JUDICIAL COUNCIL MEETING

Minutes
Monday, October 27, 2014
Matheson Courthouse
Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. James Davis
Hon. Glen Dawson
Hon. Thomas Higbee
Hon. David Marx
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
Rob Rice, esq. for John Lund, esq.

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Liz Knight
Nancy Sylvester
Nancy Volmer

GUESTS:
Judge Marsha Thomas
Ron Gordon

EXCUSED:
John Lund, esq.

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to the new Council members: 1) Judge Ann Boyden, and 2) Judge Marvin Bagley.

Motion: Judge Higbee moved to approve the minutes from the September 9, 2014 Judicial Council meeting. Judge Hornak seconded the motion, and it passed unanimously.

2. **NEW MEMBER – OATH OF OFFICE: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant administered the oath of office to the new members to include: 1) Judge Marvin Bagley, and 2) Judge Ann Boyden.

3. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant reported on the following items:

Chief Justice Durrant, Mr. Becker, Mr. Wahl, and Mr. Schwermer will be meeting with the Governor tomorrow afternoon to discuss various court matters.

Chief Justice Durrant and Mr. Ray Wahl will be attending a PEW Conference in San Diego, November 17-19.

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

Mr. Becker reported on the following items:

Elected Offices and Judicial Compensation Commission. The Commission met on October 9. The Commission has received information from the courts and from the National Center for State Courts (NCSC) relative to judicial compensation. The Commission is considering a target amount rather than a specific percentage increase. Final action on any proposed recommendations will be taken at their October 30 meeting.

Meeting with the Governor. Chief Justice Durrant, Mr. Becker, Mr. Wahl, and Mr. Schwermer will meet with the Governor on October 28 to discuss the following items: 1) the importance of treatment services and how they can be enhanced, 2) the Justice Reinvestment Initiative, 3) judicial compensation, and 4) the courts 2016 budget requests.

FY 2015 – First Quarter Case Filing Review. Mr. Becker highlighted the following case filing data for district court: 1) criminal, 9% increase; 2) felony, 10% increase; 3) domestic, 2% decrease; 4) general civil, 11% increase; 5) probate, 0% change; 6) property rights, 6% decrease; 7) tort, 14% decrease; 8) traffic, 10% increase; and 9) district court overall, 2% increase.

He highlighted the following referral data for juvenile court: 1) juvenile court overall, 1% decrease; 2) felony, 6% increase; 3) misdemeanor, 8% decrease; 4) infraction, 48% decrease; 5) child welfare proceedings, 14% increase; 6) termination of parental rights, 2% increase; and 7) voluntary relinquishment, 25% increase.

E-Filing Update. Mr. Becker mentioned that the last phase of mandatory e-filing of criminal cases is the requirement for criminal informations, effective January 1, 2015. Filing of the criminal information, on a voluntary basis, went live three weeks ago.

New Council Member Orientation. An orientation was held with new members of the Council prior to today's meeting.

Council Norms. A copy of the Council norms was distributed to members of the Council.

JPEC Update. Mr. Schwermer provided an update of the October JPEC meeting. He highlighted the following in his update: 1) evaluation reports are to be published three months after the April 15 filing date (by July 15), 2) no JPEC legislation has been proposed, 3) future public relations efforts, 4) $25,000 received from the Lieutenant Governor to use for public relations efforts this election cycle, 5) receipt of $200 for sponsored social media, and 6) use of a public service ad, prior to the upcoming election, that was developed for use in Georgia.

Mr. Schwermer previewed video footage of the ad being used in Utah.

Discussion took place.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No meeting was held in October.

Policy and Planning Meeting:

Judge Dawson reported on the following items: 1) amended rule 1-205 relative to the Model Utah Jury Instructions Committees which is on the agenda later for final approval, 2) amended Rule 4-510.03 relative to qualifications of ADR providers which is on the agenda later for final approval, and 3) amended Rule 3-111 relative to performance evaluation of senior judges and court commissioners which is on the consent calendar.

Bar Commission Report:

Mr. Rice reported on the following items: 1) the Pro Bono Commission has signed a contract with a provider to help in the implementation process of matching unrepresented parties with pro bono volunteers, and to help with the modest means program matching as well, and 2) held their last meeting at the University of Utah Law School and toured the new law school building, which is under construction.

6. GAL OVERSIGHT COMMITTEE UPDATE: (Liz Knight)

Chief Justice Durrant welcomed Ms. Knight to the meeting.

Ms. Knight highlighted the following performance measures in her update to the Council: 1) in FY14, GAL attorneys had on average 142 children on their caseloads – down from 160; 2) an additional $300,000 was funded by the Legislature to increase attorney salaries in the GAL; 3) in FY 14, 50% of children attended and participated in their court hearings; 4) in FY14, the Office of GAL participated in 116 appeals on behalf of their clients; 5) in FY14, the Office of GAL attorneys engaged in 50,184 activities in order to complete independent investigations on behalf of the 11,463 children represented; 6) in FY14, 770 Court Appointed Special Advocates (CASAs) served 1,422 children and donated 34,588 volunteer hours; 7) 130 private GAL attorneys with coordination provided by the private guardian ad litem coordinator; 8) implementation of CJA R4-906(8)(G) in November 2014 requiring Private Guardian ad Litem attorneys to obtain an additional three hours of training per year in order to stay certified; and 9) the GAL celebrated their 20th anniversary in September.

7. COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed 2015 Council committee appointments. He recommended the appointment of Judge Marvin Bagley and Judge Ann Boyden to serve as members of the Policy and Planning Committee.

Motion: Judge Skanchy moved to approve the Council committee appointments as proposed by Chief Justice Durrant. Judge Sandberg seconded the motion, and it passed unanimously.

8. 2015 COUNCIL CALENDAR APPROVAL: (Ray Wahl)

Mr. Wahl reviewed the proposed 2015 Council calendar. He highlighted the following relative to the 2015 Judicial Council meeting dates: 1) March meeting to be held in St. George in conjunction with the Utah State Bar's Spring Conference, 2) change in date for the May meeting due to the Memorial Day holiday, 3) August meeting being held in conjunction with the Council's budget and planning session, 4) September meeting being held in conjunction with the Annual Judicial Conference, and 5) consideration of holding the July meeting on July 13 at the

new Ogden Juvenile Courthouse or in Sun Valley, Idaho in conjunction with the Utah State Bar's Summer Conference.

Mr. Wahl compared expenses incurred with travel to the July 2014 Council meeting in Snowmass, CO to the lodging room rates in Sun Valley, ID, as well as, other expense details relative to traveling to Sun Valley, ID.

Attendance at the Utah State Bar's Summer Conference since 2002 was referenced, noting a decline in attendance since 2007.

Discussion took place. The Council agreed to defer approval of the July 2015 meeting date and location to the November meeting to allow Mr. John Lund to be present and provide information on behalf of the State Bar, relative to the 2015 Bar Conference in Sun Valley.

Motion: Justice Parrish moved to approve the 2015 Council calendar as proposed, with the exception of the July 2015 meeting. Judge Sandberg seconded the motion, and it passed unanimously.

9. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a legislative update for the Council. He highlighted the following in his update: 1) health reform and the criminal justice population, 2) Medicaid expansion – update on Healthy Utah Plan, 3) domestic asset protection trusts, 4) penalty for traffic violation causing a death, 5) Interim Judiciary Committees with regard to minimum mandatory sentencing, 6) veteran's and military affairs, 7) Utah Veterans Court, and 8) development of a request for proposals to develop the curriculum for continuing education on federalism.

10. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac provided the annual training to Council members on the Open and Public Meetings Act as required by Rule 2-103 and 2-104. She highlighted the following: 1) the key principles of the rule include—the Council meetings must be open unless they are closed in the proper way and for the proper reason, the requirements for an open meeting, and the intent to establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act; 2) what a meeting is; 3) public notice must be given; 4) audio recording and minutes – what the minutes shall include and access to the meeting recording and minutes; 5) public access to the meeting; and 6) closed meetings – how the meetings are closed, reasons for closing a meeting, and limits on decisions made in a closed meeting.

11. RULES FOR FINAL ACTION: (Alison Adams-Perlac)

The Policy and Planning Committee recommended the following rules for final action:

CJA 1-205 – Standing and ad hoc committees. This rule has been amended to make the Committee on Model Utah Civil Jury Instructions and the Committee on Model Utah Criminal Jury Instructions standing committees of the Judicial Council. It has been recommended that the rule be approved on an expedited basis, and if approved, would be effective immediately.

CJA 4-405 – Juror and witness fees and expenses. This rule has been amended to make an attorney issuing the subpoena responsible for reimbursing a civil witness for necessary and reasonable parking expenses as required by statute.

CJA 4-907 – Divorce education and divorce orientation courses. This rule has been amended to provide an option to take the divorce orientation course online, and it reflects changes to the fees for the course as required by statute.

CJA 4-510.03 – Qualification of ADR providers. This rule has been amended to correct an incorrect reference to another rule.

Motion: Judge Dawson moved to approve Rules CJA 1-205 (on an expedited basis), CJA 4-405, CJA 4-907, and CJA 4-510.03 as recommended by the Policy and Planning Committee. Judge Skanchy seconded the motion, and it passed unanimously.

12. STUDY ITEM CHARGE/MEMBERSHIP: (Daniel J. Becker)

Mr. Becker noted that the Council, at their September meeting; requested a charge, timetable and membership be developed by the AOC for approval at their October meeting. Mr. Becker reviewed the proposed committee charge, timetable and membership with members of the Management Committee to include the following: 1) committee charge – the committee is charged with conducting a thorough assessment of existing pre-trial release practices used in Utah's courts and determining if there are alternatives which should be considered, 2) the committee should complete their work and report their findings and recommendations to the Judicial Council at their November 2015 meeting, and 3) reviewed the recommended membership.

The proposed names included:

District Court judges: Judge Todd Shaughnessy to serve as the committee chair, and Judge James Brady
Juvenile Court judge: Judge Janice Frost
Justice Court Judges: Judge Brendan McCullagh, and Judge Andrea Lockwood
Prosecutor: David Brickey
Defense Attorney: Todd Utzinger
County Sheriff: Sheriff James Tracy
Member of the Senate: Senator Lyle Hillyard
Member of the House: Representative Eric Hutchings
Commission on Criminal and Juvenile Justice Staff: Jennifer Valencia
County Government: David Litvack, CJAC
Commercial Bail Agent: Gary Walton
Insurance Commission Representative: Deputy Commissioner Brett Barratt
AOC: Brent Johnson and Rick Schwermer

Mr. Becker noted that the members of the proposed committee have not been contacted yet. He requested that the Council delegate filling open slots, if any of the proposed members decline, to the Management Committee.

Motion: Judge Skanchy moved to approve the 2015 study committee charge, timetable and membership and delegate filling open slots to the Management Committee, if any of the proposed members decline. Judge Sandberg seconded the motion, and it passed unanimously.

13. RESOURCES FOR SELF-REPRESENTED PARTIES COMMITTEE UPDATE: (Judge Marsha Thomas)

Chief Justice Durrant welcomed Judge Thomas to the meeting.

Judge Thomas provided an update to the Council on the activities of the Resources for Self-Represented Parties Committee. She highlighted the following in her update: 1) a brief history of the committee, 2) where the committee is today, and 3) where they would like to go.

The original committee charge included: 1) provide leadership to identify needs of self-represented parties, 2) coordinate the resources to meet those needs, 3) assess available resources, 4) ensure court programs are integrated into statewide planning, 5) recommend measures for improving the legal system that serve self-represented parties, and 6) develop an action plan.

The Resources for Self-Represented Parties Committee created a survey to gather information relative to self-represented parties. A strategic plan was developed and presented to the Council in 2006 based upon the survey results to include the following goals: 1) ensure access to the legal system, 2) increase education of court users, 3) provide clarification to the court system, 4) increase efficiency and effectiveness of the court system, and 5) increase the understanding of court orders, once issued. The main principle of the strategic plan was to allow for equal availability of the court system to all parties.

The specific recommendations of the strategic plan included: 1) suggested creation of a self-help center, 2) development of clinic and resource availability, 3) information provided statewide by the law library, 4) form availability, 5) address potential rule changes, 6) support of unbundled legal services, and 7) support of low or no fee representation.

The strategic plan for the Resources for Self-Represented Parties Committee was revised in 2011 to include the following recommendations: 1) continuation of the self-help center to the entire state, 2) continuance of development of legal forms, 3) creation of instruction videos, 4) increased collaboration with the Online Court Assistance Program (OCAP) and the Utah State Bar, and 5) the study of alternative processes for self-represented parties.

Judge Thomas highlighted the following successes of the committee: 1) the Self-Help Center was funded statewide, 2) a forms committee was created, 3) videos on small claims and landlord tenant matters were created, 4) the unauthorized practice of law rule was changed to allow for clerical assistance in completing forms, and 5) a website redesign was completed.

