

JUDICIAL COUNCIL MEETING

Minutes

Monday, October 25th, 2010

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Michael Westfall, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. Donald Eyre, Jr.
Hon. Kimberly K. Hornak
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. Gregory Orme
Hon. Jody Petry
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Nancy Volmer
Brent Johnson
Rick Smith
Brody Arishita
Diane Abegglen
Carol Price
Lori Brown

EXCUSED:

GUESTS:

Hon. Lynn Payne
Hon. James Davis
Hon. Michele Christiansen
Hon. James Davis
Hon. Stephen Roth
Hon. Fred Voros
Lisa Collins
Mary Westby
Lisa Romney
Stephen Hunt, Tribune

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

Chief Justice Durham welcomed everyone to the meeting. She welcomed the new members. She mentioned that the new members were oriented to the norms, processes, culture of the Council.

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

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

Chief Justice Durham reported on the following items:

She and Mr. Becker will be meeting with the governor's staff this afternoon to review the court's budget.

She spoke at a community group meeting last week in Logan.

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

Mr. Becker reported on the following items:

A presentation was made to the Appropriations Subcommittee at the end of September covering the following: 1) court's workload, 2) second generation CourTools demonstration, 3) electronic record and changes for the court system, and 4) Self-Help Center.

Five courts were identified to receive grant money, totaling \$450,000 from the Department of Substance Abuse, at the state level for drug courts.

Mr. Becker and Mr. Lunceford attended the Building Board Meeting on October 6 where Mr. Lunceford made a presentation on the Ogden Juvenile Court Facility and the proposal for land banking in Utah County.

Chief Justice Durham and Mr. Becker will meet with the Governor's office this afternoon to review the court's budget.

Mr. Becker commented on a publication which dealt with Supreme Court races and the amount of money being spent on these campaigns.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham reported that the Management Committee meeting minutes accurately reflect the issues discussed. The meeting was relatively short.

Liaison Committee Report:

No meeting was held in October.

Policy and Planning Meeting:

Judge Orme reported on the following:

Objection to Court Commissioner's Recommendation. They continued to work towards a statewide uniform rule on this item. The Board of District Court Judges will review the information, and Mr. Shea hopes it will be discussed at the Civil Procedures Committee meeting on Wednesday, October 27.

Rules for Comment - CJA 06-0402 - Records in Domestic Relations Cases. This defines the records required for motions for temporary relief, alimony, child support, and child custody. It is on the Consent Calendar. If there are no concerns expressed by the end of the meeting, it will go out for comment.

Federal Directives Concerning Court Interpreters. This item will be discussed at the November 22 Council meeting.

Bar Committee Report:

Ms. Nelson reported on the following:

The Executive meeting was held last week. The Bar Commission meeting is scheduled for Friday, October 29. The Bar Commission priorities include: 1) public education, and 2) member education. Changes have been made to the client security fund to address recent high fund issues.

Chief Justice Durham indicated that she and Mr. Becker had an opportunity to meet with the bar president, president-elect, and John Baldwin recently where the pro bono initiative was discussed.

5. COUNCIL COMMITTEE APPOINTMENTS AND SELECTION OF VICE CHAIR: (Chief Justice Christine M. Durham)

Chief Justice reviewed the proposed Council Committee assignments for 2011 as recommended by the Management Committee. She mentioned that Judge Westfall had been asked to serve as the vice chair of the Management Committee. Chief Justice Durham noted that the Policy and Planning Committee and the Liaison Committee would chose the chair of their committees.

Motion: Judge Atherton moved to approve the 2011 Council Committee Assignments. Judge Eyre seconded the motion, and it passed unanimously.

6. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Tim Shea)

Mr. Shea provided the annual training on the open and public meeting law as a benefit to the new Council members and as a reminder to the rest of the members. He reviewed details from the Open and Public Meetings Act and Rule 2-103 - Open and Closed Meetings which primarily applies to the Judicial Council.

The following are guidelines for open and public meetings: 1) the meeting must be open unless closed for a proper purpose in the proper way, 2) notice must be given publicly, 3) anyone can attend and observe, 4) the meeting has to be recorded, and 5) the minutes are to be distributed properly. He noted that the minutes are considered a public record.

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

Rule 2-104 - Recording Minutes. The intent of this rule is to provide a formal method for memorializing Council meetings and to regulate public access to such records.

