

JUDICIAL COUNCIL MEETING

Minutes
Monday, June 25, 2012
Council Room
Matheson Courthouse
Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Judith Atherton
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. John Sandberg
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ron Bowmaster
Mary Jane Ciccarello
Neira Siaperas
Nancy Volmer
Michelle Wells-Jones
Alison Adams-Perlac

EXCUSED:

GUESTS:

Aaron Falk, SL Tribune
Emiley Morgan, Des News
Tessa Lopez, Intern
Russ Pearson, 8th District TCE
Polly Atwood, 7th Dist TCE
Judge David Miller

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting.
He acknowledged the passing of Ms. Pat Bartholomew, the Supreme Court clerk of court.

Motion: It was moved and seconded to approve the minutes. It passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reported on the following:
He spoke at the Juvenile Court Conference held at Deer Valley at the end of May.
He also met with the Governor and discussed several matters, including the judicial appointment process.

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

He reported on the following items:

Mr. Becker mentioned that an executive session would be needed at the end of the meeting.

Judge Sterling Sainsbury, Fourth District juvenile court judge, has announced his retirement effective December 1, 2012.

Formal notice has been received from the towns of Springdale, Rockville, and Virgin of their intent to dissolve their inter-local agreement with Hurricane. They are discussing the possibility of entering into an inter-local agreement with the Washington County Justice Court. This matter will be on the agenda for the July Council meeting.

The Salt Lake County Council passed a resolution last week beginning the process of closing their justice court. This action would require legislative approval as cases would be transferred to Third District Court. They are apparently exploring with several different cities the possibility of entering into an inter-local agreement.

The Rand Institute is undertaking a study on court financing and budgeting and the effects of the recession on courts across the country to include five states: 1) Utah, 2) Florida, 3) Massachusetts, 4) New Hampshire, and 5) Ohio.

The Court Trends annual publication prepared by the National Center for State Courts (NCSC) was shared with the Council. Future issues emerging in the court administrative field are highlighted in the publication including an article on the transcript management process used by the Utah State courts.

A meeting was held with eight members of the South Carolina Administrative Office of the Courts on June 14 studying how we moved to an all digital recording environment, our automated transcript management system, and court interpretation initiatives.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No meeting was held in June.

Policy and Planning Meeting:

Judge Orme provided the following report.

The Policy and Planning meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda. He noted Rules Published for Comment on the consent calendar referring to amendments to Rule 2-204 – Local Supplemental Rules that would allow for the Council to approve rules on an expedited basis.

Bar Commission Report:

Ms. Nelson reported on the following:

The selection of the annual award recipients took place at their last meeting to include: 1) Judge of the Year, Judge Royal Hansen; 2) Lawyer of the Year, Mr. Gary Crane; and 3) a new award for Mentors of the Year, Mr. Josh Player (inside of firm) and Ms. Sharon Donovan (outside of firm).

The Bar Commission continues their work on getting the Pro Bono Commission in place.

5. MANDATORY E-FILING REPORT: (Ray Wahl)

Chief Justice Durrant welcomed Mr. Wahl to the meeting.

Mr. Wahl provided a report on mandatory e-filing as prepared by the Mandatory E-Filing Workgroup and authored by Mr. Shea.

He highlighted the following in his report: 1) the members of the workgroup, 2) the committee's charge to plan for the impact of e-filing and to assist the Council in setting an e-filing effective date, 3) redistribution of clerical resources, and 4) a summary of the recommendations.

Mr. Wahl noted that the report reflects what would take place in district court with the move to e-filing. A similar report will be provided for juvenile court in September.

He referred to the changes in work and work flow to include: 1) examples of tasks made simpler or significantly reduced due to electronic records, 2) examples of new tasks due to electronic records, and 3) examples of tasks with little or no change due to electronic records.

