

Board of Judicial Policy and Administration
Minutes
December 1, 2005

The Board of Judicial Policy and Administration met in Douglas on December 1, 2005. In attendance were Chief Justice William U. Hill, Judge Jeff Donnell, Judge John Brooks, and Judge Mike Huber. Judge Gary Hartman, Holly Hansen, Jim Bivona and Ronda Munger also attended. Justice Michael Golden, Justice Marilyn Kite, Judge John Perry, Judge Terry Tharp and Judge Bob Skar participated by telephone. Throughout the course of the meeting the following individuals attended at some point: Tina Kerin, Public Defender's Office; Tom Mann, State Retirement Office; Jim Pond, Albany County Sheriff; Danny Glick, Laramie County Sheriff; Byron Oedekoven, Executive Director for the Wyoming Sheriff's and Chief's Association; John Bey, Converse County Sheriff; and Lori Emmert, Chief of Police in Douglas.

Old Business

Committee Updates

Circuit Court Records Committee - Tina Kerin, a member of the Circuit Court Records Committee (Committee), made a presentation to the Board regarding the recommendations of the Committee. Tina reported that the Committee surveyed the Circuit Courts regarding the quality of their recording equipment and found that most of the equipment was inadequate and did not produce quality recordings. In some counties, there were times when preliminary hearings had to be repeated because of the lack of good recordings. The Committee concluded that all the circuit courts should have uniform recording equipment and that it should be in digital format so that it would be easy to copy and store. The Committee explored some of the options for replacing the equipment and discovered that it would be a large expenditure, but in the end decided that the money would be well spent. Holly Hansen reported to the Board that the Supreme Court is making a request for an appropriation from the Legislature out of a special revenue account to pay for the over \$800,000 expenditure.

Tina reported that the second aspect of the Committee's work focused on the problems that have been occurring with regard to the process for transcribing the audio tapes that are now produced in the circuit courts. The rules for transcribing those records are unclear. Basically, in an appeal from circuit court to district court, the rules require that the district court accept the electronic recording as the record in determining the issues on appeal. Problems occur in those districts where the district court docket is such that the district judge does not have time to listen to the entire electronic record in deciding the appeal. The district judges are experiencing the same problems with the quality of the recordings, and they are also without a clear mechanism for the creation of a transcript of the electronic record. Questions regarding who can transcribe audio tapes and who actually pays for the transcript have arisen. The Committee recommended the Board ask the Permanent Rules Committee address the following two issues:

- 1) That the Rules Committee determine the best mechanism for accomplishing a written transcript of an electronic record. The Committee suggests when a notice

of appeal is filed in circuit court that the party requesting the appeal be required to notify the court; and at that time, a transcript of the electronic record would be made and given to the district judge in determining the merits of the appeal. The Committee recommends that private counsel pay for the transcript, except in those cases where the Public Defender's Office is involved and then the transcript would be treated as an *in forma pauperis* matter, as is currently required by the rules.

2) That a mechanism be developed to create a transcript of preliminary hearings. At this time, the rules do not make it clear who is responsible for the transcription of the audio tape. Regardless of who prepares the transcript, time limits need to be established, and the amount of notice and preparation time should be set. The Committee proposes a notice time within 30 days of trial (in an effort to prevent transcripts from being unnecessarily prepared in cases that end up pleading out). The Committee was not able to reach agreement on who should be responsible for transcribing the record, whether it should be the district court clerk, since the record is transferred to that office, or whether it should be the responsibility of the circuit or district court.

The Board had a lengthy discussion regarding the Committee's request to refer these issues to the Permanent Rules Committee. The Board discussed the merits of the recommendations and Judge Donnell moved and Justice Kite seconded a motion to direct the Circuit Court Records Committee to go back to work and bring to the Board a package proposal with specific language and rule changes, along with a funding proposal. The motion passed unanimously.

