

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 08, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m. She thank the Administrative Judges from all districts for taking the time to come and present to the Committee.

MINUTES APPROVAL: **Senator Foreman** moved to approve the Minutes of January 25, 2017. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the gubernatorial appointment of Kimberly Simmons to the Sexual Offender Management Board to the floor with a recommendation that she be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Foreman** moved to send the gubernatorial appointment of Erwin L. Sonnenberg to the Sexual Offender Management Board to the floor with a recommendation that he be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Chairman Lodge** asked Judge Wood to outline the program for the Committee. **Judge Barry Wood**, Senior District Judge, stated that he had practiced law in Idaho for 40 years, been in the judiciary for 30 years, and was a page here 48 years ago. He introduced the Trial Court Administrators attending and announced the agenda of speakers.

Judge Wood began his presentation by giving an overview of the Idaho Judiciary. He indicated that there were 45 district judges. This level of judgeship was put in the Idaho Constitution in 1890. One way to become a district judge in Idaho is to fill a vacancy in that position during the judge's term. The other way to be appointed is to be elected. The 45 district judges in Idaho live in 19 different counties, and they travel to cover cases in other counties. Their term of office is four years and all district judges are on the ballot in non-presidential years. They do not have staggered terms. Their jurisdiction is to hear felony criminal cases, civil actions if the amount involved is more than \$10,000 in controversy, hear appeals from decisions of the magistrate division, hear appeals from administrative agencies in their district, and appeals from community boards. One of the judges was assigned to water adjudications in the State and hears all administrative appeals of water matters from the Department of Water Resources.

Judge Wood explained Idaho's Judicial Districts and the county breakdown in each district. Each district has an administrative district judge. For information regarding the selection, term, and duties as well as the administrative power and duties of the administrative district judges see attachment 1.

PRESENTATION: **District Judge Jeff Brudie** indicated that he would be discussing the Judicial Excellence and Education Program (JEEP). He stated a pilot program was created through the Administrative Office of the Courts to give judges feedback on their courts and areas that they might wish to improve on. One survey would be sent out to attorneys who appear before the judges and the other one would go to other courtroom professionals. There are 136 trial judges and the plan was to select 3-5 judges to be surveyed each month in a random selection. The feedback is confidential to the judge who is surveyed. There are two exceptions to the randomness and confidentiality of the survey. Magistrates who are selected by the Magistrates Commission have an 18 month probationary period at the start of their service, and they are automatically surveyed at 9 and 18 months. Those results will be shared with the Magistrates Commission who reviews the judges for continued service. It will take approximately three years to complete the survey process. The first group of three judges was selected in January 2017 and the surveys were expected back by the end of February. For the survey to be effective, it is important to get a good response rate. There is no way to predict that, but reminders will be sent out. Once the results are collected, the judges will have an opportunity to provide a response if they choose.

Senator Hagedorn asked if the judges who were being surveyed were aware that they were being surveyed before it happened. **Judge Brudie** indicated that they were. **Chairman Lodge** inquired about how long it would take to fill out the survey. **Judge Brudie** stated that he wasn't sure, but assured her that the survey was paired down as much as possible, and also stated that it was not mandatory.

PRESENTATION: **Darren Simpson**, Administrative District Judge for the 7th Judicial District, located in Bingham County. **Judge Simpson** indicated that he would be discussing the Senior Judge program in the State of Idaho. The Senior Judge Program began in 1999. Judges who have retired can apply to the Supreme Court to become a Senior Judge. They have all the rights in the court where they are assigned. Compensation is 85% of the acting judge's compensation and only based on the days they serve. As an alternative to the traditional Senior Judge Program, the Plan B Senior Judge serves for 35 days per year if he/she took office before July 1, 2012. After that time, one would have to perform 60 days per year for 5 years. There is no compensation except for health benefits during the Plan B status. Travel and per diem expenses are covered. Senior Judges are a great flexible resource in Idaho. **Judge Simpson** indicated that the Senior Judges worked 2,414 days in Fiscal Year 2016 which is approximately the equivalent of 11 additional judgeships.

