

Board of Judicial Policy and Administration
Minutes
February 9, 2004

The Board of Judicial Policy and Administration met in Cheyenne on February 9, 2004. Chief Justice William Hill, Justice Marilyn Kite, Justice Bart Voigt, Judge Ed Grant, Judge Jim Burke, Judge John Perry, Judge Mike Huber, Judge Terry Tharp and Judge Wade Waldrip attended. Holly Hansen and Ronda Munger also attended. Throughout the course of the meeting the following individuals attended at some point: Justice Larry Lehman, Judge Jeff Donnell, Judge Nena James, Judge Victoria Schofield, Representative Colin Simpson, Senator John Hanes, John Renneisen, David Delicath, Elizabeth Gagen, Rodger McDaniel, and Donna Sheen.

Presentations by Special Guests

Senator John Hanes and Representative Colin Simpson appeared before the Board to talk about the concept of the Office of Children's Representative. The creation of the Office of Children's Representative (OCR) has been proposed to address the difference in the type of legal representation of a child in the courtroom -- legal representation based on the best interests of the child versus the role of the guardian ad litem or the child's attorney. The Child and Family Services Act, which is a federal program that provides money for grants and foster care, requires that attorneys be qualified to provide certain types of legal representation of children in the courtroom. Those states not having a qualification and training process for attorneys lose federal funding. Judge Ed Grant reported that he surveyed the district judges on this issue, and all of the judges that responded were opposed to the creation of a new office of child's representative. Representative Simpson and Senator Hanes requested that the Board, or its designee(s), work with the Joint Judiciary Interim Committee to figure out how the logistics of the federal requirement could be met. It was first suggested that a separate OCR be set up, but the legislative support needed for an entirely new office does not exist. The Joint Judiciary Interim Committee would like input from the Board as to how to set up the structure for the Committee to work during the interim with the Judiciary to solve this problem. The Committee believes that it needs judges heavily involved so that the end product will sell to the Legislature. The Board agreed to send Justice Voigt, Justice Lehman and Holly Hansen to meet with Senator Hanes and Representative Simpson the following day.

Rodger McDaniel, Director of the Department of Family Services (DFS), and Donna Sheen attended the Board meeting to present information to the Board on House Bill 33, titled Children and Families Planning Study. The bill proposes a comprehensive study coordinated by DFS, carried out over the next two years, to develop recommendations to better meet the needs of children and families in Wyoming. One aspect of the study proposes an in-depth study of the Judiciary and court processes. The Governor's plan for this study includes a steering committee, and Mr. McDaniel requested that the Board

appoint someone to that position. At a later date, Mr. McDaniel would like recommendations on the best way to gain access to all judges at all levels. Judge Gary Hartman volunteered to be the Board's designee on the steering committee. The Board thanked Mr. McDaniel and Ms. Sheen for attending the meeting. After discussion, the Board decided to nominate Judge Ed Grant, Judge Jeff Donnell, Judge Keith Kautz, Judge Nena James, and Judge Gary Hartman to work on a steering committee with DFS on the children and families study. Justice Hill will contact the judges selected.

The Board also met with representatives from the Wyoming Attorney General's Office. Personnel matters were discussed.

Committee and Staff Reports

Judge Jim Burke provided a report to the Board on the activities of the compensation committee. Judge Burke worked with the State Court Administrator's office in updating a Western state's salary survey that was provided to the Legislature two years ago. Judge Burke reported that Senator John Hanes and Representative Colin Simpson had verbally agreed to co-sponsor a judicial salary bill with Representative Phil Nicholas. The bill outlines a three percent raise beginning July 1, 2004 and an additional three percent raise on July 1, 2005. These numbers are based on a cost of living type increase. This increase is consistent with what is being proposed for other state employees.

Justice Larry Lehman provided a report to the Board on judicial retirement issues. Justice Lehman has been working with Flick Fornia in the retirement office. The Board was provided a copy of a letter from Mr. Fornia and Michael Mills, an actuary working with the Wyoming Retirement System. The letter reiterates the position that if a judge in the new judicial retirement plan takes "early" retirement, the monthly amount of retirement that the judge will receive will be actuarially reduced based on the judge's age and years of service. One proposal that was posed, referred to as "enhanced early retirement" suggested that the benefit would be reduced based on the age a judge would attain 15 years of service, if he or she remained employed. Any judge who would reach 15 years of service on or before age 65 would be actuarially reduced from age 65; others would be reduced from age 70. This proposal would increase the system's accrued liability by \$50,000 and would increase the annual normal cost by \$15,000 - possibly meaning that the monthly contribution would have to increase to cover this expense. Justice Lehman recommended that the Legislative Committee look at this issue over the next year, and go to the 2005 Legislative Session with a possible solution. Justice Lehman and Holly Hansen were asked to come up with a plan of attack and provide a report at the next Board meeting or conference call.

