

JUDICIAL COUNCIL MEETING

Minutes

Monday, December 17th, 2007

Judicial Council Room

Chief Justice Durham, Presiding

ATTENDEES:

Chief Justice Christine Durham
Hon. Gregory Orme
Hon. Brendan McCullagh
Hon. Gary D. Stott
Hon. Michael D. Lyon
Hon. Judith Atherton
Hon. Mark Andrus
Hon. William Barrett
Hon. Michael Kwan
Scott Sabey, esq.
Hon. Hans Chamberlain
Hon. Michael Westfall
Hon. Ronald Nehring

STAFF PRESENT:

Daniel J. Becker
Myron K. March
Rick Schwermer
Tim Shea
Ray Wahl
Holly Frischknecht
Nancy Volmer
Debra Moore
Kim Allard
Katie Gregory

EXCUSED:

Hon. Jody Petry

Attorney

GUESTS:

Judge Birch
Doug Allstrom, Draper City

Andy Blackburn, Roy City Attorney

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

Chief Justice Durham welcomed everyone to the meeting and excused Judge Petry. The Chief welcomed Steve Hunt from the Salt Lake Tribune.

Motion: Judge Stott motioned to approve the minutes, the motion was seconded by Scott Sabey and passed unanimously.

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

Chief Justice Durham reported the following:

-The leadership of the Judicial Retention and Selection Task Force and the judiciary have continued to work together on a proposed bill. The Chief Justice and Judge Stott visited with the Board of District Court Judges last week about this issue. Judge Payne will join the Council later to discuss the Board's view on the legislation.

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

Mr. Becker reported the following:

- Diane Cowdrey has accepted the position as Education Director in the California Court system. Her last day will be January 24th. Gordon Bissegger will be retiring at the end of December. A reception will be held for him this Wednesday at 3:00 p.m. in the Supreme Court rotunda.
- Governor Huntsman released his budget last week and the only addition beyond the recommendations from the GOPB is a 7% increase for judicial compensation.
- The Appropriation's Subcommittee will meet on January 16th to begin reviewing the base budget.
- The picture of the Judicial Council was provided to each Council member.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durham referred the Council members to the minutes and reported that most agenda items will be discussed in the Council meeting. Chief Justice Durham noted that an audit report from the Sanpete County Justice Court was provided to the Management Committee. The Chief noted what a thorough job the Audit Department provided the courts.

Policy and Planning Meeting:

Judge Barrett reported that the Council will later discuss Policy and Planning's recommended changes to Rule 4-401 regarding photography in the courtroom.

Liaison Committee:

Justice Nehring reported the committee reviewed the Justice Court reform bill based on the charge from the Council last month to consider draft legislation. Rick Schwermer provided a copy of the protected bill. Justice Nehring indicated that a few changes have been made to the bill that slightly alter what was reported during the last Council meeting. The first change affects the way the courts will receive payment from municipalities for the service of a judge. The locality will be charged based on the workload of the court in that area. The second change will allow part time justice court judges who currently receive health benefits from municipalities to continue receiving that coverage until 2012. The bill would preserve their health benefit eligibility and the cost would be passed through to the sponsoring entity. An additional change recommends that record keeping for justice courts will be made uniform statewide. Mr. Schwermer highlighted the District Court jurisdiction provision in the bill which limits concurrent jurisdiction. Discussion took place about the wording and meaning of concurrent jurisdiction.

Motion: Judge McCullagh motioned to ratify the changes in the bill to address the payment mechanism to the localities, the healthcare benefits for half time judges, and the inclusion of a statewide record keeping program. Scott Sabey seconded the motion, the motion passed unanimously.

Motion: Judge McCullagh moved that the current jurisdiction should remain the same with the

provision that cases be heard by the district court upon the disallusionment of a local justice court. There was no second on the motion.

Motion: Judge Kwan motioned to approve language that would eliminate concurrent jurisdiction to the extent possible in the bill. Judge Lyon seconded the motion, the motion passed unanimously.

This bill is currently protected by the Legislative sponsor and Mr. Schwermer collected the draft bill from each Council member.

