

Board of Judicial Policy and Administration
Minutes
June 1, 2005

The Board of Judicial Policy and Administration met in Cheyenne on June 1, 2005. In attendance were Chief Justice William U. Hill, Judge Jeff Donnell, Judge John Brooks, Judge Mike Huber, Judge Terry Tharp and Judge Bob Skar. Holly Hansen and Ronda Munger also attended. Justice Michael Golden, Justice Marilyn Kite, and Judge John Perry participated by telephone. Throughout the course of the meeting the following individuals attended at some point by phone: Judge Sam Soule'. Rodger McDaniels and Korin Schmidt made a presentation to the board.

Old Business

Rule 106-Guardians Ad Litem

Judge Donnell made a presentation to the Board regarding the proposed Rule 106. Rule 106 was proposed by the district judges conference, per the legislative mandate in Chapter 237, 2005 Wyoming Session Laws, to specify training requirements and standards for Guardians Ad Litem (GALs) for the Supreme Court reimbursement cases. The rule generated some controversy. At the end of the drafting process, some of the district judges came forward and expressed a concern that the proposed rule would drive away those attorneys who are currently handling the GAL cases. There were two proposals that were voted on at the district judges meeting, and the one being proposed to the Board carried the most district judge support. The proposed rule was created by a committee comprised of Judges Donnell, Hartman and Young; Professor John Burman and Dona Playton provided some input as well. The rule is based on some standards propounded by the ABA and The National Association of Children's Counsel.

Judge Perry, who established that he would vote for the passage of Rule 106, mentioned some concerns he had with adoption of the Rule. In Campbell County, he uses attorney GALs who normally bill out at a substantially greater rate than they are paid for these cases. The attorneys are willing to serve based on a community service component of their practice. Judge Perry is concerned that if these attorneys are required to attend specialized training, and required to obtain certification to be a GAL, then they will no longer be willing to serve. Further, he raises the issue of whether or not the Legislature can establish specialized training requirements for lawyers. Judge Huber agreed with the concerns raised by Judge Perry. Judge Donnell did not necessarily disagree with Judges Perry and Huber, however, he pointed out the issues that are currently being raised should have been raised with the Legislature, before the legislative mandate to draft training rules and standards in conjunction with the two million dollars the state appropriated to help the counties pay GALs. Judge Skar expressed some concern about the lack of lawyers to do this work in the smaller counties.

Justice Golden moved and Judge Perry seconded a motion to approve the adoption of Rule 106, Uniform Rules for District Courts. The motion carried unanimously.

Holly Hansen briefed the Board in terms of what will happen next. She informed the Board that the Rule will be recommended to the Supreme Court for adoption; then, the

rule will be put in a package that will be sent to the county commissioners, county attorneys, and district Judges. The funding will be available July 1, 2005. Holly also informed the Board that there will be a special training session, sponsored by the Children's Justice Project, to be held in Casper on June 28th and 29th, which will help any attorney interested in this program to obtain the necessary training. Holly also informed the Board that Linda Beaver and Joann Stockdale are working with the State Bar in getting the details of the certification program up and running.

Committee Updates

CACC - Holly reminded the Board that they had received the results of a pro se packet survey at their December meeting. The uniform response was that the packets needed to be updated and the forms needed to be simpler. A draft of the pro se packets will be distributed to district judges who are interested in reviewing them. The goal will be to have the packets revised as close to July 1, 2005, as possible.

Circuit Court Records Committee - Holly reported to the Board that the Circuit Court Records Committee is moving forward with its work. The committee has met by conference call on three separate occasions. The committee has chosen to divide the project into two separate parts. The first part deals with issues relating to the recording systems currently in the circuit courts. Judge Nau, Judge Eakin and Holly made a presentation to the circuit judges at their meeting in April, in order to get feedback from the judges on their willingness to support a statewide effort to get new digital recording equipment for all the courts. The circuit judges as a whole were supported the concept. The next step will be to develop a budget request that provides an appropriation for this equipment. At this time, a vendor for the equipment has not been selected. The selection process will move forward if the Legislature provides the requested funds.

The circuit court records committee will move forward with the second part of the project, and that is to take a look at the rules that are currently in place that deal with transcripts and records in the circuit courts.

Retirement Committee - Justice Kite reported that the retirement committee has had their first meeting. The committee sent a letter, via Holly Hansen, to Tom Mann, requesting information on two issues: 1) what the impact would be of changing the "actuarially reduced basis" to a more favorable calculation that does not so severely penalize members of the judiciary who choose to leave before they have attained the age of 60, with 20 years of service; and 2) the availability of additional options that could include, providing health insurance coverage, more money upon retirement, revision of the retirement age and senior status. The committee will also be looking at the Idaho and Kentucky retirement plans for judges.

