

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 22nd, 2010

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Michael Westfall, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Dane Nolan for Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Nancy Volmer
Diane Abegglen
Rosa Oakes
Katie Gregory
Susan Burke

GUESTS:

Hon. Suchada Bazzelle
Dan Weist, SL Tribune
Terry Keefe, Layton Police Chief

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

Chief Justice Durham welcomed everyone to the meeting. She mentioned that Judge Nolan would be sitting in for Judge Hornak who was participating in the Second District Nominating Commission.

Motion: Justice Parrish moved to approve the minutes as amended. Judge Steele seconded the motion, and it passed unanimously.

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

Chief Justice Durham reported on the following items:
A meeting with Speaker Clark is scheduled for November 24. Legislative leadership meetings will be held before the 2011 Legislative Session.

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

Mr. Becker reported on the following items:
He congratulated all judges retained in the current judicial election.

Mr. Becker announced the appointment of Mr. Ray Wahl as the Deputy State Court Administrator replacing Mr. Myron March who is retiring December 24. Mr. Wahl has served the courts well as the Juvenile Court Administrator. Mr. Becker met with the Board of Juvenile Court Judges to discuss the appointment of the new Juvenile Court Administrator. He congratulated Mr. Wahl on his new appointment.

A meeting with Speaker Clark is scheduled for Wednesday, and a meeting with Senator Hillyard was held on November 2.

Legislative update meetings will be held in each district throughout the state at the end of December and the first part of January.

The revenue projections were released last week showing that the State is \$10 million over projections for the current fiscal year.

Mr. Becker provided case filing data for the first 4 ½ months of FY 11. District Court case filings were up 16% in FY 10, and they remain flat for the same time period in FY 11. Juvenile court referrals are down 7%.

The Online Court Assistance program usage went from 8,200 filings from previous years to 22,500 in FY 10, another indication of the impact of the recession on the courts.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. She highlighted the following areas discussed at the meeting: 1) audit reports, 2) review and approval for a mental health court project to move forward, and 3) mileage rate change.

Liaison Committee Report:

No meeting was held in November. The Committee will determine if a December meeting is necessary.

Policy and Planning Meeting:

Mr. Shea reported on the following:

Two items discussed at the November Policy and Planning meeting will be discussed further later in the meeting. The two items include: 1) approval of rules, and 2) court interpreter and Title VI issues.

He noted that Policy and Planning is recommending a transition period regarding evaluations of commissioners and senior judges. It is anticipated that the change will go into effect April 1, 2011. It is recommended that the contract be renewed with Market Decisions to conduct surveys on commissioners and senior judges up for evaluation in 2011, and enter into a new contract for 2012.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar Committee will meet Friday, December 3. Their main focus is preparing for the 2011 Legislative Session.

The Fall Forum had an attendance between 450-500 participants.

5. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided an update on the legislative highlights to the Council.

He reported on the internal legislation that will be advanced during the 2011 Legislative Session. The housekeeping bill will be sponsored by Senator Hillyard. The juvenile court amendments bill will be sponsored by Representative Harper. Mr. Schwermer mentioned that Representative Harper is combining the bill with another bill dealing with child welfare issues. The resolution on Orem will be sponsored by Senator Valentine, and the guardianship bill from last year is being advanced by Representative Powell.

Mr. Schwermer provided the following highlights: 1) death penalty amendments, 2) drug offender reform act, 3) defendants' appellate representation, 4) renewal of judgment act, and 5) shared parent-time.

The Senate Judicial Confirmation Committee confirmed the appointments of Charlene Barlow and Andrew Stone to fill the vacancies in the Third District Court.

He mentioned that the Alcohol or Drug Related Offense Amendments were approved as a committee bill which modifies provisions relating to the driver license suspension period and other sentencing requirements for certain alcohol or drug related offenses. An overview of what the current bill allows for was provided.

6. CODE OF JUDICIAL ADMINISTRATION RULES FOR APPROVAL: (Tim Shea)

Chief Justice Durham welcomed Mr. Shea to the meeting.

Mr. Shea mentioned that Mr. Terry Keefe, Layton Police Chief, would be attending the meeting to speak on behalf of CJA 04-0702 - Electronic Citations Required. He reported that there are five rules that were published for comment and are now ready for final Council approval. He reviewed each rule to include:

CJA 02-0103 - Open and closed meetings. The rule is being amended to clarify that a meeting can be closed to discuss the professional competence of an individual and add discussion of a non-public document as grounds to close a meeting. Mr. Shea provided examples of issues that would fall into the category of closing a meeting. Discussion took place.

