

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MEETING MINUTES

Monday, June 26th, 2006

Matheson Courthouse
Council Room
Salt Lake City

Chief Justice Christine M. Durham, presiding

MEMBERS PRESENT:

Chief Justice Christine M. Durham
Hon. James Davis
Hon. Rand Beacham
Hon. Hans Chamberlain
Hon. J. Mark Andrus
Hon. Robert Hilder
Hon. William Barrett
Hon. Jerald Jensen
Hon. Jody Petry
Hon. Gary Stott
Hon. Ronald Nehring
Hon. Michael Lyon
David Bird, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Richard Schwermer
Mark Jones
Ray Wahl
Brent Johnson
Fred Jayne
Gordon Bissegger
Holly Frischknecht
Diane Cowdrey
Kristin Brewer

GUESTS PRESENT:

Judge Michael Kwan
Judge Gordon Low
Judge Pamela Greenwood
Judge Sandra Peuler
Judge Kimberly Hornak
Debra Moore, *Chair, GAL Standing Committee*
Lisa Watts-Baskin, *Member, GAL Standing Committee*
Dr. Kevin Gully, *GAL Standing Committee*
Keith Hamilton, *Chair, Board of Pardons*
Curt Garner, *Board of Pardons*
Cheryl Hansen, *Board of Pardons*
Elizabeth Neff, *Salt Lake Tribune*

MEMBERS EXCUSED:

Judge Kevin Nelson

1. WELCOME AND APPROVAL OF MINUTES:

Chief Justice Durham welcomed everyone to the meeting. The minutes were reviewed and the following motion was made.

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

Chief Justice Durham welcomed Judge Michael Kwan who is attending the Council meeting for Judge Kevin Nelson. Chief Justice Durham also welcomed the staff and discussed that the Council meetings are open and public meetings and visitors are welcome to attend.

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

Chief Justice Durham reported the following:

-The Management Committee discussed the supervision and review of pro tem judges and determined to send this item on to the Policy and Planning Committee for further consideration. The court's role in guardianship cases will also be sent to the Policy and Planning Committee.

-The Nominating Commission has met for the 3rd District Court juvenile vacancy. There were 20 applicants for this position.

-Senator Greg Bell met with Chief Justice Durham and staff to discuss the courts' service to litigants. Chief Justice Durham explained to Senator Bell the numerous ways the courts are reaching out to the public through public surveys, CourtTools, and the many other efforts being made to create a user-friendly system. The resources available to the courts to provide summary judgements were also discussed.

3. ADMINISTRATOR'S REPORT: (Dan Becker)

Mr. Becker reported the following:

-The budget and planning meeting will be Wednesday, August 23rd and Thursday, August 24th at the Matheson Courthouse. The Management Committee will meet after the Council does on Thursday afternoon.

-The Beaver City Attorney elected not to bring charges against Enoch City officials after an investigation took place that found no deliberate criminal activity occurred.

-During the July meeting, the Judicial Council will consider the results of the security study that evaluated the perimeter security for the courthouses in the 2nd, 3rd and 4th Districts. The consultant has determined that contracted security, or in house employees could provide perimeter security at a cost savings over the present method. The self represented litigant committee will also be presenting the results of a survey they are conducting and a proposal for a pilot project based on their findings.

-A joint case management training with the Idaho Courts will be done this week for TCE's and AOC staff.

-The Building Board will be meeting this Wednesday to review the Court's five year plan.

Management Committee:

Chief Justice Durham reported that the minutes of the Management Meeting reviewed the issues covered during the last meeting. Discussion took place about the problem solving court item that was discussed at that meeting.

Policy and Planning Committee:

Judge Stott reported that the Policy and Planning Committee considered three items at their recent meeting. It was reported that three dedicated hard drives have been purchased for storage and retrieval of court reporter's files. When this system is in place, the Policy and Planning Committee will return to the Council and report on its use.

Small claims judges pro tempore was discussed. A comparison of pro tem features with California was done. With the focus the Management Committee has given the Policy and Planning Committee, they will continue further study.

The open meetings rule was also reviewed. The public portion of the Council agenda and the minutes will continue to be published on the public website. The executive portion of the meetings must now be recorded and minutes must be taken. These closed meetings do not need to be recorded if a personnel issue or security item is discussed and the Chief Justice signs an affidavit. The new rule also requires that workshops be recorded. The scope of this rule relates only to the Council Meetings and not Board Meetings. Discussion took place about the definition of a workshop. It was reported that regardless of the title of the meeting, if a quorum of the Council meets, it is considered a meeting open to the public. Chief Justice Durham thanked the committee for their work.

