

JUDICIAL COUNCIL MEETING

Minutes

Monday, October 26th, 2009

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Judge Hans Chamberlain, Presiding

ATTENDEES:

Hon. Hans Chamberlain, Vice Chair
Justice Ron Nehring
Hon. 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:

Chief Justice Christine M. Durham

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Ray Wahl
Rick Schwermer
Tim Shea
Matty Branch
Rick Smith

GUESTS:

Lisa-Michelle Church
Wayne Klein
Keith Kelly
Steve Hunt, Salt Lake Tribune

1. WELCOME, NEW COUNCIL MEMBERS WELCOME AND APPROVAL OF MINUTES: (Judge Hans Chamberlain)

Judge Hans Chamberlain welcomed everyone to the meeting. He reported that Chief Justice Durham asked to be excused.

Judge Chamberlain introduced and welcomed the new Council members to the meeting: Judge Kimberly Hornak, Third District Juvenile Court; Judge Thomas Willmore, First District Court; and Judge Keith Stoney, West Valley Justice Court.

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

2. CHAIR'S REPORT: (Judge Hans Chamberlain)

Judge Chamberlain reported that he had nothing new to report.

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

Mr. Becker reported on the following items:

He reviewed the district court case filings for the first three months of FY 10, which were

down 1%. He noted that last year's first quarter saw a 20% increase over FY 2008. The juvenile court case filings were down 17%.

The e-filing implementation schedule was given for Districts 2 through 5. The schedule is as follows: 1) Second District, November 9; 2) Third District, January 28; 3) Fourth District, February 8; and 4) Fifth District, March 8. Prior to each roll-out, training will be provided to staff, judges and attorneys.

Mr. Becker reported that e-payments went live on September 12. To date, 1,433 e-payments have been made. The top users include Orem, Bountiful and Layton. He mentioned that a poster is available explaining e-payments which will be placed in the clerks offices statewide.

He reviewed the most recent juvenile report card. The report card information is available online. Judge Chamberlain reported that he shares this information with local legislative leaders.

A meeting is scheduled with the Governor for Wednesday, October 28 to review the Court's budget. He mentioned the Governor's request for tentative plans to reduce budgets by 7 percent.

The Building Board met last week and set their priorities. There were 29 buildings being considered. The Ogden Juvenile Court was ranked at 5.

Joanne Slotnik, Director of the Judicial Performance Evaluation Commission, has contacted Mr. Becker to request approval relative to the litigant and witness survey pilot programs. He provided an explanation of the request. Currently, the pilot is scheduled to end January 1, 2010. Discussion took place.

Motion: Ms. Nelson moved to delegate authority to the Management Committee to approve the Judicial Performance Evaluation Commission's request relative to their pilot. Judge Eyre seconded the motion.

Mr. Becker reported that the scheduled Council member orientation will be held at the November meeting. He provided a brief review of what has taken place in the past related to new Council member orientation. He distributed a paper entitled *Institutional Independence and Governance in the State Courts* which was prepared for a Harvard University Program on Courts in the 21st Century. Information from the paper will be discussed as part of the Council member orientation. Judge Chamberlain will review the Council norms as part of the orientation.

The Council photo is scheduled for the November meeting.

4. COMMITTEE REPORTS:

Management Committee Report:

Judge Chamberlain mentioned that there were several grant applications reviewed at the Management Committee meeting last week. He reported that all other items requiring action from the Council will be discussed further on the agenda.

Liaison Committee Report:

Justice Nehring reported that the Liaison Committee did not meet in October. He mentioned the issue of replacing outgoing members of the Committee.

Policy and Planning Meeting:

Judge Orme reported on the following:

He recognized Judge Kwan for his invaluable service on the Committee.

The Committee approved Rule 4-404 - Jury selection and service, and it has been placed on the consent calendar.

The proposed Rule 10-1-204 - Objection to court commissioner's recommendation was reviewed. The Council agreed with Policy and Planning to defer a decision pending consideration by the Supreme Court's Advisory Committee on the Rules of Civil Procedure of a similar rule with statewide application. Mr. Shea will take the recommendation to the Committee.

The Committee has received a recommendation to review the rules of civil procedure. Judge Orme reviewed the Committee's recommendation on this issue.

