

**JUDICIAL COUNCIL AGENDA
SEPTEMBER 26TH
GARDEN ROOM 1
MIDWAY, UTAH
HOMESTEAD**

ATTENDEES:

Chief Justice Christine Durham
Justice Ronald Nehring
Judge Hans Chamberlain
Judge Robert Hilder
Judge Michael Westfall
Judge Kevin Nelson
Judge Bill Barrett
Judge Mark Andrus
Judge Michael Kwan
Judge Gary Stott
Judge Jody Petry
Judge James Davis
Scott Sabey, esq.

STAFF:

Daniel J. Becker
Myron K. March
Richard Schwermer
Ray Wahl
Tim Shea
Debra Moore
Katie Gregory
Holly Frischknecht
Gordon Bissegger
Ron Bowmaster
Rick Smith

GUESTS

Keith Kelley
Judge Sharon McCully
Greg Johnson
Claudia Jarrett
Mark Anderson
Brent Bowcutt
Judge David Mower

1. Welcome & Approval of Minutes (Chief Justice Christine Durham)

Chief Justice Durham welcomed everyone to the Homestead. The minutes were reviewed and the correction was made that the Justice Court Technology account fund increase show a request of spending up to \$1,000,000, not \$100,000.

Motion: Judge Lyon motioned to accept the minutes, Judge Petry seconded the motion. The motion passed unanimously.

2. Chair's Report (Chief Justice Durham)

Chief Justice Durham reported the following items:

-Constitution Day was celebrated last week with the reading of the preamble of the Constitution by Chief Justice Durham, Judge Bench, Judge Hilder and Judge Hornak in the rotunda of the Matheson Courthouse. Constitution Day was also celebrated in other courthouses around the state.

-A Kyrzekistan delegation recently visited the Supreme Court, District Court and the AOC to learn more about the judicial process in the United States and in Utah.

3. Administrator's Report (Daniel J. Becker)

Mr. Becker reported the following items:

-The two case management programers that were funded during the past legislative session have been hired. Sherrie Thompson working in the 3rd District Court and Russ Torgerson has been hired in the 3rd Juvenile Court.

-The Legislative Judiciary Interim Committee will recommend a ten year re-authorization of the Administrative Office of the Courts.

-The Justice Court reform proposal has been presented to the Judiciary Interim Committee, the Utah Association of Counties, and the League of City's and Towns meeting. Mr. Schwermer indicated that UAC and the League expressed concern over elements in the plan. The Justice Court Study Committee will continue to meet to finalize their proposal for the Judicial Council to consider in November.

-The Appropriations Subcommittee will soon meet and a request has been made for them to review the Council's clerical compensation request. This will allow for a thorough presentation of the issues involved in the request.

-A subcommittee of the Selection and Retention Task Force Committee charged with considering the format of the voter information pamphlet has been meeting to review the design and content of the pamphlet. Mr. Schwermer attended their most recent meeting but had not been included in the process up to this point. The subcommittee had been working off the recommendations of an institution in Colorado. A representative from the Colorado Institute will be making a presentation to the Task Force during their next meeting. It is expected that the Task Force's Subcommittee will propose that an independent retention commission be established.

4. Reports:

Management Committee-

Chief Justice Durham referred the Judicial Council Members to the Management Committee's minutes.

Policy and Planning Committee-

Judge Stott indicated the Committee had reviewed comments to the Rules that will come before the Council in October. The Committee participated in a lengthy discussion on Rules involving media in the courtroom and policies concerning photography. Several areas were identified for proposed modification. Judge Kevin Nelson participated in his last Policy and Planning meeting in September and Judge Stott recognized his work and contribution.

Liaison Committee-

Justice Nehring reported that the Committee had discussed the Housekeeping Bill and reviewed the fees on guardianship and conservatorship.

Bar Commission-

Mr. Sabey provided handouts of the Bar's long term plans and goals that were created during the Bar's Annual Convention. Mr. Sabey highlighted that the Bar discussed the changing role of the media and how that has affected the practice of law and the judiciary. The Bar also discussed how to support the courts in the legislation of the judicial selection and retention process.

The Bar also reviewed the number of attorneys in the state who carried malpractice insurance. As a budget reduction measure, the Bar is reducing some of the amount they give to other organizations in order to avoid requesting a dues increase. However, they recognized that the Bar has hit a plateau and an increase will have to take place at some point in the near future.

Mr. Sabey reported that a Juvenile Law Section of the Bar was created last week. Chief Justice Durham requested that this information be taken to the Board of Juvenile Judges.

5. Guardian ad Litem Annual Report (Keith Kelley, Rick Smith)

Chief Justice Durham welcomed Mr. Smith and Mr. Kelley to the meeting. Mr. Smith provided the GAL's Annual Report to the Council. Mr. Smith discussed the growth of the Office of the Guardian ad Litem and the changes that have been taking place due to the new Director and new employees recently hired. Mr. Smith also reported on a number of corporate donations that have greatly assisted the CASA program.

