JUDICIAL COUNCIL MEETING

Minutes
Monday, June 24, 2013
Garfield County Courthouse
Panguitch, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Michele Christiansen for Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq. (by phone)

EXCUSED:
Justice Jill Parrish

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea

GUESTS:
Judge Thomas Higbee, 5th Dist
Judge Wallace Lee, 6th Dist
Wendell Roberts, 6th Dist TCE
Greg Hardman, Kanab City Attny
Duane Huffman, Kanab City Mgr
Nina Laycook, Mayor – Kanab City
Judge Gary Johnson, Kanab Justice
Robert VanDyke, Kane County Attn

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

Motion: Judge Maughan moved to approve the minutes from the May 20, 2013 Judicial Council meeting. Judge Sandberg seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)
Nothing to report at this time.

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

Judicial Retirements. Judge Bill Thorne has announced his retirement, effective September 15. Judge Kay Lindsay has announced her retirement, effective December 1.

Justice Court Dissolutions. Mr. Becker reminded the Council of Salt Lake and Davis County's letters sent last year with their intent to dissolve their respective justice courts. With no action taken during the 2013 Legislative Session, Mr. Becker sent letters to both justice courts asking for the status of their intent to dissolve their justice courts. Davis County responded

noting that they do not intend to dissolve their justice court at this time, and they will reinitiate the process if they determine they wish to proceed at a later date. Mr. Schwermer has received a verbal representation that Salt Lake County intends to take the same approach.

Juab County Courthouse. The groundbreaking for the Juab County Courthouse took place on June 10.

Ogden Juvenile Courthouse. The groundbreaking is scheduled within the next month.

Visitors to Matheson Courthouse. Mr. Becker mentioned that there were 20,000 fewer visitors to the Matheson Courthouse in May of 2013 compared to May of 2012. Due, he believes, principally to the impact of mandatory e-filing.

E-Filings. 154,000 electronic filings were received in April.

Media Rules. With the new media rules in place, the following requests were highlighted: 1) 27 requests for video, 2) 20 were shot and broadcast, and 3) 7 were not considered or the matter before the courts is pending or was continued.

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.

Mr. Becker reported that the Management Committee received a hardship exemption to the mandatory electronic filing requirements (from the Utah State Bar's Pro Bono Commission) relative to a special project involving the representation of defendants appearing for specific hearings during the Third District Court's weekly debt collection calendar. He noted this is the first hardship exemption request received and granted by the Management Committee.

Mr. Becker reminded the Council that Kanab City did not submit a recertification affidavit at the time of recertification of the municipal justice court in January of 2012. Kanab City is requesting dissolution of their justice court effective July 1, 2013. Kane County is requesting more time to prepare for the additional caseload. Discussion of the matter took place at the June Management Committee and will be discussed further later on the agenda.

Liaison Committee Report:

No meeting was held in June.

Policy and Planning Meeting:

Mr. Shea reported on the following:

Several rules have been published for comment.

Discussion took place on the following items at the Committee's June meeting: 1) jury selection and service, 2) guardianship recommendations, and 3) record of arraignment and conviction.

Bar Commission Report:

Mr. Lund reported on the following:

The following award recipients have been selected and will be awarded at the Utah State Bar's Summer Convention, July 17-20 in Snowmass, Colorado: 1) Judge Michael Lyon, Judge of the Year; and 2) Mr. Peter Stirba, Lawyer of the Year.

The Utah State Bar has submitted names for consideration to the Governor for the Appellate Nominating Commission.

Registration for the Summer Convention is going well.

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

Chief Justice welcomed Judge Higbee to the meeting.

Judge Higbee provided an update to the Council on the Committee's activities. He highlighted the following in his update: 1) the Committee was reauthorized in May of 2010, 2) listed the members of the Committee, 3) listing of the four subcommittees – a) adoption, b) divorce procedures, c) custody evaluation, and d) juvenile court jurisdiction.

Adoption. Judge Higbee provided background information on what has taken place with the study of issues relating to concurrent jurisdiction on termination of parental rights. General updates of the Committee's findings and views were provided to the Boards and Council throughout the study. In concluding the study, the Committee has no recommendations. There are no plans to continue studying the matter further.

