

JUDICIAL COUNCIL MEETING

Minutes

Monday, April 25th, 2011

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. Donald Eyre, Jr.
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:

Hon. Judith Atherton

GUESTS:

Lauren Hunt, Intern
August Lehman, Legislative Auditor
Joanne Slotnik
Max Burdick, Salt Lake County Council
David Bennett, Salt Lake County Criminal Justice
David Litvack, CJAC
Jim Bradley, Salt Lake County Council
Hon. Royal Hansen
Eve Furse
Hon. John Baxter
Hon. David Marx
Hon. Suchada Bazelle

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Lisa-Michele Church
Debra Moore
Rick Schwermer
Tim Shea
Diane Abegglen
Nancy Volmer
Brent Johnson
Derek Byrne
Alyn Lunceford
Jessica Van Buren
Mary Jane Ciccarello
Susan Burke
Katie Gregory
Misty Butler

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

Durham)

Chief Justice Durham welcomed everyone to the meeting to include various staff, as well as; Mr. August Lehman, Legislative Auditor and Ms. Lauren Hunt, Juvenile Court intern.

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

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

Chief Justice Durham had nothing new to report.

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

Mr. Becker reported on the following items:

Formal notice has been received from the State Justice Institute (SJI) that the courts have been awarded \$270,000 in grant funding to be used over a three-year period for the Court Visitor Program in guardianship and conservatorship proceedings.

The Self-Help Center has received \$10,000 in grant funding from the Michael’s Foundation to support the Self-Help Center.

Mr. Becker highlighted the following court conferences/workshops to be held in May: 1) District Court Conference, 2) Presiding Judge/Trial Court Executive Workshop, and 3) Juvenile Court Conference. The Justice Court Conference was held in April.

He reminded the Council members that the May 23 Council meeting will be held at the Manti Courthouse where they will be given an update from Judge Wallace Lee and Mr. Wendell Roberts, trial court executive, on the transition from a contract-managed court site to a state-managed court site. Mr. Becker mentioned that there may be other such transitions in the future, and this will give the Council information on the issues involved.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today’s agenda.

Liaison Committee Report:

No meeting was held in April.

Policy and Planning Meeting:

Mr. Shea provided the following summary:

The majority of the meeting was spent discussing rules relative to public access and private court records. There was a discussion of what case types to classify as private. It was mentioned that a motion can be made, in an individual case, to make individual cases private. It was determined to leave the current policy in place. If there is an increase in the number of motions to make particular case types private, the policy will be examined further.

Rule CJA 03-0408 - Inventory is on the consent calendar as a rule to be published for comment.

Ms. Nelson has been selected as the new President-Elect of the Utah State Bar during the Bar's Spring Conference. Chief Justice Durham congratulated Ms. Nelson on her selection as President-Elect of the Utah State Bar.

Bar Committee Report:

Ms. Nelson reported on the following:

The newly-elected Bar Commissioners at the Spring Conference include: 1) Mr. Rob Rice, 2) Mr. Dickson Burton, and Ms. Eve Furse. An orientation will be held for the new Commissioners at the end of May, and they will be sworn in at the Annual Conference in July.

The Bar Commission approved the following at their March meeting held in St. George in conjunction with their Spring Conference: 1) a Utah State Bar Media Campaign to educate the public about lawyers, 2) a contribution of funds for the women lawyer's first 100 banquet, and 3) use a new publisher to print the Bar Journal with a slightly lower quality paper which saves a substantial amount of money. Ms. Nelson was asked if consideration had been given to providing the Bar Journal online. She reported that it has been discussed, but the decision has been made not to go in that direction, at the present time. Ms. Nelson and Judge Orme provided their opinions on the quality of the Bar Journal from the new publisher.

Ms. Nelson mentioned that with over 7,500 active bar members, less than 2,000 members voted in the Bar election. She expressed concern with the lack of participation.

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

Ms. Slotnik provided an update to the Council on the activities of the Judicial Performance Evaluation Commission.

