

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 23rd, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. Mark Andrus
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Michael Kwan
Hon. Michael Lyon
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Scott Sabey, esq.

GUESTS:

Judge George Harmond
Judge L.A. Dever
Judge Dane Nolan
Judge Vernice Trease
Maureen Henry
Kerry Chlarson
Kent Alderman
Julie Rigby
Steve Hunt

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Rob Parkes
Mary Aguirre-Shahin
Brent Johnson
Carol Price
Matty Branch
Nancy Volmer
Mary Jane Ciccarello
Susan Burke
Katie Gregory

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. Judge Maughan seconded the motion, and it passed unanimously.

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

Chief Justice Durham reported that she, Mr. Becker, Mr. Schwermer, and Ms. Moore met with legislative leadership last week.

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

Mr. Becker gave the following update:

He reported that three judges have submitted their notice of retirement. The retiring judges include: 1) Judge Sheila McCleve, effective June 30, 2009; 2) Judge Gary Stott, effective July 1, 2009; and Judge John Anderson, effective September 1, 2009.

Mr. Becker briefed the Council on the employee survey results. The response rate was up 67.7% from previous years. The survey showed some areas of improvement. Communication, particularly clerks staff, is an area that continues to need attention. The survey results will be provided to all staff and separated by district and distributed to the TCEs at their next meeting. Court level administrators will go over the results with each court executive as part of the performance evaluation review.

He mentioned that \$1.6 million in design money has been recommended by the Appropriation Subcommittee for the Ogden Juvenile facility.

The Commission on Criminal Justice has approved a grant in the amount of \$35,000 to hold an evidence-based practice symposium. The symposium is scheduled for June 24.

Mr. Becker reviewed different facets of the stimulus package. A portion is for criminal justice in the amount of \$16 million for the Byrne Grant, \$12 million for local government and \$4 million to the State. The Administrative Office of the Courts has drafted several requests for submission when these funds become available, they include: 1) additional clerical support to address workload increase, 2) additional probation officers in juvenile court, and possibly 3) additional law clerks.

A budget update was given. With the release of the updated revenue projections, the FY2009 revenue is down another \$171 million. For FY10, the revised figure has revenues down \$320 million which includes the \$85 million shortfall already calculated in HB 3. The \$320 million is equal to an approximate 15% reduction.

How the Federal Stimulus package will be used in the context of 2010 budgets remains an open question. Mr. Becker also noted that the Rainy Day Fund remains untouched.

Mr. Becker reviewed the courts reduction in a discussion regarding the following: 1) reductions to date, 2) reductions for FY2010, 3) action taken, 4) reductions above \$5.5 million, 5) total reductions, 6) budget reduction shortfall, and 7) areas pending.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that she had nothing new to add to what is already reflected in the Management Committee minutes.

Liaison Committee Report:

Justice Nehring reported that the majority of the bills discussed in the Liaison Committee meeting were generating a "no position" position by the committee members. He deferred to Rick Schwermer's later report on legislative activities for the details on specific bills.

Policy and Planning Meeting:

Judge Orme reported that most issues discussed at the Policy and Planning meeting would be discussed later in the agenda or were on the consent calendar.

Bar Committee Report:

Mr. Sabey reported on the following:

The Mentoring Program is taking shape. There is a need for more people to serve as mentors, especially outside of Salt Lake City. The Utah State Bar is getting ready for the Spring Convention in St. George, Utah. Mr. Sabey mentioned that Justice Sandra Day O’Conner is scheduled to speak at the Summer Convention in Sun Valley, Idaho. The Law Day planning is underway.

5. AP&P PROPOSED SUPERVISION STANDARDS (Debra Moore)

Ms. Moore mentioned that by statute, the Probation Standards are to be brought before the Judicial Council for comment. The district board has reviewed the standards and made input for wording changes.

It was mentioned that pending budget cuts in the Department of Corrections could impact the standards.

Judge Westfall commented that the association standard is rarely enforce because it is unenforceable. It was mentioned that it should be tightened down so that it can be enforced. Judge McCullagh commented that he would like the standards to reflect who is being supervised and what recommendations are made under the circumstances.

The Council suggested that Corrections revisit the standards at the end of the Legislative Session to determine what programs will still be offered and review the revised standards with the district board at that time.

6. LEGISLATIVE INTERIM REPORT (Rick Schwermer)

Mr. Schwermer gave a brief report on a few of the bills.

SB 53 - Awarding of Attorney Fees. This bill limits when a court may award attorney fees. It is being redrafted to make it more clear.

SB 154 - Juvenile Court Judge - Fifth District. This bill increases the number of juvenile court judges in the Fifth Judicial District to three.

SB 170 - Judiciary Amendments. This bill is the judiciary’s internal housekeeping bill. It covers more issues than usual.

SB 184 - Civil Filing Fees. Mr. Schwermer mentioned that the collectors have been the only ones expressing concerns over this bill. The bill has been redrafted. There was discussion regarding the filing fee increases and what some of the increases would be.

SB 176 - Civil Fees in Courts of Record Amendments. This bill deals with small claims filing fees. Discussion took place.

