

## MINUTES

# ADMINISTRATIVE CONFERENCE

*Monday and Tuesday, February 4-5, 2013 // Boise, Idaho*

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The Administrative Conference was called to order on Monday, February 4, 2013, at 2:30 pm MST by Chief Justice Roger Burdick. Administrative District Judges in attendance included: Hon. John Mitchell, Hon. John Stegner, Hon. Tom Ryan, Hon. Timothy Hansen, Hon. Richard Bevan, Hon. Stephen Dunn, and Hon. Jon Shindurling. Trial Court Administrators present included: Karlene Behringer, Hon. Jay Gaskill (acting), Dan Kessler, Larry Reiner, Linda Wright, Suzanne Johnson, and Burt Butler. In addition, Hon. Lansing Haynes joined the conference, as the soon-to-be Administrative District Judge for the 1<sup>st</sup> Judicial District.

Other members joining for all or part of the Conference included: Justice Joel Horton; Court of Appeals Chief Judge Sergio Gutierrez; Hon. Juneal Kerrick, President – District Judges Association; Hon. Rick Bollar, President – Magistrate Judges Association; Hon. Ryan Boyer, Past-President – Magistrate Judges Association; Hon. Michael Oths – Secretary/Treasurer; Magistrate Judges Association; Roland Gammill; Janica Bisharat; Andrea Patterson; Kevin Iwersen; Kerry Hong; Taunya Jones; Hon. John Varin; Hon. Russ Comstock, Hon. Michael Dennard; Hon. Gaylen Box; Viki Howard; Hon. Michael McLaughlin; Scott Ronan; Michael Henderson, Senior Judge Barry Wood, and Patti Tobias.

Chief Justice Burdick congratulated Judge Gutierrez on becoming Chief Judge of the Court of Appeals. He thanked Judge Gratton for his work on the Post-Conviction Relief Handbook provided for district judges, and indicated it is a good start on which to build. Chief Justice Burdick welcomed Judge Haynes to the Administrative Conference, who will begin his term as the First District Administrative District Judge effective April 1, 2013. In addition, the Chief Justice expressed appreciation to Patti Tobias for her JFAC presentation on February 4, 2013.

The Mission Statement, Values, and Strategic Goals and Major Objectives of the Idaho Courts and ICAR 43A were reviewed.

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**A. Approval of Minutes of the October 11-12, 2012 Administrative Conference and the Special Meetings/Conference Calls held on December 20, 2012 and January 8, 2013**

IT WAS MOVED BY JUDGE BOLLAR AND SECONDED BY JUDGE SHINDURLING TO APPROVE THE MINUTES OF THE OCTOBER 11-12, 2012, ADMINISTRATIVE CONFERENCE. THE MOTION PASSED UNANIMOUSLY.

IT WAS MOVED BY JUDGE MITCHELL AND SECONDED BY JUDGE BEVAN TO APPROVE THE MINUTES OF THE ADMINISTRATIVE CONFERENCE SPECIAL MEETINGS/TELECONFERENCES HELD DECEMBER 20, 2012, AND JANUARY 8, 2013. THE MOTION PASSED UNANIMOUSLY.

**B. Supreme Court Action on Administrative Conference Recommendations and other Supreme Court Updates by Chief Justice Burdick**

1. All recommendations relating to the FY14 legislative and budget priorities as described in the Administrative Conference minutes were forwarded to the Court for its consideration and the approved priorities were distributed.
2. The recommendation to encourage every Idaho judge to participate in the voluntary performance evaluation program offered by the Judicial Council was forwarded to the Court. The Administrative Conference recommendation stands. Chief Justice Burdick reported that a panel discussion at the recent District Judges Conference garnered unanimous support from the attending judges. A similar panel is planned for the Magistrate Judges Conference in May. The Chief Justice plans to send a letter to each judge encouraging participation. It is hoped that by July, the Judicial

Council will report that 100% participation has been achieved. Chief Justice Burdick thanked Judge Stegner for his initiative to approach the Council about this process, and noted that the Judicial Council has asked the legislature for an increase in funding.

3. The recommendation to approve the Rules of Family Law Procedure for the counties in the 4th Judicial District for purposes of a pilot project was forwarded to the Court and approved, effective January 1, 2013. The rules can be located online at: <http://www.isc.idaho.gov/irflp>.

In his State of the Judiciary address, Chief Justice Burdick acknowledged Judges David Day and Russell Comstock for their vision for specialized rules of procedure for family courts. He also noted that Justice Warren Jones who chairs the Civil Rules Advisory Committee is working to review rules needing updates.

