

Board of Judicial Policy and Administration
Minutes
December 1, 2004

The Board of Judicial Policy and Administration met in Cheyenne on December 1, 2004. Chief Justice William Hill, Justice Michael Golden, Judge Jeff Donnell, Judge Jim Burke, Judge Mike Huber, and Judge Bob Skar attended. Justice Marilyn Kite, Judge John Perry, Judge John Brooks, and Judge Terry Tharp participated by telephone. Holly Hansen and Ronda Munger also attended. Throughout the course of the meeting the following individuals attended at some point by phone: Tina Wood, Joyce Boyer, Dona Playton and John Burman. Judge Roberta Coates and Donna Sheen attended in person for part of the meeting.

OLD BUSINESS

JUDICIAL POSITIONS

District Judge John Perry provided an update on the Sixth Judicial District's request for a third district judge. The prime sponsors of the bill creating the additional judicial position are Senator Schiffer, Representative Simpson, Representative Wasserberger, Representative Osborn, Representative Lubnau, Representative Lotta, and possibly Senator Nicholas and Senator Hanes. In light of the impact of Coal Bed Methane in the area, Judge Perry represented that if they receive the third judge then they will attempt to also pick up some of the overflow of the Fourth Judicial District.

Chief Justice Hill updated the Board on the situation in the Ninth Judicial District Circuit Court in Fremont County, Riverton. Chief Justice Hill reported that he would be leaving the Board meeting early to join the rest of the Judicial Nominating Commission in Riverton to interview candidates for the position left vacant by Judge Hall. The interviews will occur on December 2nd and 3rd, and the Governor will have the three names by the afternoon of the 3rd. The Board voted to refill this position based on the revised weighted workload study and the testimony provided at the September Board meeting. Justice Hill reported the Board's intention to fill the position to Senator Schiffer, Senator Hanes, Representative Nicholas, and Representative Simpson in a letter dated September 27, 2004. Despite the fact that the weighted workload supported refilling the position, in subsequent conversations, it became apparent that a few legislators felt that the Board had gone back on a promise not to fill the position. Chief Justice Hill further explained that the position is funded through 2006.

Chief Justice Hill updated the Board on the facility issues in the Seventh Judicial District. The Natrona County Commissioners are back to the drawing board as far as funding. They are not sure how they will raise the money for either a renovation of an existing building or construction of a new building. The Commissioners have had discussions with the Farm Loan Board. Another newspaper article appeared quoting Representative Nicholas as stating that Campbell County needs the judge and has space. In a subsequent article, Representative Nicholas acknowledged the need for the judge in Natrona County. It is well documented the positive impact that Judge Skavdahl has had in moving cases along the busy Seventh Judicial District docket. A final article was discussed wherein

Representative Nicholas stated that the Supreme Court may have to order the Natrona County Commissioners to provide the space, but Chief Justice Hill commented that it is not likely to happen. Judge Huber was present years ago when Justice Rooney had a very stern conversation with the Natrona County Commissioners in getting the county court built, and so Judge Huber believes that it may take an order from the Court to accomplish it.

JUDICIAL RETIREMENT

Holly Hansen provided an update on the funding shortfall in the Judicial Retirement plan. This issue was initially discussed at the September Board meeting. Subsequent to that meeting, Holly arranged for a meeting with the director of the State Retirement system, the new actuary, and as many judges as could attend. The meeting took place October 20, 2004, in Casper. Holly reported the meeting went well and was very productive. Currently, there is a proposed bill before the Joint Judiciary Committee, which would remedy the judicial retirement shortfall by increasing the employer contribution by 3%. The Joint Appropriations Committee will sponsor a separate bill which will carry the appropriation necessary for the multiple budgets that are involved. In the coming year, there will also be work done on legislation which will change the language in the retirement statutes from the "actuarially adjusted" phraseology to the same language that is in the state employees' retirement statutes. Other retirement issues that were discussed were: 1) creating one Judicial retirement system that encompasses all judges; 2) investigating the possibility of an early retirement plan that accomplishes a prorated reduction for those who do not want to work until they are age 70; and 3) a plan to explore the possibility of using retired judges to help out the overloaded dockets, much like the system that is currently in place in Idaho. Judge Burke moved to have a committee set up to work on retirement issues, and Justice Golden seconded the motion. The motion carried unanimously. Justice Kite agreed to Chair the committee and Judge Skar agreed to be a member. Other judges who were mentioned as possible members were Judge Castor, Judge Day and Judge Spangler. Holly and the Chief Justice will formally appoint the committee.

