

JUDICIAL COUNCIL MEETING

Minutes

Thursday, March 15th, 2012

Sabra Ballroom G

Lexington Hotel

St George, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Kimberly K. Hornak, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. John Sandberg
Hon. Larry Steele
Hon. Thomas Willmore
Lori Nelson, esq.

EXCUSED:

Hon. Keith Stoney

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Lisa-Michele Church
Debra Moore
Tim Shea
Rick Schwermer (by phone)

GUESTS:

Justice Matthew Durrant
Judge Kate Toomey
Rod Snow, Utah State Bar President
John Baldwin, Utah State Bar
Russ Pearson, 8th Dist TCE
Peyton Smith, 3rd Dist TCE
Judge Janice Frost
Rick Davis

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

Chief Justice Durham welcomed everyone to the meeting.

Motion: Justice Parrish moved to approve the minutes. Judge Mortensen seconded the motion, and it passed unanimously.

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

Chief Justice Durham mentioned that she had nothing new to report. She distributed perpetual calendars to the members as a reminder of the time spent together as a Council.

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

Mr. Becker reported on the following items:

He circulated a copy of a publication authored by himself and Chief Justice Durham for the Harvard Kennedy School entitled *A Case for Court Governance Principles*, of which, he will be presenting at the National Association of Court Managers (NACM) Conference in Orlando in

July. The publication was also a focal point at a *The Fourth National Symposium on the Future of Courts Conference* given last year in Williamsburg.

Criminal E-Filing. Criminal E-filing is underway for two weeks in a pilot mode in Weber County. The test mode allows for paper filings as well as electronic filings to be received to assess the accuracy of the electronic records. Once that test has been completed, the plan is to move criminal e-filings to Davis County. A plan to move towards criminal e-filing statewide is being prepared.

Case Filing Review. Mr. Becker provided a review of case filings for the period of July 2011 through February 2012. The court's caseload continues to fall to pre-recession levels. He highlighted the following case filing statistics: 1) contracts, 30% decrease; 2) debt collection, 12% decrease; 3) general civil cases, 15% decrease; 4) criminal cases, 4% decrease; 5) misdemeanors, 8% decrease; 6) misdemeanor DUIs, 15% decrease; 7) domestic cases, 1% decrease; 8) probate cases, 3% decrease; 9) property rights, 1% decrease; 10) torts, 6% decrease; 11) traffic, 21% decrease; 12) judgments, 5% increase; and 13) overall case filings, 6% decrease for the first 8 months.

Juvenile referrals reflected similar data as reported previously. He highlighted the following juvenile referral statistics: 1) felonies, 10% increase; 2) misdemeanors, 9% increase; 3) child welfare proceedings, 6% increase; 4) termination of parental rights, 19% decrease; and 4) overall juvenile referrals, 2% increase.

Title VI Compliance. Mr. Becker distributed a copy of a letter sent by the US Department of Justice to the Director of the North Carolina Administrative Office of the Courts regarding an investigation relative to compliance of Title VI and providing meaningful access to state court proceedings and operations for limited English proficient (LEP) individuals.

Legislative Audit. An entrance conference was held with legislative auditors yesterday relative to an audit on the DCFS child welfare process. The audit was requested by Representative Watkins and Representative Harper. The audit will address the types of coordination and training that is in place between DCFS and the groups they interface with.

American Judicature Study. A study dealing with merit selection was circulated among Council members. Mr. Becker highlighted criteria included in the study. He noted that Utah did not participate in the survey.

Court's System Failure. Mr. Becker reviewed the details relative to the system failure that affected the court's computer systems on March 9. An HVAC problem in the Matheson courthouse was the source of the failure. He reviewed the steps taken to get the system back online which included replacement of a switch, and the steps being taken in the instance of a similar occurrence.