The current needs the committee views as areas to address include: 1) referral to available legal services, 2) document assembly assistance or resolution help, 3) help for the non-English speakers, and 4) additional collaboration with the Utah State Bar's pro bono and modest means programs.

Judge Thomas noted that the Resources for Self-Represented Parties Committee plans to review the previous strategic plans and prepare a revised plan to present to the Council in the Spring of 2015.

Chief Justice Durrant thanked Judge Thomas for her update.

14. SUNSET OF JUSTICE COURT STANDARDS COMMITTEE: (Rick Schwemer)

Mr. Schwermer provided background information on the origin and original charge of the Justice Court Standards Committee. In recent years, fewer and fewer issues were brought before the committee, and the committee membership has not changed in the past eight years.

Mr. Schwermer mentioned that 27 counties with justice courts are up for recertification in January 2015.

The following was recommended relative to the existence of the Justice Court Standards Committee: 1) delete the rule pertaining to the Justice Court Standards Committee as a standing committee of the Judicial Council, 2) sunset the committee, and 3) proceed with justice court standards to be handled similarly to the process for approving justice court grants.

Discussion took place. Clarification was requested regarding the process for applying for recertification by a justice court. Mr. Schwermer provided clarification.

Motion: Judge Higbee moved to approve the recommendations as proposed by Mr. Schwermer relative to the Justice Court Standards Committee and allow the Management Committee to approve justice court recertification requests unless a matter of decertification comes before the Management Committee. At that time, the recommendation for decertification would be placed on the Judicial Council agenda for further action. Judge Sandberg seconded the motion, and it passed unanimously.

15. JUSTICE REINVESTMENT INITIATIVE: (Ron Gordon)

Chief Justice Durrant welcomed Mr. Gordon to the meeting.

Mr. Gordon reported on the draft Justice Reinvestment Initiative. He highlighted the following in his report: 1) summary takeaways relative to incarceration, offenders, supervision revocation, and projected prison population growth; 2) current policies under consideration projected to avert 97% growth; 3) sentencing subgroup recommendations; 4) release subgroup recommendations; 5) treatment and supervision subgroup recommendations; and 6) victim/ survivor/advocate roundtable priorities.

Questions were asked of Mr. Gordon relative to the recommendations. Mr. Gordon provided responses.

Mr. Gordon noted that training would be provided to the appropriate state agencies if the recommendations are approved. The draft Justice Reinvestment Initiative Report will be presented to members of CCJJ on November 12 for their approval.

Upon approval of the recommendations, statutory changes would be drafted soon thereafter. A bill would be prepared late November, early December with Representative Eric Hutchings as the sponsor of the bill.

Mr. Gordon invited input from members of the judiciary through the CCJJ judicial representatives, before November 12, to include: 1) Mr. Dan Becker, 2) Judge Thomas Low, and 3) Judge Elizabeth Lindsley.

16. SENIOR JUDGE OPERATIONS BUDGET: (Ray Wahl)

Mr. Wahl highlighted the following in his update on the senior judge budget: 1) in FY 2014, $226,900 was allocated to the senior judge account; 2) in FY 2014, $338,642.79 was spent from the senior judge account; 3) noted the unique circumstances during FY 2014 that required additional spending from the senior judge account; 4) for FY 2015, the Council allocated $167,000 to the senior judge account, as well as, an additional 23,000 from carry-forward funding; and 5) the miscalculation of the judicial operations budget authorized increase from $500 to $900 for the senior judge account.

Mr. Wahl reminded the Council of their approval, in April, to authorize a one-time spending increase of $45,600 to increase the judicial operations budget from $500 to $900. Judges, senior judges, and commissioners are entitled to use of this funding by policy. The authorized one-time spending increase did not take into account the 27 active senior judges.

It was recommended that the Council approve an additional $10,800 in one-time spending to cover potential spending from the judicial operations budget and that it be taken from the reserve authorized by the Council.

Motion: Judge Parkin moved to approve the recommendation for an additional $10,800 in one-time spending, to be taken from the court's reserve, and it be placed in the judicial operations budget. Judge Skanchy seconded the motion, and it passed unanimously.

17. EXECUTIVE SESSION:

An executive session was not held at this time.

18. ADJOURN

The meeting was adjourned.