

JUDICIAL COUNCIL MEETING

Minutes

Monday, June 21st, 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
Justice Ron Nehring
Hon. Robert Hilder for Judith Atherton
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

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Nancy Volmer
Rob Parkes
Rob Dobbins
Paul Barron

GUESTS:

Judge Samuel McVey
Judge David Marx
Judge Elizabeth Lindsley
Stephen Hunt, SLC Tribune
John Stearmer
Judge Jack Peterson

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

Chief Justice Durham welcomed everyone to the meeting. She mentioned that representatives from Duchesne County would be in attendance later to speak on behalf of the Duchesne Justice Court issue. She reported that Judge Hilder was sitting in for Judge Atherton, and Justice Nehring would be in attendance later in the meeting.

Motion: Judge Maughan moved to approve the minutes. Ms. Nelson seconded the motion, and it passed unanimously.

2. REPORT AND REAUTHORIZATION OF THE STANDING COMMITTEE ON JUDICIAL OUTREACH: (Judge Samuel McVey and Nancy Volmer)

Judge McVey and Ms. Volmer were welcomed.

Judge McVey provided an update to the Council on the work of the Standing Committee

on Judicial Outreach.

He reviewed the intent of the committee to include: 1) to foster a greater role for judges in service to the community, 2) to provide leadership and resources for outreach, and 3) to improve public trust and confidence in the judiciary. He listed the membership of the committee. He outlined the current committee structure to include the following subcommittees: 1) community outreach subcommittee, 2) media subcommittee, 3) divorce education for children subcommittee, 4) and diversity subcommittee.

He highlighted the following areas of interest being addressed by the Media Subcommittee: 1) the committee is considering holding a media training for judges beyond what is provided at the new judge orientation, 2) new program development of a bench-media subcommittee, and 3) new program development of a panel presentation on a historic court case.

The Jury Subcommittee plans to update the “*Selected to Serve*” video once funding is available. Possible funding sources were mentioned.

Previous subcommittees that have completed their charge include: 1) Website Ad Hoc Committee, 2) Survey Subcommittee, and 3) Kids and Judges Day.

The future plans of the committee are to continue with existing programs and form a Social Media Subcommittee.

Judge McVey requested the Council reauthorize the Standing Committee on Judicial Outreach.

Chief Justice Durham thanked the committee for their hard work and service.

Motion: Judge Eyre moved to reauthorize the Standing Committee on Judicial Outreach. Judge Westfall seconded the motion, and it passed unanimously.

3. CHAIR’S REPORT: (Chief Justice Christine M. Durham)

Chief Justice Durham reported on the following items:

She mentioned she sat in on the last Nominating Commission meeting for the Fifth District Juvenile Court on June 17. For future nominating commission meetings, a member of the Council will be appointed, ad hoc, as necessary.

Chief Justice Durham had an opportunity to attend a law school for journalists conference in Los Angeles. She participated along with the National Center for State Courts (NCSC) and spoke on behalf of the state courts.

She, along with members of the National Center for State Courts (NCSC), met with the US Attorney General, Eric Holder, in Washington, DC to discuss an initiative regarding indigency defense. She noted that Utah and Pennsylvania are the only two states that have no form of state funded indigency defense on the criminal side.

4. ADMINISTRATOR’S REPORT: (Daniel J. Becker)

Mr. Becker reported on the following items:

A report to the Judiciary, Law Enforcement, and Criminal Justice Interim Committee on the Courts budget will be given on June 23. Mr. Schwermer will report on several sunset reviews, and Mr. Shea will report on proposed guardianship legislation.

The Courts transcript management project will receive the National Association for Court Management (NACM) justice achievement meritorious award at their annual conference on July 22. This will be the second time Utah courts has received this award. The first time was in 2001 for the Online Court Assistance Program (OCAP).

There will be a presiding judge/court executive meeting held on July 1 to discuss operational issues as they relate to the budget. Mr. Becker will report back on the meeting at the Council meeting in July.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed.

Liaison Committee Report:

No meeting was held in June.

Policy and Planning Meeting:

Judge Orme reported on the following:

The Committee did not meet on June 4. They held their meeting before the Council meeting today. Information relative to “rules for final action” and “rules for comment” will be distributed to members of the Council later in the meeting.

He requested approval of the rules to be published for comment. The rules for final action will be deferred until the July 19 Council meeting. He mentioned that the rule to amend the transfer of small claims cases needs further amendment and will be considered in July. An amendment regarding records access to permit an adult adoptee to access the adoption decree will be considered in July as well.

