

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 15, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Malloy(McKague), Mortimer, Nuxoll, Bock, and LeFavour
ABSENT/ EXCUSED:

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.

Chairman Darrington called the meeting to order at 1:35 p.m. and he recognized Senator Malloy for a motion to approve the minutes.

MOTION **Senator Malloy** moved, seconded by **Senator Nuxoll**, to approve the minutes of **February 10, 2012** as written. The motion carried by **voice vote**.

RS 21237 **Relating to Attorney's Fees, Witness Fees and Expenses Awarded in Certain Instances.** **Senator Keough** explained this legislation adds additional language to Idaho Code, Section 12-117 to make clear certain situations. It also amends Idaho Code, Section 12-117 to cover health districts (which are not technically regarded as state agencies), to provide that the prevailing party in lawsuits between governmental entities is entitled to recover attorney fees and costs as a disincentive to such suits, and to make technical corrections.

MOTION **Senator Davis** moved, seconded by **Senator Mortimer**, to print **RS 21237**. The motion carried by **voice vote**.

HJM 4 **A Joint Memorial** to the Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in the Congress of the United States. **Representative Grant Burgoyne** explained this memorial urges the United States Congress to create a third federal district judgeship for the State of Idaho. Representative Burgoyne proceeded to give some background of why this judgeship was necessary. He said the first federal district judge was in 1890 when Idaho became a state. By 1954, Congress thought Idaho's growth, with a population of 500 or 600 thousand people, was sufficient for a second federal district judge. The population now has reached 1.5 million people and there is great need for a third federal district judge. Representative Burgoyne said these federal district judges are constitutional judges, appointed by the President and confirmed by the Senate. He said they could hear any federal case. The magistrate judges employed by the federal court and not being constitutional judges, can only do civil cases not criminal cases. He stated that because the state was large geographically, judges must travel to four locations. The caseload has increased dramatically over the years. In 1954, there were 170 pending criminal cases in Idaho; there were 942 cases as of September 2011. Currently, judges must come from out of state to try these cases. So a third federal district judge is not an Idahoan, is unknown, maybe from a district in California, or possibly a retired federal judge from Spokane, Washington.

Representative Burgoyne continued by reminding the committee that in 2002, Senate Joint Memorial 110 was adopted by the Second Regular Session of the 56th Idaho Legislature urging the Congress of the United States to authorize an additional United States District Court Judge and the staff necessary to assist handling the increasing caseload, but to date, Congress has failed to act. The federal government has an obligation to appoint a 3rd federal district judge for Idaho. A properly resourced and properly functioning judiciary is a fundamental and core governmental function essential for the preservation of the people's rights and their freedom. There was some concern expressed in the House about which President was going to appoint a new federal district judge. He doesn't see any difference between the current federal district judges on the basis of who appointed them. They both judge fairly, neutrally, and impartially. He said whatever is done in Washington, DC today for a federal district judge, is going to take time and it is not known who will be President of the United States or who will be in the Senate and how that appointment confirmation process will come down by then.

Vice Chairman Vick asked why there was opposition in the House.

Representative Burgoyne said that Representative Batemen was concerned about having the current President make the appointment for Idaho. Representative Batemen also said he thought there was too much federal government in Idaho already. **Senator Malloy** queried if the President could actually appoint someone in another state who would have to relocate to Idaho. **Representative Burgoyne** said he didn't know, but typically there could be a number of names given to the President to pick from.

John Runft, a member of the Idaho State Bar, said he thinks this goes far beyond political parties, and there is an absolute desperate need. Many of nearby states with less population than Idaho have three federal district judges. The comparison is exacerbated further by the fact that Idaho is bigger than most of these other states and the judges have to travel great distances to get to court. In addition to that, the criminal calendar is especially troublesome because in federal criminal cases only federal district judges can adjudicate which means the federal bench is tied up. Those who are practicing civil law have a difficult time getting into court. In many cases, the appointment of a magistrate is elective. Lastly, he stated the need is overwhelming, and the federal district bench deserves attention.

MOTION

Senator Davis moved, seconded by **Senator Bock**, to send HJM 4 to the floor with a **do pass** recommendation. **Senator Davis** said there were two types of judges, Article I (magistrate judges) and Article III judges who are lifetime appointments. He mentioned a decision from the Supreme Court that severely limited bankruptcy cases. He added that there were many bankruptcy cases in Idaho and because they must be heard by an Article III judge the effect was to add burden to judges. **Senator Bock** commented about the fear of political sway and he thought that issue could be put to rest. **Senator Lodge** declared a conflict, but will vote. The motion carried by **voice vote**.

