

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 26th, 2007
Ogden Juvenile Court

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine Durham
Hon. Gregory Orme
Hon. Brendan McCullagh
Hon. Gary D. Stott
Hon. Michael D. Lyon
Hon. Judith Atherton
Hon. Mark Andrus
Hon. William Barrett
Hon. Michael Kwan
Scott Sabey, esq.
Hon. Hans Chamberlain
Hon. Jody Petry
Hon. Michael Westfall
Hon. Ronald Nehring

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Tim Shea
Ray Wahl
Holly Frischknecht
Nancy Volmer
Debra Moore
Kim Allard
Katie Gregory

ABSENT:

GUESTS:

Ken Leitham
Kate Romney
Brent Tippetts
Judge Baxter
Waine Riches
Judge Hadley

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

Chief Justice welcomed everyone and reviewed the minutes. Judge Westfall clarified his statements in the CRC section of the October minutes.

Motion: Judge Kwan motioned to accept the minutes as amended. The motion was seconded and passed unanimously.

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

Chief Justice Durham reported the following:

-Chief Justice Durham spoke to teachers during UEA about utilizing judges in the classroom to help educate students on the judiciary.

- The Dialogue on Democracy was held at the end of last month and Lee Hamilton, former Senator and member of the Iraq Study Group, spoke on the responsibility leaders have to provide civic education to children. Chief Justice Durham indicated many judges attended and it was a wonderful evening.
- The First District Nominating Commission will be meeting again in January to send another name to the Governor for consideration. The former nominee had to withdraw his name for personal reasons.
- The Constitutional Revision Commission met last week and took the matter of changing the 14th Amendment under advisement and will consider it in the future.
- Chief Justice Durham, Mr. Becker, Mr. March, Mr. Schwermer, and Ms. Moore met with the Governor and his budget officers to discuss the Council's budget requests, clerk compensation, the justice court study proposal and other court issues.

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

Mr. Becker reported the following:

- Chief Justice Durham received the Rehnquist Award from Chief Justice Roberts on November 15th at the United States Supreme Court. Mr. Becker reported that it was an exceptional evening.
- Sanpete County has voted against building a new Courthouse.
- Nancy Volmer has received the Golden Spike award for the court's strategic communication plan.
- The Council selects a priority each year to focus their efforts on. The 2005 focus was the Performance Measures and CourTools, in 2006 it was the Justice Court Study Committee and in 2007 it was the Probate issue. Mr. Becker and the Chief have discussed the possibility of considering appellate and post-conviction representation as a Council focus for 2008. Mr. Becker indicated that this issue has become a greater concern among the courts and the public recently and it is time discussions for viable solutions begin. The Council agreed to make this topic its study issue for 2008.

4. COMMITTEE REPORTS:

Management Committee Report:

- Chief Justice Durham indicated that the Management Committee met shortly after the last Council meeting and the items that were discussed will be on the Council agenda today.

Bar Commission Report:

- Mr. Sabey provided a handout outlining the long range goals of the Bar Organization. A formal report from the mentoring committee will be made to the Bar Committee next month. The Bar is considering why the Lawyers Helping Lawyers program is still underutilized. Mr. Sabey indicated that the judges and their families are also able to participate in this program. The Fall Forum was recently held and several judges participated and presented. The Annual Conference will be held in Sun Valley in July and the Mid-Year Conference will be in St. George in March. The Bar will now create their own attorney referral program.

Policy and Planning Meeting:

-Judge Orme reported that with his prior service on the Council, he never had the opportunity to serve on the Policy and Planning Committee and looks forward to the experience. Judge Orme indicated that the committee discussed how fees collected through annual accountings could be used for an audit program established by the Council. The committee also made recommendations to the Probate Committee about how volunteers should be used in the probate process. A rule change regarding photography in the courtroom was discussed and more information will be provided to the Council in the next few months. A rule change that would allow an American Sign Language representative on the Interpreter Committee was also reviewed. The Committee discussed that the annual report on the wards in guardianship cases would not be made public.

Liaison Committee Report:

-Justice Nehring indicated the committee has not officially met but has been reviewing legislation through email.

5. SARATOGA SPRINGS JUSTICE COURT APPROVAL: (Rick Schwermer)

Mr. Schwermer reported that the Judicial Council originally approved Saratoga Springs Justice Court to open July of 2007. Saratoga Springs did not open in July, but they are now prepared to open. The Utah County Justice Court is the court that currently hears cases that would be transferred to the new Saratoga Springs court and they reported the opening would not significantly impact them. Judge Keith Stoney will be the judge in Saratoga Springs one day each week.