Mr. Shea highlighted the following information relative to open and public meetings: 1) definition of a public body, 2) definition of a meeting, 3) definition of an executive session, 4) proper notice of the meeting, 5) public participation and rights, 6) process for closing a public meeting, 7) purpose of a closed meeting, 8) description of the minutes and recording of the meeting, and 9) access to the recording and the minutes. Discussion took place.

7. APPROVAL OF RULE 4-408.01: (Tim Shea)

Rule 4-408.01, changing Manti from a county-run to a state-run district court, has been published for comment and did not receive any comments. The rule is ready for Council approval with the planned implementation date of November 1.

Motion: Judge Stoney moved to approve Rule 4-408.01. Judge Westfall seconded the motion, and it passed unanimously.

8. APPROVAL OF RULE 4-614: (Rick Schwermer and Brent Johnson)

Mr. Schwermer provided a brief history of the Selection of Indigent Aggravated Murder Defense Fund Counsel. He reported that 20 counties participate in the use of the fund.

The intent of the rule is to establish the process to be used to select pre-contracted attorneys from the roster maintained by the Indigent Defense Funds Board in capital cases, and it will apply to the district court. Discussion took place. Questions were asked pertaining to Rule 8 qualified attorneys and capital defendants entitled to two attorneys. Mr. Schwermer provided an explanation.

It was suggested to amend the rule on (3) last line to read “until there are at least three attorneys....”

Motion: Judge Westfall moved to amend Rule 4-614 as suggested above. Judge McCullagh seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to adopt Rule 4-614 on an expedited basis and send it out for comment. Judge Westfall seconded the motion, and it passed unanimously.

9. JUVENILE COURT E-PAYMENTS AND MY CASE SYSTEM: (Brody Arishita)

Mr. Arishita was welcomed to the meeting.

He provided an update to the Council on the Juvenile Court E-Payments and My Case System. The availability of e-payments for the juvenile court took place in September. The juvenile court e-payment options were piloted for two months prior to being released. There are two options available for juvenile e-payments which include: 1) regular e-payments, and 2) my case system. The e-payment option is used when parents or family members want to make a payment. My Case System identifies specific case and court orders. With the use of My Case System, a pin number is required for its use. The My Case System has the regular e-payment features, as well as, additional features to include: 1) additional tabs with dollars, hours, items, and miscellaneous fees; 2) status of youth’s case; 3) case history; 4) custody information; 5) probation information; and 6) hearings and appointments. In the future, the system will include court orders and probation orders.

Mr. Arishita demonstrated the use of the systems.

It was noted that 30% of all payments and collections are being made electronically in the district and justice courts, statewide.

Mr. Arishita was asked as to whether a system similar to My Case System is being considered for use in the district court. He noted that My Case System was developed with the juvenile court needs in mind. He mentioned the differences between CORIS, used by the district and justice courts; and CARE, used by the juvenile courts. Discussion took place.

A question regarding the use of electronic check and debit card payments on the e-payment system was asked. It was reported that these options would be made available in the future.

10. GRAND JURY PANEL UPDATE: (Judge Lynn Payne and Debra Moore)

Judge Payne was welcomed to the meeting.

Judge Payne provided an update to the Council on the activities of the Grand Jury Panel. He mentioned that the panel consists of five judges from around the state appointed by the Chief Justice to include: 1) A. Lynn Payne, Senior Judge; 2) Terry Christiansen, Third District Court Judge; 3) Steven Hansen, Fourth District Court Judge; 4) Brent West, Second District Court Judge; and 5) Sandra Peuler, Third District Court Judge. Ms. Debra Moore serves as staff to the panel.

The panel is statutorily authorized to determine if “good cause” exists to call a grand jury. The statute includes: 1) authorizes the panel to call upon prosecuting authorities to investigate allegations that need more evidence or information for the panel to decide whether good cause exists to call a grand jury; 2) requires that all allegations to be criminal and not civil in nature; and 3) requires all proceedings to be conducted in secret.

During the 2010 General Session of the Utah Legislature, the Grand Jury Reform Act was amended in the Judiciary’s housekeeping bill to allow the panel to cancel a hearing if there are no matters scheduled in advance. A separate bill was passed that made substantial changes to the act to include: 1) the Act was amended to add municipal attorneys to the prosecutors who may be requested to conduct an investigation and who may request that a grand jury be called; 2) the amended act requires the panel to consider “among other factors, whether a grand jury is needed to help maintain public confidence in the impartiality of the criminal justice process,” in determining whether to call a grand jury; 3) the amendments changed the required content of the prosecutor to release the certification to the public if the panel declines to call a grand jury; and 4) amended Act expressly permits the prosecuting authority to represent the state in a grand jury proceeding to elect to have a special prosecutor appointed without the need to establish a conflict of interest.

