

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 25th, 2010

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh (by phone)
Hon. Gregory Orme
Hon. Keith Stoney
Hon. Michael Westfall
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

Hon. Jody Petry

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Ray Wahl
Rick Schwermer
Tim Shea
Matty Branch
Kim Allard
Nancy Volmer
Brent Johnson
George Braden

GUESTS:

Peyton Smith
Stephen Hunt, SL Tribune

1. WELCOME, NEW COUNCIL MEMBERS WELCOME AND APPROVAL OF MINUTES: (Chief Justice Christine M. Durham)

Chief Justice Durham welcomed everyone to the meeting.

Motion: Judge Orme moved to approve the minutes as amended. Judge McCullagh seconded the motion, and it passed unanimously.

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

She reported that she, Mr. Becker and Mr. Schwermer met with House leadership to discuss budgetary issues. A meeting with Senate leadership will be scheduled for a later date.

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

Mr. Becker reported on the following items:

The State of the Judiciary address is scheduled for 2:15 p.m. today. All Council members are invited to attend.

He introduced and welcomed Mr. Peyton Smith, the new Third District trial court executive, to the courts. He mentioned that he started working for the courts on January 12. A brief background of Mr. Smith's experience was provided.

4. COMMITTEE REPORTS:

Management Committee Report:

An update was not provided at this time.

Liaison Committee Report:

Justice Nehring reported that the Liaison Committee is meeting weekly on Fridays at noon. The main topic of discussion at the last meeting dealt with retirement bills.

Mr. March provided an update on retirement. Many of the bills being introduced look at extending the length of time employees need to work to receive certain retirement benefits. Eliminating the state's 401K contribution for employees is also being considered.

Policy and Planning Meeting:

Judge Orme reported on the following:

He mentioned that input on evaluation of senior judges and court commissioners was received from the following judges: 1) Judge Christine Decker, 2) Judge Michael Lyon, and 3) Judge Derek Pullan. Commissioner input will be given at the next meeting. It will be a few months before an update will be provided to the Council.

Judge Orme commented on Title VI regarding Court Interpreters and Utah's compliance. A review of this matter will take several months before an update will be provided to the Council.

There are several rules for final action that will be discussed later in the agenda, and there is one rule for comment on the Consent Calendar.

The Technology Committee will prepare a separate proposal to allow certain individuals to gain access on Xchange at no charge.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar Committee met last Friday. The Governmental Affairs Committee will meet every Tuesday at noon. The Bar Committee will meet Tuesday at noon with the Bar Commission meeting at 4 p.m. to review the Committee's actions. Law Day is scheduled for February 18.

This year, all voting for the Bar Commission and for the Bar President will be done electronically.

The Bar is continuing to provide information on the use of e-filing.

5. COURT DATA REPORT: (Kim Allard and George Braden)

Mr. Becker recognized Ms. Kim Allard and Mr. George Braden for their work on the Court Statistics Project. They were awarded the *2009 Reporting Excellence Award* for improved statistical reporting of Juvenile and Criminal Caseloads.

Ms. Allard provided an update on mid-year case filings and referrals for the Supreme Court and Court of Appeals, Juvenile Court, and District Court. She highlighted a number of case types where either increases or decreases were exceptional.

6. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer provided a report to the Council on proposed legislation. He commented on 78A-2-229 - References to court pleadings and other papers. This is listed under the Housekeeping Legislation. Other legislation mentioned included: 1) grand jury amendments draft and 2) HB 74 - Adoption and child custody amendments.

7. NEW JUSTICE COURT JUDGES CERTIFICATION: (Rick Schwermer)

Mr. Schwermer recommended that Justice Court Judge John Cox, new justice court judge for San Pete County, be certified to have completed the required orientation.

Motion: Judge McCullagh moved to certify Justice Court Judge John Cox as completing the required orientation. The motion was seconded, and it unanimously passed.

8. SECOND DISTRICT JUDICIAL VACANCY: (Daniel J. Becker)

Mr. Becker reported on a proposed change in the position that would be used in a transfer from the Second District Court to the Fifth District Juvenile Court. Judge Memmott has announced his retirement effective May 1. It is recommended by the Management Committee to fill Judge Page's vacancy now and make the transfer effective with Judge Memmott's vacancy. There will be no change in the legislation or the effective date associated with this change in transfer.

