JUDICIAL COUNCIL MEETING

Minutes
Monday, October 28, 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. James Davis
Hon. Glen Dawson
Hon. George Harmond
Hon. Thomas Higbee
Hon. David Marx
Hon. Paul Maughan
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Alison Adams-Perlac
Dawn Marie Rubio
Debra Moore
Jody Gonzales
Rick Schwermer
Tim Shea
Joanne Vandestreek
Jessica Van Buren
Liz Knight

GUESTS:
Judge Kevin Allen

EXCUSED:

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

Chief Justice Durrant welcomed everyone to the meeting. He extended a special welcome to the new Council members to include: 1) Judge James Davis, 2) Judge Thomas Higbee, 3) Judge David Marx, and 4) Judge Randall Skanchy. He mentioned that a new-member orientation was held this morning prior to the Council meeting.

Motion: Mr. Lund moved to approve the minutes from the September 10, 2013 Judicial Council meeting. Judge Sandberg seconded the motion, and it passed unanimously.

2. NEW MEMBER – OATH OF OFFICE: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant administered the oath of office to the new members to include: 1) Judge James Davis, 2) Judge David Marx, and 3) Judge Thomas Higbee. Judge Randall Skanchy was administered the oath of office at the September meeting.

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

Chief Justice Durrant reported on the following:
He acknowledged the passing of Judge Anthony Quinn, Third District Court Judge.

Chief Justice Durrant expressed disappointment regarding the non-vote to confirm Commissioner Conklin as a district court judge. He mentioned that a meeting to discuss systemic issues regarding the Senate confirmation process with Senate leadership will be scheduled at a later date.

Chief Justice Durrant, Mr. Becker, Mr. Wahl and Mr. Schwermer met with the Lt. Governor to review the court's FY 2015 proposed budget.

He and Mr. Becker attended a meeting with the Legislative Retirement Committee and provided information on the importance of the present judicial retirement system.

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

Mr. Becker reported on the following items:

Juvenile Court Administrator. Mr. Becker introduced Ms. Dawn Marie Rubio, new Juvenile Court Administrator. He noted her background and experience. She began working for the courts on September 30. Mr. Wahl was thanked for providing coverage during the interim.

Court Technology Conference. Ms. Debra Moore and Mr. Bowmaster presented on what the Utah Courts have done to advance technologically at the Court Technology Conference held in Baltimore, Maryland last month.

Judicial Retirements and Appointments. Judge James Shumate has announced his upcoming retirement, effective March 31, 2014. Judge Andrew Valdez's effective date for retirement is November 1, 2013. The following Governor appointees are awaiting Senate confirmation: 1) Ms. Sharon Sipes, Second District Juvenile Court; 2) Mr. John Pearce, Court of Appeals; and 3) Mr. Brent Bartholomew, Fourth District Juvenile Court.

Ogden Juvenile Courthouse. The construction bid has been awarded to Jacobsen Construction. It was noted that the bids came in higher than anticipated. Modifications were made to the design to bring the bid in budget. The groundbreaking for the Ogden Juvenile Courthouse is scheduled to be held on November 4 at noon.

Third District Juvenile Court TCE. Mr. Duane Betournay has announced his upcoming retirement, effective January 1, 2014.

Appellate Court Administrator. Ms. Diane Abegglen has resigned from her position as Appellate Court Administrator. Mr. Tim Shea will serve as the acting Appellate Court Administrator for the next six months. The following committee assignments of Mr. Shea's have been reassigned as follows: 1) Ms. Alison Adams-Perlac will staff the Policy and Planning Committee, 2) Ms. Jessica Van Buren will staff the Resources for Self-Represented Parties Committee, and 3) Mr. Corrie Keller will staff the Remote Access Committee.

National Treatment Advocacy Center Study. Utah was noted to have the best access to mental health court and diversionary practices in the country in this study. A copy of the study was circulated among the Council members.

Executive Session. An executive session will be held later to discuss matters of professional competency.

Judicial Council Photo. The Judicial Council photo will be taken at the end of the November meeting.

Justice Center – The Council of State Governments. Mr. Wahl provided an update of the meeting held with this group last week. The Council of State Governments will be drafting a white paper on the implementation of evidence-based practices. An overview of Utah's juvenile justice system and the history behind the adoption of its assessment tool was presented during

the meeting. The Council of State Governments would like to develop checklists for implementation of evidence-based practices and is looking to Utah as a best practices model.

