

JUDICIAL COUNCIL MEETING

Minutes

Monday, December 14, 2015

Judicial Council Room

Matheson Courthouse

Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Justice Thomas Lee
Hon. Marvin Bagley
Hon. Paul Farr
Hon. Thomas Higbee
Hon. David Marx
Hon. David Mortensen
Hon. Mary Noonan
Hon. Reed Parkin (by phone)
Hon. Randall Skanchy
Hon. Kate Toomey
John Lund, esq.

ESCUSED:

Hon. Ann Boyden
Hon. Mark DeCaria

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Dawn Marie Rubio
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Jason Ralston
Nini Rich
Nancy Sylvester

GUESTS:

Justice Deno Himonas
Hon. Royal Hansen
Hon. James Blanch
Hon. Elizabeth Hruby-Mills
Ms. Juli Blanch
Ms. Jessica Miller, SL Tribune

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Motion: Judge Toomey moved to approve the minutes from the November 23, 2015 Judicial Council meeting. Judge Higbee seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

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

Mr. Becker reported on the following items:

Council Photo. Copies of the Council photo were distributed to members of the Council.
Governor's FY 2017 Budget Recommendations. The Governor's FY 2017 budget recommendations were released last week. All budget requests submitted by the courts were addressed in his recommendations.

Revenue Projections. The State's revenue projections were released last week. The breakdown of one-time and ongoing funding was provided, noting that the majority of new funding will be in the Education fund.

Mandatory E-Filing in Juvenile Court. The effective date for mandatory e-filing in juvenile court was December 1 with no major issues resulting from it.

Judicial Retirement. Judge Charlene Barlow has announced her upcoming retirement, effective July 1, 2016.

Court Security Director. Ms. Carol Price has submitted her resignation, effective December 31, to pursue other interests. Mr. Wahl will be the contact person in the interim.

State of the State Courts Poll. The findings from the State of the State Courts poll, conducted by the National Center for State Courts, were briefly reviewed by Mr. Becker.

Legislative Update. Mr. Schwermer highlighted the following in his legislative update: 1) bills are being filed for the 2016 Legislative Session, and 2) proposed legislation that would amend the Utah Constitution relative to judges of courts not of record, requiring them to be practicing attorneys.

Discussion took place.

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 November. The Liaison Committee will meet following today's Council meeting.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) a meeting was held with many rules being discussed and reviewed, and 2) two rules will be considered later on the agenda for final action relative to pre-trial release and supervision.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Utah Bar Foundation and management of the Interest on Lawyer Trust Accounts (IOLTA) as it relates to funding sources used to provide legal aid to those who cannot afford legal services, and 2) discussion of the attorney referral program by the Management Committee for requested posting on the court's website as it relates to access to justice.

5. RULES FOR FINAL ACTION: (Alison Adams-Perlac)

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

The Policy and Planning Committee recommended final action be taken on the following two rules relative to creation of a Standing Committee on Pretrial Release and Supervision: 1) CJA 1-205 – Standing and ad hoc committees, and 2) Rule CJA 3-116 – Pretrial Release and Supervision Committee.

Discussion took place relative to who should be included in the membership of the committee.

Motion: Judge Skanchy moved to approve the proposed amendments to Rule CJA 1-205 – Standing and ad hoc committees as recommended by the Policy and Planning Committee, on an expedited basis. Judge Toomey seconded the motion, and it passed unanimously.

Motion: Judge Skanchy moved to approve Rule CJA 3-116 – Pretrial Release and Supervision Committee as recommended by the Policy and Planning Committee, on an expedited basis. Judge Toomey seconded the motion, and it passed unanimously.

6. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Alison Adams-Perlac)

Ms. Adams-Perlac provided annual training on the Open and Public Meetings Act, to Council members, as required by Rule 2-103 and 2-104. She highlighted the following: 1) intent of Rule 2-103 is to establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act; 2) requires the Administrative Office of the Courts to provide annual training to Council members; 3) the Council meetings must be open unless they are closed in the right way for the right reason; 4) what a meeting is; 5) public notice must be given; 6) audio recording and minutes; 7) public access to the meeting; 8) closed meetings—how the meetings are closed, reasons for closing a meeting, and limits on decisions made in a closed meeting; and 9) access to meeting records.

7. OVERVIEW AND USAGE OF THE COURTS WEBSITE: (Jason Ralston)

Chief Justice Durrant welcomed Mr. Ralston to the meeting.

