

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, May 29th, 2007
Ogden Juvenile Court

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine Durham
Hon. James Davis
Hon. Kevin Nelson
Hon. Gary D. Stott
Hon. Michael D. Lyon
Hon. Robert Hilder
Hon. Mark Andrus
Hon. William Barrett
Hon. Michael Kwan
Scott Sabey, esq.
Hon. Hans Chamberlain
Hon. Jody Petry
Hon. Rand Beacham

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Tim Shea
Ray Wahl
Holly Frischknecht
Nancy Volmer
Debra Moore

ABSENT:

Hon. Ronald Nehring

GUESTS:

Bill Cox, UAC
Derek Byrne, Legislative Analyst

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

Chief Justice Durham welcomed everyone to the Ogden Juvenile Courthouse. The Chief thanked Beani Martinez, 2nd Juvenile TCE for hosting the Council meeting.

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

Chief Justice Durham reported the following:

- The District Court Conference was held in Springdale last month. The conference was well received and the educational sessions were very helpful to all in attendance. During the conference, discussion also took place regarding the Presiding Judge Rule. The Board continues to have concerns about the Rule. The Justice Court Study Committee proposal was also presented along with a roundtable discussion on the appellate process led by Chief Justice Durham and Judge Greenwood.
- The Appellate Courts also held their annual conference in Torrey last month where the bench met with a appellate attorney's who also participated in a roundtable discussion on the appellate process.
- The Governor will be selecting a new 3rd District Juvenile Judge out of the five names

that were sent up to him by the nominating commission.

-The Supreme Court met with the Bar to discuss their performance review plan. The Bar reported the participation of judges in Bar related activities is very important to continue the work of the organization and help mentor young attorneys.

-The Chief will speak to the Litigation Section of the Bar this week on the details of the judicial selection process.

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

Mr. Becker reported the following:

-The Governor has advanced the name of Darold McDade to the Senate. He will be up for Senate Confirmation next month.

-CCJJ will begin a study on the mental health and the criminal justice services being offered in the state. The Courts and DHS will also be participating in the study.

-Jim Peters has been named as the new 4th District Juvenile TCE. Mr. Peters has experience in child welfare and also holds a JD and MBA from BYU.

-The Court Security Director position has been advertised and interviews will begin in the next week. The Management Committee has also determined the Court Security Director position will report to a subcommittee of the Facilities Standing Committee for oversight and direction.

-Judge Darwin Hansen will retire December 31st. Judge Hansen is also a representative of the Judicial Conduct Commission and he will be missed.

4. COMMITTEE REPORTS:

Management Committee Report

-Judge Davis indicated that the minutes explained the Management Committee's discussions.

Bar Commission Report

-Scott Sabey indicated that when the Court met with the Bar discussion took place about the response from Grant Thornton's performance review report. The Bar is moving ahead on six of the eight recommendations made by the Court and the performance report. Mr. Sabey discussed the possibility of posting the Bar's response to the report online. Chief Justice Durham indicated that overall the report shows the Bar is very successful fiscally and operationally.

-The Council discussed the cost of Bar conferences and activities and the possibilities on how to deal with increased costs.

5. INTERIM COMMITTEE REPORT: (Rick Schwermer)

Mr. Schwermer indicated that in April the Judiciary Committee heard reports on each of their study items. During the meeting, Representative McIff made a presentation about smarter sentencing. Previously, Wally Bugden had sent a letter to the court proposing all custodial hearings be video taped. The Evidence Advisory Committee reviewed this, but the Committee did not make any recommendations. The prosecution community did not oppose the idea overall, but a more detailed argument against it was reviewed. If custodial interrogations were started,

the Judiciary Committee discussed what remedy should be provided if a recording is not made. The substance and procedure of this possibility would cause some concerns for the courts.

Mr. Schwermer also reported that the Law Enforcement and Criminal Justice Committee received an update on the federal Adam Walsh Act relating to sex offender registration and the anticipated effect on the sex offenders on Utah's registry.

