

MINUTES

ADMINISTRATIVE CONFERENCE

Thursday, October 15, 2015 // Boise, Idaho

The Administrative Conference was called to order on Thursday, October 15, 2015, at 12:30 pm MDT by Vice Chief Justice Daniel Eismann (Chief Justice Jim Jones was traveling out of the country). Administrative District Judges in attendance included: Hon. Lansing Haynes, Hon. Jeff Brudie; Hon. Bradly Ford, Hon. Timothy Hansen, Hon. Richard Bevan, Hon. Stephen Dunn, and Hon. Darren Simpson. Trial Court Administrators present included: Karlene Behringer, Hon. Jay Gaskill (acting), Dan Kessler, Doug Tyler, Larry Reiner, Shelli Tubbs, Suzanne Johnson, and Burt Butler.

Others joining for all or part of the Conference included: Interim Administrative Director of the Courts Justice Linda Copple Trout; Hon. Barry Wood, Interim Deputy Administrative Director of the Courts; Court of Appeals Chief Judge John Melanson; Hon. John Butler, President – District Judges Association; Hon. Rick Carnaroli, President-elect – Magistrate Judges Association; Hon. Jayme Sullivan, Secretary-Treasurer – Magistrate Judges Association; Hon. Michael Oths, Past-President – Magistrate Judges Association; Hon. Rick Bollar, Past-Past-President – Magistrate Judges Association; Roland Gammill; Janica Bisharat; Andrea Patterson; Kerry Hong; Kevin Iwersen; Michael Henderson; Cathy Derden; Deena Layne, Judge Lynne Krogh, and Steve Kenyon.

Justice Eismann welcomed Doug Tyler, the newly appointed Trial Court Administrator for the Third Judicial District, and Shelli Tubbs as the newly appointed Trial Court Administrator for the Fifth Judicial District.

Judge Jayme Sullivan was welcomed as the new secretary-treasurer for the Magistrate Judges Association. The Conference expressed its appreciation to Judge John Butler, who ends his service as the president of the District Judges Association.

Justice Eismann congratulated Dan Kessler, Third Judicial District Trial Court Administrator, on his retirement after 26 ¼ years on the job. He presented him with a Ward Hooper print of the Supreme Court building signed by those present. Congratulations and thank you, Dan!

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

- At each meeting, the Administrative Conference reviews the Court's strategic goals and objectives and ICAR 43A regarding the role and responsibilities of the Administrative Conference.

Action Item

Justice Trout and Andrea Patterson are reviewing the Court's current strategic goals and objectives and will submit suggested updates at a future Administrative Conference.

- Discuss the timing / frequency of the evaluation process for Administrative Conferences. To ensure the Administrative Conference is accomplishing the necessary work for the judiciary, a survey had been taken of Administrative Conference members following meetings. In the interest of time, there was no discussion about the evaluations, but the timing/frequency of the evaluation process will be on the agenda for discussion at a future conference.

Action Item

- Following discussion, it was determined that an evaluation of the Administrative Conference will be done annually, following the July Administrative Conference.

B. Approval of Minutes of the July 21-22, 2015 Administrative Conference

IT WAS MOVED BY JUDGE GASKILL AND SECONDED BY JUDGE SIMPSON TO APPROVE THE MINUTES OF THE JULY 21-22, 2015 ADMINISTRATIVE CONFERENCE. THE MOTION PASSED UNANIMOUSLY.

C. Supreme Court Action on July 2015 Administrative Conference Recommendations and Other Supreme Court Updates

Justice Eismann updated the Conference on the following items:

1. The Court agreed with the following recommendation of items for the FY17 budget priorities, as forwarded by the Administrative Conference following its July 2015 meeting:
 - a General Fund request for year three of five of the Odyssey Project (\$2,000,000)
 - a General Fund request for the Judicial Excellence and Education Program (JEEP) (\$293,700)
 - a General Fund request for the Court to use statewide for language access services (\$442,600)
 - a General Fund request to improve the dedicated Drug Court Fund (I.C. §1-1625) will be sought.

The specifics of this proposal are still being developed but at a minimum would seek to move senior judge days (\$865,000) back to the General Fund and possibly eliminate the Cooperative Welfare Fund transfer (\$257,800) to IDHW from the Drug Court Fund. A second proposal being discussed would involve moving all of the personnel and operating expenses included in the “Other Court Services” portion of the Drug Court Fund back to the General Fund in exchange for the 80% of the emergency surcharge revenues being redirected to the General Fund instead of being deposited into the Drug Court Fund.

