

JUDICIAL COUNCIL MEETING

Minutes

Monday, November 21st, 2011

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Chief Justice Christine M. Durham, Presiding

ATTENDEES:

Chief Justice Christine M. Durham
Hon. Kimberly K. Hornak, vice chair
Justice Jill N. Parrish
Hon. Judith Atherton
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. Larry Steele
Hon. Keith Stoney
Hon. Thomas Willmore
Lori Nelson, esq.

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Nancy Volmer
Katie Gregory
Rob Parkes
Nini Rich
Rick Smith
Lori Brown

EXCUSED:

Hon. John Sandberg

GUESTS:

Aaron Falk, SL Tribune
Randy Dryer
Tani Downing
Hon. Royal Hansen
Hon. Janice Frost
Hon. Elizabeth Lindsley

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

Chief Justice Durham welcomed everyone to the meeting.

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

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

Chief Justice Durham reported on the following:

She attended part of the Bar's Fall Forum on November 18. She noted that the Civil Rules Advisory Committee received a certificate of appreciation for their work on the new discovery reform rules.

She participated in the Presiding Judge/Associate Presiding Judge/TCE Workshop held on November 18. She provided highlights from the workshop.

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

Mr. Becker reported on the following items:

He updated the Council on Juab County's position on addressing the Nephi court facility needs relative to its adequacy from a security standpoint. Mr. Becker and Mr Wahl met with the Fourth District Presiding judges to discuss the matter further. A meeting with the Juab County attorney will take place to discuss options.

Mr. Becker mentioned that the Building Board has ranked the Ogden juvenile court facility at #2 on the priority list.

He mentioned the positive stories in the media to include: 1) the KSL two-part story on mental health courts, and 2) the articles relative to the courts Access and Fairness Survey.

A Drug Court Conference was held at the end of October with over 300 attendees. Judge Dennis Fuchs and Mr. Rick Schwermer provided a presentation on the court's drug court certification process. The conference was well received.

The Presiding Judge/Association Presiding Judge/TCE Workshop was held on November 18. The workshop was well attended, and there was a lot of constructive discussion. Chief Justice Durham offered positive comments.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham 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. She highlighted topics from the meeting: 1) security audit reports, and 2) the upcoming civil discovery reform workshops.

Liaison Committee Report:

No meeting was held in November. The Liaison Committee's first meeting is scheduled in early January.

Policy and Planning Meeting:

Mr. Shea reported on the following:

Most of what was discussed has been placed on the agenda as Rules for Final Action or on the consent calendar. Judge Orme was re-elected as the chair of the Committee. The Committee addressed the legislative audit recommendation relative to the complaint process regarding custody evaluators. He mentioned that the complaint process and a form are available on the court's website.

Bar Commission Report:

Ms. Nelson reported on the following:

The Bar recently hired a new pro bono coordinator, Michelle Harvey.

The Bar's Fall Forum was very well attended with over 600 members attending. She noted that the keynote address was very well received.

5. GAL OVERSIGHT COMMITTEE UPDATE: (Tani Downing and Rick Smith)

Chief Justice Durham welcomed Ms. Downing and Mr. Smith to the meeting.

Ms. Downing provided an update to the Council on the work of the GAL Oversight Committee.

She highlighted the following in her update: 1) a list of the current committee membership, 2) a review of Rule 4-906 - Guardian ad litem program - as it relates to the responsibilities of the Oversight Committee, 3) court survey, 4) office procedures evaluation, 5) survey of GAL Director, and 6) the CASA program.

Ms. Downing and Mr. Smith were thanked for their update.

6. RECOMMENDATIONS ON THE USE OF SOCIAL MEDIA BY JUDGES: (Randy Dryer and Nancy Volmer)

Chief Justice Durham welcomed Mr. Dryer and Ms. Volmer to the meeting.

Mr Dryer detailed background information relative to the use of social media by judges. The Committee was charged with making a determination as to whether or not the Code of Judicial Conduct should be revised relative to the use of social media and its use by judges. The draft Report and Recommendations for Judges Using Social Media was provided to the Council on behalf of the Social Media Subcommittee of the Judicial Outreach Committee.