Mr. Wahl reviewed the recommendations on how to spend savings as the result of mandatory e-filing, in order of priority, to include: 1) redistribute personnel to meet new IT demands due to the electronic record, 2) redistribute personnel to emphasize judicial support teams and case management, 3) increase compensation to recognize increased judgment and discretion of personnel and increased complexity of tasks, 4) redistribute personnel to emphasize assistance for self-represented parties, and 5) explore opportunities of workflow that is not tied to a physical location.

The Mandatory E-Filing Workgroup will remain intact to address more specific issues relative to the implementation plan.

Mr. Becker mentioned the proposed rule developed by Policy and Planning, which will be reviewed later on the agenda. He noted that an effective date of January 1, 2013 had been included in the proposed rule. Mr. Becker recommended changing the effective date for mandatory e-filing of civil and domestic cases to April 1, 2013. He provided an explanation for this date. Mr. Becker indicated that the books have now been closed for FY 2012 and that more funds will be carried forward than earlier projected. He further recommended that mandatory e-filing of probate cases be effective July 1, 2013.

Court executives and presiding judges have been encouraged to meet with local bar members to discuss issues relative to the impending mandatory e-filing, and a booth will be staffed at the upcoming Annual Bar Conference.

A modification to the rule has been prepared by Mr. Shea with regards to the proposed effective dates and probate cases.

Mr. Becker noted that e-filing of criminal cases is still being pilot tested.

Motion: Ms. Nelson moved to accept the report on behalf of the Mandatory E-Filing Workgroup and endorse the priorities set by Workgroup in addressing the recommendations on how to spend the savings. Judge Mortensen seconded the motion, and it passed unanimously.

6. RULES FOR FINAL ACTION: (Tim Shea)

Mr. Shea reviewed the proposed rules for final action with members of the Council.

CJA 06-0401 – Domestic relations commissioners. The rule has been amended to recognize the authority of court commissioners to hear child protective order cases.

CJA 07-0102 – Duties and authority of juvenile court commissioners. The rule has been amended to recognize the authority of court commissioners to hear child protective order cases.

These amendments were requested by the Board of District Court Judges and the Board of Juvenile Court Judges. The amendment will conform the rule to the practice.

Motion: Judge Mortensen moved to approve the amendments as proposed effective today and send the rules out for comment. Judge Steele seconded the motion, and it passed unanimously.

Mr. Shea reported that the remainder of the rules for final action have been published for comment.

CJA 4-502. This rule has been deferred and will be redrafted at the next Policy and Planning meeting.

CJA 03-0301 – Court administrators.

CJA 03-0410 – Automated information resource management.

These rules have been amended to conform the text with the practice.

Motion: Ms. Nelson moved to approve the amendments to CJA 03-0301 and CJA 03-0410 effective November 1, 2012. Judge Stoney seconded the motion, and it passed unanimously.

CJA 04-0202.08 – Fees for records, information and services. This rule amendment prohibits the practice of email documents available on Xchange. Mr. Shea noted that the Self-Help Center is exempt from this rule.

Motion: Judge Orme moved to approve the amendments to Rule CJA 04-0202.08 as recommended. Judge Hornak seconded the motion, and it passed unanimously.

CJA 04-0501 – Expedited Jury Trial. The rule pertains to implementation of a pilot program for expedited jury trial. The amendment includes original and new legislation.

Motion: Judge Mortensen moved to approve the amendments to CJA 04-0501 as recommended with a July 1, 2012 effective date. The motion was seconded, and it passed unanimously.

CJA 04-0503 – Mandatory electronic filing. The rule would require that documents in district court cases be filed electronically.

Mr. Shea provided an amended document with the proposed effective date of April 1, 2013 for filing civil cases and July 1, 2013 for filing probate cases. Comments received were considered, but no further changes were made to the proposed rule. Discussion took place.

Motion: Judge Maughan moved to accept the changes to proposed Rule CJA 04-0503 and approve the rule as recommended with an effective date of July 1, 2012 for the rule to allow its immediate publication. This is distinct from the actual effective date for mandatory e-filing. Judge Mortensen seconded the motion, and it passed unanimously.

