

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 25th, 2008

Judicial Council Room

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Gregory Orme
Hon. Brendan McCullagh
Hon. Gary D. Stott
Hon. Hans Chamberlain
Hon. Ronald Nehring
Hon. Jody Petry
Hon. William Barrett
Hon. Michael Kwan
Scott Sabey, esq.
Hon. Michael Westfall
Hon. Judith Atherton

STAFF PRESENT:

Daniel J. Becker
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Holly Frischknecht
Kim Allard

EXCUSED:

Hon. Mark Andrus
Hon. Michael Lyon

GUESTS:

Hon. George Harmond
Hon. Paul Thompson
Frank Nakamura,
Murray City Attorney

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

After making changes to the minutes regarding the computer use policy for judges, the following motion was made:

Motion: Judge Barrett motioned to accept the minutes with the changes, the motion was seconded by Judge Petry and the motion passed unanimously.

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

Chief Justice Durham indicated that those things she has to report will be discussed throughout the meeting and in the Legislative Update.

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

Mr. Becker reported the following:

-The state's projected surplus fell short of expectations which will limit funds available

for growth requests. There is approximately \$100 million available for new funding. The Executive Appropriations Meeting will be held tomorrow night. There continues to be discussion about the weighted pupil unit, state employee salary increases, and possible tax relief. The committee that proposed the courts budget increases placed the lease and contract obligation lower on their priority list, so it is unclear how this will be funded. The courts continue to work with Executive Appropriations regarding the clerk compensation request and the lease and contract request. The other items the courts requested are not likely to be funded. It appears that funding for the land purchase of an Ogden Juvenile Courthouse looks positive. The 4th District and Juvenile Commissioner request may not be funded, but intent language could be approved for the courts to fund the position.

-Applicants for the Education Director position will be interviewed tomorrow.

-The Guardian ad Litem's Office is undergoing another full audit to follow up on the one conducted three years ago.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham referred the Council members to the minutes of the Management Committee meeting.

Policy and Planning Meeting:

Judge Orme reported that the Policy and Planning Committee reviewed many items that will be addressed later on the Council agenda. Judge Orme highlighted one of the Rules on the consent calendar regarding the parent-time coordinator. Mr. Becker discussed legislation that has been introduced regarding parent-time coordination and indicated this changed rule is timely to address some concerns being raised.

Liaison Committee:

Justice Nehring indicated a more full legislative report will be given when Mr. Schwermer and Ms. Moore arrive, but a complete list of the bills the Liaison Committee has reviewed is included in the Council material.

Bar Committee Report:

Mr. Sabey reported that the Bar's operational review will be available shortly. The mentoring program will be introduced in July. Lowry Snow, President of the Bar, visited with the District Court Board last week and discussed the Bar's approach on press coverage of judges. The Bar will have an emergency meeting of the Commission today to discuss a letter sent by a state senator to a judge.

Judge Orme indicated that judges as a group have sensed the awkwardness of defending themselves in the media and the Bar could help address these negative attacks. Judge Orme expressed his appreciation to the Bar for addressing this issue. Mr. Becker indicated that Lowry Snow and John Baldwin of the Bar will be attending the Judicial Council meeting in March.

5. CLASSIFICATION OF GUARDIANSHIP AND CONSERVATORSHIP

RECORDS AS PRIVATE: (Hon. George Harmond, Tim Shea)

Judge Harmond, Chair of the ad hoc Committee on Probate Law and Procedure, recommended Rule 4-202.02 be amended to classify guardianship records and conservatorship records, except the order and letter of appointment as private. The Committee recommends the change be effective immediately under the Council's expedited rulemaking process.

The Council has already approved for comment an amendment to classify the inventory and annual reports of guardians and conservators as private, and to make a private probate record accessible to interested persons in the case. The Council then asked the ad hoc committee to consider if the balance of the records should be private.

Judge Harmond recognized that guardianship and conservatorship is a great responsibility that should be monitored closely, but the Committee believes the public hearings offer sufficient scrutiny to control abuse and the order and letter of appointment should remain private.

Motion: Judge Stott motioned to accept the proposal of the Policy and Planning Committee to classify these guardianship and conservatorship records as private and approve an expedited request for the rule to be made. Judge Orme seconded the motion and also raised further discussion on the issue.

Judge Orme reported that while he approves of the change in the rule, he doesn't view the change as an emergency. Judge Harmond indicated that the annual reports are already private, but the petitions also hold the assets of the protected person. This can include bank records and social security records. If this information is available in the petition, there is no reason to keep the annual report private. Judge Harmond reported that these privacy issues have not been changed yet because this is the first time they are being considered. If the Council approves this emergency rule, there is still time for public comment.

