fox, is refocusing the group's goals. The group will meet to identify and narrow the scope of its projects.</p>

## **Guardianship of a Minor Child Pro Se Packet**

Equal Justice Wyoming has provided guardianship packets for over two years. The Guardianship of a Minor Child forms are the most frequently downloaded forms on the Equal Justice Wyoming website. Because these forms are being widely used, the Pro Se Forms Committee began working on this packet. The forms were reviewed by the Pro Se Forms Committee before submitting the forms to the district judges, the judges' law clerks, and the clerks of district court for input. The Committee received input, comments, and suggestions from many of the individuals who reviewed the forms. The Committee incorporated most of the requested changes into the packets.

Angie reviewed the comments/issues and requested changes that were not incorporated into the forms packet.

1. Redaction. The Committee received comments that there are no instructions about redaction in the packet. The Committee believes it would be most efficient to create one set of redaction instructions for all packets.
2. Temporary Guardianship for educational, medical, or dental care. The Committee will create a separate packet for these and also for guardianship of an adult.
3. Out-of-State Orders. Because guardianship or custody orders from out of state are so complicated, a warning will be added to this section advising the form users that if there are out-of-state orders, they should speak to an attorney before filing.
4. Serving a Proposed Ward who is a Minor. The Committee acknowledges that there is a requirement to serve the ward, but that requirement can be waived for a proposed ward who is a minor. The Committee is unclear if judges are requiring service on children, and if not, if they are automatically waiving the requirement sua sponte, or if they waive it only if a petitioner files a motion to waive service on the child. Since the Committee did not have a good sense of the different ways judges are handling this, it was not addressed in the packet, which will leave it up to the individual judges to handle this as they see fit.
5. Fee Waiver. Questions arose whether there is authority to allow a fee waiver in guardianship cases. The Committee understands that various judges handle fee waivers differently. Since some judges allow fee waivers in guardianship cases, the Committee recommended leaving the fee waiver in the packet and leaving it up to each individual judge to determine if a fee waiver will be granted.
6. Visitation Schedule. Questions were received as to the authority to set a visitation schedule in a guardianship case. The Committee reviewed W.S. 3-1-205 (a)(v), which provides the ward has the right to the least restrictive and most appropriate guardianship or conservatorship suitable to the proposed ward's circumstances. The Committee's interpretation of this statute is that it gives broad discretion for judges to enter orders that accommodate a ward's particular circumstances. If it would be beneficial for the child to continue to have contact with his/her parents, then the Committee concluded the judge would have authority to enter a visitation schedule

	<p>as part of the order. When the forms were originally developed, some judges indicated that they do enter visitation schedules in appropriate cases, while other judges do not. Although there is no requirement that a visitation schedule must be entered, the Committee recommends leaving the visitation portion in the forms in order to allow judges to use their discretion to enter visitation when appropriate.</p> <p>7. <u>Oath and Letters of Guardianship.</u> Comments were submitted that the oath and letters of guardianship are not required under the Wyoming Statutes. The Committee interprets W.S. 3-1-106 to require an oath and letters of guardianship. This statute states the provisions applicable to all fiduciaries under W.S. 2-3-101 through 2-3-504 and 2-3-801 through 2-3-834 shall govern the appointment, qualification, substitution, removal, oath and bond of a guardian or conservator. The Committee interprets this to mean that although the requirement of the bond is waived unless the court finds it necessary, the other provisions, including an oath and letters, are still required. The Committee recommends leaving the oath and letters of guardianship in the packet.</p>
<p><b>Judicial Education Committee</b></p> <p>Members:</p> <p>Chief Justice Burke, Justice Kautz, Judge Sullins, Judge Lavery, Judge Haws &amp; Judge Healy</p>	<p><b>Circuit Court Benchbook Committee</b></p> <p>Judge Castor reported the circuit court bench book will be presented to the judges at their April meeting. The book was created over the last year and addresses numerous topics, including preliminary hearings, contempt, small claims, commencement of civil actions, amended pleadings, summary judgments, default, revival and forcible entry and detainer. The book sets out best practices, law and advisements.</p> <p>Judge Fenn stated the district judges do not have a formal pattern bench book, but they confer regularly and share materials and information.</p> <p>Justice Burke added that the judicial education committee arose out of the training held for Judge Korell. The training involved approximately ten district court judges and three justices. The training was very successful. This committee will continue the process of developing an approach to education that is meaningful to the judges. The committee will assess education currently available and investigate valuable and cost effective opportunities for the future.</p>
<p><b>Elder Task Force</b></p>	<p>Justice Fox provided background on the Governor's Order Establishing Elder and Vulnerable Adult Task Force, signed February 17, 2016. This task force arose out of the Elder Law Subcommittee, which was established by the Board at its December 14, 2014 meeting. The subcommittee included Justice Fox, Judge Perry, Judge Kautz and Judge Roberts. The subcommittee recognized that the lack of guardians is a nationwide issue and recommended that there be a special task force established to focus on legislative changes. The Governor's task force includes Justice Kautz, Judge Rogers, Judge Roberts, DFS, Department of Health, legislators, bankers, lawyers, law enforcement, prosecutors and the Wyoming Guardianship Corporation. The first meeting of the task force will be March 28, 2016.</p> <p>The judiciary still will need to look at judiciary specific issues.</p>

