

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 23rd, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Keith Stoney
Hon. Michael Westfall
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Ray Wahl
Rick Schwermer
Tim Shea
Matty Branch
Kim Allard
Rob Parkes
Nancy Volmer
Katie Gregory
Shari Veverka

GUESTS:

Judge Scott Johansen
Judge Thomas Kay
Judge Thomas Higbee
Judge Ben Hadfield
Judge Michael Lyon
Judge Brent West
Troy Rawlings
Bret Millburn
Douglas Adair
Senior Judge Rodney Page
Thomas Hardy

1. WELCOME, NEW COUNCIL MEMBERS WELCOME AND APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

Chief Justice Durham welcomed everyone to the meeting. She introduced the new Council members: Judge Keith Stoney, Judge Thomas Willmore, and Judge Kimberly Hornak. She thanked Judge Chamberlain for chairing the October Council meeting.

Motion: Judge Petry moved to approve the minutes as amended. The motion was seconded, and it passed unanimously.

2. COUNCIL MEMBER ORIENTATION: (Chief Justice Durham and Judge Hans Chamberlain)

Chief Justice Durham provided a history of the various ways in which new Council member orientation has been addressed in the past. She mentioned that she would address the governance issues as related to the Council, and Vice Chair, Judge Hans Chamberlain, would address the specific Council norms. The Utah Constitution vests the authority for the administration of the courts with the Utah Judicial Council. She provided a summary of what this constitutes.

Chief Justice Durham reviewed the Principles of Court Governance as outlined in the *Institutional Independence and Governance in the State Courts* discussion paper. The ten core principles include: 1) a well defined governance structure for policy formulation and administration for the entire state court system, 2) meaningful input from all court levels into the decision making process, 3) a system that speaks with a single voice, 4) selection of leadership based on competency, not seniority or rotation, 5) commitment to transparency and accountability, 6) authority to allocate resources and spend appropriated funding independent of the legislative and executive branches, 7) a focus on policy level issues, delegation with clarity to administrative staff, and a commitment to evaluation, 8) open communication on decisions and how they are reached, 9) positive institutional relationships that foster trust among other branches and constituencies, and 10) clearly established relationships with presiding judges, court administrators, boards of judges, and court committees. She also reviewed the system of court governance through the years. In summary, she stated that it is important that if the Council is to fulfill its constitutional mandate, to be responsible for the administration of the courts, that the members of the Council come with a clear understanding that we come to make the best decisions, identify the best priorities, and implement those decisions for the good of the system as a whole.

Judge Chamberlain reviewed the Council norms. He mentioned that for scheduling purposes, Council meetings must take priority. He mentioned that executive sessions are used to discuss budget strategy, litigation matters and personnel issues in a closed-meeting setting.

Mr. Becker reviewed a list of major Judicial Council initiatives/projects with the Council members.

3. CHAIR'S REPORT: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that she has met with other chief justices and state court leaders in various forums recently where the national perspective on the financial crisis facing the state courts was discussed. The National Center for State Courts is tracking the financial situation faced by the court system nationwide. She mentioned Utah's ranking as related to budget reductions. She commented that other state court systems are examining some of the same actions taken in Utah, including moving to digital recording of court proceedings.

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

Mr. Becker reported on the following items:

He introduced Shari Veverka, Court Program Administrator, who will be working on justice court issues.

Mr. Becker shared information from a letter prepared by Senator Lyle Hillyard and Representative Ron Bigelow, co-chairs of the Executive Appropriations Committee. They

reported that the revenue collection report for the first quarter of FY 10 shows a 22% decline in collections.

He reviewed information prepared by the National Center for State Courts regarding state budget shortfalls during the last recession compared with the current recession. The information depicts all state government in their findings.

The budget meeting scheduled with the Governor was canceled. He reported that he did meet with the GOPB director to review budgets. The budget meeting with the Governor will be rescheduled. Mr. Becker anticipates the Governor to release his budget projections within the next couple of weeks as well as release of the revenue projections.

He reported that the Judicial and Elected Officials Compensation Committee meeting was also canceled.

The December 14 Council meeting will be held in St. George along with the Courthouse dedication.

Mr. Parkes provided a summary from the most recent Legislative Retirement Committee meeting. He reported that discussion took place regarding employee compensation, employee contribution rates, the overall retirement system and judicial rates.