4. The July 2012 Administrative Conference recommendation relating to the disqualification of judges, as discussed at the October Conference, was forwarded to the Court for its consideration. After discussion, the Court voted to take no action on the recommendations. Chief Justice Burdick reported that the Court took no action, choosing to instead monitor amended ICR 25, which allows Administrative District Judges to review a situation for possible misuse of the rule and take remedial measures.
5. The recommendation to adopt the rule regarding electronic devices in court facilities as proposed by the Media/Courts Committee was forwarded to the Court for its consideration. The Court adopted ICAR 49, effective January 1, 2013, and a copy of the order was included in the materials.
6. The amendments to Appellate Rules as outlined for the Administrative Conference were approved and included in the Conference materials.
7. The amendments to Criminal Rules were approved and included in the Conference materials.
8. The proposed order for the formation of a Jury Committee will be forwarded to the Court for its consideration at the February Oral Conference, when the proposed committee membership is completed. Judge Gratton has agreed to chair the committee.
9. The recommendation from the team attending the Language Access Summit to appoint a Language Access Committee will be forwarded to the Court for its consideration at the February Oral Conference, when the proposed committee membership is completed. Judge Gutierrez will chair the committee.
10. MCR 9.4 recommendations were forwarded to the Court and approved, with one change made before submission. A copy of the order was included in the Conference materials.
11. Canon 3B7(h) was amended, as follows: The Court adopted the following amendment, effective January 1, 2013: “(h) If a judge receives an unauthorized ex parte or other prohibited communication bearing upon the substance of the matter, the judge shall promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond. If the communication was in writing, the judge shall promptly provide a copy to all parties.”

12. Recommendations relating to a targeted 5% provider rate reimbursement for problem-solving court treatment providers were approved by the Court, effective January 1, 2013.

### C. Legislative and Budget Matters

#### 1. FY13 Budget

Roland Gammill provided the Administrative Conference with an update on the status of the FY13 budget, including the status of revenues from the emergency surcharge, the tax intercept, and other funding sources. He also reviewed high level financial reports on the general fund, dedicated fund, and technology fund. It was noted that the state revenue report is expected to be released shortly and will be a critical factor in the legislature's budgeting decisions.

In addition, the following documents were included in the Conference materials:

- a. *State of the State* address
- b. *State of the Judiciary* address. Due to the timing of the District Judges Conference, district judges were able to attend the address given by Chief Justice Burdick at the Capitol.
- c. JFAC Budget Presentation
- d. A national publication on "Funding Justice: Strategies and Messages for Restoring Court Funding"
- e. Office of Performance Evaluation (OPE) of state employee compensation and turnover. Andrea Patterson reported that the OPE was asked by the Legislature to study state employee compensation and turnover. A detailed report was released on January 30, 2013. Key findings were included in the conference materials. The study is limited in that it only looks at classified employee. Judicial Branch personnel are non-classified, but that does not mean the findings are not relevant. The report concluded that inflation has outpaced the gains in CEC (change in employee compensation) and the main reason employees leave is due to poor compensation. The overall economy continues to be a challenge in terms of taking action. Andrea will continue to monitor developments.

#### 2. Court Legislative Priorities

- a. Senior Judge Barry Wood updated the Conference on the status of the Court's legislative priorities, as follows:
  - *Priority 1: To continue to provide access to justice through the timely, fair, and impartial resolution of cases, consider removing the June 30, 2013 emergency surcharge sunset by amending I.C. § 31-3201H.*
    - > The Chief Justice addressed this issue in the *State of the Judiciary* address, and Patti Tobias also included it in her budget presentation to JFAC. A "print hearing" on this bill has been scheduled in the House Judiciary, Rules, and Administration Committee on February 5, 2013.
  - *Priority 2: Address compensation for justices, judges, and court employees.*
    - > As a result of the "road trip" to all seven judicial districts, Judge Wood reviewed the "Proposed Solution to address District Judge Recruitment," as follows:
      1. Statewide, the Idaho Judiciary will refocus and enhance its judicial recruitment efforts on an ongoing basis to better inform eligible applicants of the desirability, compensation, and other specific benefits of each of the judicial positions.

2. In several judicial districts, additional judgeships and support staff are needed to address the chronic understaffing and alleviate the significant and complex caseloads of District Judges. HB29 has now been introduced, seeking three (3) new District Judges, one each in the Third, Fourth, and Seventh Judicial Districts.
3. The Judiciary will continue to explore the feasibility and desirability of any changes to the selection and election of judges.
4. The Idaho Judiciary will seek to improve recruitment of a sufficient number of highly qualified applicants for all judicial positions by seeking a salary increase and other statutory changes where feasible.
5. Based upon input from both the Legislative and Executive branches, together with economic conditions, any salary increases may have to be sought through a phased in approach.
6. Additional Milliman analysis is ongoing and will inform all discussions and decisions.

Judge Wood reviewed a proposed three-phase approach. In addition, Justice Horton was invited to share his concerns regarding the Milliman analysis.

Also included in the Conference materials was a revised "White Paper" entitled *District Judge Recruitment Challenges Persists: Why Increasing Judicial Salaries in Idaho is Necessary*.

During discussion, a suggestion was made to eliminate Plan B service. The concern expressed related to the unintended consequences of drawing district judges away to retirement too early in their service. Some analysis will be conducted on this issue and included on the April Administrative Conference agenda for discussion.

A question was posed regarding ABA standards relating to judicial compensation and whether, according to those standards, judges with CP calendars should be the highest paid trial court judges. A clarification was made that the standard is intended for those judges who hear CP matters exclusively. This information will be verified.

Following discussion, IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY JUDGE SHINDURLING TO FORWARD THE "PROPOSED SOLUTION TO ADDRESS DISTRICT JUDGE RECRUITMENT" AS PRESENTED TO THE COURT FOR THEIR CONSIDERATION. THE MOTION PASSED (10-9).

Action Item(s):

- The April Administrative Conference will discuss concerns expressed regarding the unintended consequences of Plan B service.
- *Priority 3: Advancing Justice by meeting the need for additional judicial resources.*
  - > Two new magistrate judge positions are being addressed in the budget request, and three new district judge positions are requested in HB29 for Canyon, Ada, and Jefferson counties.

- b. Recommendations from the December 20, 2012 and January 8, 2013 Special Meetings/ Conference Calls relating to the recruitment of highly qualified judges and compensation were included in the materials. Another meeting will be convened at a future date.

3. Other Legislation of interest to the Courts

Judge Wood briefly highlighted other legislation of interest to the courts, including legislation related to mileage and per diem of jurors, controlled substance schedules, bail, requirements for clear and convincing evidence prior to ITD driver's license suspension, and use of state labs. A current status report of bills filed was distributed to the Conference, and it was noted that the Legislative Review Teams have been very busy and their work is very much appreciated. In addition, "other policy matters" for future consideration were reviewed:

- *It is time to transition from Idaho's aging computerized case management system.*
  - > This upcoming need was identified in the *State of the Judiciary* and the budget presentation to JFAC.
- *Improving our public defender system.*
  - > This item was discussed later on the Conference agenda (see item C.9.).
- *Support the Department of Administration's FY14 Capital Budget request to the Permanent Building Fund.*
  - > The Governor included \$1.5 million in his budget for renovation of the old Capitol Annex; however, because the Permanent Building Fund Committee has not been appointed yet, the status of the this item is unknown.
- *Improve the collection of court fees, fines, and other obligations.*
  - > Some legislators have shown an interest in this topic, and there is discussion about appointing an interim committee to study this issue. It was also included in the Court's budget presentation to JFAC.
- *Address public financing of Idaho Legal Aid Services (ILAS).*
  - > No new proposal has been received from ILAS.
- *Add disturbing the peace to the crimes for which the domestic violence court fee is assessed.*
- *Amend the Child Protective Act to improve both the implementation of the Act and ensure continued Federal funding.*
- *Expansion of rehabilitation options for persons who demonstrate good behavior while on probation and for a substantial period of time following discharge from probation.*
  - > Draft legislation was circulated to the district judges, who provided very useful feedback on the issue. This item is also on the agenda of the upcoming IPAA board meeting.
- *Provide for certifications in certain signed documents that would be the equivalent of an oath, and further provide that making a false statement in a document with such certification would constitute perjury.*
  - > Amendments have been proposed for this bill in preparation of a "print hearing."

Additional budget matters of interest for the 2013 Legislative Session include:

- *Specialized Facilities Planner that will assist counties and district courts statewide*
- *Increased spending authority from the existing Drug Court, Mental Health Court, and Family Court Services Fund, I.C. § 1-1625*
- *Effective administration of substance use disorder funds for problem-solving courts*
- *Additional guardian ad litem funding for abused and neglected children*
- *Juvenile intervention programs continue to make a difference*

4. Defects in the Law

Michael Henderson reported that all three of the following “defects” bills are on the 3<sup>rd</sup> Reading Calendar and are expected to receive a “Do Pass” from the Senate Judiciary and Rules Committee:

- SB 1016 – Producer Licensing. The statutes governing the licensing of bail agents include a provision that states, "A bail agent's license filed with the clerk of the district court is deemed proof that such bail agent is licensed pursuant to this chapter." Idaho Code § 41-1039(3). This provision was adopted in 2010 to guide district court clerks in determining whether a person was licensed to execute bail bonds. However, it is already obsolete. District court clerks can now verify that a person is currently licensed as a bail agent by consulting the website of the Department of Insurance, which provides up-to-date listings of licensed bail agents. A bail agent's license that was previously filed with the clerk may not provide valid proof that the agent is currently licensed, since such a license may since have been suspended, revoked, not renewed, or otherwise become invalid. Checking the Department of Insurance website will always provide current, accurate information on the agent's status. This bill would repeal the obsolete provision.
- SB 1017 – Magistrate's Division. Idaho Code §§ 19-3939 through 19-3944 concern the procedure to be followed when a misdemeanor conviction is appealed from the magistrate division to the district court. These statutes date back to territorial days, long before the magistrate division came into existence in 1971. They are now obsolete and in conflict with the provisions of the Idaho Criminal Rules governing such appeals. This bill would repeal these outdated statutes, which will help to avoid confusion as to the proper procedure to be followed in these appeals.
- SB 1018 – Juror Contempt. This bill corrects an erroneous reference to a subsection within Idaho Code § 2-208, a statute that addresses the procedure for summoning prospective jurors. In addition, the language in Idaho Code § 2-208(5) regarding the circumstances in which a prospective juror may be found in contempt of court for failing to report and the penalty provided for such contempt is in conflict with the language in Idaho Code §§ 7-601 and 7-610, the statutes defining what constitutes contempt and establishing the punishment for that offense. This bill would remove that conflict by amending Idaho Code § 2-208(5) to state that prospective jurors who fail to appear may be subject to contempt proceedings as provided in chapter 6, title 7 of the Idaho Code and in applicable Supreme Court rules.

