

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 26, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Judge Kimberly K. Hornak, 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
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Nancy Sylvester
Rob Parkes

GUESTS:

Kort Prince, UCJC
Erin B. Worwood, UCJC
Rob Butters, UCJC
David Litvack, CJAC
Patricia Cassell, SL County DA Ofc
Jim Bradley, SL County Council
Max Burdick, SL County Council
Michael Postma, District Attorney
Paula Hanaford-Agor, NCSC
Cynthia Lee, NCSC
Justice Christine Durham
Justice Thomas Lee

1. WELCOME AND APPROVAL OF MINUTES: (Judge Kimberly K. Hornak)

Judge Hornak welcomed everyone to the meeting. She mentioned that Chief Justice Durrant was attending the Conference of Chief Justices mid-year meeting, and he was traveling back to Utah for the remainder of the meeting and to deliver the State of Judiciary address this afternoon. It was noted that Justice Parrish went through the Senate Confirmation hearing process for her appointment as a federal judge. Judge Hornak expressed to Justice Parrish, on behalf of the Council, how proud they were of her accomplishments and nomination. Judge Hornak extended a special welcome to Mr. Max Burdick and Mr. Jim Bradley of the Salt Lake County Council.

Motion: Judge Skanchy moved to approve the minutes from the December 15, 2014 Judicial Council meeting. The motion was seconded, and it passed unanimously.

2. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

Legislative Meetings. Legislative meetings were held in all judicial districts, and they were very well attended by both judges and legislators. Mr. Becker mentioned the discussions that took place at the legislative meetings.

Elected Offices and Judicial Compensation Commission Update. A bill has been drafted to fund the proposed recommendations made by the Elected Offices and Judicial Compensation Commission.

SJR003 – Proposal to amend Utah Constitution. A bill has been sponsored by Senator Stephen Urquhart requesting a constitutional amendment regarding the practice of law.

Six-Month Case Filing Update. District court case filings, overall, reflect a 1% increase compared to a 4% decrease in FY2014. Juvenile court referrals, overall, reflect a 2% decrease compared to a 5% decrease in FY2014. Justice court case filings, overall, reflect a 6% decrease.

National Filing Trends. Mr. Becker distributed a copy of a document prepared by the National Center of State Courts (NCSC) on filing trends of state courts nationally.

State Audit of Drug Courts. The audit has been completed by State audit. The results of the audit will be shared with the Council at their February meeting. He highlighted the following recommendations resulting from the audit: 1) more attention to Utah-based data, 2) better use of Medicaid dollars, and 3) a need for more administrative oversight. Mr. Becker responded to questions asked relative to the audit.

2015 Legislative Session. The 2015 legislative session begins today. The legislative appropriations process will begin on Wednesday. Base budget meetings will be discussed in four separate meetings, already scheduled. A request, for budget cuts in the amount of 2%, has been made to all state entities. Three meetings will be devoted to discussing building block requests. The courts budget will be discussed at the February 3 Appropriations Subcommittee meeting.

State of the Judiciary Address. Chief Justice Durrant will deliver the State of the Judiciary address this afternoon. Transportation will be provided for Council members able to attend.

Annual Report to the Community. A copy of the 2015 Annual Report to the Community was distributed to members of the Council. Copies of the annual report will be available at all court locations.

3. **COMMITTEE REPORTS:**

Management Committee Report:

Judge Hornak 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:

Justice Parrish mentioned that she was not in attendance at the last meeting. Judge Mortensen provided an update to the Council, on behalf of the Liaison Committee meeting.

He reported on the following items: 1) the majority of the bills considered by the Liaison Committee, no position was taken; and 2) HB 137 – Change to mandatory retirement age for judges, sponsored by Representative Kraig Powell.

Judge Mortensen provided background information on HB 137 – Change to mandatory retirement age for judges. Mr. Becker shared information, with regard to retirement age in other state court systems. Mr. Schwermer noted what is set in statute with regard to retirement age. The Liaison Committee recommended opposing HB 137, but they are requesting Council input. Discussion took place.

Motion: Judge Higbee moved to oppose HB 137 – Change to mandatory retirement age for judges. The motion was seconded, and it passed unanimously.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) continued focus on Rule 4-401.01 – Electronic Media Coverage of Court Proceedings, and 2) continued discussion on Rule 3-201 – Public comment for court commissioners.

Bar Commission Report:

Mr. Lund reported on the following items: 1) Associate Justice Anthony M. Kennedy, US Supreme Court, will provide the keynote address at the Bar's Summer Convention in Sun Valley, Idaho July 29-Aug 1; 2) the lodging options for the Bar's Summer Convention are provided on the Bar's website; 3) the Bar Commission met on Friday, January 23 at the BYU Law School; 4) selection of Mr. Thomas Seiler and Mr. Rob Rice for the upcoming bar presidency election; and 5) the Bar's focus on SJR003 – Proposal to amend Utah Constitution—regarding the practice of law, sponsored by Senator Stephen Urquhart.