Bar Committee:

Mr. Bird reported that the survey the Bar had sent recently will be revised and re-sent. Judicial vacancy announcements are also being sent out differently now, which has resulted in more people receiving the information.

The Lawyers Helping Lawyers program is continuing. An informational mailing will be sent home to make spouses and families aware of those services being offered.

During the last Bar meeting, additional funds were provided for the bar performance review to be completed in the next few months. Two candidates are up for nomination for the Bar's delegate to the ABA, they are Charles Brown and Charlotte Miller.

4. LEGISLATIVE INTERIM COMMITTEE REPORT: (Rick Schwermer, Mark Jones)

Mr. Schwermer reported that the Executive Appropriation's Committee reviewed court leases last week. The Judiciary Interim Committee received a report of a protective order of dating violence. The only action item that carried over was the sunset of law practice that was discussed last meeting. This item was extended five years. The audit subcommittee met and advanced agencies use of monies through fiscal note. Justice Nehring reported on the CRC discussion that took place during last weeks interim meetings. It was resolved that no change would be made to CRC.

Mr. Jones indicated that Representative Ure met with the Board of District Judges during their May budget and planning meeting. Representative Urqhart will meet with the Board in July

5. JUDICIAL BRANCH EDUCATION COMMITTEE: (Judge Gordon Low, Diane Cowdrey)

Judge Gordon Low thanked the Council for their time. Judge Low provided a breakdown of Education's budget. Dr. Diane Cowdrey reviewed the mission statement and core values of the Standing Committee on Judicial Branch Education, which is:

"Our mission is to provide education and foster a culture of learning to maintain a high standard of service and justice to the community."

The core values that the committee determined were: relevance; effectiveness inclusiveness; convenience; being tied to the mission of the courts; and, supportive of lifelong learning. The accomplishments met in 2006 included advanced clerk education, continuing leadership training for presiding judges and TCE's and advanced district court education.

The Education Committee has also developed numerous justice court education programs such as expanding the Legal Institute, planing a retreat for judges and clerks, creating an online management training program, curriculum development for judges and clerks, and a traffic seminar.

The goals for 2006-2007 are:

1. Faculty development
2. New employee orientation
3. Probation officer training
4. Clerk training

The goals for justice court education programs in 2006-2007 include continued curriculum development for clerks and judges, faculty development, mentor program, Spanish classes for clerks, Groupwise training, technical online assistance, and online programs for judges. Dr. Cowdrey demonstrated online justice court clerk services that have been modeled after New Mexico programs. The Utah module has not been released yet, but the program is planned to begin shortly.

Chief Justice Durham indicated that in her recent discussions with legislators, education continues to be a priority and the judiciary is able to respond to those inquiries with the numerous programs the Education Department and Standing Committee provide for judges and staff.

Mr. Becker indicated that this report serves as the Education Standing Committee strategic plan. Chief Justice Durham thanked the committee for their hard work and efforts.

6. GUARDIAN AD LITEM STANDING COMMITTEE: (Debra Moore, Kristin Brewer)

Debra Moore indicated that the Guardian ad Litem Oversight Committee was formed a year ago and this is the first report to the Judicial Council since they began meeting. Ms. Moore introduced Lisa Watts Baskin, an attorney at the Board of Utah Children and Dr. Kevin Gully from the University of Utah, are also on the Oversight Committee.

Ms. Moore provided a handout that reviewed the goals the Standing Committee has set. During the upcoming legislative session, the GAL Oversight Committee will reintroduce the same changes that were presented this past year. These included changes to 78-3a-912 and 78-7-9 dealing with the GAL duties in the juvenile and district court. The Committee will also continue to work with SWAP on changes to statutory duties in criminal cases as well as continue a comprehensive look at statutes governing GAL duties. The GAL Oversight Committee will continue to address lingering concerns over the relocation of the office, the negative impact on funding requests, and the perception that GAL's have a greater access to and more influence over judges because of their location within the system.

The GAL's now have access to CARE. Due to excessive caseload and inadequate funding the concern remains over personnel burnout, and loss of experience and training due to high turnover. Because of these concerns, the Oversight Committee will continue to seek increased funding for additional personnel and aggressively consider alternative means of reducing caseload. Some of those alternatives might include: statutory time limits in district court cases; district court judges appointing private GAL's; requesting and awarding attorney fees as required or permitted by statute, and; creating a workload standard. The challenge over seeking fees was discussed. The complaint procedure was also discussed and the clarification of the role of GALOC in appeals from the Director's disposition of complaints regarding GAL's.

