

JUDICIAL COUNCIL MEETING

Minutes

Monday, May 24th, 2010

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Justice Ron Nehring
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Keith Stoney
Hon. Michael Westfall
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

Hon. Hans Chamberlain
Hon. Jody Petry

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Ray Wahl
Katie Gregory
Derek Byrne
Alyn Lunceford
Nancy Volmer

GUESTS:

Colin Winchester
Joanne Slotnik
Judge Scott Johansen
Judge Doug Thomas
David Walsh
Stephen Hunt, Tribune
Joe Derring

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

Chief Justice Durham welcomed everyone to the meeting. Judge Petry and Judge Chamberlain were excused.

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

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

Mr. Becker reported on the following items:

He and Mr. March attended a meeting held by the Governor to discuss jail financing. He provided a brief update on the issues and discussion which took place. He indicated this was a long standing issue which had defied resolution.

E-payments for juvenile court are currently being tested. If all goes well, e-payments in juvenile court will go live in mid-July. At the end of April, e-payments represented 23.4% of all

payments received. The use of e-payments is steadily increasing.

The first court security officer training in the state was held on May 20-21 at the Matheson Courthouse. Specialized training in a court environment was provided. Chief Justice Durham provided a welcome to the group, and judges and court staff were among the instructors.

Mr. Becker provided an update on judicial vacancies to include: 1) the governor will announce his nominee for the Supreme Court vacancy by this Friday, 2) Judge Christiansen was confirmed on May 19 for the Court of Appeals vacancy, 3) The Second District Nominating Commission will meet this week to begin the process to fill the vacancies for Judge Heffernan, Judge Memmott, Judge VanDyke, and Judge Bachman, 4) the names selected to fill Judge Roth's vacancy are out for the 10-day comment period, 5) the advertisement to fill the vacancies for Judge Christiansen and Judge McCully will go out today, 6) the application period for the Fifth District Juvenile Court vacancy has closed, and the nominating commission will soon schedule its initial meeting, and 7) the names selected to fill Judge Payne's vacancy are out for the 10-day comment period.

3. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting was brief due to a small agenda, and that the Committee's minutes cover all the issues discussed.

Liaison Committee Report:

No meeting was held in May.

Policy and Planning Meeting:

Judge Orme reported on the following:

The Policy and Planning Committee continued to work on the court interpreter initiative and on the senior judge and commissioner evaluations.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar Committee will meet this Friday. CLE reporting will change to fiscal year reporting.

Chief Justice Durham inquired to the response of electronic voting. Ms. Nelson reported that the process went very well. She mentioned that the use of electronic voting saved the Bar approximately \$18,000.

Renewal notices for bar dues will be sent out by way of a postcard. It will be mandatory to renew online.

4. JUDICIAL CONDUCT COMMISSION UPDATE: (Colin Winchester)

Chief Justice Durham welcomed Mr. Winchester to the meeting.

Mr. Winchester provided an update to the Council on the activities of the Judicial Conduct Commission. He reported that there has been significant turnover in the membership of the Commission. He provided a list of the Commission membership to the Council.

He mentioned that two public reprimands were recommended by the Commission. Information on both situations was provided.

Chief Justice Durham inquired to the culture of the Commission. Mr. Winchester commented that the Commission is strong and hard working. He mentioned that training for the Commission would be moved to the odd-numbered years. He reported that filings had been down for several years, but they were up this year.

Chief Justice Durham thanked Mr. Winchester for his update.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Ms. Slotnik was welcomed to the meeting.

She updated the Council on progress made by the Judicial Performance Evaluation Commission.

The legislature adopted the recommended changes for statutory modification to include: 1) elimination of witness surveys from the respondent groups, and 2) expand the survey topic of judicial temperament.

She reported on the status of the pilot programs being conducted. The courtroom observation reports are ready to be sent to the participating judges. An email glitch has slowed the delivery of the reports to the judges. A solution is being addressed, and she anticipates sending the courtroom observation reports out this week.

Ms. Slotnik highlighted the following areas in her report: 1) survey preparation, 2) mid-term reports for 2012, 3) litigant information, 4) court staff surveys, 5) juror surveys, 6) attorney surveys, and 7) appellate court judge focus group.

The Commission is preparing the pilot for juvenile court professionals. This pilot will take place in the fall.

The mid-term attorney surveys are being revised first, and then the retention surveys will be modified.

Discussion took place regarding the differences between district court and justice court judges. Some of the concerns relative to justice courts include: 1) in smaller courts, court staff report to the judges, and 2) many justices courts are not yet on CORIS which complicates the collection of attorney data.

Revisions and reformatting of the Voter Information Pamphlet are being planned.

Chief Justice Durham thanked Ms. Slotnik for her update.

6. BOARD OF JUVENILE JUDGES UPDATE: (Judge Scott Johansen and Ray Wall)

Judge Johansen was welcomed to the meeting.

