

Board of Judicial Policy and Administration
Minutes
December 1, 2010

The Board of Judicial Policy and Administration met in Cheyenne on December 1, 2010. In attendance in person in Cheyenne were Justice William Hill, Judge Tom Campbell, Joann Odendahl, Steven Dreher and Becky Craig. Those in attendance by video conference were Chief Justice Marilyn Kite, Justice Michael Golden, Judge John Brooks, Judge Dan Forgey, Judge Robert Castor, Judge Wes Roberts, and Judge Dan Price. Ronda Munger participated by phone.

Old Business

Committee Updates

Court Security Commission – Justice Hill advised the Board that the Court Security Commission issued its report, but that the commission has not met since that time. It is assumed that the report is being studied and that comments will be forthcoming. There may be a new director of the Office of Homeland Security, since the current director, Joe Moore, has been nominated to the position of United States Marshal. The new director is expected to come onto the commission, but it is yet unknown who the chairperson of the commission will be.

Access to Justice Commission – Chief Justice Kite reported to the Board that the AJC held a public meeting in Cheyenne on October 28, 2010 using the video conferencing technology. All concerned were very pleased with how it operated and how the commission was able to reach out over the state to get comments from individuals who may not have participated had the meeting been centrally located. There were people attending via video conference from Cheyenne, Cody, Casper, Rawlins, Lander and Jackson. Many constructive ideas were shared on how services might be delivered. The report that was required by statute was delivered to the Legislature, and is available to the public on the judiciary's website. An initial seven member board of directors is being established for The Wyoming Center for Legal Aid ("The Center"), which is the new non-profit that will handle the primary aspects of the program. This initial group may select the additional members of the board. An attempt is being made to recruit diverse board members from across the state, particularly those with agricultural, business, or legislative backgrounds and interests. It is hoped that the board will be in place and will have their initial meeting in the month of December since the funds are accumulating and will need to be administered. By this time next year, the organization should be up and running and providing services in all parts of the state.

CTAC – Joann Odendahl informed the Board that the Court Technology Advisory Committee has not met for a couple of months. Judge Skavdahl will be leaving the CTAC.

Judge Michael Davis has agreed to serve on the committee and has met with Justice Voigt to get an update on the status of the various projects.

Electronic Resource and Internet – Judge Brooks reported that he, Judge Castor and Steven Dreher examined and compared the previous Electronic Resource & Internet Use Policy with the proposed draft, and have developed a new policy, which they presented to the Board for consideration and adoption. Discussion was held, with changes being suggested. Judge Castor moved and Judge Roberts seconded a motion to adopt the policy with two changes. Motion carried unanimously.

Order on Confidential Records – Chief Justice Kite informed the Board that the Clerks of the District Court have raised concerns that they feel they have statutory responsibilities in a number of areas to keep certain records confidential, and they are worried that sharing their data with the Supreme Court or other courts could be problematic. She explained that part of the intent of the Order on Confidential Records was to make it clear that any authorized party who accesses the data is governed by the same kinds of confidentiality restrictions that apply to a district court clerk. It may be necessary in the future to request some statutory changes that deal specifically with adoption records, paternity records, and areas that go beyond normal juvenile information.

Discussion was also held on the effect that the Redaction Policy will have on the court clerks and other individuals/agencies that are involved with the judiciary. Chief Justice Kite pointed out that there has been a concerted effort made to accommodate the concerns of the clerks, the court reporters and the lawyers in the creation of the policy. Child Support Enforcement has recently voiced concerns about the impact this is going to have on their department. Ronda Munger advised that all agencies that file documents that include identifiers will need to file two sets of documents: a redacted version and an un-redacted version. The redacted document will be put in the part of the case file that is available to the public, and the un-redacted document will be put into the confidential part of the case file. The identifiers that are required to be redacted are the dates of birth (revealing only the year of birth), social security numbers or account numbers (revealing only the last four digits), and the names of minor children (to reveal only the minor child's initials). The courts obviously need the un-redacted information to function, but the public does not. Chief Justice Kite stated that this won't be an easy process, but remains convinced that this is a worthy undertaking to protect Wyoming citizens against identity theft. This will become particularly important as the courts move to electronic filing.

District Court Case Management System – Steven Dreher advised the Board that the system is coming along nicely. He indicated, however, that problems seem to develop in any endeavor of this size, which in this case, is with entity management. LT Court Tech is going back and making sure that the method by which the participants are identified is indeed correct. This particular aspect of the project is running behind, which may extend the roll-out date by approximately five months. After the recent clerk elections, there have been two changes to the members of the development team, i.e. Janice Sexton and Nickie Arney. The two pilot project counties will now be Albany County and Uinta County.

Peremptory Disqualification Rule 40.1(b)(1)

Judge Brooks informed the Board that the district judges discussed the Task Force's proposed changes to this rule at their September meeting, however, they did not have enough time to take a vote. The issue will be raised for an official vote at their meeting on December 2nd, and the outcome will be conveyed to the Board.

