

JUDICIAL COUNCIL MEETING

Minutes
Monday, December 19, 2016
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. Ann Boyden
Hon. Mark DeCaria
Hon. Paul Farr
Hon. Thomas Higbee
Hon. David Marx
Hon. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Ron Bowmaster
Chris Palmer
Nini Rich
Nancy Sylvester
Keisa Williams
Nicholas Stiles

GUESTS:

Hon. Dennis Fuchs
Jim Hudspeth
Hon. James Blanch
Hon. Royal Hansen
Hon. Michelle Heward

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 21, 2016 Judicial Council meeting. Judge DeCaria seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that he has been participating in the legislative meetings being held in each judicial district to meet with the local legislators.

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

Mr. Becker reported on the following items:

Arnold Foundation – Pre-trial Release Assessment Tool Update. The Utah court system is in the final process of signing the contract with the Arnold Foundation for implementation of the pre-trial release assessment tool.

A meeting with Ron Gordon, the Executive Director of the Commission on Criminal and Juvenile Justice (CCJJ), will be held tomorrow to discuss details of funding for the implementation costs of using the Arnold pre-trial release assessment tool.

Legislative Meetings. The local legislative meetings being held in each judicial district have begun. The meetings are going well. Topics being discussed include: 1) JRI, 2) juvenile justice reform recommendations, 3) pre-trial release, and 4) the courts budget.

Legislative Audit. An audit exit meeting on the cash bail audit was held on December 2. The audit report will be presented to the audit committee in January. Mr. Becker has reviewed the audit report, and he has provided a response, on behalf of the courts. Findings from the audit will be presented to the Council at a future meeting.

Legislative Leadership. Mr. Becker reported there is a change in leadership on the Executive Appropriations Committee. The committee leadership includes: 1) Senator Jerry Stevenson, Senate chair; 2) Senator Kevin Van Tassell, Senate vice chair; 3) Representative Dean Sanpei, House chair, and 4) Representative Bradley Last, House vice chair. He noted Senator Lyle Hillyard's 12 years of service as Senate Appropriations chair.

Judicial Retirement. Judge Charles Behrens has announced his upcoming retirement, effective July 1, 2017.

COSCA Midyear Meeting. Justice Himonas participated as a panelist in a plenary session regarding *Online Dispute Resolution* at the COSCA Midyear meeting held in Naples, Florida at the beginning of December.

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:

The Liaison Committee, along with additional juvenile judges, met on December 9 to gather and to identify 3-4 priorities as the Liaison Committee prepares to address proposed legislation resulting from the recommendations of the Utah Juvenile Justice Working Group.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) the committee continues to work on a number of rules, and 2) several rules will be considered for final action later on the agenda.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Bar's 2017 Spring Convention will be held in St. George on March 9-11, and 2) a meeting was recently held between several members of the State Bar and Mr. Bowmaster to discuss the matter of connecting lawyer interaction with the courts electronic data.

5. PROBLEM-SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs and Rick Schwermer)

Chief Justice Durrant welcomed Judge Fuchs and Mr. Schwermer to the meeting.

Judge Fuchs reported that there are 22 problem solving courts being recommended for certification. All 22 courts meet the minimum qualifications for certification.

Judge Fuchs highlighted several concerns arising in the problem-solving courts statewide. The concerns included:

- Monitoring historically disadvantaged groups – determine if minority groups are adequately represented in problem-solving courts
 - As part of the CORIS rewrite, IT is working on developing a program that will capture data on minority representation in problem solving courts.
- Drug and alcohol testing is frequent enough to ensure substance use is detected quickly.
- Responsibilities of the judge.
 - The judge presides over the problem-solving court for no less than two consecutive years.
 - Outcomes are better when the problem-solving court judge attends annual training conferences on evidence-based practices in substance abuse and mental health treatment.
- Number of participants
 - The policy followed on behalf of the Council and State Substance Abuse allows for no more than 125 participants and no less than 15 participants.

Discussion took place.

It was determined that the concerns raised by Judge Fuchs could best be addressed by a working group on best practices that would then make recommendations to the Judicial Council. Judge Fuchs will prepare a list, for approval by the Management Committee, for potential working group members.

Motion: Judge Higbee moved to certify the problem-solving courts as recommended. Judge Toomey seconded the motion, and it passed unanimously.

6. AP&P PRE-SENTENCE AND SUPERVISION STANDARDS REVIEW: (Jim Hudspeth, and Debra Moore)

Chief Justice Durrant welcomed Mr. Hudspeth and Ms. Moore to the meeting.

Mr. Hudspeth provided his background information.

