

JUDICIAL COUNCIL MEETING

Minutes
Monday, May 22, 2017
Judicial Council Room
Matheson Courthouse
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Justice Deno Himonas for 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.

STAFF PRESENT:

Richard Schwermer
Jody Gonzales
James Ishida
Debra Moore
Jim Peters
Dawn Marie Rubio
Alyn Lunceford
Rob Parkes
Stacey Snyder
Nancy Sylvester
John Bell

GUESTS:

Judge Samuel McVey

EXCUSED:

Justice Thomas Lee

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. He mentioned that Justice Deno Himonas would be sitting in for Justice Thomas Lee.

Motion: Judge Toomey moved to approve the minutes from the April 24 Judicial Council meeting. Judge Higbee seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the Appellate Court Conference held May 17-19.

3. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Mr. Schwermer reported on the following items:

2017 CCJ/COSCA Western Region Civil Justice Reform Summit. Utah, along with CCJ/COSCA, will host the Western Region Civil Justice Reform Summit May 22-24. A presentation of the Licensed Paralegal Practitioner program and the Online Dispute Resolution program will be provided at the Summit.

HB 239 Implementation Committee. The Management Committee approved the appointment of Judge Mary Noonan, Fourth District Court Juvenile Judge to serve on the HB 239 Implementation Committee. The HB 239 Implementation Committee is scheduled to hold their first meeting later this morning. Ms. Dawn Marie Rubio, Juvenile Court Administrator; and Ms. Krista Airam, Assistant Juvenile Court Administrator are also members of the committee and will be attending today's meeting.

CIP Program. Mr. Schwermer reminded members of the Council that federal funding for the Court Improvement Program (CIP) was not approved before the Congressional recess. At that time, Mr. Becker mentioned that Utah's CIP Program was funded through September 2017. Funding of the last two of the three grants was recently restored.

Judicial Performance Evaluation Commission (JPEC). A handout was distributed regarding proposed changes to the attorney survey. Feedback is being sought by Ms. Yim, executive Director of JPEC, on the proposed changes to the attorney survey. The commission requested an opportunity to conduct a pre-test with the proposed changes to the attorney surveys. With the pre-test, two from the 2016 retention election will be subject to the pre-test with regard to the proposed new questions and format to the attorney survey.

A handout was distributed regarding proposed changes to the adjective question which is part of the attorney survey. In 2015, changes were made to the adjective question. Mr. Schwermer reviewed draft changes to include the following: 1) format changes, 2) tense changes, 3) reference to the 3.6 standard, 4) procedural fairness, and 5) questions directing attention to recent interactions between the attorney and the judge.

Discussion took place.

Feedback was provided to Mr. Schwermer. Mr. Schwermer mentioned that additional feedback on the proposed changes to the adjective question of the attorney survey can be forwarded to him, by email, before the end of May.

Judicial Council and Judicial Council Committees. The Liaison Committee would like to hold a retreat this summer to come to a consensus, as a committee, of a common understanding in more detail of when and why the committee takes positions on bills and how they should respond to the legislative matters faced by the committee each legislative session.

The Policy and Planning Committee is working to standardize the process by which rules are sent to them for consideration and hope to develop a way to prioritize the rules once they have been received.

Mr. Schwermer will work with the Management Committee to schedule a Council retreat.

Executive Session. A brief executive session will be held later in the meeting.

District Court Administrator. Mr. Schwermer, recognized and thanked Ms. Debra Moore, District Court Administrator, for all she has done on behalf of the Utah court system. She will be retiring on May 25.

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 May.

Policy and Planning Meeting:

Judge Pullan reported that the Policy and Planning Committee continue to work on assignments forwarded to them to determine if the items are pertinent to their scope of work. Several rules are on the agenda for final action.

Bar Commission Report:

Mr. Lund reported on the following items:

- the Bar Commission approved the Utah State Bar's budget for the coming fiscal year
- Mr. Baldwin, executive director of the Utah State Bar, entered into another two-year contract to serve in this capacity
- Mr. Robert Rice, Utah State Bar president, submitted an OpEd entitled: *Don't Undermine the Independence of Utah's Judges* as a result of Robert Gehrke's recent call for recall elections for judges
- the Judicial Performance Evaluation Commission (JPEC) recently contacted Bar leadership regarding the pre-test request of attorney surveys
- Judge Fred Voros and Judge Stephen Roth have been selected as judges of the year
- Mr. Paul Simmons has been selected as lawyer of the year
- the Government Relations Committee has been selected as committee of the year
- Unbundled Services has been selected as the section of the year
- the Bar Commission has authorized entry of a contract with the Canyons Resort in Park City for as the venue for the 2019 Utah State Bar's Summer Convention

5. FACILITIES STANDING COMMITTEE UPDATE: (Judge Samuel McVey and Alyn Lunceford)

Chief Justice Durrant welcomed Judge McVey and Mr. Lunceford to the meeting.

