

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 28th, 2011

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Michael Westfall, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

Hon. Jody Petry

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Diane Abegglen
Brent Johnson
Nancy Volmer
Rosa Oakes

GUESTS:

Hon. John Sandberg
Hon. Stephen Roth
Hon. Lynn Davis
Hon. Vernice Trease
Hon. Kate Toomey
Hon. Stephen Henriod
Stephen Hunt, SL Tribune

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

Chief Justice Durham welcomed everyone to the meeting. Judge Petry was excused.

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

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

She had nothing new to report at this time.

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

Mr. Becker reported on the following items:

He mentioned that the agenda would follow a different sequence as Mr. Shea and Mr. Schwermer were involved in hearings on the guardianship legislation.

The legislative session is in its final two weeks. The outcome of the FY 2012 budget

remains pending. Mr. Becker provided information on the state's budget that still need to be addressed. The court's budget reduction is currently at 5.9%. A meeting was held with the Appropriation's Committee to outline budget priorities where funding restoration may be made available. The following restoration priorities were highlighted: 1) funding of county courthouses; 2) funding for court personnel; 3) funding for the three courthouses in counties with multiple courthouses which include Davis, Utah and Duchesne counties; and 4) fund the lease revenue bond in Provo which has expired. Other areas to consider when addressing the budget reduction include the use of fiscal note funding, and the possible use of two restricted accounts with the passage of SB 274 - Court Budget Amendments. The amendments would allow the Justice Court Technology, Security and Training Account to also cover justice court audit expenditures, and adds information technology to the list of expenditures permitted by the Court Transcript Account.

Meetings were held with Senator Hillyard and Representative Brown in the past week to give them a better understanding of what the recommended reduction would mean to the courts. Discussion with Ron Bigelow, Director - Office of Budget and Planning, took place as well. It is anticipated that a proposed budget will be released on Thursday, March 3.

Mr. Becker, Mr. Wahl, and Mr. Lunceford met with seven county clerks last week regarding the possible closure of county courthouses. The clerks expressed their concerns. They were provided an explanation, and they were asked to talk to their legislators.

He mentioned that Lisa-Michele Church has been hired as the new Juvenile Court Administrator, and she will begin working at the courts on March 7. He summarized her background and mentioned that she previously served as the Executive Director for the Department of Human Services. He noted that she will be a valuable asset to the courts.

Mr. Becker shared information on two new publications available in the courts to include: 1) Judicial Threat Response for judges, prepared by Ms. Carol Price; and 2) Divorce Education for Kids Workbook.

He reported that a third e-filing vendor has been approved. An average of over 2,000 e-filings per week have been received in the past few months, and the numbers continue to grow. He noted that in excess of one million documents are now stored electronically.

Mr. Becker provided an update on the CORIS conversion in the justice courts. As of December 31, 2010, 114 justice courts are operating on CORIS, which represents 83% of justice court filings. All justice courts are scheduled to be on CORIS by July 11, 2011. Once the CORIS conversion has been completed, 4.6 million cases will have been converted from the several justice court systems onto CORIS. The funding of the CORIS conversion has come from the Justice Court Education, Security and Technology Fund.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham 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 the Council agenda.

Liaison Committee Report:

Justice Parrish reported on the following:

The issues addressed by the committee are accurately reflected in the minutes. As the committee held their meetings this legislative session, they only opposed several bills. She

briefly highlighted the proposed amendments in SB 212 – Judicial Evaluation Amendments. She highlighted the part of the bill pertaining to performance standards. Discussion took place. She mentioned that Mr. Schwermer may have additional comments on the bill when he arrives.

Policy and Planning Meeting:

Judge Orme reported on the following:

The minutes reflect what was discussed in the meeting. He asked to defer part of his report until Mr. Shea arrives. Many of the rules are included on the agenda for final action, as well as, on the consent calendar for comment. He noted that Rule 04-0613 – Intercounty jail prisoner transportation was revised and refined and has once again been placed on the consent calendar for comment.

Bar Committee Report:

Ms. Nelson reported on the following:

A Lawyer Advertising Rules Committee has been formed to address lawyer advertising. She mentioned the following award recipients: 1) Lauren Scholnick, Dorothy Merrill Brothers Award; and 2) Nate Alder, Raymond S. Uno Award.

