

Board of Judicial Policy and Administration

Supreme Court Building, Room 237

Cheyenne, Wyoming

September 16, 2019

9:00 A.M. – NOON

Video Conference

MINUTES

BJPA Members Present: Chief Justice Michael Davis (Chair), Justice Kate Fox, Justice Lynne Boomgaarden, Judge Bob Castor,* Judge John Fenn, Judge Catherine Rogers, Judge Tom Rumpke,* Judge Wes Roberts,* Judge Curt Haws*

Others Present: Judge Nick Deegan, Judge Tom Campbell, Judge Brian Christensen, Diane Sanchez, Laramie County Clerk of District Court, Patty Bennett, Clerk of the Supreme Court, Julie Goyen, Chief Information Officer, Claire Smith, Chief Fiscal Officer, Elisa Butler, General Counsel, Phil Donoho, Associate General Counsel, Heather Kenworthy, IT Applications Manager, Cierra Hipszky, Business Manager and Lily Sharpe, State Court Administrator

**Appeared remotely via phone or video conference*

Agenda Items	
Welcome	Chief Justice Davis welcomed members and attendees.
Roll Call	All members present.
Judicial Ethics Advisory Committee	1. Update – Judge Campbell Judge Campbell stated that the Judicial Ethics Advisory Committee has issued the two attached opinions so far this year. (Appendix 1 and 2) The Committee declined one opinion request.
Fourth Judge Campbell County	1. Update – Judge Deegan Judge Deegan and Campbell County Commissioner Rusty Bell presented to the Joint Judiciary Interim Committee at its meeting in August 2019. Judge Deegan and Commissioner Bell urged the Committee to sponsor legislation to add a fourth judge for the Sixth Judicial District in light of the large caseload and the county's plans to build a fourth courtroom. The Committee declined to sponsor legislation, but Judge Deegan anticipates that Senator Von Flatern will be a primary sponsor on a bill paving the way for a fourth judge. Chief Justice Davis conveyed that Judge Lavery and Judge Bluemel are also interested in a fourth district court judge

	in the Third Judicial District. A fourth courtroom might not have to be built since there is a courtroom available in Evanston.
Judicial Appointments and Vacancies	Chief Justice Davis noted that Judge Arp retired on July 2, 2019 and Judge Nate Hibben was officially sworn in on August 23, 2019 as the newest circuit court judge in Torrington. Judge James retires from the Third Judicial District Court on October 18, 2019. The Judicial Nominating Commission has sent its list of three names to the Governor.
Legal Division	Elisa Butler introduced Phil Donoho. Phil will serve as associate general counsel for Court Administration. Prior to coming to the court, Phil worked for the Laramie County District Attorney's Office. Phil will assist with court automation projects and the new Court Records Division of the Permanent Rules Advisory Committee.
Legislative Interim Committee Meetings	1. Joint Judiciary Committee – Justice Fox and Ronda Munger Ronda Munger discussed the abstract of court records bill draft presented to the Joint Judiciary Interim Committee at its August 2019 meeting. (Appendix 3) The proposed bill would update and clarify the information the courts are required to provide to agencies. The current statutes are outdated and inconsistent. The Committee agreed to sponsor the bill. Ronda explained that DCI will ultimately need to upgrade their electronic record system to import the abstract information into their electronic records system. Justice Fox detailed two initiatives the Children's Justice Program presented to the Joint Judiciary Interim Committee in August. The first initiative is a bill draft to move the Guardian Ad Litem Program out from the Office of the Public Defender to an independent office. (Appendix 4) The Committee voted to sponsor the bill. The second initiative is to create an Office of Parents Counsel to ensure that parents receive high quality legal assistance in abuse and neglect and termination cases. (Appendix 5) Justice Fox described the nexus between well trained counsel and better outcomes. The Committee will consider the bill draft again at its next meeting. 2. Joint Appropriations Committee – Lily Sharpe and Julie Goyen The Joint Appropriations Committee's top priority this year is to review public access to court records and revenue sources to implement technology upgrades. During its summer meeting, JAC requested an IT master plan. The master plan will be presented to the JAC at the end of October. Julie Goyen and Heather Kenworthy elucidated on the need for a training center to allow more efficient training for clerks, judges and staff and attorneys. Substantial amount of work time is lost to travel currently. Chief Justice Davis added that a training center will also aid with retention of staff over the next few years during the major system rollouts. The cost of travel to Cheyenne for training for district court clerks was raised as a concern. A possibility may be asking the Legislature for travel funding for district court clerk staff.

Chancery Court Committee Judicial Members: Justice Fox (Chair), Chief Justice Davis, Judge Fenn, Judge Waldrup, Ret., Judge Sullins, Ret.	1. Update – Justice Fox The Chancery Court Committee has been very busy. The Committee is in the process of finalizing proposed rules. The location of the Chancery Court is still unknown. A possible location is the new state office building in Casper. The anticipated cost of adding court facilities to the Casper state building is approximately one million dollars. Mayor Orr also expressed interest in having the court on the second floor of the municipal building that is being built in downtown Cheyenne and the Campbell County Commissioners have expressed support for locating the court in their new court facility. Justice Fox pointed out that some legislators were under the impression that the filing fee in the Chancery Court would provide enough revenue for the court to be self-sustaining. Judge Fenn commented that a \$500 filing fee would not be anywhere near the cost of funding the court. Chief Justice Davis thanked Justice Fox and the committee for all their work.
Judicial Conference Reports <u>Circuit Conference President:</u> Judge Christensen <u>District Conference President:</u> Judge Day	1. Circuit Court Conference – Judge Christensen No update. 2. District Court Conference – Judge Campbell A. Exception Requests Update Judge Campbell reported that the District Court Budget Committee approved a few exception requests. The district court judges also updated their budget narratives. During their fall meeting, the Conference will discuss law clerk and staff attorney salaries.
Budget Requests	1. Update – Claire Smith Claire Smith gave an overview of the budget procedure. It is a complex process that starts with creating “Chapter 17” reports for each circuit and district court as well as the Supreme Court. These reports adjust each court’s current appropriation for changes in salaries, health insurance and benefits made during the prior two years to arrive at the standard budget presented to the Joint Appropriations Committee. A court must ask for an exception to the court’s standard budget to exceed the standard budget during the coming biennium. The Supreme Court is finalizing its exception requests and the District Court Budget Committee has forwarded their approved exception requests to Claire.
Judicial Branch Technology <u>Courtroom Automation Committee</u> Members: Chief Justice Davis (Chair), Judge Fenn, Judge Edelman, Judge Campbell, Judge Christensen, Judge Castano, Judge Haws	Court Automation Committee Updates – Elisa Butler and Heather Kenworthy <u>DCAC/CCAC – Elisa Butler</u> The District and Circuit Court Automation Committees continue to meet nearly every month to resolve policy issues and receive updates on the case management system, the jury management system and e-filing. <u>Circuit and District Court Clerk Committees – Heather Kenworthy</u> FCE Circuit

<u>Courtroom Technology Committee</u> Members: Chief Justice Davis (Chair), Justice Fox, Judge Lavery, Judge Johnson, Judge Christensen, and Judge Prokos	Thirteen courts have gone live on FullCourt Enterprise. Three more courts will go live by the end of the year. Lily Sharpe added that Montana has asked us to share the training materials that Heather and her staff have created. There are approximately 400 pages of materials. Chief Justice Davis remarked that creation and updating the training materials is a major accomplishment. FCE District The District Court FullCourt Committee continues to work on configuration. We are reviewing customization quotes received from Justice Systems Inc. (JSI) for the child welfare module. Once we request the customizations, it will take JSI approximately six to eight months to provide code for the customizations. <u>Jury Management – Heather Kenworthy</u> AgileJury has changed its name to Clearview Jury. The second rollout group is going well. Two courts will soon have their first trial in Clearview Jury. Elisa is starting to contact the courts who will be in the third rollout group. Meanwhile, the training team is working on getting ready for the December training. E-Filing Update – Elisa Butler We are in the process of selecting an e-filing vendor. With the creation of the chancery court, and the progress made on the new case management system, the Supreme Court determined that moving forward with a request for e-filing funds was appropriate during the upcoming budget session of the Legislature. As a result, RFQs were sent out in June to a number of vendors. We received responses from four vendors and selected three of those to provide demonstrations of their e-filing systems. To assist in the selection, an e-filing Committee was created consisting of the Chief Justice, a district court judge, attorneys, clerks of district court, a district court judicial assistant, and a court reporter. The first demonstration occurred on Friday, September 13, 2019 and the remaining demonstrations will take place on September 20, 2019. The Committee will make a recommendation to the Joint Court Automation Committee as to which vendor to select. Upon approval by the Joint Court Automation Committee, the recommendation will go to the Supreme Court for a final decision. Judge Rumpke asked about the relationship between FullCourt Enterprise and the new e-filing system. Chief Justice Davis described the FullCourt Enterprise case management system as where all the documents sit. The e-filing system will import new documents into FullCourt Enterprise and send out notifications to case participants. The public access system will interact with the case management system to provide access to the public to court records. Courtroom Technology Committee Updates – Julie Goyen Judge Lavery joined the Committee and has already provided some suggestions for the standards. We continue to work on the rollout schedule adopted by the Courtroom Technology Committee last August. We are also working with counties on the Memorandums of Understanding (MOUs) to delineate responsibility between the State and counties for courtroom technology. So far, we have signed MOUs with eight counties (Converse, Weston, Laramie, Park, Sweetwater, Big Horn, Hot Springs, and Converse counties). We reached out to ten additional counties (Washakie, Goshen, Niobrara, Platte, Fremont, Crook,
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	Lincoln, Johnson, Campbell, and Sheridan). We have several courtrooms and jury rooms that have been granted an emergency request. Courts scheduled to receive emergency fixes before the end of the year are: ○ Natrona Circuit Courtroom 5B (Judge Patchen): October 2019 ○ Campbell Circuit Courtrooms A & C (Judges Bartlett & Phillips): November 2019 ○ Uinta Circuit Courtroom A (Judge Greer): TBD. While we are in the area, we will be updating the jury rooms in both Evanston and Kemmerer. Additionally, we will be adding some features previously missing from Judge Bluemel's setup due to those courtrooms being some of the first to receive technology updates in 2017. One last item of note, we recently received a shipment of the next generation of Microsoft Surface Hubs. We are in the process of testing them. Phase III Update As of the first week of August, the Phase III Hardware Refresh project was complete. It took approximately nineteen months to replace computer stations for the whole Branch. We will be moving forward to a more regular refresh cycle of four years. However, due to the time compression under which this project was conducted, this first cycle could be anywhere from three to five years depending on your location. After the first cycle is completed, we will be able to complete approximately one-quarter to one-half of court locations per year. Thank you to everyone for your flexibility and scheduling to make this project happen. Azure Migration We continue to work on the Azure migration of all systems to the Cloud. We are now down to one last major system hosted in the Supreme Court data center. Surface Hub Audio System We have received several concerns about the inability to hear courtroom proceedings on the Microsoft Surface Hubs. Nate Goddard and his staff are working on documentation to assist users. These include: 1. Basic Surface Hub Troubleshooting 2. Proper microphone etiquette A note to all users: It essential for the person who is speaking to stay directly in front of the microphone and for the speaker's mouth to stay between six to eight inches from the microphone. A good rule of thumb is the speaker's mouth should remain a hand's distance from the microphone.
Permanent Rules Advisory Committee (PRAC) <u>Court Records Division</u> Judicial Members: Justice Gray, Judge Overfield, Judge Castano	1. Court Records Division – Phil Donoho A. Order Creating and Appointing Members (Appendix 6) Chief Justice Davis has created a new Court Records Division of the Permanent Rules Advisory Committee to recommend rules and statutory changes needed to clarify levels of confidentiality of court records before e-filing is implemented. The committee includes judges, district court clerks and attorneys.

