

JUDICIAL COUNCIL MEETING

Minutes

Monday, May 23rd, 2011

West Courtroom

Manti Courthouse

Manti, 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. 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.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Diane Abegglen
Alyn Lunceford
Brent Johnson
Kim Allard

GUESTS:

Rob Jeffs, Utah State Bar President
Hon. Paul Lyman
Wendell Roberts, 6th Dist TCE

EXCUSED:

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

Judge Westfall welcomed everyone to the meeting, and he informed the Council that Chief Justice Durham would be in attendance shortly.

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

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

Chief Justice Durham reported on the following items:

She and Mr. Becker participated as members of the Executive Session for State Court Leaders in the 21st Century, John F. Kennedy School of Government, Harvard University. The session took place over a three-year period with two meetings per year. The membership addressed emerging issues facing state courts. Chief Justice Durham and Mr. Becker co-authored and submitted a paper for publication addressing court governance.

She commented on the economic difficulties facing many states and how other state courts have dealt with the economic downturn.

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

Mr. Becker reported on the following items:

Mr. Becker received a request for information on Utah's court governance model from a consultant working with the country of South Africa. South Africa is examining how they operate and govern their court system. Utah's Judicial Council is being recommended to the South African courts as the model they should consider adopting.

Westlaw has been selected as the legal research provider for the courts, effective June 1. Training is available. The Bar has offered the use of Case Maker as well.

Mr. Becker mentioned that the Council meeting this month is being held in Manti to allow the Council to hear from the court executive and the presiding judge on what changes were made to transition from a contract-managed court site to a state-managed court site. He provided background information regarding a past request to build a new court facility in Sanpete County. With the Manti court now a state site, a request for a new state court facility has been made by the Sanpete County Commission. A tour of the court facility will be provided at the end of the meeting.

Mr. Schwermer provided an update on the Interim Committee meeting held on Wednesday, May 18. It was noted that Mr. Rob Jeffs and Ms. Lori Nelson, Utah State Bar, were in attendance for the sunset review of the unauthorized practice of law statute.

Mr. Schwermer provided background information relative to the provision and discussion at the time the sunset provision was approved. Discussion took place. The rule was reauthorized and will re-sunset in five years.

Mr. Becker and Mr. Bowmaster presented information to the Judiciary Committee on what is taking place in the courts relative to electronic records.

During the last session, there was a bill run by Representative Oda on Judicial Performance Evaluation Commission and justice courts. During the session, it did not get prioritized, and it did not pass. Representative Oda has brought it back up for consideration. It has been approved to be on the agenda for the next special session. Mr. Schwermer provided information regarding the discussion relative to the bill. The compromise on the health insurance bill will be on the agenda as well.

Chief Justice Durham reported that there is an article in the American Judicature Society Journal on retention election. Of all the retention states, Utah has the highest affirmative retention votes.

Judge Westfall was thanked for starting the meeting.

Mr. Becker reported that several court employees, Jessica Van Buren, Mari Cheney and Judge Marsha Thomas co-authored a publication entitled Utah Legal Research.

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 May.

Policy and Planning Meeting:

No meeting was held in May.

Bar Committee Report:

Ms. Nelson reported on the following:

The next meeting will be held on June 1 in Provo to allow the Commission to meet with the Central Utah Bar Association. The Commission is in the process of selecting their annual award winners to include: 1) the lawyer of the year, 2) the judge of the year, 3) the committee of the year, and 4) the section of the year.

They are soliciting to fill a vacancy for an experienced lawyer on the Ethics Advisory Committee.

5. UPDATE ON BAR'S PUBLIC RELATIONS/EDUCATION PROJECT: (Rob Jeffs)

Mr. Jeffs updated the Council on the Bar's Public Relations/Education Project. He mentioned that the Bar used the same media firm and had the same perspective on dealing with media related items for the past 18 years. He provided background information of what types of public education took place during that time as well.

The Bar determined that they want to take a more active role in what message is presented to the public on the Bar and the courts. The Bar has now contracted with Love Communications to prepare a media campaign to get the Bar's message out to the public.

Messages from Texas and Georgia in their media campaigns were played for the Council. A media campaign with a series of five to six messages is being designed for radio. The kickoff of the media campaign is May 9. Separate print documentation will be developed.

He highlighted various Bar events where media coverage was provided. Discussion took place.

Questions were asked relative to Hispanic radio coverage. Mr. Jeffs reported that the Hispanic market is not being addressed in the current media campaign. Future plans may include additional radio stations. Mr. Jeffs was asked if there were plans for assessing and evaluating the results of the media campaign. He indicated the budget for the project would not allow for extensive program evaluation.

Mr. Jeff's was thanked for his presentation.

6. PROJECT "SAFE SURRENDER": (Rick Schwermer)

Mr. Schwermer provided background information on the project. It is modeled after a federally-funded effort to implement the project. It was noted that this is not an amnesty program. The intent of the project is to encourage people to address any outstanding warrants in a non-threatening location over a four-day period.

The information was presented to the Management Committee at their May meeting by Mr. Gary Cox and several federal officials. A number of questions regarding the logistics, legal issues, and statutory requirements were brought up. He highlighted the questions that were asked relative to the project to include: 1) what costs if any, would be incurred by the courts through their participation, 2) available security, 3) clerical support, 4) what electronic support will be available, 5) type of mechanism in place for victim support, 6) the use of interpreter

services, 7) how the cases will be entered, and 8) how juveniles should be handled. The issue of holding the event on church premises was of concern.

Mr. Johnson provided feedback related to church/state issues. He noted that a New Jersey court declined to hold the event because of the designated location being a church. Another state participated, but they elected not to holding it on church property as well. He recommended the use of another facility rather than a church. It was mentioned that the program has been discontinued in other states due to lack of funding. Discussion took place.

