

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 25, 2013

Matheson Courthouse

Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Nancy Volmer
Brent Johnson

GUESTS:

Judge Vernice Trease
Joanne Slotnik, JPEC
Judge Joanne Rigby, JPEC

EXCUSED:

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Steele moved to approve the minutes from the January 28, 2013 Judicial Council meeting. Judge Harmond seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reported on the following:

He had the opportunity to speak along with Lt Governor Bell, Speaker of the House Rebecca Lockhart, and Senate President Wayne Niederhauser at the Bar CLE held on February 19.

Judge Judith Atherton has announced her upcoming retirement.

Judge Paul Maughan has agreed to serve on the Third District Nominating Commission to fill Judge Atherton's vacancy.

Chief Justice Durrant expressed his appreciation to Mr. Becker, Mr. Wahl, and Mr. Schwermer for all they do, on behalf of the courts, during the legislative session.

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

Mr. Becker reported on the following items:

Court's Budget Update. A budget update will be provided later on the agenda.

Digital Court Reporting. The Utah court system continues to be a resource to other court systems interested in moving to digital court reporting.

Judicial Workspace Application. The judicial workspace application was recently released. The application provides tools accessible to judges while on the bench. Teams from each judicial district have been trained on its use, and they will provide training to court staff in their respective districts.

Mandatory E-Filing. The effective date for mandatory e-filing is April 1. Ms Moore highlighted what steps have been taken to bring awareness to the effective date for e-filing to include: 1) notices in the Bar's e-bulletin; 2) an advertisement and an article in the Bar Journal; 3) attended all Bar conferences and provided e-filing brochures; 4) local bar meetings held; 5) provided information at the Family Law and Litigation Section meetings; 6) provided information to the University of Utah Law School; 7) offered to provide information to the BYU Law School, 8) development of training programs and resources, an FAQ section, a user's manual and an e-filing guide for the court's website; and 9) the e-filing providers are conducting their own marketing campaigns. Questions were asked, and Ms. Moore provided explanations.

Legislative Child Welfare Audit. The audit has been completed. There were no recommendations relative to juvenile court. Details of the audit are available online, and the details of the audit will be reviewed with the Board of Juvenile Court Judges. Ms. Lisa-Michele Church and the juvenile court staff were thanked for the support they provided to legislative auditors during the audit review.

4. **COMMITTEE REPORTS:**

Management Committee Report:

Chief Justice Durrant 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:

Justice Parrish reported on the following:

She mentioned that Liaison Committee meeting minutes accurately reflect the bills discussed, with the exception of the February 22 meeting. Mr. Schwermer will provide additional details later in the meeting with his legislative update.

Policy and Planning Meeting:

Judge Orme reported on the following:

He mentioned that the Policy and Planning meeting minutes accurately reflect the issues discussed. All items needing additional attention are on the agenda for final action or for comment.

Bar Commission Report:

Mr. Lund reported on the following:

He noted that the Governmental Affairs Committee has been overseeing legislative matters being discussed during the 2013 Legislative Session.

The Mid-Year Bar Conference will be held in St. George March 14-16. The Summer Convention will be held in Snowmass Village, Colorado July 17-20.

5. ETHICS ADVISORY COMMITTEE UPDATE: (Brent Johnson)

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson provided an update to the Council on the activities of the Ethics Advisory Committee over the past year. He highlighted the following in his update: 1) the membership of the Committee, 2) activities of the committee, 3) update of the website which will include links to the opinions, 4) Informal Opinion 12-01 as it relates to judges and their interaction with social media, and 5) Informal Opinion 12-02 as it relates to the use of a preapproved roster of service providers created by the court and making referrals.

Informal Opinion 12-01 was referred by the Council, at their December 2012 meeting, to Policy and Planning for further review and to determine the best plan of action.

Mr. Johnson noted that he has received a great deal of feedback concerning Informal Opinion 12-02.

Ms. Moore mentioned that upon discussion by the Board of District Court Judges at their meeting on Friday, February 22, a subcommittee has been formed to review the rule as it relates to Informal Opinion 12-02, and the Board is expected to seek an additional opinion.

Mr. Johnson covered how opinions can be reconsidered and the options available to the Council. The rule states that an opinion can be reconsidered, if the requestor or a committee member asks for reconsideration within 10 days of the opinion being issued.

The process of getting the opinion considered by the Council include: 1) a majority of the committee members can vote to bring the opinion before the Council, 2) the requestor can ask the Council to consider the opinion, and 3) the rule states that upon motion of the Council, the Council can consider the opinion. The rule does not have a time limit by which an opinion can be reconsidered.

Discussion took place.

Motion: Judge Dawson moved to request Informal Opinion 12-02 be reconsidered by the Council. The motion was amended to allow the opinion to be placed on the Council's May agenda for reconsideration. Judge Harmond seconded the motion, and it passed unanimously.

Motion: Judge Dawson moved to request Policy and Planning to review the Ethics Committee appeals and suspension process further. He withdrew his motion.

