

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 24th, 2008

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair
Hon. Hans Chamberlain
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
Scott Sabey, esq.

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Ray Wahl
Matty Branch
Fred Jayne
Carol Price
Katie Gregory
Rosa Oakes

GUESTS:

Dr. Monica Christy
Hon. Vernice Trease
Steve Hunt

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

Chief Justice Durham welcomed everyone to the meeting.

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

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

Chief Justice Durham mentioned that she would like to suggest a new tradition of information sharing, whereas, we include personal or any local news updates. With this, she shared the obituary of former Judge Homer Wilkinson who has recently passed away.

She also mentioned that she had received an appreciative letter from Scott Anderson on his receiving the Amicus Curiae Award at the Annual Judicial Conference.

Chief Justice Durham reported that she attended a meeting of the Board of Directors of

the Conference of Chief Justices. The main focus of discussion focused on the economic downturn and the effect it will have on the courts.

She then mentioned the Rehnquist award winner, Judge Jonathan Lippman of New York and commented that his remarks dealt with how to maintain a status of a co-equal partner of government, institutional independence of the courts, decisional autonomy, and structural capacity to do our jobs as they should be done.

The Legislative District meetings have been scheduled for December and January.

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

Mr. Becker reported on the following:

He mentioned that further budget reduction drafts will be reviewed in an executive session later this morning.

He then reported that he and Chief Justice Durham met with the Governor on the Court's budget requests as well as the Council's budget reduction decisions. They then discussed with the Governor the kind of steps which would be required if deeper reductions proved necessary.

Mr. Becker also mentioned that the following week, he met with Jonathan Ball, Legislative Fiscal Analyst. The Legislature is reviewing the implications of an additional 5% or 10% reduction.

The Governor's office has asked for an additional 1 ½% reduction in the current fiscal year and an additional 7% reduction for FY10 based on declining revenue collections.

Last, he mentioned that the Board of Justice Court Judges update will not be given at this time, it will be given at the December meeting.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham shared the case filing preliminary statistics which were given at the most recent Management Committee Meeting. For the first four months of the current fiscal year, case filings are showing unprecedented numbers in the following categories: 1) criminal cases, up 6%; 2) domestic cases, up 7%; 3) contracts, up 65%; 4) debt collection, up 27%; 5) forfeitures, up 48%; and 6) foreclosures, up 108%.

With the decision to eliminate the In-house Court Reporting Program in FY10, there has been a lot of communication from court reporters. The district board has forward a request to the Council to reconsider their decision to eliminate the program. It was also mentioned that a Transcript Committee has been formed and has met to examine and recommend how best to organize and administer transcript production when the courts move to an all digital recording operation.

Liaison Committee Report:

Nothing to report. There may be a meeting scheduled in December. If not, the scheduled January meetings will begin in advance of the Legislative Session.

Policy and Planning Meeting:

The Policy and Planning committee focused on two items during their last meeting: 1) to review and refine the Justice Court Judges Computer Use Policy which Judge McCullagh helped prepare, and 2) to consider the best way to abstract a judgment for use in court. These two items

will be discussed later in the meeting.

Bar Committee Report:

Mr. Sabey reported that the Utah State Bar Fall Forum was held last Thursday and Friday. The Forum started on Thurs night. There were 200 people in attendance. On Friday, there were close to 480 in attendance. The most popular topic at the Forum was “How to Make Law Offices More Green Friendly”.

5. JUDICIAL PERFORMANCE EVALUATION SCORES INCLUSION IN COURTOOLS: (Tim Shea)

As suggested by the Management Committee, Mr. Shea presented a mock up of a new CourTools measure that would report aggregate scores on Judicial Evaluation Surveys, and what the information could look like once prepared and put on the Court’s website. There would be public availability of the information. The information would be prepared as an aggregate report for appellate, district and juvenile courts.

Chief Justice Durham mentioned that this CourTools measure would be inline with the movement to provide information to the public on what information we have and how we as judges are performing in the courts. It would also show favorable results as to how judges are viewed in the evaluation process. She also requested that the Council be updated to the degree that CourTools is being accessed by the public.

Discussion took place regarding various aspects of the report. It was determined that the following areas should be addressed before listing the information on CourTools: 1) ensure the information is accurate, 2) ensure the information is accessible, and 3) display the information in the best possible way to highlight the data presented.

Motion: Judge Andrus moved to include the Judicial Performance Evaluation Scores on CourTools. Judge Eyre seconded the motion, and it passed unanimously.

