

JUDICIAL COUNCIL MEETING

Minutes
Monday, October 22, 2012
LaQuinta Inn
Moab, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Tom Langhorne

GUESTS:

Hon. Mary Manley
Terri Yelonek, 7th Dist TCE
Claudia Page, 7th C of C

EXCUSED:

Justice Jill Parrish

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

Chief Justice Durrant welcomed everyone to the meeting. He extended a special welcome to the new Council members.

Motion: It was moved and seconded to approve the minutes from the September 11, 2012 Judicial Council meeting. The motion passed unanimously.

2. OATH OF OFFICE FOR NEW COUNCIL MEMBERS: (Mary Manley)

Judge Manley administered the Oath of Office to the new Council members and Chief Justice Durrant.

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

Chief Justice Durrant reported on the following:
A meeting was held with Lt Governor Bell on October 16 to review the court's budget requests.
A Judicial Council orientation meeting was held on October 16 for the new members.

Mr. Myron March has been appointed to fill the vacancy on the Judicial Performance Evaluation Commission left by the resignation of Mr. Russ VanVleet.

A letter has been prepared and sent to the Judicial Performance Evaluation Commission regarding the Appellate Court judges' opinion evaluation proposal.

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

Mr. Becker reported on the following items:

Court Visit. Ms. Moore hosted court staff from Maricopa County, Arizona, who were interested in learning from our experience with clerical reorganization in anticipation of our move to the electronic record.

National Summit on Language Access in the Courts. Mr. Becker provided an update on the National Summit on Language Access in the Courts which was held in Houston, TX on October 1-3. The following attended from Utah: 1) Judge Larry Steele, 2) Mr. Dan Becker, 3) Mr. Tim Shea, and 4) Ms. Rosa Oakes. The Summit was attended by over 300 people from 49 states and 5 territories.

Mr. Becker was pleased with the fact that Utah addressed the issue of interpreters and their use in civil cases early on. He noted that the Justice Department has now responded to complaints in eight states relative to interpreters in civil cases.

As a result of the Summit, Mr. Becker foresees the Utah courts addressing the following issues relative to language access in the courts: 1) developing a more complete complaint process, and 2) modifying CORIS and CARE to process payments as an automated function, with improved data collection as a byproduct. Discussion took place.

Court Executive Retirement. Ms. Beani Martinez, Second Juvenile court executive, has announced her retirement—effective January 1, 2013. He noted that Ms. Martinez is a long-term, very dedicated court employee, whose services will be missed.

Case Filing Update. Mr. Becker provided an update on the case filing statistics in district court and the referrals statistics in juvenile court for the first quarter of FY 2013.

He highlighted the following district court case filing statistics: 1) felonies, 8% increase; 2) misdemeanors, 7% increase; 3) criminal case filings, 8% increase; 4) domestic case filings, 0% change; 5) contracts, 18% decrease; 6) debt collection, 10% decrease; 7) general civil case filings, 8% decrease; 8) tax liens, 14% increase; 9) judgments case filings, 5% increase; 10) probate case filings, 4% increase; 11) property rights case filings, 6% decrease; 12) torts case filings, 9% decrease; 13) traffic case filings, 6% decrease; and 14) district case filings, 0% change overall.

He highlighted the following juvenile court referral statistics: 1) felony, 13% increase; 2) misdemeanor, 16% decrease; 3) infraction, 5% decrease; 4) contempt, 10% decrease; 5) status, 22% decrease; 6) adult violations, 17% increase; 7) child welfare proceedings, 4% increase; 8) termination of parental rights, 24% increase; 9) voluntary relinquishment, 5% decrease, 10) domestic/probate, 30% decrease, and 11) juvenile court referrals, 10% decrease overall).

Court Funding Strategy Summary. *The True Cost of Justice: Transforming the Debate on Restoring Court Funding*, part of the campaign for addressing court funding prepared by the National Center for State Courts and Justice at Stake was distributed.

Mr. Becker highlighted the following from the document: 1) challenges facing the court community, 2) confidence in governmental institutions is low, 3) voters are far more focused on the economy and fiscal austerity, 4) beliefs about delays and backlogs are not attributed to low funding, but to other (mis)perceptions, 5) short term objective: winning support from budget

setters, 6) long term objective: reshaping public attitudes to the courts, and 7) what doesn't work: themes and language to avoid in the debate.

Council Photo. Mr. Becker noted that the Council Photo will be taken at the November meeting.

Legislative Interim Highlights. Mr. Schwermer provided an update on the October Legislative Interim meetings. He highlighted the following in his update: 1) annual DUI Report, 2) Veteran's Reintegration Task Force, and 3) administrative law judge matter.

Summit County Drug Court Project. Clarification was requested on the proposed Summit County Drug Court project. Discussion took place. It was noted that the matter would be discussed further at the Specialty Court Committee meeting of the Third District Court on Thursday, October 25.

5. 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 October.

Policy and Planning Meeting:

No meeting was held in October.

Bar Commission Report:

Mr. Lund reported on the following:

This week is National Pro Bono week.

The Utah State Bar's Fall Forum will be held in Salt Lake City on November 8-9. Mr. Lund highlighted several presenters including Professor Jeffrey J. Rachlinski of the Cornell Law School.

Mr. Nate Alder has been appointed as the ABA delegate for the Bar.

Four free legal clinics are being offered by the Bar. Details can be found on the Bar's website.

6. COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed recommendations for Council committee appointments.

Vacancies exist on the Policy and Planning Committee with the terms ending for: 1) Ms. Lori Nelson, 2) Judge Keith Stoney, and 3) Judge Thomas Willmore.

Chief Justice Durrant proposed filling the vacancies on the Policy and Planning Committee with the new Council members: 1) Judge Glen Dawson, 2) Judge Reed Parkin, and 3) Mr. John Lund. The committee membership for the Management Committee and the Liaison Committee would remain the same.

Motion: Judge McCullagh moved to approve the recommendations for Council committee appointments as proposed by Chief Justice Durrant. Judge Harmond seconded the motion, and it passed unanimously.

7. 2013 CALENDAR APPROVAL: (Ray Wahl)

Mr. Wahl reviewed the proposed 2013 Council calendar. He highlighted the following dates: 1) the March meeting will be held in conjunction with the Bar's Spring Conference, noting the change in date; 2) an adjustment to the May meeting date as a result of the Memorial Day holiday; 3) the adjustment of the Budget and Planning Session to a one-day session, 4) the September meeting being held in conjunction with the Annual Conference, and 5) reviewed the dates and location for the Bar's Summer Conference.

Motion: Judge Hornak moved to approve the 2013 Council Calendar as proposed. Mr. Lund seconded the motion, and it passed unanimously.

8. JUSTICE COURT: IVINS INTERLOCAL AGREEMENT: (Rick Schwermer)

Mr. Schwermer provided details relative to the request made by Ivins City to dissolve their inter-local agreement with the Washington County Justice Court and enter into an inter-local agreement with the Santa Clara Justice Court, effective January 1, 2013. If the inter-local agreement is reached, the Santa Clara Justice Court would be considered a Category III Court.

All parties have been notified and are in agreement with the request.

Motion: Judge Sandberg moved to approve the proposed inter-local agreement request made by Ivins City. Mr. Lund seconded the motion, and it passed unanimously.

9. JUSTICE COURT PROPOSALS: (Rick Schwermer)

Mr. Schwermer reviewed two possible matters being considered for the next legislative session to include: 1) inclusion of prior warnings to be included with documents sent on behalf of the Judicial Conduct Commission to the Supreme Court when an order is sent, and 2) a proposed salary cap for justice court judges when they are employed by more than one entity. The anticipated sponsor has requested input from the courts. Discussion took place.

10. RULES FOR FINAL ACTION: (Tim Shea)

The Policy and Planning Committee recommended the following rules be approved for final action: 1) Rule CJA 02-0204 – Local Supplemental Rules, 2) CJA 03-0202 – Court Referees, 3) CJA 04-0202.01 Definitions, 4) CJA 04-0202.02 – Records Classification, 5) CJA 04-0202.03 – Records Access, 6) CJA 04-0202.05 – Request to Access an Administrative Record..., 7) CJA 04-0405 – Juror and Witness Fees and Expenses, 8) CJA 04-0409 – Council Approval of Problem Solving Courts, 9) CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues, 10) CJA 04-0704 – Authority of Court Clerks, 11) CJA 06-0401 – Domestic Relations Commissioners, and 12) CJA 07-0102 – Duties and Authority of Juvenile Court Commissioners. Mr. Shea reported the rules were all published for comment.

Rule CJA 04-0409 – Council Approval of Problem Solving Courts. The rule has been amended to regulate ex parte communication in problem solving courts as recognized by the Code of Judicial Conduct and consistent with the signed agreement.

Motion: Judge Orme moved to amend Subsection 7 of the Problem Solving Court rule. Judge McCullagh seconded the motion, and it passed unanimously.

