

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 22nd, 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
Hon. Gregory Orme
Hon. Jody Petry
Hon. Keith Stoney
Hon. Michael Westfall
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Ray Wahl
Ron Bowmaster
Nancy Volmer
Kim Allard

GUESTS:

Joanne Slotnik
Hon. Ben Hadfield
Hon. Anthony Quinn
Hon. Ernie Jones
Hon. Robert Hilder
Hon. Terry Christiansen
Commissioner David Dillon
Suzanne Tallarico, NCSC

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

Chief Justice Durham welcomed everyone to the meeting.

Motion: Ms. Nelson moved to approve the minutes. Judge Chamberlain seconded the motion, and it passed unanimously.

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

Chief Justice Durham expressed her appreciation to all Council members who attended the State of the Judiciary Address.

She reported on the American Bar Association meeting which she recently attended. The budgetary concerns of the state courts, nationally, were discussed. Some of the issues undertaken by the Utah Courts such as E-filing were mentioned. The issues of court closings and furloughs were also mentioned.

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

Mr. Becker reported on the following items:

Retirement Legislation. SB63 will provide changes, prospectively, in the retirement system. He reported that an amendment to the bill regarding public safety was made. He commented that discussion with the sponsor regarding judicial retirement is forthcoming.

Mr. Becker recognized Justice Parrish for her work on SB 109.

He provided an update on the judicial vacancies to include: 1) Judge Bachman has requested a change in his retirement date from March 1 to August 1, pending the Governor's approval; 2) the nominating commission will meet at the end of March to begin reviewing the applicants for Judge Page's vacancy; 3) the nominating commission will meet at the beginning of April to begin reviewing the applicants for Judge Maetani's vacancy; 4) the ten-day comment period ends today for the names selected to fill Judge Bench's position, and the names will be submitted to the Governor on March 1; 5) the application process ends March 3 for Justice Wilkin's vacancy; and 6) the application process ends March 12 for Judge Payne's vacancy.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the minutes accurately reflect what was discussed at the meeting. She mentioned that a number of items were deferred to the Council meeting for further discussion.

Liaison Committee Report:

Justice Nehring provided a brief update on the proposed legislation being reviewed by the Liaison Committee. He thanked the members of the Committee for their thorough work.

Policy and Planning Meeting:

Judge Orme reported on the following:

He mentioned that input on evaluation of senior judges and court commissioners has been received from both presiding judges and court commissioners. The Committee is still in the process of receiving input and will have recommendations for the Council at a later date.

The Committee continues to review issues relative to Title VI regarding court interpreters.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar's focus has been on the legislative session. The Governmental Affairs Commission is up and running and reviewing pending legislation. The Bar has placed a great deal of emphasis on SB 109.

The Bar's CLE class was held on February 18 at the Capitol.

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

Ms. Slotnik was welcomed to the meeting.

She updated the Council on progress made by the Judicial Performance Evaluation Commission.

She mentioned that Senator Buttars is sponsoring SB 210 - Judicial Performance Evaluation Commission Amendments. The highlight provisions of the bill include: 1) eliminates witnesses who have testified in cases considered by the judge from the list of mandatory survey respondent groups, and 2) expands the survey topic of “judicial temperament” to include questions about judicial demeanor and personal attributes that promote trust and confidence in the judiciary.

For juvenile court, a new survey category entitled Juvenile Professionals is being created to find ways to supplement the pool for juvenile court. This category shall include: 1) Division of Child and Family Services child projection service workers, 2) Division of Child and Family Services case workers, 3) Juvenile Justice Services observation and assessment staff, 4) Juvenile Justice Services secure care staff, and 5) others who provide substantive professional services on a regular basis to juvenile court. A pilot program to encompass these professionals in the survey pool will be established.

Clarification of what defines “court staff” was made.

Ms. Slotnik provided the following review of the pilot program.

Litigants. There was a poor response from litigants. The Commission would like to continue one more round with litigants. Litigant surveys are scheduled for July 1.

Court Staff. There was a good response rate from the court staff online. The size of the pool was an issue.

Courtroom Observation. The recruitment of courtroom observers has been good. There are eight observers. The goal is five two-hour observations per judge. Ms. Slotnik reported on the orientation provided to the observers.

Attorney Survey. The attorney survey is being postponed until April.

Discussion took place regarding surveys of children and parents in juvenile court.

Review of the pilot program data and determining how to separate the data is forthcoming.

Questions were asked and discussion took place relative to the pilot program.

6. E-FILING, CORIS CONVERSION, E-PAYMENTS UPDATE: (Ron Bowmaster)

Mr. Bowmaster provided an update to the Council on E-filing, E-payments and the CORIS Conversion.

