

Board of Judicial Policy and Administration  
Minutes  
September 27, 2007

The Board of Judicial Policy and Administration met in Cheyenne on September 27, 2007. In attendance were Chief Justice Barton Voigt, Justice Jim Burke, Judge John Brooks, Judge Jeff Donnell, Judge Mike Huber, Judge Robert Castor, and Judge Victoria Schofield. Holly Hansen, Joann Stockdale, Ronda Munger, and Steven Dreher also attended. Justice Marilyn Kite participated by phone.

**Old Business**

**Committee Updates**

**Information Technology Committee (ITC)** - Chief Justice Voigt reported to the Board that the Judicial Technology Taskforce had been dissolved and has been replaced by the Information Technology Committee (ITC). The committee has met a couple of times. The committee members are Chief Justice Voigt and Holly Hansen from the Supreme Court, Judge Scott Skavdahl as the District Court Judge, Judge Rob Denhardt as the Circuit Court Judge, Steven Dreher, Frosty Sprout, and James Bothamley from the Supreme Court IT staff. The committee requested the Board change the name of the Information Technology Committee (ITC) to Court Technology Advisory Committee (CTAC). Judge Jeff Donnell moved and Judge Robert Castor seconded a motion to approve the proposed change. Motion carried unanimously. The second proposal CTAC made was to no longer use court automation funds for grants in individual court projects. The committee felt there needed to be some guidance from the Board on how to appropriate these funds to benefit the judiciary as a whole. Wyoming Statute 5-2-120 allows for “purchase, maintenance, and operation of computer hardware and software” and the committee wanted the Board to know that some of this money was being used to pay for salaries to maintain technology equipment. Judge Mike Huber agreed that W.S. 5-2-120 should include paying court technology salaries as a part of “operation” under this statute. The Legislature appropriates or approves the expenditure of the funds out of the account and already knows by appropriation where these funds are being applied. District Court Clerks, by letter of request to the Chief Justice, have requested to have a district court clerk on the CTAC. Steven Dreher, Judge Scott Skavdahl, and Sergio Gonzales from the CTAC met with the District Court Clerks to let them know about the function of CTAC. Steven reported to the Board that Tina Wood from Sundance showed interest in becoming an active participant in the committee on behalf of the District Court Clerks. Discussion was made as to whether to invite a Clerk of District Court to be on CTAC. Judge Donnell moved and Justice Burke seconded a motion to add a district court clerk to the committee. Motion carried unanimously.

**Court Security Task Force** - Judge Jeff Donnell reported on the work of the Court Security Committee. Judge Donnell has scheduled a meeting with Tony Ross on October 4<sup>th</sup> to discuss the draft bill for the creation of the Wyoming Court Security Commission. In addition to working with the Legislature, the Committee is working to see what possibilities there are with what is currently in place right now. The Law Enforcement Academy is holding a one week course on Court and Building Security Training. Chief Justice Voigt made some initial proposals to the Governor, however, the

Governor has not shown interest in the proposals. Judge Donnell would like for the security funds to be allocated on a needs basis and not a political basis. One way to accomplish this would be for the funds to be appropriated to the Supreme Court, and then the Board would come up with a formula for distribution to the counties. Discussion was also raised about the Legislature allocating money directly to individual counties, however, Holly Hansen pointed out that the money must go through a state entity before going to the counties. The committee needs to work with counties who already have their own protocol on court security.

**E-Filing Committee** - Chief Justice Voigt, Chair of the e-filing committee, reported that the first half of the two part structure for the electronic case management system at the Supreme Court is done and operating internally. Initially, the second phase of the e-filing system would have extended the system into the court chambers, but that phase has been put on hold and will become stage 3. E-filing at the Supreme Court will become stage 2 and will start with criminal cases which will mainly deal with the Attorney General's Office and the Public Defender's Office. Then when the criminal cases are up and running, the civil cases will be added into the e-filing process. C-Track is finalizing the software and expects that the e-filing for criminal cases will be underway by the end of the year. Chief Justice Voigt assured the Board that e-filing will not be attempted in the trial courts without some extensive study of the issue. Because the e-filing system will be more complicated in the trial court setting, the Board will be involved. E-filing will include greater public access to records.

**Judicial Retirement Committee** - Justice Marilyn Kite reported to the Board the 6 options that were being considered for the judicial retirement plan. Discussion was made regarding the full retirement age of 65 versus age 60 and the early retirement age of 55 versus age 50. It is Justice Kite's belief that the Legislature got the impression that judges wanted out of the system too early and that the retirement age of 60 hurt the bill during the last session. Judge Castor advised the Board that options 4, 5, and 6 were not being offered by the retirement committee, since it would significantly increase the necessary appropriation, and he didn't think the Board should consider those options. Options 4-6 would have added the eight circuit judges who are still in the old system. Judge Donnell moved and Judge Castor seconded a motion to remove options 4-6 for voting purposes. Motion carried unanimously. Holly Hansen pointed out to the Board that since this is a budget session the bill would require a two-thirds vote just to get it introduced. Judge Donnell moved and Judge Castor seconded a motion to recommend Option 3, which provides full retirement at age 60 and early retirement at age 55. Motion carried unanimously.

