

JUDICIAL COUNCIL MEETING

Minutes

Monday, June 29th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. Mark Andrus
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Michael Kwan
Hon. David Connors for Hon. Michael Lyon
Hon. Paul Maughan
Hon. Pamela Greenwood for Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Scott Sabey, esq.

STAFF PRESENT:

Myron K. March
Jody Gonzales
Debra Moore
Ray Wahl
Rick Schwermer
Tim Shea
Ron Bowmaster
Mary Aguirre-Shahin
Katie Gregory
Susan Burke

GUESTS:

Judge Elizabeth Lindsley
Judge Carolyn McHugh
Judge Dane Nolan
Lori Nelson, esq.

EXCUSED:

Daniel J. Becker
Hon. Michael Lyon
Hon. Brendan McCullagh
Hon. Gregory Orme

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

Chief Justice Durham welcomed everyone to the meeting. Chief Justice Durham excused Mr. Becker from the meeting. She mentioned that Judge Pam Greenwood is sitting in for Judge Orme, and Judge David Connors is sitting in for Judge Michael Lyon.

Chief Justice Durham reported that this would be Mr. Sabey's last Council meeting. Ms. Lori Nelson, the new Bar representative, will be joining us later in the meeting.

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

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

Chief Justice Durham reported that she had an opportunity to attend the Evidence-Based Practices Symposium last week. She provide the welcome and the opening remarks to the group and was present for the opening speaker. In attendance at the event were 1) juvenile and district

court judges, 2) probation officers, 3) treatment providers, 4) CCJJ representatives, and 5) court management.

The symposium provided an opportunity to: 1) see the steps taken to monitor the data and choose what works and does not work towards recidivism; 2) see choices that are available to help improve the lives of people involved; 3) see that there are good needs and risk assessment opportunities up front, to allow for judgements to be made towards what works in a given situation; and 4) see practices that are available to reduce recidivism for low-risk offenders without incarceration.

Chief Justice Durham expressed her gratitude to the trial judges leading the efforts in the evidence-based practice arena.

She reported that she attended the American Bar Association Globalization of the Legal Profession Conference at the end of May.

3. ADMINISTRATOR'S REPORT: (Myron K. March)

Mr. March reported that the respective court staff, including Chief Justice Durham, and several presiding judges, participated in a table-top exercise last week to review the steps necessary to institute the Continuity of Operations Plan in the event of an emergency at the Matheson Courthouse. The goal of the exercise was to identify potential weaknesses in the plan and to familiarize participants with their roles and responsibilities within the plan. He mentioned the exercise was beneficial to all involved.

Judicial Vacancies. He also reported that the Nominating Commission in the Eighth District has selected five nominees. The 10-day comment period closed Friday, June 26. The names will then be submitted to the Governor. The Court of Appeals Nominating Commission will hold its first meeting on August 4, and interviews will be held on August 10.

Retirements. Judge McCleve's last day was last Friday. Judge Stott's retirement reception is scheduled for tomorrow. Mr. Jayne retired last Friday after 31 years with the courts.

Mr. March was asked the status of filling the vacancies in regards to Legislative support. Discussion took place. Chief Justice Durham mentioned her discussions with President Waddoups and the courts situation with filling the judicial vacancies.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reviewed the recommendation from all three board of judges on Rule CJA 03-501 as discussed in the June Management Committee meeting. She mentioned that she had nothing more to add to what is already reflected in the minutes.

A question was asked regarding justice court case filings in regards to the numbers reflected. Mr. Schwermer provided a response.

Liaison Committee Report:

A June meeting was not held.

Policy and Planning Meeting:

A June meeting was not held.

Bar Committee Report:

Mr. Sabey reported on the following:

There is a proposed professional service package which is on hold.

The Mentoring Program continues to move forward.

The Bar voted to increase the bar dues by \$75 which is the first increase in 20 years. The increase would become effective in 2010.

The focus is on the 2009 Summer Convention to be held July 15-18 in Sun Valley, Idaho. Mr. Steve Owens will be installed as the new Bar president replacing outgoing president, Mr. Nathan Alder.

5. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer mentioned that the Constitutional Revision Commission continues their review of the post-conviction appeals process.

The concerns with the overall CCJJ grant use and Byrne funding were clarified at the Executive Appropriations meeting. The courts will receive \$585,000 from the Byrne fund for clerk support.

He reported that revenue is down 11.7%. He mentioned that a lot of emphasis is being placed on employee compensation and benefits. Evaluation of the four-day work week continues.

Mr. Schwermer provided an update on the activities of the Judicial Interim Committee.

He stated that the City of Orem intends to file a request with the intent to form a justice court. He stated that he has received many inquiries from the justice courts.

Former Judge David Roth will be replacing former Judge William Bohling on the Judicial Performance Evaluation Commission.