Divorce Procedures. The subcommittee is working on implementing changes to improve divorce procedures. The following areas are being addressed by the subcommittee: 1) modifications to Rule 101; 2) creation of proposed rule 109, which would enact automatic temporary orders when divorce cases are filed; and 3) review of financial declarations that are used in domestic cases.

Custody Evaluation. The subcommittee's focus deals with fine tuning the statutory and rule syncrinization based on Rule 403. Looking at recommendations to change and align them. They are also addressing the matter of custody evaluator consideration of children's preferences.

Juvenile Court Jurisdiction. The subcommittee addresses the matter when an adult was charged with a crime that occurred when they were a juvenile. Recommendations have been made, and the subcommittee will consider whether additional proposals will be made.

The recommendation was to give more discretion to district court in sentencing people charged in the adult system for crimes committed when they were a juvenile.

Guardian ad Litem Practice. An analysis on the recent changes to the guardian ad litem practices in district court on protective orders is in the process of being completed. Commissioner David Dillon has been asked to spearhead this project. He is in the process of contacting each commissioner and others to receive input.

Mr. Becker noted that re-authorization of the Committee would be considered by the Council in 2014, and he asked if the Committee felt they have substantial matters needing to be addressed that would warrant their extension. Judge Higbee indicated he believed they would.

Discussion continued relative to the matter of concurrent jurisdiction on termination of parental rights. A report on the matter of concurrent jurisdiction will be provided to the Council for further discussion at the July 22 Council meeting.

Judge Higbee was thanked for his update.

6. PROPOSED STUDY ITEM: (Daniel J. Becker)

Mr. Becker proposed a study item that would examine the delivery of remote services through technology.

With mandatory e-filing in place for civil, domestic and citation cases and juvenile and criminal e-filing in development, the opportunity exists to determine how best to deliver services through low-volume courts, with consideration to coverage provided remotely.

He highlighted the following: 1) the opportunities to be considered, 2) the issues to be studied, and 3) who should be included in the membership. If approved, an ad-hoc committee would be formed, membership would be selected, and a report would be provided to the Council six months from commencement of the study.

Discussion took place.

The Council agreed to the formation of the study group. Formation of the Committee will be deferred to the July 9 Management Committee meeting.

Mr. Schwermer provided a legislative update.

He highlighted the following in his update: 1) Judge Renee Jimenez, Third Juvenile Court, was confirmed by the Senate; 2) discussion on changing the process of driver's license hearings took place; 3) DUI penalties; 4) court fees for political subdivisions to be discussed by judiciary committee; 5) protection of children in situations of custody or visitation; 6) pre-judgment interest revisions; 7) circuit court system; 8) a request to study law enforcement evidentiary irregularities was made; 9) child welfare parental defense; 10) the court's Appropriation Subcommittee requested to meet twice, with the 1st meeting to be held at the Weber County Courthouse on August 23; 11) interim committees met last week; and 12) administrative subpoena discussion.

7. KANAB JUSTICE COURT – DISSOLUTION ISSUE: (Rick Schwermer)

Mr. Schwermer provided background information on the recertification issue for the Kanab City Justice Court. In January 2012; the judge, rather than Kanab City, submitted a recertification affidavit. Separately, the city asked for an extension of time to consider all of their options relative to the court. At the January 2012 Council meeting, the Council approved a waiver until July 1, 2012. If the recertification ordinance was not received by that date, their prior submission would be treated as a request to dissolve the court.

Discussion took place.

Mr. Greg Hardman, Kanab City Attorney; Mr. Duane Huffman, Kanab City Manager; Mayor Nina Laycook; and Judge Gary Johnson were in attendance. Mr. Hardman provided details as to what transpired relative to the plans for dissolution of the Kanab City Justice Court between city and county officials. Mr. Hardman indicated that written notice was not provided as it is not required in statute. Kanab City officials requested that the court's dissolution be October 1, 2013, rather than July 1, 2013.

Mr. Robert Van Dyke, Chief Deputy Kane County Attorney, spoke on behalf of Kane County. He mentioned that Kane County is in agreement with the proposed October 1, 2013 effective date for dissolution of the Kanab City Justice Court with transfer of the caseload to the Kane County Justice Court. He expressed the need for submitting a notice of dissolution in writing for future dissolutions.

Further discussion took place.

