

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

August 16, 2002
Law and Justice Center
645 South 200 East
Salt Lake City, Utah

Chief Justice Christine M. Durham, Presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Justice Matthew Durrant
Hon. James Davis
Hon. Jerald Jensen
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Andrew Valdez
Hon. Lynn Davis
Hon. Ronald Hare
Hon. Lyle Anderson
Hon. Scott Johansen
Debra Moore, esq

STAFF PRESENT:

Daniel J. Becker
Myron K. March
D. Mark Jones
Ray Wahl
Richard Schwermer
Holly Bullen
Tim Shea
Jan Thompson
Kim Allard
AnNicole Faeth

MEMBERS EXCUSED:

Hon. Ben Hadfield

GUESTS PRESENT:

Rep. Lamont Tyler
Robin Arnold-Williams, *Executive Director, Dept. of Human Services*
Adam Trupp, *Division of Child and Family Services*
Hon. Robert Yeates, *Chair, Board of Juvenile Court Judges*

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

All in attendance were welcomed to the meeting. The minutes of the Council's July meeting were discussed.

Motion: Judge James Davis made a motion to approve the minutes. The motion was seconded and carried unanimously.

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

Chief Justice Durham reported the following items:

- During the Council's July meeting, revisions were made to the Voter Information Pamphlet which had been suggested by legislative leadership. A letter from legislative leadership thanking the Council for their consideration of the suggested issues was shared with Council members.
- The National Institute of Justice (NIJ) has distributed a notice regarding available technical assistance funds. Utah has been invited to send a four person team to a workshop NIJ will be hosting in the Fall.
- Commissioner Michael Evans has agreed to take over as chair of the Public Outreach Committee, which is a subcommittee of the Education Standing Committee. Chief Justice Durham formerly served as chair of the committee.
- The Annual meeting of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators was held the last week of July. Issues such as court records and privacy, self represented litigants, and racial and ethnic fairness were discussed at the meeting.

- The Supreme Court will be appointing a committee to look at the redrafting of stock jury instructions to make them more understandable to the general public.
- Chief Justice Durham, Dan Becker, and Matty Branch met with a representative from the National Center for State Courts concerning a possible technical assistance project for the state law library.

Chief Justice Durham also reported that retired judge, Thornley K. Swan, recently passed away. A draft resolution was shared with the Council. The following motion was then made.

Motion: Judge Lynn Davis made a motion to adopt the resolution. Judge James Davis seconded the motion. The motion carried unanimously.

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

Daniel J. Becker reported the following items:

- The Governor has forwarded the name of Elizabeth Lindsley to the Senate for confirmation as a judge in the Third District Juvenile Court.
- Justice Leonard Russon has announced his retirement, effective May 15th.
- The Bar Commission provided a \$1,700 grant to the judiciary to update court forms to include a notice of an individual's right to an interpreter.
- An application for a domestic violence training grant through VAWA funds has been submitted. The courts are now entitled to receive a percentage of any VAWA funds the state receives.
- The Supreme Court appointed retired judge, Olof Johannson, as a pro tem judge to handle Division of Child and Family Services database reviews for one year.
- According to the clerical weighted caseload study there are currently two districts overstaffed. The First District is overstaffed by 2.6 positions and the Sixth District is overstaffed by 1.1 positions. The Second District Court is shown to be understaffed.

Additionally, information describing organization and staffing in the Administrative Office of the Courts was distributed.

4. REPORTS:

Management Committee: (Chief Justice Christine M. Durham)

Chief Justice Durham reported that the Management Committee received evaluation results from the mandatory cultural competency training that took place in the last year. It was mentioned that Judge Brent West will provide a report to the Council in September concerning the implementation of racial and ethnic fairness recommendations for the courts. The Management Committee also heard reports concerning collection rates of the Office of State Debt Collections, and an audit which took place in Spanish Fork.

Chief Justice Durham mentioned that Judge Hadfield asked the Management Committee to reassess the day of the week Judicial Council meetings are held. This issue will be discussed in October, after new Council members have been selected.

It was also reported that the Management Committee approved the appointment of Judge William Thorne to the Standing Committee on Technology to replace Justice Matthew Durrant, and they recommended that Barbara Polich take over as chair of the Technology Standing Committee. Ms. Polich appreciated the recommendation, but time constraints preclude her from serving. The Management Committee will review this issue again in their September meeting.

Policy and Planning: (Hon. Scott Johansen)

Judge Johansen reported that several items approved by Policy and Planning appear on the Council's consent calendar, one of which deals with court security. It was reported that UCA 78-7-6 prohibits weapons in secure areas, but that none of the district's security plans rely on the secure area definition. HB 82, which would require gun lockers in courthouses, applies only to secure areas. Policy and Planning has agreed that weapons in courthouses present a risk, and therefore, they recommend that rule 3-414 be amended to eliminate the designation of secure areas. This eliminates the ability to prosecute the possession of a weapon in a secure area as a felony, and eliminates the requirement for gun lockers.