He reviewed information relative to the AP&P pre-sentence and supervision standards, of which, appropriate documentation is included in the Council materials. He highlighted the following in his review: 1) the response and incentive matrix for the O track has been completed, 2) currently working on the pre-sentence investigation report, 3) discussion of supervision and pre-sentence investigation standards, 4) currently using the Level of Services/Risk, Need, Responsivity (R&R) assessment tool, 5) providing case management training as needed, 6) treatment resource centers available in each region of the state, and 7) use of the DORA model.

Mr. Hudspeth responded to questions asked of him.

Ms. Moore mentioned that a modified PSR is being addressed as part of the CORIS rewrite. The Board of District Court Judges was provided a review of the AP&P pre-sentence and supervisions standards at their meeting on December 16. A minor change on the PSR custody status above the history was the only change requested by the board. No other concerns were noted.

Chief Justice Durrant thanked Mr. Hudspeth and Ms. Moore for their update.

7. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Keisa Williams)

Chief Justice Durrant welcomed Ms. Williams to the meeting.

Ms. Williams highlighted the following relative to the Open and Public Meeting Law:

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.

8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwemer)

Mr. Schwemer highlighted the following in his legislative update: 1) four legislative meetings have been held; 2) the Executive Appropriations Committee met last week and adopted budget estimates, and there seems to be little new general fund and even less general fund one-time; 3) bills have begun to be numbered; 4) the Liaison Committee will begin to meet in January; 5) a meeting will be held with Ron Gordon tomorrow regarding the recommendations prepared by the Utah Juvenile Justice Working Group; and 6) results of an Attorney Telephone Survey Report prepared for the Utah Judicial Performance Evaluation Committee will be shared with members of the Council at a later time.

9. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Ron Bowmaster and Chris Palmer)

Chief Justice Durrant welcomed Mr. Bowmaster and Mr. Palmer to the meeting.

Mr. Bowmaster reported on the recommended courtroom audio/video upgrades as determined by the Standing Committee on Technology.

The Standing Committee on Technology was tasked with evaluating the technology that can be used to retrofit video conferencing capability in existing courtrooms, to establish a plan to upgrade existing technology, and to make a recommendation for a statewide plan to guide the expansion of courtroom technology throughout the state. Currently there are 164 courtrooms throughout the state.

The following assumptions were used to develop the guidelines that could be used to schedule upgrades, as funding becomes available:

- The primary objective is to bring enhanced video conference capability to every courthouse
- Limit the enhanced video capability to each courthouse to one unit until all the courthouses have one courtroom with enhanced video capability
- In those courthouses with more than one courtroom, install enhanced video in only one courtroom or install a mobile solution that can be moved from courtroom to courtroom
- Establish an audio/video upgrade schedule based upon the age of existing equipment and/or those that require constant maintenance
- Create a statewide audio/video upgrade plan for all courtrooms in the state

Upgrade costs are as follows:

- Standalone mobile cart, \$8,000
- Audio system upgrade, \$25,000
- Video system upgrade - \$30,000

Mr. Bowmaster reviewed the recommended options, prepared by the Standing Committee on Technology, that could be used when determining what courtrooms to upgrade and in what order.

Mr. Becker mentioned that funding of courtroom audio/video upgrades may be considered at the May 2017 Council meeting when approving the FY 2018 spending plan. Discussion took place.

Motion: Judge Toomey moved to enter into an executive session to discuss the deployment of security personnel devices or systems. Judge Shaughnessy seconded the motion, and it passed unanimously.

10. STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS UPDATE: (Judge James Blanch and Keisa Williams)

Judge Blanch and Ms. Williams were welcomed to the meeting.

Judge Blanch provided an update to the Council on the work of the Standing Committee on Model Utah Criminal Jury Instructions. He highlighted the following in his update on the work of the standing committee:

- Thanked Ms. Williams for all she does as staff to the committee
- Plan to develop substantive jury instruction that relates to specific offenses and defenses
- Plan to identify and prioritize those offenses that tend to get charged more often and go to trial more often
- Completed jury instructions relative to sex offenses which have been published
- Completed a comprehensive set of jury instructions on drug offenses that should be published in January
- Plan to update the general jury instructions
- Currently addressing jury instructions on affirmative defenses
- Development of jury instructions relative to domestic violence offenses will take place once the jury instructions on affirmative defenses have been completed

Chief Justice thanked Judge Blanch for all the work the Standing Committee on Model Utah Criminal Jury Instructions has completed.

11. RULES FOR FINAL ACTION: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Several rules are being recommended for final action, on an expedited basis, by the Policy and Planning Committee.