NCSC Case Study. Mr. Wahl provided an overview of *A Case Study: Reengineering Utah's Courts through the Lens of the Principles for Judicial Administration*. He provide background information in preparation of the case study to include: 1) development of principles for judicial administration by the National Center for State Courts (NCSC) and the Conference of State Court Administrators (COSCA), 2) comparison of the Utah court system and the principles for judicial administration by Mr. Lee Suskin to test the principles, and 3) completion of the final report as presented in the case study. The report is a reflection of how the Utah court system is viewed relative to the principles for judicial administration.

It was noted that the case study would be useful for training new judges, Council members, etc.

Presentation to Chief Justice Durham. Judge Hornak recognized Chief Justice Durham

for her years of service as the Chair of the Judicial Council, as well as, accomplishments during her ten-year tenure as chair.

Chief Justice Durham offered a few comments.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

Justice Parrish reported on the following:

No report was given at this time. A more detailed report will be provided later on the agenda. She expressed her appreciation to the AOC staff for all they did supporting the courts during the 2012 Legislative Session.

Policy and Planning Meeting:

Judge Orme reported on the following:

The Policy and Planning Committee meeting minutes accurately reflect the items discussed. Judge Orme highlighted the following items discussed: 1) continued work on the court referee rule, 2) pro bono resolution as listed later on the agenda, and 3) proposed rule on mandatory e-filing on the consent calendar.

Bar Commission Report:

Ms. Nelson reported on the following:

The Bar Commission is schedule to meet today at 1:00 with the Southern Utah Bar Association. Leadership training will be held tomorrow. Mr. Bill Robinson, ABA Bar President, will provide the keynote address on Saturday morning.

5. REMARKS FROM UTAH STATE BAR PRESIDENT/PRESIDENT-ELECT: (Rod Snow and John Baldwin)

Mr. Snow and Mr. Baldwin were welcomed to the meeting.

They mentioned that Mr. Bill Robinson, ABA president, will be providing the keynote address at the Bar's conference on Saturday. A meeting with Mr. Robinson will be held on Friday afternoon at the Dixie Center where all are invited to attend.

An update was provided on the status of Utah Legal Services. Additional sources of funding are being sought.

The Bar is moving forward with the Pro Bono initiative.

The courts staff was thanked for all they do for the Bar.

It was noted that the Pro Bono resolution will be discussed later on the agenda.

Chief Justice Durham thanked Mr. Snow and Mr. Baldwin for their update.

6. PERFORMANCE EVALUATIONS: (Chief Justice Christine M. Durham)

Chief Justice Durham reminded the Council of the discussion which took place at the February meeting with Mr. Schofield, Commission Chair and Ms. Slotnik, Director of JPEC. At that meeting, the desire for more formal communication between JPEC and the Council was suggested, and the Council was invited to attend the April 10 JPEC meeting.

After consulting with Justice Durrant, the following Council members will represent the Council at the April 10 JPEC meeting: 1) Justice Matthew Durrant, 2) Judge Kimberly Hornak, 3) Judge Greg Orme, 4) Judge David Mortensen, and 5) Judge Brendan McCullagh. Mr. Dan Becker and Mr. Rick Schwermer will also attend.

Questions and concerns to be brought to the attention of the JPEC membership were discussed to help guide the presentation of the Council's representatives.

7. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Kate Toomey and Debra Moore)

Chief Justice Durham welcomed Judge Toomey to the meeting.

Judge Toomey provided an update to the Council on the activities of the Board of District Court Judges. She highlighted the following in her update: 1) monitoring statewide implementation of new civil discovery rules, 2) fee waiver guidelines and procedures, 3) domestic case study, 4) mental health court, and 5) revised statewide district court judges benchbook.

Other areas of focus included: 1) continue to meet with presiding judges and court executives, 2) provide assistance to Judge Denise Lindberg on the *Model Utah Jury Instructions* for criminal cases, and 3) explained the steps taken by the Board to fill the Capital Litigation Research Attorney vacancy, and 4) continued work with the IT Department on computer issues and case management design.

