

JUDICIAL COUNCIL MEETING

Minutes

Tuesday, September 15th, 2009

Garden Room 1

Homestead Resort

Midway, 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. Michael Lyon
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Michael Westfall
Lori Nelson, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Ray Wahl
Rick Schwermer
Tim Shea
Kim Allard
Nancy Volmer
Matty Branch
Carol Price

GUESTS:

Joanne Slotnik, JPEC
Christine Richman
Karen Wikstrom
Judge Samuel McVey
Judge Stephen Roth
Judge Vernice Trease

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

Chief Justice Durham welcomed everyone to the meeting. The August minutes were reviewed.

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

2. RECOGNITION OF OUTGOING COUNCIL MEMBERS: (Chief Justice Christine M. Durham)

Chief Justice Durham recognized the outgoing members for their service and contribution to the Council. The outgoing members include: 1) Judge Mark Andrus, 2) Judge Michael Kwan, and 3) Judge Michael Lyon.

The outgoing members offered their comments to the Council.

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

Chief Justice Durham commented that because this meeting was so close to the last meeting, she had nothing new to report.

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

Mr. Becker reported on the following items:

There is an Executive Appropriations Committee meeting scheduled this afternoon, and he would be reporting on budget actions taken by the Courts.

A meeting of the Legislative Retirement Committee was held last week. Mr. Becker reviewed information presented by the Legislative Fiscal Analyst. The Committee has asked staff to gather additional information on the impact of several proposals. The next meeting will be held in November.

The pilot test in the Fourth District on the e-payment system has been completed. It is anticipated that the system will be available statewide on September 21.

The pilot test in the Second District on the e-filing system is nearing completion. The courts will partner with the Utah State Bar and Tibera as electronic filing service providers. Mr. Becker mentioned there would be a subscription rate per attorney to use the e-filing system that will be administered by the Utah State Bar. Other service providers may enter this market as well.

5. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that she had nothing more to add to what is already reflected in the minutes.

Liaison Committee Report:

Justice Nehring reported that the last meeting was held in conjunction with the August Budget and Planning Session, and a report was given at that meeting.

Policy and Planning Meeting:

Judge Orme reported that several Committee actions requiring approval will be discussed later in the meeting.

Bar Committee Report:

Ms. Nelson reported on the following items:

A management audit performed by Grant Thornton three years ago was broken into two-year reviews. There is a review scheduled for the end of the month. The bar is working on implementing the necessary changes to the bar operations as outlined in the reviews. With this, four subcommittees have been formed to include: 1) court subcommittee, 2) public and government relations subcommittee, 3) management and technology subcommittee, and 4) mentoring and CLE subcommittee.

Ms. Nelson reported on the discussion held at the August Management Committee meeting regarding a bar-sponsored forum between the three branches of government. The Bar Commission has agreed to sponsor a reception to be held between the state of the judiciary address and the state of the state address for a meet and greet between the three branches of government.

She mentioned that in some districts, a fee is being charged to defense counsel for preparation of discovery documents. This is a concern to members of the Bar. An explanation was given.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION PRE-TEST ASSESSMENT AND SURVEY ADMINISTRATION: (Joanne Slotnik, Christine Richman and Karen Wikstrom)

Chief Justice Durham welcomed Ms. Slotnik to the meeting.

Ms. Slotnik gave a brief update of the Commission's activities in the past months. She mentioned that Judge Bill Bohling resigned from the Commission and Judge David Roth has filled his vacancy on the Commission.

The Commission has hired Wikstrom Economic and Planning Consultants to conduct the surveys. They have also hired a program specialist to help with courtroom observations.

Currently a pretest of the surveys and the procedures for witnesses, litigants and jurors is taking place. There are three courts participating in the pretest. They include: 1) West Valley City Justice Court, 2) Third District Juvenile Court, and 3) Third District Court. The following are the judges participating in the pretest: 1) West Valley City Justice Court - Judge Stoney and Judge McCullagh, 2) Third District Juvenile Court - Judge Hornak and Judge McCully, and 3) Third District Court - Judge Toomey and Judge Christiansen.

There are two basic protocols being tested: 1) gathering contact information, and 2) distributing and collecting surveys. Time was spent observing the respective courtrooms for protocol for the surveys. Currently, the focus is on the litigant and witness survey. The attorney survey and staff survey will be completed online. The juror survey will be updated with the protocol remaining the same.

