

JUDICIAL COUNCIL MEETING

Minutes

Tuesday, September 9th, 2008

Ivers Room, 2nd Floor

Yarrow Hotel

Park City, UT

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Gary Stott, Vice Chair
Justice Ron Nehring
Hon. Mark Andrus
Hon. Judith Atherton
Hon. William Barrett
Hon. Hans Chamberlain
Hon. Michael Kwan
Hon. Michael Lyon
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Scott Sabey, esq

STAFF PRESENT:

Myron K. March
Rick Schwermer
Ray Wahl
Holly Frischknecht
Jody Gonzales
Katie Gregory
Tim Shea
Nancy Volmer

GUESTS:

Judge Samuel McVey
Judge Lynn Payne

ABSENT:

Daniel J. Becker
Debra Moore

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

Chief Justice Durham welcomed everyone to the meeting. The minutes of the August meeting were reviewed and the following motion was made.

Motion: It was moved and seconded to approve the August meeting minutes.

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

Chief Justice Durham mentioned that there was no new news to report since the August meeting.

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

Mr. March reported on the following:

Mr. Becker is currently attending the Court Solutions Conference in Baltimore and will return tomorrow. The Comprehensive Clerical Study was presented at the conference. There was a lot of interest from the attendees. There were requests for information regarding the recommendations and the implementation of the study.

Nomination Commission Update. All the names to fill the vacancies in the Court of Appeals, Sixth District and Fourth District are with the Governor. He has set interviews with the Court of Appeals nominees. The Second District nominating commission application period ended last night at 5:00 p.m.. Twenty three district applications and twenty seven juvenile applications were received. Justice Jill Parrish, Ms. Debra Moore and Mr. Ray Wahl will work together on the nominating process for the two open positions in the Second District. It will take approximately three weeks to complete the investigative background checks. At that time, the nominating process will begin. An email went out by Mr. Bob Yeates to the Utah Bar seeking interested parties to serve on the Second District Nominating Commission as there is an open position.

Budgets. Mr. March updated the Council on the issues regarding the budgets and potential 1%, 3% and 5% budget cuts. The legislature was contacted last week by the Governor's office and will be looking at the same budget contingencies. Staff members of the AOC met with the fiscal analyst last week to discuss budget issues. Nothing definite has been decided. No decisions may be made until after the elections. The Governor is looking at ongoing money.

The trial court executives (TCEs) and clerks of court met last Friday in a joint meeting to discuss the comprehensive clerical study implementation plan. The presiding judges will receive the information tomorrow at the Presiding Judges' Luncheon, and discussion will take place regarding the implementation plan. Each district will put together a structure that will work for them, and submit the plan to the statewide implementation team to review and approve for consistency. Once the structure has been approved, the districts will go back and place people in the positions. The completed structure with names is to be submitted to HR no later than November 7.

4. COMMITTEE REPORTS:

Management Committee Report: Chief Justice Durham reported that there was nothing to report.

Mr. Schwermer updated the Council to the first meeting of the Performance Evaluation Commission. At their first meeting, they reviewed a checklist of items that needed to be addressed. The areas that were addressed included: 1) establish the commission; 2) select a chairperson, Lowry Snow; 3) review the job description for the director of the commission, (removing from the job description the requirement that a member of the commission must be a member of the Utah State Bar); 4) set the salary range; and 4) establish an executive committee discussion. Mr. Bob Yeates was the acting staff and chair at the meeting.

Liaison Committee Report: No new update.

Policy and Planning Meeting: Judge Orme reported that there were six rule changes; four were approved and are on the agenda for discussion, one was deferred until October, and another one was revised and will be sent out for further comment.

Bar Committee Report: No new update.

5. COURT IMPROVEMENT UPDATE: (Katie Gregory)

Ms. Gregory gave an update of the Court Improvement Program including history of the program. The federal grant program is available to all states. The first was authorized by Congress in 1993 and most recently reauthorized in 2007. Improvements must be related to child welfare.

She reported to the Council how Utah administers its CIP grants. The Utah Supreme Court delegates authority to a CIP committee which is currently chaired by Judge Kay Lindsay. AOC staff include Ms. Katie Gregory, Ms. Misty Butler, and Ms. Nakita Rimal.