Judge Johansen reported that there are also rules listed on the Council's consent calendar dealing with mandatory reporting, custody evaluators, and abuse and neglect.

Motion: Judge Dever made a motion to adopt the recommendations of Policy and Planning. Judge Poulson seconded the motion. The motion carried unanimously.

Liaison Committee:

Judge Jerald Jensen reported that the Liaison Committee met before the Council's budget planning session, and that items discussed by the committee were shared with the Council during the session.

Bar Commission: (Debra Moore)

Debra Moore reported that the Bar's "Dialogue on Freedom" program will take place the week of September 8th. The program is the brainchild of U.S. Supreme Court Justice Kennedy who feels that there needs to be more education in schools about systems of government in order to instill a better appreciation for our system of government and the rule of law. It was reported that over 350 lawyers are planning on being involved in the program, as well as 100 people Governor Leavitt committed from the Executive Branch. It was mentioned that they are still in need of judges to participate in the program. Those interested in getting involved may contact Charles Stuart at (801)531-9077. Ms. Moore mentioned that the Bar has raised over \$50,000 from law firms in order to pay for a four page color insert in a number of newspapers throughout the state. This will help take this program into communities across Utah.

Debra Moore also reported that she recently attended the National Conference of Bar Presidents, where Utah's Online Court Assistance Program (OCAP) was discussed and received numerous accolades. The program was highlighted as a model for court systems throughout the nation to follow. A report from the Conference of Chief Justices and the Conference of State Court Administrators' Task Force on Self-Represented Litigants was also presented at the conference.

5. ENOCH CITY JUSTICE COURT: (Patrick Franks, Gaylen Matheson)

Patrick Franks, mayor of Enoch City, and Gaylen Matheson, Enoch City manager, provided additional information to the Council concerning the City's request to form a class 3 justice court. It was reported that there are approximately 3,600 residents in Enoch, and there is a need to better enforce municipal ordinances and address municipal issues that aren't currently being covered. Enoch City would like to create their own police force to better enforce these ordinances. It was reported that Enoch City has enough money to fund a police force for one year, but the city would need revenue to fund the force after that. It was mentioned that Enoch cases are currently handled through an interlocal agreement with Iron County, who has expressed support for Enoch creating their own justice court.

The Judicial Council thanked Mayor Franks and Mr. Matheson for their presentation. Later in the meeting, after discussion had taken place, the following motion was made.

Motion: Judge Johansen made a motion to decline to approve the Enoch City justice court application and suggest that the city continue to contract for those services for a period of time. Judge Valdez seconded the motion. The motion carried unanimously.

6. MAKING THE RECORD: (Kim Allard, Robert Turner)

Kim Allard reported that the Court Technology Committee issued a final report to the Judicial Council, November 20, 1995, in which it was stated that, "Video recording makes an accurate and reliable court record.", and that, "Video technology should constitute the mainstay of the court reporting system." Ms. Allard reported that there are currently 67 analog video trial systems located in district courtrooms throughout the state, and 17 analog audio systems located in district courtrooms, juvenile court, the Court of Appeals, and the Supreme Court. There are currently 20 digital audio systems in juvenile courtrooms, 2 digital audio systems in district courtrooms, 1 digital video system in the district court, and 8 more digital audio systems that have been requested or are being installed in district courtrooms.

Ms. Allard provided the Council with a demonstration of a digital audio system and how it compares to standard analog audio systems. It was reported that the quality of digital audio recordings is significantly better than analog recordings, and that approximately 22½ hours of digital audio can be recorded on one CD. Additionally, digital audio is networked, allows for better quality monitoring, and it provides better indexing and access tools for clerks and transcribers.

The benefits and drawbacks of digital video systems were also discussed. It was reported that digital video could be a positive addition to courtrooms since it can be networked, video would be recorded on CDs rather than tapes which is more cost effective, and digital backups provide for better quality monitoring. There are still a number of drawbacks to digital video, however, such as their creation of larger computer files, and digital video lacks the same indexing/access tools that digital audio has. Additionally, audio tracks can't be separated on digital video systems the way they can on digital audio systems. It was mentioned that as current analog video systems begin to deteriorate and require maintenance and eventual replacement, decisions will need to be made about the future

of recording technology in courtrooms. It is anticipated that in the next 7 to 9 years, necessary upgrades of existing video systems in courtrooms could cost anywhere from \$200,000 to \$425,000 per year, depending on the number of units needing replacement in any given year. It was mentioned that replacing the same analog video systems with digital audio would cost anywhere from \$60,000 to \$140,000 per year, based upon the number of units requiring replacement.

Ms. Allard mentioned that the Standing Committee on Court Technology is proposing that a follow-up committee be formed to look at technology, rules and practices related to court recording equipment.

