

Board of Judicial Policy and Administration
Minutes
October 1, 2003

The Board of Judicial Policy and Administration met in Cheyenne on October 1, 2003. Chief Justice William Hill, Justice Bart Voigt, Judge Ed Grant, Judge Jim Burke, Judge Mike Huber, Judge Terry Tharp attended. Justice Marilyn Kite participated by telephone. Holly Hansen and Joann Stockdale also attended. Throughout the course of the meeting the following individuals attended at some point: Judge Jeff Donnell, Judy Pacheco, Karl Linde, Dean Jessup, Jim Bivona. Judge Rob Denhardt and Judge Bob Skar participated by telephone.

1. **Approval of Minutes**

Judge Huber moved and Justice Voigt seconded a motion to approve the minutes of the June 19-20, 2003 meeting. Motion carried.

2. **Committee Reports**

- A. Drug Court Rules Subcommittee -- Judge Donnell reported on the activities of the drug court subcommittee. Judge Donnell opened his presentation by stating that after much deliberation he has come to the realization that drug courts are not really courts at all, but rather an Executive Branch program that happens to operate in a courtroom from time to time when a judge is there. But, it is not a court.

He said that the term "court" carries a connotation that the entity has jurisdiction and procedures. Courts have neither Executive Branch oversight, nor do they answer to the Executive Branch. He said he decided to compare the drug court legislation to the juvenile court statutes, because the juvenile court is a specialized court. He said that while jurisdiction is addressed in the juvenile court statutes, jurisdiction is not addressed in the drug court statutes. He said drug court jurisdiction is not clear from the statutes. There is no means of appeal established for the drug court. He also pointed out the criteria for admission to the drug court is not clear. He said drug court program criteria are subject to whatever criteria are used by the county where the defendant enters drug court. Consequently, there are no criteria standards. The criteria are completely dependent upon whatever is developed by the local drug court committee.

He advised the Board that the drug court subcommittee was established in order to address some of these issues. However, jurisdiction cannot be addressed in rules. Courts cannot confer jurisdiction by rule that is something that has to be done by the Legislature.

He said the subcommittee also tried to address some of the fiscal control and administrative concerns that had been raised, because they were not addressed in the statute

In the final analysis, Judge Donnell expressed his concern that the drug court, as it is currently established, is not a true “court.” He said that if the Legislature were to want the drug courts to operate as a true court, then the statutes need to be revised so that it includes the attributes of a court. The alternative is to make it an administrative program of the Executive Branch that is administered by the Department of Health. He stated that the drug court should not be called a “court”, because it is subject to Executive Branch supervision. He said it is a program.

Chief Justice Hill stated that the Board’s role at this point should be to go back to the Legislature and ask the Legislature to address the concerns that have been raised. The Chief Justice said the Board also needs to assist the current programs as they continue to implement the drug court statutes in their counties. He expressed his concern that the Judicial Branch would be compounding the problems by adopting the proposed rules.

Judge Donnell suggested there are two approaches that could be offered to the Legislature for its consideration. First, if the Legislature wants the drug court to be a special court like the juvenile court, then the Legislature could adopt statutes that parallel the juvenile court statutes that define jurisdiction and the other elements that are present in a court. If the Legislature wants this to be a drug treatment resource program which is available to the courts for use in a probation type program, then it should be clearly defined such. As it stands now, it is called a “court” which is subject to Executive Branch supervision and that needs to be addressed.

Justice Voigt stated that it helps if this is viewed as a court based drug treatment program and that as a treatment program it properly belongs with the Department of Health. He said that rule making for this program is a proper function under the Administrative Procedures Act. He said it would be a mistake to adopt rules and put those rules in the Judicial Branch’s rulebook. Justice Voigt said that he is concerned about having judges administer drug treatment programs and having judges be responsible for the treatment that defendants receive.

Judge Huber said this program started out being called a “court” because that is what it is called in most other states. However, in many other states probation is an arm of the court and that is not the case in Wyoming. He said there are currently a number of drug courts operating in Wyoming and they are in critical need of procedural help and guidance. He asked if the Board would be willing to adopt the rules and call them interim rules.

Judge Denhardt suggested that the Board step back and ask the drug court subcommittee to go back and separate out those rules that are not within the Judicial Branch's purview. He stated that the sections that apply to the judiciary could be formulated as guidelines for the judges and the remainder of the rules could be sent to the Department of Health for its consideration.

Justice Voigt said he was concerned with changing traditional judicial remedies, traditional separation of powers, and the jurisdiction of courts through an administrative program. If this is a drug treatment program, it should have no effect on the traditional rules, remedies, practices, and appeals that exist in the court system. It should not be possible to change jurisdictional and appellate processes with the drug treatment program. He said the drug court program goes too far in interfering with the judicial process.

Dean Jessup said that he had originally approached then Chief Justice Lehman about developing judicial standards or a bench book for the drug courts. He said that he recognized that certain things needed to be handled through the Judiciary. He said he wondered if it would be possible to fashion a bench book instead of rules.