CJA 04-0202.02 - Records classification. The rule is being amended to classify a record of a Children's Justice Center investigative interview as a protected record before conclusion of legal proceedings and as a sealed record after the conclusion of legal proceedings.

CJA 04-0202.06 - Response to request to access or classify a court record. This rule is being amended by incorporating amendments to GRAMA by HB 278 and HB 133. The amendment requires that if a records request claims to qualify for an expedited response, the records custodian will, within 5 business days, respond or notify the requester that the request does not qualify.

CJA 04-0702 - Electronic citations required. This is a new rule that requires that citations filed after July 1, 2012 be filed electronically. Discussion took place.

A concern regarding the use of electronic citations dealing with the cost to manage and maintain the system, was raised. It was determined that the issues deal with access to the hardware, it is not a software issue.

Mr. Terry Keefe, Layton Police Chief, expressed the concern of the Utah Chiefs of Police Association with the cost to replace and maintain printers that would need to be installed in each patrol car. A suggestion was made to seek grant funding for the hardware relative to use of

electronic citations. Transmission of the electronic citation from a police department to public safety rather than from a patrol car was suggested as a solution to eliminate installation of printers in every patrol car. Discussion took place.

It was determined that special circumstances or needs may need to be addressed at a later date.

It was noted that Policy and Planning pushed back the implementation date six months after reviewing the comments received.

CJA 07-0308 - Expungement procedures. The recommendation is to repeal this rule as all provisions of this rule are contained in URJP 56 or Section 78A-6-1105.

Motion: Judge Orme moved to approve CJA 04.0202.02, CJA 04-0202.06, and CJA 07-0308 as submitted. Judge McCullagh seconded the motion, and it passed unanimously.

The Council was in consensus to table CJA 02-0103, and sent it back to Policy and Planning for further study.

Motion: Judge Orme moved to approve CJA 04-0702 whereas the data from the citations shall be transmitted electronically to the courts. Judge McCullagh seconded the motion, and it passed unanimously.

7. REPORT ON COURT INTERPRETER USE 2008-2010: (Tim Shea)

Chief Justice Durham mentioned that Mr. Shea would report on court interpreter use throughout the years to provide the Council with a background to the use of court reporters relative to Title VI which was undertaken by Policy and Planning during the 2010 calendar year as a study item.

Mr. Shea welcomed Ms. Rosa Oakes to the meeting. He reported on the historical use of court interpreters from 2008-2010 in the trial courts. He highlighted the following relative to court interpreter use: 1) total cost for court interpreters, 2) languages where court interpreter services were provided, 3) total interpreter assignments, 4) Hispanic or Latino population, 5) Spanish interpretation, 6) Navajo and Vietnamese interpretation, 7) interpretation in languages other than Spanish, Navajo and Vietnamese, and 8) interpreter need and availability.

The total cost for court interpreters in 2010 was \$897,153. Total interpreter assignments in 2010 were 8,423.

Mr. Shea reported that the Interpreter Committee's main focus will be to recruit interpreters, especially those languages where no interpreters are available. Discussion took place relative to telephonic interpretation and its use.

8. REPORT FROM POLICY AND PLANNING ON TITLE VI AND COURT INTERPRETERS: (Tim Shea)

Mr. Shea provided an update from Policy and Planning to the Council on Title VI and court interpreters which resulted from the Council's selection of the topic as the 2010 study item. Policy and Planning was charged with investigating the federal law and determine how best Utah courts would manage court interpreter services relative to Title VI.

He reviewed a letter from Assistant Attorney General Perez which advises that the position of the US Attorney General is that federal law requires, as a condition of receiving

federal funds, the appointment, without cost, of an interpreter in all court proceedings in which a person of limited English proficiency (LEP) is involved.

Mr. Shea summarized the following key recommendations: 1) extend Rule 3-306 to all legal proceedings, 2) establish a procedure to review denial of an interpreter, 3) establish a procedure to review denial of a claim of impecuniosity, 4) improve notice of the right to an interpreter, 5) monitor and meet the need for interpreter coordinators (schedulers), 6) improve training and testing for interpreters in languages other than Spanish, 7) improve training and testing for credentials other than “certified”, and 8) improve training for court personnel.

