JUDICIAL COUNCIL MEETING

Minutes
Monday, June 22, 2015
Judicial Council Room
Matheson Courthouse
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Ann Boyden
Hon. Glen Dawson
Hon. Paul Farr
Hon. David Marx
Hon. David Mortensen
Hon. Randall Skanchy
Hon. Kate Toomey
John Lund, esq.

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Jody Gonzales
Dawn Marie Rubio
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Alyn Lunceford
Nancy Sylvester
Kim Allard
Nancy Volmer

GUESTS:
Judge Doug Thomas
Judge Stephen Roth
Judge Fred Voros
Judge Mary Noonan
Judge Brendan McCullagh
Ron Bowmaster

EXCUSED:
Hon. Thomas Higbee
Hon. Reed Parkin

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge Skanchy moved to approve the minutes from the May 29, 2015 Judicial Council meeting. Justice Lee seconded the motion, and it passed unanimously.

2. **OATH OF OFFICE: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant administered the Oath of Office to Judge Paul Farr.

3. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant reported on the following items:
He participated on a panel at a PEW Congressional Briefing in Washington, DC relative to justice reinvestment.

4. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**
Mr. Becker reported on the following items:

Letter from National Center for State Courts (NCSC). Mr. Becker highlighted comments outlined in a letter from Ms. Mary McQueen, president of the National Center for State Courts (NCSC), to Chief Justice Durrant regarding the impact of Rule 26 revisions and evaluations completed by the National Center for State Courts. She expressed her gratitude to the Utah State Courts for inviting the National Center for State Courts (NCSC) to evaluate the impact of the Rule 26 revisions on discovery practices in civil cases, and complimented the Utah Courts on the success on this initiative.

Legislative Audits. AOC staff and Legislative Audit staff met in an entrance conference on June 8 regarding two audits the legislative audit staff would like to conduct. The audits relate to the following matters: 1) the warrant process in the Third District, and 2) the use of cash bonds by judges in several districts as an alternative to the use of the bail bonds process.

Judicial Appointment. Ms. Elizabeth Knight, GAL Director, has been appointed by the Governor to fill the Third District Juvenile Court judicial vacancy, pending confirmation. The GAL Oversight Committee and Mr. Becker will work together to fill her vacancy, once Ms. Knight has been confirmed.

5. 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 June.

Policy and Planning Meeting:

Judge Dawson reported that the juvenile restraint rule will be discussed later in the meeting.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Bar Commission met on June 12; 2) Judge Claudia Laycock has been selected as Judge of the Year; 3) Mr. Ron Yengich has been selected as Lawyer of the Year; 4) the Bar Commission is investigating the possibility of forming an Access to Justice Commission to coordinate all access to justice initiative efforts; and 5) the US Supreme Court's decision, on behalf of the Dental Board of North Carolina, relative to people, other than dentists, providing teeth whitening services.

6. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW UPDATE: (Judge Doug Thomas and Ray Wahl)

Chief Justice Durrant welcomed Judge Thomas and Mr. Wahl to the meeting.

Judge Thomas expressed his appreciation to Mr. Wahl for all he does as the staff representative of the Standing Committee on Children and Family Law.

Judge Thomas and Mr Wahl highlighted the following in their update to the Council on behalf of the Standing Committee on Children and Family Law: 1) committee membership, 2) the Council's approval to reauthorize the committee in May 2011, 3) Divorce Procedures Subcommittee tasks, 4) Custody Evaluation Subcommittee tasks, and 5) the use of special masters and potential changes to Rule 53.

The following rules are being addressed by the Divorce Procedures Subcommittee: 1) Rule 101, 2) Rule 109, 3) Rule 108, and 4) discovery rules and how they affect domestic cases.

The Custody Evaluations Subcommittee is addressing Rule 4-903 – Uniform custody evaluations, and the subcommittee will study a shortened version of the process and parent time evaluation.

Judge Thomas provided responses to questions asked of him.

Chief Justice Durrant thanked Judge Thomas and Mr. Wahl for their update.

7. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer highlighted the following from the May and June Legislative Interim meetings: 1) the Judiciary committee discussed topics for the coming year, 2) implementation and funding of the justice reinvestment initiative, and 3) discussion regarding the use of cash bail vs. bail bonds.

Discussion took place relative to the use of cash bail vs. bail bonds.

8. SITING OF THE PROVO COURTHOUSE APPROVAL: (Alyn Lunceford)

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Mr. Lunceford reported on Provo City's proposal to trade three-fourths of the block currently owned by the state for construction of the Fourth District Courthouse in Provo for three-fourths of the block directly west. He highlighted the benefits of the property swap to include: 1) the city will construct a parking structure that will accommodate parking for the Utah Applied Technology College, Utah County Convention Center, and a new hotel; 2) the city parking structure will also provide public parking; therefore, parking needs for our building will be reduced; and 3) the property swap will allow the new courthouse to be constructed so the judicial chambers will overlook a residential property rather than a high-rise commercial development.

Mr. Lunceford is requesting approval from the Judicial Council to move forward with the following: 1) finalize the details of the proposed property swap with Provo City, 2) seek legislative approval, and 2) seek approval from the State Building Board.

Discussion took place. Mr. Lunceford responded to questions asked relative to the property location and the proposed swap.

Mr. Lunceford noted that selection of the design team for the Fourth District Courthouse project is forthcoming.

