

JUDICIAL COUNCIL MEETING

Minutes

Wednesday, May 27th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Judge Hans Chamberlain, Presiding

ATTENDEES:

Hon. Hans Chamberlain, Vice Chair
Hon. Mark Andrus
Hon. Sandra Peuler for Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Michael Kwan
Hon. Michael Lyon
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Scott Sabey, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Nancy Volmer
Matty Branch
Alyn Lunceford
Susan Burke
Jessica VanBuren
Mary Jane Ciccarello

GUESTS:

Judge Thomas Kay
Judge Thomas Higbee
Judge John Baxter
Stephen Hunt, Salt Lake Tribune
Sara Israelsen, Deseret Morning News
Joanne Slotnik
Peter Moyes
Michelle Beatty
Debra Dibble
Lori Nelson, esq.
Susan Bird

EXCUSED:

Chief Justice Christine M. Durham
Justice Ron Nehring
Hon. Michael Westfall
Ray Wahl

1. WELCOME AND APPROVAL OF MINUTES: (Judge Hans Chamberlain)

Judge Hans Chamberlain welcomed everyone to the meeting.

Motion: Judge Maughan moved to approve the minutes as amended. Judge Petry seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Judge Hans Chamberlain)

Nothing to report.

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

Mr. Becker reported on the following:

There are three additional judicial vacancies with the upcoming retirements of Judge Pamela Greenwood, Court of Appeals; Judge Russell Bench, Court of Appeals; and Judge Howard Maetani, Fourth District. All three of these retirements are effective, January 1, 2010.

Mr. Becker mentioned that he attended the Judiciary, Law Enforcement and Criminal Justice Interim Committee meeting on May 20. He presented to the committee information relative to the Judicial Branch budget reduction for FY 2010. The information presented included: 1) personnel reductions, 2) non personnel reductions, 3) case filing increase, 4) actions taken, and 5) judicial vacancies. Some members of the committee were particularly interested in the filling of the judicial vacancies. Discussion took place.

He reported on several grant awards received by the Courts. The Self Help Center has received \$5,000 from the IOTA Foundation and \$5,000 from the Michael's Foundation. The Divorce Education for Children Program has received \$7,000. He mentioned that issues were raised during the Legislative Executive Appropriations Committee regarding the use of federal stimulus dollars, in particular, the proposed use of Byrne funding. Further discussion will take place at the next Executive Appropriations meeting.

Mr. Becker reported that the following attended the American Bar Association Summit in Charlotte, North Carolina: 1) Chief Justice Christine M. Durham, Mr. Daniel J. Becker, and Mr. Rick Schwermer from the Judicial Branch; 2) Senator Lyle Hillyard, and Representative Kraig Powell from the Legislative Branch; 3) Mr. Ron Gordon from the Executive Branch; and 4) Nate Alder from the Utah State Bar. Senator Lyle Hillyard, Representative Kraig Powell and Mr. Nate Alder will be invited to attend the June 29 Council meeting to report on the conference in more detail.

4. COMMITTEE REPORTS:

Management Committee Report:

Judge Chamberlain highlighted a few areas covered at the Management Committee Meeting which included 1) prioritization of filling judicial vacancies, 2) H1N1 update, and 3) AOC downsizing/priorities.

Liaison Committee Report:

No report at this time.

Policy and Planning Meeting:

Judge Orme reported:

Policy and Planning met on Friday, May 1. The meeting agenda was very extensive. He also mentioned that summary minutes are being taken at this meeting.

He mentioned five rules listed on the consent calendar:

CJA 03-0501. Insurance benefits upon retirement.

CJA 03-0502. Insurance benefits for surviving spouses and dependent children of deceased justices, judges and commissioners.

CJA 02-0104. Recording meetings.

CJA 04-0409. Council approval of problem-solving courts.

CJA 04-0906. Guardian ad litem program.

Judge Orme mentioned that there were concerns with CJA 03-0501 and CJA 03-0502. Therefore, these two rules will be discussed further. He also mentioned the Rules for Audio Record of Court Hearings and Transcripts as well as the proposed rule amendments are on the agenda for later discussion.

Bar Committee Report:

Mr. Sabey reported on the following:

The new Mentoring Program has been launched and is doing well. He mentioned that there is still a need for more mentors.

The Bar Commission Annual Retreat is scheduled for May 29 and May 30.