5. Legislative – Court Relationships

Patti Tobias expressed appreciation to the members of the Judiciary for their efforts to establish relationships with legislators.

Action Item

- Judge Wood will send a reminder to judges who have not had a chance to submit their “contact sheets” regarding legislators.

6. Legislative Review Teams

Judge Wood noted that the review teams are complete, with the exception of one magistrate judge for the First District. The feedback provided on legislation is very much appreciated.

7. 2012 Yearly Court Reports

Each trial court administrator received a supply of the 2012 Yearly Reports, for distribution to the county commissioners in their judicial district. The TCA's are currently working to develop a protocol for establishing and maintaining effective relationships with local officials. The proposed protocol will be included on the April Administrative Conference agenda.

Action Item:

- The TCA's will develop a proposed protocol for establishing and maintaining effective relationships with local officials for consideration by the April Administrative Conference.

8. Inviting Legislators to Judicial Interviews

Chief Justice Burdick reported that he invited legislators in the Sandpoint area to attend interviews for the district judge position in the First District so they may gain an understanding of the process, values, and characteristics required of a judicial candidate and so they have an opportunity to get to know the candidates. The experience was well received by the legislators and the Chief Justice committed to invite legislators to attend interviews as a matter of practice. A suggestion was made for ADJ's/TCA's to invite legislators to sit in on magistrate commission interviews. This practice will be added to the aforementioned protocol as well as to the Magistrate Commission Handbook.

Action Item

- Administrative District Judges and Trial Court Administrators will invite legislators to attend District Magistrate Commission interviews.
- The protocol for establishing and maintaining effective relationships with local officials and the Magistrate Commission Manual will be amended to include the practice of inviting legislators to District Magistrate Commission interviews.

9. Improving Public Defense in Idaho

Judge Stegner, Judge Box, Judge Varin and Michael Henderson were invited to update the Conference on the work of the public defender subcommittee, including recommended legislation and rule changes.

Michael Henderson reminded the Conference of the 2010 NLADA evaluation of Idaho's public defense system. As a result of the report and in an effort to be proactive against possible lawsuits, the Criminal Justice Commission (CJC) appointed a subcommittee to address the improvement of public defense in Idaho. The first bill recommended by the subcommittee proposes the following:

- Right to representation: The purpose of the legislation is to update Chapter 8, Title 19, Idaho Code, to achieve uniformity in the provision of counsel at public expense as well as technical consistency.

Judge Varin summarized the second and third pieces of proposed legislation:

- Representation of juveniles: The purpose of this legislation is to clarify the circumstances in which juveniles are appointed counsel at public expense and to limit the circumstances in which juveniles may waive their right to counsel. The right to counsel would attach for a juvenile in any instance he is detained by a law enforcement officer or is under formal charge of having committed, or has been adjudicated for commission of, an act, omission, or status which brings him under the purview of the Juvenile Corrections Act. Juveniles would only be allowed to waive their right to counsel if they are charged with certain, non-serious offenses.

The legislation would also limit the use of information provided by a juvenile in pre-adjudication diversion proceedings so as to balance the Fifth Amendment privilege against self-incrimination and Sixth Amendment right to counsel of the juvenile with the government's interest in facilitating disposition of juvenile proceedings.

- **Right to counsel in Child Protection Act cases:** This legislation seeks to resolve ethical conflicts that arrive under 16-1614, Idaho Code, which allow an attorney to be appointed to serve in a dual capacity as both a guardian ad litem ("GAL") and an attorney for a child. An attorney serving in this dual role may be required to act in violation of the Rules of Professional Conduct for attorneys. A GAL advocates for the best interests of the child whereas an attorney advocates for what the child wants and maintains a confidential attorney-client relationships with the child. Most GALs are non-lawyer CASA volunteers. The proposed bill clarifies that an attorney may be appointed as an attorney for a child or a GAL for the child but may not serve in both roles in the same case. An attorney appointed as a GAL has the same rights and responsibilities as a non-lawyer GAL and has no additional authority even though that individual may hold a license to practice law.

