

DRAFT MINUTES

Advancing Justice Committee

April 27th, 2016, 9:00-3:00

Lincoln Room – Idaho Supreme Court Building

IN ATTENDANCE:

Judge Barry Wood, Judge Rick Carnaroli, Judge Theresa Gardunia, Judge Stephen Dunn, Judge Greg Moeller, Larry Reiner, Jerry Woolley, Cindy Eagle-Ervin, Doug Tyler, Jan Bennetts, Raena Bull, Janica Bisharat, Michael Mehall, Deena Layne, Taunya Jones

MEMBERS NOT IN ATTENDANCE: JB Lothspeich, Judge Barbara Buchanan, Erika Birch, Michael Bartlett

WELCOME AND APPROVAL OF MINUTES

Judge Moeller moved and Judge Carnaroli seconded that the minutes from the December 4, 2015 meeting be approved. The Committee unanimously approved the minutes.

CHANGES TO COMMITTEE MEMBERSHIP

Judge Wood announced some upcoming changes to the original order appointing the Advancing Justice Committee. He indicated that they would be revisiting and possibly revising the charges listed in the order. In addition, he announced that Judge Dunn would be assuming the position of Chair. Judge Wood will continue to serve on the Committee.

CASEFLOW MANGEMENT PLANS

Judge Wood provided an update on approval of the district felony caseflow management plans. He reported that the Supreme Court took them up during the March Oral Conference. The Court had been asked to take up a discrepancy between the 1st district felony plan and the statewide template. Initially, the Court approved all but the 1st District plan, asking that the variance in this plan be corrected. Subsequently, during the April Administrative District Judges meeting, Judge Haynes requested that the Court reconsider this decision. In response, the Court reconsidered the plan last week and voted with a split vote to approve the 1st District Plan as is.

It is anticipated that a similar issue will arise when the Court reviews the child protection plans as there is a discrepancy between the 1st district plan and best practice recommendations to be resolved. Judge Wood has recommended to the Court that the individuals with differing positions be allowed to present their issues directly to the Court prior to the Court making a determination. He expects this to be the process moving forward.

Judge Dunn elaborated that during the Administrative District Judges meeting, he represented the Committee's position. He explained that since the Court asked the Committee to do the initial review of the plans, they should defer to the opinion of the Committee on matters like this. He further explained that the Committee did not feel this particular variance in the felony plan was significant enough to cause concern. However, Judge Dunn also recommended that the Committee be cautious of the slippery slope that might be created by allowing variances in plans. He believes the default position of the Committee should be that districts be required to follow the templates, with rare exception. Judge Moeller agreed that there are core elements contained in the templates that need to be adhered to, while the templates also allow for a certain amount of variation between districts.

Judge Gardunia asked if the Court provided a rationale for believing it was a significant variance. Judge Dunn reported that the Court was trying to promote uniformity in the plans as a general rule.

Taunya Jones provided the Committee with an update about next steps for developing district caseload management plans for civil, juvenile, and termination of parental rights cases. She reminded the Committee that a civil template was developed by a workgroup a few years ago but suggested that the group revisit and refine that template prior to asking districts to develop those plans. She reported that a template has also been developed for termination of parental rights cases; it was developed by the same workgroup that created the child protection template. A juvenile template has not yet been developed.

Taunya reported that of these three areas, juvenile has been identified as the highest priority and will be the primary focus in the coming year. She explained that the iCourt Project has provided an opportunity to learn about caseload management practices across the state and juvenile is an area in which there is a great deal of variation in practice. Planning is underway for the development of a juvenile template and the development of juvenile caseload management plans.

The Committee discussed whether there is a need for separate magistrate and district civil plans. Judge Gardunia indicated that the two are very distinct in Ada County. Judge Dunn indicated that he believes they might be fundamentally the same, having similar core components. It was noted that the two have different time standards which would seem to indicate the need for different plans. Judge Gardunia added that there needs to be consideration of the audience and also longevity, including consideration about how much specialization there is in this area across the state. This is an additional reason to keep them separate. There was some discussion about having a single template, but with district and magistrate components.