SJR 14 - Joint Resolution - Challenging the Legality of a Conviction or Sentence. An explanation and discussion took place.

SB 243 Judicial Performance Evaluation Commission Modification. This would help the process to work better.

HJR 27 - Criminal Procedure Revisions Resolution. This joint resolution amends the Utah Rules of Criminal Procedure to prohibit a prosecutor from reducing a charge in certain circumstances.

Chief Justice Durham mentioned that she had received favorable comments from members of legislative leadership in regards to the good representation from the court staff.

7. REPORT FROM COMMITTEE ON PROBATE AND LAW PROCEDURES (Judge George Harmond and Tim Shea)

Judge Harmond introduced committee members, Kerry Chlarson, Maureen Henry, and Mary Jane Ciccarello.

He gave a brief overview from the Committee on Probate and Law Procedures. The committee members include: George Harmond, Chair; Kent Alderman; Kerry Chlarson; Mary Jane Ciccarello; Reese Hansen; Maureen Henry; Richard Howe; Stephen Mikita; Julie Rigby; Gary Stott; Kathy Thyfault; and Tim Shea.

The charge to the committee included: 1) probate law and procedures, and 2) appointment of guardians and conservators. It was mentioned that there are other issues which a future committee might address. The summary of the problem included: 1) antiquated concept of incapacity, 2) plenary authority not supported by evidence, and 3) too many corners being cut.

Judge Harmond then reported on key elements to include: 1) definition of incapacity, 2) how we approach incapacity, 3) representation, 4) evidence of incapacity, 5) hearings, 6) mediation, 7) probate commissioner, 8) fiduciary authority, 9) monitoring appointments, and 10) miscellaneous. He gave a brief explanation of each key element of the report. Discussion took place.

A brief discussion took place regarding school guardianships.

Judge Harmond mentioned that the report would be presented to the boards, the Annual Bar Conference, and other appropriate forums.

The committee was thanked for their hard work and time spend to undertake this important project and bring it to completion.

8. UPDATE ON RACIAL AND ETHNIC FAIRNESS (Rob Parkes, Mary Aguirre-Shahin and Brent Johnson)

Chief Justice Durham introduced Mr. Parkes, Ms. Aguirre-Shahin, and Mr. Johnson. She mentioned that Mr. Becker had appointed a small group of staff to determine progress being made by the courts in relation to racial and ethnic fairness issues, generally, and employment issues, specifically.

Mr. Parkes compared the court system in comparison to state ethnicity data. The information was then broken down into the following groups for comparison: 1) judges and commissioners, 2) staff, 3) supervisory staff, 4) district court staff, 5) juvenile court staff, 6) juvenile staff in comparison to intake demographics, and 7) juvenile probation staff in comparison to intake demographics.

He then reported on the use of “branding” to recruit a more diverse workforce. Branding is a form of advertising wherein we market the courts as an employer of choice to the audience from which we would like to recruit. He mentioned that we would use branding to: 1) communicate our value to current employees, 2) develop materials for diverse groups which highlight opportunities and diversity within the courts, 3) create an image which is more appealing to the current generation workforce, and 4) selling the court as a great place to work. Discussion concerning this recruitment approach followed.

He mentioned that the Colorado courts are using the slogan, “Your career should do you justice”.

Ms Aguirre-Shahin reported on *Procedural Fairness: Education's Role in Equal Access to Justice* and *Premise for Cultural Competency Education*. With this, she referenced a quote from Justice Sandra Day O'Conner by commenting that the courts have to be aware of public opinion.

She reviewed Utah's changing demographics which include: 1) latino population growth statewide, 11.6%; 2) 52% increase in the latino population, 3) a 121% increase in the latino population in Wasatch County; 4) the make up of Salt Lake County is represented by 23.5% ethnic minorities and a 48.28% increase in latinos; 5) in San Juan County, 60.2% of the residents are ethnic minorities, and 6) the Weber County population is 20.2% latino.

Ms. Aguirre-Shahin mentioned that diversity/cultural training is being integrated into the courts employee conference, the courts employee orientation, and other classes being offered to employees, staff and judicial officers. Such topics offered include: 1) how unconscious bias impacts judging, 2) the browning of America, 3) diversity consciousness in the courts, 4) uncover your diversity intelligence, and 5) rethinking pink: minority girls in the court system.

She mentioned that it is important to determine the best way to raise the issues and how to best present them to varied audiences.

Ms. Aguirre-Shahin reported that the Judicial Outreach Committee will work with Judge Valdez and others to pilot a gang prevention program. The focus of the pilot program is to: 1) educate parents of third and fourth graders on the vital role parents play to prevent gang affiliations, and 2) it will also educate parents about guiding youth towards positive community resources for youth activities.

Also at the request of the Judicial Outreach Committee, a program will be developed to teach a faculty development program for judges to prepare them to work effectively with youth in the community. The course will emphasize the need to work with minority youth.

Mr. Johnson outlined some of the projects that are being developed by the Diversity Subcommittee. They include: 1) create a brochure to be available to the community with the courts media guide as a template; 2) invite media representatives from various groups and obtain feedback to what we can do to help them get information on the courts out to minority communities; and 3) work with community groups to determine what information they want from the judiciary, then have speakers available to speak to these groups as requested.

