

JUDICIAL COUNCIL MEETING

Minutes

Wednesday, March 17th, 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
Matty Branch
Nancy Volmer
Brent Johnson
Alyn Lunceford
Rob Parkes
Nini Rich
Derek Byrne

GUESTS:

Hon. Royal Hansen
Hon. Vernice Trease
Joe Derring
Wendell Roberts
Steve Hunt, Salt Lake Tribune
Mark Christensen
Phil Morris

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. Ms. Nelson seconded the motion, and it passed unanimously.

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

Chief Justice Durham reported that she had an opportunity to participate in the new judge orientation held at the beginning of the month. She, Mr. Becker and Judge Hornak attended a Leadership Forum for Presiding Judges conducted by the National Center for State Courts over the past weekend. There were over 20 presiding judge representatives from all over the country

in attendance. The forum's main objective is to develop a training curriculum and model rules for presiding judges.

3. 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 thanked the Committee members for their hard work. He reported that Mr. Schwermer will update the Council on the Legislative Session.

Policy and Planning Meeting:

Judge Orme reported on the following:

He mentioned that the Committee continues to review the evaluation process for senior judges and court commissioners. Additional input from court commissioners has been received. The Committee will next gather input from court commissioners who are now judges.

The Committee continues to review all aspects of the federal directive relative to the Title VI requirements for court interpreters. An interim report to the Council is expected at the April or May meeting.

Bar Committee Report:

Ms. Nelson reported on the following:

The Bar Committee will meet tomorrow in St George as part of their Spring Convention. The issues of importance relate to licensing and voting. Electronic balloting will be rolled out at this meeting.

Chief Justice Durham expressed her regrets to the Bar on behalf of the Council and the Boards not being able to attend the Spring Conference in St. George this year.

4. ETHICS ADVISORY COMMITTEE UPDATE: (BRENT JOHNSON)

Mr. Johnson was welcomed to the meeting. He reported that the Ethics Advisory Committee has not had a need to meet in two years. He mentioned that there have been no requests for ethics opinions during that time. He listed the members of the Committee and their terms. Many of the questions that are directed to him deal with: 1) letters of recommendation for employment and school, 2) whether the judge can serve on a board or committee (non-profit or government), and 3) qualification questions. He noted that ethics training is included in new judge orientation.

The new Code of Judicial Conduct will go into effect on April 1, 2010.

A suggestion was made to Brent to address the questions that routinely get asked in a column in the employee newsletter.

Mr. Johnson provided clarification relative to letters of recommendation.

5. PROPOSED JUDICIAL PERFORMANCE EVALUATION RULES: (Tim Shea)

Mr. Shea reviewed the proposed Judicial Performance Evaluation Rules with the Council. The proposed amendments are out for public comment with a deadline of March 31, 2010. He highlighted the amendments to include: 1) expanding time frame for more respondents, 2) change to question 1b in the survey category, and 3) court staff, both a definition and a listing identifying court staff, 4) litigant category and changes, 5) juvenile court professionals, and 6) anonymity and confidentiality definitions. For item 2, it was suggested that the Commission choose from among the mid-term questions for the final evaluation. Regarding court staff, it was suggested that both a definition and a list are not needed. It was also mentioned that bailiffs and interpreters are not court staff but should be listed as court professionals. Since there is a classification for juvenile court professionals, it was suggested to expand on district court professionals as well.

Judge Petry provided the concerns of the Justice Court Board. They are concerned with the relationship between the judges and the staff in the justice courts. With the direct supervision of employees by judges, the evaluation process could prove to be difficult. It was also noted that the definitions and titles used for court staff do not apply to the justice courts.

Mr. Shea will summarize the suggestions from the Management Committee and the Council and any comments received from the boards and submit them to Ms. Slotnik.

6. REPORT ON LEGISLATIVE BUDGET ACTIONS: (Daniel J. Becker and Myron K. March)

Mr. Becker thanked Mr. Schwermer, Ms. Moore, Mr. March, Mr. Byrne, and Mr. Lunceford for their hard work during the 2010 Legislative Session.