Mr. Sabey introduced Ms. Lori Nelson of Jones Waldo who will begin her term as the Bar representative on the Judicial Council in July.

5. BOARD OF DISTRICT JUDGES UPDATE: (Judge Thomas Kay & Debra Moore)

Judge Chamberlain welcomed Judge Kay, District Board chair to the meeting.

Judge Kay provided an update to the Council on behalf of the Board of District Judges.

He reported that the District Court Conference was held May 14-15. The conference had the best attendance yet. The conference went very well.

The Alternative Sentencing Committee, chaired by Judge Paul Maughan, met on May 22. The committee is developing evidence-based practices. An Evidence-Based Symposium is scheduled for June 24 to introduce judges, providers and probation workers to evidence-based practices. It was mentioned the practice of placing people in programs that have been proven to reduce recidivism have positive outcomes.

Judge Kay reported that Mr. Mark Field gave a report to the Board of District Judges at their May Board meeting. He also spoke at the bench meeting and gave a post-conviction relief presentation at the District Court Conference. Judge Kay tentatively will meet with Mr. Field on a weekly basis for an update on his work.

The Board of District Judges prioritization recommendations for filling the judicial vacancies are as follows: 1) Eighth District vacancy, filling the position of Judge John Anderson; 2) Fourth District vacancy, filling the position for Judge Gary Stott; 3) Third District vacancy, filling the position for Judge Sheila McCleve; and 4) Second District vacancy, filling the position for Judge Rodney Page. After the first recommendation, the Board of District Judges recommends filling the positions two at a time.

Ms Debra Moore mentioned that the evidence-based practice initiative is a very worthwhile project for the District Board. She reported that Judge Paul Maughan presented information on evidence-based practices to the Sentencing Commission last week. The District Board has invited the Sentencing Commission to attend the Evidence-Based Symposium on June 24.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Judge Chamberlain welcomed Ms. Slotnik to the meeting.

Ms. Slotnik reported that she has spoken at the following events: 1) new Judges Orientation, 2) Juvenile Court Conference, and 3) District Court Conference. Mr. Lowry Snow, Commission chair, spoke to the Justice Court Board. Ms. Slotnik is scheduled to speak at the Appellate Court Conference in June as well as at the Annual Judicial Conference in the Fall.

She mentioned that two administrative rules went into effect on May 1.

The RFP for the survey process for attorneys, jurors, litigants, went out May 1. The deadline for submitting bids was May 26. The Commission has received five bids to consider.

Ms. Slotnik reported that the Commission is familiarizing themselves in the area of procedural justice. She also reported that they have submitted a written request to the Attorney General's Office on several matters regarding statutory interpretation. They are waiting for a response.

She reviewed a tentative timeline in preparation for judges up for evaluation in 2012. This group of judges includes 21 district court judges, 9 juvenile court judges and 2 justice court judges. The timeline includes the following: 1) juror surveys, late summer 2009; 2) litigant and witness pilots, late summer or early fall of 2009; 3) court's staff survey, fall 2009; and 4) attorney surveys, beginning of 2010 which will capture data from Jan-Dec 2009. The selective use of courtroom observations as a possibility was mentioned as well.

There is concern with the use of attorney surveys in rural areas. The Commission is looking at areas to supplement the surveys in the rural areas.

Ms. Slotnik reported there is a vacancy on the Commission. Judge Bill Bohling has resigned.

Questions were asked relative to justice court judges and performance evaluations and appellate court judges. Ms. Slotnik mentioned that these areas still need to be defined.

7. FOURTH DISTRICT - UTAH COUNTY MASTER PLAN: (Peter Moyes & Alyn Lunceford)

Mr. Moyes and Mr. Lunceford were welcomed to the meeting. Mr. Moyes reviewed the final master plan as prepared with input from judges, and county/local city officials for projecting the demographics for the next 15-20 years. The information provided considers what is the most appropriate way to provide court services during that time frame.

The four options presented include: 1) balanced court distribution, 2) dual hub court distribution, 3) hub and spoke court distribution, and 4) linear court distribution. Each option was explained and discussed. Questions were asked relative to the existing Fourth District Court and Fourth Juvenile Court facilities. One question which arose dealt with the possibility of both district and juvenile court being housed in the same facility. Mr. Moyes provided feedback on the issues brought up. The following are factors to consider with housing both courts in the same facility: 1) parking issues, 2) increased costs to run a combined facility, and 3) different programs in effect at each facility.