<u>Appellate Division</u> Judicial Members: Justice Boomgaarden, Judge Fenn <u>Civil Division</u> Judicial Members: Justice Fox (Chair), Judge Castano, Judge Kricken, Judge Rumpke <u>Criminal Division</u> Judicial Members: Justice Kautz (Chair), Judge Sharpe, Judge Phillips <u>Evidence Division</u> Judicial Members: Judge Rumpke (Chair), Judge Nau, Judge Radda <u>Juvenile Division</u> Judicial Members: Judge Wilking (Chair), Justice Kautz, Judge Campbell, Judge Fenn	2. Appellate Rules Division – Justice Boomgaarden and Patty Bennett A. No Update 3. Civil Rules Division – Justice Fox and Patty Bennett <u>Rule 12 of the Rules of Procedure for Circuit Courts</u> (Appendix 7) Effective December 1, 2019, the rule will be amended in to clarify that circuit court judges can only be disqualified for cause and are not subject to preemptory challenges. <u>Rule 5(b)(2) of the Rules of Civil Procedure</u> (Appendix 8) Effective December 1, 2019, when serving documents, if service is made by mail, the document must also be served electronically. This change came about because of the delay some attorneys experience in the U.S. mail. <u>Rule 26(a)(1.1), (1.2) and (c)(4) of the Rules of Civil Procedure</u> (Appendix 9) Effective December 1, 2019, the amendments to Rule 26(a) clarify that parties must disclose the facts supporting their custody position in both original custody proceedings as well as in modification proceedings involving alleging material change is circumstances. Effective December 1, 2019, Rule 26(c)(4) will be reinserted. The provision was removed in 2017 for consistency since it does not exist in the Federal Rules. As reinstated, when a protective order is sought, the the disclosure or discovery is stayed pending outcome of the motion. Judge Campbell expressed concern the change could slow the proceedings. Justice Fox emphasized the importance of a getting a ruling before having to appear at a deposition. Judge Fenn pointed out the difficulty when parties attempt to get a ruling during a deposition. Judge Fenn, seconded by Judge Campbell, moved to amend the language as follows, “Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is <u>denied</u> not well taken.” The motion carried on a voice vote. 4. Criminal Rules Division – Justice Kautz and Patty Bennett A. Proposed Change – Judge Christensen <u>Rule 4(a) of the Rules of Criminal Procedure</u> (Appendix 10) Judge Christensen presented the attached proposed rule change from the Circuit Court Conference Executive Committee. Currently the rule requires a judge to issue a warrant at the request of the prosecuting attorney. There is concern, however, that judges should have discretion whether to issue a warrant for misdemeanants. The proposed changes set forth two the options. One would allow discretion for all charges and the other would allow discretion unless a felony is charged. Judge Haws agreed that discretion is preferable in misdemeanor cases. Currently, he issues book and release orders when detention is not necessary. Judge Roberts responded that in Fremont County, the county attorney will often present a summons and a warrant and Judge Roberts decides what to issue. Judge Campbell underscored the separation of powers concerns by
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	amending the rule. He highlighted there could be numerous reasons why an arrest warrant is preferable in a misdemeanor case. Justice Fox moved, seconded by Judge Rogers, to send the proposed change to the Criminal Rules Division for consideration. The motion carried on a voice vote. B. Patty Bennett stated the Criminal Rules Division is currently considering amendments to the following Rules of Criminal Procedure: 1. Rule 3 (relating to specificity in information's which allege multiple counts) 2. Rule 24 (relating to the number of peremptory challenges when there are multiple defendants) 3. Rule 32 to comply with W.S. 7-13-303(c) 4. Rule 46.4 (relating to disposition of forfeited bonds) 5. Rule 48 (relating to speedy trial) 6. Differences between our existing rules and current federal rules 5. Rules of Evidence Division – Judge Rumpke and Patty Bennett Judge Rumpke reminded the Board that revisions were made to Rules of Evidence 701, 702, 703, 704, 705, 803, and 902. The amendments became effective August 1, 2019. 6. Juvenile Rules Division – Justice Kautz and Patty Bennett No Update
Access to Justice Commission	Justice Boomgaarden conveyed that the Access to Justice Commission continues to work on the end-of-year program report and the new strategic plan. The Committee will meet again in November. Justice Boomgaarden reminded the Board about Pro Bono Week beginning October 21, 2019 and encouraged active participation by courts. She also thanked Judges Day and Christensen for meeting with Angie Dorsch and Justice Boomgaarden on a prospective fee waiver rule.
Court Security Commission	Ronda Munger reported on behalf of the Court Security Commission. The Commission voted at its May 22, 2019 meeting to visit local court facilities to better understand local security issues. With that goal in mind, Justice Kautz visited the Johnson County Justice Center on behalf of the Commission on May 23, 2019, and the Commission met at the Riverton Justice Center on August 14, 2019. The next meeting of the Commission will be in November at the Sublette County Courthouse in Pinedale. The Commission believes that the cooperative efforts of counties and the State are significantly enhancing courthouse security. Ronda also reported that the Commission timely provided its Annual Report to the Chief Justice, the Governor and the Joint Judiciary and Joint Appropriations Committee. That report can be found on the Court Security Commission page at:

	http://www.courts.state.wy.us/wp-content/uploads/2019/09/Court-Security-Commission-Report-2019.pdf
Judicial Education	Update – Elisa Butler A written report is attached. (Appendix 11) Elisa thanked everyone who participated in the September orientation.
Sweetwater County Supervising Judge	Justice Boomgaarden moved, seconded by Judge Roberts, to approve the attached request to appoint Judge Jones as the supervising circuit judge in the Third Judicial District. The motion passed on a voice vote. (Appendixes 12 and 13)
Disestablishment of Redaction Committee	1. Update – Patty Bennett A. Draft Order Disestablishing the Redaction Committee (Appendix 14) Patty Bennett explained that the Redaction Committee was formed to revise the Redaction Rules and has not met since completing its task. She recommended disbanding the Committee. Justice Fox, seconded by Justice Boomgaarden, moved to recommend the Committee be disestablished. The motion passed on a voice vote.
Formal Appointment	Chief Justice Davis entered the attached Nunc Pro Tunc Order Appointing and/or Reappointing Members to the Board of Judicial Policy and Administration. (Appendix 15)
New Business	Member Input Judge Haws suggested topics for the Board to consider: 1. Once the litigation is complete relating to representation by the Public Defender’s Office, consideration and participation in solutions to the lack of representation for eligible defendants. 2. Compensation for circuit court clerks and staff. Many courts have had a hard time attracting and keeping people and keeping morale high. Chief Justice Davis asked Judge Haws to add the Public Defender representation topic to the BJPA agenda when the timing is appropriate and agreed that clerk pay should be reviewed. Lily Sharpe added that Claire Smith has visited with courts about the need to create pay tables. Claire has been working with the Department of Administration and Information Human Resources Division to develop job descriptions that will be needed for pay tables. She has encouraged the District Court Conference to also consider adopting pay tables. By not having pay tables, it is difficult for the Branch to seek pay raises.
2020 BJPA Schedule	1. March 16, 2020 2. June 15, 2020 3. September 21, 2020 4. December 14, 2020

Action items:

1. Judge Haws will add the Public Defender representation topic to the BIPA agenda when the timing is appropriate.
2. Claire Smith and Court Administration will work on developing job descriptions and proposed pay tables for the Supreme and Circuit Courts and will assist the District Court Conference if the Conference would like to adopt pay tables.

Action taken by Board:

1. Recommend amending the reinserted Rule 26(c)(4) in **Appendix 9** as follows, “Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is denied ~~not well taken~~.”
2. Refer the Circuit Court Executive Conference’s proposed rule change to Rule 4(a) of the Rules of Criminal Procedure in **Appendix 10** to the Criminal Rules Division for consideration and recommendation to the Board.
3. Approve the attached request to appoint Judge Jones as the supervising circuit judge in the Third Judicial District. **(Appendixes 12 and 13)**
4. Disestablish the Redaction Committee **(Appendix 14)**

Appendix 1: Judicial Ethics Advisory Committee Advisory Opinion 2019-01

Appendix 2: Judicial Ethics Advisory Committee Advisory Opinion 2019-02

Appendix 3: Abstract of Court Records Bill

Appendix 4: Office of the Guardian Ad Litem Bill

Appendix 5: Family Preservation Act

Appendix 6: Order Creating Court Records Division of the PRAC

Appendix 7: Rule 12 of the Rules of Procedure for Circuit Courts

Appendix 8: Rule 5(b)(2) of the Rules of Civil Procedure

Appendix 9: Rule 26 (a) (1.1), (1.2), and (c)(4) of the Rules of Civil Procedure

Appendix 10: Rule 4(a) of the Rules of Criminal Procedure

Appendix 11: Judicial Education Report

Appendix 12: Letter from Sweetwater County

Appendix 13: BJPA Supervision Policy

Appendix 14: Draft Order Disestablishing the Redaction Committee

Appendix 15: Nunc Pro Tunc Order Appointing and/or Reappointing Members to the BJPA

Attachments are highlighted

Approved on December 6th, 2019

Wyoming Supreme Court Judicial Ethics Advisory Committee

W.S.C.J.E.A.C. Advisory Opinion 2019-01

QUESTION PRESENTED

Can a circuit court judge's spouse volunteer as a staff member of the Visitation and Advocacy Center (also known as CASA) and advocate on behalf of children in the juvenile court system and domestic violence protection order cases, without creating a violation of the Code of Judicial Conduct?

RESPONSE

The Committee answers yes to the question presented, under limited circumstances.

BACKGROUND

The requesting judge's spouse would like to volunteer as a Court Appointed Special Advocate (CASA) worker in the judicial district in which the judge presides. CASA workers meet with children in the juvenile court system, getting to know the children and their needs and speaking on their behalf as necessary in court. Their duties include information gathering and reporting, attendance at court hearings and Multidisciplinary Team meetings, reviewing Department of Family Services and court records, and making the child's wishes known to the parties. CASA volunteers also advocate for children in circuit court domestic violence protection order cases in which custody and visitation are at issue. Volunteer CASA workers are unpaid positions but receive reimbursements for actual expenses incurred. The requesting judge's spouse is not an attorney and would not act as legal counsel or as a court-appointed guardian ad litem. The judge's spouse will not act in any supervisory capacity over any other CASA volunteers or staff. In juvenile court matters, CASA is not involved in a particular case until the juvenile court judge enters an order appointing CASA pursuant to Rule 8(c) of the Rules of Procedure for Juvenile Courts.