He reported that the courts budget for FY 2011 will be reduced by \$2,429,600 or 2.4% instead of the recommended reduction by the Appropriations Subcommittee of \$5,174,600. Executive Appropriations restored \$2,750,000 of the court's budget with ongoing funds. He mentioned that the court's budget has been reduced by a total of 7.9% in the past two years with the reduction of 5.5% in 2009 and 2.4% in 2010.

One-time supplemental funding in the amount of \$804,200 to the Juror, Witness, and Interpreter line item was approved. This covers the deficits from FY 2007, FY 2008, and FY 2009.

He mentioned the following FY 2011 budget additions: 1) the funding request for the \$540,000 - judicial retirement that had been unfunded for this fiscal year was funded in the amount of \$432,000; 2) restricted fund increases for the Online Court Assistance Program and the Justice Court Technology, Security and Education Fund; 3) the addition of a Fifth District Juvenile Court Judge with two clerks; and 4) fiscal note money in the amount of \$148,000 is anticipated.

Mr. Becker reminded the Council that past budget reductions have been addressed with systemic reductions, of which, all areas under this type of approach have been exhausted. He reviewed a budget reduction plan which consisted of the following recommended actions: 1) transfer all small claims filings to justice courts with the anticipated loss of 18 clerical positions, effective June 30, 2010; 2) institute across the board reductions; and 3) delegate to court executives and presiding judges, as well as the AOC, the preparation of permanent reduction plans subject to approval by the Judicial Council.

He reported that the reductions are general fund and must come from the main line item. When you exclude the judges salaries and benefits from the general fund monies, it raises the percent of reduction to 3.9%. He reviewed a proposed reduction schedule with a 3.9%

reduction for each district and the Administrative Office of the Courts. He recommended that the Council adopt the reduction schedule.

Small Claims. The 18 clerks eliminated from five districts at the beginning of FY 2010 were backfilled on a one-time basis with ARRA funds, and the funding will expire June 30, 2010. With the loss of clerk support, the recommendation is to transfer all small claims filings to the justice courts. Issues relative to the transfer include: 1) effective date of the transfer, 2) impact to revenue, 3) impact on justice courts, 4) coverage by pro tem judges, and 5) filing distribution issues.

It was noted that an amendment to Rule 4-108, relating to small claims filing, went out for comment last year with no comments being received. With the deferment of transferring small claims to the justice courts, the amendment was not acted upon.

Mr. March reviewed the fiscal impact to the courts with the proposed transfer of small claims to the justice courts. He provided civil filing and small claims filing data.

Ms. Allard provided information on the clerical weighted caseload that equalizes the clerical staffing between the districts. She mentioned that the information takes into account the loss of the 18 clerks at the end of June 30, 2010. Discussion took place.

Mr. Becker recommended that every court entity reduce their budget by 3.9%, and the decision for budget reductions in each district be made by the court executives and presiding judges. All reductions must be permanent reductions. He suggested the following be considered in the budget reduction plans: 1) consider all personnel, 2) is there enough staff to support the judges, 3) possibility of consolidating multiple court locations, 4) possibility of districts sharing law clerks, and 5) possibility of combining front counters. He noted that building and facility leases and contracts cannot be reduced. It is anticipated that each district will reduce budgets using current expense and personnel.

Questions regarding in-state travel, out-of-state travel, and state car usage relative to the budget were asked. Mr. Becker provided an explanation.

The Council agreed with across the board reductions in each budgetary unit and the delegation of budget reduction planning to the court executives and presiding judges in their respective districts and the State Court Administrator for the AOC. The Council also supported the schedule of reductions. It was noted that the cost of contract sites had not been included in the schedule.

Judge Petry provided an update from the Justice Court Board regarding the transfer of small claims to justice courts. She reported that there was no consensus for or against the transfer. Issues relative to the transfer included: 1) adequate staff to handle the transfer beginning July 1, 2010; 2) adequate judge time; 3) pro tem coverage; and 4) uncertainty of the caseload per justice court with the transfer.

Mr. Shea mentioned that in districts where there are no justice courts, small claim filings will remain in district court. It was determined that only new small claims filings will be transferred to justice courts.

Motion: Judge Willmore moved to transfer all new small claims filings to justice courts effective September 1, 2010. Judge Eyre seconded the motion, and it passed unanimously.