The proposed bill further amends the statute to require a specific type of representation for a child involved in a child protection action. The bill requires the appointment of a GAL for all children under the age of twelve (12) unless there is no GAL available in which case an attorney shall be appointed to represent the child. An attorney shall be appointed to represent the GAL. For children twelve (12) years of age or older, the legislation requires the appointment of counsel to represent the child absent a finding by the court that such appointment is not appropriate or practicable. The appointment of counsel allows older children to have representation and a voice in critical decisions being made about their lives.

Judge Stegner commented that the legislation presented is less controversial than the creation of a paid commission. The subcommittee reported its support for the creation of a paid commission to the CJC, and the CJC has agreed to appoint a joint committee to review this topic further.

Members of the conference were invited to provide input on the proposals. One concern expressed relates to the definition of "serious crime" and the impact it may pose on counties. Consideration may need to be given to changing certain misdemeanors to infractions.

#### Action Item

- The legislation proposed by the public defender subcommittee will be sent to rule committees for review, in anticipation of the proposals proceeding in the legislature. Michael Henderson will analyze the question raised regarding the definition of "serious crime".

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY JUDGE STEGNER TO ADJOURN THE ADMINISTRATIVE CONFERENCE FOR THE DAY, TO RECONVENE AT 8:30 AM MST ON TUESDAY, FEBRUARY 5, 2013. THE CONFERENCE ADJOURNED FOR THE DAY AT 5:35 PM MST.

**On Tuesday, February 5, 2013, the Administrative Conference reconvened at 8:30 am MST.**

#### **D. Achieving the Court's Strategic Goals and Objectives**

1. Provide Timely, Fair, and Impartial Case Resolution / Advance justice by resolving cases as early as possible, while guaranteeing the rights of the parties.

Senior Judge Barry Wood summarized the work of the Advancing Justice Committee since the Administrative Conference last met, specifically its work on the proposed time standards and

efforts to solicit feedback from district judges and magistrate judges at their respective conferences. Presentations have also been made to a number of other groups, including the Idaho Prosecuting Attorney Association, members of the bar, and others. The committee plans to convene and consider all comments received in time to have a final recommended reporting format to present to the July Administrative Conference.

Action Item:

- Advancing Justice Committee recommendations relating to time standards will be included on the July Administrative Conference agenda.
2. Ensure Access to Justice / Enhance the ability to efficiently conduct court business by developing technologies, especially electronic filing of all court documents.
- a. The new Chief Information Officer (CIO) Kevin Iwersen was introduced to the Conference. Chief Justice Burdick and Kevin provided the Conference with updates on technology developments, including the status of laptops/pilot project. Kevin provided a more comprehensive report at the Clerks and Judges Conference held on February 4<sup>th</sup>.
  - b. The Administrative Conference will be kept apprised of the Court Technology Committee's actions, as well as the work of the Design and Implementation Committee. The Committee will recommend adoption of a strategic plan and an e-filing framework at the April Conference.
  - c. The important role of the respective judges associations in developing uniform best practices will be discussed. (Judge Juneal Kerrick, Judge Rick Bollar, and Janica Bisharat).

Chief Justice Burdick reviewed the progress of court technology, beginning with the assessment, hiring Kevin Iwersen as the new Chief Information Officer (CIO), the work of the Court Technology Committee, and the work of the Design and Implementation Committee chaired by Justice Trout.

Kevin Iwersen outlined the IT Strategic Plan, reported on the objective review of the case management system, continuing work to enable strategies for the case management environment, and laying the foundation and engaging vendors to develop e-filing within the courts. He asked for any input before the Court Technology Committee makes final recommendations.

Patti Tobias noted the significant contributions by the leadership of the District and Magistrate Judge Associations, Judges Box and Williamson, and Janica Bisharat, as they work with the Design and Implementation Committee on developing uniform business practices and forms. Judge Kerrick and Judge Bollar each provided brief updates on the efforts of the uniform business practice workgroups.

Action Item

- The Court Technology Committee will recommend adoption of a strategic plan and an e-filing framework at the April Administrative Conference.
3. Senior Judges: Judge Michael McLaughlin was welcomed to the conference. The Administrative Conference had previously asked for recommendations regarding the orientation, training, and evaluation of senior judges. Janica Bisharat reminded members that the Court had earlier adopted continuing education requirements for senior judges. Judge McLaughlin reported on the status of implementation efforts and answered questions regarding scheduled attendance at upcoming conferences. Janica Bisharat outlined recommendations of the Trial Court Administrators relating to the orientation of senior judges. The proposed process provides for a statewide orientation coordinated by the Administrative Office of the Courts and a district orientation coordinated by the ADJ and TCA.

Following discussion, IT WAS MOVED BY JUDGE GASKILL AND SECONDED BY JUDGE STEGNER TO ADOPT THE SENIOR JUDGE ORIENTATION CHECKLIST AS AMENDED, TO BE FORWARDED TO THE SUPREME COURT FOR CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The recommendation to adopt the senior judge orientation checklist will be forwarded to the Court for its consideration.