The Social Media Subcommittee believes that social media will play an increasingly important role in Utah's judicial retention elections as more and more people obtain information online. Courts throughout the country are recognizing the value of social media as a means of communicating with the public and other judicial constituencies. A recent survey by the National Center for State Courts reveals that a full third of state judiciaries use one or more of the social media communications platforms of YouTube, Facebook and Twitter.

Mr. Dryer highlighted the following in his report: 1) possible inquiries for the Ethics Advisory Committee regarding the use of Social Media by judges, 2) opinions applying the Code of Judicial Conduct to judge online activity, and 3) a summary of recommendations.

Questions were asked and discussion took place relative to the proposed recommendations. Mr. Dryer provided answers and clarification to the questions asked of him.

Mr. Dryer was thanked for his expertise and the time taken by the Social Media Subcommittee to prepare the recommendations on social media as presented to the Council.

He noted that the last report to be presented to the Council will include the recommendations for the court's use of social media. Discussion took place.

Motion: Judge Steele moved to accept the report and refer its recommendations to Policy and Planning to consider methods of implementation. Judge Mortensen seconded the motion, and it passed unanimously.

7. STUDY ITEM RECOMMENDATION: (Daniel J. Becker)

Mr. Becker updated the new Council members to the Council's practice of selecting an annual study item requiring a more extensive review. He highlighted past study items to include: 1) guardianship/conservatorship, 2) appellate post conviction representation, 3) juvenile and district court indigent representation, and 4) the 2011 topic relative to technology being brought into the courtroom. He had considered not recommending a study item for 2012 as there are still a number of studies being addressed.

A request to Chief Justice Durham by Judge Thomas Kay to amend Rule 11-202 - Judge Pro Tempore was referred to the Supreme Court. The request would allow pro tem judges to serve as traffic referees. The Supreme Court had concerns with the request, therefore, the

request was denied; and the Supreme Court requested the Judicial Council to review the existing rule relating to the use of referees.

Mr. Becker is recommending a review of the rule providing for the use of traffic referees and a study of alternatives for handling minor traffic offenses be considered as the 2012 study item. Discussion on the role of referees took place. It was mentioned that it is used in Second District Court as well as some justice courts. It was noted that the current rule only applies to courts of record.

The Council asked Mr. Becker to outline a more specific charge for the Council study item recommendation for the December meeting.

Motion: Judge Hornak moved to enter into an executive session to discuss matters concerning litigation. Judge Steele seconded the motion, and it passed unanimously.

8. EXECUTIVE SESSION

An executive session was entered into at this time.

9. RULES FOR FINAL ACTION: (Tim Shea)

Mr. Shea highlighted the process for rule approval for the new Council members. He noted that the recommendations for final approval of the following rules would bring them into conformity with actual practice:

CJA 03-0408 - Inventory. The amended rule deletes procedures that are no longer required.

CJA 07-0307 - Use of Money in the Restitution Fund. The amended rule allows the trial court executive to spend up to \$250 without approval by the juvenile court administrator.

Motion: Justice Parrish moved to approve the rules as recommended by the Policy and Planning Committee. Judge Hornak seconded the motion, and it passed unanimously.

10. PROPOSED AMENDMENTS TO UCJA 4-510: (Judge Royal Hansen and Nini Rich)

Chief Justice Durham welcomed Judge Hansen and Ms. Rich to the meeting.

Judge Hansen provided background information relative to the proposed amendments to UCJA 4-510 - Alternative Dispute Resolution (ADR). Rule 16 - Pretrial conferences, scheduling and management conferences was referred to relative to its use in conjunction with UCJA 4-510.

The proposed amendments to UCJA Rule 4-510 include the following: 1) dividing the rule into six separate rules, 2) removing outdated references and updating current references to information now found on the court's website, 3) streamlining the rule on referral of civil actions and tying it to the new rules of civil procedure, and 4) dividing the rule on exceptions (4-510.06) into three subcategories for purposes of clarification.

Motion: Judge McCullagh moved to accept the amendments to Rule UCJA 4-510 as proposed. Judge Stoney seconded the motion, and it passed unanimously.