Her update focused on courtroom observations. She mentioned that the courtroom observers are volunteers. Many of the citizens volunteering as courtroom observers are civic-minded, educated, retired professionals. The training provided for the courtroom observers is becoming more sophisticated. Currently, there are 28 courtroom observers. Each observer spends 2-4 hours in a courtroom observing a judge before completing their report. There will be five observers for each courtroom.

Ms. Slotnik was asked if the judges are informed when a courtroom observer is visiting their courtroom. She noted that in most circumstances, they are not; it is completely anonymous.

Review of the courtroom observation data took place.

The courtroom observation report consists of two parts. The first part centers on the four principles of procedural justice: 1) neutrality, 2) respect, 3) trust, and 4) voice. For each principle, a question is asked with the request of the following three responses: a) consider which behaviors you observed, b) describe the judge's performance on the bench, and c) score the judge on that principle. The score is based on the following standards: 1 = inadequate performance, 2 = substandard performance, 3 = acceptable performance, 4 = very good performance, and 5 = outstanding performance.

The second part of the observation asks additional, more general questions and provides an opportunity for other comments on the courtroom observer's experience in the particular judge's court.

Ms. Slotnik reviewed sample reports of courtroom observations for judges.

She mentioned that the Commission is determining the best approach to studying the narratives and how to best use the content.

The Commission is addressing the area of performance standards for evaluating justice court judges. A meeting has been held with the Board of Justice Court Judges regarding the performance standards. It was discussed that evaluating full-time justice court judges could be done the same as district and juvenile judges. It was decided that the current evaluation process would not work for part-time justice court judges. The Commission would like to proceed with part-time justice court judges with the same process undertaken for the 2010 justice court judges. Ms. Slotnik mentioned that a letter has been prepared for the governor to address the Commission's request during a special session of the Legislature.

Ms. Slotnik clarified the performance standards as amended in the 2011 Legislative Session. Discussion took place. She noted that court staff are included with attorneys in compiling the performance evaluation survey results.

Chief Justice Durham thanked Ms. Slotnik for her update.

6. SALT LAKE COUNTY COURTROOMS AT JAIL PROPOSAL: (Max Brudick, David Bennett, and Daniel J. Becker)

Introductions were made to the key players involved with the Salt Lake County courtrooms at the jail proposal to include: 1) Mr. Max Brudick, Salt Lake County Council Chair; 2) Mr. David Bennett, Salt Lake County Criminal Justice Consultant; 3) Mr. Jim Bradley, Salt Lake County Council Member; and 4) Mr. David Litvack, CJAC Director.

Chief Justice Durham noted that this is not a discussion about the Early Case Resolution (ECR) pilot project. The Council has been briefed on Early Case Resolution (ECR) previously and is supportive of the pilot project. The discussion is regarding policy issues related to the question of placing courtrooms in jail facilities. She reported that the Judicial Council has received information that the Salt Lake County Council is considering investing in a planning process that may be aimed at placing courtrooms in the jail facilities. When the Early Case Resolution pilot program was presented to the Council, the issue of placing courtrooms in the jail facilities was not mentioned.

Mr. David Litvack, CJAC Director, provided information of what is being considered. He reported that review of existing Early Case Resolution programs is taking place and discussion of placing a court facility by the jail to optimize efficiencies is being considered.

Mr. David Bennett, Salt Lake County Criminal Justice Consultant, mentioned that he has been involved with Early Case Resolution programs throughout the country. He provided statistical data on the current Early Case Resolution pilot program being conducted in the Third District Court.

It was reported to the Judicial Council that the Salt Lake County Council is looking at conducting a feasibility study to place a courtroom near the jail with a secure passageway from the jail to the courtroom facility. The Salt Lake County Council has agreed to conduct the study.

Questions and discussion took place. Included in the discussion were issues relative to transportation, video options, the extent to which felonies were being pled down to misdemeanors, and public access to the facility.

The Salt Lake County Council is requesting the courts to consider being part of the study.