Joint Judiciary Committee

Civil Jurisdiction in Circuit Courts – Chief Justice Kite reported on the proposal to change the jurisdictional limits in the circuit courts. She explained that the current jurisdictional limits, which were established in 1985, are well past the timeframe of when they should have been increased. The committee members, almost unanimously, have given their support to this change. The district court clerks conducted research on their own, looking at data in a large, medium, and small county, and counting the number of civil complaints that were \$50,000 or less. They concluded that this range involves a relatively small number of cases, and are not unanimously opposed to the proposal. There are some circuit courts that would be impacted more than others, however, the new floating clerk that is working around the state would help ease some of the burden of any extra workload. The e-citation project will help relieve the duties of the circuit court clerks tremendously, and eventually, electronic filing will alleviate many problems as well. Judge Roberts pointed out that the circuit court judges did not propose the increase in the small claims jurisdiction amount to \$7,500, and he feels that such an increase would be problematic and burdensome. He explained that even the cases at the \$5,000 limit are difficult to sort through because people do not understand how to present or defend their lawsuits, and that the circuit court judges would spend more time sorting through a \$7,500 small claims case than they would a \$50,000 collection case. Chief Justice Kite agreed that it is essential to get judges out of the role of being mediators.

Chief Justice Kite explained that there is also legislation that proposes changes to the statute that deals with the district judges assigning matters to the circuit court judges. The statute presently requires that if the case being assigned is for an amount above \$20,000, the consent of all of the parties to such assignment is required. It is felt that if the circuit court judges' jurisdiction is increased to \$50,000, then a district judge should be able to assign any case above that amount to a circuit court judge, up to perhaps \$75,000, before requiring the consent of the parties. Another bill proposes that retired circuit court judges be appointed to cases in the same manner as retired district judges are now. This bill is very straight forward, non-controversial and has had unanimous support. It was originally intended that the circuit court judge retirement age of 70 would be addressed to make it consistent with the other judges' retirement age, however, the Joint Judiciary Committee felt that this was age discrimination, and deleted it. The committee appears to be undecided on what the retirement age should be for any of the judges.

Judicial Surety Bond – Joann reminded the Board that at the last meeting it was agreed to move forward on discontinuing the requirement that circuit court judges and magistrates need to be bonded. Since it wasn't an interim committee topic, the Joint Judiciary Committee was unable to address the issue. Hopefully a representative will be

enlisted to sponsor and introduce this particular bill change so that it can be accomplished this session.

New Business

Rule 1 Initiative

Chief Justice Kite reported that the Rule 1 Committee has three different courses on its agenda: to look at our own Rules of Civil Procedure as they apply to all cases, to examine how the rules could be improved, and to address the issues of the time and expense involved in civil litigation. Judge Norman Young, the current President of the District Court Conference, has agreed to lead the effort. He will gather suggestions from judges and lawyers, and will develop a proposal that will be presented to the BJPA and to the Civil Rules Committee.

Domestic Relations Committee – Chief Justice Kite spoke about this issue, and the consensus that the system is broken: the process takes too long; it is too expensive; it further divides families; and it creates problems with regard to custody and in mending any kind of emotional damage that the divorce has done. The domestic relations piece was cut out of the Rule 1 Initiative to allow a closer look at the problems and the process. She feels that there is a lot going on nationally to guide us on how the system could be better structured, and gave the example of the Wyoming probate system being revised into a relatively prompt and inexpensive process. She reported that Judge Kautz and six or seven other judges have volunteered to devote their time to this issue. They have identified 20-25 lawyers from across the State who have either indicated an interest in this issue, or their judges have suggested that they be recruited. Judge Kautz will be working with Ronda Munger and Rebecca Love Kourlis's group in coming together with this committee to see what can be developed. It is hoped that within the next six months to a year they will have a proposal in place.

Circuit Court Judges Rules Committee-Rule 16.1 – Chief Justice Kite informed the Board that in Joint Judiciary Committee discussions it was suggested that a set of simplified rules for the circuit courts should be developed to correspond with the proposed jurisdictional changes. Judge Roberts explained that regardless of whether the jurisdiction is changed or not, a committee has been formed, consisting of himself, Judge Haws, Judge Castor, Judge Forgey, Judge Patchen, Judge Arp, Judge Greer and Judge Waters, to develop simplified rules for application in the circuit courts. They received samples of rules that are used in Colorado and Oregon from Judge Kourlis, and decided that as a platform, they liked Rule 16.1 of the Simplified Rules of Procedure in Colorado. The Rules Committee met again two weeks ago, and decided to have the Institute for the Advancement of the American Legal System put together a proposed simplified 16.1 customized for Wyoming. There is now a draft of those proposed rules, and they will meet the week of December 13th to discuss them. They may be far enough along in January to share the draft with the Board. Chief Justice Kite suggested that once this is developed, that it could possibly be used as a model for simple cases in the district courts.

Legislative Breakfast

Chief Justice Kite reminded the Board about the Legislative Breakfast scheduled for January 12th at 7 a.m. Joann explained that in terms of the budget this year, \$80,000 is being requested for a time study to be conducted for the circuit court clerks in order to clarify which vacant positions in the circuit courts should be filled. If the jurisdictional limits are changed, this study would also be helpful in identifying what impact the change had on the circuit courts.

Board Adjourned.

Schedule of Future Meetings:

March 18, 2011

June 1, 2011

September 12, 2011

December 1, 2011

Approved by email on January 26, 2011.