The Governmental Affairs Committee continues to meet every Tuesday at noon. The Bar Commission meets every Tuesday afternoon at 4:00 p.m. by telephone conference during the session.

5. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schermer provided a legislative update to the Council by highlighting the following bills:

HB349 - Expedited Jury Trial. This bill was introduced by Representative King and creates a new part in Title 78B, Chapter 3, allowing for expedited jury trials. It requires the Judicial Council to create rules. It was redrafted to conform to Utah's version of rulemaking. It passed out of the first committee.

SB 274 - Court Budget Amendments. This bill makes changes in two court restricted accounts to allow more flexibility within the court's budget to include: 1) allow the Justice Court Technology, Security, and Training Account to also cover expenditures for justice court audits, and 2) adds information technology to the list of expenditures permitted by the Court Transcript Account.

HB 494 - Justice Courts and SB 318 - Justice Court Modifications. These two bills establish that justice courts may not be created or certified by the Judicial Council unless the justice court operates a recording device in each court room. He noted that the Senate version requires video. The Liaison Committee supported these bills in concept. Mr. Schwermer reminded the Council that a pilot program of digitally recording the audio in Judge Jensen's courtroom is underway.

SB 96 - Alimony Amendments. This bill failed on the floor.

HB 491 - Alimony Modifications. This bill expands the factors a court shall consider when determining alimony. The bill does not define fault.

SB 212 - Judicial Evaluation Amendments. This bill makes amendments to the Judicial Performance Evaluation Commission. The areas highlighted in the amendments include: 1) removes litigants from the judicial performance evaluation survey; 2) reduces the number of categories to be included in the performance evaluation survey; 3) establishes a clear minimum

performance standard; and 4) establishes that the judicial performance evaluation survey is to be reported in three categories: legal ability, judicial temperament and integrity, and administrative abilities. Discussion took place. Mr. Schwermer will request clarification on areas of the amendments on behalf of the Council.

HB 284 - Guardianship Amendments. This bill creates the Utah Protective Proceedings Act within the Probate Code.

HJR 36 - Joint Resolution on Civil Procedure Rules Regarding Cause of Action. This bill allows the consolidation of claims into one action if the claims are all for the same defendants. The Liaison Committee opposed this bill. This bill died.

SB 143 - Judiciary Amendments. This is the court's housekeeping bill.

HB 74 - Municipal Justice Court Judge Elections. This bill changes the requirements for a retention election vote for justice court judges. Mr. Schwermer mentioned that the Liaison Committee was opposed to the original bill, but are neutral on the substitute bill.

HB 207 - Juvenile Amendments. Only one item remained in the amended version and the substitute bill has passed.

SB 133 - Grand Jury Amendments. This bill is sponsored by Senator Valentine. The bill was pulled last week.

Mr. Schwermer was thanked for all of his hard work during the legislative session.

6. RULES FOR FINAL ACTION: (Tim Shea)

Mr. Shea provided information to the Council on the Rules for Final Action.

CJA 01-0205 – Standing and ad hoc committees. The amendments address the following two areas: 1) eliminates the Judicial Performance Evaluation Committee because judicial evaluations are no longer the Council's responsibility, and 2) exempts the Guardian ad Litem Oversight Committee from sunset review. The Policy and Planning Committee recommends that the amendments be approved.

Discussion took place. The amendment to eliminate the Judicial Performance Evaluation Committee was deferred until after the legislative session.

Motion: Judge McCullagh moved to approve the amendment to Rule CJA 01-0205 pertaining to the Guardian ad Litem. Judge Eyre seconded the motion, and it passed unanimously.

CJA 02-0106 through 02-0106.05 will be repealed and both certification and self-improvement objectives for evaluation of court commissioners and senior judges will be governed by Rule 3-111.

CJA 03-0111.01 through 03-0111.06 will be repealed and/or consolidated into new Rule 3-111.

