



Minutes of November 13, 2006, ISC Meeting

Committee members in attendance: Hugh Hayes, Chief Judge
Robert Jacobs, Public Defender
Sheldon Finman, Esquire
Peter Ringsmuth, Esquire

Others in attendance: Jill Burzynski
Suzanne Ederr
Eric Fishbeck
Brenda Giessman
Betty Gourley
Ryan Kuhl
Keith Losey
Ian Mann
Amy McGarry
Carrie Smith
Minerva Soto
Paul Sullivan
Phillip Taylor

Phone attendance: JAC Staff - Sharon Bruley

1. Minutes of the meeting held August 14, 2006.
 - **Action:** Motion to approve the minutes passed.

2. Public Comment.
 - Minerva Soto, representative for registry-attorney Nico Vitale, detailed the present difficulty in Collier County to locate court reporters that will agree to abide by the ISC's rate schedule. Ms. Soto stated that her office has contacted all known court reporters in Collier County and that each one has rejected working for the current \$35/hr. rate. She stated that \$50/hr. is the current market rate in Collier. She stated that under the JAC's new rule, all vendors must sign a contract with the JAC in order to receive reimbursement. Sharon Bruley reminded the ISC that the JAC is not authorized to pay out at rates that exceed the ISC's '05/'06 rates. Chairman Hayes stated that he was troubled that the present situation forces the registry attorneys to prepay their court reporters at market prices without the assurance of full repayment from the JAC.
 - Ms. Bruley stated that the JAC could reimburse the registry-attorneys, but is statutorily prohibited from directly paying the non-contracted vendors; thus, in lieu of working with vendors that have contracted with the JAC, registry-attorneys are required to pay the vendors out of their own pocket. Ms. Bruley instructed that circumstances such as this require the registry-attorney to pay the vendor, seek a court order for the

costs that exceed the ISC's rates, and attempt to receive approval for payment from the JAC on a case-by-case basis. However, there is no certainty that the excessive rates will be approved by the JAC.

- Mr. Ringsmuth questioned whether this problem is related to Attorney Vitale's preferred vendor, or a countywide deficiency of willing court reporters. He concluded that additional information is needed.
- Ms. Gourley, of LeGrande and LeGrande, informed the Committee members that the JAC's policy is to only reimburse registry-attorneys for amounts that exceed \$500. Thus, attorneys must wait until their cumulative billings exceed the \$500 threshold.
- Mr. Finman recommended that the ISC Staff examine this problem by contacting every court-reporting agency in the 20th Judicial Circuit in order to reestablish the current market prices, so that the Committee can present its findings to the JAC at the next meeting.
- Chairman Hayes directed the ISC Staff to assist Ms. Soto in her effort to obtain full payment for Mr. Vitale.

3. Request from JAC to develop a policy to manage registry attorneys who fail to execute the statutorily required JAC contract. The JAC identified five attorneys in the 20th that are presently in this lapsed state:

- Paul V. Scott – removed from ISC registry as of 10/17/05.
- Robert M. Lipshutz – requested to be removed from registry as of 11/13/06.
- Lisa P. Kirby – requested to be removed from registry as of 11/13/06.
- Gregory A. Gennett – provided a copy of JAC contract signed 11/10/06.
- Delia Cañete – provided no response to the ISC Staff's inquiry.

Chairman Hayes and Vice-Chairman Jacobs, both agreed that given the unambiguous requirement under F.S. §27.40(3), the Committee must remove any attorneys from the registry that have not executed their JAC contract within ten days of a letter of notice that would be sent by the ISC Staff. The Committee Members rejected the JAC's suggestion that registry-attorneys merely be suspended from the registry. Rather, the Committee directed that the policy for the 20th is that registry-attorneys who have failed to execute their contract with the JAC will be removed, and may seek reinstatement at a later date.

