

IN THE SUPREME COURT
STATE OF WYOMING
FILED

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Carol Thompson
CAROL THOMPSON, CLERK

Minutes

District Judges Conference

Winter Meeting - December 1 & 2, 2011

Casper, Wyoming

December 1, 2011

Natrona County Townsend Justice Center Conference Room
115 N. Center St.

Present: Fenn**, Rykmann**, Day**, Deegan*, Waldrip, Price*, Perry*, James, Sanderson, Donnell, Wilking, Brooks, Park, Arnold, Campbell, Kautz, Cranfill, Sullins, Skar, Davis

Absent: Tyler, Young

** by teleconference both days

* by teleconference first day, personal attendance second day

Chief Justice Kite- Salary and miscellaneous matters

Joann Odendahl- Interpreter Policy and Budget

Salary - Judges

Phil Nicholas, Chairman of Senate Appropriations, will sponsor a salary-hike bill (Supreme at 165k, District at 150k, Circuit at 106k). Close to BJA white paper numbers, except for Circuit Court (Supreme at 165k, District at 148.5k, Circuit at 132k) comes in at decidedly less. Measure will be introduced in Senate. Under rules of Budget Session, it must acquire 20 votes for consideration. Chief Justice anticipates this will not be a problem. She will go to bat (invites us to do same) to seek amendment to bring Circuit up to 132k. Believes a member of Senate Judiciary may do this.

Chairman Nicholas will seek co-sponsors and expects same, perhaps even leadership members out of both houses.

Chief Justice urges all district court judges to contact their legislators to urge favorable consideration of salary measure (with an uptick for Circuit Court).

Salary – Staff

Hay study is in final stages of completion. Preliminary review of figures indicates our staffs compare well to 12 state executive pool. Our judicial assistants range from 45k to 56k (some being above the range of comparison). Our law clerks range from 48k to 60k. Each judge sets salaries for his/her judicial assistant and law clerk. Court reporters receive 56k. Court reporter salary is determined by Supreme Court as authorized by legislature.

Budget Cuts

Chairman Nicholas has requested state agencies to submit proposed cuts of 2%-5%-8%. Governor prefers 2%. Confusion as to whether proposed cuts are against exception budget or standard budget. Seemingly against both.

Joann points out district court budgets don't have "programs" that can be cut. Most of us, below the 100 series line (salaries), exist on budgets that are rather small. We all made cuts in Spring 09 and those cuts followed our budgets into the 2011-2012 budget. This is unlike many state agencies where, through the budget process after the original round of 10% cuts sought by Gov. Freudenthal in Spring 09, the agencies "bounced back" in their funding, overcoming previous cuts and adding some to boot.

Joann is of the view we ought to offer some cuts to the Legislature to show our good faith. She will be submitting proposals in the 2% neighborhood for our review.

Interpreter Policy

Joann basically reviewed the interpreter policy that can be found on the Supreme Court website and is self-explanatory. It's a work in progress.

BJPA Meeting

Chief Justice reports BJPA met this morning and discussed a couple of matters she wanted to relate to us: caseload management and pro se divorce facilitators.

Caseload management: This topic was initiated when the Chief Justice and Judge Tyler and Judge Price for the district court conference attended a multi-state presentation on caseload management in Boise, Idaho this past summer. Chief Justice indicates the resources of the Supreme Court are available to district courts to analyze case filing data and, in particular, time to disposition if any of us is curious on this issue. Any results of such analysis are expected to be kept "in house." Discussion was had as to the mis-use that can be made of this kind of data. Chief Justice would like us to have a handle on the topic of caseload management (in particular, time to disposition) if we ever need to respond to legislative inquiry on this front. Chief Justice

makes it clear neither she nor the Supreme Court is interested in interfering in district court docket management.

Pro se divorce facilitators: This matter was addressed in a presentation by two Colorado pro se divorce facilitators last September at the State Bar Convention. Chief Justice is looking for two or three (or more) district courts that wish to serve as pilot courts. The idea is this: perhaps it would be prudent to utilize a Deputy District Court Clerk, for example, to assume the function of aiding pro se litigants in getting their ducks in a row for presentation of their case to the court (not practicing law, just explaining the process and what the courts expect in the way of information – robust discussion had on this point). Chief Justice not restricting the role to the office of District Court Clerk, but felt with e-filing and the like there might be some surplus labor available at that source. Training would be available through the State of Colorado, likely next spring. Judge Sanderson volunteered his court. Looking for other volunteers.

Legislative Breakfast

Chief Justice and Joann reviewed the usual protocol for the legislative breakfast before the State of the State/State of the Judiciary addresses. All were encouraged to attend. Joann indicated it would take place on a Monday morning, February 13, 2012. She suggested we might consider “hanging out” at the Little America bar or lobby the evening before to encounter legislators and interact with them.