CJA 03-0111 – Performance evaluation of senior judges and court commissioners. This new rule combines Rules 3-111.01 through 3-111.04, describing the evaluation program applicable to senior judges and court commissioners. The Board of District Court Judges recommends that court commissioners be permitted to remove from their evaluation respondent pool attorneys the commissioner believes will not respond objectively to the survey because the commissioner has presided in a case affecting the attorney or the attorney's family members.

Based upon the comment received from the Board of District Court Judges, the Policy and Planning Committee further amended the rule as follows: “with the approval of the Management Committee, a court commissioner may exclude an attorney from the list of

respondents if the court commissioner believes the attorney will not respond objectively to the survey.”

CJA 03-0201 – Court Commissioners. The amendment provides for a uniform end of term date for court commissioners of December 31.

Motion: Judge Willmore moved to approve the rules corresponding with the senior judge and court commissioner evaluation process. Justice Parrish seconded the motion, and it passed unanimously.

CJA 04-0202.02 – Records classification. The amendment classifies as private performance evaluation information from senior judges and court commissioners.

Motion: Judge Eyre moved to approve the amendment to CJA 04-0202.02. Ms. Nelson seconded the motion, and it passed unanimously.

Mr. Shea noted that CJA 04-0202.02 – Records Classification also has amendments to the rule on the consent calendar which the Policy and Planning Committee recommends. In the February meeting, the issue of financial declarations and supporting attachments in divorce, temporary separation, separate maintenance, parentage, custody, child support, and modification was added to the records considered private. Since the February meeting, the issue of child protective order cases being classified as private was included; and it is recommended to add an additional paragraph to the rule to address this issue.

Motion: Judge Orme moved to add the additional paragraph addressing child protective order cases to Rule CJA 04-0202.02 on the consent calendar for rules for final comment. Judge Eyre seconded the motion, and it passed unanimously.

CJA 04-0601 – Selection of indigent aggravated murder defense fund counsel. This new rule establishes the process to be used to select pre-contracted attorneys from the roster maintained by the Indigent Defense Funds Board in aggravated murder cases.

Motion: Judge Stoney moved to approve Rule CJA 04-0601. Judge Westfall seconded the motion, and it passed unanimously.

CJA 06-0402 – Records in domestic relations cases. Mr. Shea mentioned that this amendment was requested by the Sixth Judicial District. This new rule defines the records required for motions for temporary relief, alimony, child support, and child custody. Discussion took place as to where best to place the rule.

Motion: Judge Eyre moved to approve Rule CJA 06-0402. Ms. Nelson seconded the motion, and it passed unanimously.

CJA 03-0306 - Court Interpreters. The amendments expand the interpreter program to the balance of the court’s case types, establishes testing requirements for approved interpreters,

establishes credentials for interpreters who do not meet the testing requirements, defines “limited English proficiency,” and establishes a mechanism for reviewing the denial of an interpreter. Mr. Shea reported that after completion of a long study by the Policy and Planning Committee and with these amendments, the courts should be in compliance with Title VI.

Motion: Ms. Nelson moved to approve CJA 03-0306. Judge Maughan seconded the motion, and it passed unanimously.

7. PRACTICE OF DIVERTING TRAFFIC STOPS TO TRAFFIC SCHOOL: (Judge John Sandberg)

Judge Sandberg was welcomed to the meeting.

He distributed a handout outlining the practice of diverting traffic stops to traffic school in South Ogden City. Law enforcement in South Ogden City rather than issuing a citation for traffic offenses are directing offenders to traffic school. If they choose not to attend traffic school, a citation is issued and the charge is referred to the city attorney for prosecution.

He mentioned that this practice was brought to the attention of the judiciary previously. At that time, discussion took place with South Ogden City, and it was thought a resolution had been reached. An article in a local newspaper brought to light the continued practice.

Discussion took place.

Motion: Judge Orme moved to request court staff talk to South Ogden City officials and get a better understanding of the policy and procedures relative to the practice being used for traffic stops. Judge Hornak seconded the motion, and it passed unanimously.

8. ETHICS ADVISORY COMMITTEE REPORT: (Brent Johnson)

Mr. Johnson was welcomed to the meeting. He listed members of the Committee. He mentioned that as opinion requests come in, he sends them to the Committee members, waits for feedback, and an opinion is drafted. In the past three years, only one opinion was received. In the last four months, four opinions have been received. He noted that the Committee cannot interpret statute, they strictly interpret the code of conduct. Discussion took place.