Bar Committee Report:

Scott Sabey reported that support for the mentoring program is becoming stronger since the Fall Forum. The program will require the approval by the court by the beginning of the year. The Legislative Affairs Committee will begin meeting soon. The Lawyers Helping Lawyers program is switching to a paid per service with the Blomquist Hale service providers. Mr. Sabey indicated that Lowrey Snow thanked the Court and the Council on behalf of the Bar for the close relationship they enjoy.

Chief Justice Durham suggested that the Lawyers Helping Lawyers program would be helpful to present to the Boards of District and Juvenile Judges and the Presiding Judges group.

5. MUNICIPAL JUSTICE RE-CERTIFICATION: (Rick Schwermer)

Mr. Schwermer reported that all county justice courts must re-certify every four years with the Justice Court Standards Committee. Mr. Schwermer indicated that the Committee heard 100 requests for recertification. Mr. Schwermer provided a handout outlining the recommendations of the Committee. Thirteen municipalities had issues that the Committee made additional recommendations or waiver considerations for. Eleven of those thirteen municipalities reported they made the changes necessary to certify.

Mr. Schwermer reported that the Council has authority to defer decisions on compliance issues, but are not able to waive statutory requirements. Mr. Schwermer discussed that the Levan Justice Court has not been sending monthly reports to the Administrative Office of the Courts, although the justice court indicates the reports have been collected monthly, they have just not been sent. The Committee recommends that the re-certification of the Levan Justice Court be contingent on monthly reports being made to the AOC and that old reports be forwarded on. The Committee also recommended that a follow up with the Driver License Division and the Bureau of Criminal Identification be done to ensure that disposition reporting has been provided to them.

The Draper and Roy County Council requested to address the Judicial Council and appeal the Committee's recommendations regarding the re-certification of their court. Each court is now a Class I Court due to their number of case filings. Mr. Schwermer reported that a Class I Court requires that a full time judge is available and that the judge not practice law as a second job. Doug Allstrom, Draper's city attorney, requested that the Council provide a waiver to the full time judge requirement for Class I Courts. Draper currently has a caseload of almost 800 but reported that due to increased assistance through technology, administrative support, and changes to the pleas and abeyance laws, the judge was not needed on a full time basis. Mr. Allstrom reported that Draper should not be penalized by paying for a full time judge if they

have proven efficient enough to meet the city's needs with a part time justice court judge. Mr. Schwermer reported that the class of court is currently determined by case filings and there is not a method in place for judging clerical weighted caseload for the justice courts.

Andy Blackburn, Roy's City Attorney, indicated that Roy has barely exceeded the case filings to make them a Class I Court. Mr. Blackburn requested that the Council consider a waiver on the full time judge requirement, the dedicated courtroom requirement, and the requirement for 3 FTE's for administrative support. Mr. Blackburn indicated that Roy is not anticipated to grow and there is not a need for the city to have a full time judge. Mr. Blackburn also reported that the courtroom is only used twice per week and is shared as the County Council room. Roy currently employs 2.5 FTE's and are not in need if any additional assistance.

Justice Nehring indicated that these issues raised by the re-certification process of justice courts demonstrate the need for the justice court reform legislation. Mr. Schwermer reported that the main concern that Roy and Draper has regarding the Class I status of their court is that their judges will no longer be able to practice law as a second job. Mr. Schwermer emphasized that this issue deals with questions regarding the requirements of the cannons that address that judges should not be practicing law on the side.

Mr. Schwermer reported that the deadline for certification is in February. Chief Justice Durham indicated the Council's options include to deny the requests for both cities or consider their waiver requests and establish a time-line for the waivers. The second option would also allow time for the Council to consider how to apply the code of conduct regarding legal work as a second job to justice court judges. Judge Andrus indicated that the local courts have a responsibility to plan for growth and anticipate the requirement changes that are possible.

Justice Nehring reported flexibility should be exercised with these request for waivers given the pending legislation.