Motion: Judge Maughan moved to adopt the budget reduction schedule for all judicial districts and the Administrative Office of the Courts. Judge Orme seconded the motion, and it passed unanimously.

Motion: Judge Petry moved to send the amendments to Rule 4-108 out for comment. Judge Westfall seconded the motion, and it passed unanimously.

7. REPORT ON LEGISLATIVE SESSION: (Rick Schwermer and Debra Moore)

Mr Schwermer reviewed the following bills that passed during the 2010 Legislative Session:

HB 19 - Post Conviction Remedies Amendments. This bill modifies the Judicial Code to clarify a statutory limitation on claims for relief under the Post-Conviction Remedies Act.

HB 112 - Supreme Court Review of an Initiative or Referendum. This bill amends provisions that establish time requirements for the Supreme Court to review an issue related to an initiative or referendum.

HB 115 - Counsel for Indigents in Juvenile Court Proceedings. This bill provides limitations on the scopes of service available to indigents through appointed counsel in juvenile court.

HB 284 - Uniform Collaborative Law Act. This bill establishes minimum requirements for collaborative law participation agreements.

HJR 34 - Joint Resolution on Hospital Claims Management. This joint resolution amends a rule of evidence relating to expressions of apology in medical malpractice action.

SB 43 - Post-Retirement Employment Amendments. This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions related to a retiree who returns to work for a participating employer, and the restrictions on the maximum retirement allowance certain employees can accrue.

SB 63 - New Public Employees' Tier II Contributory Retirement Act. This bill modifies the Utah State Retirement and Insurance Benefit Act to provide for modified retirement benefits for new public employees and new public safety and firefighter employees.

Chief Justice Durham reported that she met with Senator Liljenquist regarding SB 43 and SB 63. She mentioned the limits on how to employ active senior judges and the limits on rehiring elected positions are excluded from this bill.

SB 91 - Prosecutor Appeals. This bill modifies justice court provisions relating to the standards for de novo review in district court for certain orders in specified criminal prosecution.

SB 116 - District Court Judges Amendments. This bill adds one juvenile court judge in the Fifth District.

SB 130 - Judiciary Amendments. This is the courts housekeeping bill. The \$7.50 judicial filing fee is no longer required.

SB 143 - Grand Jury Amendments. This bill specifies instances when a grand jury may be called. Reinstated the finding of good cause.

SB 210 - Judicial Performance Evaluation Commission Amendments. This bill amends the judicial performance evaluation survey. It eliminates witnesses from the list of mandatory survey respondent groups.

SB 217 - Increase in Surcharge on Fines. This bill increases the surcharge on fines and penalties to provide funds for increased law enforcement presence in areas with halfway houses.

SB 277 - DNA Modifications. This bill modifies the public safety laws regarding collection of DNA specimens to include collection from persons booked for any violent felony,

increases the fee for the specimen and changes the management of fees. It does not apply to juveniles.

HB 289 Judicial Nominating Commission Amendments. This bill deals with the judicial nominating commission process. The process will be managed by the Commission on Criminal Juvenile Justice effective July 1, 2010. It takes the Judicial Council out of the rule preparation process. Recruitment, membership and language amendments were reviewed.

SB 232 regarding a judicial hiring freeze. This bill creates a procedure to implement a judicial hiring freeze.

Chief Justice Durham expressed appreciation to Mr. Becker and Mr. March on budgetary support and Mr. Schwermer and Ms. Moore on legislative support.

8. REPORT ON LEGISLATIVE FACILITY ACTIONS: (Alyn Lunceford)

Mr. Lunceford mentioned the following bills that passed that affect facilities issues:

HB 5 - Revenue Bond and Capital Facilities Authorizations.

HB 370 - Capital Project Amendments.

SB 189 - Capital Facilities Amendments.

SB 280 - 2010 General Obligation Bond Authorization.

SB 282 - Capital Facilities Appropriations.

He reported that the courts did not receive funding for the Ogden Juvenile Court building during the 2010 Legislative Session. We did receive \$2.3 million in capital improvement funding this year.

9. RETIREMENT CHANGES: (Myron K. March and Rob Parkes)

Mr. Parkes provided an update to the Council on SB 43 - Post-Retirement Employee Amendments and SB 63 - New Public Employees' Tier II Contributory Retirement Act.

