

MINUTES

ADMINISTRATIVE CONFERENCE

Tuesday and Wednesday, July 12-13, 2011 // Idaho

The Administrative Conference was called to order on Tuesday, July 12, 2011, at 1:07 pm MDT by Chief Justice Eismann.

Administrative District Judges in attendance included: Hon. John Mitchell, Hon. Jeff Brudie, Hon. Juneal Kerrick, Hon. Michael Wetherell, Hon. Richard Bevan, Hon. David Nye, 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.

Others members joining the Conference included: Justice Roger Burdick, Justice Jim Jones, Justice Warren Jones, Justice Joel Horton, Court of Appeals Chief Judge David Gratton, Hon. Steve Verby, President – District Judges Association, Hon. Ryan Boyer, President – Magistrate Judges Association, Hon. Rick Bollar, Vice-President – Magistrate Judges Association, Hon. Michael Oths – Secretary/Treasurer, Magistrate Judges Association, Corrie Keller, Roland Gammill, John Peay, Janica Bisharat, Michael Henderson, Andrea Patterson, Cathy Derden, Shirley Throop, and Patti Tobias.

Chief Justice Eismann announced the recent election of Justice Roger Burdick as the new chief justice, effective August 1, 2011. Justice Burdick expressed his appreciation to Chief Justice Eismann for his outstanding service during the past four years.

A. Approval of Minutes of the April 15, 2011 Administrative Conference

IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY JUDGE BOLLAR TO APPROVE THE MINUTES OF THE APRIL 15, 2011 ADMINISTRATIVE CONFERENCE. THE MOTION PASSED UNANIMOUSLY.

B. Supreme Court Action on Administrative Conference Recommendations and Other Supreme Court Updates

1. FY12 budgets and Administrative Conference recommendations, including revisions to the Budget Reduction Policy, were approved by the Court.
2. Proposed rule changes relating to ICR 25(12) were forwarded to the Court for its consideration. Comments from the bar and judges were sought on the proposal and submitted to the Court. Following review of the comments, the Court adopted amendments to ICR 25(12). A copy of the order was included in the materials.
3. ICRP 75(d) amendment
The Conference concluded additional discussion and drafting was necessary. The Court agreed and this proposal is pending with the staff attorney.
4. A final summary of all rule changes, effective July 1, 2011, was included in the materials. Any pending implementation issues will be identified.

C. Legislative and Budget Matters

1. FY12 Budgets
The FY12 budget summary was included in the materials, as well as the revised budget reduction policy. Roland Gammill reported that the Governor's office announced FY11 revenues at 7.9% ahead of projections, or \$85.3 million. As stipulated by SB1207, \$67.4 million of the surplus will

be added back to the education budget. In addition, some of the surplus will be used to replenish the state's reserve funds.

Roland Gammill noted that the court was able to maintain operations during the past two fiscal years by using cash balances, adding the emergency surcharge, and making significant cuts through its budget holdback policy. A summary of the FY12 budget allocation was reviewed, as well as the status of the emergency surcharge and the tax intercept program.

Patti Tobias emphasized that the Legislature showed extraordinary respect for the judiciary during the budget setting process this year.

2. FY13 Budget

Roland Gammill provided the Conference with a review of the FY13 budget preparation schedule, and noted that the "word on the street" for the FY13 budget is "maintenance only; no new enhancements." The conference reviewed a list of the FY13 budget requests received to date. Patti Tobias thanked the Administrative District Judges and Trial Court Administrators for their work in submitting the needs of each judicial district.

Action Item

- For the October Administrative Conference, Roland Gammill will provide detailed estimates for the FY13 budget requests, including costs and caseloads for the judgeships requested, funding the senior judge days requested, and restoring other budget units which had been reduced during the two years of holdbacks. Roland will also analyze all dedicated fund requests to determine which, if any, can proceed in FY12.

3. Capital Budget request / Law Learning Center

Roland Gammill reported that the Department of Administration received \$1.5 million from the Public Works Division to start renovating the infrastructure of the Law Learning Center. It is anticipated that an additional \$4 million will be requested in FY13 to continue with the project.

4. Grant Funds

Additional grant funds have been sought aggressively by court personnel. Roland Gammill provided the conference with a status report on awards received or grants in process.

