

# **Board of Judicial Policy and Administration**

## **Minutes**

### **September 14, 2010**

The Board of Judicial Policy and Administration met in Laramie on September 14, 2010. In attendance were Chief Justice Marilyn Kite, Justice Michael Golden, Judge Dan Forgey, Judge Robert Castor, Judge Tom Campbell, Judge John Brooks, Judge Wes Roberts, Judge Dan Price, Joann Odendahl and Ronda Munger. Justice William Hill attended by phone.

#### **Old Business**

##### **Committee Updates**

**Court Security Commission** – Joann Odendahl handed out a copy of the Court Security Commission's August 31, 2010 annual report to the Board. A copy of the report will be distributed to each of the circuit judges and district judges, possibly through their respective conferences, and is also available on the Office of Homeland Security website. Justice Hill informed the Board that this is the Commission's effort to identify problems and priorities, and to make suggestions for improvements. He believes that once the report is analyzed, an action plan will be developed. He also pointed out that the enabling law that created the Commission anticipated appointment of the initial commission members for a term of three years, therefore, it is not contemplated that the Commission will go out of business after completion of this report. However, the Board will keep the Commission on its agenda so that if it does go out of existence legislatively, it could possibly be kept in existence as an arm of the Board for continuing questions. Kevin White, the Supreme Court Security Officer, just completed a well-received trip across the state to visit every courthouse to investigate what resources and assistance might be needed. He will be preparing a report to the Justices to identify measures that could be taken to make the courthouses more secure. The Legislature might be addressed in the future to request funding to work in cooperation with the counties to accomplish some of these projects.

**Access to Justice** -- Chief Justice Kite updated the Board on the progress of the Access to Justice Commission. There are draft documents being prepared of the Access to Justice Commission's Role and Core Values, a statement of how the Supreme Court and the new non-profit are going to interact, the Wyoming Center for Legal Aid's proposed Rules and Regulations, and the Center's Board of Directors Operational Rules. The Operational Rules will detail how the board and non-profit are going to function, how the board members are appointed or removed, what the term is, etc. They are attempting to have some flexibility built into the Rules so that the board will be a broad-based group of members. A public meeting is being planned to present the proposed drafts for public discussion and comment. It is hoped that an Executive Director will be hired by the first part of November through a nation-wide advertisement and search. The salary for the Executive Director is being discussed, and the question is still being researched whether or

not this type of employee can be a member of the retirement system and the health insurance plan. There is expected to be two or three staff members over time. Dona Playton and Stuart Day are working on revamping a website, which will include fill-in forms that will be similarly designed to some tax programs; i.e., only the forms that are necessary for a particular situation will need to be printed out. Joann reported that in just two months' time, there is approximately \$108,000 in the Civil Legal Services Fund.

**Judicial Ethics Advisory Committee** – Judge Castor and Judge Price reported to the Board on the Judicial Ethics Advisory Committee which came into existence as of July 1, 2010. The Committee received their first request for an advisory opinion in July, and the opinion has been issued and is now on the judicial website. The National ABA Center for Judicial Ethics requested a link to the Committee's website as a means of circulating the Wyoming opinions to judges nationwide.

**CTAC** – Joann reported on the Court Technology Advisory Committee, which is a subcommittee of the Board. The first and second draft of the Electronic Resource and Internet Use Policy were distributed to the Board for review. Judge Skavdahl is working on some additional changes that may result in a third draft. Joann explained that the last policy concerning internet use was written back in 2002. This new policy will advise the employees that all of their electronic resources are for court use only, and that internet access is offered as a courtesy, subject to the discretion of each judge or supervisor. The Committee has been taking recommendations from the IT staff, whose main concern is making sure that the day-to-day business of the court can be accomplished without the bandwidth being bogged down or computers crashing due to spam or to illegal internet sites being accessed. There was lengthy discussion that followed by the Board on what constitutes a violation. Judge Brooks and Judge Castor will meet with Steven Dreher about the proposed draft to see what he perceives as being the troubled areas of the existing policy.

**E-mail Confidentiality & Archiving Policies** – Joann advised the Board that she has been trying to get information from the Legislative Service Office as what their archive policy is for e-mails, but has not received a response from them as yet. From what she has learned from the IT staff, a person's e-mail is accessible forever. In that it is not uncommon for subpoenas to be issued for computers, it is imperative that there be a policy created regarding archiving of e-mails and protection of the confidentiality of e-mail items. The matter of the retention period for digital recordings has also been questioned. Steven has asked whether the existing policy for retention of audio cassette recordings should be applied in the same fashion to digital recordings and their retention in the server.