CJA 4-202.02 – Records classification. The rule has been amended to classify dismissals in criminal cases as private rather than protected.

It was noted that a bill will be considered in the 2017 Legislative Session to address related issues.

Motion: Mr. Lund moved to approve Rule 4-202.02 – Records classification for final action, on an expedited basis, as it relates to classifying dismissals in criminal cases and classifying court records associated with actions for disease testing (approved at the November meeting). The rule will then go out for public comment and will have an effective date of May 15, 2017. Judge Toomey seconded the motion, and it passed unanimously.

CJA 1-205 – Standing and ad hoc committees. The rule has been amended to add the Committee on Court Forms.

CJA 3-117 – Committee on Court Forms. This is a new rule to establish a committee to determine the need for forms and to create forms for use by litigants in all court levels.

Motion: Judge Toomey moved to approve Rule 1-205 – Standing and ad hoc committees and Rule 3-117 – Committee on court forms as recommended by the Policy and Planning Committee and send the rules out for public comment. Mr. Lund seconded the motion, and it passed unanimously.

12. SENIOR JUDGE CERTIFICATION: (Nancy Sylvester)

The following judges have requested certification as senior judges: 1) Judge Jeffrey R. Burbank, active senior judge; 2) Judge R. Scott Waterfall, inactive senior justice court judge; 3) Judge O. Lane McCotter, from an active senior justice court judge to an inactive senior justice court judge; and 4) Judge William Keetch, inactive senior judge.

Motion: Judge Toomey moved to enter into an executive session to discuss the character, competence, or physical or mental health of an individual. Judge Parkin seconded the motion, and it passed unanimously.

Motion: Judge Higbee moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council for the following judges: 1) Judge Jeffrey R. Burbank, active senior judge; 2) Judge R. Scott Waterfall, inactive senior justice court judge; 3) Judge O. Lane McCotter, from an active senior justice court judge to an inactive senior justice court judge; and 4) Judge William Keetch, inactive senior judge. Judge DeCaria seconded the motion, and it passed unanimously.

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

Chief Justice Durrant welcomed Judge Hansen and Ms. Rich to the meeting. Judge Hansen and Ms. Rich highlighted the following in their update:

- Inclusion of the ADR Committee Update to the Judicial Council dated December 19, 2016 in the Council's meeting materials
- Adoption of the *Utah Mediation Best Practice Guide* as a resource for mediation standards by the Council at their April 2016 meeting
- Continued focus on outreach and education programs to the legal community on the availability of ADR programs and resources
- Invited to present the Utah ADR programs at the 2016 ABA Conference to be held in San Francisco in April
- Peacekeeper of the Year Award was presented to Judge Royal Hansen, ADR Committee chair, in May 2016 by the Utah Council on Conflict Resolution (UCCR)

- in recognition of his outspoken advocacy for the use of ADR in the courts and his commitment to advancing the ethical foundations of ADR practices in Utah
- ADR Committee focus for 2017 include: 1) update of the online ethics exam, 2) continue outreach and education on ethics, 3) continue to address statewide access and utilization of available ADR programs
 - ADR Program statistic for FY 2016 included: 1) more than 3,000 cases were mediated through court ADR programs, 2) Five ADR staff mediators conducted 1,107 child welfare mediations statewide, and 3) more than 300 pro bono mediations were arranged directly by ADR staff
 - Annual 40-Hour Basic Mediation Training provided to court staff and personnel

Chief Justice Durrant thanked Judge Hansen and Ms. Rich for their ADR Committee update.

14. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Michelle Heward and Dawn Marie Rubio)

Chief Justice Durrant welcomed Judge Heward and Ms. Rubio to the meeting. A handout was distributed.

Judge Heward highlighted the following in her update to the Council: 1) members of the Board of Juvenile Court Judges, 2) mandatory e-filing in juvenile court, 3) education court report, 4) media access to juvenile court hearings and records, 5) development of court video for parents, 6) child welfare regarding permanency bench card and Indian Child Welfare Act (ICWA) guidelines and regulations, 7) juvenile justice working group – selected key findings and pro-active efforts of the Board and Probation.

Portions of the court video for parents were viewed by members of the Council.

Chief Justice Durrant thanked Judge Heward for her update.

Mr. Schwermer reviewed information from the October 2016 Attorney Telephone Survey Report as prepared for the Utah Judicial Performance Evaluation Commission. He highlighted the key findings from the survey as listed in the executive summary of the report to include the following: 1) general evaluation information, 2) barriers preventing completion of the evaluations, 3) motivation to complete the evaluations, and 4) evaluation statements.

Discussion took place.

15. ADJOURN

The meeting was adjourned.