Mr. Leitham, the city manager for Saratoga Springs projected a budget of \$180,000 for the operation of the court and did not anticipate a tax increase since this is a general budget item.

Motion: Justice Nehring motioned to approve the opening of the Saratoga Springs Justice Court beginning January 1st. Judge Stott seconded the motion and the motion passed unanimously.

6. COMPREHENSIVE CLERK STUDY COMMITTEE: (Debra Moore)

Ms. Moore reported that the Clerk Committee has now been meeting for six months and continues to develop more questions about the future role of the clerk in the judicial process.

Ms. Moore reported that the state's stable economy has led to a strong workforce that makes the low paying court jobs harder to fill. Ms. Moore discussed the challenges the courts and the job market will face with the upcoming retirement of baby boomers. Ms. Moore reviewed the Committee's charge, and indicated they are working closely with the University of Utah's Center for Public Policy to gain more information on the clerk position throughout the state. Ms. Moore, Mr. Pearson and Mr. Parkes have also presented to each district to gain feedback from the clerks throughout the state. Chief Justice Durham reported that it could be helpful to gain insight from Judges. Chief Justice Durham thanked Ms. Moore and the Committee for their work.

7. CHILDREN AND FAMILY LAW COMMITTEE UPDATE: (Judge Scott Hadley)

Judge Hadley reported that he co-chairs the Children and Family Law Committee with Judge Higbee. Judge Hadley provided a power point presentation that reviewed the membership of the Committee.

Judge Hadley reviewed the Committee's original charge by the Council. Those reforms included:

- Improve communication between court levels
- Mandatory mediation of divorce
- Appoint a private GAL in contested custody cases
- Improve quality and timeliness of custody evaluations
- Permit a statement of the case in lieu of or as a supplement to testimony (proffer)
- As other issues are discussed by standing committee, attempts will be made to resolve them

Judge Hadley reported that the results of those reforms have led to adoption of Rule 100, the inception of the pilot project of mandatory mediation in 2nd District, and the appointment of private GAL's in most districts. In 2003 there was also a rule change in custody evaluations. The proffer issue has been thoroughly reviewed, but it was determined that no changes should be made.

Ms. Gregory, staff to the standing committee, reviewed the work that has been done through subcommittees in the areas of child protective orders, custody evaluations, special masters and divorce procedures.

The Child Protective Order Subcommittee has studied the lack of remedy for children who are emotionally maltreated by the parent during a divorce proceeding and the conflict in duration between child protective orders and custody/visitation orders. The subcommittee has also advanced a legislative proposal to the Policy and Planning Committee for a housekeeping bill addition to allow all child protective orders to expire after 150 days unless the court sets a shorter or more extended date for good cause. No child protective order may extend beyond the child's 18th birthday.

The Custody Evaluation Subcommittee has been refining the custody evaluation settlement conference (CESC) procedure set in the Spring of 2004 and conducted a survey of custody evaluators statewide about the effectiveness of CESC's. A workshop on CESC procedures was held at the 2007 District Court Conference.

The Special Masters Subcommittee has finalized a draft rule defining the role of a parent coordinator. A draft of this rule has been reviewed with the District Court Board multiple times. The Subcommittee continues to investigate informal practice of appointed special masters in domestic cases.

The Divorce Procedures Subcommittee has been reviewing objections to commissioner's recommendations to consider the standard of review and how the objection should be handled. An ad hoc legislative work group on family law and custody issues was created by Senator Bell and members of the subcommittee have participated in this group. Chief Justice Durham indicated there has been concern by the Legislature over the standard of review by commissioners.

Judge Hadley questioned what direction the Council would like to see the Committee on Children and Family Law head. Some options the committee is considering is adoption laws, visitation with non-parents, issues unique to never-married parents, incarcerated fathers and

child support issues.

Chief Justice Durham thanked Judge Hadley and Ms. Gregory. Mr. Becker reported that the origin of this committee stemmed from the Council's study of the family court proposal and this committee has proven to be a very effective as a way to address these issues with multiple stakeholders and across the bench. Judge Hadley reported that more involvement from the House of Representatives would be helpful.

7. BOARD OF DISTRICT COURT JUDGES: (Debra Moore)

Ms. Moore indicated that the Board of District Court Judges have been actively reviewing their governance process in order to be more proactive on many issues. During their last meeting, the Board selected five goals to focus on during the upcoming year. They are:

1. Sentencing Practices
2. Limited Legal Services
3. Remote Hearing
4. Adoption Improvements
5. Public Outreach

Ms. Moore indicated the Board has felt the regular meetings with the Presiding Judges have been very helpful and have assisted both the Board and the PJ's in the smooth administration of the districts. Chief Justice Durham thanked Ms. Moore and the Board for their efforts.