<b>Permanent Rules Advisory Committee, Civil Division</b>	Justice Fox conveyed that the Permanent Rules Advisory Committee, Civil Division, has been working diligently to compare federal rules of civil procedure to our Wyoming Rules of Civil Procedure. The Committee will be proposing numerous rules changes, and although many of the changes are language cleanups, some of the proposed changes are substantive in nature. In an effort to include the State Bar in the discussion, the Committee has arranged for a panel discussion to occur at the Annual Bar Meeting in Laramie. Judge Fenn noted that Judge Rumpke is on the committee and will address the district judges at their April conference.
<b>Request For Rule Change – Uniform Rules for District Courts, Rule 501</b>	Justice Fox explained a rule change requested by an attorney to Rule 501(a)(3)(B)(ii) of the Uniform Rules For District Courts. The paragraph provides, “Expert witness fees shall be allowed at the rate of \$25 per day or such other amount as the court may allow according to the circumstances of the case....” Judge Fenn stated the district judges considered the request during their Friday morning conference call and were uniformly opposed. The suggestion is contrary to the American Rule. Justice Kautz pointed out the rule is based on a statute (W.S. 1-14-102). The Chief Justice directed staff to forward the letter to the circuit and district judges’ conferences for further input.
<b>Small Claims Cases Fees (W.S. 1-21-202(a))</b>	Judge Castor questioned the requirement in W.S. 1-21-202(a) of a \$4 appearance fee in small claims cases. When the \$10 filing fee was imposed, circuit courts collected the filing fee in lieu of the appearance fee. Judge Castor moved, seconded by Justice Fox, to approach legislature to delete this language. The motion passed unanimously. Judge Castor will provide the suggested legislative changes to Supreme Court staff.

<b>Actions Taken</b>	
1. The Board directed staff to forward the letter regarding expert witness fees to the circuit and district judges’ conferences for input.	
2. The Board directed staff to request legislative changes to delete the \$4 appearance fee in W.S. 1-21-202(a).	

<b>Schedule of Future Events</b>	Circuit Court Clerks Conference, Casper – April 6 <sup>th</sup> through 8 <sup>th</sup> Circuit Court Judicial Conference, Jackson – April 20 <sup>th</sup> through 22 <sup>nd</sup> District Court Judicial Conference, Sheridan – April 21 <sup>st</sup> and 22 <sup>nd</sup> BJPA Meeting, Video Conference – June 13, 2016 Children’s Justice Project Conference, Casper – June 22 <sup>nd</sup> through June 24 <sup>th</sup> BJPA Meeting, Video Conference – August 15, 2016 BJPA Meeting, Video Conference – December 12, 2016

Approved by email on June 7, 2016