Rule 4-501 - Rule on summary judgments. This was moved to the rules of civil procedure. Mr. March reported that the district board reviewed this issue at their meeting last Friday and some changes and recommendations were made.

Discussion took place regarding a policy for service animals in the courthouses. This item has been referred to the Security and Facilities Committee for review. They also discussed a proposal relative to identification and location in divorce involving minors. Mr. Shea provided clarification on this matter.

Bar Committee Report:

Ms. Nelson reported on the following:

Margaret Plane and Lawrence Stevens were approved as the new ABA representatives for the Bar.

Approval of the client security fund payments was given.

Award recipients were selected as follows: 1) Karen Hale, Community Member Award; 2) Craig Merringer, Professionalism Award; and 3) Leonard Burningham, Hearts and Hand Award.

Ben McMurray and Doug Hogan were selected to serve on the Utah Sentencing Commission.

The Bar is going online for licensing. This will allow for bar members to get licensed and pay their bar dues online.

In the process of implementing all committee reports.

All committees established as a result of the audit are up and running.

Ms. Nelson noted there is still a need for mentors.

5. HUMAN SERVICES, JUSTICE INTERSECT ISSUES: (Lisa-Michelle Church)

Judge Chamberlain welcomed Ms. Church to the meeting.

She reported on the three areas that intersect between human services and the justice system. These three areas are: 1) mental health, 2) substance abuse, and 3) children's services. She mentioned that mental health took a reduction last year. Areas affected by the reductions and areas that may face reductions in the future were discussed.

Three other areas of interest include: 1) aging, 2) disability, and 3) child support. She mentioned that aging took a big reduction this past year, but it received one-time stimulus funding. Disability took a 30% reduction primarily affecting staff. Recovery Services lost 69 positions last year. The primary focus has been on the use of automated systems where it is feasible.

Possible reductions to mental health were discussed. It was mentioned that any future reductions would come out of community programs with the rural counties hit the hardest.

6. PRO BONO LAW CLERKS: (Wayne Klein)

Judge Chamberlain welcomed Mr. Klein, Chair of the Litigation Section of the Utah State Bar to the meeting.

Mr. Klein reviewed a pro bono program developed by the New York State Bar and the New York Court system which provides out-of-work attorneys and law school graduates the opportunity to provide pro bono services as law clerks. He is proposing a similar program be developed for use in the Utah court system. Discussion took place.

Concerns and possible scenarios were suggested. They include: 1) the amount of training required to get the volunteers up to speed, 2) the appropriate person to provide supervision, 3) create a law clerk pool for research and writing opportunities for the requesting judge, and 4) what would the potential for conflict be if the attorney does any work outside of the pro bono work?

The suggestion was made to form a committee including law clerks, presiding judges and library personnel to pursue the idea further. There was a consensus from the Council members to refer this to a committee and bring back their recommendations to the Council.

7. OREM JUSTICE COURT - CHANGE IN START DATE: (Rick Schwermer)

Mr. Schwermer reported that the City of Orem has sent a letter dated October 8, 2010, requesting a change in the start date of their justice court to September 1, 2010, rather than July 1, 2010, as originally requested. This change would allow them to hire the majority of their staff in FY 2011. Discussion relative to prolonging the transition from district court to justice court took place.

Motion: Judge McCullagh moved to approve the change in start date for the Orem Justice Court. Judge Eyre seconded the motion, and it passed unanimously.

8. EVALUATION OF SENIOR JUDGES AND COURT COMMISSIONERS AFTER JUDICIAL PERFORMANCE EVALUATION COMMISSION: (Tim Shea)

Mr. Shea reported the current evaluation process for senior judges and commissioners is similar to that of sitting judges. Senior judges are certified for three-year terms, and the re-certification is completed at the end of the calendar year. However, if the senior judge is over 75 years of age, they are re-certified every year. Commissioners are certified for four-year terms, and they are re-certified four years from the date of the original certification.

The question before the Council is whether to continue with the current system in place or develop a new evaluation process for senior judges and commissioners once the evaluation for sitting judges passes to the Judicial Performance Evaluation Commission. Mr. Shea mentioned that in the current system, the cost to hire a consultant to conduct the attorney surveys would be higher as there are fewer senior judges and commissioners being evaluated. Discussion took place.