**Legislative Committee** – Justice Jim Burke reported that the Legislative Committee has been discussing the salary bill and is considering using the percentage approach for salary increases. The percentage approach is based upon the Governor request for the executive branch employees. It was recommended that one judge in each judicial district be in charge of maintaining contact with a legislature in their district in regards to the retirement bill and salary bill.

### **Follow-up on Dale Lefever**

Holly Hansen provided the Board with a summary of the Judicial Council workshop conducted by Dale Lefever in Jackson. The attending judges voted to focus attention on maintaining trust and confidence in the Missouri Plan, which is the selection process for Wyoming judges. The Board agreed that a proactive stance on this issue would be the best course of action. The Board also agreed to implement some steps to open up the selection process to the public and the bar as much as possible. Chief Justice Voigt agreed to provide additional press releases in the future, to the communities that have judicial vacancies. Justice Burke moved and Justice Kite seconded a motion to create a committee to work with Gay Woodhouse and the bar to develop a PowerPoint presentation to be distributed to the local communities that provides information about the judicial selection process. Justice Burke has agreed to chair that committee. The Board continued discussion regarding establishing a best practices approach to judicial education for each of the judicial conferences. The conversation centered around the experience of new judges when they come on the bench, and how the only formal educational piece that is provided is trial by fire - or in some instances a seasoned judge provides some mentoring, but not on a consistent basis. The Board requested the circuit judges and district judges discuss the best practices concept with their respective conferences and report back to the Board at its December meeting.

### **Contract with WPAP (Wyoming Professional Assistance Program)**

Holly Hansen reported to the Board that she has had several conversations with the George Vandel of the Wyoming Professional Assistance Program. Initially, it was thought that the judges would be covered under the WPAP agreement signed by the Wyoming State Bar, however, that does not now appear to be the case. The judiciary will be moving forward with the drafting of a contract to formalize judicial participation in the WPAP. There are two ways that judges could take advantage of the program. One way would be voluntarily where the judge could initiate the assistance. The second way would be involuntarily where the Commission of Judicial Conduct would get involved. It was determined that there would need to be a separate contract with the WPAP as the judges would not be covered by the Wyoming State Bar contract. The cost would be \$27.50 per judge, which would be around \$2,000.00 per year. The goal is to get the program in place by January 1, 2008. Holly Hansen will work with George Vandel to enroll the judges in this program.

### **Code of Judicial Conduct**

Chief Justice Voigt gave a report to the Board regarding the history of the ABA Code of Judicial Conduct. In 1991, the Supreme Court adopted the ABA Model Code. The ABA has recently adopted a new Model Code of Judicial Conduct. It was discussed that the Board may want to look into replacing the old Code of Judicial Conduct with the new Model Code. The new Model Code that the ABA is adopting is structurally more like the Code of Professional Conduct for Lawyers. The Board decided to create a Committee to look at the newly revised Code of Judicial Conduct and see if the amendments need to be adopted. Justice Kite recommended that John Burman be contacted to review the amendments and if he wasn't available, then the Board could turn to the National Center for State Courts to find someone to moderate the committee. Judge Castor volunteered to work on the committee. The Board asked Ronda Munger to contact John Burman and see if he would be interested in chairing the Model Code Committee.

### **Rule 103 Uniform Rules for District Court**

Ronda Munger made a follow-up report to the Board with regards to proposed changes to Uniform Rules for District Courts Rule 103, which requires out of state attorneys that are licensed in the State of Wyoming to obtain a local address. Judge Perry was asked to poll the District Court Judges and received responses from 7 District Court Judges who voted to leave Rule 103 as is, 1 District Court Judge had no opinion, and the remaining District Court Judges did not respond. Ronda polled the District Court Clerks and received 5 responses to repeal Rule 103. At the District Court Clerks meeting in Casper, the issue came up for discussion again and the clerks stated that they would like the rule repealed. However, the clerks requested the rule require the attorneys to put their Wyoming Bar number on their letterheads and pleadings, so the clerks know that they are licensed attorneys in the State of Wyoming. The Board agreed that just because an attorney has a Wyoming address does not mean that they are licensed to practice law here. Justice Kite moved and Judge Schofield seconded a motion to repeal the portion of Rule 103 that requires attorneys to maintain a Wyoming address and require attorneys to put their Wyoming Bar number on their rulings and correspondence. Motion carried unanimously.