Senator Lee asked if Plan B was a popular option for Senior Judges. **Judge Simpson** responded that, depending on where a person was in their career, it could be valuable. **Senator Foreman** asked the difference between an administrative district judge and a district judge. **Judge Simpson** stated that a district judge hears cases in civil matters that exceed \$10,000 and felony criminal cases, appeals from the Magistrate Division and from Boards. An administrative judge has the additional duties of handling the administrative affairs within the district and is the bridge between the District and the Supreme Court. **Senator Burgoyne** asked Judge Simpson to explain the difference between a clerk of the district court, trial court administrators, and county clerks. **Judge Simpson** stated that clerks of the district court are responsible for court operations, deputy clerks, and responsibilities within their county. Trial court administrators have many of the same responsibilities that an administrative district judge has with some variation from district to district. Every trial court administrator brings their own philosophies which results in different approaches. A county clerk has responsibilities other than those directly related to the court, but which apply to their counties. There are differences in how those things are handled that are not directly dealt to

them statutorily. The administrative judge and the trial court administrator have a district-wide obligation as well as some responsibilities to the Supreme Court.

PRESENTATION: **Timothy Hansen**, District Judge 4th District for Ada County, stated that since he had been Administrative Judge for the past four years, he had been asked to do the presentation on iCourt and the Odyssey implementation. The iCourt project involved a change from a paper-based system to an electronic online judicial system. Case management software called Odyssey by Tyler Technologies was chosen because it was felt to be the most capable and cost effective program (see attachment 2). It has become apparent that additional time and training will be needed to enable counties to take advantage of everything Odyssey has to offer.

Senator Hagedorn asked what issues have caused glitches in using the Odyssey program. **Judge Hansen** responded that there were some software problems and some business process problems. All of the IT staffs involved participated in working to solve the issues. **Senator Hagedorn** asked if there had been a funding shortfall. **Judge Hansen** stated that the civil filings had gone down 26% and criminal felony case filings had gone up 23%. The impact was a reduction in the fees available to pay some of the costs for the Odyssey implementation. **Senator Burgoyne** questioned why there was a 26% drop in civil filings. **Judge Hansen** stated that some theories are that society was becoming less litigious or that people have less faith in the judicial process. He suggested that he had seen more binding arbitration as a result of contractual agreements between parties, and that may have contributed to the reduction.

Sara Thomas, Administrative Director of the Courts, gave a brief summary of the shortfall they have experienced. In 2014 a business plan was created for the implementation of this product. The revenues came from three different places. Those included filing fees, additional civil filing fees from HB 509 (2014), and one time appropriations from the General Fund. The Courts quickly realized that more people were needed to implement the iCourt program. Cuts were made in other areas to help with cost reduction. The filing fee level dropped by 18 percent between 2014-2016 causing more shortfalls. Initial filing fees are paid when something is filed and continue throughout the life of the case. The entire project through 2018 would result in a \$3.7 million shortfall. The Courts have asked to have General Funds appropriated to address 50 percent of that amount. Without that appropriation, iCourt will not stay on schedule.

PRESENTATION: **Richard Bevan**, Administrative District Judge in Twin Falls County, stated that he had been asked to discuss problem solving courts and crisis centers. The Twin Falls Crisis Center was the third center to open and it has filled its expected role and has made a difference in the lives of displaced individuals. The benefit to local communities will be felt in areas such as hospitals and jail cells. A more long term positive result will be felt by the individuals served by the centers.

Judge Bevan indicated that Problem Solving Courts are an ongoing success in his district. By increasing direct supervision of offenders, coordinating public resources, and expediting case processing, the courts can help break the cycle of criminal behavior, alcohol and drug use, and incarceration. He discussed the financial sustainability of the Courts with the onset of Odyssey (see attachment 3).

PRESENTATION: **Barbara Buchanan**, District Judge for Bonner and Boundary Counties, stated that her topic was the impact of capital cases on a judicial district. She indicated that she was presenting because Judge Lancing Haynes is involved in a capital case. Idaho is one of 32 states that currently has a death penalty. In Idaho a person can receive the death penalty for first degree murder or first degree kidnapping. Death penalty cases literally take decades to reach final resolution, and they are extremely costly in both dollars and resources. They rely heavily on senior judges to help with case loads when one of their judges is involved in a capital case. **Judge Buchanan** gave Idaho execution statistics (see attachment 4).