Judge McVey and Mr. Lunceford highlighted the following in their update to the Council on the work of the Facilities Standing Committee:

- The remodel of the old Ogden Juvenile Courthouse to properly house the juvenile probation supervision staff and relocate GAL from Layton to Ogden has been completed
- Construction of the Fourth District, Provo, District and Juvenile Courthouse underway
- Construction of the Seventh District, Price – District and Juvenile Courthouse underway
- Matheson Courthouse – capital improvement and maintenance – reroofing project underway
- American Fork Courthouse – capital improvements and maintenance – improvements to the clerks front counters relative to improved security and the ability to more efficiently serve the public are forthcoming
- Heber Courthouse – development of a new courtroom plan
- Approval to advance a request to construct a new courthouse in Manti during the August Budget and Planning Session will be sought
- Standing Committee Report – 2017 Courts Facility Planning – summary provided

Judge McVey made a suggestion for larger court facilities to include a dedicated area for drug testing and the reasoning behind his suggestion.

Mr. Lunceford provided a response to a question relative to funding provided for court facilities through counties vs. funding requested by the legislature.

Chief Justice Durrant thanked Judge McVey and Mr. Lunceford for their update.

6. JUDICIAL ASSISTANT EQUIVALENCY UPDATE: (Cheryl Breneman)

Chief Justice Durrant welcomed Ms. Breneman to the meeting.

Mr. Schwermer provided background information on the Judicial Assistant qualifications as discussed extensively by the Board of District Court Judges. The proposed recommendation, prepared by the Board of District Court Judges, was discussed by the Management Committee at their February meeting. At that meeting, the Management Committee made a request to the human resource staff to determine alternative equivalencies to the college degree qualification for the judicial assistant position and present that information at the April Management Committee meeting.

The current Judicial Assistant qualifications are as follows:

- BA degree and two years experience in a professional environment.

The alternative equivalency for external candidates, as determined by human resources, is as follows:

- BA degree plus two years experience, or a paralegal certificate and four years of related experience

The proposed recommendation by the Board of District Court Judges for external candidates is as follows:

- The recommendation would allow the candidates to have five years of experience working in a legal field with a law firm, legal agency or court OR a BA degree

Ms. Breneman noted that with the alternative equivalency for external candidates, as determined by human resources; the equivalency would not lower the classification of the position resulting from a recent market comparability that was conducted by human resources.

Mr. Schwermer mentioned that human resources conducts a market comparability study annually, by rotating the employee positions every three years. The current market comparability study included the Judicial Assistant position. The results from the market comparability study for the Judicial Assistant position showed that the pay for the entry rate of the position is 6% below market. The Board of District Court Judges recommendation which would allow for elimination of the bachelor's degree requirement, in some instances, would reflect that the pay for the entry rate of the Judicial Assistant position is above the market comparability.

Discussion took place.

Chief Justice Durrant thanked Ms. Breneman for her update.

7. GAL OVERSIGHT COMMITTEE UPDATE: (Stacey Snyder)

Chief Justice Durrant welcomed Ms. Snyder to the meeting.

Ms. Snyder highlighted the following in her update: 1) committee membership; 2) meetings held in the last year; 3) the issue of salary parity still exists, with no additional funding being requested during the 2017 Legislative Session; 4) recommendation to add a GAL component to new judge training is being prepared by the committee; 5) request for continued

support relative to salary parity of GAL attorneys; and 6) recommendation to develop an educational video or pamphlet to provide for parents on the role of the Guardian ad Litem.

Mr. Schwermer acknowledged the work Ms. Snyder continues to do relative to the Guardian ad Litem program in the Utah State court system.

Chief Justice Durrant thanked Ms. Snyder for her update.

8. PRESENTATION OF THE FY 2018 SPENDING RECOMMENDATIONS: (Richard Schwermer)

Mr. Schwermer reviewed the process for addressing the FY 2018 spending recommendations. The process begins with priorities being considered by district leadership, boards of judges, and the members of an Executive Budget Committee.

The Executive Budget Committee met in April to review requests and recommend what should be considered and advanced to the Council at their August Budget and Planning Session, and to propose a balanced budget.

The proposed FY 2018 spending recommendations were also discussed with the Management Committee at their May meeting.