Motion: Mr. Lund moved to approve Provo City's proposal to trade three-fourths of the block currently owned by the state for construction of the Fourth District Courthouse in Provo for three-fourths of the block directly west and allow Mr. Lunceford to finalize the details of the property swap with Provo City and seek the necessary approval from the Legislature and the State Building Board. Judge Toomey seconded the motion, and it passed unanimously.

9. JUVENILE RESTRAINT RULE: (Alison Adams-Perlac)

Chief Justice Durrant welcomed Ms. Adams-Perlac to the meeting.

Ms. Adams-Perlac mentioned that an excerpt from Senate Bill 167 – Juvenile Offender Amendments relative to 78A-6-122 – Restraint of juveniles and a copy of the proposed rule – Rule 4-905 – Restraint of minors in juvenile court was distributed to members of the Council in a separate email prior to the meeting.

She mentioned that a subcommittee was created by the Board of Juvenile Court Judges to develop a rule that would address the circumstances by which a juvenile may be restrained while

appearing in court. Two proposals were prepared by the subcommittee, and the Board advanced a proposed rule change for consideration by the Policy and Planning Committee.

Ms. Adams-Perlac reviewed the content of the proposed rule with members of the Council.

Judge Mary Noonan provided comments, relative to the rule, on behalf of the Board of Juvenile Court Judges. Judge Noonan provided responses to questions asked of her relative to the rule.

Discussion took place. Minor changes in language of the rule were suggested.

Motion: Judge Hornak moved to adopt Rule 4-905 – Restraint of minors in juvenile court, with the suggested language changes, and send it out for public comment. Justice Lee seconded the motion, and it passed unanimously.

10. INDIGENT REPRESENTATION COMMITTEE INTERIM REPORT: (Judge Stephen Roth and Judge Fred Voros)

Chief Justice Durrant welcomed Judge Roth and Judge Voros to the meeting.

Judges Roth and Voros provided an update to Council highlighting the following: 1) Appellate Indigent Defense Committee report, and 2) Trial Court Indigent Defense Committee report.

Judge Voros reviewed the status of the Appellate Indigent Defense Representation rule as proposed. The Appellate Indigent Defense Committee recommended that a Standing Committee on Appellate Representation be established under the Supreme Court Rules of Professional Practice.

Discussion took place.

Motion: Mr. Lund moved to endorse the concept of establishing the Standing Committee on Appellate Representation and referring it to the Supreme Court to determine the best placement of the Committee. Judge Dawson seconded the motion, and it passed unanimously.

Judge Roth reviewed the status of the Trial Court Indigent Defense Representation Committee work. He highlighted the following in his review: 1) status of the study conducted by the Sixth Amendment Center, 2) the study included a sampling of 10 Utah counties, 3) a draft report of the findings of the study was sent to the counties involved to review for accuracy, 4) the draft report was reviewed by the committee in June, 5) the final report and an executive summary are being prepared, and 6) a final report and the committee's recommendations will be presented to the Council at a later date.

Judges Roth and Voros were thanked for their update to the Council.

11. ONLINE DISPUTE RESOLUTION PROPOSAL: (Daniel J. Becker)

Mr. Becker mentioned that a summary of the Online Dispute Resolution proposal can be found in the Council materials. He provided background information on the proposal. He referred to a report prepared for the courts in Great Britain entitled *Online Dispute Resolution of Low Value Civil Claims*.

He highlighted the following relative to the proposal: 1) workgroup membership; 2) court settings using online dispute resolution (ODR) including the United Kingdom, British Columbia, and the Netherlands; 3) court applications in the U.S. have been limited to a few small pilot projects; 4) possible applications in a state court setting discussed by the workgroup included use of online dispute resolution in small claims cases, small amount civil actions, landlord tenant cases, and certain elements of domestic relations cases; and 4) a demonstration of

available technology by a principal commercial vendor was provided to the workgroup.

Mr. Becker reviewed the Online Dispute Resolution proposal with the Management Committee at their June meeting, and they deferred the proposal to the June Council meeting for further input and action. Mr. Becker requested feedback from members of the Council as to whether or not the workgroup should continue to research the matter further and provide a proposal to the Council at a later date.

Discussion took place.

Motion: Judge Skanchy moved to approve further assessment be done by the Online Dispute Resolution Workgroup and provide a report of their findings to the Council at a later date. Judge Toomey seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Judge Lesley G. Scott and Judge John L. Sandberg have applied to be certified as active senior justice court judges. Both comply with the minimum performance standards.

Motion: Judge Mortensen moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify the following as active senior justice court judges: 1) Judge Lesley G. Scott, and 2) Judge John L. Sandberg. Justice Lee seconded the motion, and it passed unanimously.

13. DAVIS COUNTY/FARMINGTON INTERLOCAL AGREEMENT: (Rick Schwermer)

Mr. Schwermer mentioned that no action is necessary today.

He provided background information, for the new Council members, relative to Davis County's previous requests to waive the two-year waiting period to dissolve their justice court. He noted that the Council, at their March 13 meeting, denied Davis County's request to waive the two-year waiting period to dissolve their justice court.

Several meetings have been held with Davis County and with affected municipalities.

Farmington is interested in creating a justice court and entering into an interlocal agreement with Davis County and the neighboring municipalities.

Details of the proposal from Farmington are forthcoming.

Motion: Judge Mortensen moved to enter into an executive session to discuss a personnel matter. Judge Toomey seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

An executive session was held at this time.

15. ADJOURN

The meeting was adjourned.