SB 43 Summary. It was noted that a judge who retires and returns to work as a senior judge is exempt from the re-employment provisions of this bill.

For full-time re-employed retirees who return to work prior to July 1, 2010, the following provisions are in place: 1) the bill repeals the requirement that an employer contribute to a retiree's 401(k) at the same rate as the retirement contribution of active employees, and 2) an employer may contribute to a retiree's 401(k), but the contribution is capped at the normal cost rate (approximately 12% in the current system).

He reviewed the changes for an employee who retires and seeks to re-employ after July 1, 2010. He highlighted some of the changes to retirees dependent upon whether they returned to work within the first year or after a year or more to include: 1) for an employee who returns within the first year, the retirement status allowance is canceled, and the individual is reinstated to active status, and 2) for an employee who returns after a year or more, the individual may opt to cancel the retirement allowance and accrue additional service credit or continue receiving retirement allowance but then forfeit any retirement-related contribution from the employer.

SB 63 Summary. Mr. Parkes reported that this does not impact any current active members in the retirement systems or any individuals hired prior to July 1, 2011. The bill does not modify the judicial retirement system. This bill creates a Tier II retirement system and closes the current system renamed the Tier I retirement system.

Employees hired after July 1, 2011, will choose between the defined contribution system or the defined benefit/defined contribution hybrid system.

The defined contribution system consists of the following: 1) employer contributes 10% of

salary into an employee's 401(k); 2) employee may contribute an additional amount into their 401(k), and this amount vests immediately; and 3) employee makes an additional contribution based on the "amortization rate" set by the retirement board.

The defined benefit/defined contribution hybrid system consists of the following: 1) the defined benefit portion of the hybrid system is funded by contributions from both the employer and employee, based on the "certified contribution rate" set by the retirement board, 2) the defined contribution portion of the hybrid system allows for an employer to make a contribution of 10%, minus the amount contributed into the DB portion of the plan, and allows for an employee to make additional contributions to the DC plan, and these vest immediately to the employee; 3) the employer makes an additional contribution based on the "amortization rate" set by the retirement board, and 4) retirement under the hybrid system has specific guidelines in place.

Mr. Parkes provided a comparison of the current defined benefit system and the future defined benefit in the hybrid system.

10. TRIAL COURT EXECUTIVE UPDATE: (Joe Derring and Wendell Roberts)

Mr. Derring and Mr. Roberts were welcomed to the meeting.

Mr. Derring mentioned the positive impact that the technological advances such as e-filing and e-payments has had on the courts.

With the budgetary reductions being faced by the courts, the focus on court personnel has been to maintain a level of efficiency and proficiency. He reported that training and cross-training of clerical staff is key to functioning with limited staff at some court locations. He updated the Council to the clerical restructure, feedback on how it is working, and how it is perceived by the clerical staff.

Mr. Roberts spoke on behalf of changes in juvenile court. He reported on the areas of: 1) assessments, 2) interventions, and 3) probation officer workload. He also mentioned the impact the budget reductions of other entities outside of the courts will play on the courts.

Mr. Becker recognized all court executives for their professionalism and dedication, especially during these difficult fiscal times.

11. FY 2011 ANNUAL CONFERENCE: (Myron K. March)

Mr. March reported that the possibility of canceling the Annual Conference was discussed at the March Management Committee meeting, and a decision to cancel the conference was deferred to this Council meeting. He mentioned that there is a contract in place with Snowbird for the conference. He reviewed the penalties that would be incurred if a determination was made to cancel the conference. Discussion took place.

Motion: Ms. Nelson moved to not cancel the Annual Conference, but to keep costs at a minimum wherever possible. Judge Chamberlain seconded the motion, and it passed with Judge Hornak voting no.

12. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Nini Rich)

Chief Justice Durham welcomed Judge Hansen and Ms. Rich to the meeting.