Congress expanded CIP funding in 2006 to include: 1) two new grants were added to the basic grant program, a) data collection and analysis, and b) training and cross training; 2) states may apply yearly for five years (2006-2010); and 3) each grant must be used within a two-year period.

CIP members include: 1) five juvenile judges, 2) two appellate court judges, 3) one Utah tribal judge, 4) two Guardian ad Litem, 5) two Attorney Generals, 6) two parents' defense counsel, 7) one trial court executive, 8) director of DCFS, 9) director Foster Care Citizens Review Board, 10) representatives and staff from the AOC, and 11) community representatives.

The CIP is governed by: 1) a statewide table of six - Steering Committee, 2) Executive Committee on funding issues and 3) local tables of six or agency meetings.

Ms. Gregory mentioned some of the CIP projects and accomplishments. Some of these projects and accomplishments include: printers for courtrooms, expanding the Child Welfare Mediation Program, Kids and Judges Day activities, and move-in kits for youth aging out.

The current activities for the basic grant include: 1) dual adjudication subcommittee, 2) well-being subcommittee, and 3) task force to assess the interstate placement of children. The current activities for the data collection and analysis grant include: 1) developing CARE/SAFE interface, a) Phase I - read only interface (roll out 9/2008), and b) Phase 2 - enhancements. The current activities for the training and cross training grant include: 1) CIP Summit, 2) National Association of Counsel for Children Training and Certification, 3) Education Summit, and 4) other ongoing training opportunities.

Lastly, she updated the Council to the work of the Initiative on Utah children in foster care (IOU).

Chief Justice Durham asked Ms. Gregory what the single most productive thing that came out of the Court Improvement Program (CIP) during the past year was. Ms. Gregory stated that the work to improve outcomes for dually adjudicated youth and the efforts of IOU to improve coordination with the educational system for youth in foster care. Then she gave a few examples of where this took place.

6. JUDICIAL OUTREACH COMMITTEE: (Judge Samuel McVey and Nancy Volmer)

Judge Samuel McVey commended Judge Judith Billings for her work on the committee. His committee review included the following:

An overview of the 2006 Court Surveys was presented. A few of the areas listed from the survey include: 1) access and fairness, 2) public perception, 3) positive perception of the judiciary, and 4) courts are accessible, employees are respectful and responsive. Survey subcommittee recommendations include: 1) website services, 2) juror services, 3) barriers to justice, 4) procedural fairness, 5) court performance, and 6) diversity. Committee priorities include: 1) explore holding a teacher training workshop, 2) address juror services, 3) incorporate diversity issues into outreach efforts, and 4) coordinate website services with outreach efforts.

New subcommittees that have been formed include: 1) jury subcommittee, 2) diversity subcommittee, and 3) web site ad hoc committee. Subcommittee assignments, accomplishments and challenges were mentioned.

The Strategic Communication Plan includes the following areas: 1) utilize media coverage to proactively create a better understanding of the Utah Courts and the Judicial Branch, 2) foster an understanding of the courts' role as an open, fair, and independent branch of government through outreach efforts, 3) utilize tools effectively and maintain avenues of communication to relay the courts' key messages to target audiences, and 4) maintain avenues of internal communication to recognize employee contributions and accomplishments, promote PIO services, and support new judges.

Lastly, the subcommittee goals and the future media trends were reviewed.

Ms. Nancy Volmer then showed a short video of compiled news clippings of court news to the Council.

7. DISTRICT BOARD UPDATE: (Judge Lynn Payne and Holly Frischknecht)

Judge Lynn Payne gave an update from the district board. He mentioned that Judge Thomas Kay will be the next board chair. Judge Payne thanked Ms. Debra Moore and Ms. Holly Frischknecht for the time they have put in to supporting the district board. The following are things that were adopted by the district board during the past year: 1) instituted a policy where the agenda is prepared in advance and approved by the chair and items not on the agenda will not be addressed; 2) adopted norms, 3) revised the format for the agenda, 4) adopted a job description for board members, and 5) adopted goals. New members receive orientation to review the expectations of a district board member. Judge Payne gave his perception of the district board's relationship with the Council. Discussion took place regarding how information is disseminated from Council members to the judges in the respective districts. The two areas where the district board felt they were not adequately informed were in regards to the Judicial Performance Committee and the Comprehensive Clerical Study.