Judge Burke raised one additional issue with regards to judicial retirement. Title 5 of the Wyoming Statutes refers to a judicial retirement plan that does not apply to any new judges, as it only applies to the old judicial retirement plan. The new retirement plan is found in Title 9. A problem arises when applicants for judicial positions look up judicial retirement information in the statutes, and it is not clearly defined that Title 5 does not apply to anyone who is hired as a judge after 1998. Justice Golden moved and Judge Donnell seconded the motion that a bill be drafted to amend Title 5 to reflect the fact that Title 5 only potentially applies to judges hired prior to 1998. The motion carried unanimously. Holly Hansen agreed to draft the bill.

LEGISLATIVE AND RULES COMMITTEE UPDATE

Holly Hansen provided an update on the Legislative and Rules Committee issues. There are three items to be discussed under this topic; 1) the mental competency statute change; 2) the internal audit revisions; and 3) changes to procedure rules regarding faxed documents in district court. With regard to the mental competency statute change (W.S. 7-11-303), Holly sent a letter to Senator Hanes and Representative Simpson on September 21, 2004, and has not heard back. She will contact Representative Simpson to

follow up. With regard to the internal audit proposal for the Circuit Courts, a bill has been drafted to reflect the changes necessary to bring the audits of the courts in-house. The bill is sponsored by Simpson and Hanes. The Joint Appropriations Committee will hear the bill on December 9th, and Mike Geesey, director of the Department of Audit, will speak to the bill at that time. Finally, with regard to faxed documents in district courts, that issue has been referred to George Santini and the Permanent Rules Committee. The committee met on the issue, but they have not communicated their recommendations to the Board at this time.

NEW BUSINESS

ORDER APPOINTING SUPERVISING JUDGES IN CIRCUIT COURTS

Holly Hansen presented an Order Appointing Supervising Judges to the Board and explained that it is the Board's policy to appoint supervising judges for each calendar year in those circuit courts without resident circuit judges and in counties with multi-judge circuit courts. Judge Tharp moved and Judge Skar seconded a motion to approve the Order. Motion carried unanimously.

TAPES VS. TRANSCRIPTS IN CIRCUIT COURTS

Judy Pacheco made a presentation to the Board regarding the difficulties experienced by public defenders, the Attorney General's Office and district court clerks in processing appeals from circuit courts to district courts because of problems with faulty recording equipment in the circuit courts. The rules regarding proceedings in circuit courts are a little loose, allowing that tapes can be used on appeal in district court. There are times when it is necessary to have a transcript of the proceedings and it is not clear who is responsible to provide it. Unfortunately, the procedures for checking tapes out of the district courts are not uniform. In the end, the problem becomes how to get audible tapes and a good record when a case is being appealed to the district court, when the district courts are not handling the appeals in the same fashion and very few of the rules of appellate procedure are being followed. Much discussion ensued about this topic. Some of the topics discussed were: 1) how important is a complete record in misdemeanor cases and what constitutes a complete record; 2) do the circuit courts all need new recording equipment; 3) the effect of requiring all criminal cases to have a court reporter record them; 4) the availability of court reporters in the state; and 5) how important is a transcript of a preliminary hearing when a litigant is being bound over to district court. Justice Golden moved and Judge Donnell seconded a motion to establish a committee to look into all the issues involved in this topic. Motion carried unanimously. The Chief Justice will appoint a Circuit Court Record Committee made up of clerks (Clerk of the Supreme Court, one circuit clerk and one district clerk), judges (at least one justice, one district judge and one circuit judge), a public defender and an attorney general.

DISTRICT COURT ISSUES

Judge Donnell reported to the Board that since Judge Burke has been appointed as a Supreme Court Justice, the District Judges held an email conference and voted to have Judge John Brooks replace Judge Burke on the Board. Chief Justice Hill welcomed Judge Brooks to the Board.

District Court Clerks Tina Wood and Joyce Boyer appeared by phone and made a presentation to the Board regarding fees in District Courts. Joyce Boyer explained that there already exist Supreme Court orders for Rules for Costs and Fees for both municipal courts and circuit courts, which are published in the Wyoming Court Rules. The clerks suggested that there needs to be one place for litigants to look to find all the fees for district courts. The proposed order titled "Rules for Fees and Cost in District Courts" does not make substantive changes to the rules or fees, but it does include a new fee for facsimile transmissions and for exemplification of court records. Justice Golden moved and Judge Perry seconded a motion to recommend the Supreme Court adopt the Rules for Fees and Costs in District Courts. Motion carried unanimously.