Ms. Slotnik mentioned that she and Commission member Anthony Schofield met with Mr. Becker and Chief Justice Durham to discuss issues related to the administration of the survey.

The next step will be to finalize the pretest data and determine the best protocol for the litigant, witness and jury surveys. Once these surveys have been finalized, work will begin on the court staff surveys.

Ms. Wikstrom reviewed what has taken place in the pretesting process regarding contact information and surveys.

Judge Maughan reported that a jury trial will be held in his court the following week if there is a desire for a courtroom observation at that time.

7. LEGISLATIVE AUDIT REPORT ON CONVERSION OF JUSTICE COURTS TO CORIS: (Rick Schwermer)

Mr. Schwermer handed out a summary of the CORIS Audit. He reported that it was a full audit conducted by the legislative auditors which took six months to complete. The results were very positive. The report can be found online. The following were areas addressed in the audit: 1) the decision to convert all justice courts to CORIS, 2) the conversion schedule relative to the deadline of July 1, 2011, and 3) the project funding.

He reported that the auditors agreed with the Judicial Council's decision to use the CORIS program as the case management system in all district and justice courts. The four courts that had chosen not to convert to CORIS are now on the schedule near the end. The majority of the funding for the conversion is coming from the Technology, Security and Training Account.

Mr. Schwermer reported that a survey was sent to all justice courts to understand pre- and post-conversion attitudes and perceptions of the project. It was shown that clerks in the justice courts that had not yet gone through the CORIS conversion, were negative toward the conversion. However, the majority of the clerks using the software are pleased.

He thanked Mr. Bowmaster and the Courts IT staff for their continued work on the CORIS conversion.

8. VACANCY PRIORITIZATION: (Chief Justice Christine M. Durham)

Discussion took place as to the order to fill the vacancies in the Supreme Court, Court of Appeals and the Fourth District.

Council members agreed to advertise for the vacancies in the following order: 1) Court of Appeals - December 2009, 2) Fourth District - January 2010, and 3) Supreme Court - February 2010.

A suggestion was made to include representation from the Second District and the Fifth Juvenile District at the October Council meeting to discuss judicial vacancy transfers.

Senior judge recommendations will be discussed further at a later date.

Motion: Judge Orme moved to approve the filling of the vacancies in the following months: 1) Court of Appeals - May, 2) Fourth District - June, and 3) Supreme Court - July. Judge Maughan seconded the motion, and it passed unanimously.

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

Chief Justice Durham welcomed Judge McVey to the meeting.

Judge McVey provided an update to the Council on the Judicial Outreach Committee. He reviewed the members of the committee. His introduction included the following key areas: 1) national public opinion surveys show that public confidence in the courts is on the decline, 2) the level of public trust and confidence directly corresponds to the level of public knowledge about the courts and 3) now more than ever, the courts should lead in enhancing the public's knowledge about the function of the courts in our democracy, including the value of judicial independence.

He reviewed the challenges, accomplishments and media trends faced by the Committee. He mentioned that the use of the following social media forums are changing how media is viewed. They include: 1) Twitter, 2) Face Book, 3) You Tube, and 4) blogging.

The strategic communication plan of the Committee includes: 1) utilize media coverage to pro-actively create a better understanding of the Utah State 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 tool 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 Public Information Officer services, and support new judges.

Judge McVey reviewed the work of each of the subcommittees.

In summary, he mentioned that the number of journalists who cover the courts is diminishing. We need to determine the best way to fill the information gap.

Chief Justice Durham inquired to what materials we have available to educate the schools on the courts? She also mentioned available resources. Ms. Volmer mentioned that cost is the

issue with obtaining some of the available resources.

Judge McVey mentioned that training would take place on media at the presiding judges meeting to be held at the Annual Judicial Conference.

Chief Justice Durham thanked Judge McVey for his leadership on the Judicial Outreach Committee.

10. APPELLATE REPRESENTATION COMMITTEE UPDATE: (Judge Stephen Roth)

Chief Justice Durham welcomed Judge Roth to the meeting.

Judge Roth provided background information on a report prepared by a Supreme Court Task Force on Appellate Representation of Indigent Defendants dated September 1994. In the report, the task force recommended formation of a statewide appellate public defender's office with a centralized office and staff of attorneys specialized in appellate work in order "to provide consistently competent representation of indigent criminal defendants at the appellate level."

