

JUDICIAL COUNCIL MEETING

Minutes

Monday, January 23, 2017

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. Thomas Higbee
Hon. David Marx
Hon. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

Hon. Paul Farr

STAFF PRESENT:

Daniel J. Becker
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Ron Bowmaster
Kim Allard
Karolina Abuzyarova
Tucker Samuelsen
Keisa Williams
Nancy Sylvester

GUESTS:

Hon. James Taylor
Jennifer Yim, JPEC
Shannon Sebahar, JPEC
Justice Deno Himonas
Justice John Pearce
Hon. David Connors

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 December 19, 2016 Judicial Council meeting. The motion was seconded, and it passed unanimously.

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

Chief Justice Durrant reported that the last of the local legislative meetings scheduled in each judicial district have been held.

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

Mr. Becker reported on the following items:

Arnold Foundation – Pre-Trial Release Assessment Tool Update. The contract has been signed. Preliminary work with the consultant should begin shortly. Implementation of the pre-

trial release assessment tool is expected within the next six months. Mr. Becker expressed his appreciation to Judge Todd Shaughnessy and Judge Paige Petersen for all their work on the Pre-Trial Release & Supervision Committee.

Legislative Audit. The Legislative Audit Subcommittee will meet on Thursday, January 26. The audit report on cash bail will be presented to the audit committee at this time.

Judicial Retirements. The following judges have announced their upcoming retirements: 1) Judge Samuel McVey, effective July 16, 2017; 2) Judge Dane Nolan, effective July 15, 2017; and 3) Judge Scott Hadley, effective August 1, 2017.

2017 Legislative Session. The appropriation subcommittees will begin their work on Wednesday, January 25. Each state agency has been asked by their respective legislative fiscal analyst to look at where budgets could be reduced by two percent.

Executive Session. An executive session will be held at the end of the meeting.

State of the Judiciary Address. Chief Justice Durrant will deliver the State of the Judiciary address this afternoon. Transportation to the Capitol will be provided for Council members able to attend.

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:

Justice Lee reported on the following items: 1) meetings are being held weekly, 2) HB 239 – Juvenile Justice Amendments, 2) HB 19 – Civil Asset Forfeiture Reform Amendments, 3) SJR 4 – Joint Resolution Amending Rules of Evidence – Victim Selection, and 4) Mr. Schwermer will address bills pertinent to the courts with his legislative update later in the meeting.

Policy and Planning Meeting:

Judge Parkin reported on the following items: 1) discussion took place at the last meeting, with various stakeholders, on proposed amendments to CJA 6-103 – District Court Tax Judges, and 2) Judge Pullan was appointed as the chair of the Policy and Planning Committee with Judge Parkin's term expiring.

Bar Commission Report:

Mr. Lund reported on the following items: 1) Judge Michele Christiansen has been selected to receive the Dorothy Merrill Brothers Award (for the advancement of women in the legal profession), 2) Judge Vernice Trease has been selected to receive the Raymond S. Uno Award, and 3) Mr. H. Dickson Burton has been nominated as the president elect for the Utah State Bar.

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

Mr. Schwermer highlighted the following in his legislative update: 1) tax commission – classification of records matter, 2) copy of draft rules to legislative research prior to upcoming Council meetings, 3) judiciary amendments, 4) HB 77 – Fifth District Court Judge, 5) protected draft of the juvenile justice recommendations, 6) SB 134 – Indigent Defense Commission Amendments, 7) SB 71 – Criminal Accounts Receivable Amendments, 8) HB 72 – Child Welfare Proceedings Amendments, 9) Judicial Performance Evaluation Commission

Amendments, 10) SJR 4 – Joint Resolution Amending Rules of Evidence – Victim Selection, and 11) several DUI bills.