Judge Hansen recognized Ms. Rich for all she does for ADR. He provided an update on the ADR Committee to the Council. He reviewed the goals set at the Committee's retreat which was held in November 2009 to include: 1) harmonize Utah ADR Act and Utah Uniform

Mediation Act with respect to privilege and confidentiality; 2) examine roster discipline; 3) work with the Bar to put on events for judges, attorneys, and mediators; 4) up-front ADR training for new judges; and 5) public education and outreach. The Committee is addressing rules and statutes relative to the ADR program. Areas being addressed to integrate ADR into case management in the courts include: 1) educate judges, clerks, and other personnel about ADR programs; 2) proposed amendments to Rule 4-510 would make mediation part of the scheduling order under Rule 26 and also a requirement for pro se parties; and 3) judge pairing, training for judges to conduct mediations for each other.

He reviewed the membership of the ADR Committee. A review of the ADR programs was provided.

Chief Justice Durham thanked Judge Hansen and Ms. Rich for the update.

13. COURT INTERPRETER COMMITTEE UPDATE: (Judge Vernice Trease and Tim Shea)

Judge Trease was welcomed to the meeting.

She reported that the Committee has only met twice since the last update.

A language-neutral training has been started. The training will help interpreters in languages other than Spanish to become “certified”. Recommendations from the Committee include: 1) recommend a “superior” rating on the Oral Proficiency Interview conducted by Language Testing International for “approved” credentials, 2) recommend creating a new category of “registered” for those interpreters who do not take or do not pass an examination, and 3) recommend several amendments to the accounting manual to clarify interpreter payments.

Judge Trease mentioned that the Court Interpreter Committee endorses the study of Title VI requirements by the Policy and Planning Committee. The Committee supports efforts to save money by contracting with full-time interpreters, centralizing interpreter scheduling, and using technology for remote interpretation. She requested consideration of the annual market analysis of interpreter fees in April.

The categories of interpreters include: 1) certified, 2) approved, and 3) conditional approved.

Chief Justice Durham thanked Judge Trease for her leadership on interpreter issues.

14. WEBER COUNTY JUSTICE COURT AND WASHINGTON TERRACE/ MARRIOTT-SLATERVILLE - PROPOSED INTER-LOCAL AGREEMENTS: (Rick Schwermer)

Mr. Schwermer updated the Council on the proposed inter-local agreement between Weber County and Roy City for justice court services. The proposed effective date for the agreement is April 1, 2010. He mentioned that Weber County has addressed the retirement issues with Judge Storey.

The issues relative to the agreement include: 1) request for a waiver on the waiting period required to enter into an inter-local agreement, 2) case management system differences with Roy still being on Caselle, 3) dedicated courtroom concern, and 4) full-time judge concern.

It was mentioned that Roy City’s clerks will be participating in CORIS training on Thursday, March 18 and Friday, March 19. Upon approval of the inter-local agreement, two case management systems would be used until Roy City has been converted to CORIS. The earliest conversion date would be August 3, 2010.

The availability of a dedicated courtroom and the full-time judge requirements were discussed.

Motion: Judge McCullagh moved to approve the inter-local agreement between Weber County and Roy City, contingent on the conditions of the standards of application as a Class 1 court are met, specifically with regards to the full-time judge requirement. Judge Petry seconded the motion, it passed with Judge Stoney voting no.

Mr. Schwermer reported that Marriott-Slaterville who is currently part of the Weber County Justice Court would like to enter into an inter-local agreement with Washington Terrace.

Mr. Mark Christensen of Washington Terrace, and Mr. Phil Morris of Marriott-Slaterville spoke on behalf of the proposed inter-local agreement. They reported that the certification standards are in compliance, and they have been converted to CORIS. Discussion took place.

Motion: Judge McCullagh moved to waive the time frame and approve the inter-local agreement between Washington Terrace and Marriott-Slaterville effective April 1, 2010, for all cases filed after that date. The approval is contingent on the agreement being signed by both parties. Judge Stoney seconded the motion, and it passed unanimously.

Mr. Becker reviewed Rule 3-106 - Legislative activities with the Council.

Motion: Judge McCullagh moved to enter into an executive session. Judge Petry seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION:

The executive session ended at this time.

Motion: Judge Orme moved to forward the letter of complaint from the ACLU dated February 18, 2010, to the Judicial Conduct Commission for review. Judge Hornak seconded the motion, and it passed unanimously.

16. ADJOURN

The meeting was adjourned.