**Video Appearance System Deployment** – Goshen County recently received their video appearance equipment. The equipment is in the courtroom on a portable cart, and can be shared between the district and circuit court judges. There are existing funds to have systems installed in all 23 courthouses within this biennium. There is not currently a policy in place that addresses when video appearances can be used, other than for arraignments. Chief Justice Kite reminded the Board that the Governor has stressed that state employees should be using these systems whenever they are able to, and that she feels that the judiciary should be using video conferencing more often for meetings.

**WYPONS** – Joann advised the Board on the progress of the “Wyoming Protection Order Notification System” that deals with protection orders and their updates in the National Registry. The project is being piloted right now in the Laramie County Dispatch Center and seems to be working well. The system uses FullCourt and feeds the protection order information to the law enforcement agencies. Officers can transmit information from their squad cars when they serve a protection order, with the data then being pulled from that source every 5 minutes to update the national database. It is hoped that this will be in place by January 1, 2011. This is a different system than the e-citation system. Still in development for the e-citation system is the portion of the program that will communicate the information from the officer or sheriff back to the courts. Lori Pozarick from the Governor’s Council is requesting supplemental funds from DCI to provide grants to local municipalities to get equipment in all squad cars so that the courts receive more up-to-the-minute information. It is hoped that the information will then go into a database that DCI will be able to access. They are interested in it from the DUI standpoint, but it will also enable the clerks to be more efficient as well.

**E-Payments** – Joann pointed out that there was in excess of \$282,000 so far this month that came in through credit card payments, however, the process is very time consuming for the circuit court clerks. It is hoped that these payments will be able to be taken online in the near future.

#### **Peremptory Disqualification Rule 40.1(b)(1)**

Judge Castor notified the Board that the Task Force has been looking at a number of changes to the Peremptory Disqualification Rule, one of which is assessing a fee after a certain number of peremptory disqualifications are made. Discussion was held. The requirement that an Affidavit would have to be filed as part of the challenge, and that mandatory mediation would be required after a certain number of challenges, are viewed as problematic by some judges. The changes will be discussed with the district judges at their divisional meeting on Thursday of the bar meeting. Judge Castor moved and Judge Roberts seconded a motion that if the district judges are comfortable with the Task Force’s recommended changes to the Rule, that the Board will approve the same. Motion carried unanimously. Ronda will ask Judge Young for a memo on this matter.

#### **New Business**

##### **Rebecca Love Kourlis/Surveys**

Chief Justice Kite reported on the Rule 1 Initiative’s efforts and surveys. There was a great response to the survey, thanks to Judge Young’s encouragement, with 45 judges and almost 400 bar members responding. The results are being synthesized and will be presented on Wednesday of the bar meeting, along with a summary of the pilot project that the Institute for the Advancement of the American Legal System has done across the nation. A panel discussion will be held at the bar meeting comprised of Judge Young, Judge Davis, Rhonda Woodard, Joe Teig, Julie Tiedeken, and Dick Honaker. Chief Justice Kite will also ask Circuit Court Judge Haws to be on the panel for his input on the potential

change to the jurisdictional limit and its impact. Becky Love Kourlis will give her presentation at the luncheon, and Judge Johnson will take a few minutes to inform the group what is happening on this matter at the federal level.