8. JUSTICE COURT STUDY COMMITTEE: (Justice Ronald Nehring)

Justice Nehring introduced the membership of the Justice Court Study Committee. Those members included: Justice Nehring, Judge Jerald Jensen, Judge Michael Kwan, Judge Brendan McCullagh, Judge Gary Stott, Judge Hans Chamberlain, David Bird, Dan Becker and Brent Johnson.

Justice Nehring reported that this is a final report to the Council, but a piece of legislation will not be discussed during this meeting to avoid the detailed word-smithing discussion that would inevitably take place at the cost of the principles of the proposal.

Justice Nehring indicated that the Committee was in agreement of the goals of the proposal. The differences stemmed from the equatability of justice court judges. Justice Nehring reported that the Committee has presented their proposal to all groups that were interested and will be affected by this plan. Justice Nehring indicated they considered the input received from interest groups and modified their proposal where the Committee felt it was necessary.

The Committee determined that the overarching goals and principles of the proposal included building judicial independence, public trust and confidence, and preserving the ability of local government to maintain a local court.

Justice Nehring indicated that after meeting with the Board of Justice Court Judges, the Committee reviewed their proposal and determined that part time judges could initially be continued.

Justice Nehring reported that the proposal includes:

- Uncoupling the money and the judge
- Make justice court judges state paid

- Pay full-time judges 90% of a district judge salary
- Pay part-time judges a percentage of the salary of a full-time judge, based on their weighted workload
- Bill the sponsoring governmental entities a flat rate per unit of judicial work just to cover salary and benefits
- Make the selection process more merit based
 - Judicial vacancies would be filled by appointment of a local selection committee
- Selection Committee Composition
 - 2 representatives selected by county officials
 - 2 representatives selected by municipal officials
 - The Presiding Justice Court Judge (with no vote)
 - 4 citizens
 - The last spot is for a representative of an entity to be directly served by that judge
- Reduce the opportunity for inappropriate political influence in the retention process
 - All judges would be subject to the retention election and performance evaluation process
 - Six year terms of office
- Assure public confidence in the fairness and competence of all justice court judges
 - Require new judges to have at least a four year college degree
- Attract and retain good judges
 - All future vacancies will be full-time positions
 - Full-time judges receive the same benefits as state judges, except for retirement
 - Retirement benefits would be in the form of a defined contribution system
 - Part-time judges who are .5 FTE or above also get full health insurance benefits
 - Workload and FTE status are re-calculated quarterly
 - Salary still cannot be reduced during a term of office

Justice Nehring reported that the transition from the current justice court system would take time and highlighted the order of events.

- Current justice court judges serve out their current terms of office, which end in February 2011 for the county judges and 2012 for municipal judges
- At that time, full time judges stand for retention
- As of February, 2012 there would be no more 'permanent' part-time positions
- Part-time judges are guaranteed at least one three year appointment as an active senior judge, and they would be paid the senior judge per-diem rate
- At the end of the three year term (in 2014 or 2015), remaining part-time judges could be re-appointed as an active senior judge depending on local workload needs
- Approximately 60 FTE judges would be needed to manage the current cases statewide based on weighted caseload reports
- The number of judges will be provided by statute

- The effective date of the proposal would be July 1, 2009

Justice Nehring reported that if this proposal is adopted by the Legislature, the state would develop ways to support the justice courts through information systems, senior judge assistance, and financial support for education experiences. Justice Nehring indicated that this proposal best supports the goals of a system with judicial independence, public trust and confidence, and the preservation of local government in maintaining local courts.

Judge Jensen joined the Council discussion and reported that he generally supports the Committee's proposal. The Justice Court Board has expressed differing views on the proposal but agree with the goals of the Study Committee.

Chief Justice Durham questioned what the next steps would be for this proposal. Justice Nehring indicated that a draft bill would be circulated among the Task Force Committee members and then be passed to the Liaison Committee for further tracking. Judge Lyon questioned if the performance evaluation process would be effected and Justice Nehring indicated the process would remain the same.

Judge Westfall questioned if a justice court judge would be able to serve statewide or only in their area of appointment. Justice Nehring confirmed that once the judge was appointed the position would be similar to the District and Juvenile Court judge and they could assist in other locations. Judge Jensen reported that justice court judges are often seeing those in court that are not living in the geographical areas in which they serve due to the types of cases they hear.

