

Board of Judicial Policy and Administration
Minutes
June 2, 2004

The Board of Judicial Policy and Administration met in Douglas on June 2, 2004. Judge Edward Grant Chaired the meeting. In attendance were Justice Marilyn Kite, Justice Bart Voigt, Judge John Perry, Judge Terry Tharp and Judge Wade Waldrip. Justice Michael Golden, Judge Jeff Donnell, Judge Bob Skar, Holly Hansen and Ronda Munger also attended. Throughout the course of the meeting the following individuals attended at some point by phone: Judge Thomas Campbell, Judge Randy Arp, Judge Rob Denhardt, and Judge Norm Young. Judge Gary Hartman, Ann Rochelle, Tara Ackerman and Jim Bivona made presentations to the board.

Old Business

Rule 32 (d), Criminal Rules Committee

Justice Voigt reported back to the Board after discussion with Judge Park 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 explained that this issue has to do with when you can withdraw a guilty plea and the standard used. The committee was concerned with the fact that there are two different standards for the withdrawal of a guilty plea -- one applies prior to sentencing, and the other standard applies after sentencing. *Nixon* shortened the time that the trial court has jurisdiction to allow withdrawal (30 days or the appeal time). During the February 9, 2004, Board meeting, the Board voted to refuse the amendment, pending further discussion with Judge Park. Justice Voigt discussed the Board's position with Judge Park. Judge Park expressed the committee's concern that 30 days is not a realistic amount of time to withdraw a guilty plea and that they wanted the rules to conform to caselaw. Justice Voigt's position is that there needs to be some sort of standard for the withdrawal of a guilty plea during the time that the trial court retains jurisdiction, which is 30 days, and that it might as well be the manifest injustice standard. Judge Waldrip made a motion to leave Rule 32 (d) as it is written, and Judge Tharp seconded the motion. The motion carried unanimously.

New Business

Employee Drug testing. At the request of one of the state court judges, the Board discussed the issue of employee drug testing. The discussion centered on the ability of the Board to enforce a policy requiring drug testing of state employees. Initially, Judge Tharp made a motion to stand on the policies already in place in the Employee Information approved by the Board. He withdrew his motion. Justice Voigt moved and Judge Waldrip seconded a motion to table the drug testing question until later when information could be gathered from caselaw on the legality of drug testing state employees. Justice Golden agreed to check with the Executive Branch on this issue. Motion carried unanimously.

Bail/Bond Schedule. Judge Campbell and Judge Arp appeared by phone to discuss the proposed changes to the Bail/Bond schedule. Judge Campbell explained that the changes to the schedule this year reflect not only the changes in the law, but also a change in the philosophy of the committee with regard to the purpose of the Bail/Bond schedule. The committee is recommending the Bail/Bond schedule be simplified, removing the "must appears" and extraneous information, and provide the law enforcement officers with more discretion. Over the past few years the schedule had become a cheat sheet for a lot of extraneous information and the committee is recommending the removal of the additional information. In its proposed form, the schedule lists the amount of individual forfeitures and nothing more. Judge Arp explained that the Wyoming Highway Patrol and the Department of Game and Fish had some concerns about this change but agreed to provide additional training as a result of the changes. Judge Arp and Judge Campbell made themselves available for additional officer training as well. Judge Campbell stated that he will request discussion occur at the judges' meetings in September to explain the changes. The Board had a lengthy discussion regarding page 23, which contains a change to the schedule dealing with Title 6 and livestock issues. Although it did not comport with the new change in philosophy regarding no extraneous information, the committee did vote to allow the addition of 6-3-203(b), failure to provide food or drink to livestock. Judge Tharp moved and Judge Waldrip seconded a motion to approve the Bail\Bond schedule as it appears. The motion carried unanimously.

Reestablishment of the Judicial Council. Judge Campbell provided the Board with a draft Order Memorializing the History and Development of the Judicial Council and the Reestablishment of the Judicial Council. Judge Campbell requested the Board approve the order so that he could draft rules and bylaws for the Circuit Judges, with an ability to cite an order giving the circuit judges the authority to conduct business as a conference. The proposed order sets out the lengthy history of the Judicial Council and clears up some of the confusion as to the name changes over the years. Judge Waldrip moved and Justice Voigt seconded a motion to approve the order. Motion carried unanimously.