The requesting judge hears family violence protection order cases and at times utilizes the services of CASA to fashion custody and visitation orders and to facilitate visitation. It is unknown to this committee how or at what stage CASA becomes involved in family violence or stalking protection order cases. While acting as a district court commissioner, the judge may also, at times, rely on CASA for similar assistance in child abuse and neglect actions in juvenile court. The judge's inquiry states that the spouse's volunteer activities would not occur in any case over which the judge presides, and that the judge would not engage in any public events or fundraising activities of CASA.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1 of the Wyoming Code of Judicial Conduct provides:

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 provides that:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3 provides that:

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so.

Canon 2 of the Wyoming Code of Judicial Conduct provides:

A judge shall perform the duties of judicial office impartially, competently and diligently.

Rule 2.2 provides that:

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3 provides in relevant part that:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Rule 2.4 provides in relevant part that:

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

DISCUSSION

The question posed is quite similar to the one addressed by this committee in Advisory Opinion 2018-02. There, the Committee was asked to advise whether the Rules of Judicial Conduct would prevent a circuit court judge's spouse from accepting

a job as the head administrator of an organization that assists victims of domestic violence and whose advocates attend domestic violence hearings before the circuit court with those victims. The judge's spouse, as head administrator of the organization, would not attend hearings as an advocate for victims or speak on behalf of victims. The primary difference in this case is that the judge's spouse would appear in an advocacy role in court hearings, albeit not in any cases over which the judge presides. As a result, much of the analysis and reasoning contained in Advisory Opinion 2018-02 is applicable here and will be repeated. Additional concerns are addressed as necessary.

As stated in Advisory Opinion 2018-02, the ethics rules contained in the Code of Judicial Conduct regulate only judges. The rules do not apply to, restrict, or govern spouses of judges, and the rules do not prohibit a spouse from advancing a career or engaging in worthwhile volunteer activities. Nevertheless, the actions of a spouse can, in certain circumstances, cause ethical issues to arise.¹

The evaluation this Committee must undertake revolves around the impact caused to the judge or the judiciary by the spouse's acceptance of a position which creates real or perceived problems with judicial impartiality and external influences upon the judge. Cumulatively, the Rules set forth above address two separate, but interrelated issues: 1) the public's perception of the judiciary, and 2) acts of impropriety by judges. Rules 1.2, 1.3 and 2.4(C) primarily focus on protecting the public's perception of judges, while Rules 2.2, 2.3(A) and 2.4(B) primarily address the judge's own actions. We will address the two issues separately below.

Public Confidence in the Judiciary. Judges are required to promote "public confidence" and "avoid impropriety and the appearance of impropriety." (Rule 1.2). To foster this public confidence, judges are prevented from abusing "the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so." (Rule 1.3). Further, judges are also prohibited from "convey[ing] or permit[ting] others to convey the impression that any person or organization is in a position to influence the judge." (Rule 2.4(C)). The comment to Rule 2.4 reads as follows:

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. *Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences* (emphasis added).

¹ The National CASA Association has adopted Standards for Local CASA/GAL Programs which set forth ethical rules to prevent or limit conflict of interest by CASA volunteers. Rule 8 of the Wyoming Rules of Procedure for Juvenile Courts requires that local CASA programs in Wyoming comply with the National CASA Association Standards. While the purpose of this opinion is not to advise the spouse on ethical conduct, the CASA standards do impose conflict of interest restrictions on volunteers and may serve as an additional mechanism to preserve the integrity of the process by guarding against conflicts.

In this matter, while we have concern, this Committee does not believe that the spouse's activities as a volunteer CASA advocate, in and of itself, create an inherent violation of the rules protecting against the appearances of impropriety. Rather, we believe that it is the conduct and interactions, including public, private and professional between the judge and the spouse that may give rise to violations of said rules. For example, a violation of Rule 1.3 would occur if the judge sent a letter of recommendation for the spouse on judicial letterhead, or if the judge attempted to impact the organization's hiring process through promises of supporting the organization's goals and policies. A violation of Rule 1.2 and 2.4(C) most certainly would occur if the spouse attends domestic violence or juvenile court hearings as an advocate in any case over which the judge presides. However, it is the committee's understanding that the spouse in this case will not appear in any proceeding over which the requesting judge presides. A violation might also occur should the judge attend or participate in CASA public events or fundraising activities. Again, however, it is the Committee's understanding that the judge will not attend or participate in such activities.

In our small, rural communities of Wyoming, there is always some family or friend nexus that may give rise to a plausible suggestion of partiality. We do not believe that avoiding every plausible suggestion of partiality is the rule; otherwise, judges should be prohibited from having family and friends altogether. In this matter, the committee believes that the requesting judge can avoid an appearance of partiality if the judge and spouse are mindful and prudent to preserve the judge's actual and perceived independence from the influence of the spouse as a volunteer for CASA.

Acts of Impropriety. Judges shall "perform all duties of judicial office fairly and impartially" (Rule 2.2) and shall perform such duties "without bias or prejudice" (Rule 2.3(A)). In addition, "a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment" (Rule 2.4(B)). This Committee has no doubt that judges, in general, can faithfully follow the rules governing judicial action and exercise and preserve their independence and judgment, regardless of their spouse's volunteer activities. However, at this time, only the requesting judge in this matter can subjectively determine whether the spouse's volunteer activities will cause, or are likely to cause, prohibited partiality or bias in the performance of that judge's duties. While we find that the requesting judge will not be in automatic violation of Rules 2.2, 2.3(A) or 2.4(B) if the spouse becomes a CASA volunteer, the judge must remain vigilant and mindful that such violations do not occur because of the spouse's position or influence.

CONCLUSION

In the event the requesting judge's spouse becomes a CASA volunteer advocate, the requesting judge should not preside over any cases in which the spouse is in any way involved as a CASA volunteer. In the event the spouse's CASA involvement includes providing information, guidance or counseling to any person who is involved, or may become involved, in family violence or stalking protection cases, the requesting

judge should cease presiding over all domestic violence cases in the circuit court in order to ensure compliance with Rule 1.2. So long as the requesting judge's spouse is not involved in any way in any case in which the judge presides, we believe that the requesting judge may continue to preside over domestic violence cases in the circuit court and juvenile hearings in the district court. Due to the narrow facts we received from the requesting Judge, this Committee's limited understanding of CASA's activities in that specific community, and this Committee's limited understanding of the spouse's specific volunteer activities with CASA, we are concerned that this situation creates a minefield of potential issues that this Committee is unable to predict or advise upon. In addition to the concerns expressed herein, we believe that it is prudent to make the following additional advisements:

1. The requesting judge should not discuss with the spouse any cases in which the spouse may be involved as a CASA volunteer, nor should the judge discuss with the spouse any other case over which he presides in which someone from CASA is involved.
2. The requesting judge should not participate in or attend CASA events or activities.
3. The requesting judge should advise the spouse not to promote or comment upon the spouse's marriage or relationship with the judge in the course of the volunteer interview and application process or in any aspect of the performance of the spouse's volunteer duties with CASA.

FINALIZED AND EFFECTIVE this 8th day of July, 2019 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.

Wyoming Supreme Court Judicial Ethics Advisory Committee

W.S.C.J.E.A.C Advisory Opinion 2019-02

QUESTIONS PRESENTED

1. Where a Judge's Law Clerk has retained counsel (Retained Counsel) for representation in a legal matter pending in the District, is the Judge required to disqualify himself from **all** cases pending before the Judge where Retained Counsel represents a party, including cases that were docketed and set prior to the Law Clerk hiring Retained Counsel?
2. If the Judge is **not** required to disqualify himself from all cases involving Retained Counsel, is the Judge required to screen the Law Clerk from all cases involving Retained Counsel?
3. If disqualification is not required by the Code of Judicial Conduct, may the Judge utilize the procedures in Rule 2.11(C) so long as the Judge certifies there is no actual bias under Rule 2.11(A)(1)?

RESPONSE

The Committee answers the questions as follows:

1. No
2. Yes
3. Yes, although the procedures under Rule 2.11(C) are discretionary.

BACKGROUND

The requesting Judge has a Law Clerk who is an alleged victim of domestic violence. The Judge's Law Clerk, pursuant to the advice of a victim witness coordinator within another judicial district, retained counsel to pursue a domestic violence protection order (the DV proceedings hereafter). The Law Clerk is believed to have retained counsel on or about August 1, 2019. The Judge reports that Retained Counsel routinely practices before the Court. The Judge has never discussed legal representation by Retained Counsel with the Judge's Law Clerk nor with Retained Counsel, nor has the Judge obtained any information other than the scheduling of the DV proceedings [as a result of discussions with his Law Clerk]. The Judge has asserted to the Committee that there is no actual positive nor negative bias on his part toward Retained Counsel.

The Judge reports that he has reassigned all new cases involving Retained Counsel to other judges within the district. The Judge reports, however, there are other matters which have been pending for some time on the Judge's calendar that are now ripening. These cases arose before the

Judge's Law Clerk hired Retained Counsel and are now ready for adjudication. It is under these circumstances that the above questions arise.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 Promoting Confidence in the Judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.*

Canon 2. A judge shall perform the duties of judicial office.

A judge shall perform the duties of judicial office impartially, competently and diligently.

Rule 2.2 Impartiality and Fairness.

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

Rule 2.4 External Influences on Judicial Conduct.

(B) A judge shall not permit family, social, political, financial, or *other interests* or *relationships* to influence the judge's judicial conduct or judgment (emphasis added).

Rule 2.7 Responsibility to Decide.

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

Rule 2.11 Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice . . .

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree relationship* to either of them, or the spouse or domestic partner* of such a person is:

(b) Acting as a lawyer in the proceeding;

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), **may** disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or the court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding. (Emphasis added.)

DISCUSSION

The Committee has been asked to decide whether the Canons for the Wyoming Code of Judicial Conduct and its numbered Rules and their explanatory comments require the Judge to screen his Law Clerk from all cases involving Retained Counsel, and whether the Canons and Rules require the Judge to disqualify himself from all proceedings where Retained Counsel represents a litigant in a matter now pending before the Judge, or in the alternative, whether the Judge, where subject to disqualification under Rule 2.11 other than for bias under (A)(1), may disclose on the record the basis of the Judge's disqualification and ask the parties and their lawyers to consider waiving disqualification.

As we have opined in the past, the Canons in the Code of Judicial Conduct, and the Rules of the Wyoming Code of Judicial Conduct, regulate only judges. The question to be evaluated by the Committee pursuant to the Canons and the Rules governing and implementing the Canons is the question of whether the Law Clerk's retention or employment of Retained Counsel who may appear before the Judge who employs the Law Clerk, raises questions, either real or perceived, regarding judicial independence. The four Canons and the numbered Rules under each Canon, together with the comments, have been adopted to ensure an independent, fair, and impartial judiciary which is determined to be indispensable to our system of justice.