Judge Perry made a presentation to the Board regarding name changes for minor children. Judge Perry explained that he is having custodial parents appear in his court, asking for a name change for a minor child with only an advertisement procedure, and often times the non-custodial parent lives out of state. Judge Perry has been requiring service upon the non-custodial parent, even though there is some question as to whether or not he can do that. The name change statutes do not address this situation. Judge Burke suggested a legislative change would be necessary and that this issue should be referred to the Board's legislative committee. Judge Perry requested that the statute contain language that there must be service on the non-custodial parent and that it contain language stating that there be no other judicial determination. Judge Perry moved and Judge Donnell seconded a motion to refer this issue to the legislative committee. Motion carried unanimously.

Since Chief Justice Hill needed to leave to attend Judicial Nominating Commission meetings, he turned the meeting over to Justice Golden.

Justice Golden made a presentation to the Board regarding W.S. 5-3-102, which has to do with the administrative and fiscal duties in the district courts. Justice Golden reviewed the history of the relationship between the supreme court and the district courts. He then explained that in 2000, the Legislature created section (b) of W.S. 5-3-102, which stated that the "district courts shall be free of administrative and fiscal control by the supreme court." This language was the driving force behind the creation of the Board of Judicial Policy and Administration, and Justice Golden questioned the need to have section (b) of W.S. 5-3-102, since the Board has now fulfilled this function. Justice Golden requested input from the district judges on the Board as to whether they thought that statute should be repealed. Judge Donnell and Perry both gave testimony that some good things with regard to the organization of the district judges have happened since the enactment of that statute. Judge Donnell suggested that he email the district judges and get a sense of what the rest of the district judges think about this statute. Judge Donnell agreed to report back to the Board once he surveys the other district judges.

CITIZENS ACCESS TO COURTS COMMITTEE

Holly Hansen reported to the Board the results of the survey she did in polling the district court clerks, district judges and other citizens regarding the continued use of the pro se divorce packets developed by the Citizens Access to Courts Committee (CACC). The consensus of the group is the packets are too complicated and hard to understand. The district judges as a whole are not in favor of the use of the packets. The district court clerks believe that there is a need for the packets, but they believe the packets should not

be used unless they are changed to be more user-friendly. The biggest problem with the packets is that they are not updated. The original packets were developed by an attorney from Casper, who provided those services on a voluntary basis. Holly reported to the Board that if the packets are going to be a workable solution to the pro se problem, the packets need to be revised by an attorney on contract, who will then be responsible for updating them on a regular basis. At this time, there is \$20,000 in the reserve account from selling the packets that could be used to contract with an attorney to revise the forms. Justice Kite suggested the Board put out an RFP to see how much an attorney would charge to manage these forms. Judge Donnell reported that the Albany County bar has set up a list of attorneys who are willing to sit down with litigants and fill out the forms, and that the unbundling of legal services has helped with this process. The Board discussed the possibility of utilizing the help of the law school legal services program. The Board decided to approach John Burman and the Legal Services Clinic. Judge Donnell moved and Judge Huber seconded a motion to negotiate a contract, subject to the approval of the Board, to include specifics and payment in updating the forms. Motion carried unanimously.

GUARDIAN AD LITEM ISSUES

Donna Sheen appeared in person and Professor John Burman and Dona Playton appeared by phone to discuss a proposal that will be submitted to the Legislature during the 2005 session, allowing a 2.1 million dollar appropriation to the Supreme Court to be used in reimbursing attorneys acting as Guardian Ad Litem in child protection cases. John Burman provided the background information on how the project was developed. As the bill is drafted now, the Supreme Court would be responsible for overseeing the payment of these monies, the district judges conference would be responsible to establish the rules and regulations to administer the program, and the counties would be required to provide 25% matching funds for the program. During a meeting in Lander, the Joint Judiciary Committee unanimously supported the legislation and made the recommendation that the budget footnote be considered by the Joint Appropriations Committee. The Joint Appropriations Committee will be meeting during the week of December 8th in Cheyenne. Judge Donnell recommended that the district judges conference suggest changes to the document to the Board, and then the Board would recommend to the Supreme Court the adoption of the program. Judge Huber moved and Judge Burke seconded a motion to have Judge Donnell make adjustments to the budget footnote and submit them to the Joint Appropriations Committee with the Board's endorsement. Motion carried unanimously.

Board Adjourned

Schedule of Future Meetings

March 17, 2005	Casper
June 1, 2005	Cheyenne
September 26, 2005	Casper
December 1, 2005	Douglas