

JUDICIAL COUNCIL MEETING

Minutes

Monday, February 27, 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. Paul Farr
Hon. Thomas Higbee
Hon. David Marx
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

Hon. Mary Noonan

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Geoff Fattah
Tucker Samuelson
Nancy Sylvester
Keisa Williams

GUESTS:

Hon. Michele Christiansen
Hon. Su Chon

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 January 23, 2017 Judicial Council meeting. Mr. Lund seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported that members of the Supreme Court have been focused on the selection of the State Court Administrator. Interviews were held with several candidates being considered for the position. Further discussion will take place later in the meeting in an executive session.

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

Mr. Becker reported on the following items:

Appropriation Requests – 2017 Legislative Session. The Executive Offices and Criminal Justice Appropriations Subcommittee finished their work on February 10. They have submitted a list of 28 prioritized items to the Executive Appropriations committee totaling \$22.4 million in ongoing requests and \$3 million in one-time requests.

The courts have five requests included on the prioritized list to include:

- Item 5 – Replace main item court complex account with GF
- Item 7 – Fifth District Court Judge
- Item 9 – District Court Law Clerks
- Item 10 – Guardianship Reporting and Monitoring Program
- Item 15 – Lease Increases

The Executive Offices and Criminal Justice Appropriations Subcommittee also reallocated existing department funds, and the courts received \$549,100 for the CORIS Rewrite Project and \$919,000 for the Jury/Witness/Interpreter Supplemental.

Revenue Projections. The revenue projections recently released were \$88 million higher than the December estimates, and the current projections provide a total of \$375 million for additional ongoing appropriations over the current budget. The majority of the new funding is in the Education Fund.

2017 Legislative Session. The 2017 Legislative Session is scheduled to end on March 9. The March Council meeting is scheduled for March 10 in St. George in conjunction with the Bar's Spring Convention.

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:

- Meetings are being held weekly
- Continued discussion and input from a work group established to address issues relative to HB 239 – Juvenile Justice Amendments
- The Liaison Committee voted unanimously to change their position, taken initially, from “support in concept” to “no position” in response to a series of concerns they have with the second substitute of HB 239 – Juvenile Justice Amendments
- A meeting has been scheduled with Representative Lowry Snow, Justice Lee, and Mr. Becker for this afternoon to discuss their concerns with HB 239 – Juvenile Justice Amendments
- HB 93 – Judicial Nominating Process Amendments
- SB 193 – Judicial Performance Evaluation Commission Amendments
- HB 332 – Criminal Procedures Revisions
- Mr. Schwermer will address bills pertinent to the courts with his legislative update later in the meeting

Policy and Planning Meeting:

Judge Pullan reported that there is a rule for comment on the agenda later for discussion.

Bar Commission Report:

Mr. Lund reported on the following items:

- Bar's interest in HB 93 – Judicial Nominating Process Amendments
- An invitation to the Snow Canyon event on March 10 was extended to all Council members attending the Bar's Spring Convention in St. George next week.

5. RULE FOR COMMENT: (Judge Derek Pullan and Nancy Sylvester)

Judge Pullan provided background information on the rule for consideration – CJA Rule 4-202.09. The proposed rule change is amended and provides for records in property and tax cases involving commercial information, as that term is defined in Utah Code § 59-1-404, are protected.

A group of tax attorneys, representing a cross-section of interests; presented a proposal, at the January Policy and Planning meeting, that would amend CJA 4-202.09.

The Policy and Planning Committee recommended that the rule be sent out for public comment.

Discussion took place.

Mr. Schwermer provided information relative to the records classification aspect of the proposed rule.

Motion: Justice Lee moved to approve CJA Rule 4-202.09 be sent out for public comment. Judge Toomey seconded the motion, and it passed unanimously.

6. LANGUAGE ACCESS COMMITTEE UPDATE AND COMMITTEE REAUTHORIZATION: (Keisa Williams)

Chief Justice Durrant welcomed Ms. Williams to the meeting.

Ms. Williams reported that the Language Access Committee was created in February 2011. The committee is requesting reauthorization for an additional six-year period.

Motion: Judge Farr moved to reauthorize the Language Access Committee for an additional six-year period. Judge Bagley seconded the motion, and it passed unanimously.

Ms. Williams highlighted the following in her update to the Council which covered FY 2014 – FY 2016:

- English Language Proficiency in Utah
- Interpreter Licensing
- Interpreter Availability
- Interpreter Hours
- Program Costs
- Travel Costs
- Remote Interpretation
- Interpreter Invoices
- Recommendations on behalf of the Language Access Committee:
 - ❖ Implement a system to capture the video record in hearings involving ASL or deaf interpretations
 - ❖ Develop an automated program to conduct interpreter scheduling, tracking and invoicing

Ms. Williams noted that ethics training will be included as part of the training provided for interpreter coordinators.

Chief Justice Durrant thanked Ms. Williams for her update.