Retirement Committee - Justice Kite reported that the retirement committee is continuing its work. At the outset, Justice Kite made it clear that all of the work that the retirement committee is doing applies only to the new judicial retirement system. For those Judges who chose to stay in the old system, there are no changes being proposed to the old plan. Tom Mann, Director of the Wyoming Retirement System has been providing a lot of support and resources to help the committee achieve the necessary changes to make the current judicial retirement plan better serve the judges and the state system as a whole. Tom Mann appeared before the Board and made a presentation that outlined several scenarios that are being considered. At present date, the average age of Wyoming judges when they are appointed and enter the system is 49, and the average age for retirement is 64 -- meaning the average number of years of service is 15 years. Justice Kite reported that the biggest hole in the new judicial retirement system occurs for those judges who are appointed at about age 50 and have 12 to 13 years of service. The actuarial reduction drops the amount of retirement paid out to those judges to about \$13,000 a year. One additional concern that the committee expressed is the fact that the retirement plan as it exists today is not a positive factor in attracting lawyers to judicial service. The committee is gathering information regarding senior judge status after retirement, but that is just in the early stages of development. The retirement committee is not yet in a position to make a recommendation to the Board and no action was taken. The plan is for the retirement committee to finish their work and approach the Joint Judiciary Committee at the end of this legislative session in hopes of this project being selected for their interim work.

Legislative Committee - Holly Hansen discussed four different legislative issues concerning the judiciary that will be moving forward in the 2006 Legislative session.

Judicial Retirement Statutes. The first issue discussed was changes that are being proposed to W.S. § 5-1-106, which is the section of the statutes that refers to the old judicial retirement plan. The reason this change is being proposed is that it needs to be made clear to judicial applicants that the old retirement system, which is defined in W.S. § 5-1-106, only applies to those judges appointed prior to July 1, 1998. The new judicial retirement plan is found in Title 9.

Children and Families Initiative. The second legislative proposal discussed with the Board was the proposed bills associated with the Children and Families Initiative. There are several bills that are circulating with regard to this initiative. The Drug Court Advisory Committee, the Children and Families Committee and Rodger McDaniel all have proposals on the table for how to bring about more problem solving courts across the State. In addition to the bills that have been mentioned, there are also other versions circulating. Judge Donnell reported that the Joint Judiciary Committee killed one version of this proposed legislation, however, another legislative committee has picked it up.

Judge Gary Hartman addressed the Board on the issue of problem solving courts. He gave a brief history on the Children and Families Initiative (CFI), including the fact that there were five district judges that sat on the CFI committee. The CFI committee came up with five recommendations, one of which concerns the court system. There were 23 meetings, one in each of the counties. Judge Hartman reported that the Governor is on board with the recommendations. One of the goals of the CFI committee is to find ways to create more problem solving courts. A second proposal was to put together a unified family court project in Laramie, but the Governor did not endorse that project and so it is dead. Since the unified pilot court project is not going forward, the plan is to put in the necessary structure to be able to have additional problem solving courts. The idea is to give a community the ability to create a problem solving court if they choose to do so. It is not a mandate on judges, but is an option for the communities. Wyoming has 18 drug courts and 3 family courts. Judge Hartman agrees that there are problems with some of the rules and regulations in these problem solving courts, but he supports the attempt to bolster a community's ability to create these courts. The problem solving court concept has been adopted by the Conference of Chief Justices and the Conference of State Court Administrators. Judge Hartman agrees with Judge Donnell as far as Wyoming having a lot of work yet to do in getting problem solving courts up and running, but he believes the problems will be ironed out. Judge Hartman requested the Board endorse the concept of the problem solving courts, without endorsing any particular version of the legislation that is being proposed. The Board as a whole expressed some grave concern about the specific details that have been proposed in several versions of the bill. The Board requested Judge Hartman draft a resolution to be distributed to the circuit and district judge conferences for endorsement. If the conferences endorse the resolution, then the Board will set a conference call to discuss the resolution.

