

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 24th, 2011

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Michael Westfall, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Nancy Volmer
Diane Abegglen
Kim Allard

GUESTS:

Joanne Slotnik
Kelsey Garner
Stephen Hunt, SL Tribune
Hon. Dennis Fuchs
Hon. Michael Kwan

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

Chief Justice Durham welcomed everyone to the meeting.

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

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

Chief Justice Durham reported on the following items:

She mentioned that she and all members of the Supreme Court attended the Governor's inauguration where she administered the Oath of Office.

A detailed report on the legislative update meetings will be provided later in the meeting.

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

Mr. Becker reported on the following items:

He provided a followup report on the Presiding Judge/Court Executive meeting held on

Monday, December 20. The meeting was very productive with the majority of the time spent with the individual districts presenting efficiency and case management initiatives taking place in their respective districts. Chief Justice Durham commented on the manner in which the individual districts are working to improve the system by which cases are processed. (She commended the Council on their willingness to invest in leadership training).

Mr. Becker received notice that at the Utah Substance Abuse Annual Conference put on by the Division of Substance Abuse, they renamed their annual award in honor of Judge Kathleen Nelson. It is now entitled the "Judge Kathleen Nelson Justice Award."

Judge Lynn Davis informed Chief Justice Durham and Mr. Becker that he and others are publishing a paper on interpreter services which has been accepted for publication by the Harvard Latino Bar Review.

He noted that copies of the 2011 Annual Report to the Community were distributed to each member. It was prepared by Ms. Nancy Volmer with the help of various court staff. Mr. Becker expressed his gratitude to Ms. Volmer for all her hard work preparing a quality report.

The 2011 Legislative Session started today. The courts have been working with the Appropriations Committee in the budget process for the two weeks leading up to the Session.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

Justice Parrish reported on the following:

Nine bills, involving policy matters, were considered by the Committee. The Committee took no position on each of the bills.

Policy and Planning Meeting:

Mr. Shea reported on the following:

Policy and Planning considered several rules. Rule CJA 02-0103 - Open and Closed Meetings is on the agenda for final action. The other rules have been placed on the consent calendar to be published for comment. Rule 04-0613 - Intercounty jail prisoner transportation will be removed from the list as a better approach is under consideration. This matter will be reset on the Council's February agenda.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar's immediate focus is on the Legislative Session.

The Governmental Affairs Committee will meet tomorrow and weekly during the Legislative Session.

She mentioned that each member of the Commission sent letters to their representatives to stress the importance of protecting judicial budgets.

The Bar has retained a public relations committee to provide visibility relative to what the Bar does and address lawyer advertising.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Ms. Slotnik reviewed the membership of the Judicial Performance Evaluation Commission. She reminded the Council that she reported on the mid-term evaluations for the 2012 judges in September and agreed to provide a presentation on the survey reports during her next update.

She highlighted information from the attorney survey results to include: 1) questions about the respondents, 2) comparison of results with peer group, 3) comparison of results for all judges standing for retention, 4) distribution of responses, and 5) comment report. Ms. Slotnik reviewed the manner by which the surveys are scored.

She noted that the court staff surveys are similar to the attorney surveys, so she did not review this category.

The juror survey is completed online. The juror email addresses are gathered at the court proceeding and a link for the survey is emailed to them. Two weeks after a jury trial, the judge receives an email with a link to the online surveys that were compiled for a particular court proceeding. Ms. Slotnik reviewed the details of the survey report.

She mentioned that the juror surveys do not affect the judges' certification.

Ms. Slotnik highlighted the following proposed statutory amendments: 1) eliminate litigant surveys as part of the evaluation process; 2) the statute only allows for yes/no questions and questions on a scale from 1-5, the Commission would like to include narrative questions; 3) close the retention vote, and protect commissioner identity; 4) with the minimum performance standards, only questions scored on a 1-5 scale will count towards the retention presumption—take out all yes/no questions; 5) each respondent group to be tallied separately; 6) limit the minimum performance standards to statistically reliable data; 7) justice courts are to be phased into the system; and 8) technical changes to the voter information pamphlet.

Proposed changes to the provision which allows judges to meet with the Commission to review an evaluation report were explained.

Courtroom observation feedback and its use was discussed. Ms. Slotnik was asked if access to the juvenile courtrooms was working. She replied that things have improved.

Ms. Slotnik was thanked for her informative presentation.

6. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schermer provided a legislative update to the Council. Budget is the main topic of discussion. Two appropriation meetings have already been held where there was discussion regarding a 10% budget cut. Currently, a 7% base budget cut across the board is being considered. The courts metrics were held up as a model at both appropriation meetings.

Four bills are being advanced by the courts to include: 1) housekeeping bill, 2) HB 207, juvenile bill, 3) guardianship bill, and 4) a resolution for closing Orem as a district court site.

7. REPORT ON LEGISLATIVE UPDATE MEETINGS: (Rick Schwermer)

Mr. Schwermer thanked Chief Justice Durham for taking time away from her schedule to attend the legislative update meetings.

He provided a brief overview of the legislative update meetings which were held in each judicial district in the state. He mentioned that the meetings were attended by a number of each district's legislative representatives as well as the judges. Much of the discussion at these

meetings focused on the court's budget, and problem-solving courts. Mr. Schwermer mentioned that a fact sheet was distributed at each location relative to the effect a 10% budget cut would have on the courts.

Council members were thanked for attending the legislative meetings in their respective districts. Chief Justice Durham commented on the value of such meetings.

8. REPORT ON STATUS CASELOAD - DISTRICT AND JUVENILE COURT: (Kim Allard)

Ms. Allard reviewed data on District Court Case Filings and Juvenile Court Referrals from July 2010 through December 2010 in a report distributed to the Council.

She highlighted the following categories relative to district court case filings: 1) criminal filings, an 8% decrease; 2) domestic filings, a 6% increase; 3) debt collections, a 16% increase; 4) judgments unchanged; 5) foreign decrees, a 57% increase; 6) name changes, a 38% increase; 7) lien/mortgage foreclosures, a 16% decrease; and 8) property rights, an 83% increase.

Discussion took place.

Ms. Allard highlighted the following categories relative to juvenile court referrals: 1) child welfare proceedings, not much of a change with a 3% decrease; 2) termination of parental rights, a 16% increase; and 3) felony, a 14% decrease.

Discussion took place as to the decreases shown in several of the categories regarding juvenile court referrals.

Based on self-reported data; the justice courts, overall, are down 20%. Misdemeanors reflect a 13% decrease, and small claims reflect an 18% increase.

Chief Justice Durham thanked Ms. Allard for her update.

9. RULE CJA 02-0103 - FINAL ACTION: (Tim Shea)

Mr. Shea reported that Rule CJA 02-0103 - Open and Closed Meetings was published for comment. Several comments were received in opposition to the change. He reminded the Council that policy issues relative to the rule were discussed at the November meeting. Final action was deferred at that time, to allow Policy and Planning to consider a more specific description of the records for which the Council could close a public meeting.

The amendment clarifies that a meeting can be closed to discuss the professional competence of an individual, and it provides that discussion of a non-public record is grounds to close a meeting. The draft rule replaces "nonpublic records" with "a private, protected, sealed, juvenile court social, or juvenile court legal record as defined in Rule 4-202.02." Discussion took place.

Motion: Judge Maughan moved to approve Rule CJA 02-0103 with the removal of the comma after "social". It was seconded, and it passed unanimously.

10. PROBLEM SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Rick Schwermer)

Judge Fuchs was welcomed to the meeting, and he reviewed the certification process for problem solving courts.

It was noted that there are certification issues with regards to the Taylorsville Justice Court - Drug Court. Judge Michael Kwan was invited to attend the Council meeting to respond to the certification issues, and he was invited to respond to the report regarding his drug court. To date, a written response has not been received by Judge Fuchs. Judge Kwan responded by email this morning saying that he may not be able to attend the Council meeting due to conflicts with his schedule.