Motion: Judge McCullagh moved to treat the request for dissolution of the Kanab City Justice Court as a request by Kanab City to shorten the one-year waiting period to October 1, 2013. Judge Atherton seconded the motion, and it passed unanimously.

8. CITY ARRANGEMENT WITH ONLINE TRAFFIC SCHOOL PROVIDER TO COLLECT PLEA IN ABEYANCE FEE: (Ray Wahl)

Mr. Wahl mentioned that no action would be taken on this matter today. He provided a brief update on the matter. During an audit, it was found that the city of St. George has an arrangement with an online traffic school provider to collect the plea in abeyance fee. At that time, the matter was referred to the State Auditor's office, but they have declined to take any action at this time. The Management Committee discussed the matter at their June meeting and asked Mr. Brent Johnson to request a copy of the contract. Once the contract has been reviewed, Mr. Johnson will review the findings with the Management Committee and determine what course of action to take.

9. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Judge Michael Lyon has applied to be appointed as an active senior judge. Mr. Shea reported that Judge Lyon meets the minimum performance standards.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify Judge Lyon for appointment as an active senior judge. Judge Maughan seconded the motion, and it passed unanimously.

10. SIXTH DISTRICT UPDATE AND TOUR OF PANGUITCH COURT FACILITY: (Judge Wallace A. Lee and Wendell Roberts)

Chief Justice Durrant welcomed Judge Lee and Mr. Roberts to the meeting.

Judge Lee and Mr. Roberts provided an update to the Council on the Sixth District. He provided a brief history of Garfield County and Panguitch. They highlighted the following in their update: 1) there are two state court facilities in the Sixth District, with the remainder of the court sites being contract sites; 2) all counties are on the state network; 3) e-filing is going well; 4) working on increased security in Richfield; 5) providing judgeship support in the Fifth District when possible; 6) providing judgeship support in the Seventh District as needed; 7) modernizing facilities as needed; 8) added a mental health court in Richfield; 9) Wayne County meeting next week to discuss the possibility of a new courthouse; and 10) security improvements being done in Manti.

Judge Lee and Mr. Roberts were thanked for their update.

The county clerk provided a tour of the facility to the Council.

Motion: Judge Hornak moved to enter into an executive session to discuss personnel matters. Judge Harmond seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION:

An executive session was held at this time.

12. PRELIMINARY FY2015 BUDGET RELATED ISSUES: (Daniel J. Becker)

Mr. Becker mentioned that two requests for judgeships have been received. A request was received from the Fourth Juvenile Court, and a request was received from the Fifth District Court. He highlighted the following data for the time period of FY 06 – FY 13 relative to the requests: 1) district and juvenile court filings, referrals, and events; 2) district court filings; 3) juvenile court referrals, and events; 4) district court – total judicial officer hours needed; 5) juvenile court – total judicial officer hours needed; 6) district court judicial officer need; 7) juvenile court judicial officer need; and 8) district and juvenile court – judicial workload as a % of standard.

He reviewed the following options for addressing the judgeship requests: 1) don't consider the requests (neither board is recommending the judgeships this year); 2) defer the requests and provide assistance through visiting judges, other court levels within a district, and senior judges; 3) seek appropriation for one or both judgeships; 4) seek legislation increasing the number of judges, but not seek an appropriation (use the savings from mandatory e-filing); and 5) seek legislative/executive authorization to transfer judgeship(s), increase authorized positions in some courts, decrease on others.

Mr. Becker reviewed the mandatory e-filing savings. Possible uses for the savings were highlighted to include: 1) address FY 2015 budget requests, 2) address ongoing needs currently being met with one-time funding; 3) address deficits resulting from reductions in collections due to drop in interest rates and case filings, 4) court visitor program (grant expires in 2014), and 5) selectively restore select programming funds lost during the recession.

A question was asked relative to any future plan for a pay adjustment for law clerks. Mr. Becker explained the process for conducting market comparability adjustments.

Discussion took place.

It was proposed to reach the bottom limit of the projected impact of 8% with the mandatory e-filing savings in district court by July 1, 2014 and downsize the Juvenile Court staff by 3 FTE for a total of 18 FTE. The Council was in agreement with the FY 2014 goal of downsizing by 18 FTEs.

13. ADJOURN

The meeting was adjourned.