7. COMMENTS TO RULES: (Tim Shea)

Tim Shea reported that the Standing Committee on Children and Family Law is recommending that rule 4-901 be based on the Uniform Custody Evaluation Act which allows sister states to interact on the same cases. It was mentioned that this could be implemented within Utah by requiring judges to communicate with one another regarding cases within the same family. The rule, however, does not authorize additional methods of dealing with cases.

Judge Lynn Davis suggested an amendment to an Alternative Dispute Resolution rule, rule 4-510. It was mentioned that Kathy Elton received a comment after the comment period had ended which she thought was meritorious. The comment suggested that the rule be changed to read, ' "Primary Trainer" means a provider who qualifies as a "Master Mediator" on the court roster or a person with equivalent experience researching and teaching the theory and practice of alternative dispute resolution and may oversee mediation training that fulfills the court's 30 hour mediator training requirement for the roster.'

Motion: Judge Dever made a motion to approve the aforementioned language in rule 4-510. Judge Lynn Davis seconded the motion. The motion carried unanimously.

Motion: Judge Johansen made a motion to adopt the entire rules packet. Judge Valdez seconded the motion. The motion carried unanimously.

8. REPORT AND RECOMMENDATIONS OF THE STANDING COMMITTEE ON CHILDREN AND FAMILY LAW: (Rep. Lamont Tyler, Tim Shea, Robin Arnold-Williams, Hon. Robert Yeates)

Representative Lamont Tyler reported that a year ago the Standing Committee on Children and Family Law was ready to make their proposal to the Council concerning protective orders on behalf of children, but they received opposition from the Board of Juvenile Court Judges. Representative Tyler reported that the Standing Committee received input from the Board and is now ready to present their report and recommendations.

Tim Shea reported that amendments were made to child protective orders a few years ago, but there have still been difficulties due to jurisdictional issues. Mr. Shea reported that there are currently three causes of action handled in both the district and juvenile courts. This means that DCFS and the Guardian ad Litem Office are potentially in two different courts. This arrangement often also leads to confusion and inconsistency, and sometimes cases are rejected at both courts.

The Standing Committee on Children and Family Law proposes that a jurisdictional line be drawn. This line would send co-habitant abuse cases involving adults and designated family members to the district court, while cases involving the abuse of a child would be sent to the juvenile court, regardless of the relationship of the parties and/or petitioner. This would eliminate child protective order petitions as a cause of action from both courts, and would provide a separation of adult and child issues. Mr. Shea reported that in cases of co-habitant abuse when children are a witness to the abuse, a separate petition could potentially be filed in both the district and juvenile courts. In cases such as these, rule 4-901 which permits judges of related cases to communicate with one another about the administration of that case would be relied upon. This rule also requires parties to notify each court if there are pending matters elsewhere.

Mr. Shea outlined the proposed procedures for addressing protective orders on behalf of children in the juvenile court as follows:

- 1) A petition alleging abuse of child is filed. A referral is made to DCFS, a Guardian ad Litem is appointed, and an ex parte hearing is held immediately.
- 2) A pretrial hearing is held within 20 days of the initial ex parte hearing. This may result in the issuance of a protective order.
- 3) An adjudication hearing may be held within 60 days of the date the petition is filed, for relief beyond the scope of the protective order. The juvenile court could order DCFS to intervene and provide services at this point.
- 4) A disposition hearing would be held within 30 days. If the disposition order is beyond the protective order, the protective order would be assimilated.

A protective order would grant limited relief for 150 days in civil cases. Violation of the protective order would constitute a class A misdemeanor, and result in mandatory arrest and inclusion on the statewide network.

Mr. Shea mentioned that in calendar year 2001 and the first half of calendar year 2002, there were 526 cases filed in the district court that would be moved to the juvenile court if the Standing Committee's proposal is accepted. Of this number, 188 will reach a final protective order. He noted that some number of these cases involve DCFS services being provided and that research is needed to determine how many.

Robin Arnold-Williams, Executive Director of the Department of Human Services, reported that the Standing Committee's proposal makes the right move by placing the juvenile court in the position of being the place for children's issues to be heard, and it sets a reasonable goal of addressing the multiple needs presented by these cases. The proposal was complimented for attempting to provide a clearer direction to families regarding which court they go to. Ms. Arnold-Williams did express concerns, however, regarding resource implications and the role of DCFS and other divisions within the Department of Human Services. She provided a written response to the Standing Committee's proposal which sets out those concerns.

Judge Robert Yeates, Chair of the Board of Juvenile Court Judges, reported that the Juvenile Board supports the general concepts of the proposal. The Board recommended, however, seven amendments which had been submitted to the Council in a letter.

Motion: Judge Johansen made a motion to thank the Standing Committee on Children and Family Law for their efforts, and to state that the Council is generally in favor of the concepts outlined in the proposal. Judge Johansen also moved to refer the issue to Policy and Planning to clarify the jurisdictional issues and to refine the details of the proposal. Judge Valdez seconded the motion. The motion carried with one opposed.

9. ADJOURN:

Motion: A motion was made to adjourn the meeting. The motion was seconded and carried unanimously.