Judge Bollar and Amber Moe, the Statewide Domestic Violence Court Coordinator, attended a national conference regarding STOP funding. The Idaho team asked the Criminal Justice Grant Review Board to no longer require the Idaho Supreme Court to complete an application every year for the STOP Grant funding to support statewide judicial education.

IT WAS MOVED BY JUDGE BOLLAR AND SECONDED BY BURT BUTLER THAT A LETTER BE SUBMITTED TO THE CRIMINAL JUSTICE GRANT REVIEW BOARD, ASKING FOR APPROVAL THAT 5% OF THE STOP GRANT BE USED FOR STATEWIDE DOMESTIC VIOLENCE EDUCATION SPONSORED BY THE IDAHO SUPREME COURT, THEREBY ELIMINATING THE NEED FOR AN APPLICATION TO BE SUBMITTED EACH YEAR. THE MOTION PASSED UNANIMOUSLY.

Court staff would continue to submit applications for amounts greater than 5%.

5. Identify any other preliminary legislative proposals

- a. The Administrative Conference was provided a list of potential legislative proposals that have been suggested over time for their review and comment for the 2012 session.

Judge Wood supported exploring options for legislation that would permit the Supreme Court to exercise options to fulfill the courts' constitutional responsibilities during fiscal crises, including specifying that certain district judge and magistrate judge positions remain vacant and relocating district judge and magistrate judge positions (Item #1, p. 19 - Handouts).

Judge Wood also pointed out that the provision of I.C. § 19-2601(5), allowing courts to place a defendant on probation to "any other person or persons" appears to be in conflict with I.C. § 20-219 and article X, section 5 of the Idaho Constitution.

Judge Bollar supported extending the permissible probation term for misdemeanors for up to one year (Inventory Item #80) and allowing ex parte orders striking non-consensual common law liens (Item #2, p. 19 – Handouts).

Judge Bevan supported legislation to clarify the duties of sheriffs to hold and transport defendants who are undergoing evaluation to determine competency, or who have been declared competent and are to receive treatment (Inventory Item #82).

Judge Brudie asked that legislation allowing relocation of resident chambers be considered (Item #1, p. 19 – Handouts).

Judge Wetherell asked that legislation be considered allowing 30 days jail time for probation violations where the defendant was not sentenced to much jail time or has served the jail time; Judge Wetherell asked that legislation be considered to ensure timely and complete mental health evaluations of defendants. I.C. § 19-2524 also needs to be examined more broadly.

Judge Wetherell also discussed the possibility of legislation, or use of contempt provisions, to address persons interfering with judges going to or from court.

Judge Shindurling pointed out that there were few providers of ignition interlock services, particularly in rural areas, and that technical problems with interlocks were being experienced. He asked that other, newer forms of interlock technology be explored.

Judge Nye supported making relief under I.C. § 19-2604 available to those who may have received only a fine, rather than only to those who were placed on probation or received a suspended sentence. (Inventory Item #57)

Judge Kerrick supported legislation clarifying the remedies, including contempt, that are available for dealing with persons who fail to appear for jury service (Inventory Item #63).

Judge Verby favored exploring legislation allowing for expungement of criminal records in certain cases, and also favored an examination of changes in the judicial election laws.

Following an earlier question by Judges Heise and Boyer about the ability to expunge a misdemeanor or redact a juvenile record, this issue will also be addressed.

Action Item

- Final recommendations regarding the Court's legislative program will be considered by the Administrative Conference at the October conference.

b. Criminal Procedure

- Burt Butler had asked that DOC provide probation violation data to the Felony Sentencing Committee and the Administrative Conference, and the statistics were included in the conference materials.
- Probation Update: Judge Wood suggested that the Conference review the statutes, rules, and case law relating to both felony and misdemeanor probation. Michael Henderson included in the Conference materials the relevant statutes and rules for reference.

Action Item

- A further review and discussion of felony and misdemeanor probation will be held at the October Administrative Conference.

c. Change to judicial ballots: Prompted by discussion during the last legislative session, the issue of changing the judicial ballot relating to the designation of the incumbent was discussed.Action Item

- For the October Administrative Conference, Michael Henderson will compile research on the background related to judicial ballots, as well as gather information regarding judicial ballots in other states.

d. The status of the Judges' Retirement Fund was discussed at the conference.