Judge Payne was thanked for his update.

Mr. Schwermer provided an update of issues being considered relative to the grand jury process for the upcoming legislative session. An explanation was provided relative to: 1) the purpose and statute of the grand jury, and 2) the purpose of the grand jury panel. Discussion took place.

11. JURY INCLUSIVENESS REPORT: (Debra Moore)

Ms. Moore reported that the Jury and Witness Act requires the court’s jury pool be as inclusive of the qualified population as possible and provides for a biannual report to the Council. The information provided shows the difference between the estimated adult population and the Master Jury List. An explanation was provided on the reporting mechanisms. Discussion took place.

12. GAL OVERSIGHT COMMITTEE UPDATE: (Rick Smith)

Mr. Smith was welcomed to the meeting. He mentioned that Ms. Tani Downing, committee chair, asked to be excused as she had a previously scheduled meeting.

He updated the Council on the GAL Oversight Committee’s recent information.

Last year, the GAL Office provided legal representation to 14,412 of Utah’s children which is a 12% increase over the past two years. He noted that this increase was handled with no increase in staff.

Utah’s Court Appointed Special Advocate Program (CASA) with 320 trained volunteer advocates donated 14,973 hours, and served 646 children which represents a 95% increase. The

qualifications and requirements of a CASA volunteer was outlined. Mr. Smith noted that the Utah Friends of CASA (UFC) was created a year ago for the exclusive purpose of recruiting and retaining CASA advocates.

Mr. Smith reported on the Child Welfare Law Specialists certification program which is an ABA-accredited program. To be awarded the CWLS designation, an attorney must demonstrate proficiency by satisfying the requirements of good standing, substantial involvement, education, peer review, writing, and substantive knowledge. Specialists must pass a comprehensive child welfare law written exam. The certification process was completed in Utah for the first time this year, with 25 Utah attorneys earning the CWLS credential. Of those 25, 18 CWLS recipients were employed in the Office of the Guardian ad Litem.

The Office of the Guardian ad Litem has been working with programmers within the Courts to create a web-based case management system designed specifically for GAL use. The new system to be called VOICE, will have the ability to maintain caseloads statewide while interfacing with CORIS, CARE, and SAFE case management systems.

The Office of the Guardian ad Litem has received additional funding to program the system and purchase additional hardware. The system is anticipated to be up and running in 2011.

Members of the GAL Oversight Committee include: 1) Tani Downing, chair; 2) Honorable Regnal Garff; 3) Douglas Goldsmith; 4) Merrill F. Nelson; 5) John Pearce; 6) Robert Steele; and 7) Lisa Watts Baskin.

Mr. Smith mentioned that the GAL uses therapy dogs from Intermountain Therapies on Fridays. The Guardian ad Litem office received the "*ITA '10 Facility of the Year 2011*" Award. Mr. Smith was thanked for his update.

13. POTENTIAL COUNCIL STUDY ITEMS FOR 2011: (Daniel J. Becker)

Mr. Becker provided a brief history of the selection of potential Council study items in the past. The selection of a Council study item is consistent with the setting of an annual priority of the planning phase of the strategic planning process. Past Council study items include: 1) performance measurement CourtTools, 2) justice court reform, 3) guardianship/conservatorship study, 4) Appellate post conviction representation study, and 5) the issue of adult and juvenile representation added to the ongoing Appellate post conviction study.

The following are ideas submitted by staff: 1) technology in the courtroom and jury rooms which is currently being addressed by the Board of District Court Judges, 2) retrospective study on racial and ethnic fairness in the civil and criminal justice systems, 3) video cameras in the courtroom pertaining to media, and 4) adoption statutes as elaborated by Mr. Shea.

Mr. Becker asked the Council members for any additional items for consideration. The following were ideas suggested by Council members: 1) sentencing autonomy - pressure from sheriff's and economics of county jails, 2) interface with evidence-based practices, 3) jury's and technology, and 4) security issues and technology. Mr. Becker reported that these topics are currently being addressed by other committees.

Chief Justice Durham asked members of the Council to provide feedback as to their interest for the study item. Discussion took place. Mr. Becker offered his perspective on each study item.

Motion: Ms. Nelson moved to recommend the narrow issue of concurrent jurisdiction, the issues raised by concurrent jurisdiction and in differing standards for termination of parental rights in juvenile and district courts, to the Standing Committee on Children and Family Law. Judge Orme seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to pursue the study item pertaining to the media - public access to the courts and public records availability, as well as media, video and electronic records access. Judge Willmore seconded the motion. It passed with Judge Steele, Judge Eyre, Judge Hornak, and Ms. Nelson opposing the motion.