Jim Bivona provided the Board with a report on the Uinta County Grant Application. Uinta County submitted a grant requesting funds that would allow them to implement a document imaging system. The Board had previously requested additional details be addressed by Uinta County prior to the approval of the grant. Jim Bivona requested the Board send another letter to Uinta County, approving \$72,096, in essence requiring the county to provide a match of \$10,000, and also making the grant contingent upon the

coordination and cooperation with Judge Mealey and Lee Parker in the circuit court. Judge Perry moved and Justice Kite seconded a motion to send a letter approving the \$72,096 and requesting the circuit court personnel to notify the Board that its concerns regarding the impact of the system on their operations have been addressed. Motion passed unanimously.

Old Business

Justice Voigt provided the Board a memo regarding changes that need to be made to the Code of Judicial Conduct, Application of the Code of Judicial Conduct, section C & D, at page 909-910 of the Wyoming Court Rules Annotated (LexisNexis 2003). The issue is raised as a result of *In re Adoption of KJD*, 41 P.3d 522, 529-530, 202 WY 26, ¶ 34 (Wyo. 2002), which analyses the continuing part-time judge and periodic part-time judge sections. The language that needs to be added to the Code would allow for part-time magistrates to be exempt from this section of the Code. When the court system was reorganized, what used to be continuing part-time and periodic part-time judges (court commissioners) are now part-time and full-time magistrates, and so the Code needs to be amended to reflect that change. Judge Perry moved and Judge Waldrip seconded a motion to change the Code of Judicial Conduct section D to include punctuation changes and the addition of the magistrate language. The motion carried unanimously. Judge Tharp moved and Judge Waldrip seconded a motion to make the same magistrate language changes to section C as well. The motion carried unanimously.

Justice Voigt also reported to the Board regarding the changes proposed by the Criminal Rules Committee to Rule 32(d), Withdrawal of Plea, as a result of *Nixon v. State*, 2002 WY 118, 51 P.3d 851 (Wyo. 2002). Justice Voigt does not believe a change to Rule 32(d) is necessary, since there is a period of time after sentencing, where a trial judge still has the authority or jurisdiction to consider a motion to withdraw sentence. After the appeal time runs, the judgment is final, and the trial court no longer has jurisdiction over the case. During the appeal time, however, the judge does have the authority to accept a motion to withdraw a plea. Justice Voigt will call Judge Park and discuss the matter further and then report back to the Board.

New Business

Judge Waldrip presented to the Board some proposed expungement forms. The forms apply to W.S. 7-13-1401 and allow for the expungement of an arrest. If the arrest results in a conviction, then the arrest cannot be expunged. Justice Kite moved and Justice Voigt seconded a motion to adopt the expungement forms. The motion carried unanimously.

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 courts without resident circuit judges and in counties with multi-judge circuit courts. Judge Tharp moved and Justice Kite seconded a motion to approve the Order. Motion carried unanimously.

Other Matters

Holly Hansen informed the Board that the Court Administrator's Office will provide training for the Wyoming Clerk's Association to replace the clerk training typically presented at the Conference of Special Court Judges.

Discussion was had regarding the 2004 VAWA grant funds. Holly Hansen will check into applying for a VAWA grant to be used for sexual harassment training. The 2003 VAWA grant money is being used to develop a bench book on domestic violence cases.

Holly Hansen reported that Senator Schiffer suggested the Judiciary begin the process of conducting the audits of the courts. Judge Perry moved and Judge Huber seconded a motion to begin the initial steps necessary to remove the auditing responsibilities from the Department of Audit and the Executive Branch to be housed within the Judiciary, transferring the necessary funds from the Department of Audit to get that done. Motion carried unanimously. Holly Hansen suggested that she work with Joann Stockdale and Don Merriam to develop a plan to take to the Joint Appropriation Committee and the Joint Judiciary Committee legislation for the 2005 session.

The Board tabled discussion regarding the location of future meetings.

The distribution of the Board agenda was discussed extensively. Holly Hansen explained several situations where her office has been asked to provide copies of the Board agenda in advance of the meetings. Justice Kite moved and Judge Burke seconded a motion to distribute by email, to coincide with the mailing of the Board notebooks, a copy of the Board agenda to Circuit Judges, District Judges, and Supreme Court Justices. The motion passed unanimously.

Board adjourned.