In this regard, Justice Trout and Judge Wood have been actively working with LSO to seek a Legislative solution but the Court has not taken a position on a specific proposal. Justice Trout and Judge Wood will be attending the Fall JFAC Tour on October 21, 2015 and will be making a presentation on the status of the Drug Court Fund. These matters will be revisited at the Court’s Oral Conference to be held October 30, 2015.

For discussion purposes, some relevant factors include:

- By statute, senior judge days should be paid from the General Fund, but haven’t been for several years;
- It would be prudent to get certain employees out of the Drug Court Fund and into the General Fund because the Legislature only appropriates money for COLAs for those employees who are paid out of General Fund appropriations;
- The emergency surcharge revenue has never met predictions, and in fact currently revenues from the emergency surcharge have been declining, which negatively impacts the Drug Court fund;

The following items were also recommended by the July 2015 Administrative Conference, but await further consideration which the Court will finalize on October 30, 2015:

- a General Fund request for a 4% salary increase for Supreme Court Justices (results in 5% for magistrate judges by operation of I.C. §59-502).

The Court has been advised that any CEC recommendation should not exceed what will ultimately be provided to state employees; so pursuant to instructions from DFM, the Court will be placing a 1% number in the budget due November 2, 2015. The Court will be adding wording seeking equal treatment of what other state employees ultimately are appropriated.

- a General Fund Request for making district judge staff attorneys state employees. The Court has declined to directly seek state funding for staff attorneys as a General Fund request coming from the Court, however, if IAC or some other group wants to introduce such legislation, the Court would support it.

D. Legislative and Budget Matters

1. FY16 Budget (ending June 30, 2016)

Roland Gammill reviewed the status of the FY16 General and Dedicated Fund budgets and revenues:

- a. Amendment of State Travel Policies and Procedures, effective 10-01-15, raises the per diem amounts from \$30 to \$45. General Fund dollars will be requested to offset the increased expense.
- b. Technology Fund Revenues ([I.C. § 1-1623](#)) continue to be monitored, and spending plans adjusted as necessary as civil filings over the past few years continue to decline.
- c. Drug & Mental Health Courts / Family Court Services Fund Revenues ([I.C. § 1-1625](#)): Continuing to work with Legislative Services Office on projections for this fund.
- d. Other Dedicated Funds were reviewed as well.

Judge Wood noted that he and Justice Trout were invited to give a presentation on October 21st to JFAC during their fall tour. The Court was asked to describe the funds shifted during the 2008-10 downturn and the resulting reduction in General Fund dollars, the creation of the Emergency Surcharge, and what was moved to this fund from the General Fund. JFAC continues to work with the Court to identify potential solutions to remedy the loss of dollars in the Drug Court Fund and to shift positions back to the General Fund.

2. FY17 Legislative and Budget Priorities

a. Budget Priorities for the 2016 Legislative Session

Senior Judge Barry Wood recapped the budget priorities for the 2016 Legislative Session as noted in agenda item C.1., noting that two items -- judicial compensation and language access -- are still being drafted.

Additionally, after the Court makes a presentation to the JFAC Committee during its Fall tour, further discussions will be held with the Supreme Court at its October 30, 2015 Oral Conference.

Action Item

- Once the final budget and legislative priorities documents are finalized, copies will be distributed to each judicial district to use at their legislative meetings scheduled prior to the start of the 2016 session.
- b. Defects in the Law, approved by the Supreme Court at its Oral Conference 9-24-15
- Michael Henderson reviewed the proposed defects letter, which lists two defects submitted to the Governor:
- proposes correcting the definition of “neglect” in I.C. § 18-1505 (the statute defining the crimes of neglect, abuse, or exploitation of a vulnerable adult) to clarify the difference between misdemeanor and felony neglect of a vulnerable adult
 - proposes an amendment to the I.C. § 7-802, dealing with name changes, to make it gender neutral

Action Item

- The Defects in the Law letter will be delivered to the Governor’s office on December 1, 2015.
- c. Legislative Priorities for the 2016 Legislative Session
- Michael Henderson and Judge Wood reviewed other Supreme Court legislative proposals, which included:
- Legislation to amend statutes regarding the priority of payments in criminal cases to give higher priority to misdemeanor probation supervision fees, the court technology fee, the surcharge fee, and problem-solving court fees.