Motion: Judge Lyon moved to grant a two year waiver for the requirement of a full time judge for Roy and Draper City Justice Courts. In the interim the Council will evaluate the cannons requiring a full time judge.

Motion: Judge Stott made an amendment to the motion that the waiver be granted for Roy to allow a shared courtroom, and only be required to have 2.5 FTE's. Judge McCullagh seconded the motion and the amendment to the motion. The motion passed with Judge Atherton opposing.

Judge Chamberlain indicated the Code of Judicial Conduct is being reviewed and the issue regarding secondary employment for justice court judges should be considered in the cannons.

Motion: Judge Stott motioned to approve the remaining courts listed in the re-certification packet with the note that the Council agrees with the waivers from the Standards Committee. Judge McCullagh seconded the motion. The motion passed with Judge Kwan abstaining.

Motion: Judge McCullagh motioned to accept the remaining courts for certification. The motion was seconded and passed unanimously.

6. RULE 4-401, PHOTOGRAPHY IN THE COURTROOM: (Tim Shea)

Mr. Shea provided a copy of the proposed changes to Rule 4-201 and 4-402 to assist in the discussion regarding photography in the courtroom. Mr. Shea indicated that the Policy and Planning Committee is recommending that these rules go out for comment.

The committee recommends modification to Rule-401 to allow that an audio or video signal of a hearing to be broadcast with the permission of the judge presiding at the hearing. This would allow the hearings to be broadcast beyond the overflow room of the pilot program and could include the internet. The committee also recommends that in addition to a prohibition against photographing jurors, photographers are prohibited from photographing documents and exhibits not in the record, unless permitted by the judge, and prohibited from photographing minors.

The final suggestion is to recognize that exclusions from the courtroom does not preclude the judge from ordering other sanctions authorized by law.

Discussion took place about the language outlining photography of a minor. The language was changed to address the concerns of this discussion. The Council discussed the language on the form for a media request for a photograph. The Policy and Planning Committee will take the form back to their committee for further discussion.

Motion: Judge Kwan motioned to publish 4-401 and 4-402 for public comment. Judge Barrett seconded the motion, the motion was passed unanimously.

7. COURTOOLS UPDATE: (Kim Allard)

Ms. Allard reported that the CourTools is a program that measures the courts in the areas of access to fairness, public trust and confidence, court employee satisfaction, time to disposition of cases, age of active pending cases, effective use of jurors, caseload clearance rates, collection of restitution, fines, and fees. Ms. Allard indicated great progress has been made in each of these areas throughout the state since the Council first adopted CourTools in 2005. Ms. Allard demonstrated how to view each report online on the court website. Mr. Shea reviewed the effective use of jurors category and how the data appears online.

Chief Justice Durham thanked Ms. Allard and Mr. Shea and expressed how pleased she is with the openness of the Utah Court System.

Mr. Becker indicated that Utah's CourTools effort is being nominated for a prestigious award from The Kennedy School of Government at Harvard University.

8. JUDICIAL COUNCIL MEETING DATE CHANGES: (Daniel J. Becker)

Mr. Becker reported that the Management Committee agreed that the Budget and Planning meeting will now be on Monday and Tuesday, August 25th and 26th, 2008. An updated calendar was provided to the Council members.

The Management Committee also recommends that the Council begin their meeting in SunValley in July in the afternoon to allow for travel Wednesday morning instead of Tuesday afternoon. Historically, the Council, the Board of Juvenile Judges, and the Board of District Judges each travel to Sun Valley for these meetings. Mr. Sabey reported that it is important to the Bar that as many judges as possible attend Bar activities.

Motion: Judge Lyon motioned to approve the amended schedules, Judge Orme seconded the motion, the motion passed unanimously.

9. JUDICIAL RETENTION AND SELECTION TASK FORCE: (Chief Justice Durham)

Chief Justice Durham indicated that she recently reported to the Board of District Court Judges on the Judicial Selection and Retention Task Force bill.

