

Board of Judicial Policy and Administration

Minutes

June 2, 2010

The Board of Judicial Policy and Administration met in Cheyenne on June 2, 2010. In attendance were Chief Justice Bart Voigt, Justice Marilyn Kite, Justice William Hill, Justice Jim Burke, Judge Dan Forgey, Judge Robert Castor, Judge Jeff Donnell, Judge John Brooks, Judge Wes Roberts, Judge Dan Price, Joann Odendahl, Ronda Munger, Becky Craig, Rebecca Love Kourlis and Pam Gagel. Senator Tony Ross, Senator Drew Perkins, Representative Mary Throne, Representative Gregg Blikre, and Representative Sandra Meyer joined the Meeting for Rebecca Love Kourlis's presentation.

Old Business

Committee Updates

Court Security Commission -- Judge Donnell advised the Board that every county now has a local committee in place that is addressing security issues. The commission will be meeting again in July. Chief Justice Voigt reported that Kevin White, the Court Security Officer, is currently serving on the Court Security Commission, and that it has been hoped that Kevin will be the coordinator and leader of the court security charge around the state as part of his job duties. Joann reported on her meeting with Kevin, Joe Moore and Larry Majerus. She stressed to them that the Court's involvement was at the directive of the Justices, and that it is the desire of the Court to be proactive instead of reactive. Kevin will be traveling around the state to meet with county commissioners, sheriffs and judges to see if there is anything that can be done, in a team effort, to make courthouses more secure. Also, if there are grant funds available through Homeland Security, he will help the commissioners request those funds.

Access to Justice -- Justice Kite reported that there were two meetings held in May to try to get the structure side of the new non-profit entity established. It was learned by the people who attended the Arizona Equal Justice Works Conference that Wyoming is rather unique in that most of the other states are primarily funded by federal funds. Being funded by the state means starting with a clean slate, but it also creates a challenge in developing the structure of the entity. Chris Reimer, an attorney in Jackson, is working with the AJC on this task. There is a statewide stakeholder meeting scheduled in August to get input on how people think the entity should be structured and how the money should be spent. The AJC hopes to have the organization set up, a staff director hired, and the rules, regulations, and policies in place in the near future since the status report to the Legislature is due November 11, 2010. Ronda reported that the AJC has hired an intern, Rennie Polidora, with funds from the Attorney Admissions Fund Committee. She will be a great asset until an executive director is on board. Rennie has been involved in research for the clinic and development of the legislation for the AJC. Chief Justice Voigt pointed out the connection between the content of Becky Love Kourlis's presentation on developing a pilot project that would make the civil justice system more accessible, and the mission of

the AJC. He also commented on the Orders that were signed and distributed regarding the civil legal services fees that are to be collected starting July 1, 2010, and the payout order for the various fees that are collected by the courts. A problem currently exists in the statutes, in that they are not internally consistent as to what should be paid first when money is received from a defendant. The Board may need to request some legislation on this issue since there is a lack of direction in the statutes.

Court Interpreter Rules

Judge Donnell spoke about the amended draft of the Directive Concerning Language Interpreters. The draft was distributed at the District Judges' Conference and the Circuit Court Judges' Conference for review. The intent is that the directive be adopted by the Supreme Court as guidelines for the courts, not as rules. Lengthy discussion was held by the Board, and one change was made in the last line in the top paragraph of page 2: the words "working in languages other than Spanish" were stricken. There was further discussion on the issue of professionally certified language interpreters being required in all felony case proceedings, including proceedings in circuit courts, if there are five or more of this class of interpreters within a 25 mile radius of the courthouse. It is felt that once these directives go into place, people will become certified, and the pool of interpreters will grow in the years to come. Until that time, it is recommended that the courts make a good faith effort to arrange for the most qualified interpreters that they can find. The Supreme Court will be the one to set the standards for the various classes of interpreters. It may be that, initially, if an interpreter is certified federally or in another state, he or she will be considered as certified in the State of Wyoming. Judge Brooks moved and Judge Castor seconded a motion to submit the proposed Directive Concerning Language Interpreters to the Supreme Court for recommendation and adoption. Motion carried unanimously.