4. Report as to the requirement to establish a fee schedule for DNA testing.

- Registry-Attorney Joseph Rinella instructed the ISC Staff that he was informed by the JAC that the ISC must establish a fee schedule for DNA testing in order for registry-attorneys to receive reimbursement.
- The ISC Staff reported that they contacted the JAC to confirm this requirement, and that Mr. Buddy Aspy, of the JAC, responded by delivering a report to the ISC Staff on November 7, 2006, which stated, "[W]e wish to clarify the JAC position regarding payments absent a fee schedule. Our procedure is to object to the payment and allow the Court to determine a reasonable rate."
- The Committee Members agreed that since the present policy of requiring attorneys to seek individual court orders has worked well, and that constructing a DNA-testing fee schedule would be impractical, no policy change is warranted at this time.

5. Request from ISC Staff to develop a policy regarding exceptions to the registry categories.
 - Senior-Staff-Attorney for the 20th Judicial Circuit, Ms. Suzanne Ederr, informed the Committee Members as to the growing level of difficulty in managing the present number of exceptions on the registry.
 - Chairman Hayes noted that the proper policy should be that registry-attorneys that have received an exception should be grandfathered into any newly adopted policy. Further, he suggested that all applicants seeking an exception from a category should be required to show good cause.
 - Mr. Ringsmuth sought clarification as to what changes have brought about this new problem. Ms. Ederr reported that it was a problem of the growth in the size of the registry coupled with the increasing number of exceptions, without any additional administrative support. Additionally, Ms. Ederr noted that the ISC Staff hopes to establish an automated system to handle registry appointments, which would preclude the use of exceptions as they are currently employed. Mr. Ringsmuth surmised that the problem should be monitored, but that "if it ain't broke don't fix it."
6. Report as to travel policies in the other ISCs.

The ISC Staff presented a survey of the current travel policies of the ISCs in similar circuits to the 20th. Mr. Ian Mann recommended that a limited intra-circuit travel policy should be adopted, which would provide reimbursement to registry-attorneys serving in category-six-capital-cases. Mr. Ringsmuth noted that Mr. Mills' request at the August 14, 2006, meeting, relating to category-six-travel reimbursement prompted this survey. Mr. Paul Sullivan confirmed that capital cases require more out-of-county travel than the other case categories. Mr. Ringsmuth suggested that a category-six travel policy should be drafted for approval at the next meeting. Chairman Hayes agreed that a policy should be presented by the ISC Staff for the Committee Members' review at the next meeting.
7. Review of updated report as to the registry attorneys' qualifications and corresponding levels of service. The ISC Staff reported that the only significant change between the reporting periods (8/14/06 – 11/13/06) was a drop in the average years admitted to the Florida Bar of the attorneys serving in categories 1, 2, 3, and 4, but not 5.
 - Mr. Ian Mann, who raised this issue as a public comment at the May 15, 2006, ISC meeting, stated that he thinks that measuring the average years admitted to the Florida Bar fails to adequately address the issue. He stated that his concern is "cherry-picking" or "self-limiting" by registry-attorney who are not participating in all categories in which they are qualified. Additionally, he stated that his secondary concern is that the ISC's qualifications are too low. For example, the trial experience qualification does not distinguish between felony and misdemeanor trial experience. He recommended abolishing all subcategories for felony cases (with the exception of capital cases), which should necessitate making the trial-experience requirement felony-specific. Mr. Mann conceded that, consequently, the most qualified attorneys on the registry would benefit by receiving more appointments, but that the indigent clients would also be better served by more experienced attorneys.

- Mr. Jacobs agreed that a difference should be drawn between felony trial experience and misdemeanor trial experience, but wanted a recommendation as to how to go about to improve the registry.
- Mr. Mann suggested that a more in-depth study is warranted, which should examine the affect on the registry-attorneys if a felony-trial experience qualification is imposed.
- Chairman Hayes questioned whether such "overlay analysis," measuring the present registry-attorneys' qualifications against any such proposed heightened qualification standard, is feasible before the ISC's next meeting. Ms. Ederr noted that the former ISC application did not require trial experience to be detailed, but only attested to. The ISC Staff confirmed that such a study is feasible, if not comprehensively, then at least by means of random sampling.
- Mr. Ringsmuth questioned Mr. Mann's aspiration, whether to solve the "cherry-picking" problem or the "under-qualified" problem. Mr. Mann stated that examining the present qualifications of registry attorneys and making appropriate improvements should solve both problems.