Chief Justice Durham reported that the Task Force began with the charge to focus on the clarity of the voter information pamphlet. A working group was then assigned to consider these questions. The working group focused on the work of a think tank out of Colorado that recommended an independent commission that evaluates the performance evaluation process for the judiciary. The Task Force then began working closely with the Colorado think tank to develop a model similar to their recommendations. The Task Force originally proposed that the commission would have no judicial representatives, be appointed by the Legislature, and have legislators serving. After Chief Justice Durham, Judge Stott and Judge Chamberlain worked with the Task Force, it was agreed that the judiciary would have four representatives on the commission and, would be housed under the CCJJ, and that no sitting legislators or judges would serve on the Commission. Chief Justice Durham is currently working with the chair of the committee to determine how the judicial appointments are chosen for the commission.

The fiscal note has not yet been completed on this bill. To fund this commission adequately, it is anticipated that a \$500,000 fiscal note would be needed. After the Task Force had finished meeting as a group, the Task Force chairs continued to meet with judicial staff to determine the standard that would be specified in the bill. The Commission will now have the discretion to review the whole record and make a recommendation on retention. The statute would also allow questionnaire data not to be made public if the judge chooses not to face retention elections.

Chief Justice Durham reported that the judiciary raised objections to the Commission making a final recommendation on whether or not a judge should be retained. If the Commission does recommend retention, the judge has an opportunity to meet with the Commission and to respond in the voter information pamphlet. The judicial representatives on the Task Force also opposed that the survey be given to litigants and witnesses. The Task Force voted that the litigants and witnesses would not be surveyed, although modified language was later included in the bill. Chief Justice Durham worked with Senator Buttars to permit the interviewing of litigants and witnesses with the understanding the Commission will have the right to create a rule that would specify when litigants and witnesses would be interviewed, and that such interviews would not be used in the certification process. Chief Justice Durham reported that all other states with Retention and Selection Commissions also survey litigants and witnesses. Chief Justice Durham indicated that a number of legislative representatives that are supportive of judiciary concerns are in favor the creation of an independent commission. Mr. Becker indicated that many of the details the Council and the Boards have had questions about will be addressed by the commission through rule and not be codified.

Chief Justice Durham thanked Mr. Shea, Mr. Schwermer, and Ms. Moore for their exceptional staff work during this process.

The Board of District Court Judges had requested in their meeting on Friday that the

Council defer any action on this bill to allow time for all district judges to respond. Mr. Schwermer indicated that once the bill is numbered, he will email the draft out to all judges, just as he does with every bill.

Mr. Becker reported that Mr. Shea has reviewed the yes/no standard and discovered that those questions that have been converted to yes/no are usually answered very favorably towards the judge.

Judge Payne indicated that the Board of District Court Judges had questions about the wording in the bill. Justice Nehring indicated that if the courts oppose the bill after having been involved on the Task Force, it is likely the entire bill will be changed to one that could more negatively effect the judiciary. Justice Nehring reported this bill should go through the Liaison Committee, just as all other bills, and all judges will be sent the language of the bill when it becomes available.

Judge Payne reported that he had constitutional concerns about the rule making ability the bill gives the newly created commission. Judge Payne suggested that the Council should explain to the judiciary how this bill was arrived at in order for the judges to better understand the history of the discussion. The Council discussed sending a narrative regarding the history of legislation out with the numbered bill when it is available.

10. CERTIFICATION OF JUDGES AND COMMISSIONERS: (Tim Shea)

Motion: A motion was made to move into executive session to discuss certification issues. The motion was seconded and passed unanimously.

Motion: A motion was made to come out of executive session, the motion was seconded and passed unanimously.

11. EXECUTIVE SESSION:

Motion: A motion was made to move into executive session. The motion was seconded and passed unanimously. Justice Nehring and Chief Justice Durham did not participate in the this portion of the executive session.

Motion: A motion was made to come out of executive session. The motion was seconded and passed unanimously.

Motion: Scott Sabey motioned to affirm the decision by Dan Becker regarding the personnel matter discussed in executive session, Judge Andrus seconded the motion, the motion passed with Judge Orme, Judge Lyon, and Judge Kwan opposing the motion.

The meeting was adjourned.