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

Judge Hornak welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac reported that the Policy and Planning Committee recommended final action for the following rules:

CJA – 03-0111 – Performance evaluation of senior judges and court commissioners. The rule has been amended to: 1) require senior judges in the district, juvenile and justice courts to undergo a performance evaluation every 18 months, 2) require senior judges in the appellate court to undergo a performance evaluation every three years, and 3) changes the evaluation criteria to more closely match the JPEC criteria.

CJA 03-0201 – Court commissioners. The rule has been amended to require a court commissioner to undergo a performance evaluation annually.

CJA 11-0201 – Senior judges. The rule has been amended to: 1) establish a residency requirement, and 2) require a senior judge to undergo a performance evaluation every 8 months after a first term.

CJA 11-0203 – Senior justice court judges. The rule has been amended to: 1) establish a residency requirement, and 2) require a senior justice court judge to undergo a performance evaluation every 18 months after a first term.

Ms. Adams-Perlac mentioned that the Policy and Planning Committee has recommended an effective date of May 1, 2015, if the rules are approved. She noted that the Council may want to consider approving the rules on an expedited basis.

Discussion took place. Members of the Council expressed concerns with rule pertaining to the process for evaluating senior judges in the appellate court.

Motion: Judge Dawson moved to approve the rules as recommended by the Policy and Planning Committee, on an expedited basis. Judge Parkin seconded the motion. The motion passed with Justice Parrish, Judge Skanchy, Judge Marx and Judge Sandberg voting no.

5. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

Judge Hornak welcomed Ms. Sylvester to the meeting.

Ms. Sylvester mentioned that information on the requests for appointment as active/inactive senior judge certification was distributed to each Council member, at their seats, for their review.

The following judges have applied for senior judge appointments: 1) Justice Nehring has applied to be appointed as an active senior judge, 2) retired Judge Raymond Uno has applied for appointment as an inactive senior judge, and 3) retired Judge Darwin Poulsen has applied for appointment as an inactive senior judge.

All three judges meet the minimum performance standards.

Motion: Justice Parrish moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the following: 1) Justice Ronald Nehring as an active senior judge, 2) Judge Raymond Uno as an inactive senior judge, and 3) Judge Darwin Poulsen as an inactive senior judge. Judge Mortensen seconded the motion, and it passed unanimously.

6. EARLY CASE RESOLUTION (ECR) EVALUATION STUDY: (Kort Prince, and Erin Worwood)

Judge Hornak welcomed Mr. Prince and Ms. Worwood to the meeting.

Mr. Schwermer provided background information on the Early Case Resolution (ECR) Pilot Program approved by the Council for a three-year period. An outcome evaluation report of the pilot program was requested by the Council at the time of approval.

The Utah Criminal Justice Center of the University of Utah has completed an outcome evaluation report. Mr. Kort Prince and Ms. Erin Worwood highlighted the following in their review of the evaluation findings: 1) sample selection of cases where the defendant was booked into the Salt Lake County jail, broken down by ECR/non-ECR cases; 2) comparison of ECR and non-ECR cases; 3) probation statistics; 4) statewide recidivism; 5) faster case processing; 6) provide “same justice sooner”; 7) access to treatment services; 8) reduce recidivism; and 9) evaluate program.

It was noted that a copy of the final report was included with the Council’s meeting materials.

Discussion took place.

Comments were provided on what to consider regarding the direction to take relative to early case resolution in the Utah court system. Consideration regarding inclusion of evidence-based, best practice programs was noted.

Judge Royal Hansen, Third District Court, has established a subcommittee to address the findings from the Early Case Resolution (ECR) evaluation study and develop a plan of action relative to the current program and how to move forward.

Motion: Judge Sandberg moved to defer the matter to the February 10 Management Committee meeting for further program analysis to be prepared by the Third District Court and provided for consideration. Justice Parrish seconded the motion, and it passed unanimously.

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

Mr. Schwermer highlighted the following in his update: 1) local legislative meetings had similar participation, by judges and legislators, as in past years, 2) SJR003 – Proposal to amend Utah constitution, sponsored by Senator Stephen Urquhart, 3) HB 136 – Campaign disclosures for judicial retention elections, sponsored by Representative Brad King, and 4) more bill files requested this year compared to previous years.

8. NEW JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)

Mr. Schwermer recommended the certification of the following three justice court judges who recently completed justice court judge orientation and passed the orientation exam: 1) Mr. Ronald Elton, Grantsville City Justice Court; 2) Mr. Dee Smith, Ogden City Justice Court; and 3) Mr. Timothy Smith, Panguitch City Justice Court.