Mr. Ralston provided an overview of the usage of the courts website as tracked in July 2015. He highlighted the website statistics and trends to include the following: 1) statistics were tracked by Google Analytics; 2) measures were defined either as sessions or page views; 3) website totals by page views in July, 590,677; 4) website totals by sessions, 279,873; 5) reviewed the top 20 web pages visited; 6) reviewed the statistics of the top 20 web pages visited per page view; 7) grouped content; 8) self-help pages; 9) court calendars; 10) court rules; 11) court directory; 12) user locations; 13) mobile device usage; and 14) summary of the website statistic and trends.

Mr. Ralston mentioned that he and Ms. Lisa Crenshaw are responsible for updating the courts website.

Chief Justice Durrant thanked Mr. Ralston, as well as Ms. Crenshaw, for the work they do to continually keep the courts website updated.

8. REPORT OF THE SUPREME COURT TASK FORCE TO EXAMINE LEGAL LIMITED LICENSING: (Justice Deno Himonas and Tim Shea)

Chief Justice welcomed Justice Himonas and Mr. Shea to the meeting.

Justice Himonas highlighted the following in his report of the Supreme Court Task Force to Examine Limited Legal Licensing: 1) committee charge; 2) committee membership; 3) creation of a workgroup to evaluate the limited license legal technician program in place in Washington State; 4) creation of a workgroup to evaluate other emerging strategies, in existence, who address access to justice matters; 5) development of a white paper entitled *Non-Lawyer Legal Assistance Roles: Efficacy, Design and Implementation* by Mr. Tom Clarke, Director of Research and Technology for National Center for State Courts; 6) programs in existence nationally; 7) recommended title; 8) recommended practice areas; 9) recommended authority of the licensed paralegal practitioner; 10) recommended educational requirements; and 11) recommended licensing and other regulations.

The committee charge included the following: 1) examine emerging strategies and programs that authorize individuals to provide specific legal assistance in areas currently

restricted by licensed lawyers, and 2) recommend whether similar programs should be established in Utah.

Mr. Shea reviewed the recommendations as proposed by the task force to include: 1) create a subset of discrete legal services that can be provided by a licensed paralegal practitioners in the three practice areas: a) temporary separation under Section 30-3-4.5, divorce, paternity, cohabitant abuse and civil stalking, custody and support and name change; b) eviction; and c) debt collection; 2) appoint a steering committee to plan, design, and implement the program details; 3) the Board of Bar Commissioners should implement, as soon as possible, the recommendations of its Futures Commission to develop an online lawyer directory and for increasing the use of discrete task legal services; 4) create a pilot program of assisted resolution of family law and/or debt collection cases involving self-represented parties; 5) continue to plan, design, and build an online dispute resolution application; and 6) request funding for expansion of the Self-Help Center.

Questions were asked concerning the reaction of Bar members to the proposed changes. Discussion took place.

Chief Justice Durrant thanked Justice Himonas for all the work and effort put into the recommendations provided by the task force.

Motion: Judge Skanchy moved to approve assignment to an ad hoc committee, those recommendations relating to case management by court commissioners. Justice Lee seconded the motion, and it passed unanimously.

9. JUSTICE COURT RECERTIFICATIONS: (Rick Schwermer)

The Board of Justice Court Judges proposed recertification of the municipal justice courts up for recertification in 2016, and including the following four courts with recommended waivers: 1) Gunnison – recommended a four-year waiver of the requirement for a secure cash box as all payments are received by the city treasurer, 2) Mantua – recommended a four-year waiver of the requirement for a six-inch riser as the current built-in four-inch riser is sufficient, 3) Providence – recommended a four-year waiver of the requirement for separate counsel tables as the current 10-foot long table provides adequate space and separation, and 4) Roy – recommended a waiver of the requirement for a dedicated courtroom. The court has preference in the use of the room, and the configuration is appropriate.

Motion: Judge Marx moved to approve the municipal justice courts up for recertification in 2016, which included granting the recommended waivers, for the following courts: 1) Gunnison, 2) Mantua, 3) Providence, and 4) Roy. The motion was seconded and it passed unanimously.

10. PROPOSED SENIOR JUDGE RULE CHANGE (Rule 3-103 – ADMINISTRATIVE ROLE OF JUDGES): (Daniel J. Becker)

Mr. Becker reminded members of the Council that this matter was discussed briefly by Judge Noel Hyde, on behalf of the Board of District Court Judges, in November when he provided a board update to the Council in November.

The proposed rule change provides for immediate and continuous use of a senior judge for the length of a vacancy resulting when a sitting judge is absent due to retirement, disability or death until the judge is permanently replaced or the presiding judge of that district determines that full-time coverage of the senior judge can be decreased or eliminated.

The change limits the assignment process under (B) of the rule which provides for consideration of active judges before active senior judges. Under the existing rule, coverage is typically provided by another judge within a judicial district. If such a judge is not available, a

judge from another judicial district is sought, and if one is not available, senior judge coverage is sought.