PRESENTATION: **Mitchell Brown**, Administrative District Judge 6th District, stated that he had been asked to talk about the Justice Reinvestment Initiative (Initiative). The Council for State Governments prepared a report which formed the basis and framework for the Initiative. The report indicated that Idaho's prison population had increased as well as the related costs. The study identified the challenges and a five year plan was implemented as a solution. The goals included reducing recidivism by 15 percent, reducing prison population by 1 percent, and avoiding the \$288 million in projected costs. **Judge Brown** indicated that the most important concept of the Initiative was reinvesting some of the savings into funding for additional resources to help those who have a higher risk of recidivism. He discussed the results of the initiative and how it was working at the two year mark (see attachment 5).

Senator Foreman asked if the Initiative would put Idaho ahead or behind compared to the system before the reinvestment program began. **Judge Brown** said that the report generated by the Council for State Governments indicated that the increased costs would be \$288 million over the five year period. At this point in time, the prison population had decreased. He said that he believed that the benefits from reinvesting some of the savings into community programs would have a large impact on judges as they sentence individuals who would otherwise not have opportunities to be on community supervision instead of receiving a prison sentence. He believes there will be substantial benefits to the reinvestment process.

PRESENTATION: **Bradley Ford**, Administrative District Judge 3rd District, said that he would be discussing courthouse facilities and related issues. There are 44 county courthouses in Idaho as well as additional municipal court facilities. Many of Idaho's courthouses are beautiful, historic structures. These court facilities present challenges to efforts to construct new or improved courtrooms and to be compliant with the American's with Disabilities Act (ADA). The responsibility to provide adequate court facilities is statutorily assigned to the counties pursuant to Idaho Code §§ 1-1613, 1-2217, and 1-2218. The funding for necessary upgrades is challenging especially for the less populated counties. Some counties have also lacked access to important information and expertise in the maintenance of court facilities. A united effort has been made to identify and address current problems with courthouse facilities, security, accommodation for disabilities, and language access.

Judge Ford gave some examples of courthouse facilities and operational problems. In March 2015 complaints were filed stating that Idaho Courts were not providing language access accommodations for those with hearing impairments. The investigation of those complaints was closed about two weeks ago. In 2016 a complaint stated that a courthouse in the Nez Perce area was a non-compliant American Disability Act (ADA) courthouse built in 1889. A local disability attorney and a sitting Idaho Supreme Court Justice both encountered difficulty accessing the main courtroom in the courthouse because of a lack of wheelchair access. An ADA compliance review of the Kootenai County Courthouse built in 1889 resulted in a 28 page list of alleged violations. It can be anticipated that similar compliance reviews will be initiated with most if not all State court facilities in the foreseeable future. Most judges can describe courthouse experiences that raise concerns about public and court employees' safety. In Canyon County security screens at the public entrance routinely reveal weapons being carried to the facility by the prospective entrants. There are security personnel available in Canyon County, but in a number of the rural courthouses there is no screening at the public entrance and lack readily available security personnel.

Judge Ford stated that the Administrative Office of the Idaho Supreme Court asked the National Centers of State Courts in 2013 for the development of court facility designed guidelines for Idaho. In 2015 that was completed. The guidelines included compliance for ADA requirements. Realistically, many of the guidelines are not feasible for some of Idaho's courthouses but there is a plan to work with. A court task force had been established to address courthouse security concerns and to develop a statewide guideline for court security. In 2016, the Legislature provided an appropriation used to enhance the court's ability to provide disability and language access. Appropriations enabled the court to hire a statewide language access manager and to begin using video-remote interpreting. Development of the video resources allows for substantial savings in travel costs and provides timely access. Statewide guidelines have been developed to provide ADA and language access compliance.

Judge Ford stated that he had an opportunity to work with the Canyon County elected official and their facilities personnel as they oversaw the building of eight new courtrooms. Emphasis was placed on technology, ADA compliance, and language access compliance. They also focused on suitable work stations and counter top space to accommodate the iCourt hardware. He said that it would be very useful to develop statewide standards for the acquisition and installation of courtroom technology particularly audio/video systems.

Chairman Lodge thanked everyone for their presentations and the information they provided.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:10 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant Secretary