

Board of Judicial Policy and Administration
Minutes
June 1, 2006

The Board of Judicial Policy and Administration met in Douglas on June 1, 2006. In attendance were Chief Justice William U. Hill, Justice Michael Golden, Judge Jeff Donnell, Judge John Brooks, Judge Mike Huber, Judge Terry Tharp and Judge Bob Skar. Justice Barton Voigt, Judge Vicki Schofield, Holly Hansen, Jim Bivona and Ronda Munger also attended. 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 or in person: Judge Ed Grant, Judge Denise Nau, Judge Tom Campbell, Judy Pacheco, Tina Kerin, Dr. Tracy Murphy, Nicole Lindsey and Mike Messenger.

Old Business

Vacancy in Uinta and Park County

Chief Justice Hill updated the board on the judicial vacancies in Uinta and Park County. Justice Hill informed the Board that the Nominating Commission had reviewed the applications to fill the vacancy in Uinta County, which came about as a result of Judge Tom Mealey retiring. The Nominating Commission is scheduled to conduct seven interviews in Casper on June 12, 2006, and will select three names to send to the Governor. Justice Hill also informed the Board that Judge Patrick submitted his letter of intent to retire on May 25, 2006. Applications for that position will be accepted until June 22, 2006. The Governor has assured Chief Justice Hill that he will fill those positions as soon after he receives the names as possible. Chief Justice Hill expressed his concern about the lack of applicants for the open judicial positions. He is not sure why the numbers are down, but he urged the Board to contact attorneys and encourage them to apply.

Committee Updates

CACC - Holly Hansen updated the Board on the Citizen's Access to Courts Committee and the pro se packets. The pro se packets have been a project that has been ongoing for sometime. In the near future the pro se packets will be placed on the Supreme Court's website. Holly reported that once the forms are on the web, the work of the clerks of district court should lessen. Currently, the district court clerks are selling the forms, remitting the money to the Supreme Court, and then the Supreme Court is contracting to have the forms printed. The current process is very labor intensive and needs to be revised. Holly reported the target date for putting the forms on the web is July 1, 2006.

JTTF - Jim Bivona provided the Board with a copy and an overview of a Memorandum of Understanding (MOU) that the JTTF recommends be signed with the clerks of district court. The MOU represents an agreement to share information. The MOU will allow the transfer of the data from each district court clerk's office regarding non-confidential criminal cases. Justice Golden moved and Judge Tharp seconded a motion to approve the MOU. The motion passed, with Judge Donnell abstaining.

Circuit Court Records Committee - Judge Denise Nau, Judy Pacheco and Tina Kerin reported to the Board regarding the Circuit Court Records Committee. Judge Nau began the presentation with a brief history of the work of the committee. The first phase of the project is complete, and the Legislature has approved the funding request for digital recording equipment in all the circuit courts. The second phase of the project was to look at the rules pertaining to transcripts, not only at the appeals level, but also for preliminary hearings as well. The rules do not clearly address at what point a transcript is made, who pays for it, and which hearings get transcribed. Judge Nau thought that it might be prudent to wait until the new recording equipment is in place and see if some of the problems with transcripts resolve. Jim Bivona stated that the projected date for the new equipment to be rolled out to all the courts is the end of 2006 or early 2007. Judy Pacheco addressed the Board and suggested that there are actually two questions to be addressed: 1) whether or not the preliminary hearing is a critical stage of the trial process and whether or not a transcript is provided on a mandatory basis or voluntary basis; and 2) who will be in charge of setting up the pool of individuals to do the transcribing. It is Judy's belief that once those two questions have been answered, the rest of the questions will fall into place. She also believes that the new recording equipment will solve a lot of the problems in existence today. Tina Kerin gave a concrete example of how the issue arises. She explained that often times the trial attorney is the person who presented most of the evidence and does not ask for a copy of the tape recording of the preliminary hearing. Then when the felony case reaches the appellate level, there is not a record (transcript) of the proceeding below. There is difficulty in getting a copy of the tape recording, court reporters are not available to transcribe a proceeding that did not happen in their court, and so problems arise. Judge Brooks moved and Judge Tharp seconded a motion that the transcribing of preliminary hearing not be mandatory. The motion passed unanimously. The Board agreed to wait and see how the new recording equipment works and at some later date the issues of who transcribes the preliminary hearings, who pays for it, and where along the process the transcript is requested will be referred to either the criminal rules committee or the appellate rules committee.

