

Board of Judicial Policy and Administration
Minutes
March 17, 2005

The Board of Judicial Policy and Administration met in Casper on March 17, 2005. Justice Michael Golden, Judge Jeff Donnell, Judge John Perry, Judge John Brooks, Judge Mike Huber, and Judge Bob Skar attended. Holly Hansen and Ronda Munger also attended. Chief Justice William Hill, Justice Marilyn Kite, and Judge Terry Tharp participated by telephone. Throughout the course of the meeting the following individuals attended at some point by phone: Judge John Brackley. Nancy Freudenthal and Keith Tiel attended in person for part of the meeting.

OLD BUSINESS

GUARDIAN AD LITEM ISSUES

Holly Hansen gave the Board a report on the new developments in the area of guardians ad litem. During the 2004 Legislative session, the Wyoming Legislature declined to establish the "Office of Child Representation," which was proposed as a part of a plan to provide legal representation for children. During the interim, the Department of Family Services and a select subcommittee of the Joint Judiciary studied the issue of guardians ad litem. During the 2005 Legislative session, the Legislature passed HEA 137, which provides that the Supreme Court will be responsible to reimburse guardians ad litem. The district judges judicial conference is responsible for proposing administrative rules and regulations governing the standards for the legal representation by attorneys as guardians ad litem in child protection or child in need of supervision cases. The district judges judicial conference is also responsible for proposing training standards for attorney guardians ad litem to be reimbursed under this system. The proposed rules and regulations are to be approved by the Board of Judicial Policy and Administration. Effective July 1, 2005, the Supreme Court will be receiving a 2.1 million dollar appropriation to begin administering the program (2.0 million is to be dispersed to attorney guardians ad litem). Under this new legislation, the counties are responsible to provide a match of 25% of the payments to guardians ad litem. The counties are also responsible for contracting with the individual service providers. Holly and Joann Stockdale will be meeting with the district judges at their April meeting. Holly will also be meeting with Joe Evans and the County Commissioners at their meeting in Evanston on April 29th. The Board will be having a special conference call in April and May to review the rules and regulations as proposed by the district judges. The Board will then disseminate the rules for comment, prior to their formal approval at the Board's June 1, 2005 meeting.

LEGISLATIVE UPDATE

Holly Hansen gave a legislative update on several enrolled acts from the 2005 Legislative session. SEA 12 provides that the Supreme Court will now be responsible for the auditing of the circuit courts. SEA 79 increased the jurisdictional amounts in small claims cases from \$3,000 to \$5,000. SEA 26 increased the number of district judges in the Sixth Judicial District to three. SEA 3 increased the employer contribution in the new judicial retirement program by 3% to correct the mistake made by the State Retirement System's actuary. Holly also discussed SF90, the court ordered placements of juveniles bill. This bill died on general file in the House, but Holly anticipates there will be

activity during the interim and that the bill will probably be proposed in one form or another the next legislative session. Holly reported that the Joint Judiciary Interim studies list states that the Joint Judiciary will look at substance abuse and mental health systems, and they will also look at juvenile court issues.

COMMITTEE UPDATES

CACC - Holly reported to the Board that she met with the District Court Clerks regarding the Pro Se packets. Holly is in the process of contracting with an attorney who will be responsible for updating the forms and simplifying them. Judge Perry advised the Board that some of the district judges have articulated interest in reviewing the forms to make them more user friendly. The Board agreed that after the forms are revised by the attorney, they will then be forwarded to the district judges conference for comment.

Circuit Court Records Committee - Chief Justice Hill, upon the Board's request, established the circuit court records committee. The members of the committee are Justice Golden, Judge Skavhahl, Judge Nau, Judge Eakin, Judy Pacheco (Supreme Court Clerk), Linda Hudson (Circuit Court Chief Clerk), Nancy Ratcliff (District Court Clerk), Dee Morgan (A.G.'s Office), and Tina Kerin (P.D.'s Office). The committee had its first call on March 3rd. The Committee drafted and circulated a survey, which was sent to all judges and clerks at the circuit and district courts. The survey requested information regarding existing practices for copying and checking out circuit court audio tapes. The survey also requested a list of all recording equipment used in the circuit courts. The committee is investigating a couple of issues: 1) compatibility of equipment between the circuit courts and the district judges' chambers; and 2) what procedures are necessary to facilitate usable circuit court records on appeal.

Retirement Committee - Holly Hansen reported that the Retirement committee has not met, but it will begin work soon. Justice Kite has been appointed as the Chair, Judge Day has expressed interest in participating, as well as Judge Castor. The Board discussed adding a couple district judges and also a judge from the old retirement plan.

Legislative Committee - The Board discussed the fact that Justice Lehman was the former Chair of the Legislative Committee and that a new Chair needs to be appointed. Justice Jim Burke was suggested as a candidate and Chief Justice Hill agreed to discuss it with him.

WRCP 5(e) - FAXED DOCUMENTS TO COURTS

During the June 2, 2004 Board meeting in Gillette, Judge Perry and Judge Waldrip led a discussion with the Board regarding the abuse of faxing pleadings to the district courts. They explained that it has become common practice for attorneys to fax most pleadings, without the consent of the court, including pleadings which are in excess of 50 pages. On June 16, 2004, Judge Waldrip sent a letter to George Santini of the Permanent Rules Civil Advisory Committee (Rules Committee) and recommended specific changes be made to WRCP 5(e). On February 2, 2005, the Board received a response and recommendation from the Rules Committee. For those amendments where Judge Waldrip and the Rules Committee agreed, the Board agreed to make those changes. There were four amendments wherein Judge Waldrip's recommendation and the Rules Committee recommendation differed.

First, Judge Waldrip recommended a page restriction of 10 pages, which is consistent with Rule 1.07 of the Rules of Appellate Procedure, providing no document which exceeds 10 pages may be filed by fax. The Rules Committee recommended a page restriction of 15 pages. After discussion, Judge Perry moved and Justice Golden seconded a motion to amend WRCP 5(e) to reflect a 10 page limitation. The motion carried unanimously.

Second, Judge Waldrip recommended a change in WRCP 5(e) reflecting that attorneys needed to notify the clerk of court that they would be sending a fax, instead of requesting approval from the clerk. The Rules Committee recommended that the prior notification language be taken out entirely. After discussion, Justice Golden moved and Judge Donnell seconded a motion to amend WRCP 5(e) to state that attorneys need to provide prior notification of a faxed filing to the clerk's office. The motion carried unanimously.

Third, at the time Judge Waldrip sent his recommendation to the Rules Committee, the Uniform Rules for Costs and Fees in District Court had not been signed. The Rules Committee recommended that the faxing fee be consistent with the newly signed order. Judge Perry moved and Justice Golden seconded a motion to insert language regarding the faxing fee being in accordance with the Uniform Rules for Costs and Fees in District Court and Circuit Court. The motion carried unanimously.

And finally, Judge Waldrip recommended a change in WRCP 5(e) to reflect that the clerk of court could refuse to file any faxed document that did not comply with the requirements of WRCP 5(e). The Rules Committee recommended that the language allowing the clerk to refuse to file faxed documents not in compliance with WRCP 5(e) be deleted entirely. After discussion, Justice Golden moved and Judge Tharp seconded a motion to add the following language to WRCP 5(e): "The court may reject any paper filed not in compliance with this rule." The motion carried unanimously.

COURT REPORTER ISSUES

Judge John Brackley appeared by phone to discuss some court reporter issues with the Board. The main discussion centered around Wyoming Statute 5-3-403, which requires official court reporters to maintain stenographic notes for 10 years, unless a transcript has been provided, at which time they can destroy their stenographic notes. The statute was put on the books in 1909, and he does not believe the 10 year requirement has been changed since. At that time, computers did not exist and the note taking used by court reporters was standardized so that court reporters could read each others notes. In today's world of stenographic programs, that is no longer the case. Even court reporters that attend the same school, during the same time frame, do not use the same keystrokes. The dictionaries on court reporter computers are specific and unique to each court reporter. Some of the latest court reporting programs do not even make paper notes. The end result being that court reporters can not transcribe each other stenographic notes and so maintaining the paper notes for 10 years is of little value. If a court reporter moves, dies or for some reason becomes incapacitated it is all but impossible for someone to create a transcript from their notes. Judge Brackley would like to in some way define what it means to maintain stenographic notes. Judge Brackley reported that all court reporters have a program that will allow them to transfer their short keystrokes into words. All of the major programs convert the stenographic notes into some other format that word processing programs can read. If the court reporters are required to transfer their notes

into the asci/rtf format, then reproduction of transcripts 10 years down the road is possible. Judge Brackley suggested requiring the court reporters, when they file their monthly billing statements, to file their stenographic notes in the asci/rtf format for everything they recorded during that month. So, along with their billing statement, court reporters should be required to file a CD to be catalogued by the clerk of the district court in all the cases. Justice Golden added that he believes there should be standards and rules and regulations that license court reporters. Judge Brooks suggested that the Board seek the input of court reporters in this area.

