

JUDICIAL COUNCIL MEETING

Minutes

Monday, December 17, 2012

Matheson Courthouse

Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
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.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Lisa-Michele Church
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Brent Johnson
Kim Allard
Nini Rich
Nancy Volmer

GUESTS:

Aaron Falk, SL Tribune
Marissa Lang, SL Tribune
Judge Scott Hadley
Judge Brent West
Judge Royal Hansen

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Justice Parrish moved to approve the minutes from the November 19, 2012 Judicial Council meeting. Judge Harmond seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following:
He had nothing new to report.

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

Mr. Becker reported on the following items:
He recognized Ms. Sandy Iwasaki, administrative assistant in the AOC, who will be retiring this week after 39.5 years of service with the courts. Her background was provided. Mr. Becker and Mr. Schwermer expressed their appreciation for Ms. Iwasaki's years of service.

Mr. Becker and Mr. Schwermer met with Senator Hillyard to discuss the courts' budget requests and other issues anticipated for the upcoming legislative session.

The Governor released his budget recommendations last week. The following requests from the courts' were included in his recommendations: 1) the Eighth District judgeship, 2) the Eighth Juvenile judgeship, and 3) the Ogden Juvenile court facility.

Mr. Becker reviewed a publication *Funding Justice: Strategies and Messages for Restoring Court Funding* prepared by the National Center for State Courts (NCSC) and Justice at Stake. Ms. Gonzales will distribute copies to members of the Council.

Judge Ric Oddone has announced his upcoming retirement, effective April 12, 2013.

Mr. Rick Smith's Senate Confirmation for his appointment as a Fourth Juvenile Court judge is scheduled for Wednesday, December 19. Upon his confirmation, Mr. Becker will work with the Guardian ad Litem Oversight Committee to fill the Director of Guardian ad Litem vacancy.

Mr. Brent Johnson, General Counsel for the courts, received the Utah State Bar's Heart and Hands Award.

The Executive Appropriations Committee has received the state's revenue report.

The Council photo has been distributed.

Mr. Becker commented on a new display of courthouse photos from around the state which is located outside the Council Room.

An executive session will be needed later on the agenda, followed by a planning workshop.

4. 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 December.

Policy and Planning Meeting:

Judge Orme reported on the following:

He noted that the December Policy and Planning Committee meeting was held on November 30. The Policy and Planning Committee meeting minutes accurately reflect the items discussed.

Judge Orme reminded the Council of their request of Policy and Planning, at their October planning session, to consider adopting rules on the following two issues: 1) removal of a Judicial Council member as a result of a criminal or ethical complaint, this will be handled as an addition to the Council norms; and 2) minimum time on the bench for service on Judicial Council, Boards and as a presiding judge, with a rule being prepared for input from the Boards and recommendations at the January meeting.

Bar Commission Report:

Mr. Lund reported on the following:

The Bar is addressing changes to advertising rules for members of the Bar.

Currently, the Bar's focus is on the following: 1) the Pro Bono initiative, and 2) the Modest Means efforts.

5. ETHICS ADVISORY – INFORMAL OPINION 12-01: (Brent Johnson)

Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson provided background information on what took place in the past relative to social media and judges. He noted that the Social Interaction Policy had been used in the past. The informal opinion was presented to the Management Committee at their October meeting. The Management Committee decided to include the matter on the Council agenda for further discussion on whether the informal opinion should be considered for conversion to a formal opinion.

Mr. Johnson recommended the opinion be adopted as a formal opinion. Discussion took place.

It was suggested that judges gain experience and insight to social media interaction at future seminars and conference sessions.

The Council was in agreement to refer the matter to Policy and Planning for further review and determine the best plan of action, including the possibility of converting the informal opinion to a formal opinion.

6. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Scott Hadley and Debra Moore)

Chief Justice Durrant welcomed Judge Hadley to the meeting.

Judge Hadley provided an update on the Board of District Court Judges activities to the Council. He highlighted the following in his update: 1) working with the Council's JPEC work group on various issues, 2) mental health court certification, and 3) continue monitoring the discovery rules.

He reviewed the 2012-2013 Board goals to include: 1) mandatory e-filing, 2) support an increase in clerical compensation, 3) study judicial compensation, 4) judicial outreach, and 5) study methods to help judges manage cases involving self-represented parties.

Judge Hadley was thanked for his update.

7. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Nini Rich)

Chief Justice Durrant welcomed Judge Hansen to the meeting.

Judge Hansen provided an update on the activities of the ADR Committee. He highlighted the following in his update: 1) Rule 16 – Pretrial conferences, of the Rules of Civil Procedures was amended to require mediation or other ADR process be completed, 2) availability of an annual 40-hour Basic Mediation Training class for court personnel, 3) over 3,000 cases were mediated through nine court ADR programs, 4) an ADR staff member was the recipient of the Peacekeeper Award, and 5) gratitude was expressed for Ms. Sandy Iwasaki's years of support to the ADR Committee.