Faxed Pleadings in District Court. Judge Perry and Judge Waldrip led a discussion with the Board regarding the abuse of faxing pleadings to the district courts. Judge Perry explained that the clerks of district court contacted both he and Judge Waldrip to express their frustration with lawyers faxing pleadings. Rule 301 of the Uniform Rules of District Court allows the faxing of pleadings consistent with Rule 5(e) of the Wyoming Rules of Criminal Procedure, so long as the party has "consent of the clerk." However, the last sentence of the rule reads, "The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not timely presented or in proper form as required by these rules." It has become common practice for attorneys to fax most pleadings, without the consent of the court, including pleadings which are in excess of 50 pages. The district court clerks have asked that the rule be at a minimum like Rule 1.07 of the Rules of Appellate Procedure, which provides: 1) no document which exceeds 10 pages may be filed by fax; and 2) any faxed document shall be replaced by an identical copy of the facsimile within 24 hours. The clerks have also requested the ability to charge a per page fee for each faxed document. Judge Perry moved and Judge Voigt seconded a motion to create a subcommittee, comprised of Judge Perry, Judge Waldrip,

George Santini from the Civil Division of the Permanent Rules Committee, and a district court clerk, for the purpose of submitting proposed changes to the rule to appropriate rules committee. The motion carried unanimously.

Judicial Salary Increase.

The Board discussed a memorandum prepared by Judge Burke, which poses the question of what is the effective date of the judicial salary increase approved by the Legislature during the 2004 session. Without discussing or determining who should decide the issue, the Supreme Court or the Board, the general tenor of the discussion was that it would better serve the Judiciary if the same process as has been applied in the past be used in this instance. The Board's position on the issue is as follows: the initial 3% salary increase will be effective for the circuit judges as of July 1, 2004, and will be effective for the district court judges and the supreme court justices on January 1, 2005. The second 3% increase will be effective for all levels on July 1, 2005.

Third District Judge in Campbell County

Judge Perry engaged the Board in a discussion regarding the addition of a third district judge in Campbell County. Judge Perry asked the Board to support this request and wanted to know what type of information he could provide to the Board to gain support. The weighted case study was discussed. Judge Perry explained how the mining of Coalbed Methane has changed the complexity of his cases and the length of the trials in his court. Judge Perry used the number of docket entries to illustrate the change in the litigation in his court. Judge Perry would like to make a request for this position during the 2005 Legislative session. No Board action was taken.

Judicial Positions, Fremont County

Judge Robert Denhardt and Judge Norman Young appeared before the Board by telephone. The purpose of the call was to discuss with the Board the need for two circuit judges in Fremont County. During past discussions with the Legislature, the Board indicated two circuit judges in Fremont County might not be necessary. However, circumstances have changed in the past couple of years, causing the caseload to increase. Several factors were cited for changing the caseload, but primarily the addition of the drug court has made the biggest difference. No Board action was taken.

Competency/Mental Evaluations

Judge Waldrip made a presentation to the Board regarding an issue that Judge Stebner had raised regarding mental evaluations requested by district courts. The central issue centers around W.S. 7-11-303 (c) (iv). On several occasions, Judge Stebner requested an evaluation of a defendant's ability to stand trial, which also included a report on the defendant's mental state at the time of the alleged crime. The problem expressed by Judge Waldrip is that there are times that the evaluation of the mental state at the time of the offense reveals information that would not be available to the prosecution, but for the report. Judge Waldrip provided a copy of a letter sent by the State Hospital articulating the position that W.S. 7-11-303 requires both evaluations be done. Judge Waldrip explained that it is his position that the statute needs to be changed so that a judge can separate the request for a competency to stand trial evaluation from the mental state at the

time of the crime, meaning a judge could request and receive only an evaluation on the defendant's ability to stand trial. Judge Waldrip moved and Justice Voigt seconded a motion to form a subcommittee, comprised of Judge Waldrip and Judge Donnell, which would propose changes to W.S. 7-11-303, allowing judges to request specific evaluations. Motion passed unanimously.