E-filing. The Utah Court’s expanded civil e-filing system was first made available in the Second Judicial District in January 2009 as a pilot program. The Civil Litigation Section of the Utah Attorney General’s Office began using the system in February 2009. In July 2009, the Utah State Bar Association became a certified e-filing vendor and began offering electronic filing services to its subscribing membership. In October 2009, an announcement was made that e-filing would be made available statewide. A schedule to roll out e-filing by district was made available. The Second, Third, and Fourth Districts are online for e-filing. The Fifth District will begin training at the first of March. The remainder of the districts are pending to see the rate of adoption in the other districts.

E-payments. The e-payment system is available to all courts (for criminal and traffic cases) that maintain CORIS on the AOC’s computing system and is available statewide. Any justice court may opt to use the E-payment system using an existing or new merchant account.

Document Scanning. A new way of scanning documents as they come in will be tested shortly in a pilot program in the First District. Once the process has been formalized, it will then be made available in the Fourth District.

PIMS/CORIS -Filing Integration Project. This project, which is a joint effort with prosecutors, is scheduled to begin July 2010.

CORIS Conversions. The IT Division continues to convert justice courts to CORIS. The project remains on schedule with a total of 30 justice courts scheduled to be converted in FY 2010 and another 33 scheduled to be converted by July 1, 2011.

7. BUDGET UPDATE: (Daniel J. Becker)

Mr. Becker reported that the Executive Appropriations Committee met and approved a revised budget for FY 2010. The courts budget was reduced by \$2.1 million rather than the \$4.1 million that had been projected. These reductions will be addressed through the hiring freeze and eliminating restricted account balances. He mentioned the jury, witness and interpreter fund supplemental is being addressed with one-time funding.

For FY 2011, the subcommittee is working on 5% reductions. This represents a \$5.1 million reduction for the courts or a loss of 93 FTEs.

The revenue projections show that the State is down \$50 million.

Mr. Becker mentioned that he met with Representative Bigelow, co-chair of Executive Appropriations, to discuss the FY 2011 budget relative to the courts. A meeting with Senator Hillyard, the other co-chair, will be scheduled at a later date.

He updated the Council on a proposed bill which would add an additional judge to the Fifth District Juvenile Court.

8. REPORT ON LEGISLATIVE AUDIT: (Daniel J. Becker)

Mr. Becker reported on the findings of the Legislative Audit of the weighted caseload systems. After reviewing the necessary documentation, and talking to Council and board members, presiding judges and other judges in the Second and Fifth Districts; the audit found that the recommendations of the Council to transfer a judge from the Second District Court to the Fifth District Juvenile Court were reasonable and that a much more acute need for an additional judge existed in the Fifth Juvenile Court than the Second District Court.

9. CERTIFICATION OF JUDGE BACHMAN: (Tim Shea)

Motion: Judge Orme moved to approve the request for certification of Judge Bachman as a senior judge. Judge Hornak seconded the motion, and it passed unanimously.

10. EXECUTIVE SESSION:

There was no need for an executive session at this time.

11. LEGISLATIVE UPDATE: (Rick Schwermer)

Chief Justice Durham expressed her appreciation to Mr. Schwermer and Ms. Moore for all of their hard work they provide during the Legislative session.

Mr. Schwermer provided a summary of the proposed legislation to the Council.

HB 347 - Guardianship Amendments - sponsored by Kraig Powell was released today.

SB 210 - Judicial Performance Evaluation Commission Amendments.

HB 115 - Counsel for Indigents in Juvenile Court Proceedings. This bill limits the scope of services available to indigents through appointed counsel in juvenile court.

HB 133 - Release of Court Documents and Child Interviews. This bill limits who can receive and view interviews with child victims.

HB 251 - Admission of Affidavits into Evidence. This bill provides a procedure by which a criminal defendant can object to the admission of crime lab reports.

HB 284 - Uniform Collaborative Law Act. This bill creates the Utah Uniform Collaborative Law Act.

HB 289 - Judicial Nominating Commission Amendments. This bill deals with the judicial nominating process and filling judicial vacancies.

SB 108 - Judicial Nominating Commission Staff Amendments. This bill requires judicial nominating commissions to meet within a specified period from the effective date of a judicial vacancy.

SB 109 - Chief Justice of the Utah Supreme Court Appointment. This bill authorizes the governor to appoint the chief justice of the Utah Supreme Court.

SB 232 - Judicial Administration Amendments. This bill allows a judicial hiring freeze to be implemented during a general fund deficit for the juvenile court, district court, appellate court, or any combination of these courts.

Discussion relative to SB 108, SB 109, SB 232 and HB 289 took place.

HJR 17 - Joint Rules Resolution for Fiscal Notes on Criminal Penalty Bills. This resolution has gone away.

SB105 - Motor Vehicle Accident Arbitration Amendments. This bill modifies the Insurance Code by amending provisions relating to the use of arbitration for certain motor vehicle accident claims.