The possibility of holding a similar event in the courthouse was discussed. It was mentioned that Third District Court has held similar types of events in the past. The Council determined that the District Court Board should consider this proposal and make a recommendation to the Council.

Mr. Schwermer will inform Mr. Cox of the Council's discussion.

7. CCJ/COSCA PROPOSED CASE MANAGEMENT GUIDELINES: (Daniel J. Becker and Kim Allard)

Mr. Becker reported that the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have prepared a draft set of case processing time standards.

Mr. Becker reported that discussion took place at the presiding judge/court executive workshop in May relative to active pending cases.

The national time standards in place in most states are thirty years old. They do not reflect the contemporary operation of the courts today. CCJ/COSCA has been reviewing earlier standards and current guidelines for almost two years now. A draft proposal on case management guidelines will be presented at the CCJ/COSCA Annual meeting at the end of July. A table from the draft document was distributed to members of the Council. Mr. Becker reviewed data from the table. Discussion took place. It was noted that several of the standards may not be appropriate in Utah.

Mr. Becker suggested that the proposed guidelines be informally provided to presiding judges and court executives as a pilot test. The pilot would be discussed at future presiding judge meetings, and their feedback could then be shared with the Council.

It was decided that Ms. Allard will run reports and distribute to presiding judges for their review and input, on a pilot basis.

Ms. Allard reviewed data relative to active pending cases from July 1, 2010 to May 1, 2011. In July of 2010, there were 87,836 active pending cases. In May of 2011, there were 69,253 active pending cases. A review of age of active pending cases was highlighted in the following manner: 1) in all judicial districts, by case type; 2) in the Fifth District, by case type; and 3) in the Second District, by case type.

Ms. Allard was thanked for her presentation.

8. COUNCIL REPRESENTATION TO NOMINATING COMMISSIONS: (Chief Justice Christine M. Durham)

Chief Justice Durham reminded the Council of the change to the statute regarding Council representation to Nominating Commissions which took place in FY 10. Under the new statute, the Chief Justice is required to appoint another member of the Judicial Council to serve on the Commissions. For the past year, she has done so on an ad hoc basis. The statute is not clear as to whether the appointment of a Judicial Council member to a Commission is for the

whole term of the Commission's existence or for each individual judicial vacancy.

She put the following considerations before the Council for discussion: 1) is it better to appoint a Council member to serve on a Commission with a vacancy in the same district in which they serve, and 2) should the Council member be from the same bench as the vacancy. She reported that there is no formal policy; and she would like to develop a more consistent practice. She mentioned that the Judicial Council member is a non-voting member on the Commission, but participates fully in discussion. Chief Justice Durham and other members of the Judicial Council provided feedback on their experiences serving on past Nominating Commissions. Discussion took place.

She thanked the members of the Council for their input and said that she found the discussion helpful.

9. REPORT FROM THE SIXTH DISTRICT: (Judge Paul Lyman and Wendell Roberts)

Chief Justice Durham welcomed Judge Lyman to the meeting.

Judge Lyman provided a report to the Council on the Sixth District. He mentioned that Mr. Wendell Roberts, Sixth District court executive, will provide a report on the Sanpete County (Manti court facility) transition from a contract-managed court site to a state-managed court site. The security options for each court location in the district were reviewed.

Mr. Roberts mentioned that the Manti court facility houses the juvenile and district court functions. The juvenile probation officers are housed in another location.

Five of the six counties in the Sixth District are contract-managed sites. Mr. Roberts provided background information relative to the contract site weighted caseload figures for FTEs which were weighed in this decision. These figures were provided to the contract sites prior to Sanpete County's request to become a state-managed court site. Budget issues played a part in the request for the change.

Mr. Alyn Lunceford was thanked for his many meetings with the county commissioners regarding the transition to a state-managed court site.

Mr. Roberts commented that prior to becoming a state-managed site, the Manti court facility was lacking in cross training of clerical staff. Currently the juvenile clerks are being cross trained to handle district court functions as needed. The court is now staffed with two district court clerks and two juvenile court clerks.

Budget information relative to the transition was distributed. The total contract cost in FY 2010 was \$238,020. The FY 2011 actual was reported to be \$149,858. Projected costs for 2012-2016 reflect a substantial savings.

He reviewed the differences in the operation of the court facility from a staffing standpoint. He noted the efficiencies reflected by the staff being under state management. He reminded the Council that the facility is still being leased.

Mr. Lunceford commented on the transition. He expressed his appreciation to Mr. Roberts and the Manti court facility staff for all they did to aid in the transition.

Chief Justice Durham thanked Judge Lyman, Mr. Roberts, and Mr. Lunceford for their update.

10. PRESIDING JUDGE/TCE WORKSHOP UPDATE: (Ray Wahl)

Mr. Wahl provided an update on the Presiding Judge/Court Executive Workshop held on May 12 and 13. He mentioned that Judge Kevin Burke, from the Minnesota Judiciary, spoke at

the workshop. Mr. Wahl expressed his appreciation to Ms. Lisa-Michele Church and Ms. Debra Moore for preparing the panel discussions for the workshop. He noted that the clerks of court were invited to participate in the second day of the workshop.

11. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Mr. Shea reported that Judge Jack Peterson has applied for certification as an active Justice Court Senior Judge.

Motion: Judge McCullagh moved to forward the recommendation, on behalf of the Council, to the Supreme Court to certify Judge Jack Peterson as an active Justice Court Senior Judges. Judge Atherton seconded the motion, and it passed unanimously.

12. ADJOURN

The meeting was adjourned.

13. MANTI COURTHOUSE TOUR

Council members were given a tour of the Manti court facility.