

JUDICIAL COUNCIL MEETING

Minutes

Tuesday, August 26th, 2008

Large Conference Room A

Matheson Courthouse

Salt Lake City, UT

Chief Justice Durham, Presiding

ATTENDEES:

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

STAFF PRESENT:

Daniel J. Becker
Myron K. March

Debra Moore
Rick Schwermer
Ray Wahl
Jody Gonzales
Rob Parkes
Holly Frischknecht

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

Chief Justice Durham welcomed everyone to the meeting. The minutes of the July meeting were reviewed and the following motion was made.

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

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

Chief Justice Durham mentioned that the Supreme Court has selected its appointees of the Judicial Performance Evaluation Commission (JPEC), and the other appointees are listed as well. The Supreme Court appointees include retired Judge Anthony Schofield, John Ashton, Robert Fotheringham, and Russell VanVleet. The Governor's appointees include retired Judge William Bohling, Lowry Snow, Maria Garcia, and Jennifer Yim. The Senate appointees include Tom Hatch and D. David Lambert. We are waiting for the House appointees. The first meeting will be held on September 9. Mr. Schwermer was asked to list the appointees and a short bio of each and forward to the Council members.

The conference of Chief Justices had their meeting at end of July/first August. The

educational focus was on media issues. One of the speakers included Anthony Lewis who spoke on a topic regarding “A Biography of the First Amendment”. Other topics included civic education and the degree to which to rededicate ourselves to the courts, to the rest of society, to the citizens, and to new leaders. There were many fascinating reports.

There is an initiative to increase the profile of the Conference of Chief Justices and the National Center for State Courts as the national voice for state courts.

Nominating Committee Update. Justice Nehring sat in on the Fourth District Nominations Committee. The Fourth District names have been selected and are in the ten-day comment period. The Sixth District closed on Monday, and the names will go to the Governor on Thursday. The Court of Appeals names were sent to the Governor last weekend.

She indicated that she had attended regular meetings with Bar leadership. The Mentoring Program will roll out soon. The Bar has done a very impressive job on this project. It will require active support from the bench. She asked for assistance in getting the word out to the boards and local Bar Associations to provide support where possible for this program.

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

Mr. Becker reported on the following:

As of two weeks ago, there are 39 justice courts on the exchange system. When you do a search, you will now get these justice courts’ information as well, as statewide district court information.

Mr. Becker briefly reviewed the Lawsuit Climate 2008 Ranking Study which was prepared by a branch of the US Chamber of Commerce. Utah was ranked 17th in 2006 and 5th in 2008. The information was passed around for the Council members to look at.

He reviewed some information from the annual legislative report of the Judicial Council in Georgia.

The Outreach Standing Committee reports that over 800 visitors and students have visited the Matheson Courthouse this past year.

Chief Justice Durham will be honored by the Institute for the Advancement of Americas Legal System with The Institute’s Transparent Courthouse Award. She will be the second recipient of the award. Justice Sandra Day O’Connor was the first recipient. Mr. Becker congratulated Chief Justice Durham!

4. COMMITTEE REPORTS:

Management Committee Report: Chief Justice Durham reported that there was nothing to report outside of what was listed in the minutes.

Liaison Committee Report: No news to report.

Policy and Planning Meeting: The committee has not met since the last meeting. However, they will have a full agenda at the next meeting.

Bar Committee Report: Mr. Sabey reported on the following: The Mentoring Program will be presented to the court in the middle of September. The program will then move forward shortly thereafter. He mentioned several awards received by the Young Lawyer’s Division by the ABA. An employee has been hired to deal with pro bono issues. The bar has prepared several surveys

related to solo practitioners, small firms, and health insurance issues. The Utah State Bar has joined the Utah Nonprofit Association in the pro bono area. The fall forum will be held on November 21. The Bar is in the middle of a two-year operations review. He mentioned that there has been some very tentative thinking about a possible five-year plan to build a new building. Their current building is 20 years old, and space issues are occurring regularly.

5. COMPREHENSIVE CLERICAL STUDY - FINAL ACTION: (Debra Moore, Rob Parkes, and Jeff Mulitalo)

The board of judges were given the presentation in Sun Valley, ID on July 17. The Board of Juvenile Judges approved the recommendations during their meeting held in Sun Valley, ID. The Board of District Judges met on August 15 to discuss the study further. They approved the study at this time with the recommendation that the presiding judges be closely involved in the implementation process relative to their districts. Then the presentations were made to all the districts (18 total presentations were made). The dates and locations were reviewed. There was a majority of the affected employees present in all of the presentations.

The following were issues that were brought up:

The proposed structure would place the Case Manager on the judicial services team at the top. There is a concern that the judge would lose the person they work closely with. District specific implementation issues were discussed as well. How will the implementation occur, and who is making the decisions that impact the individual employees? There is concern with the college degree requirement. There is a feeling that the college degree places less value on the knowledge and experience of those who do not have a degree. How will the structure impact compensation?

The following is a breakdown of employee support: 70% were very supportive, 25% were positive but uncertain about the implementation and how it would impact them individually, and 5% did not express support.

Positive comments include: 1) the proposed career track creates more opportunity for individual growth, 2) cross-trained employees will provide better customer service, and 3) the focus on job-specific training is needed.

Mr. Parkes reviewed the current structure with the proposed salary structure.

Members of the Council asked how it will be implemented in the various districts? It will be the responsibility of each district to implement the plan. A team will be put together including a court executive, clerk of court, presiding judge, other judges, and other necessary personnel to help with the implementation process. A statewide implementation committee will be formed that will outline the parameters of the study. Each district would then develop plans for their districts based upon those parameters. After the structure is outlined, then individual employees will be placed in the positions. The first phase will include reviewing the needs and the recommendations and decide on a structure that will work for each district. Then each district will come up with a proposed structure. The district team will work with HR to set the structure. A statewide committee will accept the structure of each district to ensure consistency. Once the structure has been approved, the district team will go back to their district to begin placing people in the positions as well as recruiting (in-house), as necessary, for select positions.

Initial Implementation Phase Timeline includes:

Sep 4 - Initial meeting of the statewide implementation committee

Sep 5 - Joint meeting of TCEs and Clerks of Court

Sep 10 - Presiding Judges Luncheon at the Annual Judicial Conference

Sep 10 - Job descriptions for Case Manager, Judicial Services Manager, and Judicial Team Manager positions to be made available to all employees who may be interested in applying for these positions upon approval of district structure

Sep 10 - Oct 17 - District implementation committees meet and create proposed district structure based on recommendations. Statewide committee holds meetings to review and approve proposed district structures; upon approval, districts begin competitive process for Case Manager and Team Manager positions; upon conclusion of the selection process, districts provide personnel action detail to HR.

Oct 17 - Last day for approval of district structure by statewide implementation committee.

Nov 7 - Last day to provide personnel action detail to HR.

Nov 15 - First pay period begins for new positions, assuming the above deadlines are met.

Dec 12 - Employees receive their first paycheck reflecting compensation for the new positions.

Further discussion took place. It was asked if the study would change the staff totals. It was mentioned that there would just be shifting of employees into the necessary positions. Mr. Becker mentioned that by approving the structure, we are putting in place a structure for the future. Over time, it may be determined that resulting efficiencies could lead to staff reductions.

Details for financing the study were reviewed. There are sufficient funds to implement the program at one time, if the fund held in reserve and the weighted caseload formula is used to reduce permanent staffing. Any staff reductions will be replaced with one-time funding which will continue until attrition takes place, at which time, the one-time funded position is discontinued. It was noted that the Juvenile, District and Appellate Courts will use this structure if approved.

Motion: Judge Lyon moved to approve the structure of the comprehensive clerical study with the recommendations that the presiding judge be involved in the implementation process. Judge Andrus seconded the motion, and it passed unanimously.

Motion: Judge Andrus moved for approval of the proposal on funding the comprehensive clerical study implementation as outlined by Mr. Becker and Mr. March. Judge Petry seconded the motion, and it passed unanimously.

6. REPORTING COURT PROCEEDINGS: (Debra Moore and Daniel J. Becker)

It was mentioned that an update was given in the Budget and Planning Session regarding the funds in the court reporting restricted account. Revenues are decreasing steadily, with expenses going up. This reduction in revenue has prompted a review of the way the system is operating. Currently, the court reporter system is not functioning the way it was designed to function. The court reporters are being utilized in many types of cases not outlined by the rule. They spend most of their time in court, as opposed to dividing their time in preparing transcripts. Digital recordings are being sent out-of-house to be prepared, resulting in a loss of revenue. Managing the court reporters time is where we are lacking.

A brief discussion of the cost associated with transcript production took place.

Filling court reporter positions is becoming increasingly difficult here and nationally. The current trend in the courts is relying on digital equipment for gathering the information. Every courtroom in the state is now equipped with digital recording equipment.

What are the options that we have to consider? Option 1: Continue with the existing system—improve the management of the court reporters time. We would need to add administrative support to manage it more efficiently. Option 2: Reduce the number of court reporters required for capital cases, first degree cases, and criminal cases. Option 3: Move away from hiring and retaining full-time court reporters, and rely on digital recording and selective use of contract reporters.

In addition, consideration could be given to the courts doing its own digital transcript production by hiring our own transcript production personnel. This would allow us to retain transcript revenue.

It was mentioned that, for the quarter examined, two thirds of the transcripts filed in the Appellate Courts for murder and termination cases were prepared from digital recordings.

The Council requested the AOC to take a close look at the current system and present options at a later date.

7. RECOMMENDATIONS OF THE UNIFORM FINE AND BAIL SCHEDULE COMMITTEE: (Debra Moore)

Chief Justice Durham indicated that the schedule was included in the packet and asked if anyone had any questions.

Motion: Judge Stott motioned to approve the recommendations of the Uniform Fine and Bail Schedule. Judge McCullagh seconded the motion, and it passed unanimously.

8. JUSTICE COURT WEIGHTED CASELOAD: (Rick Schwermer and Holly Frischknecht)

Mr. Schwermer and Holly Frischknecht gave a presentation on the justice court weighted caseload. To measure the justice court workload, the judicial weighted caseload was already in place. A few differences in the justice court would be made to adjust the formula. Mr. Schwermer reviewed information and explained some of the differences to the proposed weighted caseload. In one situation, there was no weight for preliminary hearings available, therefore, an informed estimate was made to arrive at the number. An explanation of an adjustment to the education number was given. If there is a court executive in the justice court, then an administrative adjustment would be made. Questions were asked about how information will be communicated to the local government? In some areas, the numbers are not reflective of the judge's bench time. Therefore, the judge would need to provide documentation that is representative of court-related materials, taking into account warrants, community education, civic education, and other related information pertaining to the judges time.

The justice court weighted caseload will be brought before the Council at the September meeting for final action.

9. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)

Motion: Judge Stott motioned to approve the certification of the senior judges requested. It was seconded, and it passed unanimously.

10. EXECUTIVE SESSION

No executive session was needed.

13. ADJOURN

The meeting was adjourned.