Retirement Committee - Justice Marilyn Kite reported that the retirement committee met with the Joint Judiciary Committee at the end of May and requested that the current judicial retirement plan be revised. Despite some initial concerns, Justice Kite reported that the Joint Judiciary reacted favorably to the request. Tom Mann, Director of the Wyoming Retirement System, prepared some documents that clearly demonstrate the problem and show that the average judge, who is appointed at age 49 and retires at age 64, is not treated fairly in the current system. The problem can be resolved without a tremendous amount of expense. The Joint Judiciary is looking at a change that would contemplate judicial retirement at 65. The Joint Judiciary staff was directed to work with Tom Mann and the Supreme Court to draft legislation to accomplish the adjustment to age 65 for consideration at their August meeting. Justice Kite reported that the Joint Judiciary also considered the idea of senior status judges but did not seem too inclined to go that route; however, they did react more favorably to changing the hourly rate at which a retired judge is paid to handle cases after retiring. Judge Perry reported that a bill draft has been requested for a contingency fund for the Board to be able to dole out money to district and circuit court judges who need senior status judges and additional funds. Judge Perry also reported that there has been a request for a bill draft to set judicial retirement at 60. Holly suggested that the contingency fund be set up through the judicial retirement program already in the Supreme Court's budget. Chief Justice Hill

asked Holly to contact John Romero at LSO and suggest that the contingency fund go in the Supreme Court's budget.

Court Security Committee - Judge Jeff Donnell reported that the Court Security Committee met on May 19, 2006, to discuss the operating and personnel aspects of the court security project. The committee decided that the best way to handle the additional personnel needed to cover the court rooms would be to utilize the sheriff's departments to provide the basic structure. The U.S. Marshal's office acquires some of their officers from a private contractor, and the committee discussed this possibility, but decided it would be best to house the additional personnel in the sheriffs' departments. Judge Donnell reported that the committee will next work on the fiscal aspects of the project. He stated that evaluations need to be done to determine a cost estimate for the project. The U.S. Marshal's office has already done an evaluation in about half of the counties. The committee is planning to go to the Legislature in the next session and ask for some funds to cover an outside consultant to do cost estimates across the state. The committee will be providing a report to the Joint Judiciary Committee for their August meeting. The Court Security Committee will meet again in July. Kevin White, a police officer in Laramie and Senator Bruce Burns are both acting as liaisons to the Joint Judiciary Committee. Judge Donnell reported that the project is huge. In some cases, the issue has become courthouse security rather than just courtroom security.

E-Filing Committee - Justice Bart Voigt, Chair of the e-filing committee, reported on the progress of his committee. The e-filing committee is comprised of about 20 people. The committee met on May 3, 2006, in Cheyenne to discuss the purpose of the committee and to establish the fact that the committee's goal is not necessarily to create an e-filing system, but rather the goal is to gather information for a recommendation to the Board regarding e-filing. Justice Voigt praised the work of Susan Larson, an e-filing expert that has been retained to help facilitate the work of the committee. Ms. Larson pointed out that nation-wide, e-filing is in its infancy; no two states do it the same, no two federal courts do it the same, and she recommended a needs/wants assessment be done to ascertain Wyoming's stance on e-filing. Ms. Larson distributed a survey to gather some information on at least the committee's view. Justice Voigt stated that he did not believe the committee should create a system, to be forced on the Wyoming courts and bar. He believes the clerks and the attorneys should be involved on the front end of the discussions. Justice Voigt reported that he has traveled and spoken to the following county bar associations: Laramie, Natrona, and Campbell. He is currently scheduled to travel to Sheridan, Cody, Thermopolis, Worland, Lander, Jackson, and possibly Rawlins and Laramie. Justice Voigt reported that the discussions in the first three meetings were mixed. The plan at this point is to invite all judges and clerks to a meeting on October 11, 2006, in Casper to get the courts discussing the possibility of an e-filing system. The committee will report back to the Board the result of that meeting.

New Business

Pandemic Flu Presentation

Dr. Tracy Murphy, state epidemiologist, and Nicole Lindsey gave a one hour presentation on the possibility of Wyoming experiencing a pandemic flu. Dr. Murphy gave an overview of a typical flu season and followed that up with specific information about a pandemic flu. Dr. Murphy explained that although the State Health Officer has the

authority to declare areas or individuals in quarantine, there is a process for appeal of that decision to the district court. One other topic that Dr. Murphy stressed to the Board was to urge them to develop a plan for keeping the courts open if the pandemic flu hits. As a public service office, the courts interact with a wide range of the citizenry and it is very likely that the court staff will be exposed to the pandemic flu.

District Court Rules for Court Reporters

Holly Hansen provided information to the Board regarding the proposed district court rules for court reporters. Part of the proposed rules allows for maintenance agreements for court reporter computers to be paid by the state. Holly explained that the State Auditor's Office advised the Supreme Court fiscal staff that maintenance agreements for computers can not be paid for by the state for any equipment that is not owned by the state. Judge Donnell moved and Judge Brooks seconded a motion to amend the District Court Rules for Court Reporters to remove the language which authorizes for the payment of maintenance agreements and then to approve the rules as amended. Motion passed unanimously. Judge Brooks moved and Judge Donnell seconded a motion to ask the Joint Judiciary to repeal W.S. 5-3-402, a statute in conflict with the certification requirements for court reporters in the new rules. Motion unanimously passed.