Motion. Judge McCullagh moved to approve Rule CJA 020-0103, CJA 04-0202.02, CJA 04-0202.06, and CJA 07-0308 be published for comment. Ms. Nelson seconded the motion, and it passed unanimously.

Bar Committee Report:

Ms. Nelson reported on the following:

A vacancy on the Bar Commission due to Mr. Rod Snow being elected president-elect of the Bar was filled with the appointment of Mr. Dixon Burton.

The CLE Operations Review Committee finalized its report. A CLE Committee to improve continuing legal education was formed. The committee will establish criteria, and provide graded CLEs. There will be opportunities for advanced, intermediate and beginning training to allow for the individual needs of the attendees to be addressed. The Bar’s website will be improved to better facilitate CLE administration. The Commission voted to include a mandatory professionalism training, a component for diversity education.

The Commission will request the Supreme Court allow the Bar to expand their self-study options for those in outlying districts that cannot attend functions in the Wasatch Front with more advanced CLE opportunities.

The Law and Justice Operations Review Subcommittee appointed a long-range planning committee to look at the operations of the Bar building.

Ms. Nelson reported on the selection of the Annual Bar Awards to include: 1) Committee of the Year, Bar Examiner Committee; 2) Section of the Year, Military Law Section; 3) Distinguished Judicial Service Award, Judge Pamela Greenwood; 4) Judge of the Year, Judge Robert Hilder; and 5) Lawyer of the Year, Mr. Randy Dryer. Mr. Larry Stevens has been reappointed for an additional two-year term as the Bar's ABA delegate.

6. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer reported on the following:

June 23 is Interim Day.

He highlighted the following from the May 2010 Interim Highlights: 1) budget cuts in the Department of Public Safety; 2) renewing judgments by motion, which establishes a \$35 fee for renewal of a judgment; and 3) Senate confirmation of Judge Michelle Christiansen to the Court of Appeals. He mentioned the confirmation hearing for Mr. Tom Lee, Supreme Court appointment; Mr. Rob Dale, Second District appointment; and Mr. James Brady, Fourth District appointment will be held on June 23.

7. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge David Marx and Rick Schwermer)

Judge Marx of the North Logan Justice Court was welcomed.

He reported that the Board of Justice Court judges main concern is with the transition of small claims transferring from the district courts to the justice courts. Clarification of when the transition would take place was requested. All new cases filed after September 1, 2010 will be processed through the justice courts. Any cases filed previous to September 1, will be finalized in the district court.

Judge Marx mentioned recent articles written by various media pertaining to the justice courts. Discussion took place.

He distributed and reviewed survey results from the Justice Court Judges Conference which was held in April. The areas surveyed included: 1) opinion that a common data management system is important, 2) opinion of AOC CORIS support, 3) formal education of judges, 4) necessity of retention elections to assure judicial independence, 5), necessity of six year term to assure judicial independence, and 6) compensation relative to baseline salary range provided by AOC.

Judge Marx reported that city councils and mayors were sent salary information relative to the justice courts in their local jurisdictions.

Chief Justice Durham commented that enormous strides and professionalism have been made in the justice courts in the last decade. She expressed her appreciation to the Board for all their hard work. She thanked Judge Marx for his update.

8. UNIFORM FINE AND BAIL RECOMMENDATION: (Debra Moore)

Ms. Moore was welcomed.

She mentioned that Mr. Rob Dobbins and Mr. Paul Barron were in attendance to answer any questions relative to the Uniform Fine and Bail recommendations.

She reported that SB 217 increased the surcharge for Felonies, Misdemeanor As, and some Misdemeanor Bs from 85% to 90%, effective July 1, 2010. She mentioned that when the committee reviewed the information in April, they mistakenly believed that no action would be

required to implement the legislation. Ms. Moore reviewed the Committee's considerations relative to implementation of SB 217.

In order to implement the surcharge increase without reducing the base fine, the Committee recommends that for each offense to which the 90% surcharge applies, increase the total fine by 5% and round up to the nearest whole dollar. Updated amounts will take effect July 1, 2010 to coincide with the effective date of SB 217.

Motion: Judge McCullagh moved to approve the Uniform Fine/Bail Forfeiture Schedule concept as presented by Ms. Moore. Judge Stoney seconded the motion, and it passed unanimously.

