

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Tuesday, September 6, 2005
Park City Marriott
Grand Ballroom 4
Park 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. K.L. McIff
Hon. Clair Poulson
Hon. Robert Hilder
Hon. Lee Dever
Hon. Gary Stott
Hon. Jon Memmott
David Bird, esq.

STAFF PRESENT:

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

MEMBERS EXCUSED:

Justice Ronald Nehring
Hon. Jerald Jensen

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

Chief Justice Durham welcomed everyone to Park City and to the Council meeting.

Motion: A motion to approve the minutes was made by Judge Hilder, Judge Poulson seconded the motion and the motion passed unanimously.

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

Chief Justice Durham reported the following:

-Judge Iwasaki will be sworn in September 12th at noon.

-A nominating committee for the 7th District Judge has been appointed, but no meetings have been set.

-A meeting has been set with the Governor and Chief Justice, and Court Administrator to discuss the court's budget request.

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

Daniel Becker reported the following:

-The Governor is expected to establish a task force to address the methamphetamine problem in Utah. The courts and Human Services have been working together on a budget initiative for the '06 legislative session which would expand drug courts to every county and increase the number of participants in existing courts.

-Mr. Becker reported that the Presiding Judge's Committee has continued to meet and a sub-committee is working on a presiding judge checklist, a review of existing rules, and plans for the next workshop.

-Mr. Becker and Gordon Bissegger will be meeting with St. George officials and legislators on September 13th to discuss the new Courthouse and support for funding.

-The October 24th Council meeting will be held at the West Jordan Courthouse in conjunction with the dedication of the new building.

-Keith Hamilton will replace Mike Sibit on the Board of Pardons.

-Dan Maldonado has been named the Director of Juvenile Justice Services.

4. Reports:

Management Committee:

Chief Justice Durham reported that the Management Committee approved the distribution of Justice Court Grant funds recommended by the Board of Justice Court Judges. Further discussion on the compensation issue took place at a special Management Committee meeting. A report on that discussion will be addressed later in the meeting.

Policy and Planning:

Judge Dever reported that the minutes clearly outlined the meeting the Policy and Planning had in July. Judge Dever reported the main discussion during the last two meetings have been about enhancements. Further discussion will continue on this issue. Chief Justice Durham will discuss these concerns with the Criminal Rules Committee.

Liaison Committee:

The Liaison Committee has not met since the last Council meeting.

Bar Commission:

David Bird reported that the operational review the Bar has been asked to do is being organized. The Lawyers Helping Lawyers effort is still being reviewed.

The opinion regarding lawyers acting as mediators who then prepare and submit final findings to the court is still has been acted upon by the commission, but issues remain which the Supreme Court may be asked to consider.

5. Judicial Conduct Commission/Legislative Issues: (Colin Winchester, Jerry Howe)

Colin Winchester reported that there are some housekeeping changes within the current Judicial Conduct Commission Code that need to be addressed this legislative session. Mr. Winchester provided information outlining the changes that are being proposed.

Mr. Winchester specified that under proposed code, the four remaining members of the Supreme Court will be added to ensure that they are covered by statute. The Chief Justice is already covered by statute. Mr. Winchester reported that the timing for introducing these changes is still being determined.

Mr. Winchester reported that in the past, the Conduct Commission only received names of judges who are currently on the district and juvenile bench applying for a different bench. Mr. Winchester requested that all names of applicants for judicial vacancies who have been a pro-tem judge or justice court judge also be submitted to the commission.

6. CourtTools Presentation: (Tim Shea)

Tim Shea presented the Council with the CourtTools survey regarding Access and Fairness. A survey with sample questions that gaged the overall experience with the court system was provided. Judge Dever indicated that the survey should be a simple format that is available in both English and Spanish. Myron March reported that 1st District has created a similar process. Mr. Shea explained that the cost, the timing and the survey would need to be determined. Mr. Becker reported that if the Council feels this survey is a feasible option, more information can be presented to the Council at the April meeting , including the possible use of one time funds to cover costs.