6. DRUG COURT RULE REVIEW: (Rick Schwermer)

Mr. Schwermer indicated that Utah's Drug Courts are in their second phase of development. In order for progress to continue, the application of research and best practices successful in drug courts should be utilized. With the research now available, Utah's specialty courts would now benefit from a Rule that would determine how these courts are operated, funded and managed. A Rule would assist the courts in playing an active role in the structure of specialty courts. Last week, a committee met to allocate the drug court money available this year to agencies involved in these courts.

Mr. Schwermer reviewed the language in the proposed specialty court Rule. The proposed Rule addresses the implementation of standardized practices, quality control, predictability and leadership of specialty courts and applies to all trial courts and justice courts. The Rule requires an initial application prior to operation that ensures there are local resources available. According to the Rule, an annual report from each specialty court will also be required.

The Division of Substance Abuse has provided money for the courts to contract with Retired Judge Fuchs for six months. He will travel around to state to obtain information about each specialty court and assist them with best practice methods that will help the court be most successful.

Mr. Schwermer reported that the current specialty court guidelines will remain until Judge Fuch's is able to visit each sight and assess the needs statewide. Adopting this Rule would not effect these guidelines, but they could be reviewed at a future date.

Mr. Schwermer reviewed what statistics were being kept statewide about the recidivism rate in drug courts. Those specialty courts receiving grants also have extensive data about recidivism.

Motion: Judge Sott motioned that subject to modification of a sentence in sub section 7 regarding plea in abeyance, the proposed specialty court Rule will go out for public comment. Judge Lyon seconded the motion, the motion passed unanimously.

7. JUSTICE COURT STUDY COMMITTEE REPORT: (Rick Schwermer)

Mr. Becker reported that Justice Nehring, chair of the Justice Court Study Committee, is

out of state and had asked Mr. Becker and Mr. Schwermer to review the recommendations determined by the Committee with the Council. The Justice Court Study Committee requests endorsement from the Council on their recommendations up to this point. The Committee will likely bring amendments back to the Council as the plan becomes more final once community input has been received.

The Judicial Council's discussion on Justice Courts began in July of 2005 when the Council considered the history, statutes, rules and constitution of the Justice Courts and the current issues they have recently faced. Over the last few years, the Council has spent a considerable amount of time resolving justice court issues. They have included: an increase in the number of justice courts, and specifically large courts being created; jurisdictional and concurrent jurisdictional issues; the public perception that justice courts serve as a vehicle for revenue generation; the challenges to judicial independence from local counties both real and perceived: the legal challenges the justice courts have faced; legislative concerns; re-certification and de-certification of justice courts; the concern for uniformity and consistency in practice and procedure, and; selection and retention of judges. Considerable improvements have also been made in the justice courts such as increased education requirements and improvement in technology and service. The review of these issues led the Council to adopt a study of the Justice Court system as their goal for 2006.

Mr. Becker reviewed the members of the Justice Court Study Committee. The Committee was charged with three goals: to examine how the existing rules address the issues of selection, retention, court operation and administration, jurisdiction and fiscal implementation; draft a proposed rule change that would address these issues, and; identify improvements which could only be addressed through legislation. As the Committee began their work, it became apparent any meaningful changes to the justice court system would require legislation. The Committee has met thirteen times in the last year and a half to consider these goals and create their proposal

Mr. Becker indicated the Committee has determined four overarching goals their proposal addresses. They are:

1. Judicial independence
2. Public trust and confidence in the court system
3. Preserving local government's right to maintain a local court
4. Eliminate concurrent jurisdiction with the district court.

Mr. Schwermer provided a power point on the Justice Court Study Committee interim progress report. Mr. Schwermer reviewed the four goals of the Committee and explained the Committee proposed the following solutions and implementation options:

-Uncouple the money and the judge

Pay justice court judges a fixed, state statute established salary. The cost of salaries, benefits, and education for all justice court judges would be funded by a percentage of

the statewide total fine revenue, collected by justice courts, that would be diverted to a state restricted account.

-Make the selection process more merit based

Each judicial district would have a justice court selection committee, comprised of local officials, citizens, and the presiding justice court judge from that district.

-Reduce the opportunity for inappropriate political influence in the retention process

Implement retention elections for all justice court judges, and make the terms of office six years.

-Assure public confidence in the competence of all justice court judges

Require all new judges to have a four-year college degree.