PEW Charitable Trusts. CCJJ invited members of the PEW Charitable Trusts to visit with members of the executive, legislative and judicial branches in Utah regarding a potential improvement project of the corrections and criminal justice system. Each branch of government was visited. They are requesting support and participation from each branch of government in Utah.

Mr. Becker provided background on the project. The Judicial Council was in agreement to support and participate in the project.

Judge Quinn. Flags will be flown at half mast at all court locations on Friday, November 1 in honor of Judge Anthony Quinn. His funeral is scheduled on Saturday, November 2.

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 October.

Policy and Planning Meeting:

No meeting was held in October.

Bar Commission Report:

Mr. Lund reported on the following: 1) the Commission met on Friday, October 25 at the BYU Law School, 2) the Bar would like to honor Judge Quinn in some way, 3) the Bar expressed concern and has discussed the matter of the non-vote for Commissioner Conklin by the Senate, 4) referrals to the Modest Means Program has doubled, 5) 300 lawyers have been admitted to the Bar, and 6) the Bar would like to assist the Council in any way to encourage a Council meeting in conjunction with the Bar's 2014 Summer Conference in Snowmass, Colorado.

6. COUNCIL COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)

The proposed Council Committee appointments would allow current Council members to retain their appointments, and the three new members would be appointed to fill the vacancies left by the outgoing Council members. It was noted that the chair for the Policy and Planning Committee and the Liaison Committee will be selected by members of the committees at their first meeting.

The proposed Council committee appointments included: 1) Judge James Davis is being recommended to fill the vacancy on the Management Committee which would restore representation of all court levels on the Committee, 2) Judge Randall Skanchy is being recommended to serve on the Policy and Planning Committee, 3) Judge Thomas Higbee is being recommended to serve on the Liaison Committee and on the Policy and Planning Committee as an ex-officio member, and 4) Judge David Marx is being recommended to serve on the Liaison Committee.

Judge Maughan requested that Judge Randall Skanchy be appointed to serve on the Management Committee as a Third District Court judge representative. He mentioned that a Third District Court Judge has served on the Management Committee for the past 15 years.

Mr. Becker provided an explanation to the exception of every court level being represented on the Management Committee with Judge Gregory Orme's desire to serve on the Policy and Planning Committee during his two terms on the Council. Discussion took place.

Motion: Judge Maughan moved to appoint Judge Randall Skanchy to serve on the Management Committee. Judge Dawson seconded the motion, and it passed unanimously.

Motion: Judge Mortensen moved to release Judge Skanchy from the proposed recommendation to serve on the Policy and Planning Committee. Judge Dawson seconded the motion, and it passed unanimously.

Motion: Justice Parrish moved to approve the proposed committee appointments as amended. Judge Hornak seconded the motion, and it passed unanimously.

7. 2014 COUNCIL CALENDAR APPROVAL: (Ray Wahl)

Mr. Wahl reviewed the 2014 Judicial Council calendar.

He highlighted the following in his Judicial Council calendar review: 1) the March meeting is held in conjunction with the Bar's Spring Conference in St. George; 2) the April meeting is scheduled to be held in the newly completed Juab County court facility in Nephi; 3) with Memorial Day the last Monday in May, it is being recommended to hold the meeting on May 19; 4) noted the date for the August Budget and Planning Session; 5) the September meeting will be held in conjunction with the Annual Judicial Conference, awaiting a finalized date; and 6) provided costs and options for consideration in determining whether the Council and/or Boards should hold their July 2014 meetings in Snowmass, Colorado in conjunction with the Bar's Summer Conference. Discussion took place.

Motion: Judge Maughan moved to allow the Management Committee to work out the details for holding their July 2014 meeting in conjunction with the Bar's Summer Conference in Snowmass, Colorado. Judge Higbee seconded the motion. The motion passed with Judge Hornak, Judge Parkin, Judge Sandberg, Judge Harmond, Justice Parrish, and Judge Skanchy voting no.

Motion: Judge Hornak moved to approve the remainder of the 2014 Judicial Council calendar as recommended. Judge Mortensen seconded the motion, and it passed unanimously.

Mr. Becker, Mr. Wahl, and Mr. Lund will meet to work out the details for the July 2014 Council meeting to be held in Snowmass, Colorado.

8. 2013 ACCESS AND FAIRNESS SURVEY RESULTS: (Joanne Vandestreek)

Chief Justice Durrant welcomed Ms. Vandestreek to the meeting.