The option that meets the approval of facilities management, the Fourth District Court and the Fourth District Juvenile Court is the linear court distribution. With this option, the Provo District Court facility would be enlarged to include the justice courts and an additional four courtrooms. The projected court capacity at each facility was reviewed. Then discussion of a northern Utah County court facility took place. The location for this facility will need to be identified. Mr. Moyes was also asked if they had considered upcoming population shifts when looking at potential areas for the northern Utah County facility.

Once the master plan has been approved, then a short-term plan will need to be developed to prioritize the buildings.

Motion: Judge Eyre moved to approve the Fourth District - Utah County Master Plan. Judge Lyon seconded the motion, and it passed unanimously.

8. UNIFORM FINE AND BAIL COMMITTEE UPDATE: (Debra Moore)

Ms. Moore reported that the Uniform Fine and Bail Committee met on May 8 to make recommendations for changes to the Fine/Bail schedule based upon legislation from the 2009 General Session and suggestions gathered from other sources throughout the year.

She mentioned that there was a request from the Ogden Justice Court to increase all fines for all minor traffic offenses. The committee did not approve this request. She explained that the Committee was not interested in pursuing such an increase, at the present time. Discussion took place.

Once the Council approves the recommendations, the Fine/Bail schedule will be posted to the website.

Motion: Judge Maughan moved to approve the Uniform Fine and Bail Schedule recommendations. Judge Orme second the motion, and it passed unanimously.

9. CHILDREN & FAMILY LAW STANDING COMMITTEE UPDATE: (Judge Thomas Higbee & Susan Burke)

Judge Higbee was welcomed to the meeting. He provided an updated from the Children and Family Law Standing Committee.

He mentioned that the Standing Committee on Children and Family Law addresses issues of law related to children and families. Members of the committee were mentioned. The committee is co-chaired by Judge Thomas Higbee and Judge Doug Thomas with Katie Gregory as the staff representative. He reported that the committee currently has vacancies in the following areas: 1) district judge representative, 2) state Senate representative, 3) state House representative, and 4) community representative.

The original charge to the committee include five reforms suggested by the Council which are: 1) improve communication between court levels, 2) mandatory mediation of divorce, 3) appoint a private GAL in contested custody cases, 4) improve quality and timeliness of custody evaluations, 5) permit a statement of the case in lieu of or as a supplement to testimony (proffer), and 6) attempt to resolve other issues as identified by the standing committee.

The result of the reforms include: 1) adoption of Rule 100, 2) mandatory mediation project continues in Third District (grant funded), 3) most districts appoint private GAL's, 4) 2003 rule change on custody evaluations, 5) proffer issue was thoroughly discussed and a majority suggested not to proceed, and 6) continued work on other identified issues.

Judge Higbee reported that the committee will sunset if not reauthorized prior to June 30, 2009. The issue of reauthorization will go before the Management Committee at their June meeting.

The four subcommittees include: 1) adoption, 2) custody evaluations, 3) divorce procedures, and 4) parent coordinator/special masters (work concluded). Issues being dealt with by the subcommittees include: 1) clarifications to 78B-6-138 regarding rights and duties of a birth parent whose spouse is adopting a child; 2) creating statutory right to counsel in District Court terminations of parental rights; 3) jurisdiction for adoption based on location of adoption agency; 4) questions related to use of putative father registries; 5) reviewed and refined the Custody Evaluation Settlement Conference (CESC) procedure set in the Spring of 2004; and 6) created a rule defining the role of a parent coordinator, which became effective April 1, 1009. Discussion took place regarding some of the issues. Potential issues for the committee were

mentioned.

Judge Higbee provided feedback to the Council on renewing the committee. Judge Orme commented on the benefits of keeping the committee and subcommittees going. The reauthorization of the Standing Committee on Children and Family Law will be discussed further in June.

10. RULES FOR AUDIO RECORD OF COURT HEARINGS & TRANSCRIPTS: (Tim Shea)

Mr. Shea mentioned that the comment period on the rules submitted for final action has closed. Policy and Planning recommends the following rules be amended: 1) CJA 03-0304 - official court reporters, 2) CJA 03-0304.01 - substitute certified shorthand reporters, 3) CJA 03-0305 - official court transcribers, and CJA 04-0201 - record of proceedings. The following rules will be considered by the Supreme Court: 1) URAP 11 - the record on appeal, 2) URAP 12 - transmission of the record, 3) URAP 54 - transcript of proceedings, and 4) URCP 052 - findings by the court.