Judge Dunn requested that the draft civil template be distributed to the Committee for further consideration.

Judge Wood reported that the Court decided to hold off reviewing the child protection plans until all plans have been received. They will plan to review them at the June Oral Conference. Taunya stated that she has received the 4th District child protection plan, the last plan that had been pending development. Judge Dunn requested that the child protection caseflow management workgroup complete an initial review of this plan and provide feedback to the Committee. The Committee will then determine whether the plan is ready for the Court's review. She will plan to accomplish this by email so that the plan can be ready for the June Oral Conference.

Taunya also provided an update on the 1st District child protection plan. She reminded the Committee that there had been ongoing efforts to try to resolve an inconsistency between the first district's case assignment practice articulated in their plan and best practice recommendations relating to the one-judge, one-family model. According to the one-judge, one-family model recommended by the Child Protection Committee, the judge that presides over the adjudicatory hearing in a child protection case should remain on the case through its duration. This is not the practice in the first district. Judge Haynes has articulated a number of reasons that the first district would like to maintain their current practice, one of which is that the vast majority of adjudicatory hearings are uncontested and parties stipulate to the issue of jurisdiction. Given this, it does not seem critical that the judge presiding over this hearing be the same judge to preside over the remainder of the case.

The Committee discussed whether the discrepancy might be resolved by adding language to the template or requesting the first district add language to their plan that suggests that the one-judge, one-family model be adopted following any contested hearing. Taunya indicated that she felt unsure that this would address the concerns of the child protection SMEs as she did not believe the one-judge, one-family model is contingent on whether or not hearings are contested. The Committee ultimately requested that Taunya reconvene the child protection caseflow management workgroup to explore whether this type of change would be consistent with best practices and if so, to request that the 1st District modify their plan accordingly.

Judge Dunn reported that drafts of three of the seven misdemeanor plans have been received, those for the 2nd, 5th, and 6th Districts. He asked Taunya to walk the Committee through the plans and report on her initial review of the plans. Taunya recommended that the Committee consider requesting a few minor modifications to the plans for the 2nd and 5th Districts based upon her review. The Committee agreed with all of her suggestions. She will return those plans to the districts with a recommendation that the plans be modified accordingly.

Taunya reported that first drafts of family law plans have been received from the 1st, 3rd, 4th, 5th, and 6th Districts. Judge Dunn requested that a workgroup of SMEs be convened to conduct an initial review of these plans and report back to the Committee with recommendations. The Committee agreed that this review should include an assessment of consistency with best practice, much like the review of child protection plans did. It was recommended that this workgroup included JB Lothspeich, Judge Carnaroli, Deena Layne, and Kara Killeen (new Clerk Specialist). Taunya was

also asked to reach out to Judge Comstock and possible to a family court service district manager (Ann Just was recommended) to request that they participate. Judge Carnaroli is to Chair this workgroup.

ACTION ITEMS:

- Taunya to distribute draft civil template to the Committee
- Taunya to convene the child protection caseflow management workgroup to review the 4th District plan and also to consider the impact of a modification to the template and/or 1st District plan regarding the one-judge, one-family case assignment model.
- Taunya to return the 2nd and 5th District plans with suggested revisions
- Taunya to convene a family law caseflow management workgroup to conduct an initial review of the family law plans and report back to the Committee.

UPDATE ON iCOURT PROJECT

Janica Bisharat reported to the Committee that they just recently held their kickoff event for the first wave deployment. This deployment will include all of the remaining counties in the 4th and 5th Districts. She also reported that the Ada County go-live date has been moved to August 8th. As a result, resources will need to be shifted back and forth between Ada County and the wave counties over the next few months. In addition, there are still efforts in place to improve implementation in Twin Falls. Several Supreme Court staff and Tyler representatives recently visited Twin Falls to discuss remaining questions, issues, and concerns. Those are being addressed and the hope is that all jurisdictions can benefit as the result of working through these issues.