Corrie Keller reported on the status of the Judges' Retirement Fund as of the end of July, and noted that meetings with certain House members are continuing. The small group is reviewing how best to stabilize the fund and costs of spousal benefits and Plan B provisions for judges appointed after a certain date. Contribution rates are also being examined. In addition, he noted that the Court's response from the IRS is still pending.

e. The status of Legal Aid's efforts to seek public financing were discussed. Patti Tobias outlined the last minute legislation that was introduced by Legal Aid, requesting court filing fees to fund Legal Aid services in Idaho. She noted that the Court continues to work in conjunction with the Idaho State Bar to provide appropriate public financing for Legal Aid.

Chief Justice Eismann inquired about the greatest needs for representation for indigent Idahoans seen by the Conference. The greatest needs are in family law cases, followed by landlord-tenant cases.

6. Review status of implementation of legislation and rule changes effective July 1, 2011

- a. Legislative and rule changes, effective July 1, were included in the materials, to ensure all implementation questions have been addressed.
- b. Pending legislative action items
 - Collection of court ordered obligations; coordination with probation and statewide collection agency contracts
 - Standard order re: PSI fee will be disseminated statewide via the *Court E-News*
 - I.C. 31-878 Administrative District Judge order re: misdemeanor supervision fee
 - Elections – impact of “closed primaries” (discussion under Item C.5.c.)
 - Public records with ICAR 32 Committee. Training for court clerks will take place at the upcoming Idaho Institute for Court Management.

- c. Substance abuse appropriations (DOC, DJC, DHW, and the Courts), report to the Criminal Justice Commission, and 19-2524 developments.
 - Specific concerns about the quality and timeliness of mental health assessments were discussed.

Action Item

- Pending legislative action items identified in the minutes will be added to the October agenda.

7. District Legislative Meetings

Administrative District Judges and Trial Court Administrators were encouraged to plan and schedule opportunities to meet with legislators in each district before next session. A copy of Judge Shindurling's letter to Senator Bart Davis was included in the Conference materials.

"Building Productive Legislative-Judicial Relationships," which was developed ten years ago, was included in the Conference materials for discussion. Patti Tobias reviewed the protocol, noting the proposed additional item relating to drug and mental health courts, as a meaningful way to engage legislators and to help them gain an understanding of the important work of the courts. The suggested addition states: Invite legislators to attend drug or mental health court graduations and/or to serve as graduation speakers; invite legislators to Adoption Days and other court events.

The Conference agreed the protocol is still appropriate and efforts simply need to be reinvigorated within each district.

Following discussion, IT WAS MOVED BY JUDGE BOLLAR AND SECONDED BY LINDA WRIGHT TO FORWARD THE REVISED PROTOCOL "BUILDING PRODUCTIVE LEGISLATIVE-JUDICIAL RELATIONSHIPS" TO THE SUPREME COURT FOR CONSIDERATION. MOTION PASSED UNANIMOUSLY.

In addition, to encourage court-legislative relationships, Patti Tobias and Judge Gratton asked the Administrative Conference to review a list of legislators and provide court or legal contacts for each legislator, and return the list to Patti Tobias in August.

Action Items

- The revised protocol "Building Productive Legislative-Judicial Relationships" will be forwarded to the Supreme Court for consideration.
- To encourage strengthening court-legislative relationships, Patti Tobias asked Administrative District Judges and Trial Court Administrators to review a list of legislators and provide court or legal contacts for each legislator, and return the list to her in August.

- D. Improving Collections:** recommended rules relating to the uniform assessment of fees, and uniform standards for the waiver of fees. Michael Henderson prepared a proposed rule relating to waiver of fees, providing that waivers be authorized by case, rather than by fee. The rule also provides for some type of finding before the fees are waived, and provide guidance as to the timing of the waiver. The Conference provided feedback on the proposed rule.

Action Item

- Michael Henderson will submit a revised rule relating to a waiver of fees for review at the October Conference.

