

JUDICIAL COUNCIL MEETING

Minutes

Monday, December 15th, 2008

Judicial Council Room

Matheson Courthouse

Salt Lake City, UT

Hon. Hans Chamberlain, Presiding

ATTENDEES:

Chief Justice Christine M. Durham, Chair (by phone)
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 (by phone)
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
Derek Byrne
Ron Bowmaster
Fred Jayne
Alyn Lunceford

GUESTS:

Hon. Carolyn McHugh
Steve Hunt

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

Judge Chamberlain welcomed everyone to the meeting. He mentioned that Chief Justice Durham would join the meeting for the executive session.

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

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

No report given.

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

Dan reported on the following:

Ms. Joanne Slotnik has been chosen as the Director of the Judicial Performance Evaluation Commission.

Mr. Becker reviewed the House Committee appointments. He also mentioned that Ms. Janice Frost has been appointed as the Second District Juvenile Judge replacing Judge Diane Wilkins, and Mr. Michael DiReda has been appointed as the Second District Court Judge replacing Judge Roger Dutson.

He reported that over the last year, the CourTools website has been viewed over 5,000 times. He also mentioned that turnover is way down. Historically, the rate has run at 11-15%. Currently, the turnover rate is at 7.5%.

There will be further budget discussions during the Executive Session.

4. COMMITTEE REPORTS:

Management Committee Report:

Judge Chamberlain mentioned that some of the items discussed at the Management Committee meeting would be presented to the Council today. He reported that the First District Mental Health Court application for a pilot program was approved by the committee.

Liaison Committee Report:

The committee is scheduled to meet on January 9, 2009.

Policy and Planning Meeting:

Judge Orme reported that at their meeting held earlier this month, the focus was on one agenda item. The item dealt with a proposal for revisions to the standard form used by the nominating commission which would be adapted for use by the Justice Courts. The information was prepared by Mr. Schwermer and Ms. Frischknecht. The committee made a few suggestions. The form was sent to the League of Cities and Towns for immediate input. It will be included on the Council's January agenda for final approval.

Bar Committee Report:

Mr. Sabey mentioned they are getting ready for the upcoming legislative session. Currently, they plan to conduct education programs for incoming members of the Legislature.

5. TRANSCRIPT COMMITTEE UPDATE: (Matty Branch & Tim Shea)

Ms. Branch mentioned the members of the committee. They are: 1) Matty Branch, chair; 2) Kim Allard; 3) Ron Bowmaster; 4) Joe Derring; 5) Debra Moore; 6) Tim Shea; and 7) Paul Vance. She mentioned that it has been helpful to have Mr. Derring and Mr. Vance on the committee as they were clerks of court at one time. The committee was charged with recommending how best to organize and administer transcript production beginning July 1, 2009, when the Utah State Courts will rely primarily on digital recording systems to make the verbatim record.

The Council amended Rule 4-201 on November 24, 2008, to 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.

Ms. Branch reported on the committee recommendations. The following are recommendations: 1) recommend that in capital cases, in addition to the digital recording, the court be permitted to contract with a licensed certified court reporter to report proceedings; 2)

the AOC should issue a non-exclusive RFP and identify successful bidders on state contract; 3) in addition to licensure, the RFP should require that court reporters be CAT (computer-aided transcription) qualified, agree to the statutory transcript rate, and agree to produce transcripts for appeal within thirty days; 4) recommend not distinguishing between the court reporter's notes and the digital recording as the official record, both are court records; 5) recommend that the IT Department survey each courthouse with the TCE to identify the optimal number and configuration of microphones and other equipment; 6) recommend a centralized access to the records which would be housed in the Appellate Court's office; 7) the IT Department will build a web-based transcription ordering system; 8) if a court reporter reported the proceeding, the transcript coordinator will transmit the request to that reporter; 9) amend Rule 3-305 to give the appellate court administrator responsibility for certifying official court transcribers, for maintaining the list of official transcribers, and for sanctioning transcribers for poor performance; 10) propose training for judges and in-court staff about how to create a good audio record; 11) recommend that judges and staff use the same transcript request service as others would use, and 12) requests for digital records for purposes other than preparing an official transcript would be made to the trial court and provided like any other court record.

Concerns were brought up regarding working digital equipment in the courtrooms. The concerns include: 1) how quickly can a glitch in the equipment be taken care of, 2) what is an acceptable downtime; 3) what are the options when the downtime will be extensive, and 4) what about the outlying areas, when the equipment goes down.

It was mentioned that the survey of the courtrooms will help in determining what equipment is necessary as backup in case of a malfunction. Judge Eyre also mentioned the use of a portable system which is used at the State Hospital.

Discussion of ordering transcripts other than through the central ordering process took place. Ms. Branch mentioned that a possible request form could be drafted for use by the trial court level that would in turn be faxed in.