7. APPROVAL OF THE DISTRICT COURT JUDICIAL WEIGHTED CASELOAD: (Debra Moore)

Chief Justice Durrant welcomed Ms. Moore to the meeting.

Ms. Moore reminded the Council of the presentation at the January meeting regarding the proposed new methodology for calculating the district court weighted caseload. She expressed her appreciation to Mr. Tucker Samuelsen for all his work in preparing the new methodology for calculating the district court judicial weighted caseload.

The proposed new methodology for calculating the district court weighted caseload is being recommended for approval.

Motion: Judge Toomey moved to approve the proposed new methodology for calculating the district court weighted caseload as recommended. Judge Higbee seconded the motion, and it passed unanimously.

8. ETHICS ADVISORY COMMITTEE UPDATE: (Judge Michele Christiansen)

Chief Justice Durrant welcomed Judge Christiansen to the meeting.

Judge Christiansen highlighted the following in her update to the Council: 1) no opinions have been issued this year, 2) members of the committee were noted, 3) the committee will begin meeting periodically to review the rules of conduct and determine if any updates or changes are necessary, 4) the annotated code has been updated, and 5) gratitude was expressed to Mr. Johnson for all he does as staff to the committee.

9. JUDICIAL OUTREACH COMMITTEE UPDATE: (Geoff Fattah)

Chief Justice Durrant welcomed Mr. Fattah to the meeting.

Mr. Fattah mentioned that Judge Elizabeth Hruby-Mills, committee chair was unable to attend. He acknowledged Judge Su Chon, a member of the committee, in attendance at the meeting.

Mr. Fattah highlighted the following in his update to the Council:

- Ongoing Outreach Efforts
 - ❖ School tours
 - ❖ Advertising: billboards, newspaper, and social media
- Community Relations Subcommittee
 - ❖ Law Day
 - ❖ Constitution Day
 - ❖ Ogden Hispanic Community Judicial Forum
- Divorce Education for Children Subcommittee
 - ❖ 26 total classes held in Logan, Ogden, Salt Lake City, and Provo
 - ❖ Future plans to create a website for teens
- Bench-Media Subcommittee
 - ❖ Media pool requests
 - ❖ Press releases
 - ❖ Media inquiries
 - ❖ Access to juvenile court information

Judge Chon offered a few comments on the work of the committee.

Mr. Fattah mentioned that he had recently begun reporting visits made to the Utah courts by other countries to the Standing Committee on Judicial Outreach.

Chief Justice Durrant thanked Mr. Fattah for his update.

10. INTERLOCAL AGREEMENT BETWEEN HELPER CITY AND CARBON COUNTY: (Jim Peters)

Chief Justice Durrant welcomed Mr. Peters to the meeting.

Mr. Peters provided background information relative to the request for an interlocal agreement between Helper City and Carbon County.

It was recommended to approve the interlocal agreement being requested.

Motion: Judge Marx moved to approve the interlocal agreement between Helper City and Carbon County, with a February 1, 2017 effective date. Judge Toomey seconded the motion, and it passed unanimously.

11. LEGISLATIVE UPDATE AND APPROPRIATIONS HIGHLIGHTS: (Daniel J. Becker and Rick Schwermer)

Chief Justice Durrant welcomed Mr. Schwermer to the meeting.

Mr. Schwermer highlighted the following bills being considered this legislative session:

- HB 72 – Child Welfare Proceedings Amendments
- HB 77 – Fifth District Court Judge
- HB 93 – Judicial Nominating Process Amendments
- SB 134 – Indigent Defense Commission Amendments
- HB 259 – Duty to Retreat Amendments
- SB 167 – Bail Amendments
- SB 193 – Judicial Performance Evaluation Commission Amendments
- SJR 7 – Joint Resolution Amending Rules of Criminal Procedure
- HB 239 – Juvenile Justice Amendments
- SB 101 – Sales and Use Tax Modifications

Discussion took place.

12. AUDIT OF MONETARY BAIL: (Rick Schwermer)

Mr. Schwermer mentioned that the legislative audit entitled *A Performance Audit of Utah's Monetary Bail System* was presented to the Legislative Audit Committee on January 26.

Mr. Schwermer highlighted the following chapters and the recommendations outlined in each of the noted chapters:

- Chapter II – While Limited in Use, Cash Bail Resulted in Higher Appearance Rates than Surety Bond
- Chapter III – Pretrial Release Decisions Need to be Evidence-Based and Account for Risk
- Chapter IV – Improvements are Needed to the Surety Bond Forfeiture Process

Discussion took place.

Motion: Judge Toomey moved to enter into an executive session to discuss a matter of professional competence. Justice Lee seconded the motion, and it passed unanimously.

13. EXECUTIVE SESSION:

An executive session was held at this time.

Motion: Justice Lee moved to approve the minutes from the January 23, 2017 Judicial Council meeting to include the Executive Session Sworn Statement. Judge Bagley seconded the motion, and it passed unanimously.

14. ADJOURN

The meeting was adjourned.