Legislative Committee - Holly reported that Justice Burke has been appointed as the Chair of the Legislative Committee. Holly will be working with him to select some additional members for the committee. There will be more to report at the September Board meeting.

JTTF - Holly made a report to the Board regarding the Judicial Technology Task Force. The JTTF met in Douglas the end of May. Over the past several years, the JTTF

has reviewed grant proposals, submitted by various local government entities requesting hardware or software for use in the court system. Each year the Legislature has appropriated \$250,000 to fund these requests. Just recently, the JTTF received a grant application from Laramie County, which will be submitted to the Board at a later date.

The JTTF would like to pursue several projects if there is interest from the Board. The first project is to develop an e-filing system in a pilot court. Overall, the Board was receptive to the idea of pursuing an e-filing path on a limited basis. The second project the JTTF discussed with the Board was the possibility of using some of the \$250,000 to put the case management system in the larger municipal courts across the state. The JTTF would like to do this so that as the state moves toward more information sharing across the state, it would be advisable to include the information from the municipal courts as well. The agreement with the municipalities would be that the JTTF would put forth the initial money for the software for the case management system, but the municipality would then be responsible for maintaining and upgrading the system. An MOU would be signed that detailed the agreement. The Board discussed this project at length, and the consensus was that there was more interest in interfacing the data contained in the municipal courts to the data warehouse that currently exists for the state court information. The third project that the JTTF suggested was to approve a plan to provide \$20,000 to Judge Brackley's court for video arraignment. The fourth project was to provide \$15,000 to work on a uniform citation system to be used for those patrol cars that have wireless computers in their cars. The last project was a request for \$50,000 to provide a web portal for the courts data warehouse. The Board unanimously approved all five projects.

Update on Campbell County Facilities

Judge Perry reported that Campbell County had its onsite review with the Chairs of the Joint Judiciary Committee. A memorandum was signed by the Joint Judiciary Committee certifying the court facilities, and Judge Perry sent the memorandum to the State Auditor, Max Maxfield.

Court Reporter Issues

Judge Brooks reported to the Board on the progress of the court reporter issues discussed at the March 17, 2005 Board meeting. The main problem is that if a court reporter becomes incapacitated for some reason, there is no way to transcribe his/her notes of hearings or trials that have not been transcribed. Judge Brackley proposed having the raw notes be put in ascii format and filed with the district court clerk with the end of the month billing statements. The Board had asked the district judges to take up three issues with regard to court reporters: one, preservation of electronic notes; two, state certification; and three, the purchase of equipment and supplies. The district judges discussed this at their April meeting, and Judge Brackley, Judge Hartman and Judge James were appointed to a committee. Judge Brooks provided the Board a copy of a memo that his court reporter sent to the district judge committee, detailing his input regarding the three issues. Justice Golden recommended that these issues be addressed through court rule, rather than through statutory changes. The Board agreed with this suggestion.

Sublette Litigation

Holly reported to the Board regarding a lawsuit that originated out of Sublette County. A private citizen in Sublette County wanted to attend a hearing at the courthouse, however, when she arrived at the courthouse she discovered that the lift was out of service and she needed to use it to get her disabled son up to the courtroom. When attempting to carry the child up the stairs, she injured her back and subsequently brought a lawsuit under the ADA. The lawsuit was settled, but in the process of the litigation, one of the issues that came to light is that the county is not the only liable party in this type of lawsuit. Even though the counties are responsible to provide courthouse space, the state as the program provider has several responsibilities under the ADA. The program provider must provide the following things to be in compliance with the ADA: 1) an ADA compliance officer at each site; 2) annual training on compliance issues; 3) notification to the county if there is a compliance issue; and 4) an alternative arrangement or location for citizens with disabilities if the courtroom is not accessible.

Each of the Chief Clerks in the circuit courts have been designated as the ADA compliance officers. Additionally, they have been asked to find out if the county has done a self assessment and whether or not there are compliance issues or barriers that need to be addressed in their courts.

New Business

Children & Families Initiative/Role of the Courts - Rodger McDaniel

Rodger McDaniel, Director of DFS, and Korin Schmidt made a presentation to the Board regarding the Children & Families Initiative (CFI). There are five results that the CFI is focusing on: 1) Wyoming families living in a stable, safe, supportive, nurturing and healthy environment; 2) a diverse economy that provides a livable income and ensures wage equality; 3) affordable and accessible health care and insurance; 4) children born healthy and achieving their highest potential in early development years; and 5) students successfully educated and prepared for life's opportunities. The CFI advisory board met and discussed some strategies to accomplish the intended results, and one of the areas of focus was the role of the courts in children and families lives. Some of the recommendations regarding the courts include expansion of the problem solving court process, a pilot project for a unified family court, a process for arriving at a common vision for the juvenile justice system, and court standards. Rodger explained that although there are judges who sit on the Board of the CFI, the legislation that set up the CFI requires a detailed report regarding the information that has been gathered during the past year and he would like feed back from all judges before the report is final. In particular, there is a section of the report that contains recommendations about the role of the courts, and Rodger asked the Board to disseminate the draft report to the judges for some feed back.

