

Board of Judicial Policy and Administration
Minutes
September 13, 2004

The Board of Judicial Policy and Administration met in Gillette on September 13, 2004. Chief Justice William Hill, Justice Marilyn Kite, Justice Michael Golden, Judge Jim Burke, Judge John Perry, Judge Jeff Donnell, Judge Mike Huber, Judge Terry Tharp and Judge Bob Skar attended. Holly Hansen, Joann Stockdale and Ronda Munger also attended. Throughout the course of the meeting the following individuals attended at some point: Judge Rob Denhardt, Judge Sam Soule, Judge Scott Cole, Judge Dennis Meier, Judge Stan Sheehan, Corky Ring, Wes Roberts, Mike Barton, and John Snell.

Chief Justice Hill opened the Board meeting by welcoming the new Board members, Justice Golden, Judge Donnell and Judge Skar. He then reviewed the agenda and explained the revised order of agenda items.

Judicial Position Fremont/Riverton - Revised Weighted Workload Study

Chief Justice Hill provided the Board with a brief history of the court reform movement that occurred in 2000 in Wyoming. At that time, the Legislature gave the Board a mandate of due diligence in assessing the necessity of filling judicial vacancies. Judge Hall in Fremont County has not elected to stand for retention after his current term, and so the Board is charged with deciding if Judge Hall's judicial position should be filled.

Holly Hansen provided a brief presentation on the Revised Weighted Workload Study. Most of the calculations and assumptions used in the initial Workload Study remain unaltered in the Revised Study. However, there are two main areas that were adjusted in the Revised Workload and those were travel time and drug court time. Information on circuit riding travel, defined as the regular journey a judge makes to other courts in his or her district to hear cases, was updated through telephone interviews with the judges. The yearly amount of time spent on circuit riding was calculated using the <www.mapquest.com> database to standardize driving time estimates. Judges who preside over drug courts were interviewed by telephone as to the amount of time they spend on average on drug court activities. They estimated the amount of time they spend on the various components of the drug court (screening the participants, reviewing the files, staffings, court hearings, management meetings, paperwork, communicating with other team members, events with participants, community presentations, and team retreats) during a typical year.

Several individuals gave testimony to the Board. Judge Norman Young, by letter, expressed his opinion that the position should be filled. Judge Rob Denhardt, Circuit Judge for the Ninth Judicial District, gave testimony in support of filling the position, as did Corky Ring the Circuit Court Clerk, Wes Roberts a part-time magistrate, Mike Barton

the Fremont County and Prosecuting Attorney, and John Snell the Riverton Police Chief. Chief Justice Hill, relinquished the Chair position and spoke in favor of replacing Judge Hall's position.

Judge Huber moved and Justice Golden seconded a motion to fill the circuit court judicial position in Fremont County. The Board discussed the motion and it carried unanimously (Judge Perry not present for this vote).

Full-Time Magistrate Salary Increase

In the last budget session of the Legislature, the judges and judicial branch employees received a 3% increase in salary for the fiscal year beginning July 1, 2004 and a 3% increase in salary for the fiscal year beginning July 1, 2005. The Full-Time magistrates were not automatically given the salary increases. Judge Scott Cole, Judge Dennis Meier and Judge Stan Sheehan appeared before the Board and requested the increase be retroactively given to them as well. Justice Kite moved and Judge Donnell seconded a motion to retroactively give the Full-Time magistrates the same raise as was given to other judicial branch employees. Discussion was had regarding whether the magistrates should be treated the same as the judges or whether they should be treated the same as the positions classified as state employees. The Board decided that given the different ways that salary raises are legislated, in the future the magistrates will have to be treated on a case-by-case basis. The motion to give the magistrates the salary increase retroactively passed unanimously (Judge Perry not present for this vote).

Report from the Judicial Technology Task Force

Jim Bivona appeared by phone and gave the Board an update on the activities of the Judicial Technology Task Force (JTTF). First, Jim explained that the JTTF is intending to expend the funds out of the Judicial Systems Automation Account a little differently. The main difference will be that if the allotted grant money for each fiscal year is not granted out for specific projects, then it will be available for granting out the following fiscal year and then will revert back to the JSAA. The second item for discussion was the status of the integrated justice project across the state. Jim reported that the demands for information sharing have grown significantly since the inception of the JTTF. The final item for discussion was how integrated justice will affect the Wyoming Judiciary. Jim explained several policy areas that need to be considered by the Board as the statewide integration goes forward.

With regard to the \$10 automation fee that is collected by the district courts, discussion was had regarding the level of service and anticipated benefit the district courts can expect to receive for the money that they are collecting and depositing into the JSAA. The question was raised as to whether the district courts can tap into the money in the JSAA for daily IT operation tech support; and secondly, what kind of tech support can they rely on from the Supreme Court. Holly Hansen explained that when the JSAA was established, the discussion surrounding the account was that the money collected would be earmarked for projects that address statewide automation issues. The Board decided

that there needs to be a lot more discussion on this issue, and Holly Hansen agreed to organize some sort of summit on the issue of computer tech support in the district courts.