Good of the Order – Part 1

Approval of Minutes of September 14 and 15, 2011 meeting of District Court Conference.

Moved by Judge Campbell, Second by Judge Donnell. No discussion. Unanimous vote to approve.

Appointment of district court judge to full term on Commission on Judicial Conduct and Ethics.

Position presently held by Judge Sullins. Judge Sullins nominated by Judge Cranfill for full term, second by Judge Park. No discussion. Unanimous vote to appoint Judge Sullins for full term on Commission on Judicial Conduct and Ethics.

Resolution of support for second district court judge in Fourth Judicial District.

Judge Fenn requests the resolution. Moved by Judge Sanderson, second by Judge Donnell. Some discussion. Unanimous vote to adopt resolution of support.

Vacancy for district court judge on Judicial Ethics Advisory Committee.

There is one permanent seat for a district court judge, one permanent seat for a circuit court judge and a third seat that rotates between the two. Our turn. Judge Brooks nominated by Judge Donnell, second by Judge Campbell. No discussion. Unanimous vote to appoint Judge Brooks.

“Robe up?”

Judge Kautz moves the body to resolve not to robe up for attendance at the State of the State/State of the Judiciary. Second by Judge Arnold. Some discussion. Unanimous vote to not robe up.

Hay Report.

Judge Waldrip, Judge Young and Judge Arnold (President, former President and Vice-President) will review the Hay Report once it is in final form. There was some discussion as to whether the Conference should support raises for court reporters. Although no vote taken, the general sentiment of those who expressed an opinion was to do so.

Salary Hike.

Judge Waldrip encouraged all district court judges to contact their legislators in support of the salary hike proposal – well in advance of the session before the legislators are otherwise distracted by session demands.

W.S. 7-13-301

Judge Sanderson brought up W.S. 7-13-301 (deferred prosecution) and the desirability of having a defendant, in connection with this treatment, serving a jail term so the gravity of his/her situation might hit home.

Budget Session

Judge Donnell and Judge Davis were impressed into service to assist Joann in the event she needs help on the floor of the legislature.

Foreign Judgments

The Committee on the Unauthorized Practice of Law (Phil Willoughby, Chair) has asked our opinion on whether or not the filing of a foreign judgment by an attorney not licensed in Wyoming constitutes the unauthorized practice of law. While all appeared to agree it did amount to the unauthorized practice of law, there was some reticence expressed as to whether we ought to give an “advisory opinion” on the topic.

BJPA Report

Judge Campell reported that others had largely covered the topic already. He offered some remarks on the impending judicial workload study update by Karen Gottlieb. Apparently, this is in the offing without any legislative appropriation as of yet. Some wondered whether there would be such an appropriation. Judge Campbell also offered some remarks on discussion had by the BJPA on the topic of juvenile justice.

Steve Corsi- DFS Director, Tom Forslund- Public Health Director

PRTF (Psychiatric Residential Treatment Facility) language was discussed, as was the consequence of entering an order of placement not conforming to the required language (State will pick up 100% of tab as opposed to sharing tab equally with Federal Government). Much discussion on the difficulty in not naming a facility in the court order.

State Hospital issues were discussed. Dept. of Health is trying to expedite procedures at State Hospital.

RTC (Residential Treatment Facility) discussed. Director Corsi indicates the good news is that placement have gone down; bad news is that costs remain steady. He indicates DFS has a tiered rate system under which the full daily rate is paid for the first nine (9) months, than a reduced rate. DFS is considering moving the full pay date back to six (6) or seven and a half (7 1/2) months.

Director Corsi indicates out-of-home placements (all out-of-home placements) cost \$109 million for the biennium.

Judge Price- Pro se litigation

Judge Price gave a very fruitful and provocative presentation on the pitfalls of pro se litigation, centering on domestic relations. He provided several valuable handouts.

The gist of Judge Price's presentation is that the rules (ethical and otherwise) that we are expected to follow in presiding over pro se litigation are largely swallowed by the exceptions. As well, decisions on the proper conduct of such litigation appear to be idiosyncratic and not necessarily reliable precedent.

December 2, 2011

Hilton Garden Inn Meeting Room

1150 N. Poplar St.

Mark Gifford- Professional Standards Advisory Committee

Bar Counsel Mark Gifford presented the proposed revised URDC 801 Standards of Professional Behavior ("Be Polite" Rule). He indicated the committee that put it together worked very hard. He indicated it would likely be a "no go" if the District Court Conference did not sign off on it.

Much discussion was had as to the propriety of the rule. All agreed the problem sought to be addressed by the rule did indeed exist. The problem expressed by many revolved around enforcement procedure and whether a litigant might seek to invoke sanctions under the proposed rule in order to gain an upper hand in litigation. Some judges unreservedly supported the rule as a statement of principle that could be used as a cudgel against offending attorneys. Bar Counsel Gifford indicated the Federal Court has had such a rule for twelve (12) years and it has never had to be enforced. Apparently, its mere existence brings offending behavior or potentially offending behavior into line.

Bar Counsel Gifford indicated he would need to work on the rule to iron out the correct protocol in the event of a violation (perhaps making sanction more plenary and less in need of extended procedure). Ultimately, the Conference took a straw vote in which it endorsed the aspiration of the rule and encouraged Bar Counsel Gifford to move forward with his efforts to refine it in light of the discussion had.

Legislators

The following legislators joined our discussion: Senator Tony Ross (Senate Majority Leader), Representative Ed Buchanan (Speaker of the House), Senator Drew Perkins (Chair, Senate Judiciary Committee), Representative Kermit Brown (Chair, House Judiciary Committee), Representative Tim Stubson.

Salary Hike

Senator Ross indicated the measure would be initiated in the Senate under his sponsorship and that of Senator Nicholas (Chair, Senate Appropriations Committee). The numbers are as earlier referenced. He indicated it was likely the 20 votes would be there in the Senate to assure introduction. He indicated it was possible the Circuit Court number would be amended, in the legislative process, to increase from 106k to 132k.

The legislators were of a view that the salary hike may “compete” with the funds necessary for a second judge in the Fourth Judicial District. This discussion occurred in the context of the general budget-cutting sentiment in the upcoming Budget Session.

It appeared the legislators were supportive of both the salary hike and the new judge position (although nobody indicated whether this support would extend to both measures at the same time).

Court Security

Representative Brown and Senator Ross took the lead on this discussion. It was their view the Legislature had done what it could to set out standards and the like for court security. As Judge Donnell pointed out, the bite is in the funding. The discussion continues.

Juvenile Justice

Judge Waldrip thanked Representative Brown, Senator Perkins and the Joint Judiciary Interim Committee for coming to the defense of the district court judges in the recent debate (last summer) on juvenile justice and alleged inadequacies in the juvenile justice system. Representative Brown and Senator Perkins indicated they were largely pleased with the present state of affairs, with perhaps the option of the juvenile court sharing some concurrent jurisdiction with the lower courts. Also discussed was the propriety of confidentiality of juvenile files, Judge Kautz advancing the argument that those most in need of juvenile services are least served by this kind of a policy.

Good of the Order – Part Two

New Fourth Judicial District Judge

Judge Fenn averred he did not believe there was linkage between a new judge for the Fourth Judicial District and the proposed salary hike.

Expungement Statutes

Judge Perry introduced the topic. There are several procedural questions in connection with expungement, for example whether it should be started as a separate civil case and whether or not it carries a separate court automation fee and indigent civil legal services fee. There was also some discussion as to whether or not a hearing was required – particularly if the prosecutor interposed no objection to the proposed expungement.

Letter for Judge Skavdahl

Judge Skavdahl is being invested next Friday as Wyoming newest federal district court judge. The thought arose as to whether our conference ought to recognize this achievement. It was

resolved that Judge Waldrip will send a letter to the powers that be honoring and congratulating Judge Skavdahl on his recent appointment.

Dating Between Law Clerk and Member of the Bar

Judge Cranfill introduced this topic, explaining how there was some difficulty recently in Park County due to the fact that his law clerk was dating a member of the bar. The consensus of the Conference seemed to be that law clerks should be instructed they are not to “share” the details of their work with a boyfriend/girlfriend who is a member of the bar, and, as well, the law clerk should not work on cases where the boyfriend/girlfriend represents a party directly or by attenuation, but beyond that we cannot dictate whom a law clerk should see outside of his/her court duties.

Appointed Counsel in CSA Cases

Judge Campbell led the discussion on this topic. He was of the view maybe a higher court ought to rule on whether or not appointed counsel is required in a CSA case on account of the recent U.S. Supreme Court case addressing the matter. The Conference seemed to be soundly on the side of the proposition that it is unnecessary to appoint counsel in a civil contempt matter. As well, there is no funding for such an appointment. There seemed to be general consensus that the U.S. Supreme Court case was ambiguous as to its intent and holding.

Adjourn

Judge Kautz moved to adjourn, seconded by Judge Donnell. Non-response indicating total assent, the motion was adopted and the meeting adjourned.

Conference to re-convene the third Friday in April, 2012.