He reported that this request has been discussed with the Governor's legal counsel and Judge Michael Lyon, presiding judge in the Second District. If the recommendation is approved, the announcement of judicial vacancy for Judge Page's position will be posted immediately. The announcement would be sent out electronically.

Motion: Judge Willmore moved to approve filling Judge Page's vacancy and making any transfer to Fifth District Juvenile Court effective with Judge Memmott's vacancy. Judge Eyre seconded the motion, and it passed unanimously.

9. SMALL CLAIMS FILING FEE WITHHOLDING: (Brent Johnson)

Mr. Johnson provided background information on the issue of small claims pleadings filed in justice courts and the small claims fees associated with Utah Code Ann. §78A-8-105. The statute states that \$7.50 shall be withheld from the fee for small claims cases and allocated to the Judges' Retirement Trust Fund. Currently, the Logan Justice Court is the only justice court that is withholding the stated fee.

The proposed action would be to modify CORIS to have the filing fee withheld from the justice courts prospectively.

Discussion took place regarding this statute as well as Utah Code Ann. §78A-7-121.

Motion: Judge McCullagh moved to refer the statute to the Liaison Committee for clarification with the change effective July 1, 2010. Judge Stoney seconded the motion. The motion failed.

Motion: Judge Maughan moved to implement the change by modifying CORIS to withhold the fee from the justice courts effective April 1, prospectively. The motion passed with Judge McCullagh and Judge Stoney voting no.

10. APPROVAL OF RULES 4-409 AND 7-304: (Tim Shea)

Mr. Shea highlighted the following two rules: 1) CJA 04-0404 - Jury selection and service, and 2) CJA 10-01-0305 - Mediation in small claims appeals.

Motion: Judge Eyre moved to approve the rules for final action as outlined. Judge Westfall seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION:

Motion: Ms. Nelson moved to enter into an executive session to discuss individual competency. Judge Maughan seconded the motion, and it passed unanimously.

12. CERTIFICATION OF JUDGES: (TIM SHEA)

The Council ended its executive session.

It was noted that the following Council members are standing for retention in 2010 and will abstain from voting for their own certification: 1) Judge McCullagh, 2) Judge Stoney, 3) Judge Petry, 4) Judge Hornak, 5) Judge Atherton, 6) Judge Eyre, and 7) Judge Chamberlain.

Motion: Judge Maughan moved to not certify Judge Gerry Hoyt. Judge Westfall seconded the motion, and it passed unanimously.

It was reported that Judge Joseph Breinholt left the bench and will not be filing for retention, Judge Stephen Henriod will not be filing for retention, and Judge Kent Bachman has announced his retirement, and will not be filing for retention. There is consensus that no further action is required for these individuals.

Motion: Judge Maughan moved to certify the remaining judges whose terms are up for retention in the 2010 election. Judge Orme seconded the motion, and it passed unanimously.

13. BUDGET INFORMATION: (Daniel J. Becker)

Mr. Becker provided an update to the Council on the courts budget.

He reported that the recommendation from Executive Appropriations is a 4% reduction in the current fiscal year which represents a \$4.1 million reduction to the courts budget.

He provided feedback from the January 7 presiding judge/court executive meeting. The following were recommendations that resulted from the presiding judge/court executive meeting: 1) 10% reduction in spending by all districts and offices, 2) all unexpended copy revenue, 3) eliminate vacancy coverage by senior judges, 4) additional operational reductions, and 5) the need for 2.2 furlough days. It was decided to implement one of the furlough days on the day of the Legislative Update. The other 1.2 days would be scheduled off between mid March and June 30. Mr. Becker mentioned that the furlough day could be taken in ½ day increments. The court executives would keep a schedule of furlough days taken in their respective districts. At this meeting, it was decided not to close court. He mentioned that there was no consensus on voluntary judge participation relative to the furlough days, and there was no consensus on closing court counters a half day a week to assist with clerical workload. Discussion of judge participation relative to the furloughs took place. Further discussion of this subject was deferred until a later date.

Mr. Becker reviewed the FY 2011 budget proposals and the makeup of the courts budget.

He reported that a legislative audit of the courts weight caseload system is being conducted.

14. ADJOURN

The meeting was adjourned.