Judge Donnell agreed to email the report to the district judges, and Holly agreed to email it to the supreme court justices and the circuit judges. The responses will be due back to the Board by June 30th.

Center for Resolution

Justice Kite reported to the Board regarding an organization in the Jackson area that mediate disputes. The Organization is called the Center for Resolution and they are comprised of volunteers, who, free of charge, help bring disputes to some sort of resolution without court action. The Center has been working with Judge Tim Day, in his court in Jackson, and they would like to expand their services. The Center does have some funding issues, and they would like the Judiciary's help with some of the training expenses incurred when training the volunteers to do the mediation. Barbara Haughe, the director of the Center for Resolution, explained to Holly that the concept of having volunteers help with the mediation process is also practiced in Nebraska and Idaho. In those states, the supreme court or the Judiciary supplies money to support these efforts. Specifically, the Wyoming Center for Resolution would like funding to send 3-5 individuals to mediation training, one of which would be a Spanish speaking individual. The cost of the training is \$750 for each registration, meaning approximately \$3,750. Currently, Judge Day receives some discretionary money from Teton County and he has been giving that money to the Center for training purposes. The Center would like to expand their program into Fremont County and therefore additional funding sources are necessary. Justice Kite recommended that the Board hear from Judge Day and Judge Roberts directly, so the Board decided to put this topic on the July conference call agenda.

Proposed Juvenile Division, Permanent Rules Advisory Committee

Judge Donnell asked the Board to request that a juvenile division of the Permanent Rules Advisory Committee be established. Initially, Judge Park brought this issue up at the district judges meeting. There is confusion in some districts regarding what rules apply in juvenile cases. The district judges discussed this issue at their April meeting, and the consensus was that there needs to be some Uniform Rules for Juvenile Courts. Some of the questions that arise are whether or not discovery can be done in juvenile cases, or whether summary judgment motions are proper or necessary. Judge Donnell requested two or three juvenile court judges, a representative of the Children's Justice Project, the District Attorney/County Attorney's office, the Public Defender's Office, and possibly Professor John Burman be appointed to work on a committee to draft these rules. Judge Perry moved and Justice Golden seconded a motion to appoint a Juvenile Permanent Rules Advisory Committee, to work on creating Uniform Rules For Juvenile Court.

Program for Certification of Spanish Speaking Interpreters

Judge Soule' participated by phone and reported to the Board that the Spanish speaking population in his county has increased 10%. Judge Soule' explained that it is not only necessary to have interpreters who speak Spanish, but that it is necessary for the interpreter to understand the meaning of the legal ease used in the courtroom setting. He suggested using the expertise of the community colleges throughout the state. He is not suggesting that interpreters be licensed, but he is suggesting there should be some sort of training or class that they can take on trial procedures.

Judge Skar added his concern, which deals with the fact that there is no record of what the interpreter says to the defendant, nor is there any record of the comment or questions that the defendant may have.

Judge Huber explained that he asks his interpreters to take an oath that they will translate to the best of their ability; he went on to state that there are numerous times in a courtroom setting where the judge has to rely on someone to honor their oath, and that we should have faith that the interpreter can and will do the job. His biggest concern is that any sort of training or additional requirements for interpreters will make it that much harder to get them to serve.

Judge Brooks explained that the federal court system requires interpreters to be certified. When Judge Brooks needed an interpreter in the federal system, and since no one in Wyoming was qualified to serve, he placed a call to New Mexico and had the defendant wear head phones, so a New Mexico interpreter could translate.

Holly suggested that a committee be created to address the problems with interpreters. Judge Soule' agreed to chair the committee.

Video Arraignments

Judge Donnell requested the Board send a recommendation to the Criminal Rules Committee proposing a change to the rules of criminal procedure to allow for video arraignments. There was extensive discussion about this issue, both for and against the use of video arraignments. The discussion ultimately led to the understanding that rule change would make it possible for the judges that wanted to use video arraignments to do so, but was not intended as a mandate for all judges to have to do video arraignments. Judge Tharp moved and Justice Kite seconded a motion to send Judge Park, Chair of the Criminal Rules Committee, some proposed language for a rule change that would allow for video arraignments. The motion carried unanimously. Judge Donnell will draft the proposed changes to be sent to Judge Park.

Board adjourned.

Schedule of Future Meetings

July 19, 2005	7:30 am Conference Call
September 8, 2005	Casper
December 1, 2005	Douglas

Minutes approved by email on July 8, 2005