Chief Justice Durham thanked the Salt Lake Council representatives for their discussion.

Discussion on the process to follow when determining the placement of a courtroom near or in a jail facility took place. The process may include the modification or adoption of a local rule. A proposed rule would come before the Council for approval. It was noted that the Third District Court is in agreement of conducting a feasibility study.

The Judicial Council is comfortable with the Salt Lake County's plan to proceed with a feasibility study; but is taking no position, at the present time, on placing courtrooms at the jail or in close proximity to the jail. The Council would consider the issue if a request for a local rule change was advanced to the Council by the Third District Bench and Board of District Court Judges.

The Salt Lake County Council representatives and Judge Royal Hansen were thanked for their attendance at the meeting.

7. INITIATIVE ON THE ADVANCEMENT AND RETENTION OF WOMEN IN LAW FIRMS: (Eve Furse)

Ms Furse, Senior Attorney for the Salt Lake City Attorney's Office and recently elected Bar Commissioner, was welcomed to the meeting.

She provided background information on the undertaking of *The Utah Report: The Initiative on the Advancement and Retention of Women in Law Firms - October 2010*. The project focus began almost five years ago with involvement from University personnel, Bar members and students. Focus on answering the following two questions took place: 1) do Utah law firms face greater challenges retaining and promoting female attorneys than male attorneys, and 2) if so, what concrete, unbiased actions can Utah law firms and Utah attorneys take to meet these challenges.

The following areas were highlighted from the report: 1) the twin elephants in the room; sexual harassment and sex discrimination, 2) survey overview, 3) Utah, we have a problem, 4) fostering advancement and retention of women through improving the work environment, 5) fostering advancement and retention of women through professional development, 6) fostering advancement and retention of women through professional recognition, and 7) basic principles and conclusion.

The Initiative provides a statewide foray into addressing the modern issues facing law firms in advancing and promoting women. The report provides practical and specific steps firms and attorneys can take to improve firm practice generally and the experience of women specifically. The following basic principles to advance and retain female lawyers were highlighted: 1) increase awareness of potential for implicit gender bias; 2) commit to working toward and achieving a workplace free from gender bias; 3) create clear, consistent evaluation, promotion, and compensation systems; 4) communicate openly, honestly, and frequently; 5) invest equally in the success of all associates; and 6) include all associates in formal and informal firm activities and relationships.

Ms. Furse was thanked for her report.

8. PRO BONO LEGAL ASSISTANCE REQUEST: (Brent Johnson)

Motion: Judge Westfall moved to enter into an executive session for the purpose of discussing matters relative to litigation. Judge Maughan seconded the motion, and it passed unanimously.

It was reported that the Management Committee was authorized to work with Mr. Johnson to resolve this issue.

**9. IMPLEMENTATION OF GUARDIANSHIP AND CONSERVATORSHIP
RECOMMENDATIONS: (Tim Shea)**

Mr. Shea was welcomed to the meeting.

Mr. Shea spoke on behalf of the ad hoc Committee on Probate Law and Procedure regarding recommendations in regards to guardianship and conservatorship. The Committee recommends that we move forward on the areas where the work can be addressed in the courts, prepare a draft with the issues that need to be addressed by the legislature, and leave the remainder of the Guardianship Act alone.

The Committee recommends that we proceed with the following: 1) address the changes to the rules, 2) move forward with education efforts with judges, lawyers, and the public at large, and 3) improve the web page and the forms available to the public.

Mr. Shea reported that grant funding has been received from the State Justice Institute to fund the Court Visitor Program for the Guardianship program.

Discussion took place.

Mr. Becker provided feedback on discussion that took place regarding a Guardianship/Conservatorship report provided at the State Justice Board meeting held on Friday, April 22.

The Council was in agreement to implement the areas recommended by Mr. Shea before considering further legislation.

