

CIVIL BENCH BAR COMMITTEE MEETING – DRAFT DECEMBER 3, 2009

October 16, 2009

Judge Dunn's Courtroom

Present: Aaron Thompson, Brent Morgan, Gaylen Box, Jim Spinner, Ken Lyons, Stephen Dunn, Suzanne Johnson, Warren Webber, Doug Bowen. Excused – Tony Sasser, Brent Roche, Kent Hawkins

- I. Protocol for submitting topics to the committee – The committee considered how it should receive input from attorneys for its agenda. Attorneys may contact any member of the bench bar committee and provide agenda items. The attorneys may request that the agenda item be anonymous. The member of the bench bar committee will then provide the information to Suzanne who will circulate the topic to members of the committee in advance of the meeting for consideration and research, if helpful. Topics can also be raised at the time of each committee meeting as well and may be discussed as time permits.

It is helpful, when possible to provide as much specificity to the topic so that the members of the committee can consider as many aspects of situation as possible in the discussion of the topic.

- II. Default judgments – Judge Dunn. At the last meeting, the checklist and all of the forms were provided for review. One of the committee members used the forms in the last few cases and found that using the proposed forms help cover all the elements of the default judgment. It was also noted that using the checklist was helpful before submitting the default judgment paperwork. The magistrate judges supported the documents and the checklist as long as they were not mandatory since there were many companies, local and non-local, who use their own software.

The committee approved posting the forms and the checklist on the Sixth District Bar Association website for use by attorneys if they choose. This will help to develop some uniformity throughout our district. The committee also suggests that attorneys use the checklist, at a minimum, to ensure that all the elements of the default have been met prior to filing the default judgment.

Action item: Doug Bowen, J Dunn's law clerk, will send the most recent documents and checklist to Suzanne. Suzanne will send them to Jim Spinner who will have them posted in Word format at the Sixth District Bar website. Suzanne and Jim will work together to create a document with the documents and the checklist for emailing to members of the Sixth District Bar.

- III. Standard attorney fees on defaults. This topic was brought up at our last bench bar meeting. From a practitioner's point of view, it is helpful to have some type of standard as long as

attorneys have an opportunity to request more attorney fees if the circumstances require it. It is harder to determine attorney fees for the small cases than the big cases. The judges tried to do it years ago, but it was never institutionalized. J Box said we tried to do it years ago. Judge Dunn suggested that perhaps creating a guideline might be useful. Brent Morgan asked if paralegal services are recognized in our area. The committee noted that each judge handles that differently.

Action item: Ken Lyon might have a copy of the old standard attorney fee document. If he can find it, he will give it to Judge Box who will then circulate it to the members of the committee. This topic will be placed on the agenda of the next committee meeting.

IV. Security check when entering Bannock County Courthouse – the attorney community have been pretty vociferous about the need for going through security screening when entering the courthouse. After this topic was discussed, in the interest of security, the existing protocol will continue.

V. Pro Bono – Judge Box and Judge Carnaroli are on the district wide Pro Bono committee. We are encouraged to continue encouraging members of the bar to provide pro bono work. Some of the ideas for increasing pro bono cases include not charging for some CLE courses; getting new attorneys to take on cases while more experienced attorneys act as their mentors. The committee supports the effort of pro bono services. There will be future presentations made at the Portneuf Inns of Court as well as at our bar meetings.

VI. Ex Parte Motions – a letter was received by J Box regarding ex parte motions; a copy of the letter is included. The rule is pretty clear regarding ex parte contact. Since the letter did not provide some specific examples, the discussion remained pretty general. Most of the problems probably occur in custody cases and domestic cases.

Action item – Suzanne will add Rule 65 to the next magistrate judge meeting agenda to review it for ex parte orders.

What happens when an attorney needs something and the judge's deputy clerk is not available?

Action item – Attorneys should either contact Cindy Haney, the clerk supervisor in Bonds and Fines or the Trial Court Administrator's office for assistance.

The letter asks why we can't process civil cases like the 5<sup>th</sup> and 7<sup>th</sup> Judicial Districts. Because the letter was not specific regarding what the desired process is that we could consider, the committee wasn't able to proceed.

Action item – Publish the 6<sup>th</sup> District Local Rules to our district website or provide a link to the Bannock County website where the local rules are posted.

A member of the committee said that he had a concern about ex parte contact with the judges by probation officers. Aaron Thompson says that defense attorneys are not often getting copies of letters that are sent by probation to the judge. Even when he requested a copy from them, he couldn't get a copy.

Action item: Suzanne, place ex parte contact with probation and parole on the next Criminal Bench Bar Meeting and invite LeeAnn Hamilton, from P&P to come to the meeting.

Cyndy Hawkley will also be invited to represent the misdemeanor probation officers.

Modified: This subject will be placed on agenda of criminal bench bar to determine next course of action.

- VII. Discovery – Ken Lyon – now that we are in the electronic age, we can call the other attorney and ask them to email the interrogatories and discovery. Perhaps we could instruct paralegal to send disk or questions so they don't have to retype everything. This could be a courtesy that we can extend to each other. Sometimes there are 90 interrogatories and it takes hours to retype them. J Box will ask attorneys to send him the information electronically so he can cut and paste. The committee posed creating a local rule or an administrative rule. The problem providing digital paperwork is that often attorneys will also provide hard copies and then we find we have duplicates of paperwork. J Dunn suggests amending Rule 30 to require an electronic copy be provided by making a recommendation to the Idaho Supreme Court Civil Rules Committee. Are all the attorneys up to speed with the electronic requirements?

Action item: On behalf of the Sixth District Civil Bench Bar Committee, Suzanne to make the recommendation to amend ICRP 30 to include an electronic copy.

- VIII. Family law – Ken Lyon received several comments from attorneys regarding the need of professional mediators, child custody evaluators, etc. and it is costing them a fortune. They are complaining about how much it is costing attorneys to do family law. Brent Morgan stated that we've seen a progression from kids being examined in chambers to custody evaluations then interim parenting time and then to Family Court Services. Our district luckily has custody evaluators who charge much less than other areas. With Interim

Parenting Time Evaluation, there is a sliding fee scale so that those who cannot afford the evaluation may be assisted through Supreme Court funding based on their income.

These programs are set up by the Idaho Supreme Court's Family and Children in the Courts Committee. A lot of the information is given at the family law forum that is held once a month at the Sandpiper. The attorneys who do a lot of family law are aware of all the programs that are available but the attorneys who practice occasional family law may not be familiar with the procedures.

Action item - Judge Box will work with Gary Schreiner, Director of Family Court Services to develop a flow chart of programs and services available for use in the family law courts. This chart may then be posted on the Sixth District Website.

NEXT MEETING: JANUARY 15, 2010