He reported that the Committee hired actuaries to analyze the system and look at ways the state could recoup monies into the system. Different options were discussed at the meeting.

Mr. Parkes reported on the issue of retired state employees getting retirement benefits and working in another capacity with the state and getting a salary at the same time. Discussion on ways to manage this situation took place. He mentioned that discussion took place regarding part-time employee benefits. Currently, they receive the same benefits as full-time employee. A pro-rated system was suggested.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham highlighted two items from the Management Committee meeting.

First, the Committee reviewed a request from Kent Hart, Executive Director of the Utah Association of Criminal Defense Lawyers, requesting time on the Council agenda to discuss the issue of defense attorneys and litigants being charged fees for discovery. The Association was advised that the appropriate forum was the Supreme Court's Rules Committee.

Second, she mentioned that members of the Judicial Performance Evaluation Commission provided a detailed update on their pilot program regarding litigant and witness surveys.

Liaison Committee Report:

Justice Nehring reported that the Liaison Committee will meet on December 18.

Policy and Planning Meeting:

Judge Orme reported on the following:

He mentioned that the Committee considered proposed rule amendments regarding fees for the Xchange system. This item is on the consent calendar and will be published for comment. Once the rule is before the Council for approval, the following will need to be addressed: 1) a policy outlining how to share the revenue, and 2) a policy that will address users of the system that gain access for free such as the media. Discussion took place regarding the use and the subscription fee for use of the Xchange system.

Judge Orme reported that the Committee has begun preliminary consideration on the performance evaluation issue regarding senior judges and commissioners. The Committee will continue to discuss issues dealing with this area in the coming months. Mr. Shea reported that the estimated cost to hire a survey consultant relative to the upcoming evaluations is estimated at \$17,000.

Bar Committee Report:

Ms. Nelson reported on the following:

She reported that the Bar Committee held their November meeting last Friday at the Davis County Bar office. The subcommittees also met. Discussion took place on areas in which the Bar can provide a service to court-sponsored events such as Law Day. Mr. Scott Sabey is working on the details for a possible reception to be held between the State of the Judiciary Address and the State of the State Address for members of the Judicial, Legislative, and Executive branches of government to come together in one setting.

6. BOARD OF JUVENILE JUDGES UPDATE: (Judge Scott Johansen and Ray Wahl)

Chief Justice Durham welcomed Judge Johansen to the meeting.

Judge Johansen provided an update from the Board of Juvenile Judges. He listed the members of the current Board of Juvenile Judges to include: 1) Scott Johansen, chair; 2) Suchada Bazzelle, vice chair; 3) Dane Nolan; 4) Charles "Bo" Behrens; 5) Mark Andrus; 6) Stephen Van Dyke; and 7) Thomas Higbee.

The 2009-2010 goals include: 1) promote efficiencies in the juvenile court through the use of evidence-based practices, enhanced use of data and technology, the streamlining of processes, and the review of code and judicial practice, 2) promote judicial self education opportunities, and 3) receive reports and provide input on specialty programs and research projects related to improving outcomes for children and families involved with the juvenile court.

The accomplishments of the Board of Juvenile Judges include: 1) judicial workload formula adopted, 2) CARE Judicial Management reports and system enhancements, 3) continued use of evidence-based practices, and 4) child welfare on-line application and reports to be released January 2010.

The challenges faced by the Board of Juvenile Judges include: 1) budget reductions in executive agencies that provide services to children and families, 2) judges meeting child welfare statutory time frames and aspiring to principles of the model delinquency guidelines, 3) addressing the ethnic diversity of court patrons, 4) participating in the Child and Family Service Review, 5) providing assistance to the workload "hot spots" in the state, and 6) cultivating effective interventions for youth in both the urban and rural courts and measuring these effective outcomes.

The overall objective is to ensure a safe home and safe community for all.

Chief Justice thanked Judge Johansen for his presentation.

7. BACKLOG INDEX - A PROPOSED COURT PERFORMANCE MEASURE: (Kim Allard)

Ms. Allard reviewed information relative to court performance measures as adopted through the years since 2004. She presented information on the backlog index as a proposed court performance measure. Areas outlined on the report included: 1) clearance rate, 2) time to

disposition, and 3) age of active cases. She mentioned that the information is available in district court. It is pending in juvenile court due to specific CARE changes and in justice court due to the CORIS conversion. Discussion took place.

