

JUDICIAL COUNCIL MEETING

Minutes

Monday, April 26th, 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
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:

Justice Ron Nehring
Hon. Judith Atherton

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Alyn Lunceford
Jessica Van Buren
Mary Jane Ciccarello
Nancy Volmer

GUESTS:

Ron Gordon
Hon. John Baxter
Hon. L. A. Dever
Duane Betournay
Loretta Park, Ogden Std Examiner

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

Chief Justice Durham welcomed everyone to the meeting. Judge Atherton and Justice Nehring were excused.

Motion: Judge Petry 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 reported on the following items:
She moderated a webinar on *Evidenced-Based Sentencing* for the Institute for Criminal Justice.
She participated in the Hinckley Institute Law Day panel.
She sat on the Nominating Commission in an ex officio capacity for the Supreme Court vacancy.

Chief Justice Durham and Mr. Becker met with the State Board of Education to provide information on and answer questions related to the new web-based civics education project entitled *Our Courts*.

Members of the Appellate Courts met with the Judicial Performance Evaluation Commission regarding the questionnaire for Appellate judges.

The Oath of Office for Judge Stephen Roth, new Court of Appeals judge, was administered on April 21.

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

Mr. Becker reported on the following items:

The budget reduction plans for all districts and the AOC, as well as the proposed one-time spending plan will be reviewed at the May 24 Council meeting.

He reviewed the district and juvenile caseload filings from July 1, 2009 through March 30, 2010. He highlighted the following district court case filing types: 1) criminal cases remained flat, 2) a 3% increase in state felonies, 3) a 3% decrease in domestic filings, 4) a 5% decrease in general civil filings, 5) a 21% decrease in contracts, 6) a 12% decrease in small claims, 7) a 13% increase in judgements, 8) an 8% decrease in probate, and 9) a 16% decrease in torts. Juvenile case filings were down overall by 11%. He highlighted the following juvenile court case filing types: 1) a 19% increase in termination of parental rights filings, and 2) a 3% decrease in child welfare filings.

Mr. Becker reported that he and Chief Justice Durham have discussed holding a legislative relations workshop with members of the Council, board members and presiding judges in October after the new members of the Council and boards have been appointed. He reported that a similar workshop was held several years ago. The intent of the workshop is to: 1) improve interaction with the legislature, 2) educate on the legislative process and how it differs from the judicial process, 3) discuss how we do business with the legislature, and 4) review the process in which we interact with the legislature.

He mentioned that we are in the process of recruiting a new Appellate Court Administrator to replace Ms. Matty Branch who has retired.

He recognized Mr. Duane Betournay, the new Third District Juvenile trial court executive, who started working for the courts today. A brief background of Mr. Betournay's experience was provided. He mentioned that Mr. Betournay will be present later in the meeting, and he will be introduced to the Council at that time.

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:

No April meeting was held.

Policy and Planning Meeting:

Judge Orme reported on the following:

He reported that with the exception of the senior judge and commissioner evaluations, all other matters before Policy and Planning will be deferred to actions taken on the Council agenda, including: 1) rules for final action, 2) court interpreter planning, and 3) rules for comment.

Bar Committee Report:

Ms. Nelson reported on the following:

The Committee met last Friday. She reported that electronic elections were held for the first time. The process went very well.

Electronic registrations will be taken for the Summer Convention. The Honorable Clarence Thomas, Associate Justice, United States Supreme Court, is scheduled to speak at the Summer Convention.

She mentioned that the CLE Committee has finished their report.

Bar dues have increased by \$75.

5. NOMINATING COMMISSION - NEW RULES: (Ron Gordon and Myron K. March)

Chief Justice Durham mentioned that effective July 1, a member of the Judicial Council appointed by the chief justice shall be a full participant in discussions of the nominating commission, but may not vote. The function of the judge on the commission is one of educating the commission on the work and needs of the courts, as well as, the kind of characteristics being looked at in a judge.

Chief Justice Durham welcomed Mr. Gordon to the meeting.

Mr. Gordon provided an update to the Council on the amendments to the Judicial Nominating Commission rules. He reviewed information relative to: 1) the process, 2) the proposed rule changes, and 3) the continued use of the manual of procedures.

He reported that the definition section of the rules is entirely new. He highlighted the changes to include: 1) the application period, and 2) the recruitment period. The recruitment period starts with the announcement of the vacancy to the organization of the first nominating commission meeting, and it includes the application period.