6. CHILDREN AND FAMILY LAW STANDING COMMITTEE REAUTHORIZATION: (Katie Gregory)

Ms. Gregory reported that the Management Committee recommends the Children and Family Law Standing Committee be reauthorized for one year. After that time, a review of the following will be completed to determine if the existence of the committee will continue: 1) does it continue to be a viable committee, 2) are the committee meetings well attended, and 3) are the issues raised being dealt with effectively.

She mentioned that the Committee met last Friday to discuss the concerns raised by the Management Committee including attendance and member appointments. Ms. Gregory stated that it has been difficult to gain legislative representation from the House or the Senate. A background of legislative representation was given. She also reported that there is a vacancy for a community member on the Committee.

Ms. Gregory reported that most of the initial charge issues of the Committee have been addressed. She updated the Council to the three remaining subcommittees which include: 1) Adoption Subcommittee, 2) Custody Support Subcommittee, and 3) Divorce Procedures Subcommittee. The Adoption Subcommittee has completed the majority of their work. The Custody Support Subcommittee is working on reforming custody evaluations. The Divorce Procedures Subcommittee was created at the end of 2005, and this subcommittee has not been very active. She mentioned that Commissioner Dillon will be chairing this subcommittee, and he will be getting it active again.

The Committee will work on the following areas in the next year to justify its continued existence: 1) draft and coordinate the work to be accomplished by the committee, 2) consider the

use of resources as it deals with staffing issues, and 3) identify the remaining issues to be dealt with by the committee. Discussion took place.

Motion: Judge Atherton moved to reauthorize the Children and Family Law Standing Committee for one year at which time an assessment of the Committee's continued existence will be made. Judge Eyre seconded the motion, and it passed unanimously.

7. ADULT PROBATION AND PAROLE'S PRESENTENCE INVESTIGATION AND SUPERVISION STANDARDS: (Debra Moore)

Ms. Moore mentioned that the standards were brought before the Council six months ago. At that time, the Council deferred action and requested that AP&P provide additional information to more fully comply with the statute and asked the district board to conduct further review. The district board has reviewed the information and is seeking approval from the Council on the standards with the exception of the item "Not Remain in USA" under the Probation Special Condition category. This item is a matter of federal jurisdiction and is not to be part of the standards.

Justice Nehring suggested that the area of "restitution" be reviewed more thoroughly. Ms. Moore asked if Justice Nehring wanted this to be a formal request to the board. The "SO-Children Under 18" item under the Probation Special Conditions was also discussed. Concern was also brought up with the "Association" item under the Probation Standard Conditions. Discussion took place regarding any type of association taking place after attending meetings or outpatient treatments that may occur between low risk offenders and high risk offenders.

Motion: Mr. Sabey moved to approve the proposed Supervision and Presentence Investigation Standards as recommended by the district board. Judge Westfall seconded the motion, and it passed unanimously.

8. JUDICIAL BRANCH EDUCATION COMMITTEE UPDATE: (Judge Elizabeth Lindsley and Mary Aguirre-Shahin)

Chief Justice Durham welcomed Judge Lindsley and Ms. Aguirre-Shahin to the meeting. Judge Lindsley commented that the presentation was prepared by Ms. Aguirre-Shahin.

First, she reviewed the mission statement: "The mission of the Utah Judicial Institute is to provide education and foster a culture of learning which promotes excellence among all judges and court staff." She mentioned that the objective of this presentation was to: 1) provide the Judicial Council with key Utah Judicial Institute education accomplishments in FY09, and 2) outline some of the education priorities for FY10.

She commented on the values that were used to develop programs which include: 1) job specific, 2) relevant, 3) effective, 4) inclusive, 5) convenient, 6) tied to the mission of the court to administer justice fairly and equitably, and 7) to support lifelong learning.

She reported on the following areas: 1) FY09 major accomplishments, 2) number of trained participants, 3) committee work, and 4) the education priorities for FY10.

Some of the accomplishments included: 1) revamping of probation officer (PO) and Chief PO training programs, 2) development of the small claims DVD, 3) work on gang prevention education for parents, 4) presented on domestic violence at the University of Utah for visiting prosecutors from Afghanistan, 5) conducted faculty development training for Juvenile Court Restorative Justice Conference, 6) developed new faculty evaluation forms, and 7)

developed electronic calendar of courses.

The goals for FY10 include: 1) work to support the training needs of clerks to support the implementation of the comprehensive clerical study, 2) utilize and integrate technology in training programs/events as appropriate, 3) integrate cultural competency into curriculum, where appropriate, to further the court's goals of fairness and equal access to justice, 4) incorporate more training on ADR, and model drug/mental health courts, 5) develop course marketing materials, 6) work with other AOC training partners to develop a comprehensive list of training done by all departments, 7) download new judge orientation material onto DVD where possible, and 8) deliver at least seven small claims training programs at the district level.