E. Introduction of Jim Carlson, Executive Director – Idaho Judicial Council

Jim Carlson was invited to meet with the Conference and listen to any concerns. Jim addressed efforts underway to address ex-parte contact, the development of a law clerk handbook, and the panel discussion scheduled for the Judicial Conference.

~~ Presentation and remarks by Justices of the Idaho Supreme Court

In honor of Corrie Keller's outstanding service to the Idaho Judiciary, Justices of the Supreme Court and others made remarks and presented tokens of appreciation to Corrie for his 27+ years with the court system. Corrie's wife, Stacy, joined for the festivities, and the judiciary wished them well as they move to Utah.

~~ At 5:15 pm MDT, the Administrative Conference adjourned for the day.

~~ On Wednesday, July 13, 2011, the Administrative Conference reconvened at 8:30 am MDT.

F. Leadership Conference / Mission Statement of the Idaho Courts**1. A revised draft of the Mission Statement of the Idaho Courts**

Andrea Patterson provided the Conference with an overview of the revised draft of the Mission Statement of the Idaho Courts and major objectives as developed at the April Leadership Conference, with the addition of proposed changes to the mission and values of the courts. The Conference discussed the draft, provided feedback, and will consider final amendments at the October meeting.

Action Item

- A final draft of the Mission Statement of the Idaho Courts will be considered at the October Administrative Conference.

2. The important role and responsibilities of the Administrative Conference were articulated and included on the July Administrative Conference agenda for review. The Administrative Conference began meeting in September of 1973, and plays a vital role in the innovation and excellence of the Third Branch of Government. Michael Henderson was asked to describe the membership, meeting schedule, roles and responsibilities of the Conference. The Conference discussed the important role of the Conference and offered the following additional thoughts about the role of the Conference:

- it would be helpful to memorialize it in a rule
- provides excellent vetting of ideas to the Supreme Court; allows ideas to come from the bottom up
- Supreme Court sends suggested proposals through the Administrative Conference process
- provides opportunity for court committee recommendations to be heard and broadly discussed
- promotes collegial discussion
- should promote uniform statistics and research-based practices
- promotes effective communication and exchange of ideas

Action Item

- The proposed role and responsibilities of the Administrative Conference will be on the agenda for final consideration at the October Administrative Conference.

3. Advancing Justice: Idaho's Caseflow Management Initiative

Judge Barry Wood provided an update on the "Advancing Justice" efforts, including:

- Overall purposes: roots in the Idaho Constitution, Idaho Judicial Canons, and the current Mission Statement of the Idaho Courts; a revitalized effort emphasized by the recent economic downturn, resulting in extra scrutiny how public dollars are spent by government agencies
- Working group consists of Judge Wood, John Peay, Janica Bisharat, Taunya Jones, Dan Kessler, Judge Gardunia, and Julie Cottrell
- Judges interviewed by Trial Court Administrators / Judicial Conference session: Still awaiting 100% response; will draw on the assistance of Trial Court Administrators to get remaining interviews completed.
- Phoenix workshop attendance
- Western Caseflow Management Conference to be held August 17-19 in Post Falls: includes a team from Idaho
- A Criminal Mediation Workshop will be held in October
- IICM: October 24-26 – all judges are encouraged to support attendance by clerks
- Time standard reports will be reviewed; will include a segment on time standards to discuss at each Administrative Conference
- Annual Report of the Courts: 2011 report will include information on this effort
- National efforts: model time standards to be considered by the Conference of Chief Justices and Conference of State Court Administrators
- All time statutes and court rules will be examined for impediments to timely and fair case resolution

John Peay emphasized that with 1.5 million people in Idaho, 5000 lawyers, 1000 clerks, and 138 judges, this initiative is critical for the improved administration of the court system and providing justice to all.

4. Technology Update

- Court Technology Plan – FY12: John Peay provided the annual update on technology plans, highlighting:

Data Sharing: currently working with the Department of Juvenile Correction. ISP and ITD are expanding the amount of electronic data that they currently receive from the data warehouse. To facilitate CPA case processing, data sharing opportunities are being examined with IDHW.

E-Citations: all ISP vehicles are set up for E-citations, reducing the average stop time from 13 minutes to 3 minutes, and reducing data entry time from 4 minutes to 3 seconds; huge time efficiencies accomplished.