Mr. Shea mentioned that the statutes will need to eliminate references to official court reporters, but those amendments do not have to be made in the 2009 general session. The four primary objects to the amendments are: 1) eliminate regulation of official court reporters, 2) identify the mechanism for maintaining a verbatim record of court proceedings, 3) identify official transcripts, and 4) describe the process for requesting an official transcript.

Motion: Judge Westfall moved to refer the recommendations from the Transcript Committee to Policy and Planning. Mr. Sabey seconded the motion, and it passed unanimously.

6. BUDGET: TRAVEL REGULATION AMENDMENT (Fred Jayne)

Judge Chamberlain distributed input from the Fifth District regarding the proposed change to the travel reimbursement processing regarding meal reimbursement.

Mr. Jayne gave a background and history of the policy. He mentioned that the State Accounting regulation is already set at the 100 miles traveled before the traveler is entitled to per diem reimbursement. However, the Judicial Branch is set at 50 miles traveled. The suggestion to bring this policy in line with the State's policy came about with our efforts to save money in travel by one of the TCEs.

The policy was reviewed in the November TCE meeting. The TCEs were asked to discuss this issue with their presiding judge(s) and bring their responses back to the December TCE Meeting. Changing this policy could see a cost savings of \$12,000-\$15,000 annually.

Discussion took place. It was also noted that this change affects overnight stays as well. The following were questions or concerns with changing the policy: 1) can we suspend the policy entirely during an economic downturn, 2) can we institute a temporary change to the 100 miles and review annually, 3) who will the change impact the most, 4) how will this change affect travelers to the annual conference, 5) can multiple-day trials and judges traveling to those trials be exempt from the policy, and 6) is there a distinction between work travel and travel for training?

Mr. Jayne then reviewed the miscellaneous expense reimbursement regarding personal phone calls while traveling. The change to this policy allows for no personal phone calls to be reimbursed while traveling.

Motion: Judge Andrus moved to send the travel policy changes to Policy and Planning to review and prepare a detailed proposal for review at the January Council meeting. Mr. Sabey seconded the motion, and it passed unanimously.

7. RULE CJA 04-906: (Rick Smith)

This rule was reviewed at the November Council meeting, however, there was confusion about what can and cannot be appealed and why the name of the child is needed in the complaint. Mr. Rick Smith was available to address any questions in regards to Rule CJA 04-906.

Discussion took place. The appropriate changes to Lines 171-174 were noted.

Motion: Judge Westfall moved to approve the rule with the amendments discussed. Judge Andrus seconded the motion, and it passed unanimously.

8. CERTIFICATION OF COURT COMMISSIONERS: (Tim Shea)

Mr. Shea reported that the following three commissioners were up for certification: 1) Commissioner Michelle R. Blomquist, 2) Commissioner David S. Dillon, and 3) Commissioner Thomas R. Patton. A brief discussion took place.

Motion: Judge Maughan moved to certify the commissioners. The motion was seconded, and it passed unanimously.

9. EXECUTIVE SESSION:

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

The Council went out of the Executive Session to get the Technology Standing Committee update.

Motion: Mr. Sabey moved to institute a policy to leave open all vacancies in judgeships contingent on the agreement of the Governor. This would apply to the current Court of Appeals vacancy. Judge McCullagh seconded the motion, and it passed unanimously.

Mr. Becker mentioned that he would visit all presiding judges and boards to give a budget briefing.

10. TECHNOLOGY STANDING COMMITTEE PROJECT UPDATE: (Judge Carolyn McHugh & Ron Bowmaster)

Judge McHugh reviewed the 2008 IT Department accomplishments to include the following: 1) the 2008 year-to-date electronic filings include 69,481 new filings; 2) solicited vendors to qualify as Utah filing service providers; 3) e-filing implementation schedule; 4) electronic payment system completed; 5) electronic affidavit and warrant system developed; 6) redundant data center, near real-time data replication at two sites for CORIS, CARE, and other critical court systems; 7) video conference support; 8) demonstrations of web-based video conferencing; and 9) Justice Court data conversion.

Web-based video conferencing and video conferencing capabilities will be tested and compared. A recommendation to the Council will be made once both capabilities have been tested and compared. Cameras and microphones will be distributed to the TCEs in each of the districts for use with video conferencing. Equipment will be permanently installed in the Council Room for video conferencing.

The Justice Court data conversions are continuing and are on schedule for the July 1, 2011 deadline.

Judge McHugh mentioned that the use of e-jury functions in other states was highlighted at the E-Courts Conference last week in Las Vegas. She mentioned that this would be an area of interest for the committee to look into.

Motion: Mr. Sabey moved to go back into an executive session. Justice Nehring seconded the motion, and it passed unanimously.

11. ADJOURN

Motion: Mr. Sabey moved to adjourn the meeting. The motion was seconded, and it passed unanimously.