Chief Justice Durham mentioned that when appointing members to the standing committees and Supreme Court Committees, we should look for diversity representation.

9. CONTINUITY PLAN APPROVAL (Judge L.A. Dever and Carol Price)

Judge Dever presented to the Council the Continuity Plan for approval. He reviewed the three key areas needing approval which include: 1) alternate court sites, 2) approval of the plan as a template for all other courthouses, and 3) approval for future changes subsequent to the plan to be brought before the standing committee.

He mentioned that he would welcome input on the alternate court sites. It was reported that in determining where to send the staff dealt with space availability. The plan uses the Matheson Courthouse as a model, and it will be used as a template for all other court locations.

He stated that the Pandemic Flu Plan will come before the Committee either in June or July.

Ms. Price mentioned that training will be provided for all employees. She commented that the training will come later in the process, probably six months from now.

The plan will involve local law enforcement agencies, key court employees, and others.

Ms. Price will keep other necessary state agencies informed of our continuity plan as needed.

It was reported that a comprehensive revision of the court security rule involvement will go before the Policy and Planning Committee. It was also mentioned that the redundant data system is up and running in West Jordan. Once the St. George facility is completed, the redundant data center will be moved to that location. The plan will be coordinated with the local security plans and compiled into a comprehensive security plan.

Motion: Judge Chamberlain moved to approve continuity plan, including the three key areas noted by Judge Dever. Judge Westfall seconded the motion, and it passed unanimously.

10. BOARD OF JUVENILE JUDGES UPDATE (Judge Dane Nolan and Ray Wahl)

Judge Nolan gave an update to the Council of the Board of Juvenile Court Judges activities.

The Board members include: 1) Judge Dane Nolan, chair; 2) Judge Scott Johansen; 3) Judge Thomas Higbee; 4) Judge Stephen Van Dyke; 5) Judge Charles "Bo" Behrens; 6) Judge Mary Noonan; and 7) Judge Suchada Bazzelle. Ms. Gregory and Ms. Burke, Assistant Juvenile Court Administrators were also introduced.

The following information was reviewed by Judge Nolan: 1) 2008-2009 board goals, 2) highlights, 3) program outcome evaluation tool, and 4) future issues the board will undertake. Judge Nolan thanked the Judicial Council for its support of board initiatives.

11. SMALL CLAIMS (Tim Shea)

Mr. Shea reported that the Policy and Planning committee recommends amending Rule 4-801 to implement the Council's decision that small claims cases be filed in the justice court. It was clarified that this rule amendment does not apply to appeals. Also, if there is not a justice court in the jurisdiction of where the small claims case is filed, then it would be filed in the respective district court.

Motion: Judge Andrus moved to approve the amendment to Rule 4-801 and send it out for final comment. It was seconded, and it passed unanimously.

12. TRANSCRIPT REPORT (Tim Shea)

Mr. Shea reported on the amendments made to implement the Council's decision that all hearings be electronically recorded. The primary issues include: 1) adequacy of the equipment, 2) equipment failure, development of a contingency plan; 3) training for judges and clerks on keeping a good audio record; and 4) allocation of money to pay for a transcript request by a judge.

He mentioned that the committee recommends that best practices be included on the agenda for the 2009 Annual Conference and as part of new-judge orientation.

Once the rules have been approved, they will be published for comment. They will then be forwarded to the Appellate Rules Committee and then the Civil Rules Committee.

There will be a redundant recording system available for backup at each court location. Discussion also took place regarding issues, such as the ability to request a particular certified transcriber and the backing up of recordings.

Motion: Judge Eyre moved to approve the amended rule and statute. Judge Andrus seconded

the motion, and it passed unanimously.

13. SENIOR JUDGE CERTIFICATION (Tim Shea)

Mr. Shea presented the senior judge requests from Judge Sheila McCleve and Judge Gary Stott. A brief discussion took place.

Motion: Judge Maughan moved to approve the senior judge requests as long as they remain qualified until the time of their retirement. Judge Lyon seconded the motion, and it passed unanimously.

14. REPORT FROM COURT INTERPRETER COMMITTEE (Judge Vernice Trease and Tim Shea)

Judge Trease reported on the changes made to Rule 3-306 - Court Interpreters. The committee recommends continuing the existing policies, but there are also many policies that the committee recommends changing. The redrafted rule is simple, eliminating some ambiguity and making it more understandable. Discussion took place regarding the planned changes.

One of the major changes deals with the payment of fees, lines 190-196. Another change deals with the use of court employees as interpreters which is covered in lines 200-222. The need for a court interpreter in probate cases would be incorporated in the rule.

The rule will go out for comment, and then it will go to Policy and Planning.

Motion: Judge Orme moved to approve the rule with the inclusion of the language to extend interpreters to guardianship/conservatorship cases. Judge Lyon seconded the motion, and it passed unanimously.

Chief Justice Durham thanked Judge Trease for her leadership on the Court Interpreter Committee.

15. ADJOURN

The meeting was adjourned.