10. FY 2012 BUDGET REDUCTIONS: (Daniel J. Becker and Ray Wahl)

11. FY 2012 SPENDING PLAN: (Daniel J. Becker and Ray Wahl)

Mr. Becker mentioned that there are two parts to be considered relative to the budget to include: 1) approval of the FY 2012 budget reduction, and 2) approval of the FY 2012 spending plan, ongoing and one-time funds. He mentioned the importance of considering the spending plan recommendations relative to the budget reductions when approving each part.

He reviewed the FY 2012 budget reduction information that was presented at the March Council meeting. He reminded the Council of the ongoing reduction for the courts in the amount of \$2,385,100.

Mr. Wahl reviewed the FY 2012 Spending Plan Recommendations for ongoing and one-time funds. He highlighted the categories relative to revenue for ongoing funds to include: 1) ongoing personnel turnover savings, and 2) Voice Over Internet Protocol (VOIP) savings.

An overview of the conversion of the current phone system to VOIP in the Matheson Courthouse was provided. The cost savings for this conversion was noted. Courts currently using the VOIP phone system include: 1) St. George, 2) West Jordan, 3) Spanish Fork, and 4) City Probation.

Mr. Wahl reviewed the recommended expenditures relative to ongoing funds to include: 1) employee career track increases, FY 2011; 2) employee career track increases, FY 2012, and 3) VOIP staff support.

With the conversion to VOIP, it will be an independently operated system from ITS, they provided support. The courts will now need to provide staff to manage the system.

For one-time funding, it was mentioned that a considerable amount was set aside in reserve last year that will be carried forward into FY 2012. Mr. Becker mentioned that the spending plan can be revisited in September, and any modifications can be made at that time, if deemed necessary. The revenue for one-time funds for FY 2012 include: 1) legislative

appropriation, 2) Online Court Assistance Program (OCAP) appropriation, and 3) projected carry forward. The total revenue for one-time funds is \$1.9 million.

Mr. Becker reviewed the recommended expenditures relative to one-time funding for FY 2012 to include:

Time Limited Clerical - Judicial Service Representatives. It is recommended that two positions be funded from appropriated one-time funds. With this, there will be no reduction to the time limited clerical staff in FY 2012.

Time Limited Law Clerks. It is recommended that two positions be funded with one-time funds. With this, the number of law clerks will remain the same in FY 2012 as in FY 2011.

Juvenile Law Clerk. It is recommended to fund .5 of this position with one-time funds.

Self Help Center. It is recommended to continue funding the temporary staff with one-time funds through FY 2012.

Additional Senior Judge Funds. Senior judge funding was modified in September of 2010 to include an additional \$100,000. It is recommended that an additional \$100,000 again be funded for FY 2012 to aid in reducing delay and backlog. This amount is in addition to that included in the base budget.

Additional IT Personnel Support. It is recommended to provide additional funding to support the promotion of the electronic record with emphasis on the case management projects currently being worked on.

Employee Incentive Awards and Tuition Assistance. It is recommended to increase the amount of funding provided for these areas in FY 2012.

Second Language Stipend. It is recommended to increase the funding amount for FY 2012 in this category.

Employee Assistance Program, ProTem Judge Training, Presiding Judge/Court Executive Education. The recommended funding for these categories remains the same for FY 2012 as was funded in FY 2011.

Leadership Conference. This conference is in its 7th year. Previously, it operated with grant funding—specifically focusing on juvenile court needs. For the past two years, it has been offered to attendees from juvenile, district and appellate court. Grant funding prohibits funding for courts other than juvenile court. It is recommended to provide one-time funds to include district and appellate courts.

Drug Court Conference. It is recommended to provide one-time funding to allow travel reimbursement for judges and court staff coordinators.

Access Survey, Document Translation. The recommended funding for these categories remains the same for FY 2012 as was funded in FY 2011.

Online Court Assistance Program (OCAP). The legislature authorized an additional \$100,000 for OCAP for FY 2012.

Reserve. It is recommended to leave \$357,000 in reserve for FY 2012 from one-time funding.

