

JUDICIAL COUNCIL MEETING

Minutes

Monday, October 27th, 2008
Judicial Council Room
Matheson Courthouse
Salt Lake City, UT

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Hans Chamberlain
Justice Ron Nehring
Hon. Mark Andrus
Hon. Donald Eyre, Jr.
Hon. Michael Kwan
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Scott Sabey, esq.
Hon. Robert Hilder for Hon. Judith Atherton
Hon. Scott Hadley for Hon. Michael Lyon

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Rick Smith
Ray Wahl
Fred Jayne
Derek Byrne
Matty Branch
Marianne O'Brien
Nancy Volmer

EXCUSED:

Hon. Judith Atherton
Hon. Michael Lyon

GUESTS:

Keith Kelly
Hon. Dane Nolan
Hon. Thomas Kay
Gary Sypus
David Walsh

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

Chief Justice Durham welcomed everyone to the meeting, especially welcoming new Council members Judge Donald Eyre, Jr. from the Fourth District and Judge Paul Maughan from the Third District. She also welcomed Judge Scott Hadley who sat in for Judge Michael Lyon and Judge Robert Hilder who sat in for Judge Judith Atherton. The minutes of the July meeting were reviewed and the following motion was made.

Motion: There was a motion to approve the minutes. The motion was seconded, and it passed unanimously.

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

Several members of the Council attended the Utah State Bar meeting on Friday morning. The bar is currently undertaking performance and operation reviews. The Bar's main focus is on a proposal to institute a mandatory mentoring program.

On Thursday, October 23, the Dialogue for Democracy annual event was held with approximately 540 people in attendance. This event was a great success.

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

Mr. Becker gave a brief explanation of the budget process that will take place during the executive session later this morning. Judge Thomas Kay and Judge Dane Nolan will be present to represent the district and juvenile boards.

On October 1, the Building Board met to review various building projects. The meeting went very well. The Ogden Juvenile Court came in 7th out of 27 buildings being requested. The requests now go to the Governor.

Mr. Becker mentioned that Judge Parley Baldwin has announced his retirement. This will leave a vacancy for some months in the Second District. The Senate confirmation for Judge Hilder's, Marvin Bagley's and Christine Johnson's judgeship appointments is scheduled for Nov 19.

Mr. Schwermer updated the Council on the initial meetings of the Judicial Performance Evaluation Commission. He noted that the summary of the first meeting and the job description for the Director of the Commission are included under Tab 6 of the Council packet. Mr. Schwermer also mentioned that he and Mr. Shea attended the second meeting of the Commission. Meeting discussion included transition dates, timelines, survey information, budget issues, and selection of an executive committee and director. The next meeting is scheduled for November 4. He also mentioned that the first survey should take place sometime in 2009.

It was also mentioned that discussion took place of a possible formation of an Ethics Committee for the legislature with the possibility of including judges as well as members of the House and Senate. This proposal is in the very early discussion phase.

Mr. Becker congratulated Chief Justice Durham for receiving the Transparent Courthouse Award last week from the Institute for the Advancement of the American Legal System (IAALS). She is the second recipient to receive this award, with Sandra Day O'Connor being the first recipient.

Mr. Becker also congratulated Judge Hilder on his nomination to the Court of Appeals.

4. COMMITTEE REPORTS:

Management Committee Report:

The Management Committee has forwarded several matters for the Council's attention.

Liaison Committee Report:

Nothing new to report.

Policy and Planning Meeting:

Judge Orme mentioned that the majority of the most recent Policy and Planning Meeting was spent on Rule 4-509. Ms. Katie Gregory and Dr. Monica Christy of the Standing Committee on Children and Family Law (CCFL), reported on the rule. It was determined that there will be a few changes incorporated into the rule. The rule will be brought before the Council in

November for final approval.

Rule 4-202.03. Records Access. This rule is out for comment.

Judge Orme also mentioned discussion of whether a Computer Use Policy should be applicable for justice court judges.

Bar Committee Report: No report was given at this time.

5. COUNCIL COMMITTEE ASSIGNMENTS (Chief Justice Christine M. Durham)

Chief Justice Durham reviewed the recommendations from the Management Committee on the proposed Judicial Council Committee assignments. New members to the Council include Judge Paul Maughan for Judge William Barrett, and Judge Donald Eyre for Judge Gary Stott. New Management Committee assignments include Judge Hans Chamberlain as vice chair and Judge Michael Westfall as a new member. New Policy and Planning Committee assignments include Judge Donald Eyre and Judge Paul Maughan as new members. Judge Michael Lyon would switch from Policy and Planning to the Liaison Committee. Last, Judge Michael Kwan and Judge Brendan McCullagh would simply switch committees assignments. This would place Judge Michael Kwan on the Policy and Planning Committee and Judge Brendan McCullagh on the Liaison Committee. She also mentioned that once the committees are approved, the committees appoint their committee chair. Judge Orme was concerned that the recommended Policy and Planning Committee does not have a juvenile court representative. Brief discussion took place. It was determined to handle this issue on an ad hoc basis.

Motion: A motion was made to approve the Council Committee assignments as recommended. The motion was seconded, and it passed unanimously.

Chief Justice Durham thanked all Council members for their willingness to serve on the various Council committees.

Chief Justice Durham had the new Council members introduce themselves.

Judge Don Eyre, Jr. mentioned that he has 14 years on the bench, he was previously a presiding judge, he has previously been a member of the board of district court judges, and he most recently served on the Committee of Children and Family Law.

Judge Paul Maughan mentioned that he has 10 years on the bench, he has previously been a member of the board of district court judges, he is the associate presiding judge in the Third District, and he is looking forward to serving as a Council member.

6. 2009 CALENDARS: (Daniel J. Becker)

Mr. Becker mentioned that the March date for the Council Meeting has been changed from Thursday, March 12 to Friday, March 13. The reason being, if a constitutional amendment passes in November; the Legislative Session will start a week later and not end until midnight on March 12. There was also discussion about the July meeting which is usually held in conjunction with the Annual Bar Conference in Sun Valley. In light of budget constraints, the Council will need to decide if budget constraints should preclude meeting in Sun Valley. It was also noted that the Utah State Bar holds three conferences annually including: 1) the Fall Forum, 2) Mid-Year Bar Conference, and 3) the Annual Bar Conference.

Motion: A motion was made to approve the calendar and discuss the July meeting following the budget discussion. The motion was seconded, and it passed unanimously.

Motion: Justice Nehring moved that the July Council meeting be held on July 20, 2009 at the Matheson Courthouse. The motion was seconded, and it passed unanimously.

7. GUARDIAN AD LITEM UPDATES (Rick Smith, and Keith Kelly)

Mr. Smith handed out the 2008 annual report. Mr. Kelly mentioned that the Guardian ad Litem Oversight Committee was formed in 2005 as a result of a legislative audit report recommendation. The Committee provides direct oversight to the GAL office, with responsibilities including policy development and other duties set out in Rule 4-906 of the Utah Rules of Judicial Administration. The members of the committee include: 1) Keith Kelly, chair; 2) Tani Downing; 3) Retired Judge Regnal Garff; 4) Kevin Gully, Ph.D.; 5) Carol Page; 6) Robert Steele; and 7) Lisa Watts-Baskin.

The Guardian ad Litem office provided legal representation to 12,854 of Utah's children in the past year. In 2007-2008, the Guardian ad Litem office, with the support of the Utah Court Improvement Program, spear-headed an initiative and negotiated an agreement to bring the National Association of Council for Children (NACC) Child Welfare Law Specialist Certification Program to Utah. In addition to Guardian ad Litem attorneys, many Utah attorneys practicing in the child welfare (juvenile) arena as judges, agency counsel, parents' counsel, and administrators, will also have the opportunity in the next four years to become certified, and hold themselves out as "Child Welfare Law Specialists". Certification is based on an exclusive NACC application process and certification exam and utilizes the NACC's "Child Welfare Law and Practice" treatise (aka "Red Book") as the basic curriculum for the exam. Several judges and assistant attorney generals attended training last week. It was mentioned that the defense bar was invited to attend the training. Scholarships for 25 people have been allotted for this specialization.

Mr. Kelly mentioned the tireless advocacy of Ms. Kristin Brewer during her time as director of the Guardian ad Litem Office. He also mentioned the great efforts and progress that have taken place in the past few years under the direction of Mr. Rick Smith in regards to the office and administrative direction as well as the legislative efforts.

Legislative Audit. Mr. Kelly reported that overall, the audit was very favorable. It is reflective of the hard work and efforts that are taking place in the Guardian ad Litem office. Mr. Kelly, Mr. Smith and Mr. Becker met with the legislative auditors reviewing the first draft and responding to the issues mentioned in the audit.

Issues discussed include: 1) placement of the Guardian ad Litem office; 2) statute clarification 3) parity; and 4) staffing.

In summary, the report includes 13 recommendations and reflects improvement and progress in the Guardian ad Litem office. Mr. Smith mentioned that he has prepared his reply to the audit. The tentative release date of the final audit is set for November 18.

For the past two years, the Guardian ad Litem has been involved in the initial phase of the automated case management system. Currently, the new Guardian ad Litem automated case management is in the design phase. The new system will be integrated with both the juvenile and district court automated systems, allowing computerized management of all cases in the Guardian ad Litem office. The new Guardian ad Litem system will have many enhanced features allowing for better case management, improved data accuracy, more completed

reporting capabilities, and supervisory and administrative functions.

A brief discussion took place in regards to best practice standards and how they are being addressed by the Guardian ad Litem. Best practice standards and guidelines should be in place next month to use to train the attorneys.

The budget procedure in regards to the Guardian ad Litem was briefly mentioned.

8. ACCESS & FAIRNESS SURVEY RESULTS: (Tim Shea)

Mr. Shea reviewed the Access and Fairness Survey results. The results can be found on CourTools on the Utah Courts website. The survey has been taken over the past three years. Three interns conduct the survey every summer, then the data is compiled and the survey results are tabulated and listed online. The interns conducting the 2008 survey included: Ms. Tania Parker, Ms. Alyson Bean, and Ms. Heidi Stutznegger. Each state courthouse was represented in the survey. This includes district, juvenile and appellate courts. If the justice courts are co-located with a state courthouse, they are represented in the survey. The survey results reflect the opinions of the people attending court on the survey date. The results reflecting a C grade or better is 95% or better. The survey shows 2006, 2007, and 2008 results.

Some of the areas covered in the survey include: 1) security officers treat me with respect; 2) the courts hours made it easy to do my business; 3) finish business in a reasonable amount of time; 4) staff paid attention to my needs; 5) I understood what happened in my case, 6) what should I do next, 7) the judge listened, 8) had all the information needed, 9) demographics, 10) respondent category including defendants, family members, police officers, and 11) type of case. Finished business in a reasonable amount of time was an area of concern in St. George and Vernal which is probably representative of the need for more judges. The public is mostly satisfied with the courts work week schedule of five 8-hour days. The following survey questions were of concern in the first district, specifically Logan: 1) I understood what happened in my case; 2) what should I do next, and 3) had all the information needed.

Regarding respondents, over half of the people in court are there in a support role. In the area of demographics, the numbers range between first time and regular court visitors, the latino population is growing in most counties, and gender numbers vary.

Each year, the data is reviewed with each court executive by Ms. Moore and Mr. Wahl. A considerable amount of time is dedicated to follow-up of the survey results.

The survey is available on the website. Ms. Volmer will reference the website and the survey in the next court newsletter.

9. CERTIFICATION OF SENIOR JUDGES: (Tim Shea)

Mr. Shea presented the senior judge requests which include a request from Judge LaMar F. Melville to be appointed as an active senior judge and a request from Judge Diane W. Wilkins to be appointed as an inactive senior judge. A brief discussion took place.

Motion: A motion was made to approve the senior judge requests. The motion was seconded, and it passed unanimously.

10. LEGISLATIVE UPDATE (Rick Schwermer)

Mr. Schwermer gave a brief legislative update. He mentioned that there were two interim meetings and a special session. He mentioned some of the special session reductions for

the Department of Health and the Department of Human Services as listed in the October 21, 2008 Fiscal Highlights. He also mentioned that DORA was a listed reduction. A legislative audit will be performed to determine if DORA is a useful, effective program. The Building Board's prioritized list was also mentioned. He then reviewed the issue of legislation to amend the Open and Public Meetings Act related to the timely release of minutes and recordings of open meetings which is listed in the October 2008 Interim Highlights. Once the minutes are drafted, they are public, and the recordings are to be available within three days. The Pilot Program for Family Preservation Services was reviewed, and it was recommended that it be reauthorized for five years. There is also a section referring to child support obligation tables and draft legislation regarding gang activity and gang related offenses as mentioned by Mr. Schwermer. The September 2008 Fiscal Highlights lists the Inaugural Meeting of the Judicial Performance Evaluation Commission on page 4 with the job description attached for the Director, Judicial Performance Evaluation Commission.

There will be two full Liaison Committee meetings before the legislative session starts.

MENTAL HEALTH COURT EXPANSION (Rick Schwermer):

Mr. Schwermer mentioned the proposed Mental Health Court Expansion project. Information was given on the proposed project. The project would have an increase in capacity of one court from 80 to 120 clients with the establishment of an additional court. This would allow approximately 60 defendants in each court. Chief Justice Durham mentioned the impressive list of stakeholders involved with this project.

Motion: A motion was made to approve the application. The motion was seconded, and it passed unanimously.

11. EXECUTIVE SESSION

A motion was made to move into an executive session to discuss draft budget material. The motion was seconded, and it passed unanimously.

12. BUDGET PLANNING

Following the executive session, the Council reviewed the following twenty-two separate actions which make up the \$3,500,000 FY 2009 spending reductions:

- eliminating unobligated carry forward funds and reserve set aside in this year's budget plan
- an across the board reduction in current expense and travel
- suspension of incentive awards for the balance of this fiscal year
- deferral of data processing equipment purchases
- eliminating unobligated balance in state supervision funds for this year
- eliminating 3rd district and juvenile court case management pilot program effective 12/31/08
- canceling the presiding judge and court executive training program for this year
- eliminating local education discretionary funds for this year
- eliminating food breaks provided during training program
- deferring building improvements, e.g., painting and carpeting replacement
- shifting select personnel or other expenses from general fund to restricted accounts with

balances, e.g., Substance Abuse Prevention Act (SAPA), EXCHANGE, and State Library Fund

- canceling plans to establish time limited guardianship/conservatorship coordinator, training coordinators, and deputy clerk
- shifting balance in the security fund to perimeter security and take as a reduction
- eliminating unobligated out of state training funds for the balance of the year
- reducing judicial operation funds for each judge from \$900 to \$500 for the 2009 calendar year
- maintaining a freeze on hiring sufficient to generate \$800,000 in savings
- eliminating savings resulting from judicial vacancies

Motion: A motion was made to approve the recommendations to the one time budget reductions of \$3,500,000 to the FY 2009 budget. The motion was seconded, and it passed unanimously.

The following areas reflect the revised base budget as adopted by the Council with a proposed budget reduction of \$4,428,000 for FY 2010:

- Perimeter Security. The Council will seek legislation imposing a security fee of \$8.00 in all traffic and criminal cases. If approved, it will generate \$2,800,000, the amount presently spent in general funds for perimeter security. This would make perimeter security a fee supported expenditure.

- Permanently shifting personnel or other expenses from general fund to restricted accounts including child welfare mediation, juvenile probation, and Information Technology.

- Contracting with the Division of Facility and Contract Management (DFCM) for custodial services.

- Relying exclusively on digital recording systems to take the record beginning July 1, 2009. This decision will require an amendment to the Rules of Judicial Administration to require the record to be taken in all case types by recording equipment in place of a combination of court reporters and recording equipment.

- Savings from a renegotiation of data processing services contracts.

- Elimination of juvenile probation leased space in the Fourth District.

Motion: Judge McCullagh moved to adopt the revised based budget for FY 2010. Justice Nehring seconded the motion, and it passed unanimously.

13. ADJOURN

The meeting was adjourned.