The recommendation is to appoint a certified (or other appropriately qualified) interpreter in all cases. In preparing the recommendations, the Brennan Center for Justice publication Language Access in State Courts was used as a basis for the Utah Interpreter Program as outlined in the recommendation. Discussion took place relative to court interpreters and court interpreter fees.

Management of court interpreter fees is maintained through the jury, witness, interpreter fund. An explanation of this fund’s management was provided.

It is recommended that the courts continue to professionally translate into Spanish as many web pages and forms as possible.

Mr. Shea noted the use of the Google translation feature which can be found on the state website.

Motion: Judge Orme moved to accept the report and endorse the recommendations relative to Title VI and court interpreters and send the rule changes out for comment. Judge Stoney seconded the motion, and it passed unanimously.

Members of the Policy and Planning Committee were thanked for all the work done to prepare the recommendation for the Council on Title VI and court interpreters.

9. CERTIFICATION OF SENIOR JUSTICE COURT JUDGES: (Tim Shea)

Nine justice court judges have applied for certification as senior justice court judges. They include: 1) James E. Box, active; 2) Betty Burns, active; 3) Richard D. Carr, active; 4) Rex C. Conradsen, inactive; 5) Geraldine Enniss, inactive; 6) Timothy C. Haveron, active; 7) William H. Keetch, inactive; 8) Lee G. Osborne, inactive; and 9) Sara Watson, active. Discussion took place.

Motion: Judge McCullagh moved to approve the certifications of the above-mentioned justice court judges as senior justice court judges and send their names to the Supreme Court. Judge Petry seconded the motion, and it passed unanimously.

10. MERITORIOUS SERVICE AWARD PRESENTATION: (Chief Justice Christine M. Durham)

The award winner was unable to attend the presentation today. Another date is being looked at.

11. EXECUTIVE SESSION

An executive session was not needed at this time.

12. BOARD OF JUVENILE JUDGES UPDATE: (Judge Suchada Bazzelle and Ray Wahl)

Chief Justice Durham welcomed Judge Bazzelle, new Juvenile Board chair, to the meeting.

Judge Bazzelle provided an update to the Council on the activities of the Board of Juvenile Court judges. She welcomed Mr. Wahl, Ms. Susan Burke, and Ms. Katie Gregory to the meeting.

She highlighted the following in her presentation: 1) listed the members of the board, 2) 2010-2011 Juvenile Board goals, 3) statistical data on referrals, and 4) challenges faced by the Juvenile Board.

The 2010-2011 Juvenile Board goals include the following: 1) continue to implement and track evidence-based practices, 2) track permanency measures, 3) clerical restructuring support committee, 4) implement electronic record, 5) receive training on Interstate Commission for Juveniles and form a state council, 6) working with Bail Schedule Committee to review the bail schedule for any modifications, and 7) provide leadership for quality education of court involved youth.

Mr. Wahl mentioned the Correctional Program Checklist website and the information that can be obtained from this site. A demonstration of the website will be given in the Spring at the Juvenile Court Judges Education Conference.

Judge Bazzelle highlighted the following relative to use of the Interstate Commission for Juveniles: 1) there are 46 states participating in the Interstate Compact for Juveniles, 2) it provides for the welfare and protection of juveniles and the public, 3) is the only legal process for returning runaways, and 4) promotes public safety and ensures effective monitoring of juveniles moving across state lines.

There will be a Truancy Summit held in January of 2011.

It was noted that the total number of cases referred to the juvenile court increased between 2006-2008 and then declined between 2008-2010.

The challenges reported by the Board of Juvenile Court Judges included: 1) budget reductions in executive agencies that provide services to children and families, 2) judges meeting child welfare statutory time frames and aspiring to principles of the Model Delinquency Guidelines, 3) addressing the ethnic diversity of court patrons, 4) cultivating effective interventions for youth in both the urban and rural courts and measuring these effective outcomes, and 5) always remembering the vision of Juvenile Court - "a safe home and safe community for all".

Questions were asked of Judge Bazzelle, and she provided provide explanations.

Judge Bazzelle was asked her perception of how the Guardian ad Litem was working relative to juvenile court support. She provided her opinion.

Chief Justice Durham thanked Judge Bazzelle for her presentation to the Council.

Judge Bazzelle thanked the Council for their assistance and support.

13. COUNCIL PHOTO

14. ADJOURN

The meeting was adjourned.