Mr. Kelley reported the Office of the Guardian ad Litem is crucial to the survival and protection of many children in the state. The GAL Office played a critical role in assisting in the resolution of the David C. case. The Oversight Committee has actively been seeking support from the Legislature for additional financial and staffing support. The Oversight Committee is extremely concerned about the high caseload each attorney holds and how to ensure children are properly represented. Mr. Kelley discussed the challenge in funding compensation increases for the attorney's in the GAL office.

Mr. Kelley indicated the Oversight Committee and Mr. Smith have struck a good balance between the direction of the GAL Office and the daily management of the office. Mr. Kelley reported the Oversight Committee continues to feel it is crucial for the GAL Office to be as independent as possible.

Chief Justice Durham thanked Mr. Kelley and Mr. Smith for their dedicated work.

6. Electronic Filing Recommendation (Ron Bowmaster)

Mr. Bowmaster provided a power point on the Technology Committee's e-filing recommendations. They include: create a multi-vendor electronic filing system; create a vendor certification process to ensure compliance with Utah court filing procedures; adopt standards to guide the electronic filing process, and; create a certified and accessible electronic court record.

Mr. Bowmaster reviewed in detail the standards that the Technology Committee will use to determine success in e-filing. He discussed how document filing will be done, the electronic case record, how to validate and retrieve electronic documents, the electronic notice, the filing date, technical failure and how to protect confidential information.

Mr. Shea reviewed the e-filing rules. The Committee has taken a minimalist approach and believe if the rules do not prohibit, the practice is permitted. The same hard copy filing rules will be applied to e-filing. The workflow will change dramatically, but the rules don't actually regulate workflow.

Mr. Shea reported electronic filing rules will cover filing, signatures, service and electronic papers. Filing Rule 5, Rule 4 and Electronic Papers Rule 10 were reviewed. These Rules should be completed by the end of the year and will then go out for public comment.

Chief Justice Durham indicated the Council needs to approve the Committee's recommendations in order for them to begin seeking RFP's for e-filing.

Motion: Judge Davis motioned that the Technology Committee move ahead with the RFP process, Judge Hilder seconded the motion, the motion passed unanimously.

Mr. Bowmaster indicated that more and more courts are utilizing e-filing as training is being done throughout each district. Mr. Shea reported that it will be the responsibility of those filing documents to keep private information private.

7. Access to Fairness Report and Jury Yield Report (Tim Shea)

Mr. Shea reported that the Access to Fairness survey was first conducted in 2006 and has been repeated during this passed summer. Three interns visited each courthouse throughout the state and helped conduct the survey. The survey included the same questions as last year. Some questions received very low responses last year and Mr. Shea suggested those questions be eliminated from the 2006 data to avoid unfairly skewing the comparative data. Mr. Shea reported the statewide outcomes were very similar to last year's results, but differed district by district.

Mr. Shea reviewed the questions that were asked about location, facilities and treatment of the public. Mr. Becker indicated that how customers are treated is a crucial area for the courts to excel in. Although the state is doing well overall, it is important for each district to analyze how they are performing and what can be improved. Mr. Shea continued to review the survey questions and outcomes statewide and by district.

Mr. Shea reported this information can be found through the CourTools link on the internet. Mr. Becker indicated it is important for the Judicial Council to understand how the system is performing, but even more important for each district to analyze what improvements should be made in their individual courts. Mr. Becker reported Utah is the most transparent court system nationwide and it is important that we be responsive to what is learned from these surveys.

8. Justice Court Lexis Nexis Option (Debra Moore)

Ms. Moore indicated at the Budget and Planning Meeting the Council approved \$28,000 for a Lexis Nexis search engine tool to be offered to District and Juvenile Judges and law clerks.

To include the Justice Court Judges in this program, the cost would be an additional \$7,100. The Council determined there would not be an issue for judges sharing information across the Justice, District and Juvenile Court. This service will be paid from the Law Library account for a year long pilot to determine if this is a helpful program.

Motion: Judge Andrus motioned to add the \$7,100 service to include the Justice Courts in the Lexis Nexis research service. Judge Petry seconded the motion, the motion passed unanimously.

9. Model Delinquency Court (Judge Sharon McCully, Greg Johnson, Ray Wahl)

Chief Justice Durham welcomed Judge McCully and Greg Johnson to the Council meeting. In the last 15 years juvenile courts have been focusing on improvements in practice and procedures of child welfare cases. The Utah courts have served as a model court and played a key role in developing these guidelines nationwide. The National Council of Juvenile and Family Court Judges now has taken a juvenile approach with delinquency and promulgated delinquency guidelines in 2005. Utah immediately decided to make changes and implement many of these guidelines through a model court project in the 3rd Juvenile Court.

Judge McCully reviewed the collaborators of the pilot program. Before beginning the model court, a committee was formed in 3rd District Juvenile Court to guide and monitor the outcomes. This pilot program has been practiced in an urban and rural court by Judge McCully and Judge Decker.