After some discussion, the Board decided there were two issues to address. The first issue is in regard to Wyoming Statute 5-3-403, and the Board decided to refer that issue to the Legislative Committee. Judge Donnell agreed to put that issue on the agenda for the district judges' conference in April. The second issue is to address the licensure/certification components by rules and regulations established by the Board. Holly Hansen raised a third issue in regard to court reporters. Ten to twelve years ago, the district judges visited the issue of what the state would pay for in terms of equipment and supplies for the court reports. Since that discussion was not memorialized, it is necessary for the district judges to revisit this issue and decide what items state money could be used for and what items they are required to provide on their own. Judge Donnell agreed to add that topic to the district judges' agenda.

NEW BUSINESS

COURT CALL

Holly Hansen reported to the Board on the topic of Court Call. Court Call is a service that can be used by judges to facilitate phone conference calls instead of in person hearings. An attorney contacted Holly to complain that one of the courts in the state was requiring attorneys to pay a \$55.00 fee to appear by phone for hearings. The Board discussed the issue and decided that it was an internal management issue that does not fall under the purview of the Board. No action was taken.

PEREMPTORY CHALLENGES OF JUDGES

Judge Brooks addressed the Board on the issue of peremptory challenges of judges made repeatedly by certain attorneys. The expense and additional burden of finding replacement district judges is becoming very burdensome on some of the courts, especially in the single judge districts. The district judge that brought this problem to Judge Brooks' attention suggested that the rules be changed so that an attorney could only peremptorily challenge a judge a limited number of times, but any additional challenges would have to go before the Bench/Bar Relations Committee. The Board discussed this issue at length. Although there is no question that the peremptory challenge rule is abused from time to time in some locations, the Board was not willing to make recommendations to the rules committee as far as limiting the use of the peremptory challenge rule. Chief Justice Hill agreed to contact Mark Harris and the Bar to discuss the issue.

COMPLAINTS ABOUT THE JUDICIARY BY THE DEPARTMENT OF FAMILY SERVICES

Judge Brooks made a presentation to the Board at the request of Judge Grant. Last fall, an article appeared in the news paper articulating criticism about the Judiciary by the Department of Family Services (DFS). The main issue at that time was out of home

placements. Judge Grant is requesting the Board to appoint a member of the Board to work with Judge Grant and DFS to discuss any difficulties that arise between DFS and the Wyoming Judiciary, so that these issues are not discussed in the local newspapers. Judge Donnell volunteered to be the representative of the Board to work with Judge Grant on this issue.

WYOMING RULES OF APPELLATE PROCEDURE 4.02

First Lady Nancy Freudenthal and Keith Tiel appeared before the Board on behalf of Philip Morris USA. Ms. Freudenthal explained that she and Mr. Tiel had previously appeared before the Permanent Rules Advisory Committee, Appellate Division to discuss an amendment to WRAP 4.02, which would put in place a maximum appeal bond cap of twenty-five million dollars. The Rules Committee viewed the request as having too many policy implications, and so the Rules Committee referred Ms. Freudenthal and Mr. Tiel to the Board. The proposal being advanced would put a cap on the execution of a judgment at 25 million dollars. Thirty-three other states have adopted maximum caps on appeals bonds, which range from one million dollars to one hundred and fifty million dollars. This amendment could be advanced through the legislative process; however, Ms. Freudenthal believes it is more appropriate to do it through the Judiciary and the rule making process. The Board discussed the matter. Judge Donnell moved and Justice Kite seconded a motion to send this issue back to the Rules Committee without comment. The motion carried unanimously.

HOURLY MAGISTRATE SALARY INCREASE

Judge Tharp brought the issue of a salary increase for the hourly magistrates before the Board. Judge Tharp explained that the magistrates who fill in on a part time basis in the circuit courts have been paid \$50 an hour since at least 1988. Judge Tharp believes that continuing to pay these magistrates the \$50 an hour wage is an issue since most attorneys bill out their hourly time at \$150 to \$200 an hour and it means that they are losing significant amounts of money to fill in at the court. Judge Tharp requested the Board support a salary increase for these magistrates in the next biennium. Judge Tharp pointed out that some of the guardians ad litem across the state are being paid \$75 an hour and the magistrate that is presiding over cases makes only \$50 an hour. Holly Hansen told the Board that there have been requests in the past to increase the hourly wage for magistrates, but the Legislature has traditionally been resistant. The Board agreed to support a raise for the magistrates in the next biennium. The Board also agreed that it is important to have all the circuit judges talk to their legislators long before the legislative session for it to be successful. Judge Skar agreed to bring this issue up at the circuit judges meeting in April, and he will ask the circuit judges to send a request to the Board outlining what they believe a defensible increase would be.

Board Adjourned

Schedule of Future Meetings

April 19, 2005	Noon Conference Call
May 3, 2005	Noon Conference Call
June 1, 2005	Cheyenne
September 8, 2005	Casper
December 1, 2005	Douglas