Chief Justice Durham reported that the creation of the oversight committee has demonstrated the great need the GAL Office continues to have and this Committee can better represent and communicate those needs to the Legislature.

7. COURT COMMISSIONER CONDUCT COMMITTEE: (Judge Pamela Greenwood, Rick Schwermer)

Chief Justice Durham welcomed Judge Greenwood to the Council Meeting. Judge Greenwood discussed the responsibility of the Court Commissioner Conduct Committee which is to evaluate complaints and make recommendations. The committee convenes very rarely to hear reports. Additional rule changes could be requested in the future to allow for complaints that can be categorized something besides frivolous or serious. Mr. Schwermer reported that with the access to the recorded hearings, the investigation into complaints is made very easy. Judge Greenwood reported that a copy of the complaints go to the Presiding Judge and they are usually involved in the review process when the committee convenes. The Commissioner's also receive a copy of the complaint made against them immediately. Chief Justice Durham thanked Judge Greenwood and Rick Schwermer for their work.

8. BOARD OF PARDONS REPORT: (Keith Hamilton, Curt Garner, Cheryl Hansen)

Chief Justice Durham welcomed Mr. Hamilton, Mr. Garner, and Ms. Hansen to the meeting. Mr. Hamilton reported that Clark Harms will be replacing Donald Blanchard on the Utah Board of Pardons and Parole. Mr. Hamilton provided a handout outlining the responsibilities the Board of Pardons has. Mr. Hamilton highlighted that the majority of the Board's work consists of preparing for hearings, disclosure of information to inmates, conducting open public hearings, administrative reviews, requests for Board action or reconsideration, and decision making.

Mr. Hamilton reiterated the importance of communication between the Board of Pardons and the Courts. Mr. Hamilton reported that obtaining a transcript or record of a hearing or additional information when death sentence cases arise can be very helpful. The Judge's perspective can be provided by letter or in the Judgement and Sentence. Mr. Garner reviewed the scheduling for particular case types. The Council discussed the minimum sentencing structure.

Mr. Hamilton reported that the Board of Pardons is very aware of their role they have in the system of justice and want to continue a healthy and productive relationship with the courts.

9. 3rd DISTRICT COURT COMMISSIONER REQUEST: (Judge Sandra Peuler, Judge Kimberly Hornak)

Chief Justice Durham thanked Judge Peuler and Judge Hornak for their time during their busy calendars. Judge Hornak reported that as the Council is aware, the district and juvenile court will be sharing a Commissioner position for the year 2006-2007. Judge Peuler reported that both benches selected Michelle Tack to serve as the new Commissioner. Ms. Tack comes from the Attorney General's Office in the division of Office of Recovery Services. Judge Peuler thanked Mr. Becker for his creativity and the resources the Council provided in allowing this position to be created.

Motion: Judge Stott motioned to accept Ms. Tack as the new 3rd District/Juvenile Court Commissioner, Judge Barrett seconded the motion, the motion passed unanimously.

10. CLERICAL WEIGHTED CASELOAD REPORT: (Kim Allard, Peggy Gentles)

Ms. Gentles reviewed the members of the Clerical Weighted Caseload Committee. To determine the weights of cases, clerks are surveyed to report on the amount of time they spend on specific case and referral types, the average time for each case type is then calculated.

Ms. Gentles reported that re-surveying of the district court was completed during this last year and a significant philosophical difference for how the weights were developed. The juvenile court did not get re-surveyed because of the introduction and training associated with CARE, but that will take place in the near future. This year the Committee collected data that was associated administrative duties unrelated to a particular case, such as answering a phone and other clerical responsibilities. The data that was retrieved needs to be evaluated further to determine the correct amount administrative time that should be spent on clerical activities. The Committee also evaluated the deviation standard and converted that number to 10%. Information was provided on the deviation number. Previously it was determined by the size of court, but the 10% deviation is now more applicable to the needs of clerical weighted caseloads statewide. Minimum staffing adjustment has also been addressed by the committee this past year. The court has an obligation to have enough staff to keep each location open and functioning during business hours. In some smaller courts, the FTE provided based on clerical weighted caseload results does not account for minimum staffing needs to continue the operation of a court if someone is sick, on vacation or gone for other reasons. The minimum staffing adjustment addresses these needs to make two clerks available in each location, regardless of the amount of filings in that location.

Ms. Allard highlighted events in 3rd District Juvenile Court, 4th District and 4th Juvenile Court that have been affected by the minimum staffing adjustment and deviation of the clerical weighted caseload results. Ms. Allard

reported that debt collection is weighted heavily but the debt collection cases are decreasing, which could have affected these clerical positions.

Mr. Becker reported that with the information discussed about clerical weighted caseload should be used to conform with the budget plan adopted in April. At that time the Judicial Council established 2 permanent law clerk positions using positions that were freed up from the second district. Nine time limited deputy clerks were also established, one has been allocated to juvenile court and one to the district court to help the Commissioner that was approved today. The question before the Council today is if more than five deputy clerks be eliminated in the second district at this time. The information provided suggested seven clerk positions, could be available. This item should be taken under advisement, no decision needs to be made at this time. Even with the creation of the justice court in the Ogden, it will take until January for cases to work their way out of the system. At that time, the Council will reconsider the deputy clerk positions.

11. JUSTICE COURT FILING TRENDS: (Kim Allard)

Ms. Allard reported that there are 134 justice courts as of April 2006. CORIS is the case management systems used by the 33, or 36%, of justice courts. Casselle is used by 91 courts, 69%, of all justice courts, and other systems are used by 10 courts, or 5%, of all justice courts. 24% of filings are done in CORIS, 55% in Casselle and 21% in other.

Ms. Allard reviewed the traffic filings, the misdemeanor filings and the small claims filings by justice courts. The growth of all justice court filings have increased 59% since 1996. Ms. Allard reviewed the justice courts that have formed since 1996. A list of the top ten justice courts by filings was also provided, they are: Salt Lake City, West Valley City, Washington County, Sandy, Murray, Iron County, Taylorsville, Weber County, Box Elder County and West Jordan. Some issues that are affecting the data quality in reporting this information included counting charges as cases, traffic mitigation for Salt Lake County, entry errors in revenue, and several courts have trouble with revenue and surcharge reporting.

12. ETHICS ADVISORY COMMITTEE REPORT: (Brent Johnson)

Chief Justice Durham thanked Mr. Johnson for attending the meeting. Mr. Johnson reported that Judge Dane Nolan is the chair of the committee, Judge Greenwood, Judge Westfall and Judge Skanchy, Judge Poulson and Pamela Vickery are also members. Mr. Johnson indicated that the committee only meets when there is a request for an opinion, and often time the committee communicates via email.

During 2005, five opinions were issued. So far in 2006, five opinions have also been issued this year. The first questioned whether a judge should disqualify themselves if their clerk's spouse appears as counsel in a case before the judge. The Committee determined the judge should enter disqualification, but the other judges in the district do not need to. The second opinion was whether disqualification was required when a judges spouse was employed at IHC in a part time position. The Committee determined the judge did need to disqualify themselves, even if the employment at IHC was limited. The third opinion was over a judge serving on a county ad hoc committee dealing with zoning issues. The Committee determined the judge could not serve because it was not a committee that dealt with the law, the legal system or the administration of justice. The fourth opinion involved a juvenile judge who asked to serve on a DCFS panel that trains foster parents. Because the panel consisted of other components and legal representatives of the juvenile justice system, the Committee determined the judge could serve on the panel. The last opinion issued this year involved a justice court judge who was asked to serve on a board of a non-profit SBA lending company. The Committee determined that because it was non-profit and the company did not appear regularly in any court, and the judge was not asked to solicit money or support, the judge could serve on the committee. Mr. Johnson indicated that a judge can appeal an ethics advisory committee decision through the Judicial Council.

The ABA is hosting an ethics conference this fall and some of the advisory committee members will be attending.

13. VOTER INFORMATION PAMPHLET: (Tim Shea)

Mr. Shea provided information on the language in the voter information pamphlet.

Motion: David Byrd motioned to approve the voter information pamphlet, Judge Hilder seconded the motion, the motion passed unanimously.

This information will go on the courts' web page and be sent to the Lt. Governor's Office for inclusion in the voter information pamphlet.

Motion: Judge Hilder motioned to go into executive session, Judge Barrett seconded the motion and the motion passed unanimously.

14. CERTIFICATION OF COMMISSIONER: (Tim Shea)

Motion: David Bird motioned to delay certification consideration of Commissioner William R. Russell until the July Council Meeting, Judge Barrett seconded the motion, the motion passed unanimously.