The starting point of the analysis of the questions presented by the Judge is that the Judge should immediately screen the Law Clerk from all cases involving Retained Counsel. Law clerks are in a rarified position because their work may in some, if not all circumstances, have direct input into judicial decisions. The relationship between a judge and his/her law clerk is one of a close and confidential nature. [The legal community and public perception undoubtedly is that (even when not true) a law clerk does have influence on the Judge who has employed them.] Rule 2.4. External Influences on Judicial Conduct, requires a judge to avoid influences from family, social, political,

financial or other interests or relationships which may influence the judge's conduct or judgment. The comment to Rule 2.4 reads as follows: "An independent judiciary requires that judges decide cases according to the law and facts without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influence." The Committee believes that under the present circumstances, the requesting Judge avoids the appearance of impropriety and maintains the impartiality of the judiciary where the Judge screens the Law Clerk from all matters involving Retained Counsel.

Turning to the other questions posed regarding disqualification. The Rules to Canon 2 governing a judge's duty to perform the duties of his judicial office with impartiality, competency, and diligence, discuss a wide range of circumstances governing disqualification. Under Rule 2.11(A), a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances where: the judge has an interest in the litigation, 2.11(A)(3); the judge has a personal bias, 2.11(A)(1); the judge has a close personal relationship with the parties or the person acting as a lawyer in the proceeding, 2.11(A)(2)(b).

In this case the Judge has already reassigned new cases involving Retained Counsel to judges within the District. The Judge now seeks clarification on his duty to disqualify himself from all matters wherein Retained Counsel represents a party and whether or not he must disqualify himself from cases that were docketed before the Law Clerk hired Retained Counsel. Guidance can be found in the comments under the Rule on disqualification (2.11). Comment [1] instructs that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, *regardless* (emphasis added) of whether any of the specific provisions of paragraphs (A)(1) through (5) apply." It should be noted that the Judge denies any personal bias or prejudice. Comment [2] instructs that "A judge's obligation **not** to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed (emphasis added)."

Disqualification of a judge is more disruptive to the administration of justice than the disqualification of a law clerk. In the circumstance noted above where the Judge has appropriately screened the Law Clerk from all cases involving Retained Counsel, the Judge can share the services of other law clerks to substitute for the screened Law Clerk. However, because disqualification of a judge is more disruptive, it should be carefully and cautiously considered. It is worth pointing out that the comments to the Rule also instruct at [4], "The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge." This comment has bearing upon the circumstances presented in the instant scenario. Here the Law Clerk has a relationship which is undoubtedly a close professional relationship with the Judge. That fact, in and of itself, does not require disqualification under Rule 2.11(A) where the Judge has implemented an absolute screen or "Chinese wall" preventing his Law Clerk from working on all files where Retained Counsel has an involvement. There are circumstances where

a judge's disqualification is required, especially where the related lawyer is known by the judge to have an interest (financial) in the law firm that is substantially affected (Rule 2.11(A)(2)(c)).

So long as the Law Clerk is screened on all cases involving Retained Counsel, the Committee concludes that it is unnecessary for the Judge to disqualify himself pursuant to Rule 2.11(A) et sec. As a result of this conclusion, it is not necessary for the Judge to follow the procedure under 2.11(C). The Judge may, out of an abundance of caution, and taking into consideration the potential impact on the functioning of the judiciary in his District, elect to disclose his potential for disqualification and ask the lawyers and their parties to consider, outside his presence, whether to waive disqualification. The Committee finds that, where the Law Clerk has been screened from all cases involving Retained Counsel, that the Court has appropriately and diligently applied procedures which protect the judiciary from impropriety or the appearance of impropriety.

CONCLUSION

We conclude the requesting Judge may continue to preside over cases which have been pending before him and which developed before the Law Clerk hired Retained Counsel so long as the Law Clerk is screened from all cases involving Retained Counsel.

We recommend that the requesting Judge not discuss with his Law Clerk, directly or indirectly, any matters concerning the cases where Retained Counsel has appeared in a matter now pending or may be pending in the future before the requesting Judge.

Finally, we conclude that the Judge has no obligation to utilize the procedure outlined in Rule 2.11(C), unless circumstances arise which make the procedure applicable. Nevertheless, if he chooses to do so, the Judge may, out of an abundance of caution, and giving due regard to the applicable circumstances and the impact on the functioning of the judiciary in his District, use the procedure in Rule 2.11(C) to disclose to the parties appearing before him that Retained Counsel is representing his Law Clerk but that the Law Clerk has been screened completely from all matters concerning the pending litigation, and should that fact raise any concerns, those concerns may be brought to the Court's attention.

FINALIZED AND EFFECTIVE this 28th day of August, 2019 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Abstracts of court records.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to courts; requiring courts to provide
2 abstracts of court records to state agencies; specifying
3 information to be included in abstracts; making conforming
4 amendments; and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 7-1-102, 7-13-1203(f), 7-19-107(b),
9 (e)(intro) and by creating new subsections (k) and (m), 23-
10 6-108(b) and by creating a new subsection (c), 23-6-108(b)
11 and by creating a new subsection (c), 31-5-1214(b) and by
12 creating a new subsection (g) and 31-7-126 are amended to
13 read:

1

2 **7-1-102. Record of information for ascertaining**
3 **condition of crime in state.**

4

5 All town, city, county and state law enforcement agencies,
6 district courts, courts of limited jurisdiction, district
7 attorneys, state adult and juvenile correctional
8 institutions and state and local probation and parole
9 agencies shall maintain a public record of crime and
10 criminals and the operation of the criminal justice system.
11 The attorney general shall provide uniform forms for
12 reporting all information necessary to obtain reliable
13 statistics to ascertain the true condition of the crime
14 situation in the state. The officer, agency or court shall
15 furnish the information requested by the attorney general,
16 except that upon implementation of a case management system
17 in a circuit or district court, the supreme court shall, on
18 behalf of the circuit or district court, furnish the
19 abstract of the court record to the attorney general as
20 required under W.S. 7-19-107(k).

21

22 *****

23 *****

24 **STAFF COMMENT**

1
2 The Committee may wish to consider whether the name of the
3 specific case-management system (FullCourt Enterprise case
4 management system) should be included in the inserted
5 language throughout this bill draft.

6
7 Alternatively, the Committee may wish to consider the
8 following language (new language in bold and italics) based
9 on discussion during the June meeting:

10
11 except that upon implementation of a case management system
12 in a circuit or district court **that has the capability of**
13 **transferring information electronically,** the supreme court
14 shall, on behalf of the circuit or district court, furnish
15 the abstract of the court record to the attorney general as
16 required in W.S. 7-19-107(k).

17
18 *****
19 *****
20

21 7-13-1203. Authority to establish teen court program.

22
23 (f) Discharge and dismissal under this section shall
24 be without adjudication of guilt and is not a conviction
25 for any purpose. If the original offense charged was a
26 traffic offense, the supreme court shall, on behalf of the
27 circuit or municipal court and within thirty (30) days
28 after the discharge and dismissal is entered, submit to the
29 department of transportation an abstract of the court
30 record of the court evidencing the defendant's successful
31 completion of the teen court program compiled under W.S. 7-
32 19-107(k). The department shall maintain abstracts

received under this subsection as provided by W.S.
31-5-1214(f).

STAFF COMMENT

The Committee may wish to consider whether the deadline for
submitting abstracts to the department of transportation in
W.S. 7-13-1203(f) should remain 30 days or be amended to 10
days to conform with the ten-day deadline used throughout
this bill draft.

7-19-107. Central repository; information to be
submitted; audits; interstate exchanges.

(b) For the purpose of maintaining complete and
accurate criminal history record information at the central
repository, all city, county and state law enforcement
agencies, district courts, courts of limited jurisdiction,
district attorneys, the department of corrections, state
juvenile correctional institutions and local probation and
parole agencies shall submit the criminal history record
information required under this section for which they are
responsible to the division for filing at the earliest time
possible following the occurrence of the reportable event.

1 Except as provided in subsection (k) of this section,
2 reports shall be submitted on uniform forms approved and
3 provided by the division.

4
5 (e) Except as provided in subsection (k) of this
6 section, a all district attorneys and clerks of the district
7 courts and courts of limited jurisdiction shall furnish the
8 division with information concerning final dispositions in
9 criminal cases covered by this act. The information shall
10 include, for each charge:

11
12 (k) Upon implementation of a case management system in
13 a circuit or district court, the supreme court shall, on
14 behalf of the district or circuit court, furnish
15 electronically to the division an abstract of the court
16 record within ten (10) days after entry of a judgment of
17 conviction or forfeiture of bail. The abstract shall
18 include:

19
20 (i) The name and address of the person charged;

21
22 (ii) A citation to the statute of each offense
23 charged;

1

2

(iii) The finding or disposition of each offense

3

charged;

4

5

(iv) The amount of fine, forfeiture or penalty

6

imposed, if any, or any changes to the amount;

7

8

9

10

STAFF COMMENT

11

The Committee may wish to consider whether "or any changes to the amount" is necessary in new paragraph (iv) above.

14

15

16

17

18

(v) Other information as determined and agreed

19

upon by the office of the attorney general and the supreme

20

court pursuant to rules promulgated by the attorney general

21

and the supreme court.

22

23

(m) Nothing in subsection (k) of this section shall

24

preclude a state agency from requesting and obtaining

25

public court records as provided by court rule.

26

1 23-6-108. Record of game and fish cases; report of
2 convictions to department.

3
4 (b) Except as provided in subsection (c) of this
5 section, within ~~thirty~~ (30) ~~ten~~ (10) days after the
6 conviction or forfeiture of bail of a person upon a charge
7 of violating any provision of this act, the judge or clerk
8 of the court in which the conviction was had or bail was
9 forfeited, shall forward to the department a certified
10 abstract of the ~~record of the~~ court record covering the
11 case in which the person was convicted or forfeited bail.
12 The abstract shall be made upon a form furnished by the
13 department and shall include the name and address of the
14 party charged, the number of his game or fish license, if
15 any, the nature of the offense, the date of hearing, the
16 plea, the judgment, or whether bail was forfeited, and the
17 amount of fine, forfeiture or penalty imposed.

18
19 *****
20 *****

21 STAFF COMMENT

22
23 The Committee may wish to consider whether the word
24 "certified" in W.S. 23-6-108(b) (see above) should be
25 stricken to conform with other references to the abstract
26 of court record in this bill draft.
27

1 *****
2 *****
3

4 (c) Upon implementation of a case management system in
5 a circuit court or district court, the supreme court shall,
6 on behalf of the circuit court or district court, furnish
7 the abstract of the court record required under this
8 section to the department. The abstract furnished under
9 this subsection shall include the information required in
10 W.S. 7-19-107(k).