Ms. Rich highlighted the following aspects of the ADR Program: 1) available ADR programs for each court level, 2) available ADR resources, 3) newly created space at the Matheson Courthouse to allow for court mediations, 4) similar space in at the Ogden Juvenile

court facility is being developed for future use for court mediations, 5) availability of an ADR DVD to prepare parents for mediation, 6) training Self-Help Center personnel on the ADR mediation program, and 7) tracking the percentage of questions received by Self-Help Center personnel that were relative to mediation.

The question was asked if there were similar provisions in justice court. It was noted that the use of ADR in the justice court is not mandated.

Judge Hansen and Ms. Rich were thanked for their update.

8. TIME TO DISPOSITION: (Judge Brent West and Kim Allard)

Chief Justice Durrant welcomed Judge West and Ms. Allard to the meeting.

Ms. Allard provided background information on what has transpired in development of Utah-specific time standards. It was noted that in 2004 CourTools measures were adopted, and they were placed on the court's web page.

The following areas were researched in development of Utah-specific time standards: 1) review of average days pending data, 2) review of time to disposition information available on CourTools, 3) review of existing standards, 4) review of COSCA standards, 5) review of Bar standards, and 6) review of the model standards adopted by the Conference of Chief Justices and the Conference of State Court Administrators.

Upon completion of the research phase, a prototype was drafted. The following steps were taken to get feedback on the draft: 1) seek input from the three Boards of judges, 2) seek input from the presiding judges, and 3) seek input from various judicial teams.

Ms. Allard reviewed the proposed time to disposition guidelines for justice court and juvenile court, and Judge West reviewed the proposed time to disposition guidelines for district court. Judge West mentioned that 39 states have adopted their own time standards.

Discussion took place.

Concern was expressed with the proposed standard for small claims cases in justice court.

Motion: Judge Harmond moved to accept the report on the proposed time to disposition guidelines in Utah Courts and adopt the recommendations. Judge Hornak seconded the motion.

Substitute Motion: Judge McCullagh moved to accept the time standards with an amendment to the small claims time standard from a 6-month time period to a 12-month time period. Judge Orme seconded the motion. The motion was withdrawn.

Motion: Judge Maughan moved to defer action to the January meeting to allow Ms. Allard to provide a purpose statement which will accompany the time standards. Mr. Lund seconded the motion, and it passed unanimously.

9. JUVENILE COURT E-FILINGS IMPACT REPORT: (Lisa-Michele Church and Ray Wahl)

A copy of the draft two-year plan and a report entitled *Realizing the Opportunities of the Electronic Record in Utah's Juvenile Court* were distributed to members of the Council. The Board of Juvenile Court Judges adopted the two-year plan in July 2012. The following was highlighted from the two-year plan: 1) implementation sequence, 2) required programming, 3) needs other than programming, and 4) programming enhancements relative to efficient operation in an e-environment.

The use of an electronic record can aid in increasing timeliness of decision-making in the life of a child, promoting access and transparency, and better serving children, families and the community.

The following areas of the report were highlighted: 1) clerical transition to the electronic record, 2) probation transition to the electronic record, 3) implementation and training, and 4) opportunities and savings.

Mr. Wahl spoke to the issue of potential savings. He highlighted the following relative to the report: 1) he expressed his appreciation to the committee for their preparation of the detailed report, 2) provided a history of the juvenile court management information system, 2) outlined the juvenile court business model, and 3) explained the difference of juvenile court in rural areas.

Ms. Church summarized the findings of the report.

Mr. Becker provided background information on the court's clerical staffing, including the number of positions reduced by budget reductions and the drop in referrals in recent years.

Ms. Church and Mr. Wahl were thanked for their report.

10. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Judge Clint Judkins and Judge Rand Beacham have applied to be appointed as active senior judges. Mr. Shea reported that both judges meet the minimum performance standards.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify Judge Judkins and Judge Beacham for appointment as active senior judges. Judge Sandberg seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION

An executive session was entered into at this time.

12. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer provided a legislative update to the Council. He noted that an Interim Committee meeting was not held in December, but the Executive Appropriations Committee met.

Legislative meetings have been scheduled in each judicial district. Council members were encouraged to attend their local legislative meeting.

Mr. Schwermer highlighted the following in his update: 1) reviewed the Senate joint appropriations subcommittees and standing committee assignments, 2) reviewed the House of Representatives executive appropriations committee, subcommittee and standing committee assignments, and 3) reviewed proposed bills for the upcoming legislative session.

13. ADJOURN

The meeting was adjourned.