

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, February 01, 2021

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Ricks, Senators Anthon, Lodge, Thayn, Zito, Burgoyne and Wintrow

**ABSENT/ EXCUSED:** Senator Lee

**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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Wintrow** moved to approve the minutes of January 18, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**Senator Wintrow** moved to approve the minutes of January 20, 2021. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PRESENTATION:** **Senior District Judge Barry Wood**, Deputy Administrative Director, Administrative Office of the Courts, gave a brief introduction of the Magistrate Judges participating in the presentations. He reminded the Committee that 1) Judges cannot discuss a pending case; 2) They are restricted from discussing their ruling on any case; and 3) They are not allowed to give legal advice.

**Magistrate Judge Megan Marshall**, Latah County, Second Judicial District, presented a brief history of the Magistrate Division of the District Court. **Judge Marshall** began her presentation stating that the Magistrate Court is the gateway to the other courts. Their beginnings were very simple. Court proceedings were held where there was space. The "police" courts were held part-time. Judges were elected on a partisan basis. In 1937 the public sentiment reflected a need for a better lower court structure. In 1962 the reorganization began. Legislation was proposed in 1965 to organize a legislative council to come up with a plan for court reform. It included the Idaho Judicial Council, which currently covers appointments in seven judicial districts. Governor Don Samuelson wasn't convinced a Judicial Council was necessary and vetoed the bill. In 1969 Legislators passed another piece of legislation that Judges created the Magistrates, the required qualifications, and how Magistrates were chosen. The current organization is largely a result of past input and legislation.

**DISCUSSION:** **Chairman Lakey** asked Judge Marshall to comment on the travel requirements placed on Magistrate Judges. **Judge Marshall** responded that there is much travel required. She indicated that she has other judges who help her with her case load. There are circumstances where the judges will travel for her or there may be a judge in the area who can take a local case. **Judge Marshall** uses Zoom and finds it to be effective.

**PRESENTATION:** **Magistrate Judge Paul Laggis**, Power County, Sixth Judicial District, reported on The Work of Idaho's Magistrate Judges. **Judge Laggis** introduced himself and stated that he grew up in the Wood River Valley of Idaho and currently resides and works in American Falls. He is one of 97 Magistrate judges in Idaho and President of the Magistrate's Association. He explained that a magistrate judge is unique because every county has at least one. In Idaho the face of the Judiciary is the Magistrate courts. Judges in these positions are connected to their communities and are involved in the lives of the residents. **Judge Laggis** stated that in 2019-2020 the magistrate courts comprised about 90% of cases as they first started out. Any of the cases can turn into a project of its own. He mentioned the many types of cases they work on including custody, divorce, child protection, adoption and many others. The magistrates are involved in the specialty courts including drugs and alcohol, veterans courts and school courts. The magistrates are expected to know and understand the law to be able to help in any cases assigned to them. At times the magistrates will review and help draft legislation and policy.

**DISCUSSION:** **Senator Wintrow** commented that their workloads are immense. **Judge Laggis** responded that they love their work and the variety it provides.

**Chairman Lakey** asked Judge Laggis how he was handling trials during covid. **Judge Laggis** responded that because he has a prosecutor who helps resolve issues without going to trial, he has not had a trial since covid began.

**PRESENTATION:** **Magistrate Judge Christopher Bieter**, Ada County, Fourth Judicial District, discussed Guardianship and Conservatorship. **Judge Bieter** defined Guardianship as a situation when someone is assigned to manage another's affairs. Conservatorship is defined as handling the financial affairs of an adult or a child. Idaho was the first state in the country to adopt probate laws. As Idaho's communities are aging, steps need to be taken to ensure that guardianships and conservatorships are working as they were intended. People from all backgrounds find themselves needing one of these mechanisms to help them function successfully. People designated to be guardians must pass online training prior to a hearing being scheduled. Background checks are made on all guardians. Family guardianships are becoming less common.

**Judge Beiter** pointed out that there are two important areas needing focus when discussing guardianships. The first area is to be more careful at the beginning of a case, watch for red flags. As the case moves along, take a closer look at the relationship and see how it is doing between the guardian and other person. It is important to check on all cases to see if their reports were filed and have any irregularities that need follow up. In Idaho, every accounting that is filed is reviewed by an accountant with expertise in that area.

**Judge Beiter** stated that the second area needing focus is the human element. The Legislature provides funds to make sure people who are under a Guardianship are getting the care they need. Sometimes a guardianship or conservatorship is not in the best interest of the people involved. By asking the question, "What would that person do for himself/herself if they could?" would help make the best decision.

**DISCUSSION:** **Senator Burgoyne** expressed the importance of the judges who are involved in these types of proceedings. Criminal infractions, broken lives, and people unable to care for themselves cause families to struggle. It takes wise people, not just education, to help all involved. **Senator Burgoyne** thanked the judges for their service.

**S 1036** **Relating to Temporary Guardians.** Jason Spillman, Legal Counsel, Administrative Office of the Courts, presented **S 1036**. He stated that Idaho Code currently requires courts to hold hearings on appointments of temporary guardianship within 10 days after the initial hearing request. In order to bring those appointments in line with other 7 day increments, and to avoid confusion, it is requested that the time be changed to 14 days.

**MOTION:** **Senator Lodge** moved to send **S 1036** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**S 1037** **Relating to the Hospitalization of the Mentally Ill.** Jason Spillman explained that the statute for the commitment of the mentally ill limits the continuance of hearings to no more than five (5) days. To reduce confusion, the five (5) day limit on continuances should be changed to seven (7) days.

**MOTION:** **Senator Wintrow** moved to send **S 1037** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:45 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary