

JUDICIAL COUNCIL MEETING

Minutes

Monday, July 19th, 2010

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
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:

Justice Ron Nehring

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Ray Wahl
Ron Bowmaster
Nancy Volmer

GUESTS:

Judge Derek Pullan
Judge Ben Hadfield
Judge Terry Christiansen
Mayor Mike Keyes, Uintah City
Mayor Jim Truett, Huntsville

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

Chief Justice Durham welcomed everyone to the meeting. Justice Nehring was excused.

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

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

Chief Justice Durham reported on the following items:

She mentioned that she attended the 2010 Summer Conference of the Utah State Bar in Sun Valley last weekend. She highlighted the following relative to the conference: 1) attendees from the state courts, 2) Professor Guiora's presentation on *Global Perspectives on Counter-Terrorism, and Religion and Terrorism*; 3) the keynote address given by Justice Clarence Thomas of the US Supreme Court; 4) a panel on *Challenges to the Judiciary for the Coming Decade* with Justice Clarence Thomas, Judge Dee Benson, Chief Justice Durham, and Judge Lee Dever as participants; and 5) met with incoming Bar president, Rob Jeffs.

Chief Justice Durham and Mr. Becker met with 17 Afghanistan visitors on Monday, July 12. They were interested in the juvenile justice system, governance for the judiciary, and the criminal justice structure.

She announced the confirmation of Mr. Becker to serve on the board of directors of the State Justice Institute.

Judge Westfall was thanked for his involvement in working with the judges of the Fifth District on case scheduling and docket issues.

Council members were invited to attend the swearing in at noon for Justice Thomas Lee as the newest Supreme Court Justice, as well as, the reception following the event. He will be sworn in by Justice Clarence Thomas of the US Supreme Court. Seating will be available for Council members.

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

Mr. Becker reported on the following items:

Ms. Diane Abegglen has been hired as the new Appellate Court Administrator with a start date of August 9. A brief background of Ms. Abegglen's experience was provided.

He updated the Council on the report provided to the Judiciary, Law Enforcement, and Criminal Justice Interim Committee on June 23. He provided a report on the budget reductions taken by the courts and how they have impacted the courts. The Committee was interested in the use of the electronic record.

Mr. Becker previewed a copy of the National Center for State Courts publication "*Future Trends in State Courts 2010*" with its main focus on re-engineering and reorganizing. An article written by Mr. Becker and Chief Justice Durham is included in the publication. The document was passed around for Council members to preview.

He shared several suggestions made to the Board of District Court Judges at their meeting on July 16. He highlighted a number of recommendations made at the board request, on how to improve the effectiveness of board activities. Judge Atherton offered her comments on the meeting and the observation that she thought the session was very productive.

SanPete County intends to petition the Council to change the Manti court status from a contract managed court site to a state managed court site. Space considerations and other details are being reviewed. It is anticipated that this will be an agenda item for the August meeting.

The August Budget and Planning session will be held on the morning of Thursday, August 26. The Council and Management Committee meetings will follow in the afternoon.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed.

Liaison Committee Report:

No meeting was held in July. The Liaison Committee will meet in conjunction with the August Budget and Planning meeting in August.

Policy and Planning Meeting:

Judge McCullagh reported on behalf of Judge Orme on the following:

The Rules for Final Action were reviewed by the Committee and will be discussed later on the agenda.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar Commission met on Wednesday before the Annual Bar Conference. New Bar commissioners were welcomed and retired Bar commissioners were thanked for their years of service. President-elect, Rod Snow, was sworn in. The new Bar commissioners were announced.

The Communications Committee finalized their last report. The focus will be to increase public relations and public education efforts. A budget has been allocated for the following: 1) public education, 2) public outreach, and 3) to address the perception of lawyers and the bench to the public.

The Client Security Fund Report has been finalized. A policy was created to assist all clients in need.

The Bar's 2011 budget was approved.

**5. AMENDMENTS TO RULES OF CIVIL PROCEDURE - PROPOSED
DISCOVERY REFORMS: (JUDGE DEREK PULLAN)**

Judge Pullan was welcomed to the meeting.

He updated the Council on the work of the Utah Supreme Court Advisory Committee on the Rules of Civil Procedure which has focused on civil discovery reforms. The two issues the Committee considered were: 1) the cost of modern discovery, and 2) the impact of discovery on our civil justice system.

Judge Pullan provided a background of the Utah rules to include: 1) the rules are similar to the federal rules and amendments, 2) the federal rules were designed for complex cases, and 3) the majority of cases filed in Utah courts today are not "federal cases".

Recent research was conducted with the following results: 1) a 2008 survey found that the civil justice system takes too long and costs too much, and 2) discovery is the primary problem.

Problems with the current discovery rules include: 1) the federal discovery rules were created before modern technology existed, 2) discovery has become the most expensive part of civil litigation, and 3) expert witnesses have become an expensive part of every case.

The proposed new discovery rules include: 1) move away from a system in which discovery is the predominant aspect of litigation, and 2) move toward a system in which discovery must be proportional.

The key principle is proportionality. The cost of discovery should be proportional to what is at stake in litigation. Proportionality exists if the following standards are met: 1) the benefits outweigh the burden or expense, 2) discovery is consistent with the overall case management, 3) discovery is reasonable, 4) discovery is not unreasonably cumulative or duplicative, 5) the information cannot be obtained from another source, and 6) the party seeking discovery has not had a sufficient opportunity to obtain the information.

Judge Pullan reviewed other aspects of the discovery rules to include: 1) the exceptional case, 2) how the new rules will operate, 3) timing of disclosures, 4) standard discovery, 5) extraordinary discovery, 6) expert discovery, and 7) the flow of the process from disclosure to discovery.

A question was asked on how alternative dispute resolution fits with the rules. Judge Pullan offered an explanation. Discussion took place.

Members of the Committee will provide information on the proposed discovery rules to interested parties upon request. The next six to eight months will allow for extensive education, discussion and further work on the proposed discovery reforms, prior to advancement for approval by the Supreme Court. The information will also be presented at the Annual Judicial Conference.

Judge Pullan was thanked for his presentation.

6. TECHNOLOGY COMMITTEE UPDATE: (Ron Bowmaster)

Mr. Bowmaster was welcomed to the meeting. He mentioned that Judge McHugh, chair of the committee, sends her apologies for not being able to attend the meeting.

He provided an update to the Council on the work of the Technology Committee. He mentioned that the committee adopted a strategic and tactical plan two years ago. The major focus outlined by the committee was to address issues relative to the shift towards an electronic court. The use of the electronic record continues to move forward in the Utah judiciary. E-filing is being used in Districts 1-7. The use of e-filing in the Eighth District will begin in early August. Training will take place in August in the Fifth and Eighth Districts relative to scanning documents into an electronic record. The courts currently use electronic teleconferencing for meetings and hearings. The e-warrant system has been in place for over a year. E-payments are being received in all districts and justice courts throughout the state.

The switch to voice over IP - digital telephones, is continuing with the St. George courthouse and installation in the West Jordan Courthouse and parts of the Matheson Courthouse.

The Transcript Management Program has been in place for over a year with 2,301 requests received and 2,542 transcripts filed. The average days to complete a transcript on appeal is 23 days, and to complete a transcript not on appeal is 12 days.

Mr. Bowmaster reported that the justice court conversion to CORIS is 90% complete with one major court remaining. The conversion is scheduled to be completed by July 1, 2011.

He reported on projects that were being addressed to include: 1) rewrite of the protective order system, 2) design work for the GAL case management system, and 3) a judge's case management system being developed with the Board of District Court Judges.

Questions were asked relative to the following: 1) the status of the electronic probable case statements, and 2) the status of scanning electronic warrants in juvenile court. Mr. Bowmaster provided an update to these two items.

Chief Justice Durham thanked Mr. Bowmaster for his report.

7. HUNTSVILLE INTER-LOCAL AGREEMENT: (Rick Schwermer)

Chief Justice Durham welcomed Mayor Jim Truett, Huntsville and Mayor Mike Keyes, Uintah City to the meeting.

Mr. Schwermer provided a summary relative to the justice court for Huntsville. First, Mr. Schwermer contacted Huntsville to verify the effective date of their proposed inter-local agreement with Uintah City Justice Court, and they suggested September 1. Mr. Schwermer then contacted Roy City regarding their position relative to the proposed inter-local agreement. Roy City was not aware of the proposed agreement, and they were to discuss the matter further with Huntsville officials. To date, Roy City has yet to meet with Huntsville. Roy City expressed

their concern with the inter-local agreements and Huntsville's contribution, if any, relative to the compensation provide to the judge.

Mayor Truett, Huntsville, reported that a letter was drafted late May or early June proposing an inter-local agreement with Uintah City. He mentioned that Hunstville is not equipped to set up a full-time justice court, but Uintah City is. Steps taken towards preparation of the proposed inter-local agreement were mentioned.

Discussion took place regarding the current inter-local agreement between Roy City and Weber County in relation to the proposed inter-local agreement between Huntsville and Uintah City.

Motion: Judge McCullagh moved to defer any decision until the August 26 Council meeting to allow discussion to take place between Huntsville and Roy City. Judge Eyre seconded the motion, and it passed unanimously.

8. RULES FOR FINAL ACTION: CJA 03-0101, CJA 04-0202.03, AND CJA 04-0801: (Myron K. March)

CJA 04-0801 - Transfer of Small Claims Cases. Judge McCullagh mentioned that several comments were received relative to the rule. The rule has been revised for clarification. A question was asked on the use of the word "shall" in place of "should" on line 18 of the rule. Discussion took place.

Motion: It was moved and seconded to amend line 18 and replace the word "should" with the word "shall".

Motion: Judge McCullagh moved to approve the rules for final action as amended. Ms. Nelson seconded the motion, and it passed unanimously.

9. SENIOR JUDGE CERTIFICATION: (Myron K. March)

Judge Sharon McCully has applied for certification as a senior judge. Discussion took place.

Motion: Judge McCullagh moved to approve Judge McCully for certification as a senior judge. Judge Chamberlain seconded the motion, and it passed unanimously.

10. PRESIDING JUDGE/COURT EXECUTIVE MEETING UPDATE: (Daniel J. Becker)

Mr. Becker provided an update to the Council on the Presiding Judge/Court Executive meeting held on July 1. The purpose of the meeting was to: 1) review efficiency measures, 2) report on the progress of electronic records, 3) discuss capacity index and backlog issues, 4) discuss continuances and postponements, 5) discuss the use of judicial resources, and 6) role of presiding judges and boards of judges.

The efficiency measures discussed included: 1) counter consolidation and cross training, 2) settlement conference training, 3) remote interpretation, and 4) preliminary hearings by justice court judges. He mentioned that settlement conference training has been scheduled for November 5. A pilot test will be set up for remote interpretation in Districts 6, 7, and 8.

Mr. Bowmaster provided an overview of the electronic record.

Mr. Becker mentioned that the use of senior judge assistance to help clear the civil backlog was discussed.

Discussion took place relative to the use of judicial resources.

11. DISTRICT BOARD RECOMMENDATION ON DISTRICT COURT WEIGHTED CASELOAD: (Judge Ben Hadfield, Judge Terry Christiansen and Debra Moore)

Judge Hadfield and Judge Christiansen were welcomed to the meeting.

A written report from the Board of District Court Judges was included in the Council materials for review. The report identifies strengths and weakness in the weighted caseload system.

Judge Christiansen mentioned that the number of case classifications in district court (99) are significantly higher than the case classifications in juvenile court (20). Out of the 99 categories in district court, only four case classifications are the same for both courts.

Discussion relative to what constitutes a weighted caseload and the way the data is compiled took place.

The Board of District Court Judges are asking for Council approval to move forward with updating the judicial table for the district court weight caseloads.

The Council is in consensus to allow the Board of District Court Judges to work with Ms. Kim Allard, Court Services, and move forward and update the district court weighted caseload.

12. ADJOURN

The meeting was adjourned.