Mr. Shea summarized comments received regarding the rules in question. He noted that some comments received were not related to the proposed rule change, such as: 1) the need for court reporters is critical, and 2) identified audio recording problems. Those comments concerning the rule included: 1) concerns with per page price, 2) which record is considered the official record, 3) certification issue of the court reporter, and 4) issue of the records filed by the court reporter being property of the court.

Ms. Debra Dibble presented concerns on behalf of the Utah Court Reporters Association to include the following: 1) the need for clarification in regards to definitions to such things as digital files, backup files, archive files, type of index pages, text file, official court transcriber, and certified court reporter; 2) in Rule 4-201, reference to “a verbatim record” or “an official transcript” better wording would be “the record” or “the transcript”; 3) issue with the records filed by the court reporter being considered property of the court; and 4) the issue of certification being rescinded. With the issue of the certification rescinded, the Utah Court Reporters association would like to see the wording be changed to rescind authorization and not rescind the certification.

Discussion took place regarding the per page issue. The per page price is determined by the Legislature. Therefore, any requested changes would need to be submitted to the Legislature. Mr. Shea provided statutory definitions as needed. Comments and discussion took place.

Mr. Shea mentioned that the rules are before the Council to further amend if necessary and then approve them. They approved rules would then become effective July 1, 2009.

Motion: Judge Eyre moved to approve the rule with the amendment dealing with the wording referencing a certified court transcriber. Mr. Sabey seconded the motion, and it passed unanimously.

Further discussion took place regarding definitions, terms, and clarification of this information.

Motion: It was moved and seconded to approve the proposed rules for audio record of court hearings and transcripts with the suggested amendments including approval of the court reporter

request form. The motion passed unanimously.

11. FINAL ACTION - PROPOSED RULE AMENDMENTS: (Tim Shea)

Mr. Shea reviewed Rule CJA 3-102. Assumption of judicial office. The effective date is November 1, 2009.

Motion: Judge Eyre moved to approve Rule CJA 3-102. Judge Andrus seconded the motion, and it passed unanimously.

Mr. Shea reviewed Rule 4-701. Rule 4-701 was amended to conform to HB 292, recognizing a citation as a charging document and permitting the court to issue an arrest warrant for failure to appear on a citation. Discussion took place.

Motion: Mr. Sabey moved to approve Rule 4-701 be published for comment. Judge McCullagh seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Mr. Shea presented the request for senior judge status for Judge John Anderson, Judge Sheila McCleve and Judge Gary Stott.

Motion: Judge Andrus moved to approve the senior judge requests. Judge Eyre seconded the motion, and it passed unanimously.

13. NEW JUDGE CERTIFICATION: (Rick Schwermer)

Mr. Schwermer presented the recommendations for justice court judge certification for Mr. Matthew Calvin Funk and Ms. Shauna Kerr. He mentioned that Ms. Kerr was the first to go through the new nominating process for justice court judges.

Ms. Kerr's recommendation and certification information has been submitted. Mr. Funk's information is incomplete. A request for the appropriate paperwork has been made.

Motion: Judge McCullagh moved to approve the certifications of Ms. Shauna Kerr and Mr. Matthew Funk as justice court judges. Mr. Funk's certification is contingent on receipt of the appropriate certification paperwork. Judge Kwan seconded the motion, and it passed unanimously.

14. VACANCY PRIORITIZATION: (Judge Hans Chamberlain)

Judge Chamberlain mentioned that the Council will need to consider the District Board's recommendations for prioritization of filling judicial vacancies and then come up with a staggered schedule that will make sense.

Mr. March reviewed a tentative schedule for filling judicial vacancies. He also gave an explanation of the open positions including the newest vacancies that will be effective January 1, 2010. Issues to be considered when prioritizing filling the vacancies include: 1) the time the nominating commission has to begin and work on the process for filling the vacancy; 2) working with a new confirmation committee chair, as well as, the handling of multiple confirmations at a given time; and 3) coordinating the date for confirmation hearings. Discussion took place.

