

JUDICIAL COUNCIL MEETING

Minutes

Monday, March 16th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. Mark Andrus
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Michael Kwan
Hon. Michael Lyon
Hon. Robert Hilder for Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Scott Sabey, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Ray Wahl
Fred Jayne
Derek Byrne
Matty Branch
Alyn Lunceford
Nini Rich

GUESTS:

Paul Vance
Russ Pearson
Steve Hunt, Salt Lake Tribune

EXCUSED:

Tim Shea

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

Chief Justice Durham welcomed everyone to the meeting.

Motion: Judge Lyon moved to approve the minutes. Judge Orme seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Durham)

Chief Justice Durham mentioned that she attended the Mid-Year Bar Conference in St. George. She updated the Bar on the court's budget. She was also a participant of the Future of Judicial Selection Panel.

The new judge orientation was held in the past two weeks. Six judges and a commissioner participated in the orientation. All participants spoke highly of the orientation program.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker deferred his update to the report on legislative budget actions.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that she had nothing new to add to what is already reflected in the Management Committee minutes.

Liaison Committee Report:

Justice Nehring thanked each member of the Liaison Committee for their hard work and service on the committee.

Policy and Planning Meeting:

Judge Orme reported that the Policy and Planning Committee has not met since the last Council Meeting. He mentioned that Judge Andrus will be joining the Policy and Planning Committee since the Liaison Committee has completed their work.

Bar Committee Report:

Mr. Sabey reported on the following:

He reported that he attended the Senate confirmation hearings on Mark DeCaria for the second district judgeship appointment. He reported briefly on the Mid-Year Bar Conference in St. George. The conference focused extensively on budgets. He then commented that they are still short mentors for the mentoring program.

5. MOTION TO RECONSIDER (Judge Michael Lyon)

Judge Lyon spoke on behalf of his motion. He mentioned that if the motion applies only to the FY 2009 budget actions, then he would like to withdraw his motion to reconsider. Mr. Becker confirmed that the motion only dealt with the FY 2009 budget actions. Therefore, the motion to reconsider by Judge Lyon has been withdrawn.

6. REPORT ON LEGISLATIVE BUDGET ACTIONS (Daniel J. Becker and Myron K. March)

Mr. Becker thanked members of the AOC Management Staff for their hard work during a very difficult Legislative session. He mentioned that the following were key to helping the Courts budget reduction remain workable: 1) meetings with legislators in advance of the session, 2) providing solutions to address the courts needs, 3) good argument of the economic impact in handling civil cases, 4) publicity - emphasis on reducing the courts resources during a time of increased case filings, 5) the impact of the State of the Judiciary address, and 6) a consistent message throughout the session. During the Legislative session, \$1 billion in spending was eliminated with budget cuts, revenue enhancements including a \$20 increase in the registration fee for automobiles, civil filing fee increase, and federal assistance of \$390 million of federal stimulus to backfill the budget in FY 2010.

He then updated the Council on the following areas: 1) overview of Legislative budget actions, 2) FY 2009 budget, 3) FY 2010 budget, and 4) other issues related to the budget.

Mr. Becker reviewed the reduction to the court's budget in FY 2009. The final reduction for the courts in FY 2009 is \$6,345,100. He reported that with dramatic spending reductions and

the hiring freeze, many of the 2009 spending issues have been addressed. As a result of the outcome of the legislative budget actions, there is no need for any type of furlough. With the use of the fee increases passed by the Legislature, there will be carry over money from FY 2009 to FY 2010.

The reduction to the FY 2010 court's budget was reviewed. The total reduction to the courts budget for FY 2010 had been slated to be \$22,342,100. After all the numbers are taken into account, the final reduction to the courts is \$5,563,100 or 4.3 percent. An issue as to whether the courts budget will have to absorb the cost of a rate increase for judicial retirement remains pending. If that is the case, the reduction will increase to \$6,103,100.

The question was asked as to whether the courts would receive any federal stimulus money. Mr. Becker mentioned that any stimulus money the courts may receive would be through the Byrne fund. He mentioned that we would submit the court's requests when the funds become available. He reported that the design money for the Ogden Juvenile Court facility was eliminated.

Mr. Becker reviewed additional budget actions relating to the following: 1) restricted accounts with spending limits increased, 2) one-time funding - DORA, 3) Online Court Assistance Fund, and 3) carry forward authority.

It was mentioned that it may be possible to lift the hiring freeze on judicial vacancies as well as for staff July 1, 2009. Discussion took place regarding the possibility of allowing for the application process for judges to begin shortly. It was noted that the earliest the judicial vacancies would be filled, if the process began now, would be September 2009. The use of a hiring slowdown versus a hiring freeze during FY 2010 was mentioned.