Janica asked for comments from those on the Committee with direct experience relating to the iCourt implementations. Jan Bennetts indicated that her office has struggled somewhat with integrations between Attorney Manager and Case Manager, but reported that Tyler is working with them to resolve these challenges. She stated that all of the teams involved appear to be very committed to resolving the issues in order to deliver a product that is acceptable to all. In addition, Jan believes they have been able to provide Tyler with feedback that should inform and improve future development of product.

Cindy Eagle-Ervin observed that the work of the Advancing Justice Committee and the caseflow management plans have been very useful in that they are providing structure to help work through variations in practice across the districts and to identify standard processes as appropriate.

Jerry Woolley stated that she has observed that in Twin Falls, while change has been significant and challenging, things seem to be settling down and running smoother at this point. People seem more satisfied with the system and there appear to be fewer and fewer issues to resolve.

Taunya provided an update on the development of case management reports in Odyssey. She indicated that progress is being made developing reports for the pilot time standards and interim

case events. She hopes to distribute initial versions of these reports to the Committee at their next meeting.

Taunya asked for direction from the Committee on a couple of matters relating the time standard report. She reminded the Committee that they had approved two separate time standards for juvenile cases—one for juveniles in detention and one for juveniles not in detention. At the time the standards were recommended and approved, it was understood they would need to work through challenges associated with identifying these two populations of juveniles and measuring the two standards. Taunya explained that now that they are writing the time standard report, it appears that at this time, it is too difficult to identify which juveniles are in detention. She recommends that they move forward with a single juvenile time standard. The Committee discussed and determined that they would like to request a recommendation from JJAT regarding which time standard to move forward with.

Taunya also asked for direction from the Committee regarding cases that are transferred between juvenile court and criminal court. She requested a recommendation about whether there should be one continuous measure or whether there should be two separate measures for each case type in this situation. The Committee ultimately recommended the latter approach. A question was raised about how to handle what is a similar situation when a criminal case type is remanded from district court to magistrate court. In this situation, the Committee determined there should only be a single measure. The determining factor is whether the case type changes.

ACTION ITEMS:

- Taunya to work with Judge Ingram to request a recommendation from JJAT regarding the juvenile time standards

RULES SUBCOMMITTEE UPDATE

Judge Moeller provided an update on efforts of the Rules Subcommittee. He reminded the Committee that there has been a joint effort between Advancing Justice and the Criminal Rules Committee to modify ICR 16 to streamline the discovery and redaction process. Changes to ICR 16 were recently adopted by the Supreme Court, allowing for certain unredacted elements to be disclosed to defense attorneys, which cannot be disclosed to defendants without the State's permission. It also includes a provision for a redacted version of a digital copy unless the defense objects, in which case an unredacted version can be released. Jan Bennetts reports that this change is expected to have an enormous positive impact on the prosecutor's office, particular the provision that allows them to handle discovery digitally.

Judge Moeller reported that modifications to ICR 44.1 have also been approved by the Supreme Court. He referenced subpart D of the amended rule pertaining to the substitution of counsel, which was authored by the Advancing Justice Committee. This provision reduces confusion and streamlines the process. The amended rule also provides that a judge sets an automatic withdrawal

time based upon a specified event. Attorneys cannot withdrawal until 45 days after sentencing, but can withdrawal without leave of the court, so long as it is after appeal process.

Judge Moeller indicated that he will review the Idaho Rules in light of federal rule changes taking place and would like to call together a subcommittee in June

Judge Moeller asked Taunya to report to the Committee on a recent analysis of the timeliness of service that her office performed. Taunya referenced a summary of the analysis included in the materials. She reported that they looked at a random sample of four different types of civil cases from five counties. The analysis seems to indicate that, overall, there are not significant delays in service, though there is a fair amount of variation across counties and there are a few counties that require more than 120 or 180 days for service. She also reported that a very small percentage of cases require publication to accomplish service. The analysis did not reveal reasons for delays in service as these data are not available.

