

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, January 30 , 2006

Matheson Courthouse
450 South State Street
Salt Lake City Utah

Chief Justice Christine M. Durham, Presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Hon. James Davis
Hon. Hans Chamberlain
Hon. Kevin Nelson
Hon. J. Mark Andrus
Hon. William Barrett
Hon. Jody Petry
Hon. Rand Beacham
Hon. Jon Memmott
Hon. Jerry Jensen
Hon. Robert Hilder

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Tim Shea
Holly Frischknecht
Kim Allard
Matty Branch

GUESTS PRESENT:

Hon. Gary Stott Susan Carter, *Enoch City Employee*
David Bird, esq. Gary Coleman, *Enoch City Attorney*
David Browning, *Enoch City Chief of Police*
Justin Waymont, *Parowan City Attorney*
Justin Gray, *Enoch City Council Member*
Judge Kenneth Adams, *Parowan City Justice Court Judge*
Kay Adams, *wife of Judge Adams*

1. Welcome and Approval of Minutes: (Chief Justice Christine M. Durham)

Chief Justice Durham welcomed everyone to the meeting and thanked them for attending. After reviewing the minutes, the following motion was made.

Motion: Judge Stott motioned to approve the minutes, the motion was seconded and passed unanimously.

2. Chair's Report: (Chief Justice Christine M. Durham)

Chief Justice Durham reported the following:

Chief Justice Durham and senior administrative staff met with the house and senate leadership last week. Discussion took place about juvenile mental health courts, justice courts and judicial compensation.

The Law Day theme will be "Separate Branches, Balanced Powers" and the Hinckley Institute has asked Chief Justice Durham, Senator Valentine, Representative Curtis and Governor Huntsman to participate in a broadcast dealing with this theme.

The Supreme Court has determined a review of Utah's Code of Judicial Conduct is now necessary. The ABA has finished their review and the Supreme Court is now in the process of determining how to best utilize the expertise within the Council's ethics advisory process, in the community and in the judiciary.

The 3rd District Nominating Commission has sent five names on to the Governor who has 30 days to appoint someone.

Prompted by a question following the State of the Judiciary Address, it was reported that the measured time to disposition for the Utah Supreme Court was on average, 153 days in 2003, 138 days in 2004 and 183 days in 2005.

Mr. Becker and Chief Justice Durham visited with Legislators and the judges of the Second District Court last month.

Chief Justice Durham is sitting on the University of Utah Dean's Search Committee to screen applicants for the College of Law. Chief Justice Durham encouraged judges to get involved in this process.

The New Judge Orientation is going on throughout the week. There are six judges and one commissioner participating in that program.

3. Administrator's Report: (Daniel J. Becker)

Mr. Becker reported the following:

The court's budget hearing was held last Thursday. Mr. Becker provided information on the analyst's recommendations which were very supportive of the Council's original requests. The three requests not advanced were the child welfare mediator, the law library and the 3rd district commissioner. The Guardian ad Litem presented their request separately from the court's requests last Thursday and were received positively. The three requests not recommended were further discussed in committee and were also received positively.

The vote on the court's budget will begin today and will be turned over to the Executive Appropriation's Committee by the end of the week.

The 4th District Judge and 3rd Juvenile Judge have passed out of committee with unanimous support. Funding for the court's facility's request will be considered later this week.

The annual report has been sent out and was presented to the Council members. Mr. Becker thanked Nancy Volmer again for her good work.

4. Reports:

Management Committee:

Chief Justice Durham reported on the discussion the Management Committee had about the process of creating a committee to evaluate justice court issues. The Management Committee will consider this issue further in the next meeting.

Policy and Planning:

Judge Stott reported that Rule 9-301 was discussed and the committee determined using Rule 11 as the proper form of record keeping, replacing Rule 9-301. The Justice Court Board discussed the same item and determined a different solution using 9-301. This topic will be discussed in more detail later in the agenda.

Liaison Committee:

Justice Nehring reported that the Liaison Committee has met numerous times since that last Council meeting and have addressed many bills. A number of these bills have concerned issues within the courts Rule making authority. There have been many bills that have large implications for the courts that the committee hasn't taken a position on yet. Justice Nehring noted these bills will be discussed further when Mr. Schwermer presents the Legislative Update.

Bar Commission:

David Bird reported that the Bar has addressed their top five priorities. Their first priority was strengthening their relationship with the legislature. The second is performance review. The communication plan is the third priority. The Lawyer's Assistance program is the fourth priority and the relationship with the law school is the fifth priority.

A further study of malpractice insurance has been done and the Bar has received a lot of feedback about their focus on the topic. The Bar will continue educating their members on malpractice insurance.

The Bar has proposed and will adopt a conflict of interest proposal recognizing that it is a 501 3C corporation and that the Bar Commissioners in addition to being elected officials are also trustees of a corporate organization.

The Bar receives some complaints about attorney's security in courthouses. The Bar sends that information on to the appropriate agencies. Mr. Becker requested that this information be sent to the courts as well.

A group from the young lawyers division attended a conference in Texas and brought back information on 10 minute mentoring programs that tape attorney's teaching on a topic they specialize in. The Bar is considering creating a similar program and this information would eventually be available on the Bar's website.

Chief Justice Durham reported that the 3rd District Nominating Commission discussed the possibility of asking the Bar to include a question in the Bar applications to find more information on Bar member's opinions about applying

for judicial vacancies. Mr. Bird reported that he would be happy to work with the Council on this item.

5. OCAP Presentation: (Kim Allard) Handouts attached

Kim Allard provided data from the Online Court Assistance Program. OCAP was set up by statute and created in 1995. Its purpose is to help the public in preparing civil pleadings in uncontested divorces, endorsements in orders of divorce decrees, landlord/tenant actions and other types of proceedings as approved by the OCAP policy board. The purpose is to minimize the costs of civil litigation, improve access to the courts and provide for improved use of the courts by pro se litigants.

Ms. Allard reviewed the members of the OCAP policy board. Ms. Allard reported on the percentage of cases filed on OCAP based off the total filings in accounting year 2004. 19% of the total divorce cases, 6% of total guardianship filings, 1% of total evictions, and 2% of total protective orders were filed on OCAP.

Ms. Allard answered questions about the data she provided to the Council members and responded to inquiries about district specific issues. Chief Justice Durham thanked Ms. Allard for the information she presented.

6. CJA Rule Amendments: (Tim Shea)

Mr. Shea provided information on the CJA Rule Amendment and the following motion was made.

Motion: David Bird motioned to approve the suggested amendments, Judge Stott seconded the motion and the motion passed unanimously.

7. Legislation Update: (Rick Schwermer, Mark Jones) Handouts Attached

Mr. Schwermer provided information on the bills that the Liaison Committee has reviewed and reported on the position they had taken with each bill. Discussion took place about the details of each bill.

Mr. Schwermer indicated that the committee currently has no position on H.J.R. 17 regarding judicial power but he noted the concerns and implications for the judicial branch. The Liaison Committee will discuss this resolution and will most likely be opposed to the changes that have been made in the language. Discussion took place about the implications H.J.R. has on the courts and the following motion was made:

Motion: Judge Davis motioned that the Judicial Council take the position of opposing H.J.R. 17, Judge Barrett seconded, the motion passed unanimously.

8. Rule 9-301: (Tim Shea)

Mr. Shea reported that the Policy and Planning Committee determined that Rule 9-301 is not necessary. The Committee recommended that Rule 9-301 be amended to eliminate the form. This amendment would put in place the use of Form 1 under URCrP 11. This form should be used when a misdemeanor might later be enhanced. Form 1 is more extensive than previous forms which have always been the standard with Rule 11. The Committee understood there has not been a standard form for Rule 9-301. The Committee encouraged the District, Juvenile and Justice Courts to use Form 1 under Rule 11.

Mr. Schwermer reported that 9-301 came about in 1990 when the Board of Justice Court Judges proposed its use in order to rebut the belief that if a DUI is convicted in a Justice Court, the record cannot be used as an enhancement. Mr. Schwermer indicated that the Justice Court Board understood this wasn't a legal issue as much as a safeguard for the justice courts. Mr. Schwermer reported that the Board of District Court Judges determined to use the same process the justice courts were using. The Policy and Planning Committee have considered the legality of Rule 9-301, but they haven't considered the political implications of getting rid of this Rule.