Small claims in relation to the budget actions was discussed. Further discussion on small claims will take place at the April Council meeting.

Mr. Becker mentioned that FY 2010 budget plan recommendations will be brought before the Council in April for discussion.

With the continuing economic slowdown, there may be a need to revisit the budget at a later time.

Chief Justice Durham offered remarks relative to the Legislative Session. Discussion then took place in regards to filling judicial vacancies. It was mentioned that by starting the process of filling the open judicial vacancies now, the vacancies would be filled no sooner than September. The open positions include: 1) Court of Appeals vacancy; 2) upcoming retirement of Judge Sheila McCleve, Third District; 3) upcoming retirement of Judge Gary Stott, Fourth District; and 4) upcoming retirement of Judge John Anderson, Eighth District.

Motion: Judge Eyre moved to have the Governor reopen the four judicial vacancies and start the process. Judge Lyon seconded the motion, and it passed with Justice Nehring's vote against the motion.

Chief Justice Durham thanked Mr. Becker for his overview of the legislative budget actions.

7. REPORT ON LEGISLATIVE SESSION (Rick Schwermer and Debra Moore)

On behalf of the Council, Chief Justice Durham thanked Mr. Schwermer and Ms. Moore on a job well done during the 2009 Legislative Session.

Mr Schwermer reviewed the following bills that passed during the 2009 Legislative Session:

HB 69 - Guardian ad Litem Amendments. This bill deals with the GAL responsibilities and program administration.

HB 138 - Expungement of Records Amendments. This bill creates an expedited process of expunged records.

HB 148 - This bill empowers the trial court judge hearing a criminal case to give the victim an appropriate remedy for a violation of a victim's rights.

HB 292 - Traffic Violation and Citation Amendments. This bill allows for a warrant to be issued for failure to appear on a traffic citation.

HB 299 - Unlawful Detainer Amendments. This bill allows for foreclosure hold overs to equal an unlawful detainer.

HB 313 - Social Host Liability Act. This bill enacts the Social Host Liability Act. It establishes responsibility related to underage drinking gatherings.

HB 326 - Forcible Entry and Detainer Amendments. This bill provides that the definition of a tenant includes a commercial tenant.

HB 401 - Custody and Parent-Time Amendments for Service Members. This bill provides direction for custody and parent-time issues when a service member is away temporarily.

HB 455 - Court Security Restricted Account. This bill relates to the funding of courts perimeter security through a restricted account.

HJR021 - Master Study Resolution. This joint resolution gives the Legislative Management Committee items of study it may assign to the appropriate interim committee.

SB 12 - DUI Amendments. This bill modifies the Motor Vehicles Code and Uniform Drivers License Act by amending provisions relating to driving under the influence.

SB 26 - Open and Public Meetings Act - Meeting Records. This bill pertains to minutes and a recording of an open meeting. The bill requires that a recording of an open meeting must be available to the public for listening within three business days after the meeting.

SB 53 - Awarding of Attorney Fees. This bill limits when a court may award attorney fees.

SB 118 - Parental Responsibility for Juvenile Criminal Gang Offense Costs. This bill modifies the Juvenile Court Act to increase a parent's financial responsibility for a minor's criminal street gang offense costs.

SB 170 - Judiciary Amendments. This bill is the judiciary's internal housekeeping bill.

SB 176 - Civil Fees in Small Claims Courts Amendments. This bill deals with increases in civil fees in small claims courts.

SB 180 - Expungement of Division of Child and Family Services Records. This bill provides that a person may petition the court for the expungement of records in custody of state agencies that are related to the person's juvenile court records.

SB 182 - Criminal Restitution Amendments. This bill extends the expiration date of criminal restitution orders indefinitely.

SB 184 - Civil Filing Fees. This bill increases several civil filing fees of the courts of

record.

SB 202 - Drug Offender Reform Act Amendments. This bill modifies provisions regarding substance abuse screening, assessment, treatment and supervision for felony offenders.

SB 243 - Judicial Performance Evaluation Commission Modifications. This bill changes the requirements for attorney surveys.

SB 271 - Judicial Conduct Commission Amendments. This bill amends the confidentiality requirements of the Judicial Conduct Commission.

SB 272 - Driver License Sanctions and Sentencing Requirements for Driving Under the Influence and Alcohol Related Offenses. This bill institutes new suspension time periods and new requirements.

SJR 6 - Legislator Communications with Judiciary Joint Rules Resolution. This bill creates a chapter in the legislative rules relating to communication with the judiciary.