The delinquency guidelines include 16 key principles that are aspirational goals. The 3rd District model court has selected three specific standards to focus on. They are: set standards for timeliness; provide defense counsel, and; conduct effective reviews. Judge McCully explained the process of a delinquency case and discussed the progress the pilot program is making.

Judge McCully reported on the quantitative and qualitative data that indicates the model court is significantly outperforming traditional court models. The key changes for judges operating this type of court would be:

- Reserve time so that trials can be set within two weeks
- Encourage parties to be prepared at the first hearing
- Hold pre-trials in two business days for detained youth
- Hold pre-trials in 20 days for non-detained youth
- If a case needs to be set for trial or evaluations, adjudicate within 30 days for detained youth or 60 days for non-detained youth

Judge McCully indicated that in her model court the experience of victims and the parents and youth have been positive because the successful completion of the case is expedited. Judge McCully discussed how outstanding staff has been while operating this pilot program and indicated this type of success would not have been achieved without their dedication and flexibility.

Judge McCully discussed that the streamlining of court processes discovered through this program has served the system as a whole and will help other courts when adopting the pilot program procedures. Judge McCully reported that before undertaking this effort, she did not have a true sense of what case management was. She indicated that after this experience, she

would not operate court in any other way. The year long pilot program began December 1st and a grant from CCJJ has been received to help evaluate first of the year's outcomes.

Mr. Becker indicated that this pilot program is an example of what case management should be and thanked Judge McCully and her staff for all their efforts.

10. Sanpete County Council

Mr. Bissegger reviewed the last discussion the Council had regarding the proposed court location in Sanpete Council. Commissioners Anderson and Jarrett reported that they support the Courthouse but expressed concern about the prospect for passage of a bond in November. They reviewed objections by some citizen groups for the use of the fairgrounds for the location of the courthouse. The Sanpete County Council is now proposing that the courts consider a separate site at the south end of town that is only a few miles south of the originally selected site.

Chief Justice Durham indicated that the Council has considered the urban and rural needs of court locations and have been concerned in the past about court sites being placed too far out of town. The Standing Committee on Facilities and the Judicial Council believes that courthouses are a critical part of community business and should be located in a central part of any city. Chief Justice Durham reported that when the Sanpete County Council approached the Judicial Council with this project it was understood that the timing and funding for the courthouse was crucial and opportunity would be missed if the Judicial Council didn't act immediately. At the time, the Sanpete County Courthouse was not on the Standing Committee on Facilities ten year plan.

Judge Stott indicated that he supported the County Commission's proposal for the courthouse to be built at the south of town based on the unique concerns Manti has with their limited space on Main Street. Chief Justice Durham reported that although it is an information item, the Council can vote to support or deny this request today.

Mr. Becker asked if the bond fails it is possible the County would remodel the current courthouse. The Commissioners indicated it is possible, but not likely due to the cost of such renovation. Mr. Bissegger also reported that refurbishing the jail has been reviewed, but it would be just as costly to remodel as it would be to build a new court at the south end of town.

Chief Justice Durham asked if the Council were ready to vote on the issue.

Motion: Judge Hilder motioned that the Council consider the Sanpete County Courthouse requests as an action item. Judge Stott seconded the motion, the motion passed unanimously.

Mr. Bissegger indicated that this building does not threaten the Facilities Committee's Master Plan because the Manti Courthouse funding does not compete with the state funded buildings. Mr. Bissegger reported that even if the current site of the Courthouse became available, the site is still very small compared to what is needed for most courthouses.

Motion: Judge Hilder motioned to approve the building of the Sanpete County Courthouse on the DWR site in the event the bond is approved, Judge Barrett seconded the motion, the motion passed unanimously.

Due to the length of time previous agenda items took and additional scheduled meetings

later in the afternoon, Chief Justice Durham requested that Katie Gregory and Tim Shea make their reports to the Judicial Council at the October meeting. The Chief apologized for this inconvenience and thanked them for their understanding.

11. Judicial Operations Budget (Myron K. March)

Chief Justice Durham indicated that the Management Committee received a request from the District Court Board to review the judicial operations budget to determine if the amount set years ago should be adjusted. Mr. March reported that the operations budget was created in 1991 and gave judges \$400 to use towards the Mid-year or Annual Bar Convention. If judges do not attend the Bar meetings, \$200 of that amount can be used on other education resources.

The mid-year Bar conference costs on average \$568, and the annual Bar conference costs \$1,036 for each judge who attends. With these amounts, the \$400 operation money covers very little of the conference costs. The Management Committee felt it would be important to get the Council's view on the issue. The Council agreed that Mr. March should propose options that would increase the judicial operations budget to cover more of the bar conference costs.

Motion: Judge Lyon motioned that Mr. March and Mr. Becker create a detailed proposal that outlines the cost of potential increases in the judicial operations budget. These alternatives could also consider how to fund books. The motion was seconded and passed unanimously.

Motion: A motion was made for the Council to move into executive session. The motion was seconded and passed unanimously.

Motion: A motion was made to come out of executive session and adjourn the meeting, the motion was seconded and passed unanimously.