Motion: Judge Hilder made a motion to approve the CoutTools survey dealing with Access and Fairness, Judge Stott seconded the motion. The motion passed unanimously.

7. Grand Jury Report: (Judge Stanton Taylor, Mark Jones)

Judge Taylor reported that prior to the change in 1990, each District would conduct their own Grand Jury process . The Grand Jury Panel now includes five judges that travel throughout the state hearing testimony in each district every three years. During the past 15 years, multiple hearings have taken place that led to indictments and

subsequent convictions in criminal cases. About three full Grand Jurys have been held, but hearing testimony by the panel is more common. Avoiding publicity for the victim and providing an alternate forum for the public to have been positive benefits of the Grand Jury Panel process.

Judge Taylor reported that there is a separate line item to fund the Grand Jury Panel and the Chief Justice appoints members to the panel. Judge Hilder reported that it is possible that legislation will be proposed that would increase the use of the Grand Jury panel. Judge Taylor reported that the supervising judge presides over the Grand Jury Panel unless he assigns another judge to preside, usually from the district where the case is being heard. Mark Jones reported that most people appearing before the Grand Jury Panel are self represented and have a positive experience.

Rick Schwermer reported that further evaluating the Grand Jury Panel system could be helpful for legislative issues that might arise this legislative session. Mr. Schwermer reported that he is monitoring discussions and attending meetings regarding the Grand Jury panel issue and he will report back to the council.

8. Technology, Security and Training Fund Rule Change: (Tim Shea)

Tim Shea reported that the Justice Court Board would like to change the grant approval schedule from the calendar year to the fiscal year. The Policy and Planning Committee has reviewed this item and concurs.

Motion: Judge Davis made a motion to change the grant approval schedule from calendar to fiscal year. David Bird seconded the motion. The motion passed unanimously.

9. Guardian ad Litem Standing Committee Report: (Kristin Brewer)

Kristin Brewer reported that the Guardian ad Litem Standing Committee has drafted proposed changes to Statute 78-3a-912. Ms. Brewer provided information about the changes and responded to questions.

Judge Chamberlain questioned whether the reference to the SAFE system in the statute was needed. Ms. Brewer reported that she would not be opposed to changing that reference. Mr. Schwermer reported that GAL access to the SAFE system is provided in the statute and access to CARE should be handled within the courts, not in Statute.

Ms. Brewer outlined changes in Statute 78-7-9. Mr. Schwermer reported that the proposed changes are meant to address the concerns from the recent audit, not overhaul the entire statute. Chief Justice Durham indicated that the Council process in working with the recommendations for the standing committees are still being developed.

Motion: David Bird motioned to have the Guardian ad Litem Standing Committee review changes in the statute suggested by the Council and take them to the Liaison Committee, Judge Hilder seconded the motion, the motion passed unanimously.

Ms. Brewer reported that the amendments proposed will be applied to only civil cases. The SWAP Committee is evaluating the criminal case amendments, but no proposals have been made.

Ms. Brewer reported that if the criminal proposal is not made in conjunction with the civil case, the civil amendments could possibly be held.

10. Interim Committee Report: (Rick Schwermer)

Rick Schwermer reported that there have been two Interim Committee meetings. Mr. Schwermer indicated that the Interim Committee has extended the Alternative Dispute Resolution program for 10 years. The Divorce Education program has also been extended. Mr. Schwermer reported that recent studies have shown that compliance with an order before mediation had been 39%, after mediation compliance with the court orders increased to 78%.

Mr. Schwermer reported that discussion took place regarding the housing of the Guardian ad Litem office. Some legislators have suggested the GAL office move to the Department of Human Services. The GAL Standing Committee is working on a proposal that would suggest changes necessary to the program. They will also hear changes legislators propose. The Council will hear the proposal from the GAL Standing Committee.

Mr. Schwermer reported that in the next Judiciary Interim Committee meeting, medical malpractice will be discussed. A proposal to advance a statute that would allow an apology to be made to a victim that could not be entered into evidence is being considered.

Matty Branch will attend the Judiciary Interim Committee to bring back information to the Council regarding the apology proposal for the medical malpractice issue.

Mr. Schwermer reported that the Judiciary Interim Committee hearings, along with other legislative committees hearings are now online.

11. Problem Solving Court Approval Process: (Rick Schwermer)

Mr. Schwermer reported that there is a need to create a structured process to monitor the creation and track information relating to problem solving courts.

The approval process would establish requirements that newly formed problem solving courts must meet before beginning. The application would require the TCE's and Presiding Judge' s signature and comments. The following would need to be considered before beginning: communication between agencies, staffing needs, identifying other services, funding strategy, creating an exit strategy, and creating an evaluation component.

Judge Memmott reported that there could be a need to address the transfer between the courts. Judge Dever suggested that all the annual reports be due at the same time each year, instead of a year from the creation of the court. Having the reports due by the end of the fiscal year would be helpful for reporting processes. Judge Poulson reported that there are also some Justice Courts that could benefit from an approval process.

Mr. Becker reported reducing Council decisions on problem solving courts into a Rule or judicial administration may be needed, and that a draft Rule will be prepared and brought back to the Council.

Motion: Judge Memmott motioned to approve the problem solving court approval process, Judge Poulson seconded the motion, the motion passed unanimously.

12. Compensation Issues: (Council Discussion)

Chief Justice Durham reported that the Management Committee had met and discussed Judicial compensation. The Chief Justice reported that it is important for the Judicial Council to take a leadership role in the compensation issue. Chief Justice Durham outlined the history of how the Council has dealt with compensation in the past.

Chief Justice Durham reported that in order to appropriately lead the judiciary on the compensation issue, the Management committee felt the Council needs to do the following:

- Ensure statutory duties of 67-8-6(5) are performed

- Establish and approve a consistent and credible internal process

- Ensure process is inclusive of all court levels

- Provide a forum for vetting ideas and suggestions

- Judicial Council speaks on behalf of judiciary - single voice

- Keep all members of the judiciary informed on compensation requests

The Management Committee proposed that the Council take the following approach for the 2006 Legislative Session:

- Need to update and supplement material prepared last year for submission to the Executive and Judicial Compensation Commission

- Put in place for one year a process for preparing, approving, and presenting a 2006 request

- Name a 3 or 4 member Citizen Committee, which will serve for one year only, to review and update 2005 material and prepare a recommended compensation increase

- Citizen Committee reports to October 24th meeting of the Judicial Council and Council determines strategy for advancing recommendation

- Provide Citizen Committee Report and recommendations to all members of the judiciary.

To address long term compensation issues, Chief Justice Durham reported that the Management committee made the following suggestions:

- Examine alternate approaches (e.g., State of Washington model)

- Consider need for statutory or rule changes

- Criteria/data to be collected and examined

- Assess pros and cons of an independent compensation review

- Judicial Council adoption of annual review process

After discussion, the following motion was made

Motion: Judge Stott motioned to approve the proposal provided by the Management Committee that addresses the short and long term compensation issues, with the addition that the Chief report on behalf of the Council to the judiciary at the Annual Judicial Conference bench meetings and that the Council speak as a united voice, Judge Hilder seconded the motion. The motion passed unanimously.

Concerns were raised over timing and it was determined that the newly formed Citizen's Committee could report to the Management Committee October 11th instead of the full Council October 24th.

Possible names were discussed for members to serve on the Citizen's Committee. Judge Dever reported that something be written up regarding the responsibilities the Committee should have.

The Management Committee will create a process to address long term concerns. The suggestion was made to include members of the judiciary who are not currently on the boards, along with Council members.

Motion: Judge Poulson made a motion to move to executive session, Judge Stott seconded the motion and the motion passed unanimously.

13. Senior Judge Request: (Tim Shea)

Motion: Judge Davis motioned that Judge Roger Livingston be approved as an active Sr. Judge, Judge McIff seconded the motion. The motion passed unanimously.

14. Adjourn

Motion: A motion was made to adjourn, the motion was seconded and passed unanimously.

Consent Calendar

The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.