

JUDICIAL COUNCIL MEETING

Minutes

Thursday, March 13th, 2008

Holiday Inn, Sabra G

850 South Bluff Street

St. George, Utah

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
Hon. Mark Andrus
Hon. Michael Lyon

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Debra Moore
Ray Wahl
Tim Shea
Fred Jayne
Derek Byrne
Alan Lunceford
Holly Frischknecht

EXCUSED:

GUESTS:

Lowry Snow, President, Utah State Bar
John Baldwin, Director, Utah State Bar
Aaron Randall, President of SUBA
Judge Shumate, 5th District Judge
Judge Higbee, 5th District Judge
Beani Martinez, 2nd Juvenile TCE
Peggy Gentles, 3rd District TCE
Bruce Thomas, 3rd Juvenile TCE
Paul Vance, 4th District TCE
Jim Peters, 4th Juvenile TCE
Rick Davis, 5th District TCE
Wendell Roberts, 6th District TCE
Bill Engle, 7th District TCE
Russ Pearson, 8th District TCE

1. **WELCOME: (Chief Justice Christine M. Durham)**

Chief Justice Durham welcomed everyone to the meeting and thanked those in attendance for traveling to St. George.

Chief Justice Durham welcomed Lowry Snow, President of the Utah Bar Association and John Baldwin, the Executive Director of the Bar. The Chief also recognized Aaron Randall, President of the Southern Utah Bar Association, and Judge Shumate and Judge Higbee from the 5th District Bench.

2. WELCOME FROM THE BAR

Mr. Snow thanked the Council for the strong relationship the Bar Commission shares with the judiciary. Mr. Snow noted that Chief Justice Durham's efforts to strengthen the communication between the Bar and the courts has been very effective and appreciated.

Mr. Snow reported that the Bar Commission considered their long range plan last July and the Commission's recent work has focused on the tenets in that plan. This plan stems from the Grant Thornton review conducted last year. The review suggested that the organization of the Bar be re-visited. Admissions, management and technology, communications, access to justice and member benefits are the areas of focus this year for the Commission. The Bar has also formed a subcommittee to consider a mentoring project. This program would assign mentors to younger attorneys to help them navigate the legal profession. Implementation could begin next year, but many questions remain and the Court's approval will also be required for the project to start.

Mr. Snow indicated that the Bar has been involved in S.B. 105 that changed the retention committee for judges. Mr. Snow reported that the Bar Commission held an emergency meeting last month to address their concerns regarding a fair and independent judiciary and to discuss that inappropriate pressure from outside sources should not effect judges' decisions.

Mr. Baldwin indicated that a letter similar to their op-ed piece regarding the Bar's response on an independent judiciary sent to the Salt Lake Tribune will also be sent to the Deseret News. Mr. Baldwin reported that the Bar is still in the process of communicating with legislative leadership and staff on this issue. Mr. Snow thanked Mr. Baldwin for his work and his efforts that have brought positive recognition to Utah from the national legal community.

Chief Justice Durham thanked Mr. Snow and Mr. Baldwin for their work with the Bar and for their report.

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

Motion: Justice Nehring motioned to approve the minutes, Judge Lyon seconded the motion, the motion passed unanimously.

Chief Justice Durham reported the following:

-Mr. Becker is receiving the Community Member of the Year Award from the Bar for his contributions to Bar committees and for his work at developing a close relationship between the judiciary and the Bar.

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

Mr. Becker reported the following:

- Mary Ann Acuirre-Shahin has been selected as the new Education Director for the courts. Ms Acuirre-Shahin has international education and legal experience. She will begin on April 7th.
- The Deseret News and the Salt Lake Tribune will print an insert on Law Day in May. Mr. Becker recognized that this insert is being funded with the generous sponsorship from local law firms and the Bar.
- The Legislative Update will be held March 28th and Senator Bell will be the guest during lunch. Senator Bell has been very supportive of the judiciary and will offer valuable insight into the legislative process.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham indicated the Management Committee planned and approved the Council agenda during their last meeting.

Policy and Planning Meeting:

Mr. Shea reported that at the last Policy and Planning meeting the Committee reviewed the language on closed Council meeting requirements. Private information in public records was discussed. Education requirements for retired judges was reviewed to determine what policy should be in place for judges hoping to become a Sr. Judge after years of retirement. The computer use policy for judges was also discussed.

Liaison Committee:

Justice Nehring thanked Mr. Schwermer and Ms. Moore for their work and for the Liaison Committee's efforts this past year.

Bar Committee Report:

Mr. Sabey did not have any additional information to add to the Bar report.

Aaron Randall, president of the Southern Utah Bar Association, reported that SUBA now has more than 100 members. SUBA has been working on growing a community legal center in Southern Utah which opened last September. The center is available full time. Money from 'And Justice for All' has helped fund this new project. The Wheels for Heroes race will be held tomorrow from 3 to 5 p.m. and Mr. Randall reported the community support for the race has been strong.