He provided an update to the Council on behalf of the Board of Juvenile Judges. He reviewed the following in his update: 1) listed the current membership of the Board of Juvenile Judges, 2) efforts to promote efficiencies, 3) board accomplishments, 4) board challenges, and 5) outlined various juvenile court statistics.

The four efficiency measures include: 1) use of evidence-based practices, 2) use of data and technology, 3) streamlining processes, and 4) review of code and judicial practice.

Judge Johansen mentioned that requirements have been added to the Juvenile Court Act throughout the years. He also reported there are a series of unfunded mandates. The board will identify those practices they feel are no longer necessary, and they will be making various recommendations to the Judicial Council regarding proposed changes.

Some of the accomplishments highlighted include: 1) CARE enhancements, 2) support for clerical restructuring, 3) e-warrants in child welfare cases in progress, and 4) pilot testing of the Carey guides.

Highlighted challenges include: 1) budget reductions in executive agencies that provide services to children and families, 2) judges meeting child welfare statutory time frames, 3) addressing the ethnic diversity of court patrons, and 4) cultivating effective interventions for youth in both the urban and rural courts.

The statistical review included the following: 1) total referrals to the juvenile court, 2) types of referrals to the juvenile court, 3) delinquency outcomes - recidivism by case type, 4) child welfare outcomes - reasons for exiting foster care, and 5) referrals by type to the juvenile court.

It was noted that juvenile referrals had declined, and Mr. Wahl provided an opinion as to why there had been such a dramatic drop.

7. APPROVAL OF VOTER INFORMATION PAMPHLET: (Myron K. March)

Mr. March reviewed the content of the Voter Information Pamphlet drafted for the next retention election, and he noted that it requires Council approval. He mentioned that the Voter Information Pamphlet for the following retention election will be prepared by the Judicial Performance Evaluation Commission.

It was reported that summaries finalized by the Supreme Court regarding reprimand issues will be included in the pamphlet if they are prepared in time.

Mr. Becker noted that municipal justice court judges are included in the pamphlet for the first time.

Motion: Judge Maughan moved to approve the Voter Information Pamphlet as submitted. The motion was seconded, and it passed unanimously.

8. UNIFORM FINE AND BAIL COMMITTEE UPDATE: (Debra Moore)

Ms. Moore was welcomed.

She reported that the Uniform Fine and Bail Committee held their annual meeting at the end of April. The recommended changes to the Uniform Fine and Bail Schedule are before the Council for approval.

She mentioned that the recommendations are not as extensive as in the past. A review of the 2010 legislative changes and recommendations include HB 170, Foster Care Revisions. The committee noted that the legislation did not specify severity for the offense of unlawful action against a foster parent's license or removal of a foster child. The committee recommended that the offense be identified as an infraction, but because of the serious nature of the offense; bail should be set at \$555.

Ms. Moore was asked if at any time the fines or fees have been reduced. She reported not to her knowledge. She mentioned that the committee discussed the need for a comprehensive review of the penalty levels. The committee decided that with the economic downturn, the penalty levels are probably still appropriate; and such a review should wait until after the economy has recovered.

Motion: Judge Eyre moved to approve the Uniform Fine and Bail Schedule recommendations. Judge Hornak second the motion, and it passed unanimously.

Chief Justice Durham expressed the Council's appreciation to the Committee for their hard work.

Motion: Judge Maughan moved to enter into an executive session at this time. Justice Nehring seconded the motion, and it passed unanimously.

9. EXECUTIVE SESSION

The Council came out of their executive session and resumed the meeting.

10. CHILDREN AND FAMILY LAW COMMITTEE UPDATE AND REAUTHORIZATION: (Judge Doug Thomas and Katie Gregory)

Chief Justice Durham welcomed Judge Thomas to the meeting.

Judge Thomas provided an update to the Council on behalf of the Children and Family Law Committee. The following was included in his update: 1) membership of the committee; 2) the original charge to the Committee, established April 2000; 3) results of the original reforms; 4) achievements; 5) subcommittees; 6) service issues relative to facebook, twitter, etc; and 7) sunset provisions.

The sunset provisions include: 1) continuing viability of the committee, 2) are the meetings well attended, and 3) effectiveness of dealing with issues raised were addressed with the members of the committee. The committee agreed that they serve a useful function. It was noted that the committee is unique in the sense that they serve as a forum where many disciplines come together to address family law issues in one setting. It was mentioned that the meetings are well attended with 80-90% attendance, and the committee is effective in dealing with the issues addressed.

Chief Justice Durham thanked Judge Thomas and Ms. Gregory for their presentation.

The question was asked as to the balance of issues brought before the committee relative to district and juvenile court. It was reported that the majority of the issues are district court related. However, juvenile court issues do arise. Ms. Nelson reported that early on, the majority of the issues dealt with juvenile court.

The issue of management of the committee and subcommittees by a member of the AOC staff was discussed. Several perspectives were provided. It was stated that Ms. Gregory's service as staff to the committee and subcommittees has been invaluable.