14. 2011 CALENDAR APPROVAL: (Myron K. March)

Chief Justice Durham provided a brief overview of the proposed 2011 Council meeting schedule as recommended by the Management Committee.

Mr. March reviewed the schedule highlighting the following dates: 1) the March Council meeting will be held in conjunction with the Bar's Spring Conference in St. George; 2) the May Council meeting will be held at the Manti Court site as a visit to the newly state-managed court site; 3) the July Council meeting will be held at the Matheson Courthouse, noting the Bar's Summer Conference being held in San Diego; 4) the August budget and planning session with the proposed date changes; and 5) the September Council meeting will be held in conjunction with the Annual Judicial Conference.

Motion: Judge Maughan moved to approve the 2011 Council calendar. Judge Petry seconded the motion, and it passed unanimously.

15. MERITORIOUS SERVICE AWARD PRESENTATION: (Chief Justice Christine M. Durham)

Chief Justice Durham mentioned that Ms. Mary Westby, Meritorious Service Award recipient, was unable to attend the Awards Luncheon at the Annual Judicial Conference in September. Presiding Judge Jim Davis spoke on behalf of Ms. Westby's contributions to the Court of Appeals.

Chief Justice Durham provided a brief overview of Ms. Westby's contributions to the Court of Appeals. Ms. Westby was presented with the Meritorious Service Award and congratulated for all she does for the courts.

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

Mr. Schwermer provided a legislative update. He reported that the fiscal highlights were not available at this time. He reported that the Legislature adopts budget numbers in November and February. They will hold an Executive Appropriations meeting in November.

He provided the following highlights: 1) custodial interference enforcement, 2) death penalty procedures amendments, 3) DUI report, 4) housing inmates in county jails, 5) indigent defense act, 6) recidivism reduction plan, and 7) statutorily required reports.

Mr. Schwermer touched on the Retirement and Independent Entities Committee's meeting. The results of the independent audit of the long-term actuarial projections related to the Utah State Retirement Systems showed that the auditors agreed with the substantive results of the valuation, assumptions, calculation of contribution rates, and funded status in the long-term projection report.

17. JUSTICE COURT JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea brought up the issue of re-certifying justice court judges after a certain length of time, especially those being appointed to another jurisdiction. Members expressed their concerns with this issue. It was mentioned that new justice court judges already go through the following process: 1) selection, 2) nomination, 3) appointment, 4) ratification, and 5) certification. Once the justice court judge completes the orientation process, they are considered to have met all requirements to be certified by the Council.

Motion: Judge McCullagh moved to remove this item from the Council agenda. Judge Petry seconded the motion, and it passed unanimously.

18. EXECUTIVE SESSION

Motion. Judge Maughan moved to enter into an executive session at this time. Judge Hornak seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to remove the recommended name to fill the vacancy of the Child Development Specialist on the Standing Committee on Children and Family Law as recommended on the Consent Calendar and be submitted to the Management Committee with another recommendation. Ms. Nelson seconded the motion, and it passed unanimously.

19. RECERTIFICATION OF SENIOR JUDGES: (Tim Shea)

The Council considered the re-certification of the following active senior judges: 1) Senior Judge Guy R. Burningham, 2) Senior Judge J. Phillip Eves, 3) Senior Judge Dennis M. Fuchs, 4) Senior Judge Joseph E. Jackson, and 5) Senior Judge Stanton M. Taylor.

The Council considered the re-certification of the following inactive senior judges: 1) Senior Judge Douglas L. Cornaby, 2) Senior Judge Timothy R. Hanson, and 3) Senior Judge Diane W. Wilkins.

Motion: Judge McCullagh moved to re-certify Senior Judge Stanton M. Taylor once he has completed the education requirements which should be met by the end of 2010. Ms. Nelson seconded the motion, and it passed unanimously.

Motion: Judge McCullagh moved to re-certify the remainder of the senior judges and submit their names to the Supreme Court. Ms. Nelson seconded the motion, and it passed unanimously.

20. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Judge Roger Livingston has applied for certification as an active Senior Judge.

Motion: Judge Eyre moved to approve the certification of Judge Roger Livingston as an active Senior Judge and submit his name to the Supreme Court. Judge McCullagh seconded the motion, and it passed unanimously.

21. ADJOURN

The meeting was adjourned.