Mr. Schwermer indicated there is an official form for Rule 9-301. The form is not standard but has been provided to all justice courts. The Justice Court Board suggested that Rule 9-301 remain applicable to DUI, DV and retail theft.

Judge Stott reported that the Policy and Planning Committee could not discover a standard form being used in the Justice Courts under Rule 9-301. The Committee determined that the two Rule's are not necessary and Rule 11 is sufficient. Mr. Schwermer reported that a sentencing survey was conducted and on all justice courts and that 80% of the justice court judges reported using the form he provided required for Rule 9-301.

Judge Hilder indicated that addressing any Rule changes at this point might prove unnecessary since a committee will shortly be formed to evaluate all Rule's affecting the justice courts.

Motion: Judge Hilder motioned that no action be taken on this item until the committee that will be created to evaluate all the justice court Rules can review the issues, Judge Jensen seconded the motion and the motion passed unanimously.

Justice Nehring indicated there is still a need to create a complete list of enhanceable items. Mr. Shea is compiling this list.

9 Enoch City Justice Court Request:

Chief Justice Durham welcomed the Enoch and Parowan City representatives to the Judicial Council Meeting and explained the Council's role in the Enoch City request for a justice court. Enoch City had believed they entered into an inter local agreement with Parowan City that allowed them to conduct some court proceedings in Enoch City. This agreement had never been approved by the Council. Historically, Enoch City had utilized Iron County's Justice Court but were now seeking official approval from the Council to conduct court with an inter local agreement with Parowan. Chief Justice Durham explained the concerns the Council had from the information the AOC auditor discovered in Enoch City.

Mr. Waymont reported that as the Parowan City attorney, he initially believed that the statute gave the authority to create an inter local agreement that allowed them to hold court in Enoch City.

Mr. Coleman explained the history of the inter local agreement and that the attempt for Enoch City to have access to their own court was not meant to disrespect the Council's role in the process. Mr. Coleman indicated that the inter local agreement was not created with the belief of creating a separate court.

Mr. Waymont and Mr. Coleman explained that if the new inter local agreement were approved, court would only take place in Parowan City and all of the audit concerns would be addressed. Clarification took place regarding the length of travel for Enoch City constituents and the profitability for Enoch City if the court only took place in Parowan. Mr. Coleman explained that along with their concern for their constituents, Enoch City also had a difficult time working with the Iron County due to a lack of reporting Iron County had provided them. This difficulty became a motivation for Enoch to gain access to a court in their own city or in Parowan.

Chief Justice Durham indicated that given the conversation today, a new request should be submitted to the Judicial Council. Jurisdiction over any case should be with the Iron County Justice Court until a new request is approved.

Chief Justice Durham thanked the representatives from Parowan and Enoch City for attending the Judicial Council Meeting. Mr. Waymont indicated that the request for an inter local agreement with Parowan to establish a court will be withdrawn and a new request will be created and brought to the Council.

10. Certification of Judges: (Tim Shea)

Motion: A motion was made to go in to executive session, the motion was seconded and approved unanimously.

Motion: A motion was made to come out of executive session, the motion was seconded and approved unanimously.

Motion: Judge Stott motioned to not certify Judge Paul Cox on the basis of his lack of education requirements, Judge Hilder seconded the motion, the motion was carried unanimously.

Motion: Judge Nehring motioned to certify Judge Kenneth Adams, Judge Hilder seconded the motion, the motion passed with Judge Chamberlain and David Bird opposing the motion.

Motion: Judge Davis motioned to remove Judge Burningham from consideration for certification based on her limited time on the bench that made her unable to meet the education requirements needed to meet certification standards, Judge Hilder seconded the motion and the motion was approved unanimously

Motion: Judge Andrus motioned to certify the remainder of the judges, David Bird seconded and motion passed unanimously. Judge Barrett, Judge Jensen, Justice Nehring, Judge Petry and Judge Stott abstained from voting on their own certification.

Motion: Judge Nelson motioned to certify Judge Thompson and Judge Renstrom as justice court judges, Judge Andrus seconded the motion and the motion passed unanimously.

11. Adjourn

Motion: Judge Davis motioned to adjourn the meeting, the motion was seconded and it passed unanimously.