Mr. Schwermer highlighted the following related to the proposed FY 2018 spending plan:

- Available ongoing funding sources
- Ongoing spending plan – budget obligations
 - Career track obligations
 - Fifth District Judge
 - Juvenile Justice Reform
 - SB 3: Contracts & Leases rent increase
- Ongoing budget items deferred from the August Planning Session
 - Market comparability adjustment
 - Fourth District law clerk (1)
- Available one-time funding sources
- One-time spending plan – budget obligations
 - Fourth District law clerk/bailiff benefit package
 - Utah Code
 - Juvenile Justice Reform
- One-time budget items deferred from the August Planning Session
 - Volunteer Court Visitor Program (2 FTE)
 - Computer replacement schedule
- One-time budget requests

Motion: Judge Parkin moved to approve the proposed FY 2018 one-time and ongoing spending plans, to include the reserve ongoing fund balance. Judge Higbee seconded the motion, and it passed unanimously.

9. RULES FOR FINAL ACTION: (Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

After being sent out for public comment, Rule CJA 03-117 – Committee on Court Forms and Rule CJA 01-205 – Standing and ad hoc committees are being recommended for final action by the Policy and Planning Committee with a November 1 effective date.

Rule CJA 01-205 – Standing and ad hoc committees. The rule was amended to create a new Judicial Council Standing Committee on Forms, provides committee composition.

Rule CJA 03-117 – Committee on Court Forms. This is a new rule that establishes the charge for the new Judicial Council Standing Committee on Forms. After public comment, paragraph (3)(a) was amended to include: The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, procedures for eliminating obsolete and outdated forms, procedures for recommending which forms should be translated into other languages, and procedures for expediting technical or non-substantive amendments to forms.

Discussion took place.

Motion: Judge Parkin moved to: 1) amend Rule CJA 03-117 – Committee on Court Forms to allow for a member skilled in linguistics or communication and one educator from a paralegal program or law school, and 2) approve Rule CJA 03-117 – Committee on Court Forms and Rule CJA 01-205 – Standing and ad hoc committees as recommended for final action by the Policy and Planning Committee with a November 1 effective date. Judge Toomey seconded the motion, and it passed unanimously.

Rule CJA 04-103 – Civil calendar management. The rule was amended. Pursuant to *Canon v. Holmes*, 2016 UT 42 and Civil Rule 41, requires that all orders of dismissal entered under the rule must contain the language “without prejudice.”

Rule CJA 09-301 – Record of arraignment and conviction. The rule was repealed. The Court of Appeals has determined that failure to follow this rule does not affect the validity of a plea or conviction with respect to enhancements. *State v. Gonzales*, 2005 UT app 538, 127 P.3d1252. The rule is also redundant to other rules and statutes.

Rule CJA 4-202.09 – Miscellaneous. This rule was amended to provide that records in property and use tax cases involving commercial information as that term is defined in Utah Code § 59-1-404 are protected. If a request is made to access a record or records ordered by the court as sealed, private, protected, or safeguarded. Thirty days after the court issues a non-appealable, final order, all records will be public, except as otherwise classified.

Discussion took place.

Motion: Judge Higbee moved to approve the following three rules for final action as recommended by the Policy and Planning Committee: 1) Rule CJA 04-103 – Civil calendar management, 2) Rule CJA 09-301 – Record of arraignment and conviction, and 3) Rule CJA 4-202.09 – Miscellaneous. Judge DeCaria seconded the motion, and it passed unanimously.

Rule 4-202.02 – Records classification. The Policy and Planning Committee recommended that no further action be taken on the proposal to amend Code of Judicial Administration Rule 4-202.02 to make criminal case records private when there has been a dismissal of all charges.

Discussion took place.

Motion: Judge DeCaria moved to take no further action, as recommended by the Policy and Planning Committee, on the proposal to amend Rule 4-202.02 – Records classification. Judge Toomey seconded the motion, and it passed unanimously.

10. SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

The following judges have applied for senior judge certifications: 1) Judge James Beasley, active senior justice court judge; 2) Judge Fred Voros, active senior judge; and 3) Judge Jack Stevens, inactive senior justice court judge.

The judges requesting senior judge certification meet all of the performance standards.

Motion: Judge Toomey moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council, for the following judges: 1) Judge James Beasley, active senior justice court judge; 2) Judge Fred Voros, active senior judge; and 3) Judge Jack Stevens, inactive senior justice court judge. Judge Higbee 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. Mr. Lund seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION:

An executive session was held at this time.

12. ADJOURN

The meeting was adjourned.