6. SMALL CLAIMS JURY COMMITTEE REPORT: (Judge Kate Toomey and Keisa Williams)

Judge Toomey provided background information relative to creation of the Small Claims Jury Committee. She highlighted the following regarding creation of the committee and provided an update on behalf of the committee:

- On June 1, 2016, in *Simler v. Chilel*, 2016 UT 23; the Utah Supreme Court concluded that “the right to a jury trial...exists in small claims cases at the trial de novo stage; and “(t)herefore, Utah Code § 78B-1-104(4) is an unconstitutional deprivation of article I, section 10’s guarantee of the right to jury trial in appeals from small claims judgment to district court.” *Id.* ¶¶ 13, 17.
- The court also suspended rule 81(c) of the Utah Rules of Civil Procedure “insofar as it precludes incorporation of the jury-related rules of civil procedure to trials de novo on appeals from the small claims court, pending further action to align the Utah Rules of Small Claims Procedure with this opinion.: *Id.*, n5.
- In June 2016, the Utah Supreme Court and the Judicial Council created the Small Claims Jury Committee to address issues relating to the Supreme Court’s action regarding this matter.
- Members of the committee were noted
- In July 2016, the committee developed temporary amendments to avoid violations of the constitutional right to a jury while a more extensive review could be conducted. The Supreme Court approved the temporary amendments, which are currently in place.
- The committee charge included: 1) develop of options for the Court’s consideration, and 2) to obtain feedback from the affected boards of judges, as well as, affected practitioners.

The current practice as outlined in the rule in small claims cases includes:

- Petitioner has the choice to file in justice or district court and demand a jury
- Defendants have a removal right to remove a case from justice court to district court and demand a jury
- Once in district court, the case is converted to a civil case and is subject to the Rules of Civil Procedure and Evidence
- Appeal rights are the same as any district court case – as if the case was filed initially in district court

Three draft rule amendments were reviewed:

Option 1:

- ❖ Bench trial in justice court
- ❖ Jury trial in district court on initial filing by plaintiff or removal by defendant with Tier 0.5 procedures
- ❖ Appeal from bench trial to district court (de novo)
- ❖ Appeal from jury trial to Court of Appeals expedited rules

Option 2:

- ❖ Bench trial in justice court (no removal right)
- ❖ Jury trial on appeal to district court only – pursuant to small claims rules

Option 3:

- ❖ Same as Option 1, except: Appeals are record reviews only and heard by a three-judge panel in the district court

Questions were asked and concerns were expressed relative to the options presented. Discussion took place.

Judge Toomey and Ms. Williams mentioned that feedback is still being gathered. They requested that anyone interested in providing further feedback on the recommended options be submitted to Ms. Williams.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Jennifer Yim and Shannon Sebahar)

Chief Justice Durrant welcomed Ms. Yim and Ms. Sebahar to the meeting.

Ms. Yim welcomed and introduced Ms. Sebahar to members of the Council.

Ms. Sebahar provided her background information and work experience.

Ms. Yim and Ms. Sebahar highlighted the following in their update to the Council: 1) retention election and JPECs involvement during the pre-election time frame, 2) attorney exclusions when they are referred to the Office of Professional Conduct, 3) the Commission participated in training on implicit bias in November – the same training provided to the judiciary, 4) determine how implicit bias affects survey respondents, 5) increasing the quality of training and the training relative to implicit bias as it relates to court room observers, 6) look at the deliberative process as commissioners, to determine what can be done to minimize the role implicit bias plays in the decision making process regarding the votes for recommendations for retention of judges, 7) hiring a survey research contractor to address survey questions and make changes that will reduce the level of implicit bias, 8) a deliberative process change – regarding use of a blind review of judges, and 9) research has been completed on attorney response rates.

Questions were asked of Ms. Yim. Responses were provided to questions asked of her. Chief Justice thanked Ms. Yim and Ms. Sebahar for their update.

8. PRESENTATION ON NEW METHODOLOGY FOR THE DISTRICT COURT JUDICIAL WEIGHTED CASELOAD: (Judge James Taylor, Tucker Samuelsen, and Kim Allard)

Chief Justice Durrant welcomed Judge Taylor, Mr. Samuelsen, and Ms. Allard to the meeting.