7. COURT INTERPRETER COMMITTEE UPDATE: (Judge Vernice Trease and Tim Shea)

Chief Justice Durrant welcomed Judge Trease to the meeting.

Judge Trease provided an update on behalf of the Court Interpreter Committee.

The Court Interpreter Committee recommended that Rule 3-306 governing interpreter qualifications be amended to permit awarding “approved” credentials only if there is no examination for the higher “certified” credentials in the interpreter’s language.

The difference between the two credentials is as follows: 1) certified – has completed an English diagnostic test, a test on the Interpreter Code of Professional Responsibility, a two-day orientation workshop, a background check and 10-hours of court observation; has completed a seven-day training course and passed a three-part oral examination offered through the National Center for State Courts; and 2) approved – has completed an English diagnostic test, a test on the Interpreter Code of Professional Responsibility, a one-day orientation workshop, a background check and 10 hours of court observation; has passed an Oral Proficiency Interview in the foreign language offered by Language Testing International.

Judge Trease reminded the Council that they approved the credentialing requirements for the court interpreters 18 months ago. She noted that the motion to amend the rule was not unanimously supported by the Committee. The Committee’s position was provided by Judge Trease. Mr. Shea provided his opinion relative to the proposed amendment. Mr. Becker recommended that the Council not adopt the amendment to Rule 3-306. Discussion took place.

The two pilot programs were highlighted: 1) staff interpreter program, and 2) remote interpretation.

Motion: Judge Harmond moved to accept the report and send the proposed amendment for Rule 3-306 to Policy and Planning for further consideration. Judge Atherton seconded the motion, and it passed with Judge Steele voting no.

8. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Kate Toomey and Debra Moore)

Chief Justice Durrant welcomed Judge Toomey and Ms. Moore to the meeting.

Judge Toomey provided an update to the Council on the activities of the Board of District Court judges. She highlighted the following in her update: 1) continued meetings with presiding judges to discuss local issues and initiatives, anticipated funding requests, and other areas of importance where the Board may assist the district; 2) the District Court Conference was held in May; 3) assist Judge Denise Lindberg and the advisory committee on the Model Utah Jury instructions in criminal cases; 4) continued supervision of the Capital Litigation Research Attorney, Melanie Haney; 5) continued work with the IT Department on computer issues and case management design; 6) participation with the JPEC Workgroup; 7) monitoring statewide implementation of the new Civil Discovery Rules; 8) fee waiver guidelines and procedures; 9) mental health conference to be held in Logan in July; and 10) revision of the statewide district court judges benchbook.

Judge Toomey was thanked for her update.

**9. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW (SCCFL)
UPDATE: (Judge Doug Thomas and Ray Wahl)**

Chief Justice Durrant welcomed Judge Thomas to the meeting.

Judge Thomas provided an update to the Council on the Standing Committee on Children and Family Law's activities. He included the following in his update: 1) members of the Committee, 2) original committee charge including five reforms with their results and achievements noted, 3) reauthorization of the Committee by the Council in 2011; 4) listing of the four subcommittees – a) adoption, b) custody evaluations, c) divorce procedures, and d) juvenile court jurisdiction.

Juvenile Court Jurisdiction. The subcommittee was formed to address the matter where an adult was charged with a crime that occurred when they were a juvenile. Judge Lyman, subcommittee chair, has drafted proposed language which has been sent to Policy and Planning for further review. The subcommittee will review the matter further at their August meeting.

Divorce Procedures. The subcommittee has been addressing Rule 101 regarding the practice before court commissioners and Rule 109 which would implement standing orders upon filing of a divorce proceeding.

Custody Evaluation. Reviewing Rule 4-903 and working towards clarifying the language in rule and to compare with. Currently, the subcommittee is researching statutory wording regarding evaluations in other states.