4. “Best Practices: Powers and Duties of Administrative District Judges” will be updated for further review at the February Administrative Conference

Janica Bisharat reviewed the preliminary guide to best practices which was developed by Administrative District Judges and Trial Court Administrators. Following additional research of statutes and rules, a number of duties were added to the chart. Members of the conference were asked to review the current draft and offer any additional changes prior to the April Administrative Conference.

Action Item

- The “Best Practices: Powers and Duties of Administrative District Judges” will be brought back to the Administrative Conference for final consideration in April.

5. District Magistrate Commission Manual

Senior Judge Wood and Janica Bisharat distributed the current draft of the District Magistrate Commission Manual, noting that it has been circulated to the Trial Court Administrators and others for their input and feedback, and invited the Conference to review this version and provide them with any suggested revisions.

Janica presented the following recommendations developed by the TCA’s to establish uniformity in the magistrate judge application.

- eliminate the request for writing samples
- restrict the number of reference letters to five (5)
- eliminate the request for references on the application

Following discussion, the conference embraced all three recommendations.

Action Items

- The Conference is invited to review the new draft of the District Magistrate Commission Manual and send any suggestions to Senior Judge Wood or Janica Bisharat.
- A revised District Magistrate Commission Manual will be brought back to the Administrative Conference for final consideration in April.

6. Magistrate Judge Retention Elections

Questions had been posed regarding how the Judiciary can provide better information to the public during elections.

Action Item

- The trial court administrators will discuss this topic and bring back recommendations to the April Administrative Conference.

7. Evidence-Based Pre-trial Release

The Conference of State Court Administrators released a white paper entitled “2012-2013 Policy Paper / Evidence-Based Pretrial Release,” which was included in the Conference materials.

A pilot project is being explored in Ada County, and Administrative District Judge Hansen explained that the 4<sup>th</sup> Judicial District’s magistrate judges have started a pre-trial release program, in coordination with Sheriff Raney. The pilot project has uncovered some issues and concerns for the group to address. Judge Dunn reported that Bannock County has such a program in place, and Judge Ryan noted that Canyon County has a good program run through the Sheriff’s office. Members briefly discussed the use of risk assessment tools. Kerry Hong added that the COSCA paper has some strong points, and with the Ada, Canyon, and Bannock county efforts, this may be a good topic for probation administrators to discuss throughout the state.

Trial court administrators were asked to discuss evidence-based pre-trial release at a future meeting, report on services in their respective districts, as well as share some best practices and ideas.

Action Items

- Trial court administrators will gather additional information regarding pre-trial release programs in their districts and discuss further during a future TCA meeting.
- Kerry Hong will add the issue of pre-trial release to a future probation administrator’s meeting agenda.

**E. Other Business**

1. Civil Rules Committee: Michael Henderson reviewed three new rules and two amendments proposed by the Civil Rules Committee, as follows:

- a. Proposed new rule 7(b)(5) regarding video teleconferencing for mental commitment hearings
- b. Proposed amendment to rule 11 regarding vexatious litigation
- c. Proposed amendments to Rule 69 regarding execution of judgments
- d. Proposed new rule 7(d) regarding declarations
- e. Proposed new rule 28(3) statement of purpose – this rule constitute Idaho’s implementation of the Uniform Unsworn Foreign Declarations Act as modified

IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY LINDA WRIGHT TO ADOPT THE RULES AND AMENDMENTS AS PRESENTED, AND INCLUDING AMENDING RULE 11 TO CLARIFY THE ROLE OF THE ADMINISTRATIVE DISTRICT JUDGE REGARDING VEXATIOUS LITIGATION. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The recommendations of the Civil Rules Committee will be forwarded to the Court for its consideration.
2. Felony Sentencing Committee: Justice Horton, chair, presented the current draft of the standard conditions of probation. The committee is working with the Department of Correction on this document, and asked district judges for their feedback and suggestions. The Criminal Rules Committee will also be asked to review the standards, which will be brought back for action by the Administrative Conference at a future date.

Justice Horton reviewed the new PSI enhancements prompting the proposed modification of Criminal Rule 32, which include:

- adding section (b)10 regarding the results of any substance abuse evaluation, mental health evaluation, or psychosexual evaluation, including any report prepared pursuant to I.C. § 19-2522 or I.C. § 19-2524, but excluding the content of any evaluation or report pursuant to I.C. § 18-211 or I.C. § 18-212.

It was suggested that this would be helpful for domestic violence evaluations.

- retaining language that PSI "... may recommend incarceration, but it should not contain specific recommendations concerning the length of incarceration ... however, the presentence report may recommend programs or treatment for the defendant and comment as to the length of time that may be required for the defendant to complete any recommended programs or treatment, and ... may also comment generally on the probability of the defendant's successfully completing the term of probation or the defendant's financial ability to pay a fine imposed by the court."
- adding section 11(e)(3) – Idaho Sentencing Information Database.
- adding section 11(h)(2) – Availability of presentence information to evaluations.
- adding section 11(h)(4) – Availability of presentence report to problem-solving court personnel.