SB 116 - District Court Judges Amendments. This bill removes one district court judge in the Second Judicial District and adds one juvenile court judge in the Fifth District.

SB 130 - Judiciary Amendments. This is the Housekeeping bill. This bill makes conforming and correction changes throughout the code regarding the judiciary and courts.

Mr. Parkes provided an update on SB 63 - New Public Employees' Tier II Contributory Retirement Act. This bill will impact employees, prospectively. The effective date would be July 1, 2011. The proposed retirement system has a Tier I, which is a hybrid of the defined benefit and contribution system, and a new Tier II system, which is exclusively a defined contribution system. An explanation of the two options was given.

The amendment dealing with public safety retirement was discussed.

Discussion on the impact to judicial retirement for future judges took place.

12. PROPOSED REVISIONS TO MANUAL OF PROCEDURES FOR JUSTICE COURT NOMINATING COMMISSION AND APPLICATION FOR JUDICIAL OFFICE: (Rick Schwermer)

Mr. Schwermer updated the Council on the proposed revisions to the Justice Court Manual of Procedures and Application for Judicial Office as presented to the Management Committee by Shari Viverka who manages the process.

He briefly mentioned the proposed revisions made to the application. He noted that the Board of Justice Court Judges recommends that Question #38 on Page 17 be dropped from the application as it requires an applicant to commit to accepting the position before salaries and benefits are negotiated. Discussion took place relative to the issue of salaries and benefits in the application process.

Motion: Judge Petry moved to have Question #38 stricken from the Application for Judicial Office for the justice courts. Judge McCullagh seconded the motion. Ms. Nelson amended the motion by substituting language to make acceptance contingent on salary and benefits being negotiated. The motion, as amended, passed with Judge Atherton, Judge Willmore, and Judge Westfall voting no.

Mr. Schwermer highlighted the following proposed manual revisions:

Page 5- Addition of verbiage specifying length of commissioner terms.

Page 7-8 - Movement of elected official requirement under (4)1 to include all commission members and addition of reference table for ease of use.

Page 14 - Change from presiding judge to judge appointed by the Board the person who is to speak with the Commission.

Page 25- Policy change for Commission to recommend to the appointing authority the number of nominees from a "minimum of 2" to minimum of 3 and maximum of 5; elimination of need for letter explaining why number was reached.

Motion: Judge Maughan moved to approve the proposed revisions to the manual and application with the amendment to the proposed application revisions. Judge Chamberlain seconded the motion. The motion passed with Judge Atherton, Judge Willmore, and Judge Westfall voting no.

13. BOARD OF DISTRICT JUDGES UPDATE: (Judge Ben Hadfield and Debra Moore)

Chief Justice Durham welcomed Judge Hadfield to the meeting.

Judge Hadfield provided an update from the Board of District Judges.

His update included the following: 1) members of the Board of District Judges, 2) the district board's highest priority is to update the weighted caseload, 3) select district court case filings, 4) law clerk allocation, and 5) the district court conference scheduled in May.

14. WEIGHTED CASELOAD PRESENTATION: (Suzanne Tallarico)

Chief Justice Durham welcomed Ms. Tallarico, a management consultant from the National Center for State Courts, to the meeting.

Ms. Tallarico provided background on herself and her prior work on weighted caseload systems. She mentioned that 80-90% of her work deals with weighted caseload systems.

Her presentation entitled *Determining Judicial Resource Needs* provided information relative to weighted caseload systems to the Council. The information presented included the following: 1) what is a weighted caseload study, 2) why workload assessment, 3) weighted caseload assessment strengths and weaknesses, 4) goals of a weighted workload assessment study, 5) NCSC orientation to workload assessment, 6) typical NCSC project overview, 7) NCSC recent experience with weighted workload assessments, 8) states where NCSC has developed weighted workload assessment, 9) review of NCSC's weighted caseload assessment study components, and 10) review issues of concern. The study components included: 1) judge year value, 2) case types, 3) case-specific activities, and 4) non-case specific activities. The recent issues of concern included: 1) special case types, and 2) special issues of concern.

She noted that the majority of judiciaries, nationally, are using a weighted caseload system. She noted that data is collected via an online data collection system that records all judicial activity for a given period of time. She provided an explanation of how this system

works. She noted that with this system, the judge's participation rate is 90% or greater. Discussion took place.

The differences between juvenile and district caseloads and how to address the differences was discussed. Ms. Tallarico commented that if the data is gathered by using the same methods to create the standard, the caseloads would be comparable.

Chief Justice Durham thanked Ms. Tallarico for her presentation.

The Council will discuss at a later date what direction to take regarding the weighted caseload systems, and particularly, whether the district and juvenile court systems should be comparable. The district court representatives indicated they would be reviewing the juvenile court system to determine whether it could be used for the district court.

An update on SB 109 was given.

15. ADJOURN

The meeting was adjourned.