Adoption. At the request of the Judicial Council, the subcommittee is studying issues relating to concurrent jurisdiction for termination of parental rights. The goal is to make the process in juvenile and district court similar. The differences between district court and juvenile court include: 1) no parental defense in district court, 2) different relinquishment procedures, 3) different appeal times, and 4) adoption related issues. It was noted that the majority of the recommendations have been agreed upon with the exception of the concurrent adoption issues. It was noted that both the Board of District Court Judges and Board of Juvenile Court Judges have been briefed on the issues surrounding concurrent jurisdiction. The subcommittee is asking the Council for direction in how to proceed with regards to concurrent jurisdiction for termination of parental rights. Questions were asked and discussion took place.

It was decided to discuss the matter of concurrent jurisdiction for termination of parental rights at the July Council meeting.

Ms. Moore introduced Ms. Tessa Lopez, Hinckley Institute Intern to the Council.

10. ECR PILOT PROGRAM UPDATE: (Judge Deno Himonas)

Chief Justice Durrant welcomed Judge Himonas to the meeting.

Judge Himonas provided an update on the progress of the ECR Pilot Program. He highlighted the following in his update: 1) the pilot program has been in operation for 1.5 years, 2) a study is being conducted by a group from the University of Utah to be completed by the end of December 2012, and 3) formation of a subcommittee to discuss matters related to the pilot program. It was noted that the pilot program is funded with a three-year grant.

Questions were asked with Judge Himonas providing explanations.

11. UPDATE AND RECOMMENDATIONS OF THE UNIFORM FINE AND BAIL COMMITTEE AND COMMITTEE REAUTHORIZATION: (Judge David Connors, Debra Moore and Lisa-Michele Church)

Chief Justice Durrant welcomed Judge Connors to the meeting.

Judge Connors provided an update to the Council on the work of the Uniform Fine and Bail Committee, and he reviewed the recommendations of the Uniform Fine and Bail Schedule on behalf of the Committee.

Judge Connors highlighted the following in his update: 1) review of 2012 legislative changes and recommendations of the Uniform Fine and Bail schedule 2) update of the traffic offense matrix, 3) update of DUI offenses matrix, 4) inclusion of the juvenile bail schedule for approval, and 4) request on behalf of the Committee to be reauthorized for an additional six years.

Chief Justice Durrant thanked Judge Connors for his report.

Motion: Judge McCullagh moved to accept the correction to the Uniform Fine and Bail Schedule as noted and approve the changes and recommendations as outlined by the Uniform Fine and Bail Committee which include the Juvenile Fine and Bail schedule. Judge Harmond seconded the motion, and it passed unanimously.

Motion: Judge Orme moved to reauthorize the Uniform Fine and Bail Committee for an additional six years. Judge McCullagh seconded the motion, and it passed unanimously.

12. MEDIA AND PORTABLE ELECTRONIC DEVICES RULES: (Tim Shea)

Mr. Shea reviewed the proposed rules allowing electronic media coverage and possession and use of portable electronic devices.

CJA 04-0401.01 – electronic media coverage of court proceedings. This is a new rule replacing 4-401 which permits electronic media coverage of any public court hearing. Policy and Planning included an amendment adding audio recording to the equipment that can be used for electronic media coverage.

CJA 04-0401.02 – Possession and use of portable electronic devices. This is a new rule which permits the possession and use of portable electronic devices in courthouses, and it allows the judge to restrict the use of portable electronic devices in courtrooms.

Discussion took place.

Motion: Judge Mortensen moved to approve Rules CJA 04-0401.01 and CJA 04-0401.02 and publish them for comment. Judge Maughan seconded the motion, and it passed unanimously.

The Study Committee on Technology Brought into the Courtroom was thanked for the work they did preparing their report to the Council. Mr. Shea was thanked for his work with the preparation of the proposed rules.