After some discussion, the Committee voted to move forward with a recommended change to modify IRCP 4(a) and IRCP 40(c) such that service must be accomplished in 90 days and that cases can be dismissed for inactivity after 90 days. This change is consistent with recent changes to the federal rules and appears to be feasible. Cindy added that timeliness may even be more efficient with electronic filing once everyone is on Odyssey. Cathy will take this proposal to the Civil Rules Committee for consideration. A request was made to modify the analysis to also show how often cases require more than 90 for service to further inform the proposed rule change.

Judge Wood asked Jan Bennetts if her office has noticed any change in the timeliness of laboratory results in the past several months. She indicated that they have not noticed a change and seem to be having the same issues with delay in all of the same areas. The primary delays are related to drugs, though blood draws are also delayed. Judge Wood inquired about whether it would be helpful to have Matthew Gammette back to speak to the Committee to provide on update on efforts to improve. The Committee will give this some consideration. Judge Dunn requested that Committee members ask around within their district to inquire about delays. Judge Moeller suggested that the Rules Subcommittee look at ICR 5.1(b) to see if any adjustments might be made to address the problem.

ACTION ITEMS:

- Taunya to convene a meeting for the Advancing Justice Rules Subcommittee
- Taunya to provide Cathy with proposed rule changes and timeliness of service analysis to take to the Civil Rules Committee
- Rules Subcommittee to consider changes to ICR 5.1(b) to address delays associated with State Lab.

NEW JUDGES OREINTATION PLANNING

Ileen Gerstenberger, Training Manager for the Supreme Court, joined the meeting for this discussion. Taunya Jones reminded the Committee that one of their charges is to develop educational programs for judges to improve caseflow management practices across the state. She added that for some time, one of the expressed goals of the Committee has been to refine and expand the caseflow management curriculum that has been used for New Judge Orientation. Taunya indicated that the intention is to form a workgroup that can bring some recommendations back to the Committee, but that she and Ileen are asking for some initial feedback from the Committee at this time.

Ileen reported that currently, 50 minutes is allocated for this session but that they may be able to reconsider this if additional core elements are identified that need to be included. Janica added that the Committee should also focus not just on a timeframe for a particular session but on a phased approach to caseflow management training for judges over an extended period of time. Judge Dunn believes 50 minutes is not enough time to cover this material, even for the initial session presented at New Judges Orientation. He indicated that it is challenging to try to get through the material in this period of time. Ileen stated that they are trying to split out magistrate and district curriculum entirely, which may help in this regard.

Taunya asked for volunteers to serve on the workgroup, and Janica indicated that she would like to see a TCA volunteer to serve on the workgroup. Cindy Eagle-Ervin suggested that we think broader to include training for clerks as well as they have a critical role in caseflow management. She also suggested that clerks participate on the workgroup. Judge Moeller added that the judge's curriculum should include a component on the clerk's role so that judges have a good understanding about how clerks can assist with caseflow management. Judge Moeller, Cindy, Raena Bull, Doug Tyler, Judge Carnaroli, and Judge Dunn volunteered to participate on the workgroup.

ACTION ITEM:

- Taunya to convene a meeting with Judicial Education workgroup.

STRATEGIC GOALS & OBJECTIVES

Taunya Jones referenced the Committee's goals & objectives included in the materials and asked the Committee to revisit them, consider changes, and identify priorities for the next couple of years. Judge Dunn requested that the Committee have an opportunity to consider this and come back with suggestions at the next meeting. As a related matter, Judge Dunn also asked members to review the original order appointing the Committee and outlining charges of the Committee. He would like the Committee's suggestions about changes to these charges. He also asked members to give consideration to whether they would like to continue serving on the Committee moving forward. The Committee has been in place for several years now and he recognizes that sometimes, schedules and priorities change over time making it difficult to continue to fulfill committee duties.

ADJOURN

Next Meeting Dates:
August 19th, 2016
November 4th, 2016

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