

Board of Judicial Policy and Administration
Minutes
September 14, 2009

The Board of Judicial Policy and Administration met in Evanston on September 14, 2009. In attendance were Chief Justice Bart Voigt, Judge Jeff Donnell, Judge John Brooks, Judge Dan Price, Judge Robert Castor, Judge Dan Forgey, and Judge Wes Roberts. Joann Odendahl, and Ronda Munger also attended. Justice Marilyn Kite and Justice William Hill participated by phone. Pat Goedkin attended on behalf of the Wyoming Professional Court Reporters Association, and Judge Bob Skar attended the discussion regarding the Family Treatment Court in Worland.

Old Business

Committee Updates

Court Technology Advisory Committee - Chief Justice Bart Voigt reported on the work of the CTAC committee. The CTAC committee would like to know if the Board thinks the Judiciary should have an archival policy. This issue comes up in regard to email. The Executive Branch has an email archival policy and the Chief Justice asked the Board if a Judicial Branch policy was necessary. When discussing this issue the Board talked about electronic discovery, the Public Records Act, and other avenues for requesting electronic information. At this time, there is not a system of saving all emails in a searchable manner. Individual users delete the information from their personal computers. That information is ultimately retrievable, but the process to recover it is difficult. The Board agreed that there should be some sort of policy and discussed a six month look back period. The Board also discussed the need for a large confidentiality element. Judges discuss specific cases in email and therefore that information should be confidential work product. The Board requested the Chief Justice explore an email archival policy. Along those same lines, the Chief Justice mentioned that the Supreme Court IT staff is questioning the increased use of the internet for personal business and face book participation. The amount of internet traffic is beginning to slow down the speed of our network system. The Board requested the IT staff review the current policy and make some suggested changes to the policy. Other topics the CTAC committee is keeping abreast of are the design of the district court case management system; electronic citations, which is being pursued by the Wyoming Highway Patrol; and video conferencing and appearance.

Court Security Commission - Judge Jeff Donnell reported that the Court Security Commission has completed its first annual report. The report was submitted to the Governor, the Joint Judiciary Interim Committee, the Joint Appropriations Interim Committee and the Wyoming Supreme Court. The Court Security Commission will be focusing on establishing a local committee in each county as well as drafting some legislation to deal with the Attorney General's advisory opinion that stated the counties do not have the authority to regulate fire arms use in courthouses or public buildings. Of note, one of the Casper judges signed an order prohibiting weapons in the Natrona County Townsend Justice Center. There may be other judges that follow his example. Chief Justice Voigt shared with the Board that the supreme court will be attempting to get a statute changed so that the definition of peace officer includes court security officers.

The reason for the change is two-fold: 1) the court wants the ability to get the court security officers commissioned without having to go through the highway patrol; and 2) if the statute is not changed it is not possible to charge a perpetrator with interfering with a peace officer if he/she has an altercation with the court security officer.

Court Records Committee - Chief Justice Voigt provided an update on the Court Records Committee. He provided the Board with two proposed orders; an Order Adopting Rules Governing Access to Court Records and an Order Adopting Rules Governing Redactions from Court Records. Chief Justice Voigt believes that these policies must be published in the Rules of Civil Procedure or they will not be followed. The issue driving the adoption of these rules is electronic filing. When documents are e-filed with courts it will be impossible to limit distribution, so the thinking behind the policies is to redact confidential information out of court documents before e-filing begins. The Board agreed that the policies are necessary. Judge Castor moved and Justice Kite seconded a motion to recommend the Supreme Court adopt the Rules Governing Access to Court Records and the Rules Governing Redactions from Court Records. The Board discussed several different issues regarding the proposed rules. Chief Justice Voigt explained some of the situations that have come to the attention of the Court with regard to the internet and electronically filed court documents. The proposed rules were drafted from model rules proposed by the National Center for State Courts and three other states that have similar rules. Judge Castor withdrew his earlier motion. Judge Donnell moved and Judge Roberts seconded a motion to ask the Supreme Court to adopt the rules by Order and gather information for a one year trial period. Motion carried unanimously.

Access to Justice Commission – Judge Wes Roberts provided information about the work of the Access to Justice Commission (AJC). The work of the AJC is being done by two subcommittees, the delivery system subcommittee and the resource development subcommittee. The main focus of the AJC is to assess the unmet legal needs and to propose strategies to fill the void. The AJC is drafting a white paper that will outline the direction of the AJC. There are also subcommittees of the AJC - one of which is the subcommittee on access to justice for Native Americans. Judge St. Clair and Judge Roberts co-chair that subcommittee, which will meet for the first time on September 23, 2009. One other subcommittee that is doing work for the AJC is the public hearing subcommittee. The first public hearing was held in Cheyenne. There will be four other public hearings – Evanston, Riverton Casper and Gillette. The Cheyenne meeting was well attended. Testimony was taken regarding several kinds of civil issues – landlord/tenant, custody, criminal matters complicating employment and housing issues. The AJC will look at many different ways of providing legal services to those who can't afford an attorney. The courts need to be more accessible to the indigent citizens of the state. The AJC is developing a website that is temporarily housed on the Supreme Court website. The Commission received \$30,000 grant from the Attorney Admission Fund at the Federal Court. No action was taken by the Board.

Rules Regarding Court-Supervised Treatment Programs – Chief Justice Voigt reminded the Board that the Legislature in the last session indicated that the Supreme Court should create rules for participation by judges in court supervised treatment programs. The proposed rules went out to the circuit judges. Several changes were made, but one issue has blossomed. In researching these rules, the Supreme Court

discovered hourly magistrates in several counties were being paid by entities other than the Judicial Branch. Chief Justice Voigt informed the Board that it is the belief of the Supreme Court that all judicial officers should be paid out of the budgets of the courts. The Supreme Court will be asking the Joint Appropriations Committee to transfer the funds for treatment courts out of the department of health and in to the Judicial Branch budgets. The Board discussed this issue at length. Judge Roberts moved and Judge Price seconded a motion to adopt the treatment court rules with the omission of rule 10, which requires hourly magistrates to be paid out of court budgets (Rule 10 will be amended back in once court budgets contain the funding). Motion carried unanimously.

Disappearing Jury Trials – Chief Justice Voigt asked the Board if there was a need to study the effect of discovery issues in the trial courts in Wyoming. He distributed a copy of the Final Report of the Joint Project of the American College of Trial Lawyers Task Force on Discovery and The Institute for the Advancement of the American Legal System. The report outlines a two year study of the Federal Rules of Civil Procedure, identifies problems with the system, and recommends justice system stakeholders review discovery practices and assess improvements that can be made. The Board discussed the issue and decided to take no action.

Court Reporters & Digital Reporting – Chief Justice Voigt shared with the Board some of the difficulties that the district judges across the state are having in finding court reporters. The question raised was whether or not the Wyoming statutes need changed so that if a court reporter is not readily available to record a hearing, then it can be digitally recorded. At this time, that option is not available to district judges, although digital recordings are being used out of necessity anyway. There is currently a statute that allows some juvenile hearings to be electronically recorded, but it only applies to juvenile cases. The statutory language proposed is -- “if through due diligence a judge cannot locate a court reporter, then the record may be created by means of electronic recording and subsequent transcription as approved by the court”. The statutes currently require the court reporter to create the official record, and a court reporter is not always available. The Board discussed the topic at length and decided to refer the issue to the district judges’ conference.

New Business

Facilities in Sweetwater County – Chief Justice Voigt has been cc’d on several letters between the governmental factions of Sweetwater County. The discussion of the letters centers around the need to build additional court facilities. As a short-term solution, the county is proposing modular buildings be put in the parking lot of the current courthouse. Sweetwater County is not sure what the overall picture will be for future location(s) of justice agencies in Sweetwater County. Chief Justice asked the Board if there should be outside involvement of the Supreme Court or the Board in this issue. The Board decided to wait until there is a specific request by the judges of Sweetwater County before getting involved in this issue.

Court Interpreters – Judge Donnell is currently working on rules for court interpreters. He will provide a draft copy for the Board at the December meeting in Casper.

2009 Weighted Workload Studies – Copies of the 2009 Weighted Workload Studies were distributed to and discussed by the Board. It was determined that in light of the budget shortfalls in the state, the Board will not be recommending any new judicial positions be added in the upcoming budget session. The workload studies will be distributed to the judges and clerks and will be posted on the Supreme Court’s website.

Upcoming Budget Session – Joann Odendahl made a presentation to the Board regarding the upcoming budget session. The budgets of the Judicial Branch have been put into the Bars system so that the State Budget office has access to all our information. We have not used the Bars system in the past, but in light of all the budgets cuts, we agreed to input Judicial Branch information. Joann emailed all the judges and is in the process of building the budget requests. Technology is the only area where we will be making a major request. There are several technology projects that really need to move forward. The Board discussed the possibility that there will be an additional ten percent cut to the budgets. Other states are being forced to cut positions and/or putting employees on furloughs. The Board did not reach any conclusions on possible additional budget cuts.

Clerks Advisory Council – Ronda Munger, speaking as the chairperson of the Clerks advisory council (CAC), made a presentation to the Board. For the benefit of the newest members of the Board, Ronda provided a brief historical background on the CAC. The CAC was established by Supreme Court Order in February of 2005. The CAC is structured as a subcommittee of the Board and is designed to increase the flow of information between the clerks of court and the Board, in an effort to promote an improved system of justice for the citizens of Wyoming. The CAC is comprised of three circuit court clerks, three district court clerks, the State Court Administrator, the Clerk of the Supreme Court, and the Supreme Court Program Coordinator. Ronda explained that over the past several years the CAC has met less and less often. As time passed, it became apparent that the area of overlap between the different levels of clerks was not as significant as first thought. On behalf of the entire council, Ronda requested the Board disband the CAC. The Board discussed the request. Judge Castor moved and Judge Price seconded a motion to disband the Clerks Advisory Council. Motion passed unanimously.

WRCP 77(d) Service of Orders or Judgments – Chief Justice Voigt introduced this topic by explaining that WRCP 77(d) and whether the district court clerks do or do not follow it has been the topic of discussion at the Supreme Court. It was brought to the Court’s attention that a party missed a notice of appeal deadline because of confusion as to the practice of the clerk of court; said practice did not comply with WRCP 77(d). WRCP 77(d) reads in pertinent part:

Rule 77. District Courts and Clerks

(d) Service of orders or judgments. Immediately upon the entry of an order or judgment the clerk shall mail a copy thereof in the manner provided in Rule 5(b) to every party who is not in default for failure to appear. Unless the order or judgment is prepared by the court, the copies necessary for such mailing shall be furnished to the clerk by the prevailing party, and the clerk shall make a note of the mailing on the docket. Any party may in addition serve a notice of

such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

Ronda surveyed the district court clerks and provided the Board with a spreadsheet that showed which courts are doing what. The Board discussed the fact that in a perfect world it would be best if all courts complied with this court rule and provided service in the same manner. Chief Justice Voigt volunteered that the Supreme Court staff will come up with a proposed solution and then he will put it on the agenda of the next Board meeting for discussion.

Restitution - In November of 2001, the Board signed a Policy Statement for Restitution Payments. The issue at that time was that clerks of court were holding restitution payments until they had received the full amount and were not distributing them to victims. In some situations, this meant some courts were holding thousands of dollars for many years. The issue of restitution has recently come to light in the FullCourt/Case Management arena. Every case management system requires a priority list of pay outs. The Board was provided a document that outlined how a majority of the counties were paying out restitution, fines and fees. It was not necessarily a surprise to the Board to learn that each of courts has a different idea about how restitution and other monies should be paid out. Ronda provided the Board a copy of the statutes that specifically address restitution payments, and she also discussed with the Board the many conversations that she had with the clerks as to why they pay out restitution in the order that they do. Some of the difficulties for the clerks come from trying to distribute ten dollars among twenty-five victims and those sorts of issues. Ronda provided the Board with three separate Orders that address the issue of restitution, albeit each in a different manner. The Board discussed the restitution issue. Judge Donnell moved and Judge Castor seconded a motion to have Ronda provide copies of the first Order to the clerks and get their input before the Board took any action on the issue. Motion carried unanimously.

Judicial Nominating Commission Rules – Chief Justice Voigt informed the Board that the Supreme Court will be revising the Judicial Nominating Commission Rules at the request of Governor Dave Freudenthal. During the last judicial appointment, there was a Public Records Act request made by the local newspaper to the Governor’s office, wherein they asked him to provide all materials associated with the three candidates in the selection process. The materials that the nominating commission provides the Governor include things such as letters of recommendation, etc. It has always been the position of the Judicial Nominating Commission (JNC) that some of the materials in an applicant’s file are submitted as confidential. The Supreme Court will be revising the rules to make it clear that those documents are to be kept confidential, even by the Governor. The Court has the ability to make documents compiled in the judicial process confidential, if necessary.

No Knock Search Warrants – Chief Justice Voigt raised the issue of no knock search warrants with the Board. He reminded the Board that no knock search warrants can only be issued by district judges or district court commissioners (in the limited situations when

the district judge is out of the county). The Chief discussed his concern that these search warrants are being improperly issued, if you interpret the constitution literally. There was discussion about what “chambers business” means. The Board discussed the issue at length and asked the Chief to take the issue up with the judges’ conferences.

Family Treatment Court Report – The Board discussed the Family Treatment Court in Worland. In the last Legislative Session, money was set aside to conduct a family treatment court in Worland and the enabling legislation required the Judiciary, in conjunction with the Department of Health, to report regarding its success. The Board reviewed two reports; one drafted by Cary Heck, of the University of Wyoming, Department of Criminal Justice, and the second one was drafted by a District Court Peer Review Committee. Judge Bob Skar, district judge in Worland, appeared before the Board to discuss his letter outlining the successes of the Family Treatment Court. The Board discussed all three documents. Judge Donnell moved and Judge Brooks seconded a motion to submit the District Court Peer Review Report and Judge Skar’s Letter to the Joint Judiciary Committee Interim Committee under separate cover drafted by the Chief Justice. Motion carried unanimously.

Board adjourned 4:30 p.m.

Schedule of Future Meetings

December 2, 2009	Casper
March 3, 2010	Cheyenne
June 2, 2010	Casper
September 13, 2010	Laramie
December 1, 2010	Casper

Approved by email on January 29, 2010