5. COMPREHENSIVE CLERICAL STUDY INTERIM COMMITTEE REPORT:(Debra Moore)

Ms. Moore provided information on the progress of the Clerical Study Committee. Ms. Moore reviewed the influences on clerical operations that helped the Committee make suggested changes on the future court clerical positions. They are:

- The comprehensive advent of e-filing
- An anticipated continuation of pro se/self-represented litigants

- An anticipated increase in automations associated with technology such as e-payment and paperless filing and scanning
- A cultural shift to more active case management

The Committee has developed a five year and a two year projection that recommends what clerk work will look like within those time frames. Ms. Moore indicated the Committee has also considered how this projected work change should be structured and what specific positions would be created to support this structure. Ms. Moore reported that a project team led by a judicial team manager guiding judicial case services, judicial support and specialized support is the structure the Committee is now reviewing. The conceptual model of current clerk responsibilities and future responsibilities was reviewed. The title of clerk could also be changed in the future to better reflect the nature of the work performed.

Judicial Council members asked how increased compensation would be provided for the additional skills that would be required in these positions. Ms. Moore indicated that the Committee will begin discussing transition plans and compensation issues during their upcoming meetings.

Chief Justice Durham commended the Committee for their review of future needs the courts will face. Mr. Becker indicated the members of the Committee offer a broad view of the work with representation from all court levels, districts and generations.

6. LEGISLATIVE/BUDGET UPDATE: (Daniel J. Becker, Myron K. March, Richard Schwermer, Debra Moore)

Mr. Becker thanked Mr. Schwermer, and Ms. Moore for their work on legislation and fiscal notes during the session. Mr. Becker also recognized Mr. Jayne, Mr. Byrne and Mr. Lunceford for their work on the budget and fiscal requirements that accompanied court requests.

Mr. Becker reported that the state's budget projections were initially very positive but were then revised to be less than two thirds of what was expected. Mr. Becker indicated that other states are experiencing a greater loss, and this could be indicative of what will come in Utah's economy.

The Appropriation's Committee that considers court requests had more than 50 requests totaling \$57 million. Out of these requests, only 9 items, equaling \$20 million, were actually funded. The Department of Corrections received \$18 million of this amount.

The courts had requested \$623,900 for the lease and contracts increase which was listed very low on the Appropriation's priority list, even though it was an obligation. This led to a conflict with the Executive Appropriation's Committee because they wanted mandates to be prioritized higher. Although the lease and contracts were eventually funded, the process of ensuring the money would be appropriated was difficult.

The 4th District and Juvenile Commissioner position was approved for \$200,000 the last day of the session. The funding for this position will begin in July.

The Guardian ad Litem's Office received funding to hire two more attorneys and staff with \$237,700 ongoing money and \$13,200 one time money. The Legislature now considers the GAL and court requests completely separately.

A fund increase was approved for the juvenile non-judicial fund and the justice court security, education, and technology fund to allow more money to be utilized by the courts out of

each of these funds. The Juror, Witness Interpreter Supplemental was also approved at \$310,000.

State salaries were increased by a 5% COLA. Judges were only going to receive 2.5% and during the last days of the session, great efforts were made to ensure that judges received 5%. To fund this increase, the premiums for the Preferred health insurance option will increase by approximately 82%. The state has been subsidizing PEHP Preferred and this increase will result in state employees choosing Advantage and the Summit plans. Information will be provided to all court employees regarding healthcare options during the open enrollment period before these insurance changes go into affect.

The deputy clerk compensation, data processing equipment, district law clerks, and case management pilot program were not funded. One time funding could potentially address some of these requests. Mr. Becker indicated that he and Mr. March are creating a proposal that will increase the deputy court clerk salaries by working with the 5% COLA and other on-going funding. This proposal will be further discussed in April during the Council's budget meeting. With this funding, up to 140 district court clerks could receive an increase. Mr. Becker indicated that the Council will also consider further clerical salary options and increases once the Comprehensive Clerical Committee makes their final proposal in June.

Mr. Schwermer provided information on relevant bills that affected the judiciary. The Liaison Committee opposed 4 bills and none of them passed, they supported 5 bills which all passed, and suggested changes to 15 bills with the majority being made.

Mr. Schwermer reported that overall, this session was relatively un-antagonistic. Justice Nehring indicated that many of the bills that the Liaison Committee opposed dealt with challenging the Court's rule-making ability.

Mr. Schwermer reviewed the following bills:

H.B. 78 - Re-codification and Revision- Updates the code and allows references to the old code to be ignored in court citations.

H.B. 167 - A Victim Amicus Bill - The bill allows for a statement to be submitted in a court case by the victim.

H.B. 319 - Review and Approval of Grants - Requires that non-federal grants and donations now be appropriated by the Legislature. Notice and approval must be received by the Legislature when amounts over \$50,000 are available to an agency. This won't affect the courts directly since the donations or grants received this past year would not have triggered the notification requirement. The Judicial Council plays a regulatory role for all the grants received by the courts

S.B.15 - Driving Under the Influence Amendments- The DUI bill addresses the lack of incentives available in specialty drug courts that affect the participation and success of court users.