Mr. Johnson reported that the courts web page has been updated with the new code of conduct. The Council requested that Mr. Johnson draft a letter to the Management Committee to propose changes to Rule 3-109 - Ethics Advisory Committee on what the Committee should be able to undertake relative to the opinions they receive.

9. APPELLATE REPRESENTATION OF INDIGENT CRIMINAL DEFENDANTS STUDY COMMITTEE REPORT: (Judge Stephen Roth)

Judge Roth was welcomed to the meeting. He provided an introduction to the Appellate Representation of Indigent Criminal Defendants Study Committee. He reported that the committee was established in June of 2008. He reviewed the committee membership. This area has not been addressed since 1994. He mentioned that the Committee was charged with

examining the issue of appellate representation of indigent defendants and proposing approaches to improve such representation. He noted that Utah remains one of two states (the other being Pennsylvania) having a strictly county-based indigent defense system with no statewide oversight.

There were three subcommittees established: 1) Contracts Subcommittee whose primary task was to gather and analyze examples of contracts utilized by virtually every county in Utah to engage the services of attorneys to represent indigent defendants on appeal. The process of obtaining exemplar contracts from across the state was facilitated with the assistance of UAC and UCDA; 2) Appeal Tracking Subcommittee was asked to provide an overview of how criminal appeals were being filed and ultimately disposed of in Utah's appellate courts, with primary focus on the Court of Appeals, the forum for most criminal appeals under current Utah law and practice; and 3) Briefing Quality Subcommittee who reviewed the briefs filed by appointed counsel in a significant number of cases to get a sense of the quality of representation of indigent defendants in this important aspect of appellate practice.

The Committee made the following recommendations:

1. Model Contracts
 - a. Separate Trial and Appellate Representation
 - b. Compensation Mechanisms to Avoid Disincentives
 - c. Trial Counsel Consultation Regarding Appeals
 - d. Conflict Counsel
2. New Rule 38B - Indigent Appellate Counsel Committee
3. Eliminate Defaults in Criminal Appeals
4. Repeal of Rule 23B
5. County Implementation Options
 - a. Single-County Contracts
 - b. Regional Pools
 - c. Guardian ad Litem Model
 - d. Centralized Appellate Office

Judge Roth reviewed the recommendations with the Council. He addressed questions asked of the Council.

Chief Justice Durham thanked Judge Roth for his thorough report and his leadership. Appreciation was expressed to the entire committee for contributions to the study

Recommendations for membership on the expanded committee are forthcoming.

10. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Lynn Davis and Debra Moore)

Judge Davis was welcomed to the meeting.

He mentioned that the Board of District Court Judges met last Friday.

He turned the time over to Ms. Moore who presented an update on the Board of District Courts activities.

Ms. Moore listed the members of the Board of District Court Judges. She highlighted the following goals and study item set by the Board: 1) revise the judicial weighted caseload, 2) recommend vexatious litigants rule, 3) recommend rule on objections to commissioner recommendations, 4) recommend best practices for managing electronic devices in courtroom, and 5) study managing domestic cases.

Weighted Caseload. The objective is to include case types and other matters not currently included or for which re-surveying is justified. The following areas were mentioned: 1) e-warrants, 2) regular travel within and between districts, 3) problem-solving courts, 4) ex parte protective orders and protective order hearings, 5) custody evaluation settlement conferences, and 6) annual review of guardianship and conservatorships. A preliminary report was given at the February 25 Board meeting. Another report will be given in 60 days. Further work will be done comparing survey results to digital recordings for protective order hearings and drug court review hearings. Ms. Moore expressed appreciation to Ms. Kim Allard and Mr. George Braden for their research and analysis relative to the weighted caseload efforts.

Managing Electronic Devices in the Courtroom. An Electronic Media Report was presented to the Board on February 25 and approved by the Board. Council members received a copy of the report. The focus was on electronic devices and social media in the courtroom and jury room.

Vexatious Litigants Rule. The goal is to recommend a procedure for sanctioning vexatious litigants. A proposed rule was distributed for comment to the district court bench on February 25. Ms. Moore thanked Mr. Shea for his work on the proposed rule.