13. GUARDIANSHIP – COURT VOLUNTEER PROGRAM UPDATE: (Tim Shea)

Mr. Shea provided an update on adult guardianships and the Volunteer Court Visitor Program. The program is staffed with two program Coordinators: 1) Ms. Karolina Abuzyarova and 2) Ms. Michaelle Wells-Jones. The coordinators supervise the volunteer visitors. Mr. Shea

noted that Ms. Mary Jane Ciccarello was instrumental in the development of the program and Judge Harmond is a member of the steering committee and past chair of the ad hoc committee.

Mr. Shea highlighted the following in his update: 1) what does it mean to be an adult; 2) what does it mean to be an incapacitated adult; 3) what can the court do; 4) what are the consequences of a plenary guardianship; 5) what powers, rights, and duties does a parent have respecting a minor child; 6) what further powers, rights, and duties does a guardian have for an incapacitated adult; 7) deciding whether a person is incapacitated is a grave responsibility; 8) the purpose of guardianship; 9) the court's role; 10) review of problems in Utah relative to guardianship; and 11) how can a visitor help.

The program was developed to address the problems noted relative to guardianship of adults. Mr. Shea highlighted the following relative to the Volunteer Court Visitor Program: 1) at the end of the first year of a three-year SJI grant, 2) staff of two paid coordinators, 3) steering committee in place, 4) work products, 5) recruit, screen, and training of volunteers, 6) determination of the volunteer's role, 7) development of forms to aid in requesting and assigning a visitor, 8) development of visitor report forms, 9) public advertisement for visitor volunteers, and 10) orientation and training provided for the current program volunteers.

Mr. Shea included the following on future plans relative to the Volunteer Court Visitor Program: 1) review of the program, 2) prepare necessary legislation, 3) develop necessary rules, 4) development of a roster of pre-qualified attorneys to represent the respondents, 5) development of guardian's decision-making standards, 6) a more defined role of the volunteer visitor, 7) provide education for judges and their staffs, and 8) development of benchbook information relative to the program.

14. DEFINITION OF A "FULL-TIME" JUDGE: (Tim Shea)

A request for consideration of the "full-time" judge definition sent in by Justice Court Judge David Miller was distributed to members of the Council.

Mr. Shea reminded the Council that this matter was before the Council at their April meeting. The Council agreed to support the definition of a "full-time" judge in concept and refer it back to Policy and Planning to allow the Board of Justice Court judges time to respond and address specific changes as necessary and report back to the Council at their June meeting.

The rule defines a "full-time" judge as follows: a "full-time" judge includes any judge of a court of record and includes a judge of a court not of record who 1) serves in a court whose judicial weighted caseload measure, as approved by the Judicial Council, shows the need for at least 1.0 judges; or 2) serves in more than one court whose total judicial weighted caseload measure, as approved by the Judicial Council, shows the need for at least 1.0 judges. This rule applies to a judge appointed on or after (the effective date of this rule) on the day of his or her appointment, and to judges appointed before (the effective date of this rule) on January 2, 2017.

Discussion took place.

Motion: Judge Sandberg moved to accept the proposed rule and send it, on behalf of the Judicial Council, to the Supreme Court for approval. Judge Orme seconded the motion, and it passed with Judge Stoney voting no.

15. LEGISLATIVE UPDATE AND HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a legislative update.

He mentioned that a Special Session was held on Wednesday, June 20. He noted that the Judiciary Interim Committee met. The following items were highlighted in his report: 1) discussion of HB 161 – Rights of Parents and Children which will carry over to the next meeting, 2) alimony and definition of fault, 3) offer of judgment in civil cases, and 4) e-filing of data and e-citations to be effective July 1, 2012 with creation of a bill file.

Motion: Judge Hornak moved to enter into an executive session to discuss a personnel matter. The motion was seconded, and it passed unanimously.

16. EXECUTIVE SESSION:

An executive session was held at this time.

17. ADJOURN

The meeting was adjourned.