6. COOP UPDATE: (Carol Price)

Ms. Price reviewed the progress of the Continuity of Operations Plan (COOP). She hopes to present the final plan to the Council in January. The plan establishes policy and guidance to ensure execution of the essential court function normally conducted in the Matheson Courthouse when an emergency threatens or incapacitates operations and the relocation of selected personnel and court functions is required. The plan is designed to: 1) uphold the rule of law during local or regional emergencies, 2) maintain the integrity of the judicial process, and 3) maintain public trust in the judicial process.

The objectives of the plan are to: 1) ensure the continuous performance of the courts essential functions during an emergency, 2) reduce or mitigate disruptions to court operations, 3) identify and designate principals and support staff to be relocated, 4) facilitate decision-making for execution of this plan and subsequent conduct of operations, 5) achieve a timely and orderly recovery from the emergency and resumption of normal court operations, 6) provide for the safety and well-being of court employees, and 7) protect essential facilities, equipment, records and other assets.

Ms. Price reviewed the plan addressing the following four potential scenarios: 1) only the Matheson Courthouse is affected, 2) the general facility is affected, 3) the entire region is affected, and 4) pandemic influenza is the cause.

She then reviewed: 1) the plan's authority and direction, 2) the emergency management team, 3) the advance team, 4) the essential function team, and 5) the reconstitution team. Each team and their responsibilities were outlined.

Essential staff vs. non-essential staff was defined as outlined in the plan. It was noted that non-essential staff will continue to receive their regular pay for a period of ten working days after the COOP activation regardless of their work status.

She mentioned that if all communications goes down, the redundant data center in West Jordan becomes available. Key personnel have satellite phones for use in emergency situations as well.

Ms. Price also stated that she has been in contact with the state continuity director in coordinating communication among all state and local officials in developing the plan.

Once the plan has been finalized and approved, the judiciary staff will need to be educated on the use of the plan.

7. SENIOR JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea presented the senior judge requests. A brief discussion took place.

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

8. JUDICIAL COUNCIL RULES APPROVAL:

Rule URCP 58A: Abstract of judgment (Tim Shea)

The Policy and Planning Committee recommends that the Council endorse amending URCP 58A to describe how to abstract a judgment and refer it to the Supreme Court's Advisory Committee on Rules of Civil Procedure.

Motion: A motion was made to send Rule URCP 58A to the Supreme Court's Advisory Committee on Rules of Civil Procedure. The motion was seconded, and it passed unanimously.

Rule 04-906: Guardian ad litem program (Tim Shea)

Mr. Shea mentioned that the amendments to Rule 04-906 were recommended by the Guardian ad Litem Oversight Committee.

Judge Westfall questioned various line items in regards to the amendment. The Council determined it was necessary to defer approval and send it back to the Policy and Planning Committee and Mr. Rick Smith for clarification.

It was also mentioned that the Guardian ad Litem audit was released last Tuesday. The report went well. The placement of the Guardian ad Litem was again brought up. Mr. Keith Kelly, chair of the Oversight Committee, addressed this issue.

Rule 04-201: Record of proceedings (Tim Shea)

Mr. Shea presented information on Rule 4-201, Record of Proceedings. To facilitate the transition to electronically recording court hearings, the Transcript Committee chaired by Ms. Matty Branch recommends an expedited amendment to the rule that will achieve the following two objectives: 1) record everything electronically, even if a court reporter also reports the hearing, and 2) make both the court reporter's file and the electronic recording the official record of the hearing.

Rule 4-201 currently prohibits electronically recording a court hearing if a court reporter reports the hearing.

Mr. Shea mentioned that recommendations to statutory rule changes will be presented to the Council in December.

Motion: Judge Chamberlain moved to approve the expedited amendment of Rule 4-201. Judge Andrus seconded the motion, and it passed unanimously.

Rule 04-509: Court-appointed parent coordinator (Katie Gregory & Dr. Monica Christy)

Rule 04-509, Court-appointed parent coordinator is new and establishes the role, qualifications and procedures of the parent coordinator. Dr. Monica Christy and Ms. Katie Gregory provided background information from the Children and Family Law Committee relative to creation of this rule.

The role of the parent coordinator would be as follows: upon court order, a parent coordinator may be appointed to serve in child custody and parent-time disputes. The parent coordinator's role is to consult with the parties and make recommendations directly to the parents about how the children's needs can best be served. The role of the parent coordinator is like that of the mediator in that the parent coordinator seeks to elicit cooperation and agreement between the parents. Using his or her expertise in child development, however, the parent coordinator also, after hearing the parents' perceptions and thoughts, offers advice and guidance with regard to specific decisions. With the help of the parent coordinator, the parents then create, revise, or clarify their parenting plan, as defined in the Utah Code.

