

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, February 01, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/  
EXCUSED:** Representative Nielsen
- GUESTS:** Patty Tobias, Administrator of the Courts, Idaho Supreme Court (ISC); Judge Michael Dennard; Judge Jack Varin
- Chairman Wills** called the meeting to order at 1:31 p.m.
- MOTION:** **Rep. Bolz** made a motion to approve the minutes from the January 25, 2012 committee meeting. **Motion carried by voice vote.**
- MOTION:** **Rep. Bolz** made a motion to approve the minutes from the January 31, 2012 committee meeting. **Motion carried by voice vote.**
- RS 21018:** **Senior Magistrate Judge Michael Dennard** presented **RS 21018**. He stated the proposed legislation would amend Idaho Code § 32-717B and would permit a parenting coordinator to charge a retainer. He then provided some background information on the legislation and stated courts have jurisdiction over child custody cases until the children turn 18. In cases where the parents/guardians seek a modification of the child custody order, a judge may choose to appoint a parent coordinator, who is a qualified neutral party and whose purpose is to reduce misunderstandings between the parties and develop methods of collaboration in resolving disputes. The appointment of a parent coordinator would be the exception to the rule, reserved for those more difficult custody situations. Since the parenting coordinator program was created, only 22 people have applied, 9 have been removed, and only 11 are currently listed as available. Most appointed parenting coordinators have not been paid or have received incomplete payment making it quite difficult for the Court to retain these people. A retainer fee should be permitted as it should increase the amount of qualified parenting coordinator applicants.
- Judge Dennard** clarified that the use of a parenting coordinator does not qualify the meetings between the parties as mediation and, depending upon the issues and the role the judge has defined for the parenting coordinator, the judge will determine the amount of time the parenting coordinator will be needed. The potential issues between the parties can range from what school to attend to when summer vacation would start/stop. The Court believes these are the kind of issues, though controversial, that can be discussed in an informal setting, without a judge and/or lawyer present.

In response to committee questions regarding the difference between a parenting coordinator and a guardian ad litem, **Judge Dennard** stated that there is often confusion about the meaning of guardian ad litem and stated that in the family law context, the parenting coordinator has to possess mediator requirements plus some specialized training in domestic violence and parenting. He explained that the guardian ad litem has been able to charge for their services while the parenting coordinator has not because the guardian ad litem or "evaluator," such as a psychologist or counselor, is appointed as an expert witness to aid in some aspect of a case. The judge can oversee the compensation to the expert witness because they have been appointed by the Court. In regards to the ability of an evaluator to negotiate the fees charged, he explained the Court can adjust the amounts charged. Judge Dennard also stated that the purpose of the parenting coordinator roster is to provide the judge with a list of people available for the judge to appoint. Parties, however, are free to select whoever they want to serve as their parenting coordinator. If the judge wishes to make the selection, there is an opportunity for the parties to object to the selection.

**MOTION:** **Rep. Smith** made a motion to introduce **RS 21018**. **Motion carried by voice vote.**

**RS 21050:** **Senior Magistrate Judge Jack Varin** presented **RS 21050**. He explained the purpose of the proposed legislation is to increase the maximum length of probation for a person convicted of a misdemeanor. Under current statute, the length of probation is 2 years. This legislation will give the judge in a misdemeanor case the authority to order additional time for probation allowing the individual to go to problem-solving court. The two year time limit sometimes does not allow enough time for the person to complete a drug court/DUI court program if the program is not assigned in the initial sentence. In the most serious misdemeanor cases, this will serve as an alternative to incarceration.

In response to committee questions, **Judge Varin** stated that counties support this legislation.

In regards to the possibility of the defendant being on probation for up to one additional year, on top of the two years, **Judge Varin** explained that the person who graduates from the problem-solving court program should be on the road to recovery. However, it is helpful to have extended authority over individuals after graduation as a reminder they are still accountable. In response to concerns over whether the Court would have the authority to extend the sentence, Judge Varin agreed to do further research on whether the Court would have the authority to extend the sentence after the sentence has been handed down.

The committee questioned the constitutional limitations with respect to sentencing. **Judge Varin** explained what is currently authorized by statute and agreed to return with information about any constitutional limitations to sentence extension. He stated, in regard to possible consecutive probation extensions, that if there were to be a situation where an individual was sentenced to multiple problem-solving court programs, the intent for the proposed legislation would be for one extension, not to have extensions stacked on one another.

**Rep. Perry** pointed to page two, where the word "and" seemed to create two different meanings to the rule, regarding probation extension timing. She indicated that "and" was to be included in both. The motion to introduce **RS 21050** will include the change.

**MOTION:** **Rep. Jaquet** made a motion to introduce **RS 21050** with the insertion of the word "and" after the word "program" on page 2, line 30. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 1:58 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary