

Board of Judicial Policy and Administration
Minutes
December 4, 2008

The Board of Judicial Policy and Administration met in Casper on December 4, 2008. In attendance were Chief Justice Bart Voigt, Judge John Brooks, and Judge Wes Roberts. Ronda Munger also attended. Justice Marilyn Kite, Justice Jim Burke, Judge Jeff Donnell, Judge Robert Castor, and Judge Victoria Schofield participated by phone. Judge Tim Day, Rick Lavery, Dona Playton, Leigh Anne Manlove, and Professor John Burman participated at some point during the conference call by phone.

Old Business

Committee Updates

Court Technology Advisory Committee - Chief Justice Bart Voigt advised the Board that CTAC has not met since the last Board meeting, but he did inform the Board that the Supreme Court will be requesting funds in the 2009 General Session for technology needs. There are three areas that funding is being requested: e-citations, state bar computer software, and district court case management system funds. The highway patrol and the Sheriff's and Chiefs Association requested the Supreme Court ask for funding to provide equipment for writing citations electronically in law enforcement vehicles. This would be the first step in electronic filing for the circuit courts. The second request for funds is to purchase software for the State Bar so that we can have Wyoming attorney information in a real-time fashion. The third item the Supreme Court is requesting money for is the case management system for the district courts. If we are ever going to have the ability to share information and accomplish e-filing in the district courts, it is imperative that they be on the same system. The money requested will be used to develop a district court case management system. This will also facilitate compilation of data in the data warehouse.

Court Security Commission - Judge Jeff Donnell advised the Board that the Court Security Commission met in August and divided itself into subcommittees. The subcommittees will be discussing what types of officers should be providing security, various training issues, officer coverage issues, and other details. The full commission will be taking those recommendations under consideration at the next meeting. Judge Donnell also informed the Board that Senator Burns suggested setting up a pot of money to be used for high security or high profile cases, such as gang cases, death penalty cases and the like. The commission sent a letter to Senator Burns endorsing that idea. The fund may be housed in one of the Executive Branch agencies, as the courts do not actually manage the security from within.

Committee to review the Code of Judicial Conduct - Judge Bob Castor and John Burman made a report to the Board regarding proposed changes to the Code of Judicial Conduct. The current Code of Judicial Conduct was adopted in 1990 and was an exact replica of the code recommended by the ABA. The current code is not easy to

understand and does not address the retention election process. The Committee decided to scrap the current code and attempt to modify the 2007 ABA Code. Professor Burman provided an overview of the process, summarized the changes that the committee proposed, and highlighted a few of the tough issues. The Committee met by conference call every other week for about a year. The committee began with Cannon 4, because it relates to elections. Judge Castor provided a lot of guidance in this section. The most controversial issue was addressing when a judge should be allowed to respond or actively participate in a retention election. The Committee decided that a judge should be able to participate when there is active opposition to his/her retention. The overall thought was that a judge should not become involved in politics, unless there is an attempt to unseat the judge. This was a compromise position. The Committee then looked at the other Cannons, word by word. In Cannon 2 (2.8 - interaction with Jurors), the committee recommends Judges be allowed to thank jurors for their service. Rule 2.9 (ex parte contact) generated a lot of discussion. Ultimately, the committee came up with a compromise in attempting to balance the interests of everyone. In Cannon 3 (3.6 - outside organizations), the Committee created a comment to provide some guidance for those judges who would like to be involved in outside organizations. As proposed, Professor Burman believes that the code now reflects the unique circumstances of Wyoming. Overall, the Committee attempted to keep judges above the fray, so that it enhances the integrity of the bench. At the conclusion of the process, there are still two areas that need addressed in the Code. The code does not apply to administrative law judges or hearing officers, and Professor Burman believes at some point they should have a code of their own. The code also does not address the issues that arise in "drug courts". Although drug courts are not really courts, they are presided over by judges in black robes. There is a section that says, "problem solving courts may be subject to other uniform rules". The word uniform is not in the ABA code. Judge Robert Castor moved and Justice Marilyn Kite seconded a motion to approve the Code of Judicial Conduct as proposed. The motion carried unanimously.

Court Records Committee - Chief Justice Voigt provided an update on the Court Records Committee. The records committee was created by the Board to draft a policy or set of rules regarding court records -- what is confidential, what is public record, etc. Chief Justice Voigt provided an initial draft to the committee. Carol Thompson, Supreme Court Deputy Clerk, drafted a second policy. The committee will be meeting on December 11th in an attempt to combine the two policies.

Access to Justice Commission - Justice Jim Burke, chair of the Access to Justice Task Force, and several members of that task force made a presentation to the Board requesting a recommendation from the Board to the Supreme Court to establish an Access to Justice Commission. Justice Burke provided a brief history of the task force and outlined the work that had been done by the task force. The task force was asked to study and make a recommendation on whether there should be an Access to Justice Commission in Wyoming. In making that recommendation, the task force focused on what the needs are for legal services in Wyoming, and then also focused on Rule 1 of Wyoming Rules of Civil Procedure which requires the just, speedy and inexpensive determination of every action. Justice Burke informed the Board that the Wyoming Legal Services Corp. had relinquished its federal contract and closed its doors in November of 2008, leaving open cases and the citizens of this state without the legal services program. He explained that the task force has spent most of its time dealing with that issue. At

present time, there are a few service providers for legal services in Wyoming: the Legal Services Corp. (LSC) provides grant funds in the amount of \$650,000 annually; the U.W. College of Law provides a legal clinic and a domestic violence clinic; the GAL program is funded by the State of Wyoming; the State Bar Foundation runs the IOLTA program which administers grant funds; and then there are the pro bono efforts of the Wyoming Bar. The loss of Wyoming Legal Services created a sense of urgency for the task force. The task force met with several service providers in Laramie in October, and held a meeting in November at the State Bar Office with the LSC representatives. The task force meets every other Tuesday by conference call. The task force unanimously agrees that the Supreme Court should establish the Access to Justice Commission. Rick Lavery discussed a proposed order creating an Access to Justice Commission. The order includes members of the court, members of the bar, and members of the legal community. Chief Justice Voigt asked whether or not the Legislature should be creating this commission, like the court security commission, or whether it was appropriate for the Court to create this commission. Justice Kite explained that the success of this type of effort is heavily weighed on whether or not there is support of the Judiciary, and she requested that the Board recommend the Court create the commission. Although the commission will eventually request funds from the Legislature, for now Judge Day concurred with Justice Kite in the belief that the commission would be best served if created by the Court. Judge Wes Roberts suggested that a change be made to the proposed order to name both tribes from the Wind River Reservation or to specify an entity that serves the needs of the reservation as a sitting member on the commission. The Board agreed to that change. Justice Kite moved and Justice Burke seconded a motion to recommend the proposed order, with the additional language regarding the Shoshone and Arapaho Tribal Court. Motion carried unanimously.

Amend GAL Rule 106 or new Rule 107 - Judge John Brooks and Judge Jeff Donnell served on the initial panel that drafted GAL Rule 106. The rule was created to provide guidance in administering the GAL funds given to the Supreme Court to be handed out to the counties. The GAL program is now administered by the State Public Defenders office, and Judge Brooks reported that the District Judges Conference voted unanimously to repeal Rule 106 of the Uniform Rules for District Courts. Judge Donnell confirmed that the Public Defender's Office has drafted new rules, so there is no longer a need for Rule 106. Judge Brooks moved and Judge Donnell seconded a motion to repeal Rule 106 of the Uniform Rules for District Courts. The motion carried unanimously.

Court Reporter Technology Issues - Judge John Brooks addressed the Board regarding an issue that has come up regarding court reporters and the purchase of computer equipment. Judge Arnold initially raised the issue and asked to purchase a laptop computer for his courtroom to be used by his court reporter. There is an Order for District Court Rules for Court Reporters that provides some guidance on this issue. The Order requires court reporters to purchase their own computer equipment. Judge Brooks explained that the difficulty arises when a district judge requires a court reporter to provide real-time reporting -- meaning additional equipment is necessary. Although not all district judges require real-time reporting, Judge Brooks surveyed the district judges and the overall feeling is that if a judge requires the real-time reporting, then the state should have to pay for the extra equipment. The Board discussed this issue at length. In that discussion, the Board considered letting this issue be vetted by the District Judges and the Court Reporters. Chief Justice Voigt pointed out that the problem with the

proposed scenario is a statute exists that requires district judges to request permission from the Chief Justice to purchase computer equipment, and that many of the questions that arise are fact based and grey area and not black and white. The Board concluded that this issue should be addressed on a case by case basis; that the existing Order is sufficient to address this issue; and that the Chief Justice and the District Judge will figure it out. Judge Brooks also brought a request from the court reporters to change some language in the existing certification rule for court reporters. After some debate, Justice Kite moved and Judge Donnell seconded a motion to table this issue to the next meeting. Motion carried unanimously.

New Business

WAM Initiatives - Chief Justice Voigt received a copy of a letter from Mark Harris, who is the legislative representative for WAM. Chief Justice Voigt explained that it is on the agenda of the Board just so that the Board is aware that the municipal courts want to raise their fines from \$750 to \$1,500 as well as raise court costs from \$10 to \$50.

District Clerks Filing Fees Increase - Chief Justice Voigt advised the Board that the district court clerks have sent a letter requesting the Board's support to raise the fees in district courts. They are requesting a \$10 filing fee for a will without probate, as well as an increase from \$50 to \$75 in the civil and probate filling fees. The clerks will be asking the Legislature to approve those fees. The Board agreed to support their request.

Stalking Order of Protection - Judge Castor requested the Board approve a one-sentence change to the Stalking Order of Protection. He asked the Board to add the following language to the last paragraph of the Warnings section of the Stalking Order of Protection; "and may in some cases subject the Respondent to enhanced penalties for felony staking under W.S. § 6-2-506(e)." Justice Kite moved and Judge Roberts seconded a motion to add the proposed language to the Stalking Order of Protection. Motion carried unanimously.

Treatment Courts - Chief Justice Voigt shared with the Board the conversations and work that he has been doing with Roger McDaniel and Gary Hartman to draft legislation regarding treatment courts. Over the last several years there has been a lot of discussion and disagreement regarding the treatment courts, and Keith Gingery made a specific request that Chief Justice Voigt work on a compromise bill. Chief Justice Voigt, Roger McDaniel and Gary Hartman came up with a compromise bill that Tony Ross, as Chairman of the Senate Judiciary Committee, agreed to sponsor. Keith Gingery is also proposing a separate treatment court bill during this session. The two bills are very different. Chief Justice Voigt will be meeting with the District Judges on December 11th and will attempt to answer any questions regarding the bills.

Judge Selection/Retention - Chief Justice Voigt met with the Judiciary committee to discuss the location of judges around the state. A lot of very good discussion took place and a bill is being proposed that allows the Supreme Court to determine where circuit judges should reside within the circuits. There was some debate as to whether or not the Legislature should decide the location, but the Joint Judiciary Committee decided that the

Supreme Court was in a better position to make those recommendations. The Board took no action on this issue.

Board adjourned 2:00 p.m.

Schedule of Future Meetings

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| March 25, 2009 | Cheyenne |
| June 10, 2009 | Casper |
| September 2, 2009 | Cheyenne |
| December 2, 2009 | Casper |

Approved by email 2-12-09