11
12 **31-5-1214. Record of traffic cases; reports of**
13 **convictions.**

14
15 (b) Except as provided in subsection (g) of this
16 section, within ten (10) days after the conviction or
17 forfeiture of bail of a person upon a charge of violating
18 any provisions of this act or other law regulating the
19 operation of vehicles on highways every clerk of the court
20 of record in which the conviction was had or bail was
21 forfeited shall prepare and immediately forward to the
22 department an abstract of the ~~record of the~~ court record
23 covering the case in which the person was so convicted or
24 forfeited bail, which abstract must be certified by the

1 person required to prepare the same to be true and correct.
2 Report need not be made of any conviction involving the
3 illegal parking or standing of a vehicle.

4
5 (g) Upon implementation of a case management system in
6 a circuit court or district court, the supreme court shall,
7 on behalf of the circuit court or district court, furnish
8 the abstract of the court record required under this
9 section to the department. The abstract furnished under
10 this subsection shall include the information required in
11 W.S. 7-19-107(k).

12
13 **31-7-126. Reporting of convictions and failure to**
14 **appear by courts.**

15
16 (a) Except as provided in subsection (b) of this
17 section, every court having jurisdiction under any statute
18 of this state or a municipal ordinance adopted by local
19 authority regulating the driving of motor vehicles, shall
20 forward to the division within ten (10) working days from
21 the date of conviction a record of the conviction of any
22 person in the court for a violation of any of those laws or
23 ordinances, other than those regulating standing or parking

1 of a motor vehicle. The court shall also forward to the
2 division a report of any violation by any person of a
3 promise to appear in court as given to the arresting
4 officer upon the issuance of a traffic citation and any
5 failure to appear in court at the time specified by the
6 court. Failure of a court to forward a record of conviction
7 or violation under this section within the time specified
8 in this section from the date of conviction or violation
9 shall not affect the division's authority under this act.

11 *****
12 *****
13 **STAFF COMMENT**

15 **The Committee may wish to consider whether the reference to**
16 **"a record of conviction" in W.S. 31-7-126 should be amended**
17 **to read "an abstract of the court record" as used**
18 **throughout this bill draft.**

20 *****
21 *****

23 (b) Upon implementation of a case management system in
24 a circuit court or district court, the supreme court shall,
25 on behalf of the circuit court or district court, furnish
26 the abstract of the court record required under this
27 section to the division. The abstract furnished under this

1 subsection shall include the information required in W.S.
2 7-19-107(k).

3

4 **Section 2.** This act is effective July 1, 2020.

5

6 (END)

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Office of guardian ad litem.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the administration of government;
2 creating the office of the guardian ad litem; modifying
3 administration of guardian ad litem program; repealing
4 provisions related to office of the public defender
5 oversight of the program; making conforming amendments;
6 providing for continuation of contracts; providing for
7 rulemaking; re-appropriating funds; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-2-3101 is created to read:

13

1

ARTICLE 31

2

OFFICE OF GUARDIAN AD LITEM

3

4

9-2-3101. Office created; appointment of director.

5

6

(a) The office of guardian ad litem is created as a separate operating agency as provided in W.S. 9-2-1704(d).

8

9

(b) The governor, with the advice and consent of the senate, shall appoint a director of the office who shall serve as the administrative head of the office and as chief guardian ad litem. Unless sooner removed, the director's term of appointment expires at the end of the term of office of the governor during which he was appointed. The director serves at the pleasure of the governor and may be removed by him as provided by W.S. 9-1-202. The director shall:

18

19

20

21

(i) Be a member in good standing of the Wyoming state bar;

1 (ii) Have experience in guardian ad litem
2 representation, child welfare and juvenile justice;

3
4 (iii) Be compensated as determined by the
5 Wyoming personnel division;

6
7 (iv) Devote full time to the performance of his
8 duties;

9
10 (v) Administer the guardian ad litem program as
11 provided in W.S. 14-12-101 through 14-12-104.

12
13 (c) The director shall not engage in private practice
14 except to complete business pending at the time of his
15 appointment.

16
17 **Section 2.** W.S. 9-2-1704(d) by creating a new
18 paragraph (xvii), 14-12-101(a)(intro) and (c)(intro),
19 14-12-103(a), (c) and (d) are amended to read:

20
21 **9-2-1704. Reorganization plan; structure; time frame.**

22

1 (d) The entities of state government specified in
2 this subsection are designated as separate operating
3 agencies, which are separate and distinct from the
4 departments and offices specified in subsection (a) of this
5 section because of their quasi-judicial responsibility or
6 because of their unique, specialized function which
7 precludes their inclusion in another department. This act
8 does not otherwise apply to separate operating agencies.
9 Separate operating agencies are as follows:

10
11 (xvii) Office of guardian ad litem.

12
13 **14-12-101. Office of guardian ad litem; guardian ad**
14 **litem program; rulemaking; reporting.**

15
16 (a) The office of the ~~state public defender~~guardian
17 ad litem shall administer a guardian ad litem program. The
18 program shall employ or contract with, supervise and manage
19 attorneys providing legal representation as guardians ad
20 litem in the following cases and actions:

1 (c) The office shall adopt policies and rules and
2 regulations governing standards for the legal
3 representation by attorneys acting as guardians ad litem in
4 cases under the program and for the training of those
5 attorneys. ~~The policies and rules shall ensure that the~~
6 ~~program will be separate and distinct from the office's~~
7 ~~performance of duties involving criminal defense and~~
8 ~~representation of a juvenile other than as a guardian ad~~
9 ~~litem in delinquency proceedings. To the maximum extent~~
10 ~~possible, the policies and rules shall ensure all fiscal~~
11 ~~and information technology duties for the program are kept~~
12 ~~separate from the fiscal and information technology duties~~
13 ~~for the office of the public defender.~~ Any attorney
14 providing services to the program as a guardian ad litem
15 shall meet the standards established by the office for the
16 program.

17
18 **14-12-103. County participation; reimbursement;**
19 **offices and equipment.**

20
21 (a) The office of the ~~state public defender~~ guardian
22 ad litem shall enter into agreements with each county

1 participating in the program. Agreements shall require
2 counties to comply with all program rules and policies. The
3 agreement shall establish the compensation rate within the
4 county for attorneys providing legal representation as
5 guardians ad litem in program cases and the reimbursement
6 requirements. A county may agree with an attorney
7 providing services under the program to pay a rate in
8 excess of the rate set for payment by the program. If a
9 county agrees to do so, it shall enter into a separate
10 contract with the attorney providing services and shall be
11 responsible and obligated to reimburse the program for one
12 hundred percent (100%) of the excess amount. The county
13 shall enter into a separate agreement with the office
14 setting out the agreement, the excess rate and the
15 responsibilities and obligations of all parties.

16

17 (c) There is created a guardian ad litem account.
18 All reimbursements received under the program shall be
19 deposited to the account. Funds within the account are
20 continuously appropriated to the ~~public defender's~~ office
21 of the guardian ad litem for expenditure for the sole
22 purpose of the guardian ad litem program.

1

2 (d) Agreements entered into under this section shall
3 include provision for each county, in which guardians ad
4 litem employed by or under contract with the program are
5 located, to provide ~~separate from any public defender field~~
6 ~~office,~~ adequate space and utility services, other than
7 telephone service, for the use of the program's guardians
8 ad litem. If suitable office space for all guardians ad
9 litem cannot be provided, the county shall provide, based
10 upon a proportional share, a monthly stipend to all program
11 guardians ad litem housed in private facilities. The
12 proportional share shall be determined by the program,
13 based upon the counties served by each guardian ad litem
14 not provided suitable office space. The stipend shall be
15 paid directly by the county to the program guardian ad
16 litem.

17

18 **Section 3.** W.S. 7-6-103(c)(viii), 7-6-106(d)(iii), 7-
19 6-112(a)(v), 7-6-113(d) and 14-12-101(b) are repealed.

20 *****

21 *****

22 **STAFF COMMENT**

23 The repealed paragraphs and subsections are reproduced here
24 for the committee's convenience:

25

1 **7-6-103. Creation of office of state public defender;**
2 **appointment of state public defender and assistants;**
3 **duties; removal.**

4
5 (c) The state public defender shall:

6
7 ~~(viii) Administer the guardian ad litem program~~
8 ~~as provided in W.S. 14-12-101 through 14-12-104.~~

9
10 **7-6-106. Determination of need; reimbursement for**
11 **services.**

12
13 (d) The state public defender shall report in the
14 agency's annual report concerning:

15
16 ~~(iii) For the guardian ad litem program, the~~
17 ~~number of cases, the amount of monies expended and the~~
18 ~~amounts of reimbursements from participating counties.~~

19
20 **7-6-112. Applicability of provisions.**

21
22 (a) This act does not apply to:

23
24 ~~(v) Administration of the guardian ad litem~~
25 ~~program under W.S. 14-12-101 through 14-12-104, except as~~
26 ~~provided in W.S. 7-6-103(c) (viii) and 7-6-106(d) (iii).~~

27
28 **7-6-113. Funding.**

29
30 ~~(d) The provisions of this section shall not be~~
31 ~~applicable to the guardian ad litem program administered by~~
32 ~~the office of the public defender and the budget for that~~
33 ~~program shall be as provided in W.S. 14-12-101 through 14-~~
34 ~~12-104.~~

35
36 **14-12-101. Office of guardian ad litem; guardian ad**
37 **litem program; rulemaking; reporting.**

38
39 ~~(b) The program shall be administered by an~~
40 ~~administrator appointed by the state public defender~~
41 ~~governor. The administrator shall be an attorney in good~~
42 ~~standing with the Wyoming state bar with experience in~~
43 ~~guardian ad litem representation, child welfare and~~
44 ~~juvenile justice.~~

1
2
3
4

5
6**Section 4.**7
8

(a) On the effective date of this act:

9 (i) All unexpired contracts existing between the
10 office of the state public defender and attorneys under
11 W.S. 14-12-101(a) or 14-12-102(c) shall continue with the
12 office of guardian ad litem substituted for the office of
13 the state public defender;

14

15 (ii) All unexpired agreements existing between
16 the office of the state public defender and counties under
17 W.S. 14-12-103 shall continue with the office of guardian
18 ad litem substituted for the office of the state public
19 defender;

20 (iii) Any unexpired memorandum of understanding
21 existing between the office of the state public defender
22 and the department of family services shall continue with
23 the office of guardian ad litem substituted for the office
24 of the state public defender.

1

2 (b) Nothing in this section shall be construed to
3 prevent any party from renegotiating any contract,
4 agreement or memorandum of understanding.

5

6 **Section 5.** All unexpended, unobligated funds
7 appropriated on or before July 1, 2020 for the guardian ad
8 litem program to the office of the state public defender
9 are hereby reappropriated to the office of the guardian ad
10 litem on July 1, 2020.