He highlighted the changes to the reference section of the proposed rule. This section categorizes the different types of applicants and the types of references requested of them. This section states that "CCJJ shall select which references will be contacted and requested to complete a standard reference form established by CCJJ." Questions were asked relative to the reference section. Mr. Gordon provided clarification.

He reviewed the changes regarding the meetings of the commission. The highlighted changes included: 1) the commission staff determines whether a commission member refuses to follow governing statutes or rules, 2) the Appellate Court Nominating Commission shall certify a list of seven names to the governor, and 3) the Trial Court Nominating Commission shall certify a list of five names to the governor. Discussion took place.

Mr. Gordon offered his opinion on the role of the Judicial Council representative on the nominating commission to include: 1) infuse reality into the discussion, providing a perspective from the view of the judicial branch of government, and 2) provide input regarding the importance of the evaluation criteria.

He covered changes made to the Conflict of Interest and Notice that a Judge is Removed or Intends to Resign or Retire categories with the Council. Discussion took place.

Mr. Gordon mentioned that the proposed rules would be reviewed by the State Division of Rules, then there will be a 30-day comment period.

Chief Justice Durham thanked Mr. Gordon for his thorough review of the proposed Judicial Nominating Commission rules.

Mr. Becker welcomed Mr. Duane Betournay, the new Third District Juvenile TCE, to the courts. He came from the Division of Child and Family Services, where he served as Director for the past three years. He brings a wealth of experience in both governmental administration, as well as, the child welfare arena.

6. PRELIMINARY RECOMMENDATIONS OF THE POLICY AND PLANNING COMMITTEE ON THE APPLICATION OF TITLE VI (COURT INTERPRETERS: (Tim Shea)

Chief Justice Durham welcomed Mr. Shea to the table.

Mr. Shea provided an update to the Council on the preliminary recommendations of the Policy and Planning Committee on Title VI - Interpreters. He highlighted the following: 1) an analysis of federal law, 2) the number or proportion of limited English proficiency (LEP) persons, 3) frequency of contact with the program, 4) nature and importance of the program, 5) resources available and costs, and 6) the Brennan Center Report entitled *Language Access in State Courts*.

He reported on the necessity of moving from Title VI to the Department of Justice guidelines. He mentioned that the federal courts operate under a statute of their own regarding court interpreters.

He outlined the Department of Justice guidelines that describe four factors to help governments determine whether the standard of “reasonable steps to ensure meaningful access” by people with limited English proficiency (LEP) has been satisfied. The guidelines include: 1) number or proportion of LEP persons in the eligible service population, 2) frequency of contact with the program, 3) nature and importance of the program, and 4) resources available and costs.

Mr Shea provided a comparison of the Brennan recommendation with Utah status and recommendations. The legal obligations included in the comparison were: 1) provide interpreters

for all LEP litigants and witnesses in all civil proceedings; 2) do not charge for interpreters, regardless of whether litigants can pay; 3) ensure that interpreters are competent and act appropriately; 4) ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately; 5) to the extent possible, ensure that LEP individuals receive the same treatment as other court participants, including by minimizing delays in their cases; 6) translations - Department of Justice safe harbor; and 7) Department of Justice enforcement. The Policy and Planning Committee recommendations were given on each legal obligation. Discussion took place.

Chief Justice Durham thanked Mr. Shea and the Policy and Planning Committee for their thorough work on the federal directive relative to the Title VI requirements for court reporters.

The question was raised regarding the best steps to take in requesting interpreters of unknown languages. The suggestion was made to develop protocols and to better train staff at finding interpreters.

Motion: Judge McCullagh moved to allow the Policy and Planning Committee to move forward with their preliminary recommendations relative to the Title VI requirements for court reporters. Judge Westfall seconded the motion, and it passed unanimously.

7. RULES FOR FINAL ACTION: (Tim Shea)

Chief Justice Durham welcomed Mr. Shea to the table.

Mr. Shea provided an update to the Council on the “rules for final action” which included: 1) CJA 03-0404 - Public information program, 2) CJA 04-0202.08 - Fees for records, information, and services, and 3) CJA 04-0701 - Failure to appear. He highlighted CJA 04-0202.08 as it adjusts the fees for Xchange to include downloading documents, it adds a per-use fee for those who do not subscribe, and it identifies waivers.