Motion: The motion was approved unanimously.

6. NEW COURT WEBSITE DEMONSTRATION: (Kim Allard)

Ms. Allard introduced Jason Ralston as the web designer who handled the re-design of the Courts website. The information most visible on the website after the re-design was determined by statistics about information most used by the public. Ms. Allard demonstrated the new features on the website, including how court calendars can be searched and how to navigate titles and codes. Ms. Allard indicated that the Google search engine is now available on the courts website to find more information. Ms. Allard demonstrated the court directory online and indicated each district is responsible for updating their own contact information. Ms. Allard reported the court's website users have increased to over 1 million visitors during this past year. Mr. Ralston reported that all of the internal links should remain the same and not be affected by the updated design.

Chief Justice Durham thanked Ms. Allard and Mr. Ralston for the improved new website and for the work they put into it.

7. APPROVAL OF RULES: (Tim Shea)

Mr. Shea indicated that the Policy and Planning Committee recommends the amendment to Rule 6-501 be approved effective immediately. The change will exempt the Office of Public Guardian from the testing requirement of the rule. The intent of Rule 6-501, when it was recently reenacted, was that professional guardians and conservators would be exempt from that requirement, but was simply overlooked. If the Council approves the amendment under Rule 2-205, it will be published for comment, but would also become effective during the comment period.

Motion: Judge Stott motioned for approval of 6-501, the motion was seconded by Justice Nehring and passed unanimously.

The Committee also recommends approval of the following rules which have been published for comment.

CJA 01-205 Amends the Standing and ad hoc committees to add a representative of the American Sign Language to the Court Interpreter Committee. In addition to this rule being approved the Committee is also requesting that Mr. Shea review with the Court Interpreter Committee the suggestion that a court reporter be appointed to that group. In the meantime the ASL representative should be approved.

CJA 04-202.03 Amends records access to require approval of the judge for access to a competency evaluation, psychological evaluation or sex behavior risk assessment, and sets the standard by which access will be allowed. The proposed amendment also allows access to private probate records to interested persons. Mr. Shea indicated that the Policy and Planning Committee felt the version of the rule published for comment left too much discretion with the judge to deny access. The Board discussed the issue further and agreed the judge should not be able to deny access entirely. However, the judge should have the authority to regulate access so there is no danger to the child, either psychologically from the report itself or physically from a parent with which the child still lives. The parties need access to the reports to confront the evidence the judge will base decisions on.

CJA 04-510 Amends alternative dispute resolution to reflect statewide application of most of the rule and creates uniform methods to defer ADR.

Motion: Scott Sabey motioned to approve the three rule changes, Judge Barrett seconded the motion, the motion passed unanimously.

Mr. Shea reported that the Policy and Planning Committee recommends the amendment to Rule 2-103 go out for comment which prohibits discussing topics from closed Council meetings with anyone other than participants in the meeting. Since this directs the Council meetings, the Committee felt the Council should discuss this rule first.

Judge Westfall indicated that the language use of past tense in the rule is confusing. Judge Westfall questioned whether the rule intends to allow only those members who attended the meeting to have the information discussed in executive session, or if all members of the Council can discuss the issues regardless of attending the executive session. Judge Orme

indicated the Policy and Planning Committee will further discuss the word tenses in order to clarify who should have access to executive session information.

Motion: A motion was made to go into executive session to discuss personnel issues. The motion was seconded and passed unanimously.

Motion: A motion was made to go out of executive session. The motion was seconded and passed unanimously.

8. BOARD OF DISTRICT COURT JUDGES REPORT: (Hon. Lynn Payne, Debra Moore)

Judge Payne indicated that he is very appreciative of Ms. Moore and all of her work as the District Court Administrator. Judge Payne reported that in the past, the Board often felt they have been focused on administrative tasks that limit their ability to address some of the bigger issues that need attention. The Board recently adopted five goals and Judge Payne further explained them.

1. Sentencing Practices
Determine which alternatives to incarceration are effective. Consider developing standards that alternative program providers should meet. Identify and encourage best sentencing practices.
2. Limited Legal Services
Encourage lawyers to provide limited legal services and facilitate the use of such services by self-represented parties.
3. Remote Hearings
Implement remote hearings in both criminal and civil cases.
4. Adoption Improvements
Amend and clarify the adoption statute as it applies to cases with little connection to Utah and cases where a biological parent will retain parental rights.
5. Public Outreach
Engage in positive outreach to teach about the role of judges in society.