Rule for Objections to Commissioner Recommendations. It is proposed to amend Rule 108 to set forth procedure and standards of review. The proposed rule was approved for publication for comment.

Domestic Case Study. The focus is on best practices and procedures for managing and expediting domestic cases to include: 1) best practices in other states, 2) Idaho rule for informal custody trials, 3) delay in cases involving custody evaluations, 4) use of domestic case managers (2nd District practice), and 5) use of mediation.

Other board activities highlighted included: 1) statewide 24/7 coverage of electronic warrants, 2) recommendations to AP&P on conditions of supervision, 3) shorten and improve completion of pro se forms, 4) supervision of capital litigation staff attorney, and 5) two ethical opinions issued at the Board's request.

A question was asked regarding the vexatious litigants rule as to whether it would be a rule of judicial administration or a rule of civil procedures. Judge Davis provided an explanation. Ms. Moore noted it is drafted as a proposed rule of civil procedures.

Judge Davis followed up by supplementing Ms. Moore's Report. He noted that the Board is well-functioned, and they have accepted assignments and responsibilities in connection with all the districts. He thanked Ms. Moore and Mr. Becker for their continued support to the Board. Judge Davis, as chairman of the Board of District Court Judges, hopes that every judge and every commissioner will access his or her talents and strengths and focus on a societal or

humanitarian need that will advance the cause of justice and take simple steps to make a difference.

Judge Davis highlighted accomplishments by district, of many judges and commissioners.

Chief Justice Durham thanked Judge Davis for his extraordinary report. He was asked to assess what is being done to train new judges in the districts and determine if what is being done is adequate or if additional training should take place.

Mr. Becker expressed his gratitude to Judge Davis for his leadership.

Motion: Ms. Nelson moved to enter into an executive session to discuss certification of a senior judge. Judge McCullagh seconded the motion, and it passed unanimously.

11. CERTIFICATION OF SENIOR JUDGE: (Tim Shea)

Motion: Judge Steele moved to forward the recommendation to the Supreme Court that Judge Stephen Henriod not be certified as an active senior judge. Judge Westfall seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION

The Executive Session has ended at this time.

13. COURT INTERPRETER COMMITTEE UPDATE: (Judge Vernice Trease)

Judge Trease was welcomed to the meeting.

She mentioned that the interpreter rule was approved earlier in the meeting. She thanked Mr. Shea and Ms. Rosa Oakes for all the work they do for the Committee. She reported that the Committee is up for sunset review this year, and she formally requested that the Council consider reauthorizing the Committee for another six years.

The most important issue addressed by the Committee dealt with the implementation of Title VI which will ensure the use of professional interpreters in all case types. The following are additional areas being addressed by the Court Interpreter Committee: 1) developing changes to the interpreter webpage to better serve the public, as well as, interpreters and court personnel; 2) developing notices of the right to an interpreter and how to request one; 3) considering changes to Rule of Civil Procedure 4 to ensure that service by publication is in the defendant's language and not necessarily in English; 4) with the Council's approval for training and testing for "certified" credentials in languages other than Spanish and for "approved" credentials in many of our most frequently needed languages, the Committee recommends that interpreters who currently have "approved" credentials be allowed one year to take the test that would let them keep those credentials; 5) developing recruitment efforts for interpreters in languages where certification is in place; 6) the pilot programs in Vernal and Richfield for remote interpretation; and 7) the use of two full-time contract interpreters in the Third District in a one-

year pilot program to be used in the Early Case Resolution calendar and the second person to be used in juvenile court.

Motion: Judge Atherton moved to reauthorize the Court Interpreter Committee for another six years. Justice Parrish seconded the motion, and it passed unanimously.

Ms. Moore distributed a corrected copy of the Appointment to the Uniform Fine and Bail Schedule Committee.

Motion: Judge Atherton moved to lift an item for discussion off the consent calendar and approve the reappointment of Judge Connors and the appointment of Judge Bagley to the Uniform Fine and Bail Schedule Committee. Judge Eyre seconded the motion, and it passed unanimously.

14. ADJOURN

The meeting was adjourned.