Judge Fuchs met with Judge Kwan and his drug court team two weeks ago to review their drug court and the issues relative to certification. He left with the understanding that Judge Kwan would respond to the certification issues and attend the Council meeting to respond to the issues resulting from the drug court review. Judge Fuchs is recommending that the Taylorsville Justice Court not be certified as a drug court.

Discussion took place relative to the certification deficiencies found in the Taylorsville Justice Court - Drug Court review. Judge Fuchs commented that the main concern with Taylorsville is the fact that they do not follow the drug court model. Other issues were brought up which include the use of peer review panel. Members of the Council suggested the observation of neighboring drug courts by Taylorsville to gain an understanding of the proper use of the drug court model.

For the remainder of the drug courts reviewed, certification is recommended. Judge Fuchs mentioned that the remainder of the problem-solving courts that were reviewed and had concerns, have complied and submitted written changes; and the changes have been implemented in their courts.

Motion: Ms. Nelson moved to certify all recommended problem-solving courts with the exception of the Taylorsville Justice Court - Drug Court, but give them 90 days to respond to the issues outlined in the certification review and wind down. Judge Maughan seconded the motion, and it passed with Judge McCullagh abstaining from the vote.

Judge Fuchs was commended for his work with the problem-solving courts.

11. CERTIFICATION OF JUSTICE COURT JUDGE: (Rick Schwermer)

Mr. Schwermer recommended that Justice Court Judge David M. Tubbs, new justice court judge for Grand County Justice Court, be certified to have completed the required orientation.

Motion: Judge McCullagh moved to certify Justice Court Judge David M. Tubbs as completing the required orientation. Judge Eyre seconded the motion, and it unanimously passed.

Motion: Judge Westfall moved to enter into an executive session to discuss the professional competency on an individual and a draft budget document. It was seconded, and it passed unanimously.

12. 2011 STUDY ITEM MEMBERSHIP APPROVAL: (Diane Abegglen)

This item was sent back to the Management Committee for review of the proposed Committee roster and will be presented at the February Judicial Council meeting.

13. CERTIFICATION OF SENIOR JUDGE: (Tim Shea)

Discussion took place in Executive Session.

14. EXECUTIVE SESSION

An executive session was held at this time.

The executive session was interrupted, and the Council went back into public session. The Council then heard from Judge Kwan in response to the review of the Taylorsville Justice Court - Drug Court.

Judge Kwan was welcomed to the meeting. He responded to the Council stating that the drug court in Taylorsville is different from other drug courts with their use of a peer review panel. He mentioned that all issues relative to certification were raised in the report and discussed further with Judge Fuchs on January 12. He mentioned that he also responded to Judge Fuchs by email last Wednesday; and he will provide a response, in writing, regarding all other non-compliant issues raised in the report.

He responded to the Council regarding the use of a peer review panel and the basis for its use. Another concern with the peer review panel dealt with its use with no judicial input. Judge Fuchs reported that he did not observe judicial participation in this process during his review. Judge Kwan provided an explanation.

Judge Kwan was asked if he felt his drug court met or did not meet the 10 components by which the problem-solving courts are reviewed for certification. He stated that he felt his drug court meets the recommendations with the exception of the use of a peer review panel. The question was asked as to whether there was data to substantiate the use of a peer review panel. Judge Kwan mentioned that it was an unproven practice, but he would like to conduct a study to substantiate its use. He mentioned that he would like to continue with the model, and seek funding to conduct a study.

Continuing concern was expressed over the peer review model which was the principal basis for decertification. Judge Kwan stated that he could provide Judge Fuchs with additional information. Judge Fuchs was asked to review any additional material to determine whether anything should be brought back before the Council.

Motion: Judge Orme moved to enter back into an executive session. It was seconded, and it passed unanimously.

15. ADJOURN

The meeting was adjourned.