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY JUDGE BEVAN THAT THE RECOMMENDED AMENDMENTS TO RULE 32 FROM THE FELONY SENTENCING COMMITTEE, AS AMENDED, BE FORWARDED TO THE SUPREME COURT FOR CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

#### Action Item

- The recommendations of the Felony Sentencing Committee will be submitted to the Supreme Court for its consideration.

3. Child Protection Rules: Kim Halbig-Sparks reviewed the proposed rule changes from the Child Protection Committee, as follows:

- IJR 33 – Summons (CPA)
- IJR 39 – Shelter Care Hearing (CPA)
- IJR 41 – Adjudicatory Hearing (CPA)
- IJR 44 – Case Plan Hearing – Permanency Plan Hearing
- IJR 45 – Review Hearings (CPA)
- IJR 46 – Annual Permanency Hearings
- IJR 51 – Application of Idaho Rules of Evidence (CPA) (JCA)

IT WAS MOVED BY JUDGE BOYER AND SECONDED BY KARLENE BEHRINGER TO FORWARD THE PROPOSED RULE CHANGES SUBMITTED BY THE CHILD PROTECTION COMMITTEE TO THE SUPREME COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The recommendations of the Child Protection Committee will be forwarded to the Court for its consideration. If the rule amendments are adopted by the Court, new Bench Guide Cards reflecting the updates will be distributed to Idaho Judges.
4. Criminal Mediation Rules: Senior Judge Barry Wood, chair of the Criminal Mediation Rules Committee, noted that they had met recently to address questions of judicial immunity, as well as questions about signing an agreement to participate in mediation. The committee discussed issues related to Rule 18.1 which were raised at a mediator training in May 2012, and their responses and proposed changes were presented to the Conference. No action is required at this time. Members of the Conference suggested that another criminal mediation training be coordinated in 2013.

Action Item

- Judge McLaughlin and Judge Heise will be asked to plan a criminal mediation training in 2013.
5. Hay Study – Status of Recommendations: Andrea Patterson reported on the status of the Hay Study recommendations and asked the conference to take action on the following broad policy recommendations:
- > Raise incumbents to minimum
  - > Provide a greater incentive for real-time reporting
  - > Raise incumbents whose salaries are significant below mid-point (calculations based on uniform Trial Court Administrator salaries)
  - > Address equity issues due to other increases

A question was raised regarding the inclusion of district court personnel in the study. The focus of the Hay study is on statewide Judicial Branch personnel. The conference was assured there are plans to work to address the classification and compensation of certain district court personnel as well.

- Next Steps: HR is working with employees and supervisors in the following positions to define a career path and associated salary ranges (and moving the incumbents into the correct position along the career path):
  - > Deputy Clerks (deputy clerk, senior deputy clerk, chief deputy clerk)
  - > Law Clerks
  - > Judicial Assistants
  - > Administrative Assistants (I, II, III, and Executive Assistant)

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY JUDGE WOOD TO ACCEPT THE BROAD POLICY OBJECTIVES OF THE HAYS STUDY AND FORWARD THEM TO THE SUPREME COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The recommendation to adopt the broad policy objectives of the Hay study as outlined will be forwarded to the Court for its consideration.
6. Judicial Performance Evaluations: Judge Stegner provided the Conference with an article entitled “Judicial Performance Evaluation Steps to Improve Survey Process and Measurement, which appeared in an issue of the *Judicature*, a publication of the American Judicature Society. Judge Stegner reported that efforts are underway to improve the judicial performance evaluation

questionnaire. The Judicial Council has established a subcommittee in this regard, and Judge Stegner is a member. The subcommittee is working with others on this issue, and emphasizes that the evaluations are strictly for educational purposes, not for voter information. It is hoped to garner 100% participation from judges.

7. Evaluation of Clerks/Judges Conference

The Administrative Conference shared their observations and experience regarding the February 4<sup>th</sup> Clerks/Judges Conference, as well as provided suggested agenda items for the 2014 conference.

8. Hayes vs. J. Mitchell lawsuit: Michael Henderson updated the Conference on the status of the *Hayes vs. J. Mitchell* lawsuit. Chief Justice Burdick, Justice Horton, and Chief Judge Gutierrez were sensitive to the possibility that the issue could come before them on appeal and stepped out of the room for this discussion. The matter is currently pending in the district court. Michael will report back to the Conference on any further developments.

9. Productivity Strategies: The Conference was provided with an update on the status of previously adopted productivity strategies, including judicial education and the laptop pilot, as follows:

- Standard ultrabooks were requested by 28 judges; all of the standard systems have been received by the Information Division, imaged, and are ready for deployment. Touchscreen laptops were requested by 69 judges; the manufacturer has not yet released these systems for general availability, however, release remains tentatively slated for February or March 2013; the Information Division remains in weekly contact with the distributor for any changes in product availability.
- Judges who requested judicial education in the survey were emailed in November and invited to submit training requests to Judges McLaughlin and Heise.