Judge Donnell said he thought the document could be called guidelines without much modification.

Judge Tharp said that he likes the idea of going back to the Legislature and asking them to address the issues that have been discussed. He said that if the Legislature wants this to be a "court" then it needs to pass enabling legislation establishing jurisdictional boundaries.

Chief Justice Hill said the Board needs to develop a strategy on approaching the Legislature in conjunction with the Department of Health. In addition, the Chief Justice suggested enlisting the Governor's assistance with the problem.

Judge Donnell said he believes there is value in having the Board circulate procedural guidelines. There is a need for guidelines in order to help those courts that want standardization. It would also be a useful document to take to the Legislature.

Judge Huber made a motion that the Board amend and adopt the rules as proposed by the subcommittee, change the title to Drug Court Procedural Guidelines. The motion failed for lack of a second.

Chief Justice Hill asked Judge Donnell if he would be willing to go back to the subcommittee and develop suggested procedural guidelines that could be provided to those courts that are already operating drug courts.

Holly Hansen asked Dean Jessup if it would be possible to forward the rules drafted by the Subcommittee to the Department of Health and ask the Department to consider incorporating those in the rules that have already been adopted. Dean Jessup responded that this would be problematic; because there are drug courts in the state that do not believe the Executive Branch rules apply to them. Dean Jessup said this dilemma is why he had hoped that the Board could provide guidance to the courts. Judge Donnell commented that it gets very problematic when you have Executive Branch agencies dictating procedural practices to the Judiciary. He said that court procedure is a function of the judicial rule adoption process. Judge Donnell said that the subcommittee could take a shot at extracting the procedural components.

The Chief Justice recommended that the Board not take action on the proposed amendments to the Wyoming Code of Judicial Conduct.

The Chief Justice indicated that the Board would also refer this matter to the Legislative Committee and ask that committee to develop a legislative strategy with respect to the matter of communicating the Board's concerns relative to the drug courts. Chief Justice Hill indicated he would ask Judge Perry to head this effort.

- B. Education Committee -- Justice Voigt and Judge Burke reported on the continuing judicial education activities during the State Bar Convention. They indicated that they have had positive feedback from judges. They indicated a preference for having more topics presented and shorter time allotted for each topic. Judge Burke advised the Board that the Education Committee would welcome suggestion from judges regarding topics for future programs.
- C. Judicial Compensation Committee – Chief Justice Hill indicated that he has requested an opportunity to meet with the Governor and so far has not heard from the Governor. He indicated that he would prepare a letter to the Governor asking to get on his calendar to discuss the compensation issue and the matter of drug courts.

There was also some discussion about the need to revise the Judicial Retirement Act, so that judges who leave office early are not so severely penalized. Chief Justice Hill reported that Justice Lehman and Judge Day have been working on a proposal to amend the Judicial Retirement Act. He further indicated that he would ask the Judicial Compensation Committee to meet in order to consider the judicial salary adjustment issue

and judicial retirement. He would further ask the Compensation Committee to bring a coordinated plan to the Board. He indicated that Justice Lehman and Judge Day would be included in that committee.

- D. Technology Task Force – Jim Bivona presented recommendations from the Technology Task Force on three grant proposals that were submitted to the Task Force. Judge Huber moved and Judge Tharp seconded a motion to approve the grant proposals from Teton County and the city of Gillette and to write a letter to Uinta County requesting further information on the grant proposal submitted. Judge Burke had a question regarding the standard for matching grants. He indicated that counties with the ability to provide a match should provide a match. The motion carried with Judge Burke voting no on the request from Gillette, because it did not provide a match.

3. **Old Business**

- A. Disrespectful and Derogatory Statements on Checks – Judge Nau was not able to attend the Board meeting. Chief Justice Hill and Holly Hansen explained the nature of Judge Nau’s concern that on occasion defendants will write disrespectful comments in the comments section on checks. Judge Grant indicated that he had spoken to Judge Nau about her concern. While the Board was sympathetic, the general consensus was the checks should be negotiated.
- B. Town of Manderson – Judge Skar (who participated by telephone) and Holly Hansen asked the Board to resolve the question about how much to charge the town of Manderson for having the Circuit Court of Big Horn County process municipal violations. Judge Grant moved and Judge Burke seconded a motion to charge \$100 per month. Motion carried.
- C. Withdrawal of Circuit Courts from Conference of Special Court Judges – Judge Huber reported to the Board that the Circuit Court judges had voted at their last divisional meeting to withdraw from the Conference of Special Court Judges. Judge Huber said that participation in this conference had been viewed as voluntary and that not all circuit court judges participate. He expressed concern for leaving the municipal judges and clerks without a training opportunity. After further discussion, Judge Grant made a motion expressing that the Board has no official position or authority in this matter. Judge Tharp seconded the motion, which carried.
- D. Joint Judiciary Interim Work – Holly Hansen reported to the Board that the Final Report from the Select Committee on Juveniles has been forwarded electronically to the judges and that the bill drafts would be available on the Legislature’s web site. She told the Board that the Joint Judiciary Committee would be meeting October 30th and 31st in Cody to