Mr. Becker mentioned that if the spending plans are adopted by the Council, the clerical staff and the law clerks would remain staffed at the same levels they are currently staffed at. The following staff reductions would also be included in the plan, if approved: 1) one less FTE in the Administrative Office of the Courts, 2) .5 less FTE in the Appellate Courts, and 3) 8 fewer probation staff. If funding is not available in FY 2013, the clerical staff would need to be reduced by four positions, and the law clerks by five positions.

Discussion took place relative to the case filing and referral information that was provided at the March meeting. The Council was reminded that the juvenile clerical and juvenile probation workload is down considerably, and the juvenile and district judges workload remains flat.

Concern was expressed relative to the size of reduction in probation staff.

Mr. Becker reminded the Council that they authorized a hiring freeze effective April 1, 2011. If the spending plan is approved, the hiring freeze will be lifted with the exception of the probation and AOC positions. As positions come vacant, there will be no delay in filling vacancies.

Motion: Justice Parrish moved to approve the FY 2012 recommended budget reductions including the recommended actions and recommended staff reductions as presented. Judge Eyre seconded the motion, and it passed unanimously.

Motion: Ms. Nelson moved to approve the FY 2012 Spending Plan Recommendations for ongoing funds. Judge Hornak seconded the motion, and it passed unanimously.

Motion: Justice Parrish moved to approve the FY 2012 Spending Plan Recommendations for one-time funds. Judge Westfall seconded the motion, and it passed unanimously.

12. JURY VIDEO: (Nancy Volmer)

Ms. Volmer was welcomed to the meeting.

She thanked the Council for approving funding for the new jury video to be produced.

She reported that the new video has been produced. Distribution of the video was discussed.

The Council members viewed the video. Council members were complimentary of the video.

Ms. Volmer mentioned that Law Day is Sunday, May 1. A link to a panel discussion moderated by Chief Justice Durham can be found online.

13. RESOURCES FOR SELF-REPRESENTED PARTIES UPDATE: (Judge John Baxter and Tim Shea)

Judge Baxter was welcomed to the meeting.

He provided an update to the Council on the activities of the Committee on Resources for Self-Represented Parties to include: 1) committee membership, 2) strategic planning session, 3) web-pages and forms—and one program, 4) law library classes, 5) self-help center, and 6) challenges.

Judge Baxter reported that the committee would be holding their strategic planning session on Tuesday, April 24.

He mentioned that the following information is included on each form that is prepared: 1) a brief description of law, 2) a brief explanation of law, and 3) a checklist to aid in filling out the form.

It was reported the forms provided are separate from the forms found on the Online Court Assistance Program (OCAP). Ms. Van Buren provided an explanation regarding use of the Self-Help forms vs using the forms on OCAP. The question was ask as to whether the forms are

being tracked for volume. It was reported that tracking of the forms is not currently taking place. A meeting is held every Thursday morning for discussion and review of the forms.

Judge Baxter reported that half of the state, geographically, has access to the Self-Help Center. The Self-Help Center is accessible in the following districts: 1) 1st District, 2) 2nd District, 3) 6th District, 4) 7th District, and 5) 8th District. The Committee's goal is to expand the Self-Help Center to statewide accessibility. The four methods by which to contact the Self-Help Center include: 1) toll-free help line, 2) mail and email, 3) text, and 4) court website.

Judge Baxter thanked the Council for the approval of one-time funding for the part time attorneys through FY 2012. The Committee continues to seek grant funding for staffing of the program.

Chief Justice Durham thanked Judge Baxter for his update. Ms. Van Buren and Ms Ciccarello were thanked for all they do on behalf of the Self-Help Center.

14. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge David Marx and Rick Schwermer)

Judge Marx was welcomed to the meeting.

He provided an update to the Council on the activities of the Board of Justice Court Judges.

Judge Marx referred to the *Broken Bench Series* prepared by the New York Times in regards to the "State of the Justice Courts".

He highlighted the recent projects of the Board of Justice Court Judges to include: 1) CORIS conversion in the justice courts, 2) transition of small claims to justice courts, 3) update to the re-established association bylaws, 4) implementation of the justice court newsletter, and 5) completion of the Annual Spring Justice Court Conference.

