

Board of Judicial Policy and Administration
Minutes
March 3, 2010

The Board of Judicial Policy and Administration met in Casper on March 3, 2010. In attendance were Chief Justice Bart Voigt, Justice William Hill, Judge Dan Forgey, Judge Robert Castor, Judge Jeff Donnell, Judge John Brooks, Judge Wes Roberts, Joann Odendahl, Ronda Munger and Becky Craig. Justice Marilyn Kite participated by phone.

Old Business

Committee Updates

Court Security Commission – Judge Donnell reported that the Commission published standards in the last few months on local committees, all of which are now up and running, with every county having a local committee. The Commission will be meeting in July with recommendations on equipment, and also looking at public standards on training and on scope of coverage, recommending that coverage should include the entire building, not just the courtroom. The Law Enforcement Academy has finished its third annual 40-hour class for officers with 20 people in attendance. Justice Voigt recounted the remodeling of the Supreme Court building, the only Wyoming court building that is not owned by a county, and of his request to use the Capitol Security Force for security at the Supreme Court building. He was told that the Judicial Branch could not use an Executive Branch force. Since the Statutes provide that the Supreme Court is to have a bailiff, he went to the Legislature, they approved a bailiff position, and Kevin White was subsequently hired. However, in that a bailiff position is not a law enforcement officer, Kevin had to be certified through the highway patrol, and he is now working as the Supreme Court Security Officer. To assure that in the future a court security officer will not have to be certified through the highway patrol, and will have the same powers as a peace officer under Title 6 and 7, a bill was introduced in the Legislature. The bill states that the Judicial Branch Court Security Officer is a peace officer, which then allows the officer to make arrests, carry a gun, seize weapons, and have the power to charge a perpetrator with interference with a peace officer. The bill never made it off the floor of the House. A new bill was introduced by Tony Ross in the Senate specifically limited to the Supreme Court's Security Officer, but which restricted the officer's powers to the Supreme Court premises only. This was then amended so that the officer could respond to requests for assistance from other law enforcement officers, and could then, if needed, assist across the street at the Capitol. The bill is currently on its third reading. The BJPA had also requested their legislative member, Kermit Brown, to sponsor a bill to deal with the Attorney General's opinion on weapons being brought into the courthouse. Nothing came of this. Justice Voigt feels that if a District Judge issues an order stating that there shall not be a weapon in a certain area of the courthouse, and someone challenges that order, it will ultimately end up being the Supreme Court that makes the final determination. Joann Odendahl noted that at one of the Commission's previous meetings it was decided

that Homeland Security, instead of the Commission, would request appropriations to cover the cost of security for high profile cases. However, Homeland Security never did request it in their budget proposal. There was also an amendment to the budget for \$100,000 for courtroom security for high profile cases, but it failed, so there is currently no funding.

Access to Justice – Justice Kite reported on the work that the Commission has been doing on the legislation, and the meetings that have been held around the state. Larry Wolfe and Walter Eggers have volunteered countless hours in putting together the legislation, which passed successfully through the House but got hung up in the Senate. There were some concerns heard about the money possibly being used to support some radical ideas. In the middle of putting together the legislation, Legal Services out of Colorado conducted some studies on the plight of the sheepherders, and it appeared that they were preparing some sort of litigation. Larry and Walter did a wonderful job of co-opting with the agricultural organizations to assure them that this was a triage effort, and to assure them that there was no interest in taking on a large number of cause cases. This satisfied the agricultural interests, but was not adequate for Senator Meyer who was familiar with a Goshen County rancher who was sued a few years back by the Texas Legal Services Corporation. The case had to do with the treatment of agriculture workers, and ultimately it put this man out of business. Senator Meyer was therefore concerned about Legal Services running out of control. He introduced an amendment on second reading in the Senate. The Commission opposed the amendment because it would have been very restrictive and essentially prevented the project from being effective. The amendment failed 16 to 13, and the lobbyist advised that a deal should be made so that the whole bill wouldn't be lost on third reading. A compromise was reached, and there is a verbal commitment from Senator Scott and Senator Meyer that they will support that amendment and the bill. Once the system is funded, the challenge will be to structure it in a manner that addresses the problems of the indigent people in Wyoming who don't have access to justice. Justice Kite commended Judge Scott Skavdahl and Judge Timothy Day for being so persuasive with the legislators in explaining the problems that they have encountered in their courtrooms. Justice Voigt stressed that in order to maintain the trust of the legislature, that when the rules are established for the Access to Justice project, the types of concerns expressed by the agricultural organizations need to be considered. Justice Kite has assured the agriculture lobbyists that they will be involved in the rule making process and the system, and that we need to have their participation and input, as well as that of some legislators.