S.B. 17 - Child Abuse and Neglect Registry - Deals with the DCFS MIS list and unsupported reports by case workers.

S.B. 38 - Transparency in Government - Requires that all budget decisions should be transparent and accessible to the public. The bill will require that Finance provide documentation outlining the court's budget to a shared website that reports agency's spending.

S.B. 72 - Justice Court Amendment Bill -The amendments made huge strides forward in regards to the judicial independence of justice courts. The compensation of justice court judges

shall be paid between 50-90% salary of a district judge depending on the case load the justice court has. Every county will have a nominating commission to assist in the selection of the justice court judge. All justice courts will now be required to use a common reporting system. An amendment was made to the bill prior to the final vote that changed the education requirement so a college degree is not needed to apply for the position. The bill created a grandfather provision to allow judges appointed through 2009 to remain in their positions. Justice Nehring reported that he is happy with the changes. Mr. Schwermer indicated that Representative McIff did a tremendous job as the sponsor in the House.

- S.B. 105- Judicial Performance Evaluation Commission - This bill passed the House and Senate with only nay 1 vote. Senator Hillyard and Senator Bell became the leaders of the bill halfway through the session. All the changes the court requested were made except for the surveying of witnesses and jurors, which will be done at the discretion of the Commission
- S.B. 191 - Judicial Conduct Commission Bill - Changes in this bill established a soft statute of limitations on complaints made to the Judicial Conduct Commission.
- S.B. 236 - Judiciary Housekeeping Bill - This bill dealt with jurisdictional issues between district, juvenile, and justice courts.
- S.B. 265 - Unlawful Detainer Amendments - Amends the discretion of a judge to extend the deadline to appear in court on charges of unlawful detainer.
- S.B. 277 - Post-conviction Remedies Act Revisions - Amends the post-conviction remedies act and establishes procedures and requirements for post-conviction actions by a person convicted of a criminal offense.
- S.B. 278 - Technical Amendments to Titles 78 a and 78b - This bill addressed concerns about citations to un-listed codes and cases and allows the citation to be transposed to the correct citation.

Chief Justice Durham thanked Mr. Schwermer, Ms. Moore, Mr. Becker, Mr. March and all other staff that greatly contributed to the session this year.

7. LEGISLATIVE FACILITY ACTION: (Daniel J. Becker, Alyn Lunceford)

Mr. Becker reported that Mr. Lunceford did a wonderful job in his first year in the position as Director of Facilities and was able to secure funding for the Ogden Courthouse land purchase. Next year the request will be approximately \$26 million for the design and building of the new courthouse. The St. George Courthouse construction will begin next month and it is expected to be complete in October of 2009.

8. TRIAL COURT EXECUTIVE PRESENTATION: (Peggy Gentles, James Peters)

The TCEs introduced themselves and provided a power point presentation highlighting the work being done in each district. Ms. Gentles and Mr. Peters reported on the work the TCEs are doing in order to further advance the Council's strategic plan.

Judicial Branch Governance:

Ms. Gentles reported that a Presiding Judge Training, a Joint Idaho/Leadership training, and HR training is being provided for the TCEs to help them gain more information and skills on

governing the courts from a district level. Ms. Gentles reported that the line staff in the courts have significant responsibility and it is important for TCEs to find ways to support them. The TCEs indicated they appreciate the change the Council made in the Presiding Judge Rule as it helps them establish a closer working relationship with the PJ's in their district.

Resources: Human Resources; Technology; Information; Facilities:

Human Resources-

Ms. Gentles thanked the Judicial Council for their work to increase salaries. By having the first priority of the Council be salary increases for clerks, the employees felt appreciated and recognized for the work they perform. The TCEs have also been receiving updates from the Comprehensive Clerk Study Committee and look forward to the final recommendations.

Technology-

The TCEs reported that increased productivity has been possible because of more accessible technology and support from IT. The use of the remote hearing technology will help improve the use of judicial and clerical time and paperless technology is also being implemented to assist the districts.

Information-

Mr. Peters indicated that the protective risk assessment tool in juvenile courts has been validated and is a predictor of recidivism for juveniles. Mr. Peters reported that having the most current information is essential to making decisions that will have positive, long term impact. The Council's emphasis on Courtools, case management, and research methodology has also greatly supported the TCEs efforts in the districts. Mr. Peters indicated that the TCEs are always learning new ways to employ resources in the best way possible.

Facilities-

Mr. Peters indicated that the new courthouses are a needed and helpful resource that allows court employees to be secure and serve the public. The courthouses in each community represent the credibility of the courts.

Planning:

The TCEs reported that the Council's annual priorities have been a guiding force for the TCEs to manage and lead their districts and the TCEs are committed to continue implementing those goals throughout the state.

Chief Justice Durham thanked the TCEs for their dedicated work in the districts and for their use of the Council's strategic plan. Chief Justice Durham indicated the Council will continue to work to support each district's efforts.

9. ADJOURN

The meeting was adjourned.