11

12 *****
13 *****

14 **STAFF COMMENT**

15 The appropriation for the guardian ad litem program for
16 2021-2022 biennium will be housed under the public
17 defender's budget, since the office of guardian ad litem
18 does not yet exist. If the committee sponsors this bill, a
19 footnote should be included in the 2020 budget bill under
20 Section 008, Office of the Public Defender to the effect:

21

22 If 2020 House Bill XX (20LSO-99) is enacted into
23 law, this total appropriation for the guardian ad
24 litem program shall be transferred to the office
25 of guardian ad litem.

26 *****
27 *****

28

29 **Section 6.** Any rules or regulations pertaining to
30 guardian ad litem program attorneys promulgated by the

1 office of the state public defender under W.S. 14-12-101(c)
2 shall remain in effect until such time that the office of
3 the guardian ad litem promulgates rules.

4

5 **Section 7.** This act is effective July 1, 2020.

6

7 (END)

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Family Preservation Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to children and parents; creating the
2 office of parent counsel; providing for staffing,
3 prescribing duties of the office; creating the parent
4 counsel program; requiring rulemaking; providing for agency
5 and county contributions to the program; creating the
6 family preservation advisory board; prescribing duties of
7 the board; authorizing positions; providing an
8 appropriation; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 14-14-101 through 14-14-106 and 14-
13 14-201 are created to read:

1

2

CHAPTER 14

3

FAMILY PRESERVATION

4

5

ARTICLE 1

6

OFFICE OF PARENT COUNSEL

7

8

14-14-101. Office created; definitions.

9

10 (a) The office of parent counsel is created as a
11 separate operating agency as provided in W.S. 9-2-1704(d).
12 The office shall employ or contract with, supervise and
13 manage attorneys providing court-appointed legal
14 representation to a parent in the following cases and
15 actions:

16

17 (i) Termination of parental rights actions under
18 W.S. 14-2-308 through 14-2-319;

19

20 (ii) Child protection cases under W.S. 14-3-101
21 through 14-3-441;

22

1 (iii) Delinquency cases under W.S. 14-6-201
2 through 14-6-252;

3

4 (iv) Children in need of supervision cases under
5 W.S. 14-6-401 through 14-6-440.

6

7 (b) As used in this act:

8

9 (i) "Board" means the family preservation board
10 created by W.S. 14-14-201;

11

12 (ii) "Director" means the director of the office
13 of parent counsel;

14

15 (iii) "Office" means the office of parent
16 counsel;

17

18 (iv) "Parent counsel" means an attorney employed
19 by the office to represent parents under this act,
20 including full-time and part-time employees of the office,
21 independent contractors and volunteer attorneys;

22

1 (v) "The Program" means the parent counsel
2 program established under this act;

3
4 (vi) "This act" means W.S. 14-14-101 through 14-
5 14-106.

6
7 **14-14-102. Appointment of director; duties;**
8 **rulemaking.**

9
10 (a) The governor, with the advice and consent of the
11 senate, shall appoint a director of the office who shall
12 serve as the administrative head of the office. Unless
13 sooner removed, the director's term of appointment expires
14 at the end of the term of office of the governor during
15 which he was appointed. The director serves at the
16 pleasure of the governor and may be removed as provided by
17 W.S. 9-1-202. The director shall:

18
19 (i) Be a member in good standing of the Wyoming
20 state bar;

21
22 (ii) Have five (5) years of experience as a
23 licensed attorney prior to appointment;

1

2 (iii) Be familiar with the representation of
3 parents in juvenile court or in termination of parental
4 rights cases;

5

6 (iv) Be compensated as determined by the Wyoming
7 personnel division;

8

9 (v) Devote full time to the performance of his
10 duties;

11

12 (vi) Administer the office and program as
13 provided in this act.

14

15 (b) The director shall not engage in private practice
16 except to complete business pending at the time of his
17 appointment.

18

19 (c) In consultation with the board, the director
20 shall:

21

22 (i) Establish a statewide program promoting
23 uniform and quality representation of parents in

1 proceedings effecting child welfare and family
2 preservation;

3

4 (ii) Promulgate rules for the operation of the
5 office and establishing the standards for the legal
6 representation by attorneys acting as parent counsel in
7 cases under the program;

8

9 (iii) Provide for the training of attorneys
10 acting as parent counsel.

11

12 (d) The director shall employ attorneys and other
13 staff necessary to perform the duties of the office,
14 subject to legislative appropriation.

15

16 **14-14-103. Attorneys and staff.**

17

18 (a) The director shall employ staff necessary to
19 perform the duties of the office, including staff
20 attorneys, a fiscal manager and an office manager.

21

22 (b) Attorneys employed by the office as parent
23 counsel shall:

1

2 (i) Serve at the pleasure of the director;

3

4 (ii) Be a member in good standing of the Wyoming
5 state bar;

6

7 (iii) Be compensated as determined by the
8 Wyoming personnel division or by the director if employed
9 under independent contract.

10

11 (c) Non-attorney employees shall serve at the
12 pleasure of the director and be compensated as determined
13 by the Wyoming personnel division or by the director if
14 employed under independent contract.

15

16 **14-14-104. Agency and county participation;**
17 **reimbursement.**

18

19 (a) The office shall enter into agreements with each
20 county participating in the program. Agreements shall
21 require counties to comply with all program rules and
22 policies. The agreement shall establish the compensation
23 rate within the county for parent counsel appointed under

1 W.S. 14-2-318, 14-3-422, 14-6-222 or 14-6-422. A county
2 may agree with a parent counsel providing services under
3 the program to pay a rate in excess of the rate set for
4 payment by the program. If a county agrees to do so, it
5 shall enter into a separate contract with the parent
6 counsel providing services and shall be responsible and
7 obligated to reimburse the program for one hundred percent
8 (100%) of the excess amount. The county shall enter into a
9 separate agreement with the office setting out the
10 agreement, the excess rate and the responsibilities and
11 obligations of all parties.

12

13 (b) The office shall pay from the account created by
14 W.S. 14-14-105 one hundred percent (100%) of the fees for
15 the legal representation of parents under the program.
16 Participating counties shall reimburse the program an
17 amount equal to not less than twenty-five percent (25%) of
18 the agreed program fees, not less than twenty-five percent
19 (25%) of the program's administrative cost prorated by
20 program funds expended in each county and one hundred
21 percent (100%) of excess rate fees. The program shall
22 invoice the county for its proportionate share. In the
23 event a county does not make payments within ninety (90)

1 days, the state treasurer may deduct the amount from sales
2 tax revenues due to the county from the state and shall
3 credit the amount to the program account.

4 *****
5 *****

6 **STAFF COMMENT**

7 Counties currently are responsible for 100% of the legal
8 representation of parents if the court appoints counsel in
9 these cases. The 25% is a place holder chosen because it is
10 the formula in the existing guardian ad litem statute, W.S.
11 14-12-103. The Committee may wish to consider a different
12 percentage contribution from counties these cases.

13 *****
14 *****
15

16 (c) In consultation with the director, each county in
17 which parent counsel is employed by or under contract with
18 the office shall provide adequate space and utility
19 services, other than telephone service, for the use by
20 parent counsel.

21
22 (d) The office shall enter into a memorandum of
23 understanding with the department of family services under
24 which parent counsel will be provided for cases in which
25 the department is required by law or court order to provide
26 counsel to parents. The department shall reimburse the
27 program an amount equal to not less than seventy-five
28 percent (75%) of parent counsel's fees.

1

2 *****
3 *****

4 **STAFF COMMENT**

5 The department of family services is currently responsible
6 for 100% of the legal representation of parents if the
7 court appoints counsel in termination cases initiated by
8 the department. The 75% is a place holder. The Committee
9 may wish to consider a different percentage contribution
10 from counties for these cases.

11

12 *****
13 *****

14

15 **14-14-105 Account.**

16

17 There is created an office of parent counsel account. All
18 reimbursements received under the program shall be
19 deposited to the account. Funds within the account are
20 continuously appropriated to the office for expenditure for
21 the sole purpose of the program.

22

23 **14-14-106 Applicability.**

24

25 (a) This act does not apply to representation of an
26 individual:

27

28 (i) In criminal proceedings;

29

1 (ii) In federal court; or

2

3 (iii) As a plaintiff in a tort or civil rights
4 action.

5

6 (b) Notwithstanding any other provision of law to the
7 contrary, any attorney providing services for the office as
8 parent counsel shall, for matters arising out of such
9 services, be considered a state employee for purposes of
10 coverage and representation under the Wyoming Governmental
11 Claims Act, W.S. 1-39-101 through 1-39-120, and the state
12 self-insurance program, W.S. 1-41-101 through 1-41-111.

13

14 ARTICLE 2

15 FAMILY PRESERVATION BOARD

16

17 **14-14-201. Board created; members; expenses.**

18

19 (a) There is created a family preservation board. The
20 board is charged with providing advice and guidance to the
21 the office of parent counsel and the office of guardian ad
22 litem to ensure that parents and children are provided

1 quality legal representation in juvenile court and
2 termination of parental rights cases.

3

4 (b) The board shall consist of five (5) voting
5 members as follows:

6

7 (i) Two (2) practicing attorneys;

8

9 (ii) Two (2) members of the judiciary;

10

11 (iii) One (1) lay person.

12

13 (c) The governor shall appoint all voting members of
14 the board.

15

16 (d) Voting members of the board shall serve for four
17 (4) years, except that, of the members first appointed,
18 three (3) shall serve for terms of two (2) years. The
19 governor shall fill any vacancies as they occur.

20

21 (e) No member of the board shall, while serving on
22 the board, be an employee of or contractor with the office
23 of parent counsel as provided in W.S. 14-14-101 through 14-

1 14-106 or the guardian ad litem program as provided in W.S.
2 14-12-101 through 14-12-104.

3

4 (f) The board shall adopt rules for its own
5 procedures. The board shall select a chairman and a vice
6 chairman. The board shall meet as often as necessary to
7 carry out its duties, but in no instance shall it meet less
8 than semiannually.

9

10 (g) The board shall be voluntary and no state funds
11 shall be expended for salary or expenses, except members
12 whose appointment is by virtue of their state employment.

