

JUDICIAL COUNCIL MEETING

Minutes
Monday, April 24, 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. Mary Noonan
Hon. Reed Parkin
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. Kate Toomey
John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Rick Schwermer
Clayson Quigley
Rob Parkes
Ron Bowmaster
Geoff Fattah
Alyn Lunceford
Nancy Sylvester

GUESTS:

Hon. James Brady
Hon. Fred Voros
Hon. Stephen Roth
Jennifer Yim, JPEC
John Ashton, JPEC
Hon. Dennis Fuchs
Hon. Reuben Renstrom
Drew Mingl, DTS
Jensie Anderson

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. He reported that this would be Mr. Dan Becker's last Council meeting.

Motion: Judge Toomey moved to approve the minutes from the March 10 Judicial Council meeting. Judge Noonan seconded the motion, and it passed unanimously.

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

Chief Justice Durrant recognized Mr. Becker for his many years of service and contributions to the Utah courts.

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

Mr. Becker reported on the following items:

District Court Administrator. Ms. Debra Moore has announced her upcoming retirement effective May 25. He recognized and thanked Ms. Moore for her involvement, service and contributions to the Utah courts.

Chief Information Officer. He reminded the Council that Mr. Ron Bowmaster will be retiring from the Utah courts effective May 1. He acknowledged all he has done on behalf of the Utah courts.

Tenure with the Courts. Mr. Becker expressed his appreciation to the Council for selecting him as the State Court Administrator in 1995 and allowing him to serve the Utah courts and the Council during that time.

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 April.

Policy and Planning Meeting:

No meeting was held in April. Judge Pullan mentioned that he is working with Mr. Brent Johnson and Ms. Nancy Sylvester to address the following: 1) to standardize the process by which rules are sent to the Policy and Planning Committee for consideration, and 2) to develop a way to prioritize the rules once they have been received by the Policy and Planning Committee.

Bar Commission Report:

Mr. Lund reported on the following items: 1) the Bar Commission is working on responses to an evaluation from an outside consulting firm who reviewed aspects of the Bar's operations; 2) Mr. Lund, Mr. Rob Rice, and Mr. John Baldwin are scheduled to meet with every member of the Congressional Delegation in Washington, D.C. tomorrow; and 3) the Summer Bar Conference will be held in Sun Valley, ID on July 26-29.

5. UNIFORM FINE AND BAIL SCHEDULE COMMITTEE UPDATE/2017

UNIFORM FINE/BAIL SCHEDULE: (Judge James Brady and Clayson Quigley)

Chief Justice Durrant welcomed Judge Brady and Mr. Quigley to the meeting.

Judge Brady provided the following update to the Council on the Uniform Fine and Bail Schedule Committee:

- The Uniform Fine and Bail Schedule Committee has met several times throughout the year
- Committee membership was noted
- Routine Function of the Uniform Fine and Bail Schedule Committee
 - ❖ 2017 legislative changes, agency requested changes, and public input have been addressed in the proposed 2017 Uniform Fine and Bail Schedule
- Committee Special Project
 - ❖ Evaluation of 125 different fine levels within the fine/bail structure

- ❖ Approval of placing offenses into four categories by the committee at their last meeting
 - Offenses against a person
 - Property offenses
 - Public Safety
 - Other
- ❖ All offenses divided into appropriate offense categories which account for approximately 2,100 offenses
- ❖ Recommended fine levels have been developed, but they have not been approved by the committee
- ❖ Assignment of an appropriate fine value for each category will be addressed

Chief Justice Durrant thanked Judge Brady for all that he and the Uniform Fine and Bail Schedule Committee is doing on behalf of the Utah courts.

Motion: Judge Toomey moved to approve the proposed 2017 Uniform Fine and Bail Schedule and authorize the Uniform Fine and Bail Schedule Committee to continue their work addressing structural changes. Judge Higbee seconded the motion, and it passed unanimously.

6. POST-CONVICTION SUBCOMMITTEE REPORT: (Judge Fred Voros and Judge Stephen Roth)

Chief Justice Durrant welcomed Judge Voros and Judge Roth to the meeting.

Background information was provided on the work of the Post-Conviction Study Committee formed in 2011 as part of the Indigent Defense Study Committee to identify and evaluate possible means to improve access to legal representation in post-conviction proceedings.

The proposed recommendations as prepared by the Post-Conviction Subcommittee include:

- Develop a post-conviction manual and checklist for use by pro se litigants and pro bono counsel
- Develop a more robust post-conviction pro bono program in the Utah State Bar
- Amend the Post-Conviction Remedies Act to expand the factors for trial courts' consideration in determining whether to appoint counsel and to provide funding for expenses
- Create a Post-Conviction Center modeled after the Rocky Mountain Innocence Center

Discussion took place.

Motion: Judge Toomey moved to approve the recommendations as presented by the Post-Conviction Subcommittee and forward them to the Management Committee for the purpose of addressing implementation of the proposed recommendations. Judge DeCaria seconded the motion, and it passed unanimously.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Jennifer Yim and John Ashton)

Chief Justice Durrant welcomed Ms. Yim and Mr. Ashton to the meeting.

Ms. Yim introduced Mr. Ashton to the Council.

Ms. Yim and Mr. Ashton highlighted the following in their update to the Council:

- Surveys of judges relative to the adjective question
 - Past surveys provided a list of adjectives which would allow respondents to select appropriate adjectives, and it allowed for the respondent to write in their own adjectives, as well
 - A new adjective question is being proposed with a limited list of adjectives and a different scoring system
- Proposal to create an online-based educational tool that would offer CLE opportunities for attorneys who complete judicial surveys

Discussion took place.

Chief Justice thanked Ms. Yim and Mr. Ashton for their update.