- Legislation proposed by the Guardianship and Conservatorship Committee to amend the minor's compromise statute, I.C. § 15-5-409a, to provide that in some circumstances a person other than the minor's parents may propose a compromise, to provide a priority of the persons who may propose a compromise, and to specify the contents of the petition.
- Legislation to provide for an increase in judicial salaries and to increase the additional compensation paid to the Chief Justice, the Chief Judge of the Court of Appeals, and Administrative District Judges from \$2,000 to 3% of their salaries. Judge Wood reviewed the discussions that have taken place thus far with key legislators regarding the prospects for judicial salary increases at the upcoming session.
- Legislation to amend I.C. § 37-2738(4) to provide that the requirements for granting a withheld judgment for controlled substance offenses would not apply to persons who are participating in or have graduated from a problem-solving court.
- Legislation to improve the provisions of I.C. § 19-2524 dealing with evaluations of persons convicted of felonies for mental health and substance abuse issues. Kerry Hong and Judge Wood described the discussions that have taken place with IDOC and DHW on this subject and the plans for further discussions leading to improvements in the process and possible legislation.

The Conference was also informed of several areas of potential legislation that may be proposed by other agencies, legislative committees, or organizations that may have an impact on the operations of the courts.

- Child protection legislation and rule amendments: Senior Judge Lynne Krogh provided a detailed discussion of amendments to the Child Protective Act and IJR 39, 40, and 45 that have been proposed by the Child Protection Committee. These amendments would bring the CPA into compliance with the federal Preventing Sex Trafficking and Strengthening Families Act and Fostering Connections Act. This compliance is necessary to maintain federal funding. The proposals would also ensure compliance with federal guidelines for implementing the Indian Child Welfare Act; to clarify certain provisions relating to shelter care hearings, status hearings, and review hearings; and to ensure that courts are provided with information regarding the psychotropic drugs being given to children in CPA proceedings and foster care.

Judge Krogh discussed the objections put forward by the office of the Ada County Prosecuting Attorneys to the amendment to IJR 40 broadening the right of children to be heard in CPA proceedings. Judge Krogh detailed the reasons why the committee had made this proposal. These included the need of children to express their desires at all stages of the proceedings, and the benefits that courts have seen from allowing such participation.

Following discussion, IT WAS MOVED BY JUDGE OTHS AND SECONDED BY JUDGE GASKILL THAT THE LEGISLATIVE PROPOSALS AND RULES AMENDMENTS BE RECOMMENDED FOR THE COURT'S CONSIDERATION, WITH TWO CHANGES TO IJR 40, SPECIFICALLY: (1) THAT THE PROVISION ALLOWING CHILDREN TO BE HEARD IN CPA PROCEEDINGS WOULD NOT SUPERSEDE THE RULES OF EVIDENCE IN ANY PROCEEDING TO WHICH THOSE RULES APPLY; AND (2) THAT THE COURT IS NOT REQUIRED TO CONTINUE A HEARING WHERE NOTICE TO THE CHILD OF THE RIGHT TO BE HEARD HAS NOT BEEN GIVEN OR WHERE THE CHILD DOES NOT APPEAR, BUT THAT THE COURT MAY CONTINUE THE HEARING IN SUCH CASES. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The legislative proposals and rule amendments will be recommended for the Court's consideration, with two changes to IJR 40 as noted above.

d. Magistrate Judge Association's update on its efforts to include magistrate judges in the Judges Retirement Fund.

Judge Bollar, past president of the Magistrate Judges Association (MJA), summarized the research undertaken by their work group regarding including magistrate judges in the Judges Retirement Fund (JRF). The MJA will have a smaller group meet with PERSI to review the financial impact and other questions about integrating magistrate judges in to the JRF in the future.

E. Achieving the Court's Strategic Goals and Objectives

1. Ensure Access to Justice / Enhance the ability to efficiently conduct court business by developing technologies, especially electronic filing of all court documents.

Kevin Iwersen provided the Conference with an information technology update, highlighting:

- Overall Status: Over the past 45 days, the Odyssey project team has continued to focus on stabilizing Twin Falls County by resolving remaining issues from the pilot court go-live event, while also implementing additional functionality that was not ready for deployment at the go-live event. During this time period, two additional judges in Twin Falls County have transitioned to an electronic courtroom, scanning operations within the Clerk's office have vastly improved, and the number of open go-live issues has been reduced by 49%. Additionally, an intense reassessment of the Ada County Odyssey project schedule and subsequent go-live date has been completed, with a newly established go-live date of June 13, 2016 (with a planned alternative go-live date of July 11, 2016, if Tyler or the Idaho project team are unable to meet specific checkpoints). Project activities have fully commenced for the Ada County phase of the Odyssey project. Furthermore, the project team has completed the initial configuration for electronic filing for Twin Falls County and is readying the system for a limited pilot with a two law firms in early October.