Judge Stott reported that when meeting with the Board of Justice Court Judges he was surprised to learn they felt the transition should take place more quickly. Chief Justice Durham indicated that the Council could accept the proposal, make recommendations, or reject it.

Motion: Judge Orme motioned to accept the proposal and take the next step of drafting the legislation and involving the Liaison Committee, Judge Lyon seconded the motion.

Mr. Schwermer indicated that the Board of Justice Court Judges would also like to discuss the language of the bill with the Council when it is more finalized. Justice Nehring reported that the Study Committee will move forward with the legislation understanding that the Council approves the concepts of the plan.

It was clarified that a county or municipality can opt out of the proposed plan and chose not to have a justice court. If there is currently no justice court in a municipality and there was a desire to create one, the same process currently in place for a new court to be created would also remain.

Justice Nehring indicated that the Committee will edit the legislation and then send it to the Liaison Committee. The final legislation will come before the Council in December. Chief Justice Durham requested that Mr. Schwermer send out the proposed legislation to the Council members.

Chief Justice Durham called for a vote on the motion.

Motion: All Council members voted in favor of the motion with the exception of Judge Petry and Judge Kwan who opposed the motion. The motion passed.

9. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer reported that the Business and Labor Committee considered medical malpractice arbitration legislation. Mr. Schwermer indicated that when Bills are introduced in Committee, they don't have to receive a committee hearing.

The Child Welfare Legislative Oversight panel reviewed the child abuse and neglect registry-management and licensing information systems amendments. This bill would create a rule of evidence that would not allow abuse and neglect evidence into a divorce scenario. The Committee also considered the Office of the GAL FY 09 budget proposal and recommended the Executive Offices and Criminal Justice Appropriation Subcommittee adopt the proposal.

The Constitutional Revision Commission considered a constitutional amendment proposed by the Utah Attorney General to Article I, Section 14. Scott Sabey indicated the head of the Constitutional Committee at the Bar had a conflict of interest and did not feel it was appropriate to become involved with the CRC. The Commission took the recommendations under advisement but made no decision.

The statewide expansion of the divorce mediation program was discussed based on Senator Bell's committee recommendation.

Mr. Schwermer reported that the judiciary committee also considered information regarding an amendment to the Rules of Evidence that would, in child molestation cases, allow admission of evidence of prior acts of child molestation under specific circumstances. The Utah Supreme Court has recently sent the amendment out for comment.

Mr. Schwermer discussed the routine re-codification that will take place this year. It was reported that PEHP will be requesting the amount available for insurance from the Legislature and then be making a proposal on employee benefits based on funds available.

Motion: A motion was made to move into executive session to discuss personnel issues. The motion was seconded and passed unanimously. Chief Justice Durham and Justice Nehring did not participate in the discussion and left the meeting.

Motion: A motion was made to exit executive session and continue discussion of the topic in December. The motion was seconded and passed unanimously. Chief Justice Durham and Justice Nehring returned to the meeting.

10. RETENTION TASK FORCE REPORT: (Chief Justice Christine Durhan, Judge Hans Chamberlain, Judge Gary Stott)

Judge Chamberlain reported that the Task Force originally considered the revision of the voter information pamphlet but the process led to the creation of a smaller committee charged with further study of the pamphlet and the creation of a commission that would survey and evaluate the judiciary. Judge Chamberlain indicated that although the creation of the separate commission was not the original intent of the Task Force as explained to the judiciary, it could be a positive change if the commission operates as intended.

Judge Stott reported that the Board of District Court Judges had opposed surveys being given to the litigants and witnesses which the Task Force later agreed with. The standard for measuring performance is still being considered, and a study group of judicial members and committee chairs will continue working to determine the standard.

Judge Stott reported that evaluations are often helpful to the judiciary in assisting in the governing of court operations and personnel. Without this tool the presiding judges will have a greater responsibility to assist judges. Mr. Becker indicated that the legislation allows the Council to review the mid-term survey to assist judges in their performance.

Chief Justice Durham discussed the current 70% standard. The Task Force felt there could be a challenge communicating this standard to the public. Chief Justice Durham reported that if the Commission is adopted, it could be a fair and impartial way for evaluation of judges. Chief Justice Durham expressed concern over the ability to help to assist in the governance of judges. Without the responsibility of creating and managing the survey, the Council would possibly have more time to work with judges on self-improvement.

Judge Stott reported that he felt the other members of the Task Force were very responsive and respectful to the judiciary's involvement and input on the Committee.