Judge Payne reported that many judges remain uncomfortable about the retention election bill. The Board is interested in rule changes that the Council considers and would like to see proposed rules before they go out for public comment. Judge Payne indicated that the Board is concerned with the Board of Juvenile Judges study of the juvenile weighted caseload. The Board of District Judges would now like to know what changes the juvenile bench is reviewing and questioned why the weighted caseload study wasn't done simultaneously with both benches. The Council suggested that the Board of District Judges conduct their own study since their case measurements would be different from the juvenile bench. Judge Payne clarified that the

principle concern is with maintaining a standard judge year for both court levels. Judge Payne reported that many on the district bench are looking forward to e-filing. Judge Payne indicated that the Board wants to be a resource to the Council.

Chief Justice Durham reported that having the Boards review the rules that go out for comment is a process that could be arranged.

9 MURRAY JUSTICE COURT JUDGE REQUEST: (Rick Schwermer)

Mr. Schwermer indicated that Murray City has hired Judge Thompson as their new justice court judge. Mr. Schwermer indicated that Judge Thompson had been a justice court judge years ago and then left the position for other opportunities. Mr. Thompson later came back as a judge and completed a total of 5 years of service which allowed him to serve as a Senior Judge in Midvale. Judge Thompson has taken the justice court training 2 times successfully due to his experience as a justice court judge during two different periods. The Management Committee had considered this issue at their meeting and determined Judge Thompson must get through the New Judge Orientation process and testing for a third time.

Mr. Nakamura, the Murray City Attorney, requested that the Judicial Council allow Judge Thompson to become the Murray City Justice Court Judge without having to take the test for a third time. Mr. Thompson last took the training and test in 2006 to prepare to apply for the Midvale Justice Court Judge opening. The Murray court then requested that Judge Thompson apply for the opening in their court. There has not been a gap in service since Judge Thompson began serving in Midvale as a Senior Judge and his appointment to the Murray City Justice Court. Judge Thompson reported that he is a justice court judge full time and is no longer practicing law.

Motion: Judge Kwan moved to certify Judge Thompson as the Justice Court Judge in Murray. Judge McCullagh seconded the motion, the motion passed unanimously.

10. LEGISLATIVE UPDATE: (Rick Schwermer, Debra Moore)

Mr. Schwermer referred the Council to the handout in the packet that outlined the Liaison Committee's positions on all bills affecting the courts. Mr. Schwermer highlighted the following bills.

H.B. 22 - Expedited parent-time enforcement expands the pilot program in the third district to the entire state. A fiscal note is attached to the bill to fund the administrator(s) of the program. The Liaison Committee supports this bill.

H.B. 156 - DNA Sample- felony and certain misdemeanor arrests that modifies the public safety laws regarding collection of DNA. This bill failed in the House this morning.

H.B. 167 - Victim amicus brief would allow victims of crime the right to file amicus briefs in actions on appeal related to the crime of which they are victims. The Liaison Committee opposes this bill because this is an amendment to an existing Rule of Appellate Procedure for filing amicus briefs and, therefore, should be addressed by the Advisory Committee on Appellate Rules.

H.B. 169 - Custody evaluation and parent coordination creates the Child Custody Evaluation Act and Parent Coordination act. The bill sets standards for education and training of child custody evaluators and requires the AOC to maintain a list of qualified custody evaluators. The Liaison Committee opposed this bill because it directly affects the operation of the courts and the timeliness of custody hearings.

H.B. 319 - Review and appropriations of grants would require legislative review and appropriations of agency grants that are privately funded, over a million dollars, and creates FTEs. The Liaison has no position on this bill and the Council already reviews grant requests so the court process would most likely not be affected.

S.B. 15 DUI - This bill repeals certain plea requirements when the prosecution agrees to a plea of guilty or no contest to an alcohol or drug-related reckless charge in satisfaction or substitute of an original charge of driving under the influence. The Liaison Committee took no position on this bill but noted that the issues of requiring a motion or a stipulation before agreeing to an impaired driving plea and the need for clarification of where an ignition interlock violation can actually be filed.

S.B. 17 - Child abuse and neglect registry provides that reports that are found to be without merit and false may not be included in the management information system or admitted as evidence. The Liaison Committee has no position on this bill but oppose some language in the bill regarding unsubstantiated findings.

S.J.R 9 - Joint resolution amending rules of evidence relating to information contained in the management information system. The Liaison Committee opposed this resolution, but it did pass out of Senate this morning.

Motion: A motion was made to go into executive session to further discuss legislation. The motion was seconded and passed unanimously.

11. ADJOURN

The meeting was adjourned.