Mr. Shea mentioned that there is a commissioner up for evaluation in April of 2010, and there will be 3-4 senior judges up for re-certification at the end of every calendar year.

Motion: Judge Maughan moved to send this item to Policy and Planning for a draft for future evaluations, but use the existing process for the upcoming re-certifications. Judge Orme seconded the motion, and it passed unanimously.

9. TOWN OF HUNTSVILLE - NOTICE OF INTENT TO DISSOLVE JUSTICE COURT: (Rick Schwermer)

Mr. Schwermer reported that in a letter dated September 3, 2009, the Town of Huntsville has given notice of intent to dissolve their justice court. He noted that the appointed judge for the Town of Huntsville Justice Court is the same judge for the Weber County Justice Court.

He mentioned that the only issues relative to the request include: 1) the request is not clear of what date to dissolve, and 2) the inter-local agreement states an effective date of September 1.

Motion: Judge McCullagh moved to approve the Town of Huntsville's notice of intent to dissolve their justice court effect November 1 or December 1 whichever date they feel is appropriate. Judge Petry seconded the motion, and it passed unanimously.

10. LEGISLATIVE UPDATE/INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer reviewed the September and October interim highlights.

Related to Judiciary, Law Enforcement, and Criminal Justice; a discussion took place with input from the Alternative Sentencing Committee on evidence-based sentencing practices. The information was well received by most.

Information on the report of the performance audit of the CORIS conversion was included in the September interim highlights.

The Legislative Retirement Interim Committee held an all-day meeting with discussion of structure of the systems, funding of the systems, employee systems, and the judicial retirement system. Mr. Rob Parkes, Courts HR Director, was in attendance.

The October Executive Appropriations meeting was held last week. The Utah Retirement System was directed to pay for an independent actuary.

Mr. Schwermer mentioned that the Judiciary's fiscal highlights were included relative to the implementation of the current year's budget cuts and next year's cuts.

In the October highlights under the Judiciary, Law Enforcement, and Criminal Justice category; reports were done on the following: 1) DUI - relating to sentencing enhancement decisions and dispositions, including measures to evaluate the profile and impacts of DUI recidivism; 2) the maximum dollar amount for small claims actions; and 3) dispute resolution program operations.

A report was received regarding post-conviction appeals.

11. COUNCIL STUDY ITEM FOR 2010: (Daniel J. Becker)

Mr. Becker mentioned that he presented a list of potential study items to the Management Committee at their October meeting. A brief history of the Council study item process was given. He mentioned that the study item is usually a broad systemic issue. Previous study items include: 1) justice court reform, 2) guardianship and conservatorship, and 3) appellate and post-conviction study. With this, Mr. Becker put the question before the Council as to whether or not to initiate a new study for 2010.

The four suggested study items for 2010 include: 1) interpreter services for civil cases, 2) indigent representation in the trial courts, 3) juvenile representation, and 4) case management issues. Mr. Becker provided background information on each of the study items and what he envisions the study items to include. Discussion took place.

It was suggested that the Appellate Representation Committee be asked if they would be willing to take on the indigent issues in addition to their current study. Further discussion of the study item for 2010 will take place once the Appellate Representation Committee has met and had the opportunity to consider the Council's request.

12. 2010 CALENDAR APPROVAL: (Daniel J. Becker)

Mr. Becker reviewed the Council's 2010 calendar as recommended by the Management Committee. The Management Committee recommended that the Council meet in conjunction with the Utah Bar's Spring Conference in St. George for the March meeting. However, they did not recommend the Council meet in conjunction with the Utah Bar's Summer Conference to be held in Sun Valley, Idaho in July.

Motion: Judge Westfall moved to approve the 2010 Council calendar as amended. Judge Eyre seconded the motion, and it passed unanimously.

13. RETIREMENT ADVISORY COMMITTEE APPOINTMENT: (Daniel J. Becker)

Mr. Becker reported that the Retirement Advisory Committee has a judicial vacancy due to the retirement of Judge Gary Stott. The Management Committee discussed the appointment at their October meeting.