VINE (Victims Notification Program): Over the past several months a cooperative effort with the Idaho Sheriff's Association has been underway to develop programming that will send ISTARs court calendared activities to VINE, supported and paid for by the Idaho Sheriff's Association grant.

On-line Payment of Fees, Fines, and Posting Bond: With a shortage of human resources, this effort is taking time to implement. Ada County is expected to go "live" within the next few weeks, followed by the largest county in each district, and then the rest of the state to follow.

Electronic Filing / Document Management: With the development of CourtPay, filing fees can now be received and accounting for by ISTARs which will allow for the implementation of electronic filing. Design and development of an E-filing solution will begin in October 2011,

with pilot testing of e-filing portion by June 1, 2012. Integration of a document management system into ISTARs will commence during the second quarter of 2012, with pilot testing slated for October 2012.

Enhanced Legal Research / Knowledge Management: All materials that were previously available on Premise have been transferred to IKMS, and future efforts will include the continued expansion of content and functionality. Currently examining migrating from the traditional *WestLaw* to the new *WestLaw Next* legal research system.

Desktop Computer, Printer and Server Upgrades: Began in FY11; completed a statewide roll-out of new desktop computers, printers, and servers to support ISTARs. All counties have been upgraded, except for Bonner and Ada. Ada County is slated for the 3rd quarter of 2011, and Bonner County's installation is pending local facility issues. John added a note of thanks to all for their cooperation with the interruptions necessary during the installation, and that the deputy clerks were great to work with.

Court Web-based Resources: Continuing to expand court resources and services that can be made available on the Internet. Working to improve the look and feel of the court's website to ensure continuity of appearance and enhance ease of use. Will implement software that will allow users to maintain their own website content.

Continue the development of new caseload and workload reports: reviewing existing caseload and time standards reports for needed changes to align them with national standards. Working to design and introduce reports that identify workload measures and where to focus judicial resources, such as the number of continuances report, as well as the number of hearings held per case at disposition.

Continue development and refinement of CPA reports: Continue with the development of CPA reports which will fill requirements for providing data and monitoring work flow/load. Slated for completed the 3rd quarter of 2011 is the addition of new actions and results for CPA: late found parent action, subsequent removal action, waived hearing continuance result.

Centralized collection of overdue court obligations: Continue to explore options to provide centralized processing of overdue fees and fines to a private collection agency to add another mechanism to collect past due court ordered fees and fines. In FY12, develop seamless transfer of collection information to local ISTARs database.

Action Item

- Final review and adoption of the technology plans for FY12 is scheduled for the October Administrative Conference.

5. Court of Appeals / Employee Satisfaction Committee

Chief Judge Dave Gratton was invited to talk about the work of the Court of Appeals, and invited the input of the Conference.

Chief Judge Gratton provided the following updates regarding the Court of Appeals:

- appreciates filling the long-vacant judicial assistant position
- enjoys the addition of a fourth judge and the new space in the Supreme Court Building
- committed to being more involved in the leadership of the judiciary
- appreciates the ability to travel again

- committed to reach out to the trial courts, promote an ongoing dialogue and will solicit opportunities to meet with trial court judges in each district

As chair of the Employee Satisfaction Committee, Judge Gratton reported that the committee has been busy reviewing the survey results, prioritizing the areas of concern, and working to implement or provide the tools necessary to address issues identified.

Andrea Patterson expressed her appreciation to Judge Gratton for his leadership with this committee.

Action Item

- A report and recommendations from the Employee Satisfaction Committee will be available at the October Administrative Conference.
- Chief Judge Gratton will contact each judicial district over the next year to schedule a visit and promote dialogue.

G. Other Business

1. Cathy Derden and Michael Henderson will be asked to facilitate a discussion of potential next steps regarding grand jury developments, rules relating to the use of email to disseminate judgments and orders; bond schedules (omissions); concerns about appeals from small claims and limitation on \$25 limit on attorney fees, but parties asking for jury trial; and license suspension issues.

Action Item

- The discussion on “other matters” earlier identified will be scheduled for October.
2. The Conference will review the status of assignments relating to Making the Record made earlier by the Administrative Conference, and discuss the priorities of the Conference and whether it wishes to proceed. The Conference will also address computers for court reporters.