11. AUTHORIZATION TO FILL A COMMISSIONER VACANCY: (Judge Royal Hansen)

Judge Hansen reported that Commissioner Michael Evans has announced his upcoming retirement effective February 15, 2012. He is requesting authorization to fill the upcoming vacancy.

Motion: Judge Maughan moved to authorize the filling of the upcoming commissioner vacancy. Ms Nelson seconded the motion, and it passed unanimously.

12. BOARD OF JUVENILE JUDGES UPDATE: (Judge Janice Frost and Lisa-Michele Church)

Chief Justice Durham welcomed Judge Frost, chair of the Board of Juvenile Judges, to the meeting.

Information including the following was distributed to the Council: 1) an overview of juvenile court, 2) the 2011 Juvenile Court Report Card to the Community, 3) a list of members of the Utah Council for Interstate Compact Juvenile Supervision, 4) IOU Education Workgroup accomplishments to date, and 5) FY 2010-2012 eliminated court positions.

Judge Frost provided an update to the Council on the Board of Juvenile Judges activities. She highlighted the following in her update: 1) Board of Juvenile Court Judges members, 2) 2010-2011 accomplishments, 3) juvenile judicial weighted caseload, 4) juvenile clerical weighted caseload, 5) juvenile probation officer weighted caseload, 6) juvenile court referrals, 7) termination of parental rights and related events, 8) current issues in juvenile court, 9) CARE initiatives and issues, 10) probation initiatives, 11) other initiatives, and 12) 2011-2012 goals.

The following current issues were reviewed: 1) increase use of video appearance by incarcerated parents, 2) increase appearance of foster youth at their own hearings, 3) juvenile competency-draft law being circulated, and 4) Judicial Performance Evaluation Commission (JPEC) training of observers on unique factors related to juvenile matters.

It was noted that a night court is taking place in Fourth District Juvenile Court. Discussion took place.

Judge Frost and Ms. Church were thanked for their update.

13. STANDING COMMITTEE ON EDUCATION UPDATE: (Judge Elizabeth Lindsley and Rob Parkes)

Judge Lindsley was welcomed to the meeting.

She provided an update to the Council on the activities of the Standing Committee on Education. She mentioned that the draft revision Guidelines for Certification of Education Programs is on the Consent Calendar for approval. She highlighted the following revisions: 1) inclusion of justice court staff in completing education hours, 2) justice court conference requirement, and 3) development of online training materials and/or modules.

The Committee will be revising the curriculum for the new judge orientation into a four-part process. She highlighted aspects of the orientation to include: 1) presiding judge involvement with case-type exposure, 2) senior judge mentoring of new judges, 3) Phase I - new judge orientation class, and 4) Phase II - new judge orientation class provided six months later. Development of a new judge-focused benchbook will take place as well.

Judge Lindsley reported that Mr. Tom Langhorne, new Education Director, will begin working for the courts on December 1. She expressed her appreciation to Mr. Rob Parkes for his assistance as he stepped in to fill the position as Education Director along with his duties as the HR Director.

Judge Lindsley noted that strengthening the role of the Standing Committee would be a focus in the coming year. In preparing future conferences, a needs assessment will be done with individual judges to assist in programming.

Discussion took place.

A correction was made on Page 1 of the Guidelines for the Certification of Education Programs for Judges, Commissioners and Court Employees.

Judge Lindsley was thanked for her update and Mr. Parkes was thanked for his work in serving as Education Director, in addition to his human resource responsibilities.

Motion: Judge McCullagh moved to approve the Guidelines for Certification of Education Programs for Judges, Commissioners and Court Employees with the correction made on Page 1 of the document. Judge Orme seconded the motion, and it passed unanimously.

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

Mr. Schwermer provided a legislative update to the Council. He highlighted the following relative to the November meeting: 1) asset division in divorce proceedings, 2) child support guidelines amendments, 3) competency to stand trial amendments, 4) grand jury amendments, and 5) total compensation market survey and analysis study.

Chief Justice Durham thanked Mr. Schwermer for his legislative update.

15. ADJOURN

The meeting was adjourned.

16. COUNCIL PHOTO