Restitution

Ronda reported that in September the Board discussed establishing an order and priority for pay out of restitution and other monies. She took the Board's Order to the District Court Clerks, and they requested that it not be recommended to the Supreme Court for approval until the district courts have a new case management system in place. Because of the way they presently process cases, and specifically for those courts that are not on FullCourt, it would create serious problems if it were instituted before that time. They also recommended that the pay out order be such that the counties would get paid before the state gets paid. Ronda would like for the Board to make a recommendation as to the order that the payments should be applied, and to have the Supreme Court make the

changes effective immediately in the circuit courts since they are all on the same system. Then, the case management system for the district courts could be designed in accordance with the Board's recommendations. Another consideration is deciding where the Legal Services Funding Fee of \$10.00 should be put in the pay out order. She suggested that it should come out towards the top, similarly to the Court Automation Fee. Discussion was held on the method of splitting out restitution payments to the victims, and the order for pay out of the costs and fees. Judge Roberts moved and Judge Castor seconded a motion to amend Rule 32.1 to insert the Legal Services Fee as number 3 in the order of pay out. Motion carried unanimously. Further discussion was held. Judge Castor moved and Judge Roberts seconded a motion to amend Rule 32.1 to transpose the priority pay out order of Fines and Fees. Motion carried unanimously. These two amendments make the prioritized order for distribution as follows:

1. Crime Victims Compensation Surcharge (§1-40-119)
2. Court Automation Fee
3. Legal Services Fee
4. Restitution as follows . . .
5. Court costs
6. Fines
7. Fees . . .
8. Contempt.

Discussion was held on when this should become effective in the courts. Judge Castor moved and Justice Hill seconded a motion that the above amendments to Rule 32.1 should become effective immediately for the Circuit Courts. Motion carried unanimously.

WRCP 77(d) Service of Orders of Judgments

Ronda reviewed the problems with Rule WRCP 77(d). She met with the District Court Clerks on February 19, 2010. The first proposed language change hand-out reflects the District Court Clerks' proposal which still requires the prevailing party to pay for everything and also to prepare a certificate of service. The clerks are concerned that in some of the larger cases that involve a substantial number of plaintiffs or defendants, that the postage and the mailing for the clerks will be an undue burden. Ronda explained the differing methods that the district courts have in handling Rule WRCP 77(d). George Santini, the Chair of the Permanent Rules Committee, after reviewing both proposals, told Justice Voigt in a phone conversation that the Committee is working to make Wyoming's rules more closely in line with the Federal Rules. Apparently the "prevailing party" language does not exist in the Federal Rule. Ronda presented the District Court Clerks' proposal to the Board, as well as another option that is similar to the Federal Rule. Justice Voigt explained that there are two ramifications: establishing who is responsible for the postage and copies, and creating consistency throughout the state as far as notice requirements. He feels that these types of problems will eventually be resolved through implementation of e-filing. Discussion was held. Judge Donnell moved & Judge Brooks seconded a motion that the proposal that is most similar to the Federal Rule be adopted, which reads in pertinent part:

Rule 77. District Courts and Clerks:

(d) Service of orders or judgments. Immediately upon the entry of an order or judgment the clerk shall provide and serve a copy thereof to every party who is not in default for failure to appear. The clerk shall provide envelopes and postage for the mailings, and the clerk shall make a note of the parties served. Service by the clerk may be accomplished by mail, hand delivery, clerk's boxes, or electronic means. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

Judge Donnell called the question that Rule 77(d) be adopted, and there being no further discussion, the motion carried unanimously.