## **2010 Judicial Weighted Workload Studies**

Ronda distributed the new fiscal year 2010 Judicial Weighted Workload Studies to the Board. She explained that additional funds will be requested from the Legislature to update the clerical time study. The clerks will be asked to do a two month time study in April and May, so that by August we will have the new case weights for the 2012 budget session. Some circuit court judges are expressing a need for additional staff, however, the need and positions have to be based on the workload study. Joann pointed out that the Sixth Judicial District had a situation where they were overstaffed in one circuit court and understaffed in another. The positions were able to be shuffled so that both courts were adequately covered by the same number of clerks. Many of the rule changes that have come into effect since the initial study will have an impact on the measurements, therefore, it is felt that there are legitimate reasons to update the clerical time study. Also, if the civil jurisdiction is changed, the updated study will help accurately reflect what the impact is to each court. Discussion was held on the possible shift of the civil jurisdiction limits, what the amounts should be, and the effect on the weighted workload studies. Ronda informed the Board that she has been conducting a study of 15 district courts that use FullCourt, as well as data from the Campbell County District Court, in order to get an estimate of how many cases would possibly shift from the district courts to the circuit courts. It is anticipated that in order to shift any civil trials, not just collection cases, an increase to the jurisdiction amount would have to be fairly substantial. After any increase, a new judicial study would need to be done to re-measure how much time the circuit court judges are spending on the civil cases so that a judicial civil workload study would then accurately reflect the increase in the caseload. The most recent judicial time study was completed in 2007. Chief Justice Kite is hopeful that the judges will discuss the increase with their conferences and have feedback, so that she can then take the matter to the Judiciary Committee with a specific number. Ronda pointed out that the Judicial Weighted Workload Study shows the need for a district court judge in Johnson County. It is the intention of the Supreme Court to give the Joint Appropriation Committee notice that it will be requesting additional funds at the next budget session to fill that judicial position. Discussion also needs to be started with the Johnson County Commissioners to make sure that the facilities are available for another district judge. Ronda also reported that approval was given by the Justices to fill a rover clerk position. Corky Ring, the former Fremont County Chief Clerk (Riverton) has been hired for that job. She will travel statewide to help out with courts that have personnel on family medical leave and are short staffed, or where there are seasonal shortages. They may also have her travel throughout the state to seek out the best business practices used in the circuit courts in order to develop a recommendation for unified practices. Ronda also advised that she has asked Karen Gottlieb for a bid to update the drug court numbers in the judicial study since some of the travel times have changed.

## **Legislative Proposals**

**Retired Circuit Court Judges** – Joann distributed a handout and explained that it covers the proposal for two new subparagraphs to W.S. 5-9-109 and 5-9-119. The first change is to Section 5-9-109 concerning circuit court judges' retirement age. This section was changed to be consistent with Article 5, Section 5 of the Wyoming Constitution to reflect that a circuit court judge will have the same retirement age as a supreme court justice or district judge. The second change was to Section 5-9-119 that will allow retired circuit court judges to be assigned to cases in the circuit courts or district courts. The amount of compensation will be an amount equal to the current compensation of a judge of the court to which he/she is assigned, and will now be consistent with how the district judges are paid. Judge Campbell moved and Judge Brooks seconded a motion that this proposal be presented to the Judiciary Committee. Motion carried unanimously.

**Electronic Signatures** – Joann informed the Board that there is nothing to report on this matter at this time. Because of e-filing capabilities in the supreme court and district courts, some of the statutes need to be updated to allow for digital electronic signatures. Law enforcement agencies have questioned whether a court order is valid if it has an electronic signature versus an actual signature. Justice Voigt is researching this issue.

**Judicial Surety Bonds** – Joann distributed a handout to the members concerning W.S. 5-9-115 and W.S. 5-9-205. She explained that the Minutes of the BJPA from June 21, 2007 indicate that the Board agreed with the recommendations from the internal auditors that the requirement that circuit court judges and circuit court magistrates be bonded serves no real purpose and should be discontinued. The Senior Staff Attorney and Risk Management have also looked at this issue. Judge Campbell moved and Judge Brooks seconded a motion to ask the Joint Judiciary Committee to sponsor a bill to repeal W.S. 5-9-115 and W.S. 5-9-205. Motion carried unanimously.

## **Digital Recordings**

Ronda reminded the Board of the background of the digital recording system, and the reason for its inception, i.e. problems with the quality of cassette tape recordings, the question of who transcribes them, how do they become a part of the official record, and do they get sent to the district court when a case is bound over. She received an email from a district court clerk and a copy of a letter from a county attorney with questions about whether or not an actual CD of the digital recording has to be sent to the district court when a case is bound over. The clerks were originally told that the committee had recommended that if a district judge requested a copy of a particular recording, then they should put it on a CD and send it up to the district court. Discussion was held by the Board. The Board directed Ronda to ask the district court clerks if this is a request by their association, and if it is, what they would specifically like to have addressed. However, at this time, the Board does not think that there should be a CD made in every case.

### **Judge Hartman's Legislative Proposal**

Joann distributed another handout regarding a matter that was not on the Agenda. She informed the Board that Judge Hartman has been gathering information from many executive branch agencies and enforcement agencies that work on juvenile cases. He is advocating that there be a centralized state data system for juvenile cases so that information can be shared by all of the agencies. The juvenile information from the courts will be available through the new case management system in the district courts, and could possibly be fed through a portal similar to WyCJIS and DCI. Steven Dreher has been attending some of the meetings with these executive branch agencies. Judge Hartman is working on legislation that would make each county prosecutor's office the central point of entry for these cases, with the intent that the juveniles be put into some sort of diversionary program to keep them out of the criminal justice system.

Board Adjourned.

#### **Schedule of Future Meetings:**

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