He then reviewed the membership of the more recently focused Judicial Council task force created to revisit the issue. The task force is reviewing data and looking at what other states are currently doing in order to determine the best solutions.

He reported on the work being done by Ms. Mary Westby. A draft working memo prepared by Ms. Westby listed options for appellate representation for indigent defendants. The options included: 1) legislation requiring separate trial defense and appellate defense contracts, 2) create a statewide board or commission to set standards for appellate practice and monitor quality of indigent representation, 3) partial state appellate defenders system, and 4) consolidate appellate contracts. He also mentioned that with a statutory amendment, another possibility would be to expand the Salt Lake Legal Defenders Association's authority to contract for appellate defense statewide. Discussion took place.

Judge Roth mentioned the various subcommittees and their responsibilities. The subcommittees include: 1) County Indigent Defense Survey Subcommittee, 2) Subcommittee on Disparities in Appeal Rates, 3) Briefing Quality Subcommittee, and 4) Interim Implementation Subcommittee.

Clarification was asked regarding juvenile representation, trial court representation and child welfare issues. An explanation was provided.

Chief Justice Durham thanked Judge Roth for his leadership.

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

Judge Trease reviewed the amendments to Rule 3-306 - Court Interpreters. She highlighted the areas that were amended to include: 1) clarification of the qualification process, 2) change to the disciplinary process, and 3) process for appointing court interpreters.

A discussion took place with regards to hiring a full-time interpreter as a court employee. Mr. Shea provided an explanation on this issue.

Training will be provided next year. Grant funding opportunities for this training are being looked at.

Judge Trease reported on the pilot program where equipment was being used to transmit interpretation from another location. This pilot program has been put on hold due to equipment issues. It will be re-accessed at a later date.

Motion: Judge Orme moved to delete lines 213-215 related to full-time interpreters working as court employees. Judge Kwan seconded the motion, and it passed unanimously.

Mr. Shea reported that under the current rule, in civil cases, a certified court interpreter is to be assigned as necessary. Discussed relative issues to this rule.

Motion: Judge McCullagh moved to strike the language in lines 72-73 relative to the rule. Justice Nehring seconded the motion, and it passed unanimously.

Judge Trease provide information on the cost for use of court interpreters to the Council. Numbers relative to the various districts and the use of court interpreters were shown.

12. PANDEMIC FLU PLAN APPROVAL: (Carol Price)

Chief Justice Durham welcomed Ms. Price to the meeting.

Ms. Price mentioned that Judge Dever asked to be excused.

She provided an update to the Council on H1N1. Currently, most flu cases are the H1N1. The H1N1 vaccination is expected to be available in three weeks. It is now one shot instead of two. The vaccinations being offered at the Matheson Courthouse are seasonal flu vaccines. With the H1N1 illness, the guideline for the length of time to stay away from work is 24 hours from the absence of a fever.

Ms. Price reported that the major change to the Pandemic Flu Plan deals with the trigger point. The trigger point will be based upon the severity as determined by the Utah Department of Health. She mentioned that there will be a link to the CDC website in the plan.

In August, the plan was approved by the Subcommittee on Security and Emergency Preparedness and the Facilities Standing Committee. Once the plan is approved by the Council, employee training will take place in each district.

Motion: Judge Chamberlain moved to approve the Pandemic Plan subject to revision. Judge Andrus seconded the motion, and it passed unanimously.

13. RULE APPROVAL: (Tim Shea)

Mr. Shea reviewed the proposed Rule CJA 04-0409: Council approval of problem solving courts. There was concern with the certification requirements specifically related to mental health courts.

Motion: Judge McCullagh moved to approve Rule CJA 04-0409 and send it out for comment. Further discussion related to the rule will be discussed following the comment period. Judge Lyon seconded the motion, and it passed unanimously.

The Policy and Planning Committee recommends the rules for final action be approved. Mr. Shea mentioned that there were no comments received on any of the rules. The rules being recommended for approval by the Council include:

CJA 02-0104. Recording meetings.

CJA 04-0202.02. Records classification.

CJA 04-0701. Failure to appear.

CJA 04-0906. Guardian ad litem program.

Mr. Schwermer suggested amending CJA 04-0701 to conform to HB 292.

Motion: Judge Chamberlain moved to approve the rules as recommended. Judge Lyon seconded the motion, and it passed unanimously.

14. ADJOURN

The meeting was adjourned.