Current projects being addressed include: 1) completion of the CORIS conversion, 2) the transition of responsibilities to the new education co-chairs, and 3) preparing for implementation of SB 318 dealing with digital recordings of proceedings in justice courts.

Upcoming projects include: 1) reviewing Title 78A for any necessary housekeeping changes, 2) review of nominating committee compositions, 3) developing a proactive strategy of getting more positive press concerning the justice courts, and 3) training judges on the implementation of SB 318.

Future consideration by the Board of Justice Court Judges may include: 1) judicial independence issues, 2) transition to a paperless system, and 3) methods of improving the message being projected to the public concerning justice courts, in general.

Judge Marx requested that the Chief Justice include and recognize the justice courts as part of the judiciary in her State of the Judiciary Address. The Board of Justice Court Judges believes this action would help educate the public to the positive that are seen in the justice courts.

A copy of the Justice Court newsletter was distributed.

An explanation of the existence of the Justice Court Judges Association was provided. Chief Justice Durham provided her opinion on the existence of this association as part of the judiciary.

Judge Marx was thanked for his update.

15. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Suchada Bazelle and Lisa-Michele Church)

Chief Justice Durham welcomed Judge Bazelle.

Judge Bazzelle provided an update to the Council on the activities of the Board of Juvenile Court Judges. She highlighted the status of the Board's 2010-2011 goals to include: 1) continue to implement and track evidence-based practices, 2) track permanency measures for DCFS youth who are under the jurisdiction of the court and identify areas for improvement, 3) receive information from the Clerical Restructuring Support Committee on progress being made on clerical restructuring, 4) implement "electronic record" and provide leadership in the identification of electronic solutions, 5) provide training on Interstate Commission for Juvenile and form a State Council, 6) review the fine and bail schedule for any suggested modifications, and 7) provide leadership for quality education of court-involved youth.

The following areas relative to evidence-based practices were highlighted: 1) the use of Carey Guides by probation officers with youth, 2) input on how to structure statewide judicial training on DCFS's Structured Decision Making Model, and 3) use of the Correctional Program Checklist (CPC) with its State Supervision and contracted programs.

Judge Bazzelle reported that child welfare e-warrant programming has been completed. Two board members will participate in a pilot of the e-warrant program in May, and all judges will be trained at the Annual Conference.

The following areas relative to Education of Court-Involved Youth were highlighted: 1) the Initiative on Utah's Children in Foster Care's Education Workgroup revamped the Youth in Custody Coordinating Council, publishing the Education Resources manual, and established DCFS Education Specialists in each region of the state; 2) efforts are underway to train CASA volunteers to specialize in education advocacy, and 3) a statewide Truancy Summit was held in January.

Other areas of interest include: 1) following the progress of the Council's study of electronic media in the courtroom, particularly cell phone use; 2) the development of a tool kit by the CIP Dual-Adjudication Subcommittee to outline best practices and common issues; and 3) the Initiative on Utah's Children in Foster Care is exploring resources available for foster youth with mental health needs.

Judge Bazzelle expressed her appreciation to the Board and juvenile staff for all their accomplishments.

Statistical information was reviewed in the following categories: 1) total referrals to the juvenile court between FY 2006-FY 2010, 2) delinquency referrals to the juvenile court between FY 2008-FY 2010, 3) child welfare referrals to the juvenile court, 4) child welfare outcomes: reason for exiting foster care, and 5) referrals by type to the juvenile court.

She mentioned that the total number of cases referred to juvenile court increased between 2006 and 2008 and then declined between 2008 and 2010. It was noted that the Termination of Parental Rights category is one of the areas that has seen an increase. Possible reasons for the decrease in referrals were discussed. The statistics provided are reflective of the national trend.

Chief Justice Durham thanked Judge Bazelle for her thorough overview.

16. ADJOURN

The meeting was adjourned.