Court Reporters and Digital Recordings

Justice Voigt shared with the Board the difficulties that some courts have had in arranging for court reporters, and that because of this, he, at one time, had suggested that the statutory language might be amended to include a provision that would enable courts to use other means of providing transcripts if a court reporter was not available. This apparently raised a lot of discussion among the court reporters and the District Judges. He explained that he, nor the Board, nor the Court are interested in getting rid of the court reporters; however, future technological developments may, at some point, dictate that alternate methods of reporting be addressed.

Peremptory Disqualification Rule 40.1(b)(1)

Justice Voigt explained that this issue has been going on for quite some time. When the District Judges met at the Bar Meeting, part of their discussion dealt with the large number of peremptory challenges that they feel are being requested. They asked the Supreme Court to consider suspending the peremptory rule for a period of time as they feel it is being abused and becoming very expensive for the state. The Bench Bar Relations Committee is looking into this as well. In light of the budget cuts, Joann collected budget information from district courts to determine how much judicial travel was actually costing the state based specifically on peremptory challenges. The Board discussed requiring the attorneys who request a peremptory challenge to pay a flat fee of \$500.00 at the time that they make their motion for the peremptory challenge. The fees would go back into the general fund to offset the expenditures. Judge Castor moved and Judge Donnell seconded a motion to recommend to the Supreme Court that the Peremptory Disqualification Rule 40.1(b)(1) be amended to require that an attorney who makes a motion for a peremptory challenge be required to submit a \$500.00 fee upon the filing of his/her motion, and that notice be given to the State Bar that this is being contemplated due to the costs involved, the perceived abuse of this system, and the request of the District Court Judges that the Supreme Court consider such an amendment. Discussion was also held on the possibility of retired Circuit Court Judges being allowed to fill in for other Circuit Court Judges or for an unfilled Circuit Court Judge position. A fund would need to be created to pay these costs.

A statute could possibly be created that would allow for this, and at the point that it is in front of the Legislature next session, the funds could be appropriated for the statute.

Court Records/Redaction Policy

Chief Justice Voigt provided an update on the Court Records Committee. The court records policy was drafted and put into effect; however, the clerks see problems with the policy in light of the development of their case management system. One of their main objections is that the rule does not make it clear that it is the attorneys who are responsible for redacting confidential information, not the clerks; therefore the Committee is going to go back and clearly set this out. The other objection has to do with past records. The clerks want to make sure that the policy states that the clerks are not required to go back into prior records to redact information.

Rule 10, Court Treatment Rules

Chief Justice Voigt informed the Board that this matter is being addressed once again. Research had been done to determine how much money the court based treatment programs were costing the state, and it was discovered that they weren't costing anything because the hourly magistrates who were doing the work were getting paid by entities other than the Judicial Branch. The Supreme Court went to the Legislature and requested that \$200,000 be taken from the Department of Health's budget and put into the Judicial Branch budget so that the magistrates can be paid from the Judicial Branch budget. From now on, the magistrate, or whoever is running a treatment court, will need to bill the judicial system for those hours.

District Court Case Management System/E Filing System

Chief Justice Voigt reported that due to some misinformation that he received, it appears that in his State of the Judiciary Statement, he may have exaggerated how far along this system has progressed. He wanted to emphasize, however, that the project is still underway, and that Sergio Gonzalez, the District Court liaison, is taking over as the lead developer in working on the case management system. The clerks have a very active, organized group that is working on it as well.