The Committee holds a one-hour monthly meeting during lunch. Judge Maughan provided a background of a typical meeting. Discussion took place.

Motion: Judge Hornak moved to recommend Judge Orme to fill the vacancy on the Retirement Advisory Committee. Judge Westfall seconded the motion, and it passed unanimously.

14. COUNCIL COMMITTEE ASSIGNMENTS: (Judge Hans Chamberlain)

Judge Chamberlain reviewed the Council's Committees for 2010. Mr. Becker provided clarification of Judge Hornak's assignment. Discussion took place.

Motion: Judge Eyre moved to approve the Council's Committees for 2010. The motion was seconded, and it passed unanimously.

15. CERTIFICATION OF SENIOR JUDGE: (Tim Shea)

Mr. Shea presented the request for senior judge status for Judge Russell Bench, Judge Pamela Greenwood, Judge Howard Maetani, and Judge Sara Watson, who is a justice court judge. Clarification of senior judge status for Court of Appeals judges was provided.

Motion: Judge Maughan moved to approve the senior judge requests. Judge Atherton seconded the motion, and it passed unanimously.

16. EXECUTIVE SESSION

An executive session was not needed.

17. GAL STANDING COMMITTEE UPDATE: (Keith Kelly and Rick Smith)

Judge Chamberlain welcomed Mr. Smith and Mr. Kelly to the meeting.

Mr. Kelly provided an overview of the committee including the following information: 1) listing the committee members, 2) reporting meeting frequency, and 3) providing a general overview. A Summary of HB 69, Guardian Ad Litem Amendments and the Utah Office of Guardian ad Litem and Casa Annual Report were distributed to the Council members.

The 2009 Judicial Survey on Guardian ad Litem - Effectiveness, Proficiency and Professionalism is included in the annual report with the following numerical ratings from a rating scale of 1-10 (with 10 being the highest) : 1) effectiveness, 9.60; 2) proficiency, 9.48; and 3) professionalism, 9.11.

Mr. Kelly reported that he is pleased with the direction the Guardian ad Litem office is going.

A summary of HB 69 which was passed in the last legislative session and became effective on May 12, 2009, was given.

Mr. Smith presented information from the Annual Report.

He reported that the most critical issues facing the Guardian ad Litem office are: 1) attorney salary parity, 2) staffing level in the office, and 3) high caseloads.

There were some one-time cuts made in the Guardian ad Litem office, but they did not have any permanent funding reductions.

Other areas of focus include: 1) collecting attorney fees, 2) use of volunteers through the Utah's Court Appointed Special Advocate (CASA) program, 3) use of the Utah's Friends of CASA to increase the number of CASA volunteer advocates, 4) joint training opportunities, 5) continued followup on legislative performance audit issues, 6) adoption of best practice guidelines, and 7) adding the National Association of Counsel for Children Child Welfare Law Specialist Certification program to the Guardian ad Litem office.

He noted that an automated case management system is currently being developed. The design process is nearing completion. It will be a free-standing system once it is implemented. The system will integrate the CARE and CORIS systems. A few of the features that will be built into the system include: 1) a feature to deal with data tracking, and 2) a feature to measure the performance of their attorneys.

18. TRAINING ON OPEN AND PUBLIC MEETING LAWS: (Tim Shea)

Mr. Shea provided training to the Council regarding the open and public meeting laws. The following are guidelines for open and public meetings: 1) the meeting must be open unless closed in the proper way for a proper purpose, 2) notice must be given publicly, 3) anyone can attend and observe, 4) the meeting has to be recorded, and 5) the minutes must be distributed properly.

The intent of Rule 2-103 is to establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act, and the Administrative Office of the Courts shall annually train the members of the Council on the requirements of the rule.

Mr. Shea provided information on the following areas: 1) definition of a public body, 2) definition of a meeting, 3) definition of a workshop and executive session, 3) proper notice of the meeting, 4) public participation and rights, 5) process for closing a public meeting, 6) purpose of a closed meeting, 7) description of the minutes and recording of the meeting, and 8) access to the recording and the minutes.

He clarified what other meetings, if any, are considered public meetings. Discussion took place.

19. ADJOURN

The meeting was adjourned.