Rebecca Love Kourlis Presentation

Justice Kite welcomed and introduced Becky Love Kourlis and Pam Gagel to the group. Becky gave a thumbnail overview of the Institute for the Advancement of the American Legal System, which develops pilot projects to reform the court system to work to the benefit of the litigants by making the system more efficient and more accessible. Pilot projects have been developed in many states, as well as in some federal courts. There are also measurement protocols that can be used in tandem with the pilot projects to ascertain if the projects are working the way that they should. The premise with which the Institute approaches their work is that the Rules of Civil Procedure invite overkill—they are orchestrated for big cases and they provide procedural mechanisms that are probably only necessary in big cases. The rules create an expectation that every case needs all of those procedural devices, and creates an expectation upon the attorneys that they should engage in significant discovery in most every case, whether or not it is really necessary. They propose that there be some "curbs on the road" as to how the process would unfold, with the proviso that the case could be "bumped" over those curbs, i.e. be moved into a different category, which would still be expansive and very permissive with respect to discovery. She reviewed the proposal that she crafted for the Wyoming courts that deals with civil litigation cases and domestic relations cases. It would be a two track system, where non-complex cases would be handled in one manner, and complex cases would be handled in another. From Becky's experience, an "opt-in" procedure does not work: people won't opt-in

to something new if they feel like they are giving something up to do it. Therefore, the way they have structured the project is that the simplified procedure is the presumptive track, but that there is an “opt-out” that the judge can order sua sponte, or upon the request of one or both parties, which would put it back into the normal rules rubric. For the judge to order the “opt-out,” there would have to be a conference between the judge, the clients, and the attorneys, at which time the clients would represent that they understand the litigation budget differences between the two tracks. Pam Gagel discussed how some of these rule changes work in Colorado.

Further discussion was held about the time frames in which domestic relation cases in Wyoming are processed; about the jurisdictional limits of the Wyoming courts; and about the possibility of gathering statistics on the amounts of the claims in civil actions and their filing-to-resolution time frames.

Justice Kite spoke about the pilot project draft, advising the group that a proposal will be presented at the Annual Bar Meeting in September to members of the bar, the judiciary, and the legislature for review and an open discussion.

Peremptory Disqualification Rule 40.1(b)(1)

Judge Donnell reported that the Task Force met last month and decided to do some investigation into what other states do in situations where there seems to be some overuse of this rule. They were going to meet on June 1st, but didn’t yet have all the information gathered. The Task Force may be looking at putting a cap per lawyer or firm on the number of peremptory disqualifications that can be used per year. They will hopefully have their recommendation ready by mid to late summer.

District Court Case Management Project

Chief Justice Voigt commented that the reports that he has received from CTAC and the district court clerks indicate that the development is moving along even better than expected. There will be a presentation on June 15th to the clerks to show them some of the screens that have been developed for the civil and juvenile justice programs. The projected rollout date is July, 2012, if not sooner.

Meetings with Clerks of Court

Ronda provided an update to the Board on her meetings with the district court clerks and the circuit court clerks, specifically in reference to the Court Records Policy. She has also been working with the court reporters on the issue of providing the parties adequate time in which to redact the transcripts of certain information. She is hopeful that the Redaction and Court Records Orders will be ready for re-signing by the Supreme Court by the end of June. The Orders won’t become effective until January 1, 2011, thereby allowing attorneys a six month training period to adjust to leaving certain information out of their pleadings, unless the information is necessary; otherwise, they’ll be required to file a redacted version of the document along with the original.