The premise behind the creation of the parent coordinator role is to provide a way to settle differences with expert opinions. In certain cases, commissioners would be able to appoint a parent coordinator. Additional information include: 1) the parent coordinator role is completely voluntary, 2) it would be an additional resource in custody cases, 3) the mediator and parent coordinator would work together on particular cases, and 4) the rule outlines continuing education requirements for the parent coordinator. The continuing education requirements does not begin until 2012 to allow for people in rural areas to get up to speed in this area.

Suggested amendments to line items 82, 84, and 101 were discussed.

Motion: Judge Atherton moved to adopt Rule CJA 04-509 as amended. Judge Orme seconded the motion, and it passed unanimously.

9. EXECUTIVE SESSION

Motion: It was moved and seconded to enter into an executive session at this time.

The Council went out of the Executive Session to finish the last two items on the agenda.

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

Judge Trease gave an update on behalf of the Court Interpreter Committee. Members of the committee include: Judge Vernice Trease, Judge Ric Oddone, Judge Karlin Myers, Peggy Gentles, Carolyn Smitherman, Branden Putnam, Evangelina Burrow, Jennifer Storer, Deborah

Kreek-Mendez, Craig Johnson, Prof. Daryl Hague, Dinorah Padro, Luther Gaylord, and Haloti Moala. Staff members include: Tim Shea, Marianne O'Brien, Rosa Oakes, and Carolyn Carpenter.

Judge Trease gave examples of people and instances where they did not speak English and they did not have an interpreter.

The committee is committed to: 1) providing language access to people with limited English proficiency, 2) elevating the quality of interpreters, 3) standardizing interpreter protocol, and 4) ensuring that Rule 3-306 and the Accounting Manual are consistent with best practices and meet federal language access regulations.

Information on the latino population growth as of August 2008 was reviewed. This includes: 1) The statewide latino population is 11.6% with a 52% increase in latino population, 2) 60.2% of residents in San Juan County are of ethnic minority, 3) Salt Lake County consists of 23.5% ethnic minorities with a 48.28% increase in latino population, 4) Weber County consists of 20.2% latino population, and 5) Wasatch County has had an increase in latino population of 121%.

Interpreter usage issues include: 1) inconsistencies in interpreter usage, 2) accessibility to interpreters, 3) interpretation by phone, 4) interpretation in certain situations, 5) interpreter travel, and 6) interpreter discipline.

The district interpreter coordinator role is to include: 1) performs all district scheduling for adult and juvenile courts; 2) utilizes Groupwise to calendar assignments, 3) court personnel make all interpreter requests via CORIS and CARE, 4) coordinator reviews and verifies all interpreter payment requests for their district (checks and balances), 5) troubleshoots problems with interpreter assignments, and 6) attends AOC annual training. Then the next step is to evaluate its effectiveness.

Judge Trease reported on the Biamp System, a distance interpreting equipment, which is being tested in the Third District Court in Tooele and the Third District Juvenile Court in West Jordan.

She also reviewed the following areas of focus: 1) current testing and training for approval and certification, 2) possible training and testing opportunities and continuing education, 3) development of language assessments for languages other than Spanish, 4) judges' training, and 5) translations.

11. JUSTICE COURT COMPUTER POLICY: (Tim Shea)

Mr. Shea reported that the Policy and Planning Committee recommends that the Council adopt the policy regarding the use of state-owned computers by justice court judges.

Brief discussion took place.

Motion: Mr. Sabey moved to approve the Justice Court Computer Policy. Judge Chamberlain seconded the motion, and it passed unanimously.

Motion: It was moved and seconded to go back into an executive session.

The Council made the following motions in regards to the budget after coming out of the executive session for the second time.

Motion: Judge Andrus moved to accept the staff recommendations for the proposed FY10

budget. The initial 3 ½% in reductions if necessary, would include \$500,000 in juvenile court programs and contracts; AOC staff reduction; reduction in publications; additional shifts from general fund to restricted accounts; and possible facility closures. Judge Eyre seconded the motion, and it passed unanimously.

Motion: Judge Eyre moved to approve the staff recommendations for the proposed 1½% reductions to the FY09 budget. Judge Andrus seconded the motion, and it passed unanimously.

Motion: Judge Andrus moved to approve the remainder of the FY10 budget reductions over 3½% be taken in FTEs. The motion was seconded, and it passed unanimously.

12. ADJOURN

The meeting was adjourned.