Third District Judge - Sixth Judicial District

On behalf of the Sixth Judicial District, Judge Perry made a presentation to the Board and asked that the Board support his district in requesting a third district judge. After discussing the revised weighted workload data for the Sixth Judicial District, Judge Perry explained how the Coal Bed Methane (CBM) boom in the Gillette area is making it very difficult to successfully manage the district court docket. Complex cases, leasing issues, tax issues and several week trials are just a few of the ways that CBM has changed the way the Sixth Judicial District does business. Judge Perry also informed the Board that within about a year, Campbell County will have successfully remodeled their courthouse and it will contain six courtrooms. Justice Golden moved and Justice Kite seconded a motion to support the request for a third district judge in the sixth judicial district. Motion carried unanimously.

Competency/Mental Evaluations

During the June meeting of the Board, Competency/Mental Evaluations (W.S. 7-11-303) was discussed. At that meeting it was decided that changes need to be made to the statute that would allow a judge to request and receive only an evaluation on the defendant's ability to stand trial. Currently, W.S. 7-11-303 provides for both an evaluation of a defendant's ability to stand trial, and the defendant's mental state at the time of the alleged crime. Judge Donnell presented the Board with the proposed changes to the statute. Justice Kite moved and Judge Tharp seconded a motion to draft a bill, reflecting the proposed language, to send to the Joint Judiciary Committee for action during the next Legislative Session. Motion carried unanimously.

Wyoming Children and Families Initiative

Judge Donnell provided the Board a report on the Wyoming Children and Families Initiative. The Initiative is now in its seventh month, with the first preliminary report due to the Legislature on November 1, 2004. The mission of the initiative is to develop a comprehensive plan to improve the lives and futures of all children and families in Wyoming. The committee has put together a work schedule and organizational structure and has also developed 5 broad goals. The Board discussed the fact that the Sponsor Team, which is charged with directing the initiative and determining its scope, does not include a representative from the Judiciary. Chief Justice Hill agreed to speak with Governor Freudenthal about this matter. No immediate action was taken by the Board.

Employee Drug Testing

During the June 2, 2004 Board meeting in Douglas, the issue of employee drug testing was raised. Justice Golden agreed to provide the Board with some background information on this issue, which he did. Justice Golden reported that the general rule is

that it is necessary to articulate an individual reasonable suspicion, or it is not advisable to request a drug test for an employee. The Board took no action on this matter.

Judicial Retirement Miscalculation

Holly Hansen reported to the Board the discovery of a miscalculation in the actuarial information provided to the Legislature when it created the new Judicial Retirement plan. In 1998, the Legislature adopted the Wyoming Judicial Retirement Act. In doing so, it created 9-3-701 through 9-3-713. The purpose of the legislation was to establish a funded program for judicial retirement. The judicial retirement program established under 5-1-106 was an unfunded state liability.

In 1998, the actuary supplied the following pertinent information: 1) the cost of the old plan was 16.9 percent of salary; and 2) the cost of the new plan was 14.9 percent of salary. Contributions for the new plan are as follows:

- a. Employer contribution = 5.68 percent of salary
- b. Employee contribution = 9.22 percent of salary
 - (i) State pays 5.57 percent of the employee contribution
 - (ii) Judges pay 3.65 percent of the employee contribution
- c. The 5.68 percent (employer contribution) + 5.57 percent (employee contribution paid by the state) = 11.25 percent, which is same as the cost the state covers for state employee retirement.

Based on the assumption that the new plan represented a “cost savings” sitting judges were allowed to transfer from the old plan to the new plan. Four justices and 11 district judges elected to make that move. Since the inception of the new plan, one justice and one district judge have moved back to the old plan.

In August 2004, the actuary advised the Wyoming Retirement System that the cost of the new plan was miscalculated by 2.99 percent of salary. Rather than costing 14.9 percent of salary, the new plan actually costs 18 percent of salary. This means that the state will have to contribute 14.32 percent on behalf of judges. Furthermore, the cost of this increase in contributions is \$183,000 per biennium. Basically, this means the new plan, is presently under funded by \$183,000 per biennium.

This identified shortfall will have to be addressed in the supplemental budget. Holly Hansen has scheduled a meeting with the new actuary and the Wyoming Retirement System to be held October 20, 2004 at the Parkway Plaza in Casper, beginning at 1:00 p.m. The entire Wyoming Judiciary is invited to attend.

Mandatory Retirement Age of 70 for Circuit Judges

In conjunction with the discussion of the Judicial Retirement Plan, the Board discussed the fact that Supreme Court Justices and District Court Judges are required to retire at age 70, but Circuit Judges are not addressed in the statute (W.S. 5-1-106). Judge Burke handed out a memo that outlines which states have a mandatory retirement age and which

do not. The Board asked Judge Tharp, Judge Skar and Judge Huber to raise this issue at the Circuit Judges divisional meeting scheduled for September 14, 2004.

December Meeting of the BJPA

The Board agreed to hold their December 1, 2004 meeting in Cheyenne.

Board adjourned.

Future Meeting Schedule

December 1, 2004 Cheyenne