She reported that this measure can be added to CourTools upon approval by the Council. Members of the Council discussed the possibility of a different title for the measure, and they suggested capacity index as an alternative.

Motion: Judge Eyre moved to adopt the Caseload Capacity Index to be included as a CourtTools measure. Judge Hornak seconded the motion, and it passed unanimously.

8. 2010 COUNCIL STUDY ITEM: (Daniel J. Becker)

Mr. Becker reviewed the status of the 2010 Council study items as discussed at the November Council meeting. The two areas being considered from the November meeting include: 1) interpreter services for civil cases, and 2) indigent representation.

An update from the Appellate Representation Committee in regards to indigent issues being added to their current study was given. The Committee recognizes there are overlapping areas with the indigent issues and that it would make sense to address those issues in addition to their current study. Discussion of the mechanics to integrate the indigent issues with the current study will take place at the Committee's next meeting.

Mr. Becker reported that the area of interpreter services in civil cases was a matter of discussion at the most recent COSCA Board of Director's meeting with Mr. Thomas Perez, Assistant Attorney General for Civil Rights. Mr. Perez mentioned that this area will be addressed nationwide. His priorities regarding the area of interpreter services in civil cases include: 1) institute a process of gathering information state to state to determine what is being provided in the area of interpreter services in civil cases; and 2) institute a process to determine what states are addressing the problem, what plans are in place to address the problem, and how each state plans to come into compliance.

It was noted that this issue involves the executive branch as well. It was suggested to include the Governor and the Attorney General's office in any correspondence relative to coming into compliance with providing interpreter services for civil cases. Discussion took place.

Motion: Judge Atherton moved to have indigent representation as the 2010 study issue and to have Policy and Planning review details relative to coming into compliance in the area of interpreter services for civil cases and prepare a plan. Judge McCullagh seconded the motion, and it passed unanimously.

9. COUNCIL PHOTO

10. EXECUTIVE SESSION

The Council entered into an executive session after lunch.

11. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)

Motion: Judge Maughan moved to approve the senior judge requests of the judges who have applied. Judge Gordon J. Low's senior judge approval is conditional on his meeting the educational requirements by the end of December 2009. Judge Orme seconded the motion, and

it passed unanimously.

12. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer provided a Legislative Update. He mentioned that last week was interim week. The Executive Appropriations meeting was held last Tuesday. He commented that the Governor's Office of Planning and Budget provided an in-depth budget review including an overview of how agencies implemented budget reductions in FY 2010 and potential budgetary impacts in FY 2011 when one-time backfill monies are no longer available. The State Building Board ranked the Courts Ogden Juvenile Courthouse at #5. Considerations made regarding the rankings include: 1) available funding, 2) funding that is bonded, and 3) how far to go down the list.

He mentioned that discussion of Judge Steele's abortion case in Vernal was an item for discussion at the interim meeting. A bill was introduced on Wednesday to change the abortion statute and to define abortion.

He updated the Council on the number of bills being submitted.

13. BUDGET AND EFFICIENCY PROPOSALS: (Chief Justice Durham)

Chief Justice Durham mentioned that the Council began considering budget and efficiency proposals in August. The Council considered opportunities and options to find ways to re-engineer the way the courts provides services in many aspects of the day-to-day operations of the courts. Many proposals were considered at that time. Today, the Council will consider additional budget efficiencies and proposals.

OVERVIEW: (Daniel J. Becker)

Mr. Becker commented on the previous discussion the Council had regarding various budget efficiencies. He also mentioned that no new funding would be available for FY 2011. He reported that the State's projected budget shortfall is now estimated at \$1 billion. The previous reduction plans for a 1%, 3% or 5% reduction have been amended upward with a 7% reduction now being requested by the Governor's office. Mr. Becker had hoped to hold the court's reductions at what had already been taken and not incur any additional reductions. However, it is expected that the court will incur additional budget reductions with the rest of the state government. He mentioned that there are three ways to respond to reductions which include: 1) reduce spending, 2) raise revenue, and 3) examine the court's business practices for efficiencies.