It was mentioned that the Eighth District vacancy and the Court of Appeals vacancy are

listed as number 1 and 2, respectively on the prioritization list. As the discussion progressed, the suggestion was made to move the schedule up a little on #2, the Court of Appeals vacancy. It was also suggested to push out the last vacancy to April or May if necessary. The use of a senior judge a couple of days a week to cover vacancy needs would be appropriate, if deemed necessary. It was noted that the six-week slowdown only relates to staff positions.

Motion: Judge Andrus moved to approve the recommended prioritization of the first five vacancies to include 1) Eighth District, 2) Court of Appeals, 3) Fourth District, 4) Third District and 5) Second District. The three January 1, 2010 vacancies will be discussed further in July. Judge McCullagh seconded the motion, and it passed unanimously.

**15. RESOURCES FOR SELF-REPRESENTED PARTIES COMMITTEE UPDATE:
(Judge John Baxter & Tim Shea)**

Judge John Baxter was welcomed to the meeting. He gave an update from the Resources for Self-Represented Parties Committee. He acknowledged Mr. Shea for all of his hard work and efforts as a staff representative on the committee.

Ms. Jessica Van Buren and Ms. Mary Jane Ciccarello have been submitting grant applications to provide funding for the Self-Help Center. They have received the following grant funding: 1) \$5,000 from the Michael's Foundation, and 2) \$5,000 from the Utah Bar Foundation. There are several grant applications which are pending. The committee is in the process of identifying resources for additional one-time funding.

Services for the Self-Help Center have been expanded to the Seventh District. Presentations have been made to staff in the Seventh District, and the information has been well received.

Judge Baxter also mentioned various presentations that have been made to various entities. He also mentioned the work being done on a three-hour CLE on limited scope representation. He reported that he would like to encourage ongoing discussion on the availability of low bono, pro bono options available for the self-represented litigant. This topic will be an ongoing discussion by the committee.

Judge Chamberlain thanked Judge Baxter and the committee for their work.

16. CASH GRANT - WALMART FOUNDATION (Judge Michael Kwan):

Background was given on the Cash Grant - WalMart Foundation submitted by Mr. Peters, court executive.

Judge Kwan expressed that his concerns with the grant were due to the potential and the appearance issues arising from WalMart as a litigant or victim. Discussion took place regarding grant submissions as generally being made to federal agencies and foundations.

Mr. Brent Johnson reviewed his discussion with Mr. Peters on the Cash Grant - WalMart Foundation. Discussion took place.

Motion: Judge Kwan moved to not authorize the application for the Cash Grant - WalMart Foundation. Mr. Sabey second the motion, and it unanimously passed.

**17. APPELLATE REPRESENTATION AND POST-CONVICTION COMMITTEE
MEMBERSHIP RECOMMENDATIONS (Daniel J. Becker)**

Chief Justice Durham apologizes for not presenting this request to the Management Committee prior to today. Chief Justice Durham received a letter from Judge Stephen Roth with three recommendations from the Appellate Representation and Post-Conviction Committee for one replacement and two additional committee representatives.

They include: 1) a county representative (replacement for Utah County Commissioner Gary Anderson), 2) a rural county prosecution representative, and 3) a victim's rights representative.

Judge Orme and Mr. Schwermer provided a brief background of the existing committee composition and their work. Mr. Schwermer also added that the request for a victim's right representative was withdrawn at their meeting held the day before. Discussion took place.

Motion: It was moved and seconded to send the request back to the Management Committee for further discussion.

Rule CJA 03-0501 - Insurance benefits upon retirement. Further discussion on this rule took place. Concern with the rule amendment has been expressed by some judges.

Mr. March gave a brief summary of what has previously taken place regarding judicial retirement and health benefits.

Motion: Judge Lyon moved to defer making a decision regarding Rule CJA 03-0501 and send it back to the Appellate, District and Juvenile Boards for discussion and to gain an understanding of what is being proposed. Further discussion by the Council will be deferred pending input from the various Boards. Judge Maughan seconded the motion, and it passed unanimously.

Motion: It was moved and seconded to enter into an executive session at this time.

18. EXECUTIVE SESSION

After coming out of an executive session, the following motion was made:

Motion: Mr. Sabey moved to change the legal research provider to Westlaw, effective July 1st. Judge Eyre seconded the motion, and it passed unanimously.

19. ADJOURN

The meeting was adjourned.