Mental Health. Holly Hansen reported on a legislative proposal that was sent to the Judiciary Committee last year and did not get introduced. The proposal involves changes

to W.S. § 7-11-303, which has to do with mental competency evaluations done by the state hospital. Holly recently sent another letter asking the Judiciary Committee to sponsor a change to W.S. § 7-11-303. The change would allow a judge to request a report involving a defendant's competency to either stand trial or a report regarding the defendant's competency at the time of the crime, but not require that both reports be done at the same time. The Judiciary Committee has agreed to sponsor the bill and a bill draft has been submitted.

Judicial Pay Raises. Judge Donnell reported that he recently met with a legislative member who has agreed to carry a bill that will request a judicial pay raise. The specific details of the bill have not been decided, but it is moving forward.

Judicial Technology Taskforce (JTTF) - Jim Bivona made a presentation to the Board on behalf of the JTTF. He reported that the JTTF would like to amend the process by which they accept grant requests for the counties. Jim explained that each year the Legislature has appropriated \$250,000 to fund grant requests from various entities, but primarily the counties. The problem that has been continuing to occur is that the counties are requesting monies to accomplish county technology objectives, but fail to understand that the monies appropriated are to be granted for statewide technology issues. To address this problem, the JTTF would like to change the guidelines for the granting program. Instead of soliciting proposals from the outside entities, the JTTF would like to solicit ideas from the entities and then the JTTF would put together the proposals or business plans for the expenditure of the funds. The Board requested Jim draft a specific proposal for its review in March.

Jim also gave a report to the Board regarding the creation of an E-filing planning committee. The objectives of the committee are to more clearly define the scope of e-filing, research the benefits that e-filing offers, and discuss the who, what, when, where and why of the larger issues of e-filing. Jim presented a list of people the JTTF suggests be on the committee. The list was compiled based on discussions with other states that have already done this type of committee work. The JTTF is recommending a committee be assembled to include a justice, the supreme court clerk, a staff attorney, two district judges, three district clerks, five members of the state bar, 2 special filers, 1 county information technologist, 1 supreme court administration, and 1 supreme court technology person. Judge Skar asked that there be 2 circuit court judges added to the list. There was also some discussion of adding a media representative, possibly the Executive Director of the Press Association. It was decided that Holly and Jim would compile a list of committee members to be approved at the Board's March meeting in Casper.

As a final note on the progress of the JTTF, Holly reported that the Wyoming Criminal Justice Information Sharing (WyCJIS) program received \$850,000 from the Office of Homeland Security. On January 12th, the Joint Appropriations and the Joint Judiciary will preview the program that is being developed. Both the Supreme Court and the Attorney General have requested monies from the General Fund during the next biennium to further this project. The WyCJIS program will be set up to pull information from the court system's data warehouse (all circuit court information) as well as data from the offender management's database (DCI) and presents all that information in one place. Holly and Jim will make a presentation at the Board's meeting in March on the WyCJIS program.

District Court Conference

Court Reporter Issues

Judge Brooks reported to the Board the progress that the district judges' conference made in creating some court reporter rules. Last year Judge Brackley brought the topic of court reporter rules to the Board, when his court reporter was injured and he was unable to retrieve notes and transcripts of proceedings in his court. A district judge subcommittee was created to address several issues with regard to court reporters. Judge Brooks presented the Board with some draft rules that were approved by the district judges at about a 3 to 1 margin. The rules contain three sections, namely a section on stenographic notes, a section on certification, and a section on equipment and supplies. Justice Kite moved and Judge Perry seconded a motion to approve the proposed court reporter rules. The motion carried unanimously. The rules will become a part of the Uniform Rules for District Courts. Judge Donnell and Judge Brooks will review existing statutes to identify necessary changes to be recommended to the Joint Judiciary Committee. Judge Donnell moved and Judge Brooks seconded a motion to send a letter with the necessary changes to the court reporter statutes to the Joint Judiciary. Motion carried unanimously.

Video Arraignments

Judge Donnell made a presentation to the Board regarding changes to Rule 5, W.R.Cr.P., which addresses initial appearances. Judge Donnell is making the proposed change on behalf of a couple of circuit judges who would like to see language be added to Rule 5 which specifically allows initial appearances to be done by video. The circuit judges' conference was not able to reach a consensus on this issue, so it was brought to the Board by Judge Donnell. Judge Donnell made a motion to approve the change to Rule 5 and send the proposed change to the standing rules committee. The motion died for lack of a second.

Circuit Court Conference

Modification of W.S. 5-9-201 - Qualifications for Magistrates

Judge Skar addressed the Board regarding a modification he would like the Board to support regarding the residency requirements for part-time magistrates in the circuit courts. Judge Skar explained the difficulty in finding part-time magistrates in some of the less populated counties. He is proposing a change to the residency requirements for the part-time magistrates such that they can be appointed throughout a judicial district, rather than just within each county. Judge Tharp moved and Judge Huber seconded a motion for the Board to endorse a legislative change to W.S. 5-9-201 making it possible for part-time magistrates to be appointed to serve throughout an entire judicial district. Motion carried unanimously. Chief Justice Hill will send a letter to the Joint Judiciary requesting this change.

New Business

Draft Order Appointing Supervising Judges

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 Skar moved and Judge Tharp seconded a motion to approve the Order. Motion carried unanimously.

Courts and Media Conference

Ronda Munger and Judge Donnell made a presentation to the Board regarding a Courts and Media Conference that they attended on November 3, 2005 in Golden, Colorado. The conference was sponsored by the National Center for Courts and Media, which is located within the National Judicial College in Reno. The Center organized conferences across the country which focused on the issues of the First and Sixth Amendment conflicts -- the right to free press versus the right to a fair trial. Judge Donnell reported that it was a good conference, and that what will likely follow is a packet of information for trial courts providing information about what to do when assigned a high profile case. That packet of information will be presented to the Board for its approval at its next meeting and then it will be disseminated to the trial judges across the state.

Clerks Advisory Council

On behalf of the Clerks Advisory Council, Ronda Munger requested that advance Board agendas be sent to the members of the Council. The Board discussed the issue at length. Deciding who should have the Board's agenda in advance, and if it would be possible to give it to some groups and not others was largely the focus of the discussion. The issue did not center around whether or not the Board wanted the CAC to have the agenda, but how to say no to other groups if it was given to the CAC. The Board discussed keeping the agenda generic and putting it on the Supreme Court website, and Judge Donnell made a motion to do so, but the motion failed for a lack of a second. In the end, W.S. 16-4-401, the Public Meetings Act, became the deciding factor. In the definitions section of the public meetings act, the Legislative and Judicial branches are specifically excluded, and so the Board did not approve giving an advance agenda to any groups other than to the Judges.

Court Security

The following individuals addressed the Board with regard to court security issues: Jim Pond, Albany County Sheriff; Danny Glick, Laramie County Sheriff; Byron Oedekoven, Executive Director for the Wyoming Sheriff's and Chief's Association; John Bey, Converse County Sheriff; and Lori Emmert, Chief of Police in Douglas. Judge Donnell introduced the group and explained that he had been contacted by Jim Pond in an effort to begin partnering with the Judiciary in approaching the Wyoming Legislature for funding to provide personnel for courthouse security. The group shared its ideas with the Board, and the Board agreed to create a Court Security Taskforce. Judge Perry moved and Justice Kite seconded a motion to partner with the sheriffs and chiefs in addressing courthouse security issues. Motion passed unanimously. The Taskforce will be chaired by Judge Donnell and will begin its work in January.

Board adjourned.

Schedule of Future Meetings

March 22, 2006	Casper
June 1, 2006	Douglas
September 15, 2006	Laramie
December 1, 2006	Cheyenne

Approved by Email January 5, 2006