

Civil Bench Bar Committee Meeting

April 16, 2010

Noon – Judge Dunn’s Courtroom

Dunn, Box, Spinner, Lyon, Sasser, Morgan, Thompson, Webber, Hawkins, Roche

- 1) Court scheduling orders – Ken Lyon. He has calls from not only here but also from all over the State;

Judge Dunn – trial submission date order: modifications made to order, now only 2 dates given, 1st date is trial date, then a backup date. Notice the rule of dq of alternate judges, needs to be done at the time of order. Judge asks attorneys to explain logic to other counsel

- 2) Discovery – Ken Lyon. The whole state is losing control on discovery...all the crap they put in...20 pages on how to fill out the thing. He practices in Utah and they only have one paragraph as well as what son says Nevada requires. They have sanctioned attorneys there for doing that now. We are defeating the discovery process by the way do it. We used to do it, it was a little statement and now it has evolved in a 10 page load of crap. He thinks it is self defeating. We can make a recommendation to the rules making at the State Bar. Would like to discuss it with the committee before that.

Ken Lyon – Discovery issues: handled under submission order discussion Interogs rules: civil rules committee would be place to have this issue sent, Judge Dunn will recommend to them

- 3) How soon do we have disclose witnesses, experts and everyone else – Ken Lyon

This topic was not addressed.

- 4) Attorney Fee Schedule on Default Judgments – Jim Spinner

Attorney fee schedule on Default Judgments – schedule is old, less than 10% of what is sued for is reasonable. Attorneys see inconsistencies among magistrates, Judge Box will email other magistrates to try to remedy. Should have a suggested schedule to follow, maximum of \$1000 proposed for default in magistrate, if more warranted then a memorandum would need to be filed. 10% of amount sought can be awarded without memo of costs in district court too. Judge Box will write up proposal to circulate among judges.

- 5) Courthouse security – still a complaint from an attorney about having to be screened when entering Bannock County Courthouse

Security issues – really not that bad. Judges are deferring to marshals, they say no special treatment in entering building

- 6) Family Court Services information for website – Judge Box

Family Court Services – outline in packet, lists services provided, Spinner will post to web page

- 7) What else?

- *Jim Spinner will publish minutes to website*
- *Ex parte orders – complaints, Judge Box will address at next magistrate meeting*
- *IPTE orders (Aaron Thompson) – attorneys are seeing a lot of delay, screening recommends IPTE but not yet ordered until scheduling conference, then ordered but 3 months later. Counsel prefers idea of automatic IPTE without order. Counsel could object on a case-by-case basis.*

- *Suggestion of meeting every 6 months, not quarterly. Therefore, the Civil Bench Bar Committee will meet every six months rather than quarterly.*
- *Brent Roche – question on change of venue outside of district, does it need to go to Supreme Court? Rule has changed. The following is Rule 40(e). Change of Venue. The blue and pink highlights are the circumstances that require us to send a request to the Supreme Court for assignment. The green highlighted portion does not require us to go through the Supreme Court and most often, it is the reason why a venue is changed.*

Rule 40(e). Change of venue.

(1) Judge or magistrate may grant a change of venue or change the place of trial to another county in any civil action as provided by statute and the judge or magistrate must, on motion pursuant to Rule 12(b), change the venue of a trial when it appears by affidavit or other satisfactory proof:

(A) That the county designated in the complaint is not the proper county, which motion must be made no later than fourteen (14) days after the party files a responsive pleading, or

(B) That there is reason to believe that an impartial trial cannot be had therein, or

(C) That the convenience of witnesses and the ends of justice would be promoted by the change.

(2) In the event a trial judge grants a change of venue pursuant to this Rule to a court of proper venue within the same judicial district, the trial judge granting the change of venue shall order the case transferred to a specific court of proper venue within the judicial district and shall continue the assignment over the case, unless the administrative district judge shall reassign the case to another judge of the judicial district. **In the event a trial judge desires to transfer a case to a court of proper venue outside of the judicial district in which the action is filed and desires to continue the assignment over the case, the trial judge may enter an order granting the change of venue and indicate therein a suggested court of proper venue in another judicial district and the trial judge's desire to preside over the case, and then refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the proceeding.** **In the event a trial judge desires to transfer a case to a county outside of the judicial district in which the action is filed upon the grounds that the county designated in the complaint is not the proper county, the trial judge shall enter an order transferring the case to the proper county and a trial judge of the receiving judicial district shall be assigned to preside over the case under the assignment procedures of that judicial district.** **In the event a trial judge desires to transfer a case to a court of proper venue outside of the judicial district in which the action is filed upon the grounds set forth in sub-paragraphs (1)(B) or (1)(C) of this rule, and the trial judge does not desire to continue the assignment over the case, the trial judge shall enter an order granting the change of venue, and then refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the proceeding.**

(Amended January 30, 2001, effective July 1, 2001.)

(3) In the event that a judge is disqualified from further handling of a proceeding in which a change of venue has been granted to a court of proper venue within the same judicial district, the administrative district judge shall reassign the case to another judge of the judicial district. In the event that a judge is disqualified from further handling of a proceeding in which a change of venue has been granted from an originating court outside of the judicial district, the administrative district judge of the judicial district to which venue has been removed shall refer the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue and assignment of a specific judge to preside in the proceeding.

(4) In ruling upon a motion for change of venue under subsection (1)(A) above, the court may consider an objection thereto based upon subsections (1)(B) or (1)(C), and the court may deny an otherwise proper motion for change of venue under section (1)(A) if it finds that the convenience of witnesses and the ends of justice would be promoted by retaining jurisdiction in the county where the action is filed.

(5) When a judge or magistrate grants a motion for change of venue, if the court finds that the action was filed in the county of improper venue without good cause, the court may, in its discretion, assess sanctions against the party, or the party's attorney, who filed the action.

(Amended effective January 8, 1976; amended December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended March 30, 1984, effective July 1, 1984; amended April 22, 2004, effective July 1, 2004.)