

Minutes
Board of Judicial Policy and Administration
December 5 & 6, 2002
Wyoming Law Enforcement Academy
Douglas, WY 82633

The December 5 & 6, 2002, meeting of the Board of Judicial Policy and Administration was held at the Wyoming Law Enforcement Academy, 1556 Riverbend Drive, Douglas, Wyoming. Chief Justice William Hill, Justices Larry Lehman and Bart Voigt, Judges Ed Grant, Keith Kautz, E. James Burke, Michael Huber, Rob Denhardt, Wade Waldrip, and Scott Cole attended. Holly Hansen and Linda Burke also attended. Matt Fermelia attended a portion of the meeting.

The meeting was called to order at 10:00 AM on December 5, 2002.

R. Approval of November 19, 2002 Conference Call Minutes

After a motion by Judge Waldrip and a second by Judge Denhardt, the November 19, 2002 minutes were unanimously approved.

S. Old Business

1. Ninth District

The Board discussed drafting a resolution to announce the vacancy in the Ninth District and whether that resolution should contain language dictating where the incoming judge would reside. The Board tabled the discussion in order to finalize the language and decided to vote on it at a later time in the meeting.

2. Natrona County Court Facilities

Chief Justice Hill advised the Board that he had not yet received a response to his letter of October 1, 2002, to the Natrona Board of County Commissioners regarding facilities for the third district court judge. Board members discussed the possibilities of meeting with the commissioners during the Board's meeting scheduled for March 19 and 20, 2003, in Casper or at the Commissioners' next meeting. Holly Hansen mentioned that the Board might also want to include Senators Hanes and Schiffer and Representatives Nicholas and Simpson. The Board appointed Chief Justice Hill, Justices Lehman and Voigt, and Judges Kautz and Burke to meet with the commissioners in Casper. Before making a final decision, however, the Board decided to invite Judges Park and Sullins to participate in a conference call with the Board to discuss various options before approaching the Natrona County Commissioners.

T. Statute and Rule Changes – Matt Fermelia

1. Justice of Peace Replacement

a. 2002 Wyoming Statutes

In anticipation of the last remaining justice of the peace court counties joining the circuit court system in January 2003, Matt Fermelia explained that he reviewed the Wyoming Statutes and identified the sections that

referred to “justice of the peace” or “justice of the peace courts.” He further explained that the Court Rules have been amended. After a brief discussion, Justice Lehman moved and Justice Voigt seconded a motion to forward the suggested statute changes to the Judiciary Committee to reflect the action of the Court. Motion carried unanimously.

2. Rules for Fees and Costs for Circuit Courts

a. Rule 1

The Board discussed changing the language from “...unless otherwise specifically excepted, costs in...” to “...unless otherwise specifically excepted by statute or rule, costs in...” Justice Voigt moved and Judge Denhardt seconded a motion to amend the language as stated above. Motion carried unanimously.

Judge Waldrip suggested that a speeder’s right to a jury trial be eliminated in cases in which the defendant’s speed is less than thirty (30) miles an hour over the speed limit. Judge Kautz then recommended that the circuit judges bring such a proposal to the next Board meeting.

3. Wyoming Rules of Civil Procedure

a. Rule 1.05 – Compulsory Counterclaim, Cross-Claim, or Third-Party Claim

Matt Fermelia referred the Board to George Santini’s letter of December 2, 2002, in which he stated that the Permanent Rules Advisory Committee, Civil Division, “...felt that the rules governing procedure in the Circuit Courts were not within the committee area of authority.” The Board took no action.

b. Rule 4 – Service of Process

Since the Board was not clear about the Civil Division of the Permanent Rules Advisory Committee’s intention for Rule 4, Holly Hansen suggested obtaining the minutes from the Committee’s meeting and in addition, asking George Santini to participate in the Board’s January conference call. After further discussion, Justice Lehman moved and Justice Voigt seconded a motion to ask George Santini for clarification. Motion carried unanimously.

The Board then discussed other rules addressed in Joel Selig’s letter of November 24, 2002. The amendments referred to in Selig’s letter were adopted at the Civil Division of the Permanent Rules Advisory Committee’s meeting on October 26, 2002.

The Board approved Rule 26(b) concerning discovery scope and limits. Justice Lehman moved and Judge Denhardt seconded a motion for its adoption. Motion carried unanimously.

Justice Lehman moved and Judge Kautz seconded a motion to approve the Committee’s amendment to Rule 30 (Depositions upon Oral Examination). Motion carried unanimously.

Judge Denhardt moved and Judge Kautz seconded a motion to accept the Committee’s amendment to Rule 37 (Failure to Make or Cooperate in Discovery; Sanctions). Motion carried unanimously.

Finally, Justice Voigt moved and Judge Grant seconded a motion to approve Rule 40 (Assignment of Cases for Trial or Alternative Dispute Resolution). Motion carried unanimously.

c. Rule 38(b)(2) – Jury Demand

The Permanent Rules Advisory Committee, Civil Division, approved the proposed amendments to Rule 38(b)(2). Judge Kautz moved and Judge Burke seconded a motion to approve the proposed amendment. Motion carried unanimously.

4. Wyoming Rules of Criminal Procedure

a. Rule 44

The Board considered the August 13, 2002 letter from Judge Park indicating that the Permanent Rules Advisory Committee, Criminal Division, approved the amendment to Rule 44 proposed by Kenneth Koski, State Public Defender. Justice Lehman moved and Judge Waldrip seconded a motion to approve the rule as amended. Motion carried unanimously. Justice Voigt pointed out that “justice of the peace” should be removed from the rule.

5. Commission on Judicial Conduct and Ethics

a. Parts II and III

Matt Fermelia outlined the amendments suggested by the Commission on Judicial Conduct and Ethics. After discussion, Judge Huber moved and Judge Denhardt seconded a motion to reject all the suggested changes to Rule 10. Motion carried unanimously.

Judge Huber then moved and Judge Denhardt seconded a motion to reject the proposed Rule 13. Motion again carried unanimously.

Judge Denhardt moved to approve the rest of the changes, excluding those to Rule 10 and 13, and Justice Lehman seconded the motion. The motion carried unanimously. Chief Justice Hill stated that he would write a letter to the Commission on Judicial Conduct and Ethics advising that if a representative wanted to appear at the Board’s January conference call to support their proposals to Rules 10 and 13, the Chief would withhold the effective date of the other amendments until the time of the conference call. The Chief would further state that if the Commission did not want to attend the January conference call, the Chief would make the other changes effective immediately.

6. Other Rules

a. Rule 2 – Fees and Costs for Municipal Courts (Align with District & Circuit Courts)

Justice Lehman moved and Judge Waldrip seconded a motion to align the fees and costs for record checks in Municipal Courts with the fees and costs in District and Circuit Courts. Motion passed unanimously.

b. Personnel Rules

Holly Hansen and Matt Fermelia told the Board that the Executive Branch required an employee rehired by the State to work for 24 months after their return to the State before being able to bridge their time for longevity purposes. The Board decided against that type of policy for the

Judicial Branch. Judge Huber moved and Justice Lehman seconded a motion to approve the elimination of the 24 month requirement for the Judicial Branch. Motion carried unanimously.

U. Committee and Activity Reports

1. Citizens' Access to Courts Committee (CACC) – Justice Lehman

Justice Lehman reported to the Board that the CACC was in the process of final approval of a new set of pro se packets that the committee planned to begin using in January. In addition, the Bar Commissioners would be considering posting the pro se forms on their website.

2. Judicial Compensation – Chief Justice Hill

Chief Justice Hill updated the Board on the Judicial Compensation Sub-Committee and advised that Phil Nicholas was the co-chairman of the Joint Appropriations Committee.

3. Standards of Conduct and Decorum – Judge Jim Burke

Judge Burke advised that the Sub-Committee had a meeting scheduled the following week. The Judge also asked if anyone remembered or had access to a John Burman article from a year and a half ago regarding the professional conduct of attorneys beginning with trial judges. Judge Waldrip advised he would locate the article.

4. Drug Court – Holly Hansen

Holly Hansen reported that the Drug Court Sub-Committee divided into three sub-groups: Ethics, Administration, and Procedures. She explained that the Ethics group developed seven questions relating to drug court structure and was awaiting responses from some of the drug courts. The Ethics group hoped to bring a recommendation to the Board in June and the Procedures group would like to have a recommendation by March.

5. Court Improvement Project (CIP) – Holly Hansen

Holly Hansen informed the Board that the Court Improvement Project (CIP) questioned her about what could be done to coordinate their efforts with existing automation efforts. One Board member mentioned that the CIP might benefit by working directly with the Judicial Technology Task Force (JTTF) so as not to duplicate efforts. Another member suggested that the CIP might have access to grants that could assist with technology tasks.

V. Implementation of the Addicted Offenders Accountability Act – Rodger McDaniel

Rodger McDaniel explained that the Addicted Offenders Accountability Act originated as House Bill 59 and would apply to crimes committed on or after July 1, 2003. McDaniel further explained that since funds do not exist for every court to function as a drug court or to place a drug court in every community, the Act provided a means for all Wyoming's courts to deal effectively with addicted offenders. This would be an option for those people who cannot qualify for drug court and would act as an overlay to the drug courts. There would be six assessors located around the state to administer assessments to determine which persons would need treatment and what level of services they would require to

succeed. Representatives from the Wyoming Department of Health would visit with District Judges and Clerks in an effort to coordinate the timing of ordering Pre-Sentence Investigations and assessments. The assessment instruments would be standardized statewide and would help judges, probation officers, and others to work with the assessors in forming a complete picture of the offender. McDaniel would like to develop training specific for judges to learn about the nature of addiction, brain chemistry, and interpretation of the assessment instruments. Six to ten judges per class would be ideal. Holly Hansen suggested sending out an interest survey to judges and suggested training at the State Bar meeting in the fall. Rodger McDaniel offered to provide some type of training for the judges before July 1, 2003. Contact information for Rodger McDaniel: 2424 Pioneer Avenue, Suite 306, Cheyenne, WY 82002. Phone: 777-6494. E-mail: rmcdan@state.wy.us

W. New Business

1. Supervision of Circuit Court Clerical Staff – Holly Hansen

Holly Hansen pointed out that she had received letters from the counties in the First, Fifth, Seventh, and Eighth Judicial Districts appointing respectively Judge Nau, Judge Skar, Judge Huber, and Judge Case as the supervising judges. Ms. Hansen commented that she had not heard from Judges Edwards and Tharp and she would call them. Justice Voigt moved and Judge Denhardt seconded a motion to accept the supervising judges appointed by the counties up to that time. Motion carried unanimously.

2. Update on Transition of Justice of the Peace Courts to Circuit Court System – Holly Hansen

Holly Hansen updated the Board on the transition activities taking place with the conversion to the circuit court system. She explained that Joann Stockdale and Elaine Kirby had been meeting with the future magistrates and their employees to discuss their new employee packets, signs, letterhead, and benefits.

3. Recommendation from Committee on Retention of Documents in Circuit Courts – Judge Waldrip and Holly Hansen

After a short discussion concerning the massive storage problems in some courts and the possibility of adjusting jurisdictional levels between circuit and district courts, Judge Grant moved and Judge Kautz seconded a motion to accept the retention recommendations outlined in Holly Hansen's letter of November 20, 2002 to Board members. Motion carried unanimously. The retention recommendations concerned limitations on time to revive dormant judgments, reporting of proceedings, and preservation of such reports. A third recommendation suggested a policy giving the court discretion to dismiss any open traffic citations not paid in full within ten years. Judge Grant moved and Judge Denhardt moved to pass the open traffic citation policy. Motion carried unanimously.

4. Formation of Education Committee – Holly Hansen

The Board tabled discussion of this topic until Friday, December 6, 2002.

After presenting a plaque to Judge Scott Cole for his outstanding service to the Board of Judicial Policy and Administration, the Board adjourned for the day at 5:00 pm on Thursday, December 5, 2002.

The Board convened at 8:00 am in a joint meeting with the Judicial Technology Task Force (JTTF).

X. Joint Meeting with Judicial Technology Task Force

The Board continued its discussion concerning the appointment of a new judge in the 9th Judicial District. After hearing the rewritten proposed language for a resolution, Judge Denhardt moved and Justice Lehman seconded a motion to accept the language in the resolution. Motion carried unanimously.

Y. New Business Continued

1. Budget Update – Holly Hansen

Holly briefed the Board on the judicial budget request to be presented to the Legislature. She discussed the amended health insurance proposal, salary adjustments, the Board's budget, and district court requests. In response to questions about the effect of the amended health insurance proposal on judicial employees, Ms. Hansen volunteered to distribute a one-page questionnaire to all judicial branch employees asking for their feedback on the proposal. In addition, Ms. Hansen advised the Board that she would invite Senator Schiffer and Representative Nicholas to discuss and explain the judiciary's budget request. She also indicated that she would like to have those district judges making budget requests to attend the presentation of the budget to the Legislature.

2. Formation of Education Committee – Holly Hansen

The Board returned to the Education Committee discussion. Holly Hansen suggested forming an Education Committee to assist the Chief, Holly Hansen, and Ronda Munger in designing training topics for judges and clerks. Board members listed several criticisms to the present system: wasting CJE time on employment, benefit, and other administrative topics; trying to please a difficult audience, i.e. judges; and finding convenient times for judges to gather for training. Holly Hansen requested help from such a committee in reviewing CJE requests. Names considered for acting on an Education Committee were: Justice Voigt, Judge Jim Burke, Judge Nena James, incoming circuit court judge Tim Day. Justice Lehman moved and Judge Waldrip seconded a motion to establish a standing committee on education. Motion carried unanimously.

3. Garnishment Forms – Holly Hansen

Holly Hansen reported that work had progressed sporadically on drafting uniform garnishment forms. She advised that Judge Tom Campbell volunteered to work on revising the forms and Judge Rob Denhardt offered to work with Judge Campbell on the project.

4. Title 14 Update – Holly Hansen

Holly Hansen told the Board that the Title 14 bill came to her for a fiscal note. She noted that the definition of “judicial officer” described in the bill included magistrates and asked the Board if it should. The Board decided that magistrate should be removed from the definition. In addition, Ms. Hansen noted that on page 119 of the bill, it referred to the Board of Judicial Policy and Administration developing and adopting guidelines for lay advocates. Ms. Hansen offered to find out more details on that statement.

5. Reporting Paternity Cases – Judge Burke

Judge Burke distributed a memo prepared by his law clerk, Sasha Johnston, addressing concerns and potential approaches to reporting paternity cases. According to the Judge, this procedure varies widely around the state. The Board discussed whether the cases should be reported, what fiscal impact would result, the lack of uniformity, and the need for a policy, or statutory change in Title 14 or another part of the statutes. Another question raised was if the proceeding must be reported, who would pay for the free transcript?

The discussion of possible legislative change led to the idea of forming a Legislative Sub-Committee of the Board that would be comprised of clerks and judges. The Legislative Sub-Committee would address topics such as paternity proceedings reporting, retention of documents, and other statutory issues. Judge Burke moved and Justice Lehman seconded a motion to establish a Legislative Sub-Committee of the Board. Motion carried unanimously. Judge Burke then moved to refer the paternity reporting issue to the Legislative Sub-Committee and Judge Waldrip seconded the motion. The motion also carried unanimously. Justice Lehman and Judge Kautz volunteered to visit about possible members of the Legislative Sub-Committee. Judge Waldrip added that his idea about eliminating jury trials for speeders driving less than thirty (30) miles over the speed limit be referred to this sub-committee. In addition, the Board discussed asking the sub-committee to consider confidentiality rules with respect to files opened to the public and types of documents contained therein.

Z. Other Matters

1. Legislative Breakfast, January 15, 2003, 7:00 am

Holly Hansen asked Board members for suggestions of programs to be presented at the luncheon on January 15, 2003. Ideas mentioned were: report from the Board to the Judges; reports from sub-committees, i.e. Standards of Conduct and Decorum, Legislative, Education sub-committees; and update on civil pattern jury instructions from John Davis.

2. Oath of Office for Retained Judges

After a brief discussion, Judge Denhardt moved and Judge Huber seconded a motion to require retained judges to execute new Oaths of Office and file where required. Motion passed unanimously.

3. Future Meeting Schedule

Justice Hill informed the Board that the February 11, 2003 conference call would not conflict with Oral Arguments.

The Board adjourned at 11:40 am, December 6, 2002.

Schedule of Future Meetings

January 15, 2003, 7:00 am – Legislative Breakfast, Supreme Court Courtroom
February 11, 2003 Conference Call, Noon
March 19 and 20, 2003 in Casper
April 8, 2003 Conference Call, Noon
May 13, 2003 Conference Call, Noon (Conflict with Oral Arguments?)
June 19 and 20, 2003 in Saratoga
July 8, 2003 Conference Call, Noon
August 12, 2003 Conference Call, Noon (Conflict with Oral Arguments?)
September 16, 2003 Conference Call, Noon (Avoid conflict with State Bar)
October 1 & 2, 2003 at Vee Bar Ranch
November 18, 2003 Conference Call, Noon (Avoid conflict with Veterans' Day)
December 4 & 5, 2003 at Law Enforcement Academy

BJPA Action Plan Resulting from December 5 & 6, 2002 Meeting

- Chief Justice Hill, Justices Lehman and Voigt, and Judges Kautz and Burke to meet with the Natrona County Commissioners after consulting Judges Park and Sullins by conference call.
- Circuit Judges to offer recommendation concerning the elimination of jury trials for speeders driving less than thirty (30) miles an hour over the speed limit.
- Consider action on Rule 1.05 - Compulsory Counterclaim, Cross-Claim, or Third-Party Claim.
- Obtain Permanent Rules Advisory Committee minutes and ask George Santini to participate in Board's January conference call.
- Holly Hansen to call Judges Edwards and Tharp about selection of supervising circuit judge
- Holly Hansen to walk through budget with Senator Schiffer and Representative Nicholas
- Contact Judge Nena James and incoming circuit judge Tim Day about Education Committee
- Holly Hansen to check about the Board developing and adopting guidelines for lay advocates, Page 119, Title 14
- Justice Lehman and Judge Kautz will visit about possible membership of the Legislative Sub-Committee