8. Review of additional applications for ISC Registry:

New Applicants:

- Gourjian, Sebouh (*walk-in*)
- LeGrande, J. L. "Ray"
- McGarry, Amy L.
- Sullivan, Paul D.
- Taylor, Phillip H. (*lacks Trial experience*).
- Vlachos, Carol C. (*lacks CLE requirement*).

Applicants amending categories of service:

- Creel, Richard M. (*addition to category 1 in Hendry County; removal from categories 10 and 11 in Charlotte County; reapplication for categories 3, 4, and 5 in Collier County; request for judicial monitoring to cease*).
- Hines, Robert G. (*removal from category 6 in Lee and Collier Counties*).
- Kirby, Lisa P. (*removal from registry*).
- Kuhl, Ryan C. (*removal from registry*).
- Lipshutz, Robert M. (*removal from registry*).
- Losey, Keith B. (*removal from registry*).
- Nicola, Tamara L. (*removal from categories 10 and 11 in Collier County*).
- Oosterbaan, Adam J. (*addition to Lee County in categories 1, 2, 3, and 4; removal from category 7 in Collier County*).

- **Action:** After the ISC Staff provided a report as to applications received, the Committee members engaged in a discussion, and made a motion that approved all applications, and amended applications, with the following exceptions:

[a] Mr. Sebouh Gourjian's application was denied for not presently meeting the CLE requirement.

- **Action:** The committee agreed to reconsider Mr. Gourjian's application at the next meeting should he meet the CLE requirement.

[b] Mr. Phillip Taylor was approved to category one, but was found to not meet the trial experience requirements for category ten.

- **Action:** The committee agreed to reconsider Mr. Taylor's request to be added to category ten at the next meeting should he meet the trial experience requirement.

[c] Ms. Carol Vlachos' application was denied for not presently meeting the ISC's Florida Bar approved CLE requirement and for not providing a sufficient record of trial experience that corresponds to each of the cases categories for which she applied.

- **Action:** The Committee Members agreed to reconsider Mr. Vlachos' application at the next meeting should sufficient documentation be presented to establish both meeting the Florida Bar approved CLE requirements and trial experience requirements for each registry category.

9. Mr. Jacobs report as to the JAC's announcement that all of its funds for the second quarter of their fiscal year have been exhausted, and that all payments have been immediately suspended.

- Ms. Burley confirmed the present situation, but encouraged all service providers to continue to submit their billings, so that the JAC can pre-approve all billings for payment. Once the Legislature advances the third-quarter funds allocation, payments will immediately resume.

Staff Follow-up:

a. Update the ISC documents, and deliver the updated documents to the JAC, Chief Justice, Clerks, Court Administration points-of-contact; post updated documents on the ISC web page.

b. Prepare a report regarding present market rates of court reporting throughout the circuit.

c. Prepare a report examining the "overlay effect" of altering the requirements of registry categories one through five.

d. Prepare for a meeting to be held on February 12, 2007.

The 2006 Florida Statutes

27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.--

(3) In utilizing a registry:

a) Each circuit Article V indigent services committee shall compile and maintain a list of attorneys in private practice, by county and by category of cases. From October 1, 2005, through September 30, 2007, the list of attorneys compiled by the Eleventh Judicial Circuit shall provide the race, gender, and national origin of assigned attorneys. To be included on a registry, attorneys shall certify that they meet any minimum requirements established in general law for court appointment, are available to represent indigent defendants in cases requiring court appointment of private counsel, and are willing to abide by the terms of the contract for services. To be included on a registry, an attorney also must enter into a contract for services with the Justice Administrative Commission. Failure to comply with the terms of the contract for services may result in termination of the contract and removal from the registry. Each attorney on the registry shall be responsible for notifying the circuit Article V indigent services committee and the Justice Administrative Commission of any change in his or her status. Failure to comply with this requirement shall be cause for termination of the contract for services and removal from the registry until the requirement is fulfilled.