The existing rule is intended to have full use of active judges before any senior judge is called. The proposed rule reverses the presumption. The existing process has served the courts well in most instances.

Mr. Becker highlighted the following instances where the existing process has not been effective in providing senior judge coverage: 1) when a judge is appointed to a higher court level, 2) death of a judge, 3) disability, or 4) serious illness. In these instances, a vacancy can last up to six months. Most vacancies are filled within 20-40 days when a judge retires.

Mr. Becker suggested the Council to consider amending the rule to address lengthy vacancies resulting from the following: 1) judicial appointment to a higher court level, 2) serious illness, or 3) disability. He suggested that no change to the rule be made relative to routine judicial retirements.

Mr. Becker reviewed the current process used to provide senior judge coverage when requested by the districts.

Discussion took place, by Council members, regarding the need to ensure that judges within a district be considered, and then available judges outside the district before considering the use of senior judges. A suggestion was made to redraft the proposed rule to put discretion with the presiding judge on the use of a senior judge after considering the availability of judges within and outside the district, rather than automatically appointing a senior judge immediately for the duration of the vacancy.

Motion: Justice Lee moved to approve the proposed rule change in concept, and then send it to the Policy and Planning Committee for redrafting, along the lines discussed. Judge Toomey seconded the motion, and it passed unanimously.

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

Chief Justice Durrant welcomed Judge Royal Hansen and Ms. Nini Rich to the meeting.

Judge Hansen and Ms. Rich highlighted the following in their update to the Council: 1) a Best Practice Guide for Utah Mediators is near completion with an anticipated draft to be presented to the Council at their April meeting; 2) the Alternative Dispute Resolution Act was due to sunset July 1, 2016, and it has been reauthorized for an additional 10 years; 3) Ms. Nini Rich and Ms. Michele Mattsson were awarded the *2015 Peacekeeper of the Year Award* by the Utah Council on Conflict Resolution; 4) continuation of the ADR Department's annual 40-hour mediation training program; 5) ADR program statistics for FY 2015; and 6) ADR program descriptions.

12. CRIMINAL JURY INSTRUCTION COMMITTEE UPDATE: (Judge James Blanch and Alison Adams-Perlac)

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

Judge Blanch highlighted the following in his update to the Council: 1) overview of what the committee has been undertaking and the direction they plan to take in the future, 2) approval of jury instructions for sexual offenses which will be published by the end of the week, 3) offenses most frequently charged will be prioritized and addressed, 4) subcommittees have been created to address these offenses, 5) members of the committee will serve as subcommittee chairs rather than non-members of the committee serving as subcommittee chairs, 6) recent committee turnover, and 7) expressed his appreciation to Ms. Adams-Perlac for all she does as the AOC staff member to the committee.

Chief Justice Durrant thanked Judge Blanch for his update to the Council.

13. JUDICIAL OUTREACH COMMITTEE UPDATE: (Judge Elizabeth Hruby-Mills)

Chief Justice Durrant welcomed Judge Hruby Mills to the meeting.

Judge Hruby-Mills highlighted the following in her update to the Council: 1) committee membership, 2) inclusion of the FY 2015-2016 Strategic Communication Plan in the Council materials, 3) Rule 3-114 – Judicial Outreach, 4) holding community forums, and 5) Divorce Education for Children – exploring expansion of the program to St. George and the Farmington Courthouses.

Chief Justice Durrant thanked Judge Hruby-Mills for her update. Judge Hruby-Mills was thanked for her involvement in screening the applications for the Communications Director position.

14. CIVIL JURY INSTRUCTION COMMITTEE UPDATE: (Juli Blanch and Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Blanch and Ms. Sylvester to the meeting.

Ms. Blanch and Ms. Sylvester highlighted the following in their update: 1) the Introduction to the Model Utah Jury Instructions, Second Edition; 2) what the committee has completed and what they are currently working on; 3) committee membership and terms; 4) history of the committee; 5) makeup of the subcommittees and their charge; 6) calendar, in place, with dates for subcommittees to present their draft instructions to the committee; 7) instructions being sent out for comment once approved by the committee; and 8) term limit compliance of committee members.

Questions were asked of Ms. Blanch, and she provided responses.

Concern was expressed with the introduction in the rule relative to the Civil Jury Instruction and approval of the instructions.

Discussion took place.

The Committee will review a possible amendment to the language of the rule and present it to the Council for final approval at the January Council meeting.

Chief Justice Durrant thanked Ms. Blanch and Ms. Sylvester for their update.

15. EXECUTIVE SESSION

An executive session was not held at this time.

16. ADJOURN

The meeting was adjourned.