

JUDICIAL COUNCIL MEETING

Minutes

Monday, May 20, 2013

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
Diane Abegglen
Jody Gonzales
Tim Shea
Nancy Volmer
Katie Gregory
Rob Parkes
Brent Johnson
Kim Allard
Liz Knight
Mark Bedel

GUESTS:

Joanne Slotnik, JPEC
Shannon Sebahar, JPEC
Colin Winchester, JCC
Judge David Connors
Judge Mark May
W. Thiel, citizen

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Parkin moved to approve the minutes from the April 22, 2013 Judicial Council meeting. The motion was seconded, and it passed unanimously.

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

Chief Justice Durrant reported on the following:

He spoke at the District Court Conference held at the first of May, and he attended the Appellate Court Conference held May 15-17.

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

Mr. Becker reported on the following items:

GAL Director. Mr. Becker introduced Ms. Liz Knight, GAL Director, to the Council. He provided background information on her experience.

Judicial Retirements. Judge Larry Steele has announced his upcoming retirement, effective December 1. Judge Paul Iwasaki has announced his upcoming retirement, effective September 16.

JPEC. Mr. Myron March resigned from his position on the Judicial Performance Evaluation Commission, effective immediately. An appointment to fill the vacancy will be made by the Supreme Court.

Juvenile Court Administrator. The job announcement to fill this vacancy has been reposted for an additional 30 days.

Case Filings/Weighted Caseload. The case filing reports as of April 30, 2013 reflect a 1% decrease in district court case filings and a 10% decrease in juvenile court referrals. The weighted caseload data reflects that collectively statewide, the number of judges needed closely matches the number of actual judges in both district and juvenile court. For comparison, in 2009 there were five of the eight districts over 100% for weighted caseload in district court and six of the eight districts were over 100% for weighted caseload in juvenile court.

Court Presentations. Mr. Becker recently participated in several court conferences by providing presentations for Washington State and South Dakota.

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 May.

Policy and Planning Meeting:

Judge Orme reported on the following:

A meeting was held in May. The majority of the meeting consisted of time spent discussing and considering several rules.

Judge Orme noted that further amendments to Rule 4-202.02 – Records Classification has been drafted to include a new classification of “safeguarded” which deals with identifying information of victims and witness of a crime. An additional handout was distributed to Council members noting the additional recommended amendment.

Motion: Judge Orme moved to further amend Rule 4-202.02 to include the new classification of “safeguarded” and publish the rule for comment. Judge Dawson seconded the motion, and it passed unanimously.

Bar Commission Report:

Mr. Lund reported on the following:

An additional \$20 per lawyer assessment will be requested along with payment of the Utah State Bar dues to fund the Client Security Fund. This amount is the same that has been requested for the past few years.

Continued funding of the employee assistance program through Blomquist Hale is currently being evaluated by the Bar Commission. Discussion took place.

Mr. Curtis Jensen, incoming Bar President, and Ms. Lori Nelson, Bar President, recently met with a congressional delegation on ABA Day in Washington DC.

The Modest Means Program currently has 110 lawyers available to take cases in the program, and there have been 65 referrals to date. Providing more awareness of the program to the courts and the judges is the next activity the Bar will place its focus.

5. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik and Shannon Sebehar)

Chief Justice Durrant welcomed Ms. Slotnik and Ms. Sebehar to the meeting.

Ms. Slotnik introduced Ms. Sebehar, House of Representatives appointment.

Ms. Sebehar provided her background.

Ms. Slotnik mentioned the resignation of Mr. Myron March, Commission member. An appointment to fill the vacancy is forthcoming. Ms. Kelsie Strong, has been appointed by the Senate to fill the vacancy left with the resignation of Mr. Chris Buttars in December 2011.

Ms. Slotnik and Ms. Sebehar highlighted the following in their update: 1) appellate opinion evaluation, 2) juror survey questions, 3) audit of the survey results, 4) juvenile court staff survey, 5) appellate court survey, 6) attorney surveys, and 7) important dates regarding judges up for retention in 2014 and judges up for retention in 2016.

It was noted that the appellate opinion evaluation would be considered further in a future pilot. Clarification was requested on the continued study of the appellate opinion evaluation.

Discussion took place relative to the accuracy of the survey results. Ms. Sebehar provided details on what the Commission has planned with regard to auditing of the survey results.

Discussion also took place regarding whether a survey should be counted when a respondent does not complete all questions.

Ms. Slotnik and Ms Sebehar were thanked for their update.

6. JUDICIAL CONDUCT COMMISSION REPORT: (Colin Winchester)

Chief Justice Durrant welcomed Mr. Winchester to the meeting.