New Business

Legislative Update

- Joann Odendahl reported that the \$69,000,000 Judicial Branch budget was approved, with the exception of \$6,000 that Judge Skar requested to help cover the expenses of his court reporter for travel to other courts. This was the only thing that was not funded.
- There was \$100,000 requested for the water litigation case, and it is hopeful that it will be settled within the next two years. Judge Guthrie is retiring as of May 31, 2010, and she has indicated to Joann that she would like to continue on under contract to finalize this case. There are funds available in the litigation budget to pay her an hourly salary, and there is also the judicial retirement account, however in talking with Administrative Assistant Gayla Mead, it was recommended that the litigation budget cover those hours for Judge Guthrie.

- There is \$2,000,000 in the Supreme Court Budget to continue development of the District Court Case Management System so that it can provide the functionality of e-filing. Originally \$4,000,000 was requested.
- There was an amendment made for Judge Tyler to approve a law clerk position. This was approved in Conference Committee.
- SF 72 – Wyoming Retirement Plan Contributions: It appears that it is going to be set at 1.43% out of pocket. There are no guarantees of any pay raises in the next few years. The Legislature may look at the revenues coming in over the next year to see if they can offset the increase in the retirement contribution.
- SF 68 -- Supreme Court Peace Officer: It is currently on third reading.
- SF 64 -- Safety Belt Violations: This bill was to increase the fee from \$25.00 to \$75.00 and is currently on third reading.
- HB 61 -- Legal Services Funding: currently on third reading.
- HB 64 – Mandatory Minimum Sentence for Sexual Abuse of a Minor: Would make the minimum sentence from 25 years to no more than 50 years.
- SF 14 – Circuit Court Hearings of Municipal Violations by Juveniles: This was presented in the senate judiciary as coming out of Natrona County, but would have had statewide impact on all the circuit courts. It would have required that all juveniles that were brought into the municipal court had to first go to the county attorney for a risk assessment, which would then determine which court the case should originate. It also gave the county attorney the option of bringing all municipal juvenile court cases into the circuit court. The Supreme Court does not want an influx of cases coming into the circuit courts which they might not be prepared to handle. An amendment was put in that stated that this could be done if there was a contract that was approved by the Supreme Court, thereby assuring that any fees generated from these types of cases would go towards funding of additional clerks. It was ultimately decided that there hadn't been enough research done, and the bill was killed in the House Judiciary.
- House Joint Resolution 4 – Mandatory Retirement: This died on the Senate floor.
- HB 71 – Workers' Compensation Appeal: This passed through the House, but then got held up by the Senate Judiciary Committee.

Alcoholics Anonymous Pamphlets

Judge Dollison contacted Chief Justice Voigt asking for direction in reference to a request by a local AA chapter that their pamphlets be made available in his court. Discussion was held and it was the Board's decision not to make an official policy decision on the placement of these types of materials in the courts.

Rules for Judicial Ethics Advisory Committee

Judge Castor presented his proposed "Rules of the Supreme Court Judicial Ethics Advisory Committee" that he developed, which were modeled primarily after New Hampshire's rules. In working with Professor Burman on the Wyoming Code of Judicial Conduct, and having received calls from judges regarding opinions on the appropriateness of conduct or compliance with the Code, it became apparent that Wyoming needed to develop an advisory committee. There are only five other states that do not have such a committee. He explained that a lot of the issues that develop into complaints against judges could be resolved by allowing judges to ask an advisory committee what they should or shouldn't do,

and it would hold the judges and the hearings to the highest possible ethical standards. He recommends that the Committee should be made up of 5 members: 2 law trained members and 3 judges. He did not include a sitting Supreme Court Justice since that is the body that would make the final determination in any disciplinary proceeding that would be filed against a judge. Judge Roberts has suggested that each of the conferences should nominate one of their members, who would then be appointed by the Chief Justice of the Supreme Court. Professor Burman has indicated that he would be glad to be part of the committee. Tim Beppler, who now serves on the Commission of Judicial Conduct, has also been suggested to fill a position. The advisory opinions would be limited to future conduct, no pending cases and no hypotheticals, and the opinions would be written opinions that would be handed down much like a Supreme Court decision and published on the Supreme Court website. Discussion was held. Justice Kite moved and Judge Donnell seconded a motion that the Rules of the Supreme Court Judicial Ethics Advisory Committee be adopted. Motion passed unanimously.

Court Interpreter Rules

Judge Donnell presented a draft of the "Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency," which he developed mainly from Colorado's policy. He suggested that the district court judges and circuit court judges could review this at their conferences. He sent copies out at the end of November and feels that it is time to move forward, understanding that finding an interpreter in Wyoming is sometimes not an easy task. The interpreters that are oftentimes used are just not competent for use in the court system: not understanding legal terminology, not interpreting literally, paraphrasing, and offering advice and chatting with the defendants. This causes due process problems as well as fundamental fairness problems. The Directive also addresses when a person has a right to have an interpreter and lists the various case types. Joann Odendahl reported that currently each individual court has a budget for interpreters. It was suggested that there be one budget that interpreters are paid from instead of each county having an individual budget. Joann believes it would be possible, in the next biennium, to move all of those funds into one budget under the Board of Judicial Policy & Administration Budget which is shared statewide. Additional funds would have to be requested to implement this in the district courts. The District Judges would need to decide if they want funds put into each individual court's budgets, or if they want it to be part of a lump sum budget under the BIPA that would be for interpreters throughout the state. Colorado is structured so that there are different categories for each class of interpreter. The Directive requires the courts to use the highest class that is available, which in many cases, would not be sufficient. Finding the various language interpreters needed for the courts along I-80 is sometimes problematic. Discussion was held. Both conferences will be asked to look at this at their April meetings for suggested amendments, with the hopes that it will be ready for approval at the Board meeting in June. The Board Members will report back from their respective committees after the draft has been reviewed. It was also suggested that the court forms should be professionally translated into Spanish for uniformity, much like what was done for the Family Violence Protection and Stalking Protection forms.

Court Weapons Policy

Judge Donnell and Judge Castor drafted a “General Order Establishing Policy Regarding Dangerous Weapons in Court Rooms and Court Operations Areas.” They have this Order posted outside of their courtroom doors and the top of the stairs on the third floor of the courthouse. They feel that there is case law that allows them to do this, but a statute would be preferable. It was suggested that some independent action in this regard should take place outside of the Court Security Commission’s work, and that perhaps the Interim Judiciary Committee could study this and it could be brought as a Committee Bill. The issue is *open* carry of weapons into public buildings.

Mandatory Retirement Age for Judges

Representative Keith Gingery had two bills before the legislature. One was to put a constitutional amendment on the ballot, and if that passed, another was to change the statute. Discussion was held. The consensus of the Board was that there should be uniformity across the board as to state judges and that this is a matter that should be pursued.

Rebecca Love Kourlis

Justice Kite reported to the Board that Rebecca Love Kourlis will be in Cheyenne to speak with the Supreme Court on April 12, 2010, and is tentatively scheduled to speak to the BJPA in June in Cheyenne. Ms. Kourlis was a District Court Judge in Colorado and served on their Supreme Court. After she resigned she became the Executive Director of The Institute for the Advancement of the American Legal System, which is associated with the DU Law School and is a non-partisan organization. Their mission is fairly broad, dedicated to improving the civil justice system as a whole, focusing on serving individuals better and meeting the needs of the people. They have interesting materials on a lot of different topics. Justice Kite feels that it would be worthwhile to hear from her, and to see what recommendations she might have for the Board. Depending on whom the Supreme Court Justices think that her message speaks to, it may be valuable to have her give a presentation to the judges and/or lawyers at the September Bar Meeting.

Board Adjourned 2:00 p.m.

Schedule of Future Meetings

June 2, 2010	Cheyenne
September 16, 2010	Laramie
December 1, 2010	Casper

Minutes approved by email on April 5, 2010