- Twin Falls County – Pilot Court

Courtroom Operations: Due to the inability of the Twin Falls Clerk's Office to keep up with the volume of document scanning, the timeline for additional judges to transition to an electronic court record has taken longer than anticipated; however, Judge Kershaw began operating an electronic courtroom on September 16, 2015, and Judge Harris began on September 30, 2015

Problem-solving Court Staff: The Odyssey project team conducted a refresher training for the Twin Falls problem solving court staff on September 11th. Due to data conversion issues, the full use of the Supervision software module within Odyssey was limited for problem solving court personnel. The majority of these issues have been resolved.

Portal: The Odyssey Portal (referred to as the iCourt Portal) has continued to operate well following the go-live event. As previously reported, there are several product improvements that Idaho would like to see Tyler make within the Portal to improve its overall functionality and usability for end-users.

Electronic Signatures: The project team has collected the majority of electronic signatures from the users in Twin Falls. They are now working to modify several forms that can be electronically signed by a judge or clerk within Odyssey as opposed to printing, signing and scanning, with the goal of implementing some of these fully electronic forms by early October.

- Ada County Project

Data Conversions: The project team is building a criteria for the first two go/no-go checkpoints that will be primarily focused on the review and remediation of data conversion issues. If the data conversion activities are not completed to Idaho and Tyler's collective satisfaction, a 5th data

conversion push will be necessary. If this additional conversion push is needed, the go-live date will shift to July 11th, 2016.

Misdemeanor Probation/Pre-Trial (Monitor): The transition of Ada County's existing misdemeanor application (Monitor) to Supervision will be delayed until after the Odyssey go-live in Ada County. The team is still assessing the details of this decision to make sure any operational or system issues are minimized with this strategy. The intent is to manage this phase of the project on its own schedule with conversion pushes leading to a targeted December 2016 go-live activity for this phase of the project.

Business Process Analysis: The project team has been meeting with Ada County on several business process issues, to include restitution, financial processing, juvenile case management and extended user access. Analysis of specific critical business processes within Ada County will continue over the next few months.

- Electronic Filing: The project team has been working with Tyler to ready Twin Falls for e-filing in early November. The majority of the configuration of the electronic filing portal has been completed and testing is in progress. Additionally, the proposed Idaho Supreme Court e-filing policy and associated rules have been completed and submitted for final review and approval. The intent is to deploy e-filing in a limited pilot with two law firms in Twin Falls to prove out the configuration and functionality. Once the system has been operationally tested and validated, the project team will then begin to open the system to voluntary use for all attorneys filing cases in Twin Falls, with the goal to implement mandatory e-filing by the early January.
 - Appellate Project: The project team is continuing to work with Tyler on when best to implement the Appellate functionality for the Idaho Supreme Court and Court of Appeals. The project team and Tyler are continuing to assess various options and benefits/risks to determine when best to implement Odyssey for the appellate courts.
 - Server and Computer Hardware Deployment: The Information Division has begun the statewide hardware rollout of new servers and desktop computers to all counties. The team completed server installations in Benewah, Bonner, Boundary and Shoshone counties. They also replaced existing computer systems in Benewah, Boundary and Shoshone counties for the court clerks and judges. The team will continue to focus on server and computer replacements in north and east Idaho with the goal to complete the majority of these counties prior to the winter months.
- a. Review of E-Filing rules
Janica Bisharat reviewed the new E-Filing rules, which apply to both civil and criminal cases.

Action Items

- The new E-Filing rules will be posted on the Court's website, and will be publicized via the State Bar's website and *E-Bulletin*.
- E-Filing training across the state will be accomplished in person and via webinars.

2. Ensure Access to Justice / ADA Update

Andrea Patterson described the Court's responsibilities under the ADA, and communications with the U.S. Attorney's Office in that regard. Included in the Conference materials were a proposed administrative rule and other documents for court participants to request an accommodation, noting that the Trial Court Administrators have reviewed the documents which provide a basic framework to have in place to address ADA issues. Janica Bisharat added that the Idaho Association of Counties has been made aware of these challenges, especially as they relate to county commissioners and county budgets. The proposed rule and other documents are currently being reviewed by Bruce Adelson, who made at presentation at this year's Idaho Judicial Conference regarding the ADA. Once Mr. Adelson submits his review and the documents have been updated as appropriate, the Administrative Conference will have another opportunity to review the proposed rule and accompanying documents.