Mr. Shea highlighted the following rules being recommended for approval:

Rule CJA 02-0204 – Local Supplemental Rules. This rule has been amended to modify the process by which local rules are approved.

Rule CJA 03-0202 – Court Referees. This rule has been amended, in conjunction with Rule 4-704 which prohibits courts from appointing court referees.

Rule CJA 04-0202.02 – Records Classification. This rule has been amended to remove investigative subpoenas from the list of protected records and change the classification of PSI reports from private to protected.

Rule CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues. This rule has been amended to describe a process for resolving discovery disputes quickly to minimize the impact on time to complete discovery.

Discussion took place relative to the effective date in conjunction with publication dates. Questions were asked, and Mr. Shea provided clarification. The Policy and Planning Committee will address the matter of rule approval in conjunction with publication dates.

Motion: Judge McCullagh moved to approve CJA 02-0204 – Local Supplemental Rules and CJA 04-0502 – Expedited Procedures for Resolving Discovery Issues effective January 1, 2013 and approve the remainder of the rules for final action, effective April 1, 2013. Judge Orme seconded the motion, and it passed unanimously.

11. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Mr. Shea reported that Judge William Barrett and Judge Sterling Sainsbury have applied to be appointed as active senior judges.

He highlighted the following senior justice court judges up for reappointment: 1) Judge James E. Box, active; 2) Judge Betty Burns, inactive; 3) Judge Richard D. Carr, inactive; 4) Judge Jack Stevens, active; 5) Judge Allan D. Vail, inactive, and 6) Judge Sara Watson, active).

Clarification was provided relative to the education requirement for Judge Sara Watson for the 2012 year. Mr. Shea noted that the minimum performance standards have been met by all requesting certification or reappointment as senior judges.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the senior judges applying for certification and reappointment as active senior judges. Judge Maughan seconded the motion, and it passed unanimously.

12. EXECUTIVE SESSION:

An executive session was not held at this time.

13. JUSTICE COURT WEIGHTED CASELOAD: (Rick Schwermer)

Mr. Schwermer provided background information relative to the justice court weighted caseload. He reminded the Council that all justice courts are now on CORIS.

The Board of Justice Court judges recommended the following changes to their weighted caseload: 1) use each individual court location, 2) bench hour day changed to 8 hours from 7 hours, 3) 100% contest traffic—do not use state court numbers, and 6) small claims removed from courts using Pro Tem.

Mr. Schwermer reviewed the data provided for each justice court location and the adjustments being made. He asked the Council to approve the justice court weighted caseload in concept. Discussion took place.

Motion: Judge McCullagh moved to approve the justice court weighted caseload, in concept, but not change the judge day as proposed. Judge Steele seconded the motion, and it passed unanimously.

14. SEVENTH DISTRICT UPDATE: (Judge Mary Manley, Judge George Harmond, Ms. Terri Yelonek, and Ms. Claudia Page)

Chief Justice Durrant noted the continued judgeship support being provided by the Seventh District to the Eighth District. He expressed his gratitude, on behalf of the Council, to the Seventh District for their continued support and contributions to the Eighth District.

Chief Justice Durrant welcomed Judge Manley, Ms. Terri Yelonek and Ms. Claudia page to the meeting.

Ms. Yelonek highlighted the following in her update: 1) reviewed statistics for the Seventh District, 2) continued judicial support to the Eighth District, 3) judicial coverage to the Sixth District when requested and available, 4) clerks providing coverage for other offices as requested, 5) clerical staff restructuring plan taking place, 6) move to one clerk of court and one team manager is being looked at, 7) all staff cross trained throughout the district, 8) review of case management information, 9) district court fileless, and 10) juvenile court documents being uploaded into CARE.

Judge Manley provided an update relative to the Seventh District Juvenile Court to include: 1) reviewed statistics relative to juvenile court, 2) review of case management information, and 3) the status of the Seventh Districts' e-filing efforts.

Judge Harmond provided an update relative to the Seventh District Court to include: 1) Seventh District judicial support by taking on all cases in Duchesne, 2) all judges are cross designated, and 3) meet monthly with county sheriffs.

Mr. Becker expressed his gratitude and appreciation to the Seventh District for their continued judicial support to the Eighth District.

Ms. Page provided details on how the Seventh District uses the electronic record to provide clerk support to another district in the following areas remotely: 1) default judgments, 2) case pending, and 3) case collections.

Chief Justice Durrant thanked the Seventh District representatives for their update.

15. **ADJOURN**
The meeting was adjourned.