Motion: It was moved and seconded to re-authorize the Children and Family Law Committee for an additional three years.

11. COURT INTERPRETER FEES: (Myron K. March)

Mr. March reported on the interpreter rates for FY 2011 as outlined in the packet. He mentioned that the market analysis does not include the Salt Lake City area. As reported by Judge Trease in March, the Court Interpreter Committee has made no recommendation for change this year. It was noted that it is difficult to compare states on this topic, because each has its unique features.

Motion: Judge Hornak moved to approve the interpreter rates for FY 2011. The motion was seconded, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATION: (Myron K. March)

Mr. March presented the senior judge requests from Judge Lynn Payne, Judge Stephen Van Dyke, Judge Craig Storey, and Judge Pamela Heffernan. He reported that Judge Heffernan is requesting certification as an inactive senior judge. Discussion took place.

Motion: Judge McCullagh moved to approve the senior judge requests from Judge Heffernan, Judge Van Dyke and Judge Payne. The motion was seconded, and it passed unanimously.

13. NEW JUSTICE COURT JUDGE CERTIFICATION: (Rick Schwermer)

Mr. Schwermer presented the recommendations for justice court judge certification for Mr. John Mack Dow and Mr. Steven R. Wallace.

Motion: Judge McCullagh moved to approve the certifications of Mr. John Dow and Mr. Steven Wallace as justice court judges. Judge Stoney seconded the motion, and it passed unanimously.

14. FY 2011 BUDGET REDUCTION: APPELLATE, DISTRICTS, AND AOC PROPOSED BUDGET REDUCTIONS: (Daniel J. Becker)

Mr. Becker stated that he would be reviewing two areas relative to the budget. First, review of the reduction plans for FY 2011 as submitted by the court executives and presiding judges. Second, review of the spending plan for FY 2011.

The proposed FY 2011 reduction plan of \$2.4 million will bring the courts budget inline with the authorized ongoing funding.

As a backdrop to the budget discussion, Mr. Becker highlighted the following: 1) case filings are returning to 2008 levels, 2) turnover rates at 4-5% are lower than in previous years, 3) no new funding from the legislature is foreseen for several years to come, 4) reductions taken by the courts in FY 2010 and FY 2011 - total 7.9%, and 5) total reductions in workforce taken by the courts in FY 2010 and FY 2011 - equates to 91 positions.

Mr. Becker provided a summary of the proposed reductions for FY 2011 for the Administrative Office of the Courts and each judicial district. Proposed reductions included: 1) personnel reductions, 2) reductions in current expense, 3) reductions in county contract sites, and 4) miscellaneous other reductions.

All personnel reductions equate to 25.5 positions or \$1.6 million.

In view of the time taken to prepare the reduction plans, Mr. Becker recommended the Council give considerable deference to the plans prepared by the court executives and the presiding judges.

Discussion took place.

Motion: Justice Nehring moved to thank the court executives and other court staff for their preparation of the proposed reduction plan and to approve the FY 2011 reduction plan as presented by Mr. Becker. Judge Maughan seconded the motion, and it passed unanimously.

15. FY 2011 ONE-TIME SPENDING PLAN: (Daniel J. Becker)

Mr. Becker reviewed the proposed FY 2011 spending plan with the Council. The areas reviewed included: 1) ongoing general funds, 2) one-time general funds, 3) ongoing obligations, and 4) proposed one-time obligations.

Areas highlighted in the ongoing general funds category included: 1) personnel set aside percentage, 2) the use of a four-week hiring slowdown, 3) judicial retirement requirements, and 4) post-retirement employment amendments, SB 43.

The areas highlighted as ongoing obligations included: 1) appropriated judicial retirement funds, 2) cost to fully fund FY 10 judicial retirement shortage, 3) Fifth juvenile judge, and 4) reinstatement of the employee career track.

A brief summary of the process of the Executive Budget Committee was provided. Mr. Becker highlighting the following one-time spending recommendations: 1) time-limited clerical, 2) district court law clerks, 3) tuition assistance, 4) employee incentive awards, 5) access survey, 6) grant matching funds, 7) executive development, 8) juvenile law clerk, and 9) DP equipment.

Clarification of the use of the senior judge budget was requested. Mr. Becker explained that senior judge assistance was part of the FY 2011 budget.

Chief Justice Durham thanked Mr. Becker and staff for their preparation of the budget plans.

Motion: Judge Willmore moved to approve the FY 2011 spending plan as presented. Ms. Nelson seconded the motion, and it passed unanimously.

Judge McCullagh reported that the Duchesne Justice Court is considering closing their East precinct in a month, and that there may be issues regarding whether Council approval of a waiver of notice is required.

Motion: Judge McCullagh moved to authorize the Management Committee to take any necessary action on behalf of the Judicial Council regarding the Duchesne Justice Court issue at their June meeting. Judge Orme seconded the motion, and it passed unanimously.

16. ADJOURN

The meeting was adjourned.