Judge Toomey thanked the Council and the Liaison Committee for expressing the court's concerns relative to the JPEC legislation which would have eliminated jury surveys from the minimum performance standards.

Chief Justice Durham thanked Judge Toomey for her update.

Motion: Judge Hornak moved to enter into an executive session to discuss an issue concerning professional competence. Judge McCullagh seconded the motion, and it passed unanimously.

8. PRO BONO RESOLUTION: (Tim Shea)

Mr. Shea reviewed the Pro Bono resolution, which had been requested by the Utah State Bar, being recommended by the Policy and Planning Committee and endorsed by the Board of District Court Judges.

Motion: Ms Nelson moved to accept and approve the recommended Pro Bono resolution as presented. Judge McCullagh seconded the motion, and it passed unanimously.

9. TRIAL COURT EXECUTIVES UPDATE: (Russ Pearson and Peyton Smith)

Mr. Pearson and Mr. Smith were welcomed to the meeting. They highlighted the following in their update to the Council: 1) the process and response of going paperless and the use of the electronic record in each district, and 2) case pending reports.

Mr. Becker commended the court executives for all they do in their districts, and particularly, their activities associated with the transition to the electronic record.

Chief Justice Durham thanked them for their update.

10. LEGISLATIVE REPORT: (Daniel J. Becker and Ray Wahl)

Mr. Schwermer provided an update on the bills considered by the Liaison Committee during the 2012 legislative Session.

The following bills were highlighted:

HB 49 - Firearms Revisions - failed.

HB 161 - Rights of Parents and Children - passed.

HB 231 - Guardianship Amendments - to be considered next year.

HB 357 - Guardian ad Litem Amendments - amended and passed.

HB 393 - Juvenile Competency Amendments - passed and funded.

SB 100 - Law Library Self-Help Center - passed.

SB 200 - Justice Court Amendments - passed.

SB 214 - Justice Court Process Amendments - passed.

Mr. Becker distributed a summary sheet on the Courts' 2012 General Session Building Block Requests and Results. He highlighted the following in his update: 1) the Self-Help Center was approved for statewide funding, 2) increase the OCAP spending cap, 3) juror/witness/interpreter deficit funding, 4) transfer of ongoing general funding for contracts and leases, 5) additional funding for federal assistance for grants, 6) GAL requests did not receive funding, 7) the request for funding the construction of a new juvenile court facility in Ogden was not approved as there were no buildings funded this year with appropriated funds, 8) approval of \$1.6 million towards the architectural design for the Ogden juvenile court facility, 9) the Northern Utah County Land Bank Request was not approved as there were no land banking requests approved, and 10) he indicated the courts budget will increase by almost \$4 million for FY 2013.

The following actions taken during the 2012 Legislative Session relative to compensation were highlighted: 1) the courts received over \$2.8 million in funding for compensation which will cover the one percent COLA and the majority of the benefit increases, 2) \$1 million of the \$2.8 million will cover the increase in judicial retirement, 3) the new judicial salary is \$133,450, 4) reviewed the increases in dental benefits, and 5) a potential increase in co-insurance built into the Appropriations Act.

The following non-court areas were highlighted: 1) \$200,00 funding for statewide legal services, 2) elimination of the receiving centers statewide for Juvenile Justice Services, 3) the apparent closing of Weber County Detention Center, 4) DCFS - loss of federal funding, and 5) the use of one-time funding for FY 2013 to cover ongoing requirements in Corrections and Juvenile Justice Services.

Mr. Becker noted that the one-time spending plan and use of carry-forward funding will be calendared for the April Council meeting.

11. SENIOR JUDGE CERTIFICATION: (Tim Shea)

This matter was discussed during the executive session.

12. EXECUTIVE SESSION:

An executive session was held at this time.

13. ADJOURN

The meeting was adjourned.