Problem Solving Court Compromise

Judge Ed Grant made a presentation to the Board regarding the Family Responsibility Program, which will be a Laramie County pilot project. Judge Grant gave the Board a brief history on the proposals that Rodger McDaniel made during the last session regarding problem solving courts. The proposals involved amending the drug court statutes to accomplish many other types of problem solving courts. Judge Grant and many other district judges opposed the amendments. The District Judges Conference did, however, pass a resolution which endorsed the concept of Judicial intervention in probation and other rehabilitative efforts, provided that the authorizing legislation provided 5 key components: 1) addresses and maintains separation of the three branches of government; 2) acknowledges and facilitates the primary role of the executive branch in accomplishing effective rehabilitation; 3) outlines the jurisdiction of the courts for such ongoing judicial intervention; 4) addresses procedure for such judicial intervention; and 5) provides adequate judicial resources for judicial involvement in rehabilitation. After the Legislative session, Judge Grant sent a letter to Rodger expressing interest in working with him to accomplish Rodger's goals in a way that would be more acceptable to the Judiciary. Judge Grant met with Rodger and the outcome of that meeting was the Family Responsibility Program. The Board was given a two page handout, outlining the 10 key components of the project, the program goals and description, as well as the program structure. The program puts the week to week supervision of participants in the hands of the executive branch by means of a hearing officer, instead of with the judiciary. Judge Grant approves of the proposal and requested that the Board approve of the program as well. The Board agreed to study the pilot project and look at the proposed legislation during a conference call in July or August.

Stalking/DV Protection Order Forms

Judge Tom Campbell appeared before the Board to request the Board's endorsement of the newly revised Stalking/DV Protection Order Forms. Judge Campbell gave a brief history of the process for revising the forms and explained that in addition to revising the

forms to comply with the new statutes (effective July 1, 2006) that the one major change for the forms was the addition of a new first page for protection orders. Judge Campbell discussed the nation-wide passport project, which was the catalyst for the change. Justice Golden moved and Justice Kite seconded a motion to adopt the forms. After a lengthy discussion, the Board unanimously approved the forms.

Wyoming Professional Assistance Program

Mike Messenger made a presentation to the Board regarding the Lawyers Assistance Taskforce and the Wyoming Professional Assistance Program (WPAP). The WPAP was established by statute in 1997 to provide resources and support to include the identification, referral and ongoing monitoring of impaired Wyoming health professionals. The statute was then amended to include attorneys and other licensed professionals. The program is run by an executive director and board of directors. Mr. Messenger requested that the Board approve a plan to include the judiciary in the professional assistance program. He explained that there are two ways that an individual can enter the program: 1) under a voluntary agreement with the individual, making the entire process confidential; or 2) involuntary enrollment through a referral or intervention scenario, which under certain defined circumstances is not confidential. Mr. Messenger explained that through the use of surveys conducted by the state bar, it is apparent that the demographics of the Wyoming legal system is changing. There has been an increase in depression, senility, dementia, and with those type of problems there is currently no mechanism to get lawyers help that need it. In the current system, there has to be a formal grievance before assistance is offered. Judge Skar moved and Judge Donnell seconded a motion to study the enrollment of the Judiciary in this program with regard to process, cost, and logistics for action at the September meeting. Motion passed unanimously.

Clerk's Advisory Council

Ronda Munger gave a presentation to the Board regarding the difference between a notary who operates under the authority of the Secretary of State's Office and a notary who is employed as a clerk of court. Ronda explained the need for the courts to have a policy established for the clerks of court acting as notaries and asked that the issue be referred to the Clerk's Advisory Council for further study and a recommendation. Judge Skar moved and Justice Golden seconded a motion to refer the issue of notarizations to the Clerk's Advisory Council for study and a recommended policy. Motion passed unanimously.

Justice of the Peace language

Holly Hansen reported to the Board that W.S. 5-6-106 still contains a reference to the Justices of the Peace. Holly requested the Board send a letter to the Joint Judiciary to get this language changed. Judge Tharp moved and Judge Donnell seconded a motion to request the Joint Judiciary sponsor a bill to remove the antiquated language. Motion passed unanimously.

Mailing Board Minutes

Holly Hansen requested the Board distribute the minutes of their meetings by email. Judge Huber moved and Justice Golden seconded a motion to have the Board minutes distributed by email rather than in hard copy. The motion unanimously passed.

Resolution

Justice Golden moved and Judge Donnell seconded a motion for the Board to pass a resolution thanking Justice Hill, Justice Kite and Judge Tharp for their years of service on the Board. The motion carried unanimously.

Board adjourned.

Schedule of Future Meetings

September 15, 2006 Laramie

December 1, 2006 Cheyenne

Minutes Approved by Email on July 21