Action Item

- Once Mr. Adelson submits his review and the documents have been updated as appropriate, the Administrative Conference will have another opportunity to review the proposed rule and accompanying documents.
3. 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 and Administrative District Judge Stephen Dunn updated the Conference on the progress of the Advancing Justice Committee generally, and specifically the status of caseload management plans. A timeline for the development of district caseload management plans was included in the Conference materials.

4. Retirement Matters

- a. Judges Retirement Fund July 1, 2015 valuation

Andrea Patterson reviewed the current valuation of the Judges Retirement Fund, noting that the valuation is a snapshot as of a specific day of the year, which in this instance was July 1, 2015. By statute the fund needs to meet certain benchmarks, which were not met as of this valuation, so PERSI will have no choice but to make rate changes resulting in increased rates for both the employee and the employer.

- b. PERSI Eligibility Update *[Note: Justice Eismann excused himself during this discussion]*

Andrea Patterson reminded the Conference that this topic will remain on Administrative Conference agendas until all issues are resolved because of the impact on district judge recruitment and retention, and matters of broad interest to Idaho courts. Efforts to resolve the matter through systemic changes have been deferred due to a district judge's appeal of PERSI's denial of benefits. A PERSI hearing officer reviewed the matter in July and August, and a decision is expected before the end of the year.

Action Item

- The Administrative Conference will be kept apprised of PERSI eligibility matters.

F. Other Business

1. Discuss proposed amendments from the Civil Rules Update Committee: The Administrative Conference reviewed proposed amendments to the Idaho Rules of Procedure from the Civil Rules Advisory Committee, almost all of which originated with the Civil Rules Update Committee, chaired by Senior Judge David Day. The Conference asked the Civil Rules Committee to review I.A.R. 11.2 on Successive Applications for Orders or Writs; Motions for Reconsideration.

IT WAS MOVED BY JUDGE BUTLER AND SECONDED BY JUDGE BEVAN TO RECOMMEND TO THE COURT APPROVAL OF THE PROPOSED AMENDMENTS TO THE IDAHO RULES OF PROCEDURE AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

Action Item

- The proposed amendments to the Idaho Rules of Procedure will be forwarded to the Court for its consideration.

2. Discuss proposed amendments to ICAR 42 as discussed at the July 21, 2015 Administrative District Judges Meeting.

Senior Judge Barry Wood reviewed the proposed amendment to ICAR 42, which was distributed at the July 2015 meeting with Administrative District Judges for their review. The amendment to ICAR 42 deals with the addition of subparagraph (e) as follows: The actions of the majority of district judges pursuant to the above subsections of this rule shall be subject to disapproval by a majority of the justices of the Supreme Court.

The amendment to this rule is being proposed while there is no pending controversy or dispute, with the intention that as the duties of the Administrative District Judges increase, the potential for controversy increases as well. Given that the Supreme Court has the inherent authority under the Constitution to do what the rule change proposes, the thought was to expressly set forth the provision in the rule.

Following discussion, IT WAS MOVED BY JUDGE SIMPSON AND SECONDED BY JUDGE BUTLER TO RECOMMEND THE PROPOSED AMENDMENT TO ICAR 42 TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED (Voting nay: Judges Brudie, Gaskill, Oths, Carnaroli, Hansen, and TCA Larry Reiner.)

Action Item

- The proposed amendment to ICAR 42 will be forwarded to the Court for its consideration.

H. Discuss Proposed agenda/plans: February 2, 2016 Administrative Conference/ Boise

February 2016 / Boise

Tuesday, February 2 (morning) Clerks/Judges Conference
 Tuesday, February 2 (afternoon) Administrative Conference
 Wednesday, February 3 (morning)..... Administrative Conference

April 2016 / Boise

Thursday, April 14 (morning) Administrative District Judges Meeting
 Thursday, April 14 (morning) Trial Court Administrators Meeting
 Thursday, April 14 (afternoon)..... Administrative Conference
 Friday, April 15 (morning)..... Administrative Conference

July 12-13, 2016 / Boise Administrative Conference
 July 13-15, 2016 / Boise State Bar Annual Meeting

October 2016 / Boise

Thursday, October 13 (morning) Administrative District Judges Meeting
 Thursday, October 13 (morning) Trial Court Administrators Meeting
 Thursday, October 13 (afternoon) Administrative Conference
 Friday, October 14 (morning)..... Administrative Conference

I. Adjournment

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY BURT BUTLER THAT THE ADMINISTRATIVE CONFERENCE ADJOURN AT 4:25 PM MDT. THE MOTION PASSED UNANIMOUSLY.