Action Item

- The October agenda will invite the Administrative Conference to identify any remaining priorities and assignments relating to making the record.
3. Proceedings for involuntary care and treatment of mentally ill persons and the use of video conferencing. Judge Bevan described an issue in the 5th district where a psychologist is willing to provide a mental health assessment via video conferencing, but a magistrate judge will not allow its use. Judge Bevan asked the Conference for their experiences in such circumstances and wondered if a rule would be helpful.

Action Item

- Judge Bevan will consider a local administrative order in the 5th district regarding the use of video conferencing for proceedings of involuntary care and the treatment of mentally ill persons.
 - Cathy Derden will ask the Civil Rules Committee to review this issue.
4. 5th District question relating to grand jury exhibits and search warrants: Linda Wright and Judge Bevan relayed a clerk’s question regarding the destruction of grand jury evidence, which also relates to Item 7, following.

Action Item

- Michael Henderson will ask the Rule 32 Committee to review this item, and bring a proposed rule back to the October Administrative Conference.
5. ICAR 37/38 regarding destroying exhibits. Cathy Derden brought forward a recommendation regarding ICAR 37/38 regarding destroying exhibits, and asks the Conference to forward any questions or concerns to her or Michael Henderson.
 6. Interpreter Language Line use by misdemeanor probation officers: Janica Bisharat reported that misdemeanor probation officers are interested in using the Language Line, and have asked if access to a statewide contract is available.

Action Item

- Kerry Hong will explore a potential statewide contract for the Language Line for misdemeanor probation officers, and report back to the Administrative Conference in October.
7. 3rd District question – jurisdiction issue – amending vital records: Dan Kessler reported that the 3rd Judicial District has been receiving requests to amend vital records (birth certificates) due to an increase in home births, and wonders if these matters can be handled in the magistrate division, or should Rule 82(c)(2) be amended to so this type of case can be assignable to an attorney magistrate. Following discussion, Judge Kerrick will consider local assignment practices.
 8. Disqualifications and Rule 41:
Judge Shindurling and Burt Butler explained their concerns regarding disqualifications on child protection cases.

Following discussion, IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY JUDGE WETHERELL TO AMEND 40(d)(1) TO ADD A NEW PROVISIONS ADDRESSING THE MISUSE OF DISQUALIFICATIONS WITHOUT CAUSE, SIMILAR TO I.C.R. 25(12). THE MOTION WAS APPROVED.

Action Item

- The recommendation to amend ICRP 40(d)(1) will be forwarded to the Supreme Court for consideration.
9. Increase in Mileage Expense: Judge Shindurling asked if the mileage reimbursement would be changing to reflect the current higher gas prices. Roland Gammill reported that no change to the mileage expense was on the horizon.

Following discussion, IT WAS MOVED BY JUDGE SHINDURLING AND SECONDED BY JUDGE VERBY THAT THE BOARD OF EXAMINERS BE ASKED TO EXAMINE THE CURRENT MILEAGE RATES FOR ANY POTENTIAL ADJUSTMENTS, GIVEN THE HIGHER GAS PRICES. MOTION PASSED UNANIMOUSLY.

Action Item

- A letter will be sent to the Board of Examiners, asking for an examination of current mileage rates for any potential adjustments, given the higher gas prices.

H. Proposed agenda for October 13-14, 2011 Administrative Conference

(Thursday afternoon and Friday morning)

- Update on performance measures
- Recruitment and Retention Committee-- evaluation survey and DMC's
- Court Security and Bailiffs – report on status and potential training

I. Upcoming Dates of Importance to the Administrative Conference

September 19-23, 2011..... Idaho Judicial Conference (Boise)

October 2011

Thursday, October 13 (morning) Administrative District Judges Meeting (Boise)

Thursday, October 13 (afternoon) Administrative Conference (Boise)

Friday, October 14 (morning)..... Administrative Conference (Boise)

February 2012

Monday, February 6 Clerks/Judges Conference (Boise)

Tuesday, February 7 Administrative Conference (Boise)

J. Adjournment: It was moved by Judge Nye and seconded by Judge Shindurling to adjourn. The motion passed, and the Administrative Conference adjourned at 12:01 pm MDT.