consider the Title 14 revision. Judge Burke expressed his concern that someone needs to review the bills on behalf of the Judiciary. He said he thought the Board had created a Legislative Committee not only for the purpose of being proactive with legislation, but for the purpose of reviewing proposed legislation. He asked if it would be an appropriate function of the Legislative Committee to review the revisions to Title 14. He stated that the Judiciary needs to be proactive instead of reactive to legislation that is passed. The Chief Justice said the matter should be referred to the Legislative Committee and ask that committee to provide an assessment of the proposed legislation.

Holly Hansen advised the Board that Judge James represented the Court Improvement Project on the Select Committee on Juveniles. Chief Justice Hill indicated that he would ask Judge James to review the bills and highlight the points of particular interest to the Judiciary. Judge Tharp also volunteered to review the bills. Holly Hansen pointed out that any comments from the Board or the Judiciary would need to be presented to the Joint Judiciary Committee meeting at its October 30 and 31 meeting.

Holly Hansen reported that the Joint Judiciary Committee would also consider three bills recommended by the Board of Judicial Policy and Administration. One bill conforms the statutes to reflect the elimination of the Justice of the Peace Courts and relating to archive issues. The other two bills address archive issues of tape storage and reviving dormant judgments.

E. Magistrate Issues – Holly Hansen reported to the Board on telephone conference call with five of the six full-time magistrates. The matters discussed included application of the Code of Judicial Conduct, the Board's policy on weddings and the process for salary adjustments.

4. **New Business**

- A. Personnel Matter – Judge Donnell indicated that he wanted to seek the Board's support for a proposal from the district judges to reclassify the law clerk positions in the district courts to staff attorneys and to set their salary on a par with the Supreme Court's staff attorneys. Judge Grant made a motion to support the concept in principal and to request that Judge Donnell present a formal resolution to the Board for future action. Judge Huber seconded the motion, which carried. Judge Donnell requested that Joann Stockdale provide information on the pay scale used in the Supreme Court.
- B. Legal Aid Services Committee – Leigh Ann Manlove and Roger Franzen spoke to the Board about a proposal to conduct a legal needs assessment in

the state. The provided information to the Board on what the Legal Aid Services Committee has been doing and what they hope to accomplish in the future.

- C. Judicial Planning and Administrative Council – Letter from Steve Lindley, Department of Corrections. In Steve Lindley’s letter he requested that a member of the Board be appointed to serve on the newly created Interstate Compact for the Supervision of Probationers and Parolees (ISC) state council. Justice Voigt nominated Judge Grant and Judge Grant seconded the motion. Motion carried.
- D. Approval of Assigned Vehicles – Joann Stockdale presented letters from Judge Hartman, Judge Brooks, Judge Zebre, Judge Skar and Holly Hansen relative to permanently assigned vehicles in their respective courts. Judge Grant moved and Judge Huber seconded a motion to approve the continuation of these permanently assigned vehicles.
- E. Preliminary Budget Numbers – Joann Stockdale reported to the Board on the development of the 2005-2006 Biennial Budget Request.
- F. Proposed Rule to the Uniform Rules of District Courts - Judge Grant made a motion and Judge Burke seconded a motion to adopt the following additional rule to the Uniform Rules of District Courts:

Rule 907: Electronic Audio Record For Paternity Cases
The district court in its discretion may comply with any requirements to report cases to W.S. 14-2-101 through W.S. 14-2-120 by providing an electronic audio record of the proceedings.

The motion carried.

- G. 5th Judicial District Home Base – Judge Skar wrote a letter to the Board requesting that the home court for the area he covers, which is Hot Springs, Washakie and Big Horn be re-evaluated and designated as Washakie County. In addition, Judge Skar participated by telephone. Judge Skar said that he has been spending more time in Washakie County and that it seems to make more sense to have it be the home court. After some discussion, the Board decided to defer action on this matter.
- H. Audio Recording Difficulties in Circuit Court – Chief Justice Hill and Judge Huber provided the Board with information regarding a situation that occurred in the Circuit Court of Natrona County when the tape recording equipment failed to work during an arraignment in a homicide case. Chief Justice Hill indicated that he would advise Senator Schiffer that the matter had been brought to the Board’s attention.

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5. **Other Matters**

- A. Future Meetings Schedule - Chief Justice Hill advised the Board that a date and time would be selected for the November teleconference call. The meeting calendar for 2004 is as follows: February 10, June 2, August 25 and December 1. The Committee generally expressed a preference for meeting in Cheyenne, provided that an occasional meeting is held elsewhere.

The Board's next meeting is scheduled for December 4, 2003 in Cheyenne.