13

14 *****
15 *****
16 **STAFF COMMENT**
17 The Committee may wish to consider adding the director of
18 the office of parent counsel and the administrator of the
19 guardian ad litem program as ex-officio members.
20 *****
21 *****
22

23 **Section 2.** W.S. 1-39-103(a)(iv)(F), 1-41-
24 102(a)(v)(D), 9-2-1704(d) by creating a new paragraph
25 (xvii), 14-2-318(b)(ii), 14-3-434(b)(v), 14-6-235(b)(v) and
26 14-6-434(b)(v) are amended to read:

27

1 **1-39-103. Definitions.**

2

3 (a) As used in this act:

4

5 (iv) "Public employee":

6

7 (F) Includes contract attorneys in the
8 course of providing contract services for:

9

10 (I) The state public defenders office
11 as provided in W.S. 7-6-103(k) or 14-12-104; and

12

13 (II) The office of parent counsel as
14 provided in W.S. 14-14-101 through 14-14-106;

15

16 **1-41-102. Definitions.**

17

18 (a) As used in this act:

19

20 (v) "Public employee" means any officer,
21 employee or servant of the state, provided the term:

22

1 (D) Includes contract attorneys in the
2 course of providing contract services for:

3
4 (I) The state public defenders office
5 as provided in W.S. 7-6-103(k) or 14-12-104; and

6
7 (II) The office of parent counsel as
8 provided in W.S. 14-14-101 through 14-14-106;

9
10 **9-2-1704. Reorganization plan; structure; time frame.**

11
12 (d) The entities of state government specified in
13 this subsection are designated as separate operating
14 agencies, which are separate and distinct from the
15 departments and offices specified in subsection (a) of this
16 section because of their quasi-judicial responsibility or
17 because of their unique, specialized function which
18 precludes their inclusion in another department. This act
19 does not otherwise apply to separate operating agencies.
20 Separate operating agencies are as follows:

21
22 (xvii) Office of parent counsel.
23

1 **14-2-318. Costs of proceedings; appointment of**
2 **counsel.**

3
4 (b) Where petitioner is an authorized agency as
5 defined by W.S. 14-2-308(a)(ii)(B), it shall pay for the
6 costs of the action. Costs shall include:

7
8 (ii) Attorney's fee for an indigent party. If
9 the agency had entered into an agreement with the office of
10 parent counsel pursuant to W.S. 14-14-101 through 14-14-106
11 and the office was appointed to provide representation, the
12 office of parent counsel shall pay the attorney's fee in
13 accordance with that agreement;

14
15 **14-3-434. Fees, costs and expenses.**

16
17 (b) The following costs and expenses, when approved
18 and certified by the court to the county treasurer, shall
19 be a charge upon the funds of the county where the
20 proceedings are held and shall be paid by the board of
21 county commissioners of that county:

1 (v) Reasonable compensation for services and
2 costs of counsel appointed by the court. If the county had
3 entered into an agreement with the office of parent counsel
4 pursuant to W.S. 14-14-101 through 14-14-106 and the office
5 was appointed to provide representation, the office of
6 parent counsel shall pay the attorney's fee in accordance
7 with that agreement;

8
9 **14-6-235. Fees, costs and expenses.**

10
11 (b) The following costs and expenses, when approved
12 and certified by the court to the county treasurer, shall
13 be a charge upon the funds of the county where the
14 proceedings are held and shall be paid by the board of
15 county commissioners of that county:

16
17 (v) Reasonable compensation for services and
18 costs of counsel appointed by the court. If the county had
19 entered into an agreement with the office of parent counsel
20 pursuant to W.S. 14-14-101 through 14-14-106 and the office
21 was appointed to provide representation, the office of
22 parent counsel shall pay the attorney's fee in accordance
23 with that agreement;

1

2 **14-6-434. Fees, costs and expenses.**

3

4 (b) The following costs and expenses, when approved
5 and certified by the court to the county treasurer, shall
6 be a charge upon the funds of the county where the
7 proceedings are held and shall be paid by the board of
8 county commissioners of that county:

9

10 (v) Reasonable compensation for services and
11 costs of counsel appointed by the court. If the county had
12 entered into an agreement with the office of parent counsel
13 pursuant to W.S. 14-14-101 through 14-14-106 and the office
14 was appointed to provide representation, the office of
15 parent counsel shall pay the attorney's fee in accordance
16 with that agreement;

17

18 **Section 3.**

19

20 (a) There is appropriated five million dollars
21 (\$5,000,000.00) from the general fund to the office of
22 parent counsel created by section 1 of this act. This
23 appropriation shall be for the period beginning with the

1 effective date of this act and ending June 30, 2022.
2 Notwithstanding any other provision of law, this
3 appropriation shall not be transferred or expended for any
4 other purpose. This appropriation shall only be expended
5 for the purpose of authorized full-time positions, contract
6 attorneys, office space, furniture and supplies and any
7 unexpended, unobligated funds remaining from this
8 appropriation shall revert as provided by law on June 30,
9 2020.

10
11 (b) There are authorized six (6) full-time attorney
12 positions, one (1) full-time office manager position and
13 one (1) full-time fiscal manager position to the office of
14 parent counsel to implement this act. These positions and
15 funding provided in this section shall be included in the
16 office of parent counsel's standard 2021-2022 biennial
17 budget. The supreme court may include in an exception
18 budget request for the 2021-2022 biennium such funds and
19 positions as it determines necessary to support the office
20 of parent counsel as created by this act.

21
22 **Section 4.** This act is effective July 1, 2020.
23

1

(END)

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2019

IN THE SUPREME COURT
STATE OF WYOMING
FILED

IN THE MATTER OF THE CREATION)
AND APPOINTMENT OF THE COURT)
RECORDS DIVISION OF THE PERMANENT)
RULES ADVISORY COMMITTEE)

SEP 10 2019

PATRICIA BENNETT, CLERK

by DEPUTY

**ORDER CREATING AND APPOINTING A COURT RECORDS DIVISION
OF THE PERMANENT RULES ADVISORY COMMITTEE**

THIS MATTER came before the Court *Sua Sponte*, and the Court deeming it necessary and proper to create a Court Records Division of the Permanent Rules Advisory Committee; it is therefore

ORDERED that there be, and hereby is, a Court Records Division of the Permanent Rules Advisory Committee established to propose rules and statutory changes to clarify the classifications and availability of court records; and it is

FURTHER ORDERED that the following individuals be, and hereby are, appointed to serve a three-year term on this committee which will expire on September 1, 2022; and it is

FURTHER ORDERED that the Court Records Division of the Permanent Rules Advisory Committee shall consist of the following members:

COURT RECORDS DIVISION

Phil Nicholas, Chairman
Former Representative, State of Wyoming Legislature
6255 Mountainview Drive
Cheyenne, WY 82009

Kari Jo Gray
Justice, Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002

Bobbi Overfield
District Court Judge
P.O. Box 862
Worland, WY 82401

Matt Castano
Circuit Court Judge
P.O. Box 650
Sundance, WY 82729

Liisa Anselmi-Dalton
Senator, Wyoming State Legislature
1735 Collins Street
Rock Springs, WY 82901

Billie Addleman
Hirst Applegate LLP
P.O. Box 1083
Cheyenne, WY 82003

Clint Langer
Davis & Cannon, LLP
P.O. Box 728
Sheridan, WY 82801

Marty L. Oblasser
Corthell and King Law Office, P.C.
P.O. Box 1147
Laramie, WY 82073

Bruce T. Moats
Law Office of Bruce T. Moats
2515 Pioneer Avenue
Cheyenne, WY 82001

Tina Wood
Clerk of District Court, Crook County
P.O. Box 406
Sundance, WY 82729

Anne Volin
Clerk of District Court, Natrona County
115 North Center Street, Suite 100
Casper, WY 82601

IT IS FURTHER ORDERED that the Office of General Counsel will staff the Court Records Division; and Karl Linde, Senior Staff Attorney and Patty Bennett, Clerk of the Supreme Court, will serve as staff consultants.

DATED this 10th day of September, 2019.

BY THE COURT:



MICHAEL K. DAVIS
CHIEF JUSTICE

Wy. R. Cir. Cts. Rule 12

A Circuit Court Judge may be disqualified only for cause.

W. R. Civ. P. Rule 5. Serving and filing pleadings and other papers.

(a) Service: When required. —

...

(b) Service: How made. —

(1) Serving an Attorney. — If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. — A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it: (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) leaving it with the court clerk if the person has no known address;

~~(C)(D)~~ mailing it to the person's last known address-in which event service is complete upon mailing; and simultaneously sending it by electronic means unless otherwise ordered by the court; or

~~(D) leaving it with the court clerk if the person has no known address;~~

~~(E) sending it by electronic means if the person consented in writing in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or~~

(F) delivering it by any other means that the person consented to in writing-in which event service is complete when the person making service delivers it to the agency designated to make delivery.

...

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Wy. R. Civ. P. 26(a) (1.1) and (1.2)

(1.1) *Initial disclosures in divorce actions.* — In divorce actions the following initial disclosures are required in pre-decree proceedings, and in post-decree proceedings to the extent that they pertain to a particular claim or defense:

(A) A schedule of financial assets, owned by the party individually or jointly, which shall include savings or checking accounts, stocks, bonds, cash or cash equivalents, and shall include:

- (i) the name and address of the depository;
- (ii) the date such account was established;
- (iii) the type of account;
- (iv) the account number;
- (v) the current value of the account; and
- (vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(B) A schedule of non-financial assets, owned by the party individually or jointly, which schedule shall include:

- (i) the purchase price and the date of acquisition;
- (ii) the present market value;
- (iii) any indebtedness relating to such asset;
- (iv) the state of record ownership;
- (v) the current location of the asset;
- (vi) whether purchased from marital assets or obtained by gift or inheritance; and
- (vii) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(C) A schedule of all debts owed individually or jointly, identifying:

- (i) the date any obligation was incurred;
- (ii) the spouse in whose name the debt was incurred;
- (iii) the present amount of all debts and the monthly payments;
- (iv) the use to which the money was put which caused the debt to arise;
- (v) identification of any asset which serves as security for such debt; and
- (vi) an acknowledgement of whether each debt is a marital or non-marital debt and, if asserted to be a non-marital debt, an explanation of the legal and factual basis for such assertion;

(D) As to safe deposit boxes:

- (i) the name and address of the institution where the box is located;
- (ii) the box number;
- (iii) the name and address of the individual(s) who have access to the box;
- (iv) an inventory of the contents; and
- (v) the value of the assets located therein;

(E) Employment:

- (i) the name and address of the employer;
- (ii) gross monthly wage;
- (iii) payroll deduction(s), specifically identifying the type and amount;
- (iv) the amount of other benefits including transportation, employer contributions to health care, and employer contributions to retirement accounts; and
- (v) outstanding bonuses;
- (F) Other income: list all sources of other income as defined by Wyo.Stat.Ann. § 20-6-202(a)(ix), including the name and address of the source and the amount and date received;
- (G) As to retirement accounts or benefits:
 - (i) the name and address of the institution holding such account or benefits;
 - (ii) the present value if readily ascertainable;
 - (iii) the initial date of any account;
 - (iv) the expected payment upon retirement and the specific retirement date; and
 - (v) the value of the account at the date of the marriage if the account existed prior to marriage;

(H) As to custody or a change in custody, each A-party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody the each party shall disclose whether he or she believes a substantial change in circumstances exists and shall set forth disclose any facts and supporting documentation that the disclosing party may use to support his or her position comprising a substantial change in circumstances and disclose any supporting documentation.

(1.2) *Initial disclosures in custody and support actions where the parties are not married.* — In custody and support actions where the parties are not married, the following initial disclosures are required in original proceedings and in modification proceedings to the extent that they pertain to a particular claim or defense:

(A) As to custody or a change in custody, each A-party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody, the each party shall disclose whether he or she believes a substantial change in circumstances exists and shall set forth disclose any facts and supporting documentation that the disclosing party may use to support his or her position. comprising a substantial change in circumstances and disclose any supporting documentation.