-Attract and retain good judges

The justice court judge salary would be set at a competitive level tied to the salary of a district judge. All justice court judge positions will become full time by 2016.

Mr. Schwermer explained that the transition to this proposed system would take place over a nine year period in order to balance the advantages of this plan with fairness to the incumbent judges. Sitting justice court judges would be grand fathered into their current office until 2016. Current full-time judges would become state-paid in 2009 and those full time positions would then be hired through the selection committees. Full time judges appointed or re-appointed in the 2010 cycle would be appointed to a six-year term of office. Part time judges would face the current selection and retention processes until 2016.

Based on the current weighted caseload information, 58 FTE judges would be needed to manage cases statewide. Currently there are 45 full time justice court judges. Because of age, retirement, resignation and appointment, many of the incumbents will not be affected by a career change in 2016.

Mr. Schwermer reported that the Committee had also discussed a combined information system that all justice courts would share. This system would assist judges who serve in more than one court location to have access to the same case management system. The Committee discussed how senior judges will be utilized during the transition time in order to cover the caseload and traveling needs of the court statewide.

The Justice Court Study Committee will now begin meeting with other stakeholders in the community to share this proposal and gain more feedback. Mr. Schwermer recognized the significant involvement each committee member had contributed to the process and indicated the experience of the justice court judges on the committee was especially helpful.

Motion: Judge Chamberlain motioned to advance the Justice Court Study Committee's proposal on to the community partners who also have interest in the justice court system. Judge Lyon

seconded the motion, the motion passed unanimously.

8. GUARDIAN AD LITEM DIRECTOR APPOINTMENT: (Daniel J. Becker)

Motion: Judge Stott motioned to go into executive session, the motion was seconded and passed unanimously.

Motion: A motion was made to come out of executive session, the motion was seconded and passed unanimously.

Motion: Judge Stott motioned to appoint Rick Smith as the new Director of the Guardian ad Litem. The motion was seconded and passed unanimously.

9. COURTOOLS UPDATE: (Kim Allard, Matty Branch)

Ms. Allard provided an update on the CourTools data that is now available online at <http://www.utcourts.gov/courtools/>. Ms. Allard reviewed the caseload clearance rates, time to disposition and age of active pending cases for 2007. Ms. Allard reported that the project to clean up all old cases is completed and CourtTools can now provide a current view of where each district is at with their caseload management.

Ms. Branch reported that the Appellate Court caseload information is now also online with CourTools. Ms. Branch reviewed the clearance rates and time to disposition of the Supreme Court and Court of Appeals for 2007. Ms. Branch indicated that the court is now controlling more of the timeliness of civil cases, due in part to a more strict policy, and that is demonstrated in the CourTool data. Council members suggested adding information on cases disposed by mediation.

Ms. Allard reported that the next time the Council receives a CourTool update the Juvenile Court data will be available.

10. INTERLOCAL AGREEMENT REQUEST/HOLLADAY AND COTTONWOOD HEIGHTS: (Rick Schwermer)

Mr. Schwermer indicated that the City of Holladay is requesting certification of an interlocal agreement to provide justice court services for Cottonwood Heights and a waiver of the year long implementation time.

Mr. Schwermer reported he will be following up on the request for a referee and the creation of a specialty court that the agreement mentions. Mr. Schwermer indicated he will also inform the two party's that they may terminate this agreement at any time with a four months notice, but the Council would have to approve this termination.

Currently, Cottonwood Heights have been using the Salt Lake County Justice Court and they will lose close to 350 cases. However, they are prepared for the decrease in cases and have no opposition to Cottonwood Heights delaying the implementation period.

Motion: Scott Sabey motioned that the Council approve the interlocal agreement between Holladay and Cottonwood Heights with the understanding Mr. Schwermer have a discussion with each court about the time frame of the agreement. Judge Davis seconded the motion, the motion passed unanimously.

11. CERTIFICATION OF COURT COMMISSIONER: (Tim Shea)

Tim Shea indicated that Commissioner Patrick Casey is up for re- certification

Motion: Judge Beacham motioned that Commissioner Casey be re-certified, the motion was seconded and passed unanimously.

12. ADJOURN

Motion: A motion was made to adjourn the meeting, the motion was seconded and passed unanimously.