Ms. Vandestreek provided an update, to the Council, on the 2013 Access and Fairness Survey. She highlighted the following in her update: 1) the survey has been taken five times since 2006; 2) the questions asked are standard questions as developed by the National Center

for State Courts (NCSC); 3) three surveyors at 38 court locations over a nine week period; 4) a full day of the busiest calendar at each court location was selected; 5) the survey was available in English and Spanish; 6) the survey was available online or on paper; 7) 1,392 people took the survey; and 8) the survey was taken by defendants, respondents, family members or friends, plaintiffs or petitioners; lawyers; witness; law enforcement or probation officers; potential jurors and DCFS caseworkers.

She reviewed responses to each survey question and highlighted the following relative to the survey results: 1) the question regarding the court hours being adequate jumped from an 87% positive response in 2011 to a 94% positive response during the current survey, 2) reviewed demographic data, and 3) comments regarding the need for daycare services.

Questions were asked with responses provided and discussion took place. Ms. Vandestreek mentioned that the survey results will be posted on the courts website and distributed to court executives and court-level administrators. It was noted that the employee satisfaction survey is currently underway.

Ms. Vandestreek was thanked for the update.

9. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided background on the frequency of legislative updates for new Council members. He mentioned that a legislative interim day is typically held the third Wednesday of each month.

He highlighted the following in his update: 1) court system modifications, 2) judges' retirement systems, 3) postretirement employee restrictions, 4) Senate judicial confirmations, 5) DUI annual report, 6) Veterans Reintegration Task Force, and 7) Veterans' Courts.

Discussion took place regarding judicial retirement.

10. JUVENILE FINE AND BAIL SCHEDULE: (Alison Adams-Perlac)

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

Ms. Adams-Perlac mentioned that the current Juvenile Court Fine and Bail Schedule was approved in June 2012. Concern was expressed regarding the standards for minor traffic and wildlife offenses being higher than set in the Uniform Fine and Bail Schedule. The issues were considered, and the Board of Juvenile Court Judges has adopted recommendations for the noted offenses that the court take into account a youth's limited earning potential and fairness.

Motion: Judge Hornak moved to accept the recommended amendments to the Fine and Bail Schedule. Judge Davis seconded the motion, and it passed unanimously.

11. GAL OVERSIGHT COMMITTEE UPDATE: (Liz Knight)

Chief Justice Durrant welcomed Ms. Knight to the meeting.

Ms. Knight highlighted information from the 2013 Annual Report of the Office of Guardian ad Litem and CASA to include the following: 1) over 13,263 children in juvenile and district court were represented by the Office of Guardian ad Litem in FY 2013, 2) Office of Guardian ad Litem attorneys were present for 26,025 hearings, 3) participated in 4,806 child and family team meetings, 4) participated in 109 cases on appeal, and 5) the request to the Legislature for a building block to address the issue of salary parity has been submitted.

The areas of focus for FY 2014 include: 1) establishing permanency for older youth who are in the custody of the State of Utah, and 2) increasing efficiencies in the office by establishing

standards and measuring performance in relation to those standards and conducting performance reviews of all GAL attorneys.

Ms. Knight highlighted the following information on the CASA program: 1) 668 volunteers in the CASA program in FY 2013, 2) 1,246 children were served, 3) 36,062 hours were donated by CASA volunteers on behalf of abused and neglected children in Utah.

The following information was highlighted relative to the private Guardian ad Litem Program: 1) currently 107 private GAL attorneys statewide who have agreed to take cases for a fee, 2) 69 attorneys have agreed to serve as pro bono private GAL attorneys, and 3) the GAL office is working with Legislators to reach a compromise that would allow them to continue to be responsible for all protective order hearings involving abuse or neglect; and district court proceedings where abuse or neglect is pled and reported, both adult parties are indigent, and there is no private GAL attorney reasonably available.

Ms. Knight was thanked for her update.

12. BOARD OF DISTRICT COURT JUDGES RECOMMENDATION FOR MANDATORY E-FILING OF CRIMINAL CASES: (Debra Moore)

The Board of District Court Judges is recommending that all documents in district court criminal cases be filed electronically, except for the information with an effective date of March 31, 2014. By January 1, 2015, all information will be filed electronically by any means permitted by the courts.

Ms. Moore provided an update on PIMS as reported by Mr. Mark Nash, Director of the Prosecution Council.

If the rule is approved for mandatory e-filing of criminal cases, it will go out for public comment.