Mr. Winchester highlighted the following in his report: 1) Terry Welch appointed as a new member on the Commission, 2) disposition times for dismissals with warning, 3) disposition times for public sanction cases, 4) the Commission's goal to complete 90% of preliminary investigations in 90 days, 5) an average of nine months to process a complaint from receipt to the Supreme Court, and 6) reviewed the process undertaken by the Commission when a complaint is received. Discussion took place regarding the length of time it takes the Commission to handle all elements of a complaint.

Discussion took place.

Mr. Winchester was thanked for his update.

7. **RULES FOR CONSIDERATION: (Tim Shea)**

Chief Justice Durrant welcomed Mr. Shea to the meeting.

Rules for Expedited Effective Date. The following rules were recommended to be published for comment.

Rule CJA 02-0103 – Open and closed meetings. Technical changes were made to meet the requirements of SB 77 – Availability of Government Information, with an effective date of May 14.

Rule CJA 02-0104 – Recording meetings. Amendments were made to meet the requirements of additional public records to be published on the Utah Public Notice Website with the passage of SB 77 – Availability of Government Information, with an effective date of May 14.

Rule CJA 04-0906 – Guardian ad litem program. The rule will implement the requirements of Section 78A-2-228 for private guardian ad litem attorneys, effective July 1.

Rule CJA 06-0401 – Domestic relations commissioners. The rule includes dating violence protective orders, authorized by HB 50, with authority of court commissioners, effective May 14.

Motion: Judge Steele moved to approve the rules being recommended for expedited effective date and to be published for comment. Judge Sandberg seconded the motion, and it passed unanimously.

Rules for Final Action. The following rules were recommended for approval:

Rule CJA 02-0206 – Effective date of rules. Rules effective dates designated as May 1 and November 1 for Judicial Council rules.

Rule CJA 04-0610 – Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments. A technical amendment was made.

Rule CJA 07-0304 – Probation supervision. This rule amended probation supervisory techniques and correction plans.

The effective date for the rules for final action is November 1 if approved.

Motion: Judge Steele moved to approve the rules being recommended for final action as presented. Justice Parrish seconded the motion, and it passed unanimously.

Rule 1-206 – Criteria for leadership positions. The intent of this rule is to describe the qualities and interests expected of judges selected to serve on the Judicial Council, on the boards of judges, and as a presiding judge.

Mr. Shea mentioned that Policy and Planning was unable to reach a recommendation regarding the rule, therefore, it was presented to the Council for their consideration. He provided background information on creation of the rule. He noted that the Board of District Court Judges opposed the rule, and the Board of Juvenile Court Judges and the Board of Justice Court Judges support the rule. Discussion took place. Some members of the Council were of the opinion the rule was unnecessary and suggested that the matter should be handled by the individual boards and respective court districts.

Motion: Judge McCullagh moved to send Rule 1-206 out for comment. The motion was seconded. Judge Harmond, Judge Atherton, Judge Dawson, Judge Mortensen, Judge Sandberg, Judge Maughan, and Mr. John Lund voted no, and the motion failed.

Clarification on Rule 4-906 was provided. Discussion took place.

8. COMMISSIONER COMPENSATION: (Rob Parkes)

Mr Parkes reviewed the proposed commissioner compensation to include the one percent cost-of-living adjustment. A comparison of the commissioner's annual salary to the district judge's salary from 2005 to the present time was provided. It was noted that funding is available for the cost-of-living adjustment.

Motion: Judge Hornak moved to approve the cost-of-living adjustment for court commissioners. Judge Mortensen seconded the motion, and it passed unanimously.

9. ETHICS ADVISORY OPINION FOLLOW-UP: (Brent Johnson and Judge David Connors)

Chief Justice Durrant welcomed Mr. Johnson and Judge Connors to the meeting.

Mr. Johnson reminded the Council that he presented information at their February 2013 meeting on Informal Opinion 12-02 as it relates to the use of a preapproved roster of service providers created by the courts and making referrals. At that time, a motion was made to request the informal opinion be reconsidered by the Council at their May meeting.

The Board of District Court Judges expressed their concerns regarding Informal Opinion 12-02, in writing. The Board asked for clarification as to whether or not "service provider" includes private probation supervisors who do not provide treatment, but only supervise probation. They also were interested in an appropriately screened rotation process among private probation supervisors. It was noted that the Board of Justice Court Judges shared some of the same concerns expressed by the Board of District Court Judges. Discussion took place.

Motion: Judge Orme moved to designate a working group to consist of Judge Dawson, Judge McCullagh and Judge Parkin to work with Mr. Johnson to review Informal Opinion 12-02 and determine if revisions are necessary and whether the opinion should remain as an informal opinion or amended as a formal opinion. Judge Dawson seconded the motion, and it passed unanimously.