SB 18 - Utah Transparency Advisory Board Amendments. Mr. Schwermer mentioned that the courts no longer has a seat on the committee.

8. REPORT ON LEGISLATIVE FACILITY ACTIONS (Alyn Lunceford)

Mr. Lunceford reported that we did not get any capital facility money. The recommended design money for the Ogden Juvenile facility was pulled. He mentioned that various capital improvement projects have begun or will begin shortly. These projects are funded by money that has been allocated for capital improvement. If the money is not used, we lose it.

9. TRIAL COURT EXECUTIVE REPORT (Paul Vance and Russ Pearson)

Mr. Russell Pearson and Mr. Paul Vance represented the Trial Court Executives by reporting on the clerical study implementation and impacts of the hiring freeze. The trial court executives were mentioned. They include: 1) Matty Branch, Appellate Court; 2) Joe Derring, First District; 3) Sylvester Daniels, Second District; 4) Beanie Martinez, Second District Juvenile; 5) Peggy Gentles, Third District; 6) Bruce Thomas, Third District Juvenile; 7) Paul Vance, Fourth District; 8) James Peters, Fourth District Juvenile; 9) Rick Davis, Fifth District; 10) Wendell Roberts, Sixth District; 11) Bill Engle, Seventh District; and 12) Russell Pearson, Eighth District.

Mr. Pearson mentioned that the questions to be addressed relative to the clerical study include: 1) where have we been, 2) where we are, and 3) where we need to go.

The following is a background of where have we been: 1) the clerical structure approved by the Council in the Fall of 2008, 2) the districts create an implementation plan, 3) the districts presented their implementation plan to the implementation committee; 4) the implementation plans approved by the committee, 5) districts expressed concerns regarding the use of a Team Manager, 6) the positions were opened and filled, and 7) the new structure begins in 2009.

He reviewed where we are in regards to the implementation of the clerical study which include the following: 1) only part way through the restructuring, 2) completed the organizational chart changes, 3) clerk of court and supervisor placement of staff in positions and coordination of changes, 4) new managers in place, 5) HR provides training to new managers, 6) use of new structure to provide training to contract sites to improve case pending, 7) in some cases, the new structure proves to be beneficial with the hiring freeze, 8) morale of clerical staff has been up and down, 9) waiting for manager training, clerical education, and ability to fully staff, 10) new employees more readily took advantage of the structural change than veteran

employees, and 11) this change will improve the number and quality of candidates for filling Clerks of Court position.

The following outline issues dealing with the question of where do we go: 1) education and training issues, 2) wages, 3) filling vacancies, and 4) other issues that result from the restructure.

Education and Training. Human Resources and the Education Department are working on a new career and professional development career track. Questions regarding development of competencies for advancement and training purposes have been raised.

Wages. The TCEs recommend that when funding becomes available, the steps are restored to the clerical positions.

Filling Vacancies. Questions of how to place new people into the positions have been asked.

Other Issues. It was suggested to have a forum or contact to deal with issues that arise after the implementation and that have not been addressed previously.

Mr. Vance reported on the impact the hiring freeze has had with implementing the clerical study. He covered the following: 1) vacancies in district, 2) the affect to court users, 3) the affect on staff, 4) the affect on judges, and 5) concerns resulting from court reporters leaving and the small claims change to the courts.

10. ADR COMMITTEE UPDATE (Nini Rich)

Ms. Nini Rich, ADR Director, mentioned that Judge Royal Hansen was unable to attend. Therefore, she updated the Council on the work of the ADR Committee. She reported briefly on her background with the Courts. The ADR committee is composed of three judges, one commissioner, several private sector mediators, a federal ADR director, an executive branch representative and an academic representative.

She mentioned there is a new policy for investigating complaints. She reported that the Committee would schedule a retreat in the fall. A basic mediation training course is provided for court personnel. It was given twice in 2008. The 2009 course has not been scheduled yet.

Nini reviewed statistics for the Child Welfare mediation program during 2008. There were 911 new referrals to the program in 2008. She also reviewed the co-parenting mediation program FY 2008 outcome report as well as the helpline telephone statistics. The helpline statistics shows a 71% increase in calls. The committee is working on creating a Spanish language piece to reference the helpline and the co-parenting line.

Use of CORIS to provide better tracking is an area of future discussion. The ADR Committee hopes to bring awareness of the mediation programs statewide. There is also a refugee mediation project funded through American Express that is taking place.

Chief Justice Durham thanked Ms. Rich for the report from the ADR Committee.

11. ADJOURN

The meeting was adjourned.