Rule 1.02 WRCPPC

Judge Tharp discussed an issue that was brought to light during a committee meeting regarding family violence cases. In domestic violence cases, a hearing regarding the issuance of a protection order is to be held within seventy-two hours. These procedures are held in a very short period of time and if an order of protection is granted, the order only lasts for 90 days. The problem that the circuit court judges are facing is that there is no guidance in the statutes regarding what rules apply to these proceedings. Although these cases are filed as civil cases, they are heard in such a short time frame, the committee felt that judges should be able to take evidence based on what is relevant and probative, much like a preliminary hearing in a criminal case. The committee requested a change be made to the Rules of Evidence Section 1101 (b) which would include Domestic Violence cases as one of the types of cases that are not subject to the rules of evidence. One example of the difficulties given by Judge Tharp was when one of the parties provides a copy of the police report. If either of the parties is represented by an attorney there are objections on a basis of foundation and hearsay. Since the hearing is held within such a short period of time, the judge is very limited in the evidence that is actually presented and should have broad discretion as to what evidence is taken by the court. Judge Perry moved and Judge Tharp seconded a motion to submit this issue to the Rules Committee, without an endorsement by the Board either way. The vote was five to one in favor of the motion, with Justice Voigt voting no.

Court Improvement Project

Judge Grant invited Ann Rochelle from the Court Improvement Project to make a presentation to the Board on the work of the Court Improvement Project (CIP). Ann and Tara Ackerman made a presentation to the Board, outlining seven main issues that the CIP is currently focusing on: 1) non-payment of child support; 2) prompt implementation of services/court orders timely filed; 3) quality child legal representation; 4) children and parents needs in understanding the process; 5) the lack of an aging-out process; 6) having well-trained caseworkers; and 7) termination being pursued when children have been in foster care for 15 of the last 22 months.

Committee and Staff Reports

Jim Bivona provided the Board with a report on grant requests submitted to the Judicial Technology Task Force (JTTF). The Town of Dubois has requested \$14,615 for the purchase of FullCourt case management software. The JTTF recommended approval. Judge Tharp moved and Judge Waldrip seconded a motion to approve the Town of Dubois' request. The motion carried unanimously. Carbon County also submitted a grant request to the JTTF. Carbon County requests \$48,000 to implement video arraignment capabilities in Carbon County. The Wyoming Penitentiary already has video capabilities. Carbon County is providing a 20% match of funds (\$12,000). The JTTF recommended

approval of the grant, but would request that the county provide statistical data on the money saved over the first year of use of the equipment. Justice Voigt moved and Justice Kite seconded a motion to approve the grant. The motion carried unanimously. Finally, there was further discussion 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. The Uinta Circuit Court is declining to be a participant in this project. The JTTF recommended the Board approve the grant, provided they keep the Board abreast of the changes in business processes of the court and other agencies involved. Justice Kite moved and Judge Waldrip seconded a motion to approve Uinta County's grant request. The vote was five to one in favor of the motion, with Judge Perry voting no.

Presentations by Special Guests

Judge Gary Hartman made a presentation to the Board wherein he raised three items for discussion. The first item discussed by Judge Hartman focused primarily on what he called the "Problem Solving Court Evolution." Judge Hartman outlined the creation of the federally funded drug courts in the state, which operate without state intervention. He discussed the 17 drug courts that are in existence in the state of Wyoming and the family treatment courts that will soon be appearing in possibly five places around the state. Judge Hartman suggested the Board establish some proactive measures and possibly rules or policies to govern the family treatment courts and the drug courts. In keeping with his first suggestion, in an effort to provide staff support for the necessary legal research and expertise to draft the rules and policies, Judge Hartman's second item for discussion was a suggestion for the Board to request a staff attorney position to be housed in the Supreme Court. The third item that Judge Hartman touched on was the reallocation of judicial resources. He discussed the possibility of utilizing retired judges to fill some of the gaps in the judicial resources across the state. Judge Hartman did not request any specific action be taken by the Board, but he provided the three items for discussion.

Other Matters

Holly Hansen provided the Board with a document that outlined proposed changes to the statutes in Chapter 9, the Circuit Courts. The document was produced as a result of Senator Schiffer's suggestion to the Judiciary that it 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. Judge Perry moved and Judge Tharp seconded a motion to approve the proposed changes to the statutes and forward them to Senator Schiffer for Legislative action. Motion carried unanimously.

Board adjourned.