Motion: Judge Higbee moved to approve the certification of Mr. Ronald Elton, Mr. Dee Smith and Mr. Timothy Smith as justice court judges. Judge Mortensen seconded the motion, and it passed unanimously.

9. JUDICIAL ASSISTANT RECLASSIFICATION FUNDING: (Daniel J. Becker and Rob Parkes)

Mr. Becker provided background information relative to the Comprehensive Clerical Study recommendations that were adopted by the Council in 2009. Objectives outlined in the Study and implemented included the following: 1) address the type of clerical support the courts foresee with future changes in case filings and the electronic environment, 2) increased opportunities for employee advancement, 3) reduce and minimize employee turnover, and 4) improve public service.

An online training program was developed to provide self-directed training for clerical staff.

Mr. Becker highlighted the following statistics from 2008 to the present to include: 1) turnover rate during the first year of employment in 2008, 41%; 2) turnover rate in first year of employment in 2014, 8.5%; 3) 2012-2014 – 60% of clerical staff holds a bachelor's degree; and 4) an investment, to date, of an additional \$2 million was made to implement the reclassification recommendation made in the 2009 study. This information was presented as context for the recommendation to be presented by Mr. Parkes.

Mr. Parkes provided background information on the recommendation proposed by the JSR/JA Classification Study Group. The study group was charged with looking at the current classifications represented in the clerk's offices, statewide. They were to determine what changes, if any, should be made. Upon completion of the study group's review of the current classifications, they recommended eliminating the judicial service representative classification and having the new entry-level classification be that of the judicial assistant.

Factors considered in making the recommendation include: 1) more flexibility to move clerical staff internally, 2) the workforce has changed over time, 3) a more professional demeanor is represented by the current clerical staff, and 4) ability to provide clerical support remotely.

Mr. Becker highlighted the following relative to the proposed recommendation for funding the judicial assistant reclassification: 1) to fund the reclassification, it would require \$130,000 in additional funding, 2) some accrual of downsizing savings and reduction in the number of managers has already taken place, and 3) the balance of funding will need to be secured by July 1.

Motion: Judge Bagley moved to approve the funding for the judicial assistant reclassification. Judge Dawson seconded the motion, and it passed unanimously.

10. RULE 26 – DISCOVER REFORM EVALUATION REPORT: (Paula Hanaford-Agor and Cynthia Lee)

Mr. Shea provided background information relative to the changes made to the rules governing discovery in civil cases filed in the Utah district courts.

Mr. Shea introduced and welcomed Ms. Paula Hanaford-Agor and Ms. Cynthia Lee of the National Center for State Courts (NCSC) to the meeting.

Ms. Paula Hanaford-Agor and Ms. Cynthia Lee provided an overview of their research and findings of *the Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts*.

The following information was reviewed in the evaluation process: 1) comparison of cases, 2) survey of attorneys, 3) judicial focus groups, and 4) litigation cost estimates.

Working hypotheses in the expected short-term impact included: 1) increased orders to amend pleadings to facilitate tier assignment, 2) increased motions to amend pleadings to adjust tier assignment, 3) increased proportion of Tier 2 and Tier 3 cases, 4) increased amended disclosures, and 5) increased motions/stipulations for extraordinary discovery.

Working hypotheses in the expected long term impact included: 1) reduced time to complete discovery, 2) reduced filing-to-disposition time, 3) decreased discovery costs, 4) increased filings of lower value (Tier 1) cases, 5) lower compliance by SRLs, and 6) increased trial rates or decreased trial rates.

The key findings included: 1) impact on monthly civil case filings; 2) discovery tier assignments – pre and post implementation findings; 3) discovery tier assignments for cases in which an answer was filed; 4) cumulative probability of survival without disposition, all tiers and case types; 5) frequency of discovery disputes; 6) litigant representation status; 7) both parties represented; 8) estimated litigation costs; and 9) compliance with standard discovery.

Concerns were expressed in the following areas: 1) tier inflation, 2) compliance/enforcement issues, 3) attorney ratings of impact on case, and 4) why are so few cases litigated.

Questions were asked throughout the presentation. Ms. Hanaford-Agor and Ms. Lee provided responses to the questions asked of them.

Ms. Hanaford-Agor and Ms. Lee were thanked for their presentation. They were scheduled to present these findings to the Civil Procedures Committee later in the week.

11. EXECUTIVE SESSION

An executive session was not needed at this time.

12. ADJOURN

Motion: Judge Mortensen moved to adjourn the meeting. Judge Boyden seconded the motion, and it passed unanimously.

The meeting was adjourned.