Action Item:

- Administrative Office personnel will continue to communicate with judges to keep them apprised of the status of their selections.

10. District Judges Association -- Request for Idaho Department of Correction (IDOC) updates:

At the recent District Judges Association meeting, a list was compiled of IDOC updates requested. Scott Ronan reported that a meeting has been scheduled to discuss these and other items with IDOC on February 27, 2013.

Action Item

- Discuss with IDOC the list of issues/updates compiled by the district judges.

11. Children and Family Committee's proposed rule for parenting time evaluations: Judge Comstock, Judge Dennard, and Viki Howard were welcomed to the conference. Judge Comstock, chair, outlined the Children and Family Committee's new proposed rule for parenting time evaluations, noting two reasons for developing this rule:

- licensed psychologists who perform this function have their own set of rules and protocols they must use in forensic custody evaluations that other licensed professionals do not. Others have performed this function and are not licensed psychologists. Those that are licensed have experienced difficulty because they are governed by national organizations that require adherence to standards that set forth the protocol for performing the evaluations and the qualifications for those that do them.

- over the years, some fundamental legal issues over admissibility of recommendations of custody evaluations have been raised.

Judge Dennard added that these issues are not new, but have resurfaced because of the need for standards. Viki Howard relayed that the board is very appreciative of the Court asking and acting on their input.

A question was raised regarding the extent of the background check required for licensure. It was agreed this area will need to be further developed.

IT WAS MOVED BY JUDGE BOLLAR AND SECONDED BY JUDGE BOYER THAT THE PROPOSED RULE FOR PARENTING TIME EVALUATIONS AS AMENDED REGARDING QUALIFIED JUDICIAL IMMUNITY BE RECOMMENDED TO THE COURT FOR ADOPTION. THE MOTION PASSED UNANIMOUSLY.

#### Action Items

- The proposed new rule relating to parenting time evaluations will be forwarded to the Court for its consideration.
- The Children and Families Committee will further develop a requirement for background checks.

#### **F. Discuss Proposed agenda for April 18-19 , 2013, Administrative Conference**

- Felony Sentencing Committee – sentencing data
- Protocol if a judge is arrested
- Family Court Services update
- “Sitting” Judges: Recommendations relating to developing best practices for the assignment and effective use of sitting judges will be discussed. (Janica Bisharat, Trial Court Administrators)
- Senior Judges (Janica Bisharat / Trial Court Administrators): a. Recommendations relating to developing best practices for the assignment and effective use of senior judges will be presented. b. Trial Court Administrators recommendations relating to performance evaluations of senior judges will be discussed.
- Communications Protocol: The role of the Judicial Council, Administrative District Judges, and Trial Court Administrators regarding complaints about senior judges or sitting judges will be discussed.
- Discussion of concerns relating to the unintended consequences of Plan B service. (Judge Stegner)
- PERSI retirement issues (Judge Kerrick)
- Consider a proposed protocol for establishing and maintaining effective relationships with local officials.
- Consider recommendations of the Advancing Justice Committee relating to time standards.
- Consider recommendations of the Court Technology Committee relating to a strategic plan and e-filing framework.
- Conduct a final review of “Best Practices and Duties of Administrative District Judges.”
- Conduct a final review of the revised Magistrate Commission Manual.
- Consider TCA recommendations relating to magistrate judge retention elections and how the Judiciary can provide better information to the public during elections.

**G. Discuss plans for Upcoming Dates of Importance to the Administrative Conference**

April 2013 / Boise

- Thursday, April 18 (morning) ..... Administrative District Judges Meeting
- Thursday, April 18 (morning) ..... Trial Court Administrators Meeting
- Thursday, April 18 (afternoon) ..... Administrative Conference (Boise)
- Friday, April 19 (morning)..... Administrative Conference (Boise)

July 2013 / Coeur d’Alene

- Tuesday, July 16 (morning) ..... Administrative District Judges Meeting
- Tuesday, July 16 (morning) ..... Trial Court Administrators Meeting
- Tuesday, July 16 (afternoon) ..... Administrative Conference (Boise)
- Wednesday, July 17 (morning) ..... Administrative Conference (Boise)
- Wednesday, July 17 – Friday, July 19.....Idaho State Bar Annual Meeting  
*(Judicial members of the Administrative Conference are invited to stay and attend the ISB annual meeting.)*

October 2013 / Boise

- Thursday, October 17 (morning)..... Administrative District Judges Meeting
- Thursday, October 17 (morning)..... Trial Court Administrators Meeting
- Thursday, October 17 (afternoon) ..... Administrative Conference (Boise)
- Friday, October 18 (morning) ..... Administrative Conference (Boise)

Judge Bevan raised a question regarding the accuracy or currency of the of the Small Lawsuit Resolution Action (SLRA) roster maintained on the Court’s website. Efforts are already underway to bring this roster current.

**IT WAS MOVED BY JUDGE DUNN TO ADJOURN**, and the Administrative Conference concluded at 12:00 Noon MST.