In August, 17 budget concepts, reduction and efficiency were presented to the Council. Some of the areas considered at the August discussion included: 1) increase and address the senior judge budget, 2) consider moving judicial vacancies to districts with the greatest need, 3) combining the Seventh and Eighth District into a single district, 4) training judges in mediation and settlement conferencing, and 5) consider moving first appearances and preliminary hearings to justice courts.

In September, the issue of moving judicial vacancies to districts with the greater need was discussed in great detail. At that time, it was determined that combining the Seventh and Eight District into a single district would be deferred and discussed further if deeper budget reductions were needed. Currently, the Eighth District is provided judicial assistance by the Seventh District and by senior judge assistance.

Mr. Becker provided data to support the transfer of a judgeship from Second District to

Fifth District Juvenile. The information included: 1) the impact of cases lost to the district court when the Ogden Justice Court was established, 2) district court - caseload as % of standard report, and 3) district court and juvenile court weighted caseload - caseload as % of standard report. He commented that there has been a long-standing need for additional judicial support in Fifth District Juvenile. The question is whether to address the need for additional judicial support in Fifth District Juvenile now or defer it to be addressed in the future.

The Council will hear comments from the Second District presiding judge, Fifth District Juvenile presiding judge, board of district judges and the board of juvenile judges. After hearing from the districts and the boards, Mr. Becker asked the Council to make a decision on the proposal to transfer a judgeship from Second District to Fifth District Juvenile. He noted that this issue had taken a disproportionate amount of time and that there were important budget decisions that needed to be addressed.

Chief Justice Durham thanked Mr. Becker for his overview. She also expressed her opinion as to future approval of additional judgeships. She also mentioned that legislative action would be required to move a judgeship from one district to another.

It was also mentioned that 18 clerk positions would be eliminated in FY 2011 unless additional funding was approved.

COMMENTS BY SECOND DISTRICT AND FIFTH JUVENILE PRESIDING JUDGES

Second District. Judge Michael Lyon spoke on behalf of Second District. He introduced several Davis County personnel in attendance. He requested that the Council not approve the transfer of judgeship for the following reasons: 1) the weighted caseload formulas are different between district and juvenile court, 2) the Second District is 96.3% of standard due to unreported numbers, 3) 96% of standard does not include considerable judicial work to state tax courts and drug courts, and 4) shifting judicial resources to where need is the greatest could pose undesirable institutional issues in the long term and possibly create potential legal problems.

Judge West provided a caseload analysis. The information was prepared by Judge Brent West, Judge Jon Memmott, and Judge Glen Dawson. He identified areas not included in the current district weighted caseload. He suggested that it is impossible to compare weighted caseloads between district and juvenile court.

Judge Kay talked about principles he felt were involved in the transfer of judgeship from one district to another. He provided the following details in his report: 1) Davis County's position regarding the transfer of judgeship, 2) Bountiful's lease payment, 3) Davis County as one of the fastest growing counties in the state, and 4) elimination of various court services with the transfer.

Fifth District Juvenile. Judge Higbee updated the Council to the long-standing need for additional judicial support. The following details were included in his report: 1) St. George is growing dramatically, 2) Fifth District Juvenile is 138% of standard, 3) judges are scheduled cases every day with no days off, 4) weighted caseload continues to grow, 5) juvenile court is scheduled by case, 6) child welfare case numbers reviewed have grown from 91 in 2001 to 261 in 2009, 7) use of other judge time as necessary, 8) use of senior judge coverage where available, 9) diversion program instituted, 10) mention of drug court, and 11) detention hearings - issue of unavailability of both juvenile judges at the same time.

COMMENTS FROM BOARD OF DISTRICT JUDGES AND BOARD OF

JUVENILE JUDGES

Board of Juvenile Judges. Judge Johansen provided feedback from the Board of Juvenile Judges position regarding the transfer of judgeship from Second District to Fifth District Juvenile. He reported that a lot of time and work was spent in preparing the weighted caseload used in juvenile court. He mentioned that the Fifth District Juvenile court has a serious need for additional judicial support. He reported that the Board of Juvenile Judges takes no position on the transfer issue. He commented that the issue is for the Council to decide, taking into account, what is best for the judiciary as a whole and that the Board would support whatever decision the Council made. Judge Johansen provided his opinion on questions asked of him.

Board of District Judges. Judge Ben Hadfield provided feedback from the Board of District Judges position regarding the transfer of judgeship from Second District to Fifth District Juvenile. He reported that the Board of District Court Judges is unanimously opposed to the proposal. Their opposition is based on the following: 1) the proposal is based upon inaccurate data and flawed assumptions, 2) the AOC has on numerous occasions assured the district judges that the juvenile court weighted caseload and the district court weighted caseload would not be used as comparables, 3) it is not in the best interest of the judiciary nor the public to foster competition between court levels for limited resources, 4) the district court weighted caseload has not been updated since 1997, and 5) it is important that the judiciary speak with one voice on legislative proposals.

Additional suggestions for dealing with the limited resources in the Fifth District Juvenile Court were given. Discussion took place.

Mr. Becker responded to questions relative to the transfer of the judgeship.

Motion: Judge Chamberlain moved to seek legislative approval to eliminate a judgeship in the Second District Court and create a judgeship in the Fifth Juvenile Court. Judge McCullagh seconded the motion. The motion passed with Justice Nehring, Judge Maughan, Judge Willmore, Judge Orme, Judge Atherton and Ms. Nelson voting no.

ADDITIONAL PROPOSALS

Mr. Becker reviewed the current list of additional efficiencies. The list includes the following items: 1) change the use of senior judge and senior judge fund, 2) train judges in mediation and settlement conferencing to assist with case management, 3) consider moving first appearance and preliminary hearings to justice courts, 4) provide rural judges with cross jurisdiction for district and juvenile cases, 5) adopt a rule requiring citation cases to be filed electronically by 1/1/2012, 6) contract for interpreter services, 7) consolidate jury coordination services, 8) use of senior judges for reviewing commissioner recommendations, and 9) proposed rule change requiring judicial vacancy review.

Senior Judge and Senior Judge Fund. Mr. March provided numbers relative to the use of senior judge and senior judge fund. The total cost for senior judge coverage is \$250,000. Additional money needed for coverage are being covered by the delay in filling judicial vacancies.

It was suggested to explore the use of available judge time before soliciting help from senior judges. A proposal will be presented to the presiding judges and trial court executives for use of senior judges for caseload management, backlogs, and areas of increased workload. Districts would be able to apply for a set amount of senior judge days.

Mediation and Settlement Conferencing Training. Mr. Schwermer provided details regarding mediation and settlement conference training. The focus of the training would be on mediation skills. The Council agreed to pursue this option.

First Appearances and Preliminary Hearings. Mr. Schwermer provided details regarding this efficiency. Issues to consider: 1) limiting factor to the availability of justice court judges, 2) high volume, 3) courtroom availability, 4) services provided by justice court judges in district court venues, and 5) saves judge time. Discussion took place. The Council determined that the use of this efficiency would be up to the presiding judge and trial court executive in each district. The Council agreed to pursue this option.

Rural Judges - Cross Jurisdiction. This would provide authority for cross jurisdictional authority. A statewide standing order for a six-month period of time would be entered by Chief Justice Durham. The Council agreed to pursue this efficiency.

Rule Requiring Citations Cases be filed Electronically. Mr. Shea provided details regarding the recommended rule. It was mentioned that a date be listed as to when this rule would become effective. The Council agreed to pursue this efficiency.

Contract for Interpreter Services. Mr. Shea provided details regarding the use of contract services for interpreters. With this service, interpretation would be provided at courts sites or remotely as the need dictates. In periods of downtime, translation of forms and websites could be done. The Council agreed to pursue this efficiency.

Consolidation of Jury Coordination Services. Mr. Shea provided a brief summary of this. The Council agreed to pursue this efficiency.

Senior Judge Review of Commissioner Recommendations. It was reported that the use of senior judge time in this instant is consistent with the recommendation provided for efficiency #1. It would be dependent on a rule change by the Rules Committee to add a standard of review. It would be up to presiding judges to determine if they wanted to propose using senior judges for this purpose.

Proposed Rule Change Requiring Judicial Vacancy Review. This efficiency requires a proposed rule change and will be sent to Policy and Planning for review.

Cross-Train District and Juvenile Counter Staff, and Limiting Filing Sites. Further studies are being completed.

14. ADJOURN

The meeting was adjourned.