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

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

Mr. Schwermer reminded the Council that in December, Judge Fuchs raised several concerns arising in the problem-solving courts statewide relative to the requirements, presumptive requirements, and best practices. At that meeting, the Council determined that the concerns raised by Judge Fuchs could best be addressed by a working group on best practices, and they would then make recommendations to the Council. He also noted that the information included in the Council material for certification of certain problem-solving courts has been prepared in a different format.

Judge Fuchs highlighted the following recommendations as prepared by the Problem-Solving Working Group: 1) number of participants, 2) judicial assignment, and 3) drug and alcohol testing.

- Number of Participants
 - ❖ It was determined, by the study group, that the number of participants should not be a critical factor as long as the problem-solving court was functioning according to the remainder of best practices and not causing any harm to the participants.
- Judicial Assignment
 - ❖ It was determined that there should be an established training protocol for all new problem-solving court judges.
- Drug and Alcohol Testing
 - ❖ It was recommended that the Judicial Council take the position, in coordination with State Substance Abuse, that all problem-solving courts require urinalysis be performed at least twice per week on a truly random basis seven days a week—including holidays.

Questions were asked and discussion took place.

Motion: Judge Noonan moved to certify the 12 courts being recommended for full certification, and conditionally certify Judge Bean's Adult Drug Court, the Second District Adult Drug Court for six months to allow time for the areas needing attention to be addressed, and to adopt the work group's recommendations conceptually and ask the work group to provide more detailed steps for implementing the recommendations. Judge Toomey seconded the motion, and it passed unanimously.

9. LEGISLATIVE UPDATE: (Rick Schwermer)

Mr. Schwermer highlighted the following in his legislative update:
Distributed a copy of the 2017 Potential Interim Study Items

- A special session will likely be held in August to address implementation of HB 155 – Driving Under the Influence and Public Safety Revisions
- Interim committees scheduled as usual, three scheduled appropriation subcommittee meetings have been scheduled ahead of time
- Study Items Highlighted:
 - ❖ Government Operations
 - Election law cleanup
 - ❖ Health and Human Services
 - Opioids
 - Controlled substance database
 - ✓ Relationship between database use and prescriber behavior
 - ✓ Identification of the real problem
 - ✓ Etc.
 - ❖ Judiciary
 - DNA
 - Family Law
 - Indigent Defense
 - Jury Nullification
 - Protective Orders
 - Release from Jail or Prison (not to include cash or bail bond)
 - ❖ Law Enforcement
 - Whether drops in law enforcement staffing levels have impacted the number of traffic citations in the state, and how this impacts state and local revenue generated from criminal convictions, including revenue from the 35/90 surcharge
 - Impact of lowering legal blood alcohol limit to .05 on DUI offender's ability to possess a weapon
 - ❖ Political Subdivisions
 - Local government enforcement mechanisms
 - ❖ Retirement and Independent Entities
 - State employee compensation, including pay and benefits (specifically health and retirement benefits), for a holistic approach to employee compensation
 - ❖ Transportation
 - DUI 0.05%
 - Look at other countries with 0.05% and how their system is different, including cultural differences (neighborhood bars)
 - Insurance Issues
 - Etc.

10. JUDICIAL ASSISTANT EQUIVALENCY UPDATE: (Rob Parkes)

This item was deferred to the May Council meeting.

11. COMPENSATION ADJUSTMENTS: (Ray Wahl)

Commissioner Compensation and Staff Compensation:

Mr. Wahl reported that a 2% cost of living adjustment was authorized for state employees during the 2017 Legislative Session. However, the Judiciary has the authority to determine how to implement the cost of living funds as they see fit.

It was recommended to approve the cost-of-living adjustment for all court employees and all court commissioners at 2%.

Motion: Judge Toomey moved to approve the 2% cost-of-living adjustment for all court employees and all court commissioners. Judge DeCaria seconded the motion, and it passed unanimously.

12. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge Reuben Renstrom and Jim Peters)

Chief Justice Durrant welcomed Judge Renstrom to the meeting

Judge Renstrom highlighted the following in his update to the Council:

- Justice Court Goals:
 - ❖ Development of a presiding judge rule for justice courts
 - ❖ Improved orientation for new justice court judges
 - ❖ Judicial Conduct Commission – improve professionalism and accountability at the justice court level – justice court judge representative on the Commission

Chief Justice Durrant thanked him for his update.

13. JUDICIAL NEEDS ASSESSMENT: (Daniel J. Becker)

Mr. Becker reminded the Council of Chief Justice Durrant's comments on the request for the Fifth District Judge where he mentioned that it would be the last judgeship request for a number of years. There were additional issues that were reflected by this comment:

- The Fifth District Court's need was far greater than any other district at that time.
- The threshold that the Council has historically used in determining a need for an additional judgeship has been 130% of standard, and no other district was close to that.
- While the steep decline in filings had eased, most caseloads were still declining.
- The Appropriations subcommittee had begun discussions about whether judges should be moved from a relatively overstaffed district to a relatively understaffed district rather than creating a new judgeship.

A question arose, recently, relative to the Third District Court being at 115% of standard, yet showing a need for five additional judgeships. Mr. Becker determined that discussion of the matter by the Judicial Council would be appropriate at this time.

Discussion took place.

Mr. Becker suggested the Council consider the following when addressing the matter of judicial needs assessment: 1) the standard used in determining a judicial need, 2) the ability to move judicial resources as appropriate, and 3) reviewing the current judicial district configuration to determine if changes can be made in judicial district boundaries.

Further discussion of judicial needs assessment will take place at the next Management Committee meeting.

14. EXECUTIVE SESSION:
An executive session was not held at this time.

15. ADJOURN
The meeting was adjourned.