9. COMMISSIONER CONDUCT COMMISSION REPORT: (Judge Pamela Greenwood and Rick Schwermer)

Judge Greenwood reported that the Committee remains active. Members of the Commission were named. The administrative-level complaints are being dealt with as they arise. An update on the types of cases presented to the Commission was given.

A complaint requiring Council action will be discussed later in an executive session.

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

10. EXECUTIVE SESSION

After coming out of an executive session, the meeting continued.

11. TECHNOLOGY COMMITTEE UPDATE: (Judge Carolyn McHugh and Ron Bowmaster)

Judge McHugh and Mr. Bowmaster were welcomed to the meeting.

Judge McHugh provided an update on the Technology Committee to the Judicial Council.

She reported on the following areas: 1) redundant data center, 2) video conferencing, 3) justice court CORIS conversion, 4) uniform offense table, and 5) National Conference for State Court Technologies presentation.

The redundant data center for the Courts is set up at the West Jordan Courthouse as a temporary redundant data center. When the St. George Courthouse is up and operational, equipment will be installed to run the redundant data center out of that location.

Judge McHugh mentioned that video conferencing through the Viack system has been used at remote locations for various meetings and conferences, including the Legislative Update that was held in April. She mentioned that the Technology Committee continues to hold their meetings using Viack for remote participants. Feedback from Viack users is very positive. She reported that there is a courtroom set up in the Matheson Courthouse for arraignments to be handled through video conferencing. Discussion and comments on Viack took place. It was determined that economically it is better for the Courts to lease the Viack equipment rather than purchasing our own equipment.

The Justice Court CORIS conversions continue. Twenty-five justice courts have been converted. Fifty percent of the justice court filings are supported by the conversion. Two conversions a month will keep the conversion process on schedule to have completed by the July 1, 2011 deadline.

Judge McHugh mentioned that a subcommittee is being formed to review the necessity of

charging a fee for the use of the exchange system. The subcommittee will look at the following factors in making their determination: 1) fee amount, 2) compare the use of the exchange system to other court systems, 3) how to collect the fees, and 4) consider the sensitivity of the information accessible on the system to users.

Establishing a uniform offense table throughout the entire criminal system was discussed. The difference in State law versus city ordinances allows for cases to be listed differently in the system. By establishing a uniform offense table, the same reference can be used throughout the system to link the data.

Mr. Bowmaster and Ms. Allard gave presentations at the National Conference for State Courts Technology in August of 2008. Judge McHugh reported that Utah is staying abreast and moving forward in the court technology forefront.

It was asked if Viack was the technology used for the video conferencing used in arraignments. Mr. Bowmaster stated that they were different technologies. The use of remote translation was also mentioned and discussed.

Clarification to the redundant data center and backup systems for the Courts. It was reported that we have back up systems for the Courts besides the redundant data center.

12. PROPOSED JUVENILE COURT JUDICIAL WORKLOAD FORMULA: (Judge Dane Nolan and Susan Burke)

Judge Nolan update the Judicial Council to the proposed juvenile court judicial workload formula and its changes. The juvenile court bench approved the draft workload formula in April. He reported that the new formula utilizes the “off-bench” definition adopted by the Judicial Council. In the current formula there are 16 categories. In the new formula, there are 20 different categories, but only two are considered new. These two categories are: detention hearings and expedited shelter/motion to change custody. Contempt/probation violations was broken out of the misdemeanor category. Child welfare motions and reviews and delinquency motions and reviews are now separate categories.

Previously, the judicial need was calculated by averaging all judges in the average amount of time to conduct hearings. The judges were surveyed, and it was determined that it would be best to take 75% of the fastest times for benchmark of the formula to calculate the judicial need. He reviewed the current judicial need formula and the proposed judicial need formula. It was mentioned that, in some instances, it takes longer in the new formula. Mr. Wahl offered his comments. He stated that there are different requirements in the new formula.

Chief Justice Durham thanked Judge Nolan for the presentation on the proposed formula change.

Motion: Judge Andrus moved to approve the proposed juvenile court judicial workload formula. Judge Chamberlain seconded the motion, and it passed unanimously.

Chief Justice Durham recognized Mr. Sabey for his years of service as a member of the Judicial Council. Mr. Sabey offered his comments, and he introduced Ms. Nelson as the new Bar representative to the Judicial Council.

Motion: Judge Maughan moved to reject the Commissioner Conduct Committee recommendation to censure the commissioner in question. Mr. Sabey seconded the motion. Discussion took place. It passed with the following judges against the motion: Justice Nehring,

Judge Eyre, Judge Andrus and Judge Westfall.

13. ADJOURN

The meeting was adjourned.