11. ST. GEORGE COURTHOUSE DESIGN UPDATE: (Brent Tippetts, Alyn Lunceford)

Mr. Becker introduced Alyn Lunceford the new Court Facilities Director for the courts. Brent Tippetts, the St. George Courthouse architect, discussed the progress of the building. Mr. Tippetts provided pictures of the future courthouse and the design and layout of the site. Mr. Tippetts demonstrated two different sandstone options for the product to be used on the outside of the building. One sandstone was man made and one was natural. The man made product is more affordable and is also more likely to withstand time. There is virtually no difference in the appearance of the man made product versus the natural sandstone. The cost difference between the materials would be close to one million dollars.

The Standing Committee on Court Facilities supports the design of the new Courthouse. Mr. Tippetts reported that those judges and government officials in St. George have been consulted and they are continuing to work together on the building.

Motion: Judge Chamberlain motioned to approve the design and the use of the man made sandstone product. The motion was seconded by Judge Lyon and passed unanimously.

12. RESOURCES FOR SELF-REPRESENTED PARTY'S COMMITTEE UPDATE:(Judge John Baxter)

Judge Baxter thanked the Council for their time. Judge Baxter reviewed the members of the Self-represented Party's Committee. The self-help project in the 2nd and 8th District has continued. The original self help attorney was not a good fit and Mary-Jane Shiparello has now been hired as the new attorney and will begin on December 10th. It is anticipated she will spend 30 hours addressing questions from the public and 10 hours on educating the districts and the public on the new position.

Education has also been another focus of the Self-represented Party's Committee. Recently Judge Baxter, Kris Prince and Marrienne O'brian attended training on self-rep services at Harvard. Judge Baxter and Judge Page will work together to develop an education program for the judges in the state. The philosophy of this training is that a judge has a responsibility to assist those in their courtroom who are unfamiliar with legal practices. This training will be made to the justice court judges, and possibly the district court judges and throughout each district.

Judge Baxter discussed that un-bundling training has been going on throughout the state. The recent Bar Fall Forum had a program devoted to un-bundling. The Forms Committee has also continued their work. The Self-rep Committee has continued their outreach efforts with the Access to Justice Council and has also worked with the Judicial Outreach Committee to work with individuals who are choosing to represent themselves.

Judge Chamberlain questioned whether the Self-rep Committee would be available to present at the Juvenile Court Conference and Judge Baxter indicated he would be delighted to do so.

Chief Justice Durham thanked Judge Baxter and the members of the Self-rep Committee.

13. OCAP DEMONSTRATION(Tim Shea, Waine Riches)

Mr. Shea indicated that Mr. Riches is working with the AOC through contract on the forms and the online court assistance program. Mr. Riches has assisted in developing an online questionnaire for guardians and conservators who have not been filing annual reports. The online system provides the status report and the accounting of guardianship cases.

Mr. Riches provided a demonstration of the forms and questions that a guardian or conservator would see when completing the reporting and training process. Ms. Allard reported that more than one hundred users have already utilized the questionnaire.

Chief Justice Durham thanked Mr. Riches for the update and for the continued improvements he is making in this area.

14. CJA RULE 04-409 PROBLEM SOLVING COURT RULE:(Rick Schwermer)

Mr. Schwermer reported that this rule was developed originally by the Management Committee and went through the Council process for approval. Judge Atherton had suggested language changes to the rule and they have been addressed in the new version that was provided to the Council.

Motion: Judge Stott motioned to approve the CJA Rule 04-409 to be effective immediately with the changes as made. Mr. Sabey seconded the motion, the motion passed with Judge McCullagh opposing.

16. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)

Mr. Shea indicated that Judge Cornaby has requested to move from an active to in-active Sr. Judge. Judge Eves and Judge Jackson are also reapplying for a Sr. Judge position. The attorney responses were minimal due to the amount of cases they each hear.

Motion: Scott Sabey motioned to accept Judge Cornaby as an inactive Sr. Judge and Judge Eves and Judge Jackson as active Sr. Judges, Judge Lyon seconded the motion and the motion passed unanimously.

The Council then considered the certification of Senior Justice Court Judges. Mr. Shea reviewed the judges who did not respond to the certification information request.

Motion: A motion was made to move into executive session. The motion was seconded and

passed unanimously.

Motion: A motion was made to return from executive session. The motion was seconded and passed unanimously.

Motion: Justice Nehring moved to reject Judge Dobson's application for Sr. Judge status and accept all other justice court judges applying for Sr. Judge status. Judge Barrett seconded the motion and the motion passed unanimously.

17. ADJOURN

Justice Nehring proposed moving the budget session to Thursday and Friday, August 20th and 21st. The session is currently scheduled for the 27th and 28th of August. The Council decided not to change the dates of the budget session.

Chief Justice Durham adjourned the meeting.