Motion: Mr. Lund moved to adopt Rule 4-603 – Mandatory electronic filing, with a March 31, 2014 effective date for all documents to be filed electronically for criminal cases, except for the information which would have an effective date of January 1, 2015 to be filed electronically. Justice Parrish seconded the motion, and it passed unanimously.

13. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Kevin Allen and Debra Moore)

Chief Justice Durrant welcomed Judge Allen to the meeting.

Judge Allen provided an update to the Council on the activities of the Board of District Court Judges. He highlighted the following in his update: 1) provided the names of the current Board of District Court judges, 2) reported on the 2012-2013 accomplishments, and 3) 2013-2014 goals being considered.

The following 2012-2013 accomplishments were highlighted: 1) support mandatory e-filing in civil cases, 2) monitor judicial workspace development, 3) monitor civil discovery reform, 4) support an increase in clerical compensation, 5) develop fee waiver guidelines, and 6) study best practices for managing cases involving self-represented parties.

Judge Allen mentioned the study of the effectiveness of mental health courts and standardization of best practices is being considered by the Board of District Court Judges as one of their 2013-2014 goals.

Mr. Becker suggested the Board of District Court Judges consider discussing the issue of Veterans' Courts further and determine if it would be beneficial to expand this type of court further.

Judge Allen mentioned the change in the term of office from two years to five years for the ABA representative has been approved by the Board of District Court Judges. He also reported that each state is allowed four voting representatives, of which Utah has only been providing one. A rule change will be made to fill all four spots, rotating them every two years.

The Board of District Court Judges continues to monitor Judicial Performance Evaluation Commission (JPEC) concerns.

Judge Allen was thanked for his update.

Motion: Judge Hornak moved to enter an executive session to discuss personnel matters. The motion was seconded and passed unanimously.

14. CERTIFICATION OF SENIOR JUSTICE COURT JUDGES: (Tim Shea and Alison Adams-Perlac)

This matter was discussed in an executive session.

Motion: Mr. Lund moved to approve the applications as submitted for active senior judge certification for Judge James E. Box, Judge Timothy C. Haveron, Judge Garry R. Sampson, and Judge Sara Watson. He moved to deny the application for active senior judge status for Judge Jack D. Peterson as he is technically still a sitting judge. He moved to conditionally approve the application, as submitted for active senior judge certification, for Judge Kim T. Adamson upon correctly completing the Senior Judge Application Form. Judge Dawson seconded the motion, and it passed unanimously.

15. GUARDIANSHIP AND CONSERVATORSHIP SIGNATURE PROGRAM: (Tim Shea)

Mr. Shea provided details on the Guardianship and Conservatorship Program. The objectives of the program include: 1) provide judges with a roster of attorneys to appoint, in compliance with Section 75-5-303 and Section 75-5-407, to represent adult respondents in guardianship and conservatorship proceedings; 2) provide a roster of attorneys willing to represent adult respondents in guardianship and conservatorship proceedings for no fee, but to be paid, as circumstances warrant, under Section 75-5-303; 3) eliminate the expectation that the petitioner will recruit an attorney to represent the respondent; and 4) eliminate the practice of an attorney representing the respondent after having given advice or having prepared pleadings for the petitioner.

The program will be available for use by district court judges to refer to when a respondent is in need of an attorney.

Mr. Shea will be reviewing program details with the clerks of court at their next meeting and obtain their feedback.

A meeting with the Board of District Court Judges will be scheduled in the future to review the program further.

Discussion took place.

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

16. CERTIFICATION OF MINIMUM PERFORMANCE STANDARDS FOR JUDGES UP FOR RETENTION IN 2014: (Tim Shea and Alison Adams-Perlac)
This matter was discussed in an executive session.

MOTION: Judge Maughan moved to forward the list compiled by Mr. Shea regarding the 2014 judges up for retention, excluding Judge Andrew Valdez, and certifying that those on the list meet the minimum performance standards. Judge Parkin seconded the motion, and it passed unanimously.

MOTION: Judge Higbee moved to authorize the Management Committee to supplement Judge Karla Staheli's information, if additional information is submitted by the November 12 Management Committee meeting. Judge Hornak seconded the motion, and it passed unanimously.

MOTION: Judge Hornak moved to enter into an executive session to discuss personnel matters. The motion was seconded, and it passed unanimously.

17. EXECUTIVE SESSION
An executive session was held at this time.

18. ADJOURN
The meeting was adjourned.