6. RULES FOR FINAL ACTION: (Tim Shea)

Mr. Shea highlighted the following four rules being recommended for final action:

CJA 01-0204 – Executive committees. This rule has been amended to give the Management Committee the authority to hear procurement protest appeals.

CJA 04-0503 – Mandatory electronic filing. The rule has been amended to require the electronic user to use a personal identity with an e-filing interface.

CJA 04-0508 – Guidelines for ruling on a motion to waive fees. This rule is new and was developed by the Board of District Court Judges to establish guidelines for ruling on a motion to waive fees. The rule requires the use of court-approved forms.

Mr. Shea noted that the Board of Juvenile Court Judges will develop court-approved forms unique to juvenile court. Discussion took place.

CJA – 11-0201 – Senior judges. This rule has been amended to remove the reference to the Judicial Council’s attorney survey for certification of senior judges.

Motion: Judge McCullagh moved to approve rule CJA 04-0508 with an amendment to the applicability notation of civil cases and the expungement of criminal records. Judge Atherton seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to approve the rules for final action as presented by Mr. Shea. Judge Maughan seconded the motion, and it passed unanimously.

7. DAGGETT COUNTY – INTENT TO DISSOLVE A JUSTICE COURT: (Rick Schwermer)

Daggett County has given notice of their intent to dissolve the justice court in the Dutch John precinct, effective February 1, 2014. The Manila precinct would handle all Daggett County justice court cases, if approved.

At this time, no action is required.

8. LEGISLATIVE AND BUDGET UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer and Daniel J. Becker)

Mr. Becker provided an update of the courts’ budget by highlighting the following: 1) the courts’ request for law clerks and IT are now before the Executive Appropriations Committee, 2) the prioritization for funding of buildings is scheduled for a February 27 meeting where the Ogden Juvenile Court Facility will be considered, and 3) the judgeship bills have passed the Senate and are pending in the House awaiting prioritization on fiscal note funding.

Mr. Schwermer provided an update on the following bills being considered during the 2013 legislative session:

- SB 49 – Child Welfare Modifications
- HB 156 – Restoration of Terminated Parental Rights
- SB 96 – Alimony Amendments
- SB 112 – Work Week Amendments
- SB 129 – Administrative Garnishment Order
- HB 105 – Serious Youth Offender Amendments
- HB 309 – Judicial Performance Evaluation Amendments
- HB 239 – Jury Service Amendments
- HB 339 – Indigent Defense in Justice Courts
- Circuit Court bill – will not be ran as a bill

Discussion took place. Mr. Schwermer provided clarification to questions asked.

9. COURT INTERPRETER COMMITTEE UPDATE: (Judge Vernice Trease and Tim Shea)

Chief Justice Durrant welcomed Judge Trease to the meeting.

Judge Trease provided an update to the Council on the activities of the Court Interpreter Committee. She highlighted the following in her update: 1) recognized Mr. Tim Shea and Ms. Rosa Oakes, AOC staff, and the rest of the Committee for all they do to support the Court Interpreter Committee, and 2) the Committee's review of their strategic plan to further improve the use of court interpretation and take into consideration changes that have occurred in the courts such as the expansion to provide court interpretation in civil cases.

The following objectives will be addressed by the Court Interpreter Committee: 1) concern of cultural sensitivity relative to court interpretation—having a basic understanding of the differences in culture; 2) increase awareness relative to native country differences, the complexities of different cultures, ethnicities and religions, etc. and how that affects interpretation in the courts; 3) community outreach to include advising the public and educating the public on the availability of interpreters and how to request an interpreter; 4) a continued need to recruit new interpreters in languages that we don't use frequently; 5) quality interpretation—by identifying areas where judges, court staff, probation officers, attorneys, bar members, can be educated on best practices in interpreting; 6) address issues unique to civil cases relative to translation of certain documents; 7) jury instructions translated and available in a Spanish/English version.

Questions were asked relative to interpretation, and Judge Trease provided explanations. Judge Trease was thanked for her update.

10. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik and Judge Joanne Rigby)

Chief Justice Durrant welcomed Ms. Slotnik and Judge Joanne Rigby to the meeting.

Ms. Slotnik introduced Judge Rigby and provided her background on the Commission.

She mentioned Ms. Shannon Sebahar, the newest commission member, appointed by the House to fill a citizen slot. Ms. Slotnik provided background information on Ms. Sebahar.

Ms. Slotnik and Judge Rigby highlighted the following in their update: 1) HB 309 – Judicial Performance Evaluation Amendments which clarifies when a judge may appear before the Judicial Performance Evaluation Commission (JPEC), 2) the status of the Appellate opinion evaluation pilot, 3) the status of the part-time justice court judge project, and 4) provided upcoming dates relative to judges up for retention in 2014.

Questions were asked, and Ms. Slotnik provided responses.

Mr. Becker noted that the JPEC Workgroup will discuss a number of issues, concerns and suggestions with JPEC at their April 9 meeting.

Chief Justice Durrant thanked Ms. Slotnik and Judge Rigby for their update.

11. EXECUTIVE SESSION

An executive session was entered into at this time.

12. ADJOURN

The meeting was adjourned.