He reported that many of the comments received, most from representatives of the press, opposed the fee imposed for accessing records by the press. More specifically, they opposed the Xchange subscription fees. The Policy and Planning Committee recommends further amendment to Rule CJA 04-0202.08 that would allow the press free Xchange accounts up to a point. They recommend a limit of 10,000 free searches per year for a news organization. If an organization exceeds that amount, they would pay the subscription and regular fee for the overage. Mr. Shea mentioned that clarification of identifying the press must be done. The Policy and Planning Committee recommends limiting the scope of the waiver to the news-gathering purposes recognized in GRAMA, and to news organizations defined by Utah Rule of Evidence 509.

With regards to the new feature of accessing a document online, with a fee of \$2.50 per document, the press would be required to pay this fee when the service is used.

For governmental entities, the original proposed recommendation was to permit them free access to a court’s paper records. After reviewing the comments received relative to this recommendation, the Policy and Planning Committee reinstated the provision that the fee can be waived for a governmental entity if the fee is minimal. Discussion took place.

He reported that Rules CJA 03-0404 and CJA 04-0701 are straight forward and do not require further discussion.

Motion: Judge Eyre moved to approve the rules for final action as amended.. Judge Westfall seconded the motion, and it passed unanimously.

8. ROY/WEBER INTER-LOCAL AGREEMENT FOLLOWUP: (Rick Schwermer)

Mr. Schwermer provided a followup to the certification of the Weber County/Roy Justice Court relative to their proposed inter-local agreement. On March 17, the Council approved the inter-local agreement contingent on the conditions of the standards of application as a Class 1 court were met.

The following issues were addressed relative to meeting the requirements for certification as a Class 1 court: 1) full-time judge requirements being met, 2) the availability of a dedicated courtroom, and 3) adequate clerical support. Judge Waterfall has agreed to fulfill duties of the judgeship in a full-time capacity. Roy City has certified that their dedicated courtroom meets the required guidelines, and their court system will be supported by three full-time clerks.

Mr. Becker asked for clarification of the process taken when considering inter-local

agreements for existing courts versus new courts. Mr. Schwermer provided an explanation.

Motion: Judge Petry moved to approve the proposed inter-local agreement between Weber County and Roy City. Judge Orme seconded the motion, and it passed unanimously.

**9. COMMITTEE ON RESOURCES FOR SELF-REPRESENTED PARTIES
UPDATE AND REQUEST FOR RE-AUTHORIZATION OF THE COMMITTEE:
(Judge John Baxter and Tim Shea)**

Chief Justice Durham welcomed Judge Baxter to the meeting.

Judge Baxter recognized Ms. Mary Jane Ciccarello, Ms. Jessica Van Buren and Mr. Tim Shea as members of the committee.

He provided an update of the Committee on Resources for Self-Represented Parties to the Council. The update included accomplishments of the committee to include the following areas: 1) community outreach, 2) education, 3) limited legal help, 4) self-help center, and 5) web pages and forms. He expressed the continued need for the services addressed by the committee. The committee identifies and guides the efforts to provide resources for self-represented parties.

Mr. Shea reviewed the courts website relative to the resources available for self-represented parties. Mr. Becker encouraged members of the Council to review the available online resources for self-represented parties.

With this, the committee is recommending that the Council re-authorize them for an additional six years.

Chief Justice Durham thanked Judge Baxter for the committee's hard work.

Motion: Ms. Nelson moved to re-authorize the Committee on Resources for Self-Represented Parties for an additional six years. Judge McCullagh seconded the motion, and it passed unanimously.

10. COURT FACILITIES PLANNING COMMITTEE UPDATE: (Judge L.A. Dever and Alyn Lunceford)

Chief Justice Durham welcomed Judge Dever and Mr. Lunceford to the meeting.

Judge Dever provided an update of the Court Facilities Planning Committee to the Council. He reported that the Committee was successful this year with the completion of the St. George courthouse. He mentioned the next project the committee is working towards is the Ogden Juvenile Court.

An additional handout was distributed with the following information included: 1) the courts 10-year building plan, 2) other projects under consideration - local government funding - with impact on courts lease budget, and 3) courts facilities FY 2011 improvement projects.

Mr. Lunceford reviewed the list of improvement projects that have been funded through the building board for FY 2011, he highlighted the projects included in the 10-year building plan, and he mentioned the contract site project plans that have been received. He reported that project plans from Juab, Wayne and Kane Counties have been requested.

Chief Justice Durham thanked Judge Dever and Mr. Lunceford for the work that is being done by the Standing Committee on Facilities and Planning.

11. ADJOURN

The meeting was adjourned.