Wy. R. Civ. P. Rule 26(c)(4) – Protection Order Amendment

Pending resolution of any motion under Rule 26(c) or 30(d), neither the objecting party, witness, nor any attorney is required to appear at a deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the disclosure or discovery at which the motion is directed pending further order of the court. Any motion for relief under this subdivision directed to a deposition must be filed and served as soon as practicable after receipt of the discovery request notice of deposition, but in no event less than three days prior to the scheduled deposition. Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is not well taken.

PROPOSED CHANGES

RULES OF CRIMINAL PROCEDURE, WYOMING COURT RULES (Page 435)

RULE 4. WARRANT OR SUMMONS UPON INFORMATION

- (a) Issuance – If it appears from a verified information, or from an affidavit or affidavits filed with the information, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue requiring the defendant to appear and answer to the information. Upon request of the attorney for the state the court ~~shall~~ **MAY** issue a warrant, rather than a summons.

(NOTE: This change would leave discretionary the issuance of a felony or misdemeanor warrant with the judge.)

However, the concern of the Circuit Court Judges is particularly with misdemeanor charges.

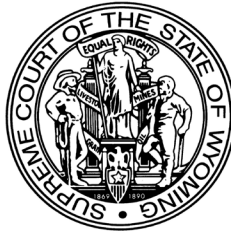
The following would address only that concern:

RULE 4. WARRANT OR SUMMONS UPON INFORMATION

- (a) Issuance – If it appears from a verified information, or from an affidavit or affidavits filed with the information, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue requiring the defendant to appear and answer to the information. Upon request of the attorney for the state the court shall issue a warrant, rather than a summons, **for any information containing at least one felony offense, and may for good cause shown by the state, issue a warrant for a misdemeanor offense.**

(NOTE: Good cause may partially be found in §7-2-102(b)(iii) that specifies when an officer may arrest. i.e. When a suspect will not be apprehended, may cause injury to self or others or cause damage to property, or may destroy or conceal evidence of the commission of a misdemeanor. The county attorney is free to express other reasons, such as, warrants already exist for the defendant or there is no known address for the defendant.)

SUPREME COURT OF WYOMING



DATE: September 16, 2019

TO: BJPA
FROM: Elisa Butler
RE: Judicial Education Committee

1. Judicial Orientation

Judicial orientation was provided to three new judges on July 23, 2019 in Cheyenne:

- Judge Conder: District Court Judge in the Ninth Judicial District for Fremont County;
- Judge Corpening: Circuit Court Judge in the Third Judicial District for Lincoln County; and
- Judge Hibben: Circuit Court Judge in the Eighth Judicial District for Goshen County.

Both the circuit and district court conferences participated extensively to assist in the orientations that took place at the Supreme Court over one full day. Thank you to those who presented and participated, which included: Chief Justice Davis, Justice Fox, Justice Kautz, Justice Boomgaarden, Justice Gray, Judge Perry, Judge Lavery, Judge Campbell, Judge Sharpe, Judge Kricken, Judge Rumpke, Judge Rogers, Judge Peasley, Judge Snyder, Judge Haws, Judge Williams, Judge Castano, Judge Lee, and Judge Phillips.

With the retirement of Judge Nena James and a new judge appointment pending, the Judicial Education Committee will work toward planning another judicial orientation in the upcoming months for the newly-appointed district court judge in the Third Judicial District for Sweetwater County.

2. Judicial Conference

The Judicial Education Committee is preparing for the upcoming Judicial Conference that will be held in cooperation with the Wyoming State Bar and the Bar Conference. The Conferences will be held at Jackson Lake Lodge located near Jackson, Wyoming. The Judicial Conference will take place over a two-day period beginning on Tuesday, October 1, 2019. The agenda for the Judicial Conference has been reviewed and approved by the Judicial Education Committee and is attached hereto.

DAY 1 - OCTOBER 1, 2019			
<u>Time</u>	<u>Program</u>	<u>Speakers</u>	<u>Location</u>
9 - 9:15 a.m.	Judicial Conference Welcome	Chief Justice Davis	Wrangler/Prospector Room
9:15 - 10:15 a.m.	Criminal Update for the Judiciary	Michael A. Blonigen Donald L. Fuller	Wrangler/Prospector Room
10:15 - 10:30 a.m.	Break		
10:30 - 11:30 a.m.	Civil Update for the Judiciary	Anna Reeves Olson	Wrangler/Prospector Room
11:30 - 11:45 a.m.	Break/Lunch Buffet		
11:45 a.m. - 12:45 p.m.	Domestic Violence, Relocation and Alienation	Dr. Arnold T. Sheinvold	Wrangler/Prospector Room
12:45 - 1:00 p.m.	Break		
1:00 - 2:00 p.m.	Domestic Violence, Relocation and Alienation	Dr. Arnold T. Sheinvold	Wrangler/Prospector Room
2:00 - 2:15 p.m.	Break		
2:15 - 3:00 p.m.	TBD	Steve Lindley	Trappers Room
3:00 - 3:45 p.m.	Ideas for Future of Wyoming Juvenile Court	Judge Robert R. Hofman Judge Robin D. Sage	Homesteader Room
3:45 - 4:00 p.m.	Break		
4:00 - 5:00 p.m.	CONFERENCE MEETINGS		
	District Court Judges' Conference		Wrangler/Prospector Room
	Circuit Court Judges' Conference		Homesteader Room
DAY 2 - OCTOBER 2, 2019			
<u>Time</u>	<u>Program</u>	<u>Speakers</u>	<u>Location</u>
6:45 - 8:15 a.m.	CJP Breakfast - Reasonable Efforts	Judge Leonard P. Edwards	Trappers Room
8:15 - 11:45 a.m.	PLENARY SESSION WITH BAR		
	Easiest Catch: Don't Be Another Fish in the Dark Net	Mark Lanterman	Moose/Grizzly Room
12 - 1:20 p.m.	Judicial Luncheon	Hon. Martin Clark	Explorers Room
1:30 - 4 p.m.	Evidence Law for Wyoming Judges: Lay and Expert Opinons and Impeachment	Prof. Stephen D. Easton	Wrangler/Prospector Room
4 - 4:15 p.m.	Break		
4:15 - 5 p.m.	CONFERENCE MEETINGS		
	District Court Judges' Conference		Wrangler Room
	Circuit Court Judges' Conference		Prospector Room



Circuit Court of the Third Judicial District Sweetwater County, State of Wyoming

John R. Prokos
Circuit Court Judge

Kori Rossetti
Clerk of Court

Craig L. Jones
Circuit Court Judge

50140C US HWY 191 South, Suite 200
Rock Springs, WY 82901

307-922-5220 (Phone)
307-352-6758 (Fax)

July 24, 2019

Chief Justice Michael Davis
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, Wyoming 82002

Re: Administrative judge, annual rotation.

Justice Davis:

It was approximately July 18, 2018, when Justice Kautz engaged in the impartial coin toss that established who would be the administrative judge in the Circuit Court of the Third Judicial District, Sweetwater County for 2018-19. I won the toss.

The plan was and still is, to rotate the position on an annual basis. We are at the anniversary of the first year and it is now time to designate Judge Jones as the administrative judge for 2019-2020.

Please accept this letter as my request to you and the BJPA to formally recognize Judge Jones in the role of administrative judge for what shall now be known as the "Administrative Year." As always, thank you to everyone on Capital Avenue for your continued support.

Sincerely,

John R. Prokos
Circuit Judge
Third Judicial District

cc: Judge Craig Jones
Lily Sharpe
Kori Rossetti

A. GENERAL POLICY STATEMENT FOR SUPERVISION OF CIRCUIT COURT CLERICAL STAFF IN COUNTIES WITHOUT A RESIDENT CIRCUIT COURT JUDGE

B. GENERAL POLICY STATEMENT FOR SUPERVISION OF CIRCUIT COURT CLERICAL STAFF IN COURTS WITH MULTIPLE JUDGES IN A SINGLE COURT LOCATION

C. SPECIFIC ACTIONS:

- Dated this 28th day of June, 2007.

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2018

IN THE MATTER OF THE DISESTABLISHMENT)
OF THE REDACTION COMMITTEE)

ORDER DISESTABLISHING THE REDACTION COMMITTEE

THIS MATTER having come before the Court by direction of the Board of Judicial Policy and Administration and this Court deeming it proper to disestablish the Redaction Committee created by order of this Court on March 16, 2017 hereby,

FINDS the Redaction Committee has fulfilled the purpose for which is was established and,

ORDERS the Redaction Committee is disestablished and all members are relieved of their obligation to serve on the Redaction Committee.

DATED this _____ day of September, 2019.

FOR THE COURT

/s/

MICHAEL K. DAVIS
CHIEF JUSTICE

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2019

IN THE MATTER OF THE APPOINTMENT)
AND/OR REAPPOINTMENT OF MEMBERS)
TO THE BOARD OF JUDICIAL POLICY AND)
ADMINISTRATION)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

SEP - 4 2019

PATRICIA BENNETT, CLERK

by DEPUTY

**NUNC PRO TUNC ORDER APPOINTING AND/OR REAPPOINTING
MEMBERS TO THE BOARD OF JUDICIAL POLICY AND ADMINISTRATION**

THIS MATTER came before the Court sua sponte to formally appoint members to the Board of Judicial Policy and Administration, and it being necessary to appoint or reappoint members to this Board; it is therefore

ORDERED that the following individuals be, and they hereby are, reappointed to the Board of Judicial Policy and Administration; and it is

FURTHER ORDERED that the Board of Judicial Policy and Administration shall consist of the following members:

Michael K. Davis, Chairperson
Chief Justice, Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002
Term Expires: June 30, 2022

Lynne Boomgaarden
Justice, Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002
Term Expires: June 30, 2021

Kate M. Fox
Justice, Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002
Term Expires: June 30, 2020

John G. Fenn
District Court Judge
224 South Main St., Ste. B11J
Sheridan, WY 82801
Term Expires: June 30, 2020

Catherine R. Rogers
District Court Judge
309 West 20th Street
Cheyenne, WY 82001
Term Expires: June 30, 2022

Thomas W. Rumpke
District Court Judge
500 South Gillette Ave., Suite 2600
Gillette, WY 82716
Term Expires: June 30, 2021

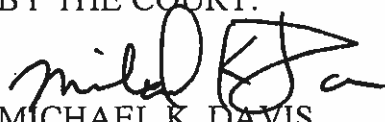
Robert A. Castor
Circuit Court Judge
525 Grand Avenue, Room 400
Laramie, WY 82070
Term Expires: June 30, 2022

Curt A. Haws
Circuit Court Judge
P.O. Box 1796
Pinedale, WY 82941
Term Expires: June 30, 2021

Wesley A. Roberts
Circuit Court Judge
1160 Major Avenue, Suite 100
Riverton, WY 82501
Term Expires: June 30, 2020

DATED this 4th day of September, 2019.

BY THE COURT:


MICHAEL K. DAVIS
CHIEF JUSTICE