The district board was involved with the remote hearings' program. At one of their meetings, they invited the president of the Utah Defense Lawyers to meet with them. They will be meeting with the president of the Prosecutor's Association in October to discuss the Prosecutor's Information Management System (PIMS). They will also be recognizing the retiring judges in bench meetings.

Chief Justice Durham thanked Judge Payne for his impressive report and for all of his contributions to the district board. The Council appreciates his observations and comments.

8. JUSTICE COURTS USE OF E-WARRANTS: (Rick Schwermer)

Mr. Schwermer gave the history of the testing of an e-warrants system that was initially set up for use in the Third District. Training was provided, and the necessary electronic equipment was made available. It was decided that one judge should test the system and get the program issues dealt with before moving forward statewide.

Judge McCullagh has been testing the e-warrant system for three to four months now. He has currently processed 15-20 e-warrants so far. He gave feedback of what can be done with the e-warrants. The test page, when it is working, will be great! An e-warrant can be turned around in ten minutes. An e-warrant can be denied with comments. Currently, it can be used for blood draws and general search warrants. There are a few bugs with the system: 1) once they are approved, they can't be found on the system, 2) need a better way to lock in a case number, 3) no

way to track the same warrant submissions, and 4) cannot find the returns. Training of law enforcement is an issue that needs to be addressed.

Judge Westfall mentioned that he had previously been trained on the system, but did not remember the process. Mr. Schwermer mentioned that something will be created to walk judges through the process of using e-warrants.

9. JUSTICE COURT WEIGHTED CASELOAD: (Rick Schwermer and Holly Frischknecht)

Mr. Schwermer reviewed the adjustment to the weighted caseload that has been made regarding the education credit for part-time judges. It is proposed that the formula be amended to pro-rate the 40-hours among the locations if the part-time judge works in three or more locations. The calculation would remain the same.

Motion: Justice Nehring motioned to accept the justice court weighted caseload as amended. It was seconded by Judge Chamberlain, and it passed unanimously.

10. JUDICIAL WORKLOAD FORMULA - STANDARD JUDGE YEAR: (Ray Wahl)

Mr. Wahl reviewed the Judicial Workload Formula in regards to the standard judge year. This is a collaborative effort of the district and juvenile boards. The difference in the formula is regarding the way the hours to actually hear a case are listed. Previously they were listed as “bench hours”. Now they are listed as “case-related hours”. Once the formula is approved, it will serve as a basis for future weighted caseload numbers.

Motion: Judge Lyons motioned to approve the standard judge year of 1540 judge hours (for internal use only). Judge Barrett seconded the motion, and it passed unanimously.

11. AMENDMENT TO THE CODE OF JUDICIAL ADMINISTRATION: (Tim Shea)

Mr. Shea reviewed four rules and the proposed amendments to those rules.

CJA 01-205. Standing and ad hoc committees. Adds an attorney with experience representing parents in abuse, neglect and dependency cases to the Committee on Children and Family law.

CJA 01-305. Board of Senior Judges. Restrict membership to active senior judges.

CJA 02-103. Open and closed meetings. Prohibits those attending a closed meeting from discussing the topic except with others attending the meeting.

CJA 03-403. Judicial branch education. Establishes the minimum requirements for an active senior judge after a break in service. This pertains to senior judges who have been off the active senior judge roster for a period of time exceeding three years. At this point, they must attain the required education hours before applying for active senior judge status.

Motion: A motion was made to require inactive or retired judges to pay their own expenses for ongoing judicial education. The motion was seconded, and it passed unanimously.

Motion: Judge Chamberlain approved all four rules as amended. Judge Atherton seconded the motion, and it passed unanimously.

The records retention schedule is included with amendments by clerks of court where they are proposing identifiable retention periods for various types of records as listed.

Motion: Judge Orme motioned to approve the record retention schedule. Judge McCullagh seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea presented the senior judge requests, along with Judge Homer Wilkinson's application to reapply as a senior judge. A brief discussion took place.

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

13. EXECUTIVE SESSION

No executive session was needed.

14. ADJOURN

The meeting was adjourned.