9. EDUCATION STANDING COMMITTEE UPDATE: (Judge Elizabeth Lindsley and Rob Parkes)

Chief Justice Durham welcomed Judge Lindsley to the meeting.

Judge Lindsley introduced Mr. Rob Parkes, the Director of Education, and she expressed her appreciation to the Education Staff for their hard work in providing the educational events for the courts.

She provided an update to the Council on the work of the Standing Committee on Judicial Branch Education. Her update included: 1) the year in review, 2) the strategic plan, 3) tasks for FY 2011, and 4) the committee membership.

Areas highlighted in the year in review included: 1) education opportunities provided through conferences, traditional classes, targeted training, and VIACK; 2) budget savings methods through the use of local speakers, holding conferences locally, and conducting training in the districts to reduce travel costs; 3) probation education; and 4) clerical education. The four components of the strategic plan include: 1) develop and deliver training which is relevant and of direct benefit to the work of the audience receiving the training; 2) further advance the use of technology in training, both in terms of online content and accessible resources; 3) expand the use of internal faculty and expertise as resources in the development and delivery of education; and 4) establish the Education Division as the internal resource and oversight for training within the courts.

Identified tasks for FY 2011 include: 1) development of a presiding judge orientation for newly appointed presiding judges, 2) development of a combined presiding judge and court executive workshop, 3) expand training in working with self-represented litigants, 4) review and revise the guidelines for the certification of education programs, 5) create and deliver more in-depth training on e-filing and paperless courts, 6) deliver satellite conferences, and 7) empower subcommittees to have increased contribution and decision making in the development of staff education.

10. CASE MANAGEMENT INFORMATION: (Daniel J. Becker)

Mr. Becker reviewed data pertaining to district court case filings and juvenile court referrals for July 2009 through May 2010. For district court case filings, there was a 15% increase from the FY 2008 filings. For juvenile referrals, the referrals are down 9% overall.

He reviewed the increase in average number of days a civil cases remains pending. The areas highlighted include: 1) domestic, 26% increase; 2) probate, 47% increase; 3) general civil, 41% increase; 4) property rights cases, 39% increase; 5) debt collection, 34% increase; 6) small claims, 54% increase; 7) contracts, 18% increase; and 8) torts, 17% increase.

Case filing increase data for FY 2007 - FY 2010 was reviewed. The numbers reflected

include: 1) 2007 - 230,443 filings; 2) 2008 - 277,844 filings; 3) 2009 - 325,454 filings; and 4) 2010 - 321,833 filings.

He mentioned that an increase in workload, hiring freezes, and the courts downsizing all played a role in the trends presented. Discussion took place.

11. DUCHESNE JUSTICE COURT WAIVER ISSUE: (Rick Schwermer)

Mr. Schwermer provided a brief history of the Duchesne Justice Court with their courts functioning in an East and West precinct. Duchesne County is proposing dissolution of the East precinct of the Duchesne County Justice Court, and continuation of their court function with one precinct.

Mr. Jon Stearmer, Deputy Duchesne County Attorney, provided information on the proposed resolution to dissolve the East precinct of the Duchesne County Justice Court with an anticipated effective date of dissolution of July 15, 2011. A signed copy of the resolution was received. Duchesne County is requesting a waiver to shorten the effective date to January 3, 2011.

He reported that Duchesne County has been considering this move for several years due to budgetary issues. He reported on behalf of Duchesne County as to their plans for compensating the judge in the East precinct as a result of the pending dissolution. Discussion relative to the judge in the East precinct regarding the upcoming retention election, his compensation upon dissolution and other pertinent issues took place.

Judge Peterson offered his comments as the judge of the East precinct of Duchesne County.

Motion. Judge Orme moved to deny Duchesne County Justice Court's waiver request to shorten the effective date of the dissolution of the East precinct to January 3, 2011. The effective date of the dissolution of the East precinct would be July 15, 2011. Judge Maughan seconded the motion. The motion passed with Justice Nehring abstaining from the vote and Judge Eyre voting no.

Motion: It was moved and seconded to enter into an executive session for the purpose of discussing an individual's competence. The motion passed unanimously.

12. EXECUTIVE SESSION

The Council came out of their executive session and resumed the meeting.

13. SENIOR JUDGE APPLICATION: (Daniel J. Becker)

Motion: Judge McCullagh moved to certify Judge Storey's application for a senior judgeship to the Supreme Court. Judge Stoney seconded the motion. The motion did not pass.

14. ADJOURN

The meeting was adjourned.