New Business

Joint Judiciary Committee

Chief Justice Voigt reported on the Joint Judiciary Committee meeting in Sheridan. One of the main issues of the meeting dealt with the Juvenile Court and the idea of having the placement authority with the Department of Family Services instead of with the court. The second day's meeting dealt, in part, with the fact that involuntary hospitalization procedures are handled differently around the state. Many counties handle these cases through their district court commissioners. However, a district court commissioner is a constitutional figure who can only act in the absence of the judge from the county. A solution could be to amend the Constitution to authorize district court commissioners to do more than just chambers business in the absence of the judges, thereby making their positions more along the lines of magistrates in the circuit courts.

Impaired Attorneys

Chief Justice Voigt informed the Board about a conversation that he had with a State Representative on the matter of impaired attorneys, as well as a letter that he received from Becky Lewis, Bar Counsel, on the issue. The head of the Wyoming Professional Assistance Program spoke at the recent Law School's CLE program, and addressed the process of monitoring once a case has been referred. If the individual fails a random test or goes off the wagon, they are sent back to their disciplinary board to assure that they don't fall through the cracks. There currently may be a lack of connection between the law enforcement's process and the Bar's action. A rule could be enacted that provides that when a person is arrested, a report is immediately made to the Supreme Court, or that the person, himself or herself, should have the obligation to report the incident. It was suggested that someone from the State Bar Office, someone from WYPAP, and a legislative representative be invited to the next BJPA meeting to get their input into what should be done.

Email Confidentiality and Archiving Policies

Chief Justice Voigt expressed his belief that a policy or rule should be developed for the entire Judicial Branch concerning emails. There is an existing email policy in place, but it does not deal with the matter of archiving. The policy should be designed so that the IT Department can isolate any emails dealing with a particular subject and provide for their storage and retrieval. There is a CTAC Meeting scheduled for June 21st, and they will attempt to have a draft policy prepared by that date. Also, a comparison needs to be made between the existing policy for the Judicial Branch concerning internet usage, and the one that Steven recently gave to Chief Justice Voigt.

Supplemental Budget Request

Joann reported on the Governor's Council on Impaired Driving. Funding had been requested for the electronic citation project, however, the Legislature then chose not to pursue it. They have now decided to go forward with it in light of the development of the district court case management system. Research will have to be done on the amount of equipment that will need to be purchased. There may need to be a supplemental budget request made in order to get the system in place in the circuit courts. Joann also pointed

out that an eye will have to be kept on the circuit courts to see if the change to Rule 77(d) increases the courts' postage costs. She pointed out that in the current biennium, all of the courts were very cooperative, and no court budgets were in dire straits.

Judicial Position

Chief Justice Voigt pointed out to the Board that the statistics now indicate that another district judge is needed in the Fourth Judicial District. Discussion was held about there being a facilities problem in providing for an additional judge in the district, since there is only one courtroom and one chamber in each county.

Miscellaneous

Retired Circuit Court Judges

Judge Castor raised the issue of utilizing retired circuit court judges in the court system. A proposal has been developed by an ad hoc committee, and was discussed at the judges' conference. After the wording is perfected, it will be presented to the Board for review, and if approved, will then go to the Joint Judiciary for consideration.

Judicial Council Meeting

Justice Kite ran through the itinerary for the State Bar Meeting. Her main comment for the Board concerned a legal writing professor at the Law School by the name of Michael Smith. Professor Smith gave a seminar to the clerks and the judicial assistants a while back that covered the first 4-5 topics of his program. In that it was very well received, and it would provide an opportunity to present CLE or CJE, Justice Kite proposed that the second part of his program be scheduled for the judges, their law clerks, and judicial assistants on Thursday afternoon of the Bar Meeting. In that the topics stand independently, it would not be a problem for those who did not attend the first program.

Board Adjourned.

Schedule of Future Meetings:

September 14, 2010	Laramie
December 1, 2010	Casper
March 18, 2011	Cheyenne
June 1, 2011	Casper
September 12, 2011	Cheyenne
December 1, 2011	Casper