### **Notary Policy**

Ronda Munger reported to the Board regarding the status of the Notary Policy. By statute, clerks of courts have the power to witness and authenticate documents. Currently, some courts are paying the notary bonds for some clerks to become notaries through the Secretary of State's Office and that practice is not really necessary since W.S. 32-1-105 gives clerks notary abilities. The Board asked the Clerks Advisory Council to draft a policy to outline the guidelines in providing notary services. A policy was drafted that gave each court the option to decide what documents could be notarized by the clerks. The Board declined to endorse a different policy in each court and asked the Clerks Advisory Council to redraft the policy to include the types of documents a clerk of court could witness. A guideline was added to the policy that stated only legal documents to be filed before the court in the clerk's district or the Supreme Court could be notarized by clerks of court. One guideline in the policy that concerned the clerks was the requirement to keep a journal of all notarial acts that were performed. They explained that if the only documents being notarized by the clerks were legal documents that were to remain in that court's files, then why would there be a need to keep a journal of those notarizations. Judge Castor moved and Justice Burke seconded a motion to remove the guideline requiring clerks of court to maintain a journal of all notarial acts they perform. Motion carried unanimously. In addition, discussion was made as to whether the policy should be referred to a "Notary" policy or follow the statutory language in W.S. 32-1-105 which allows clerks of court to administer oaths or proof of acknowledgements. Chief Justice Voigt suggested that the proposed policy needed some redefining of the notary and requested the policy be re-written and brought back before the Board in December. One other issue raised was whether the notary statute applied to elected clerks of court or all clerks of court. The Board felt that the wording in the statute applied to anyone who works as a clerk in a court of record. Action on the Notary Policy was tabled until the December meeting.

### **Weighted Workload Study**

Holly Hansen provided the Board with copies of the final Weighted Workload Study. The Board discussed the results of the workload study on a district by district basis. After a lengthy discussion, Judge Castor moved and Judge Huber seconded a motion to ask the Supreme Court to contact the local judges in Johnson County and consider including a request in the Supreme Court budget for a circuit judge in Buffalo. Motion carried unanimously. Judge Castor moved and Judge Donnell seconded a motion to contact the local judges in Teton County and then move forward with a request for a district judge to be placed in Pinedale. The additional district judge for Pinedale would have to be requested via a draft bill with a legislative sponsor. Motion carried unanimously.

### **New Business**

#### **Terms of Court**

Chief Justice Voigt led a discussion concerning the constitution requiring terms of court. Since the term of court protocol has not been used, the question was whether terms of court needed to be implemented. Judge Donnell explained that terms of court influenced jury panels, since the 6 month term is how long the jury panels were in effect. There was also discussion that prior to 1999 a judgment automatically operated as a lien against real property the judgment debtor as of the date of the first day of term of court. After a lengthy discussion the Board took no action in regard to terms of court.

#### **Model Standards of Conduct for Mediators**

Chief Justice Voigt engaged the Board in a discussion regarding the adoption of model standards for mediators. The Board sent the suggested Model Standards of Conduct for Mediators as set forth by the American Bar Association and the American Arbitration Association and Association for Conflict Resolution to the Wyoming State Bar. The Bar sent the information out. One response was that maybe there needed to be some guidelines to mediation. Another response was that mediation is not a court process and court rules do not need to oversee the mediation process. Judge Brooks believes the rules of the Model Standards of Conduct for Mediators operate under the assumption that all mediation is voluntary, which is not true in Wyoming. A second concern that he expressed was that the model rules state that all mediators have to be impartial at all times. Judge Brooks explained that sometimes in mediation, the mediators need to tell people that they are being unreasonable and this would be a violation under those standards. The Board decided not to recommend the adoption of the rules, but instead requested that the Clerk's Advisory Council continue with their plans to put a pamphlet together. Justice Kite moved and Judge Brooks seconded the motion not to adopt the Model Standards of Conduct for Mediators and create a pamphlet for the public. Motion carried unanimously.

#### **Unified Juvenile Court System**

Chief Justice Voigt brought up the issue of a Unified Juvenile Court System because he is concerned that future legislation may be drafted to deal with juvenile issues and he wanted to have raised the issue with the Board. Currently, there is an initiative within

the state to have all juveniles consistently appear in the same court. Judge Huber expressed concern that the judiciary be more proactive with the juvenile court system and lead the change instead of being swept along. He advised the Board that the Circuit Courts and the Municipal Courts have no resources for dealing with juvenile cases. He feels that there should be a sense of urgency to get some probation resources to deal with misdemeanor juveniles. Judge Castor argued that this issue should not be up to the judiciary since it is the prosecutor's prerogative to decide how these juvenile cases are charged. The Board took no action on this issue.

**Drug Court Steering Proposed Legislation**

Chief Justice Voigt gave the Board an update on the activities of the Drug Court Steering Committee. The committee is proposing legislation that will change the current process to a situation where there will be only one treatment court per county. The money that now flows from the Department of Health to each of the treatment courts will be sent directly to the County Commissioners in each county, and it will be the county that hires the treatment court coordinators and case managers. The Board discussed the treatment courts that currently exist and concluded that there are changes that need to be made to the current system of creating treatment courts.

Schedule of Future Meetings

December 6, 2007	Casper
March 26, 2008	Cheyenne
June 25, 2008	Casper
September 17, 2008	Cheyenne
December 4, 2008	Casper

Board adjourned 2:40 p.m.

Approved by email on November 7, 2007