10. UPDATE AND RECOMMENDATIONS OF THE UNIFORM FINE AND BAIL COMMITTEE: (Judge David Connors)

Chief Justice Durrant welcomed Judge Connors to the meeting.

Judge Connors provided an update to the Council on the work of the Uniform Fine and Bail Committee, and he noted that revisions, based on new legislation, were made to the Uniform Fine and Bail Schedule. The recommendations, on behalf of the Committee, are outlined in the information provided for the Council.

He mentioned an item for discussion at the 2014 meeting for the Committee to revisit the basis for calculating the fine amounts and consider making them all "round" numbers and consistent.

Motion: Judge McCullagh moved to approve the changes and recommendations as outlined by the Uniform Fine and Bail Committee. Justice Parrish seconded the motion, and it passed unanimously.

11. INITIATIVE ON UTAH CHILDREN IN FOSTER CARE: (Katie Gregory)

Chief Justice Durrant welcomed Ms. Gregory to the meeting.

Background information on the Initiative on Utah Children in Foster Care (IOU) was given. IOU, spearheaded by Justice Christine Durham (then Chief Justice of the Utah Supreme Court) and in cooperation with Utah Governor Olene Walker, was formed in 2005 as a collaborative effort between child protection agencies, business leaders, religious groups and public officials to improve the lives of youth in foster care.

Ms. Gregory noted that Justice Durham was unable to attend today. She mentioned that at a recent meeting, focus was placed on collective accomplishments of the Initiative. With the help of Ms. Misty Butler and Mr. Ryan Carrier, a document (distributed to the Council) was prepared providing highlights and accomplishments of the Initiative. Ms. Gregory provided an update to the Council on the highlights and accomplishments of the Initiative on Utah Children in Foster Care to include: 1) IOU committee members and affiliated subcommittees, and 2) highlighted the work of the subcommittees

Chief Justice Durrant expressed his gratitude for the accomplishments of the Initiative on Utah Children in Foster Care.

12. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Mark May and Katie Gregory)

Chief Justice Durrant welcomed Judge May and Ms. Gregory to the meeting.

Judge May provided an update to the Council on the activities of the Board of Juvenile Court Judges. He highlighted the Board's goals to include: 1) design "best practices" guide regarding juvenile court practices on immigration, 2) implement first year of the Juvenile Court Two-Year Electronic Conversion Plan, 3) improve permanency for older youth, and 4) give input to Juvenile Sentencing Guidelines Revision Committee.

A copy of the juvenile court electronics records update was distributed and briefly reviewed.

Judge May and Ms. Gregory was thanked for the update.

13. ONLINE COURT ASSISTANCE PROGRAM (OCAP) Enhancements: (Kim Allard)

Chief Justice Durrant welcomed Ms. Allard to the meeting.

Ms. Allard provided background information on the Online Court Assistance Program (OCAP). The program was established in statute in 2000 to provide the public with information about civil procedures and to assist the public in preparing and filing civil pleadings and other papers in the following court proceedings: 1) uncontested divorces, 2) enforcement of orders in the divorce decree, 3) landlord and tenant actions, and 4) other types of proceedings approved by the Online Court Assistance Program Policy Board.

Ms. Allard highlighted the following in her update: 1) the OCAP policy board membership, 2) better user features, 3) user account, 4) access to Self-Help Center, 5) interview improvements, 6) improved document navigation, 7) selected divorce program changes, and 8) electronic filing.

It was noted that a small claims version will be developed for use by justice courts and that electronic filing directly from OCAP is scheduled for this fall.

**14. UINTAH/HUNTSVILLE JUSTICE COURT INTERLOCAL AGREEMENT:
(Daniel J. Becker)**

Mr. Becker reminded the Council of Huntsville Town's earlier request for approval to enter into an inter-local agreement with Uintah Justice Court. Huntsville Town currently receives services from the Roy City Court. Huntsville Town has renewed that request and is prepared to move forward.

At the present time, all parties are in agreement to allow Huntsville Town to enter into an inter-local agreement with the Uintah Justice Court. The Management Committee recommended approval of a September 1 effective date.

Motion: Judge McCullagh moved to approve the inter-local agreement between Huntsville Town and the Uintah Justice Court, effective September 1, 2013. Judge Hornak seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss a matter of professional competence. Judge McCullagh seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION

An executive session was held.

Motion: Judge Harmond moved to request Mr. Colin Winchester, Executive Director of the Judicial Conduct Commission, act as special counsel by assisting in the investigation and prosecution, if necessary, in the matter before the Court Commissioner Conduct Committee. Judge Steele seconded the motion, and it passed unanimously.

16. ADJOURN

The meeting was adjourned.