APPOINTMENT

The **Idaho State Bar's Appointment** of **Joel P. Hazel** of Coeur D'Alene to replace Anne Solomon as a member of the Idaho Judicial Council. He will serve a six-year term commencing on July 1, 2011 and expiring on June 30, 2017. Mr. Hazel comes from a long line of lawyers. His great grandfather was licensed to practice law in 1911. Mr. Hazel is currently an attorney in Coeur D'Alene with licenses in Idaho and Washington. He said he has served the Bar in various capacities. He has been involved in Kootenai County specialty courts and was the prosecutor in charge of drug court when it was first created in 1997.

Chairman Darrington asked how he would describe the work of the Council. **Mr. Hazel** replied that he saw the work of the Council to select open judicial seats fairly without prejudice and select the most qualified. **Chairman Darrington** asked him about the disciplinary procedures of the Council. **Mr. Hazel** replied that some complaints have merit and some do not.

GUBERNATORIAL APPOINTMENT

Susan M. Kiebert was appointed to the **Idaho Judicial Council** to serve a term commencing October 4, 2011 and expiring July 1, 2017. Ms. Kiebert said she was not an attorney and had no family members that were. She expected this to be quite a challenge, but was dedicated to the common good and making sure that anyone that comes to court in Idaho is allowed a fair and ethical treatment of their case.

PRESENTATION

Chairman Darrington asked Jim Carlson and Chief Justice Burdick to come forward and he asked Mr. Carlson to introduce other members of the Council who were here with him. Mr. Carlson introduced Mr. Phil Reberger and Honorable Judge Wilper.

Idaho Judicial Council Update. **Jim Carlson**, Executive Director, handed out the attached Idaho Judicial Council Report to the Committee. Mr. Carlson said there was an exhaustive process to select candidates for the Judicial Council in Idaho. They would like to take the interview process into the districts where there are judicial vacancies and allow citizens to attend. That is not possible at this time due to budget constraints so this is a matter for the future. The 2011 judicial nominations that Chairman Darrington mentioned are very high quality candidates. Mr. Carlson said the judicial vacancies had declined, but he expected that to change. He went over the disciplinary activities and complaints that were received. The magistrate judges handle small claims, domestic relations and child custody cases and they get most of the complaints. He stated that a significant number of the complaints come from jail inmates. Evaluation Questionnaires are distributed to attorneys and clerks once a year to evaluate the judges. The judges have been very positive about the Performance Evaluation and the feedback they receive.

Chairman Darrington asked the other members to speak briefly to the Committee. **Chief Justice Burdick** said in light of complaints received, there should be more discussion in communities concerning any sort of government. He understands that people with little or no patience and sometimes little or no education as to the proper form of governmental action, get frustrated. He believes the frustration will just get worse in light of the social media and e-mails. **Judge Wilper** commented that Jim Carlson had taken over the position of Executive Director a year ago and had done an outstanding job. **Phil Reberger**, a public member, said it was a pleasure to be before the Committee and would second the previous comments. He would urge the Committee to vote to confirm the two nominees that are superb additions to the Council and will do a great job representing the public and the Bar. He thinks Idaho excels in public confidence, performance and ethics in the judiciary. **Chairman Darrington** added that Representative Eskridge and Representative Anderson from the House came just before the start of the meeting and asked that their support for Susan Kiebert be in the record.

Senator Malloy asked if there were any actions taken regarding complaints on any judges. **Mr. Carlson** said he couldn't be specific, but there had been a member of the bench that he thought was rude and dismissive to a litigant. It was brought before the committee to address the issue. It had been a long day for the judge, but he was advised to never say anything in anger and to remember sometimes this is the only day a person may be in a courtroom and to make it their day. **Chief Justice Burdick** said that when he was a district judge, there were four magistrate judges who were forced to retire as a result of complaints to the judicial council in one year. That may have been an exceptional situation. He said he was also a part of another proceeding where another magistrate had to retire as a result of actions of the judicial council. He stated that when there are significant complaints, there are significant punishments.

Senator Mortimer asked why all of the judges did not participate in the performance evaluations. **Chief Justice Burdick** replied that he first thought it was a lack of information that the program was available. They utilized Patti Tobias's email to target each one of those judges and have them sign up and tell them how important it is. That doubled the number of judges that signed up in one year. Currently, only a third of the judges are signed up, but he said he intended to push that issue at the judicial conference. **Senator Davis** asked if they had the right statutory makeup for the council. **Chief Justice Burdick** said that based on his experience, he thought there needed to be a mix of legal backgrounds as well as interest backgrounds and that was what they had. He said an intern would be going through the rules that concern the council this summer. **Senator Davis** asked if there was regional balance. **Chief Justice Burdick** said you don't always get to pick according to geographical area.

Chairman Darrington proceeded to graduate Chase Bower from the Page program expressing appreciation for his service. There being no further business, **Chairman Darrington** adjourned the meeting at 2:45 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary