

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 26th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

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

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Matty Branch
Derek Byrne
Fred Jayne
Holly Frischknecht
Nancy Volmer

GUESTS:

Joanne Slotnik
Steve Hunt
Margaret Plane
James Backman
John Baldwin
Rod Snow

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

Chief Justice Durham welcomed everyone to the meeting.

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

2. PERFORMANCE EVALUATION COMMISSION UPDATE (Joanne Slotnik)

Chief Justice Durham introduced Joanne Slotnik, the new executive director of the Performance Evaluation Commission. She gave a brief background relative to her involvement with the Courts.

Ms. Slotnik reported that her goal as director of the Performance Evaluation Commission

include: 1) ensuring that the Commission functions independently, and 2) that the self improvement operation of the evaluation process remains intact. She would like to maintain an appropriate balance and accountability to the public and judicial independence.

There has only been one commission meeting since she started. Currently, the commission is working on the administrative rulemaking process. Ms. Slotnik has consulted with Mr. Shea and others concerning how the courts conducted performance evaluations. The commission will begin providing information on judges up for retention in 2012. Preliminary work is being done on an attorney survey and juror survey similar to what has been done in the past.

Ms. Slotnik mentioned that she would be happy to speak to members of the boards of judges as well as participants at the annual conference regarding the work of the Performance Evaluation Commission. She mentioned the members of the commission which is chaired by Mr. Lowry Snow.

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

Chief Justice Durham mentioned that she had met with President Waddoups and Speaker Clark. She spent time discussing the fundamentals of our budget concerns. The meetings went very well. She also reported that the Council's decision to hold off on filing the Court of Appeals judgeship and any other judgeship vacancies as they arise has been well received by the legislative leadership.

She reported that a letter has been received from Judge Sheila McCleve on her retirement this June.

The State of the Judiciary Address will be given at 2:15 p.m. in the House chamber today. All Council members are welcome to attend.

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

Dan reported on the following:

Legislative Update Meetings have been given in each judicial district. The meetings were well attended and well received with a lot of positive feedback given.

He also mentioned that he and Mr. March have met with all presiding judges and court executives to brief them on the status of the budget.

Mr. Becker will be making a presentation to the Bar Commission on Friday, January 30 relative to the Courts budget situation. He will also be discussing the filing fee increase with the Commission. Then on February 5, he will be giving a similar presentation at the Bar-sponsored CLE on legislative issues.

Copies of the 2009 Annual Report to the Community have been distributed. The report covers programs that we want to highlight for the Legislature and the public.

Mr. Becker reported that Representative Hutchings, co-chair of the Appropriations Committee, will be sponsoring the security fee bill. He also mentioned that Senator Bell will sponsor the civil filing fee increase bill.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the minutes reflect the actions taken at the Management Committee meeting.

Liaison Committee Report:

Mr. Schwermer mentioned that the draft minutes reflect the actions taken at the Liaison Committee meeting.

Policy and Planning Meeting:

Judge Orme mentioned that most issues discussed at the Policy and Planning meeting will be discussed later on the agenda.

Bar Committee Report:

Mr. Sabey reported that Senator Bell has agreed to carry a bill for the *And Justice for All* license plate. The Bar is scheduled to meet with the legislators on Jan 25 at 7:30 a.m.. He also mentioned that the Bar has a Legislative CLE program scheduled for February 5.

6. NEW LAWYER TRAINING PROGRAM (NLTP): (Rod Snow, Margaret Plane, James Bachman & John Baldwin)

Members of the Bar were present to give an update on the New Lawyer Training Program (NLTP).

Mr. John Baldwin mentioned that the Bar gave presentations on the New Lawyer Training Program (NLTP) at meetings of the Cache County Bar, Federal Bar Association, and the Southern Utah Bar to solicit mentors and to inform the members of the Bar of the process for the new program. The Bar is also in communication with the local law schools and new lawyers to introduce the program to them. Currently, there are 120 volunteers.

Mr. Snow reported that the new program can be found on the Supreme Court and Bar's website. He suggested that Council members download the program and become familiar with what it offers. He mentioned that judicial support will be important. He encouraged members of the court to volunteer as mentors. The program has been a couple of years in the making. There is a new lawyer training manual and model plan in place. If a new lawyer does not complete the program in their first year, they will not get their license renewed in the second year.

Ms. Plane mentioned that mentors are needed across the state. The categories include: 1) practice, 2) gender, 3) diversity, and 4) other. The program will be individualized to the needs of the lawyer. There are 30 different sections of activities to participate in with the mentors. Also a section for transactional and litigation experience as well as various elective sections will be offered.

Three types of mentoring will be available: 1) Inside or in-house - from within your practice (excludes the supervisor), 2) Outside - can be assigned from outside the practice setting, and 3) circle or group mentoring - unique circumstances where there are two mentors and up to four new lawyers in a mentoring setting.

Professor Backman mentioned that there will be one-on-one mentoring during the first year of practice. He thanked the Council for the externships that have been available to law students. He reported that the NLTP is a natural continuum in the learning process for the new lawyers.

Chief Justice Durham thanked the Bar members for the hard work and effort gone in to developing the program.

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

Ms. Moore gave an update on the Uniform Fine and Bail Committee recommendations. The recommendations include changes that will implement a new statewide criminal e-filing system (Prosecutors Information Management System or PIMS), incorporate Wildlife, Boating, and Parks and Recreation offenses into the e-filing system, and accommodate a new Shared Master Table that has been created to facilitate legislative updates to CORIS and other databases such as those maintained by BCI, the Utah Prosecution Council, Drivers License Division, etc.).

Judge Westfall brought up a question regarding the fee amounts listed in xi. Judge McCullagh mentioned a mistake on the DUI matrix. Ms. Moore noted these corrections.

Motion: Judge Maughan moved to approve the schedules as amended. Judge Eyre seconded the motion, and it passed unanimously.

8. SMALL CLAIM JURISDICTION: (Rick Schwermer)

Mr. Schwermer reported on the proposal to move all small claims cases from the district courts to the justice courts. This would require a rule change to make the transfer. Half of the cases are already seen in the justice courts already.

It was mentioned that local government is also facing hiring freezes, therefore, staffing issues would be a concern, and the Board of Justice Court Judges would like to be reassured that existing ProTem judges would continue to serve in justice courts.

Mr. Schwermer mentioned that cases filed before July 1, 2009 will be handled where they were originally filed. Discussion took place.

Motion: Judge McCullagh moved to approve the concept and refer it to Policy and Planning for any necessary rule changes. Mr. Sabey seconded the motion, and it passed unanimously.

9. JUSTICE COURT JUDGES NOMINATING COMMISSION MANUAL: (Holly Frischknecht)

Ms. Frischknecht reported that the application and the manual of procedures have had the necessary modifications made to them. The UAC and League of Cities and Towns have been sent the information to review. There has been no feedback to the documents as they stand. Ms. Frischknecht mentioned that they have sent reminders regarding the comment period, and no comments have been received to date. She also mentioned that the education requirements have been added to the manual.

Motion: Judge McCullagh moved to approve the manual. Mr. Sabey seconded the motion, and it passed unanimously.

10. CERTIFICATION OF JUSTICE COURT JUDGES: (Rick Schwermer & Holly Frischknecht)

Mr. Schwermer presented the justice court judge certification request for certification of Darold M. Butcher. A brief discussion took place.

Motion: It was moved and seconded to approve the justice court judge certification request. It passed unanimously.

11. RULES FOR FINAL ACTION: (Tim Shea)

Mr. Shea updated on the rules.

CJA 04-202.03. Records access. Permit access to juvenile court records by the Department of Human Services.

CJA 04-202.02 Records classification. Classifies as private the records in guardianship and conservatorship cases, except the order and letter of appointment. Classifies some select data elements as public or private. It was mentioned that the date of birth would remain a public identifier.

CJA 04-202.09. Miscellaneous. Prohibits including non-public information in an otherwise public document. Mr. Shea provided an explanation. A brief discussion took place.

A proposal was brought up for discussion that would amend Rule 04-202.09 to exempt citations from the requirement that private information be redacted from the public document and that in Rule 04-202.02, the citation be classified as private, with an abstract of the citation made publicly available. Discussion took place.

Motion: Judge Andrus moved to approve the rule changes to include the proposal dealing with citations. Judge Petry seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Mr. Shea presented the senior judge request from Judge John Backlund. A brief discussion took place.

Motion: It was moved and seconded to approve the senior judge request. It passed unanimously.

13. EXECUTIVE SESSION

Motion: It was moved and seconded to enter into an executive session to consider draft budget material.

The Council moved out of the executive session at this time.

Motion: Judge McCullagh moved to limit all state courts to essential activities on Tuesdays by reason of required furlough if a 7% or higher budget reduction for FY09 is mandated to the Courts. The motion was seconded, and it unanimously passed.

Motion: Judge McCullagh moved to accept the proposal to increase civil filing fees. Mr. Sabey seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to cancel the St. George Council Meeting on March 13 and reschedule it for Monday, March 16 to be held at the Matheson Courthouse. Judge Andrus seconded the motion, and it passed unanimously.

14. ADJOURN

Meeting was adjourned.