Judge Taylor provided background information on the current methodology used in calculating judicial weighted caseload in district court. He highlighted the following as he referred to the current process being used to include:

- The Board of District Court Judges had determined that it had been some time since the current formula used to calculate judicial weighted caseload had been reviewed
- Significant changes had taken place in district court that could impact the judicial weighted caseload, i.e., conversion to e-filing, implementation of JRI, etc.

- Current methodology used in calculating judicial weights was driven by the best assumptions regarding the amount of time it took to do a particular type of case, which cannot always be accurate
- The Board of District Court Judges determined that modification to the methodology used in calculating judicial weighted caseload needed to take place
- New methodology to focus not on an estimate on a time per case, but on a time per behavior/conduct was considered

Mr. Samuelson highlighted the following in his presentation regarding the proposed new methodology for the district court weighted caseload to include:

- Review of the current methodology used in calculating judicial weighted
- Focus areas for current methodology
 - ❖ Underestimates for cases that occasionally have extremely high workload
 - ❖ Does not account for changes in workload within cases without resurveying
 - ❖ Overestimates time for cases without hearings
- Amended the survey mechanics to include:
 - ❖ Hearing type
 - ❖ Prep time
 - ❖ Hearing time
 - ❖ Time to memorialize
 - ❖ Notes
- Revised survey weights
- Revision made to calculate for complex civil weights
- Examples were provided in calculating weights for the following case types
 - ❖ Condemnation
 - ❖ Malpractice
 - ❖ Eviction
 - ❖ Felony
- Review of the recommended weights in criminal, civil, domestic and probate case types
- Review of the change in workload with the new weights

Mr. Samuelson provided clarification regarding questions asked of him.

It was recommended to approve the recommended weights as calculated using the new methodology. Action will be taken at the February Judicial Council meeting.

9. ONLINE DISPUTE RESOLUTION (ODR) STATUS REPORT: (Justice Deno Himonas and Melisse Stiglich)

Chief Justice Durrant welcomed Justice Himonas and Melisse Stiglich to the meeting. Justice Himonas reported that a copy of the information regarding Utah Small Claims Online Dispute Resolution is included in the Council material.

He mentioned that he participated as a panelist in a plenary session regarding *Online Dispute Resolution* at the COSCA Midyear meeting held in December, and Mr. Ron Bowmaster presented the same information at the e-Courts 2016 Conference in Las Vegas held in December.

Justice Himonas introduced Ms. Melisse Stiglich, ODR coordinator. She provided her background regarding her involvement.

Justice Himonas and Ms. Stiglich highlighted the following in their report on the status of online dispute resolution:

- Dedicated coder will be available in February
- For use with small claims court online dispute resolution
- ODR design included:
 - ❖ Educate and evaluate
 - ❖ Communication between parties
 - ❖ Information gathering
 - ❖ Adjudication
 - ❖ Post Judgment

Justice Himonas reported that input was received from both filers at the last meeting, where positive input was received.

Justice Himonas and Ms. Stiglich responded to questions asked of them.

Chief Justice Durrant thanked Justice Himonas and Ms. Stiglich for their update.

10. JUVENILE INDIGENT REPRESENTATION COMMITTEE

RECOMMENDATIONS: (Justice John Pearce and Keisa Williams)

Chief Justice Durrant welcomed Justice Pearce and Ms. Williams to the meeting.

Justice Pearce and Ms. Williams provided an update, from what was presented to the Council at their November meeting, on the Juvenile Indigent Representation Committee recommendations which included:

- Primary Charge
- Committee Findings
- Data Collection Recommendations – CARE should track (by attorney, county and case type):
 - ❖ Number of cases in which a contracted attorney has been appointed
 - ❖ Number of clients each attorney has been appointed to represent and who they are representing (minor/parent)
 - ❖ Number of additional private cases assigned to contracted attorneys
 - ❖ Appearance rate of attorneys in contracted cases
 - ❖ The stage of the proceeding in which attorneys are appointed
 - ❖ Per contracted attorney, number of missed appearances on contracted cases
 - ❖ Number of times an appointed attorney made no appearance in a felony delinquency case
- A bill file has been opened, by Senator Todd Weiler, to address the statutory amendments with the Indigent Defense Commission
- The proposed recommendations included:
 - ❖ The Judicial Council should support the proposed Indigent Defense Commission (IDC) statutory amendments
 - ❖ If the legislation passes, the Judicial Council should provide the Indigent Defense Commission (IDC) with the committee's best practice recommendations and model contracts for consideration
 - ❖ If the legislation does not pass, the Judicial Council should publish a final report with detailed recommendations and model contracts for country implementation
 - ❖ The Judicial Council should require the CARE IT team to implement the committee's data collection recommendations in future programming updates

- Data Collection Clarification
 - ❖ It is the intention of the Committee that private data collection will take place between the County and the attorney who is hired, provided for in the language of the draft model contracts
 - ❖ Draft model contracts were developed to address juvenile parental defense and juvenile delinquency

Questions were asked of Justice Pearce and Ms. Williams, and clarification was provided.

Motion: Mr. Lund moved to adopt the proposed recommendations relative to juvenile indigent representation as prepared by the Juvenile Indigent Representation Study Committee. Judge Toomey seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Justice Pearce and Ms. Williams for their update.

11. WINGS COMMITTEE REPORT: (Judge David Connors and Karolina Abuzyarova)

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

- Focus of the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) includes:
 - ❖ Oversee guardianship practice
 - ❖ Address key policy issues
 - ❖ Improve the current system of guardianship and less restrictive alternatives
 - ❖ Engage in outreach and education
 - ❖ Enhance the quality of care and quality of life of vulnerable adults
- Development and refinement of self-help procedures, to have available the appropriate forms for family members involved in the guardianship process
- Secured grant funding in the amount of \$30,000 from the Utah State University Center for Persons with Disabilities to allow for funding of classes on advance life planning and guardianship in FY17
- 97 professionals and caregivers in Vernal, Logan, Ogden, Provo, and Salt Lake City were trained in the first and second quarters of FY17
- Referenced the 2017 Advance Life Planning/Guardianship class schedule
- The online training program on advance life planning and guardianship has been completed and is available for use. Translation into Spanish of the online training program is in progress.
- Creation of an online training program on the standards of practice for family guardians is in progress.
- Permanent funding of the Court Visitor Program has been requested for consideration during the 2017 Legislative Session, with a presentation scheduled on February 8
- Creation of a subcommittee to address matters regarding as Judicial Response Protocol in cases of identified abuse and neglect is in progress
- Grant funding has been requested through application for the Elder Justice Innovation Grant of the U.S. Administration for Community Living to enhance court oversight in adult guardianship
- Evaluation of the impact of the Court Visitor Volunteer Program is in progress

Judge Connors and Ms. Abuzyarova were thanked for their update on behalf of the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

12. JUSTICE COURT JUDGE CERTIFICATION: (Jim Peters)

Mr. Peters recommended certification for the following new justice court judges: 1) Judge Anna Rossi Anderson, South Salt Lake Justice Court; 2) Judge Clay Stucki, Ogden City Justice Court; 3) Judge George Voiduc, Midvale City Justice Court; 4) Judge Kelly N. Schaeffer-Bullock, Alpine/Highland Justice Court; 5) Judge Michael Boehm, South Jordan Justice Court; 6) Judge Michael Junk, Ogden City Justice Court; 7) Judge Morgan Cummings, Lehi City Justice Court; 8) Judge Thad Seegmiller, Washington City Justice Court; and 9) Judge Trent Nelson, Roy City Justice Court.

Motion: Judge Marx moved to certify the justice court judges being recommended for certification. Judge Parkin seconded the motion, and it passed unanimously.

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

13. EXECUTIVE SESSION:

An executive session was held at this time.

Motion: Judge Pullan moved to refer the matter regarding the judge discussed in an executive session to the Judicial Conduct Commission. Justice Lee seconded the motion, and it passed unanimously.

14. ADJOURN

The meeting was adjourned.