

JUDICIAL COUNCIL MEETING

**Minutes
September 11, 2017
Council Room
Matheson Courthouse
Salt Lake City, Utah 84111**

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Toomey, Vice Chair
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
Rob Rice, esq.

EXCUSED:

Hon. Paul Farr

STAFF PRESENT:

Richard Schwermer
Ray Wahl
Jeni Wood
Heidi Anderson
Shane Bahr
John Bell
Katie Gregory
Jim Peters
Nancy Sylvester

GUESTS:

Hon. Suchada Bazzelle
Hon. James Brady
Hon. Michele Christiansen
Hon. Michelle Heward
Kasey Wright

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

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Kate Toomey moved to approve the minutes from the August 18, 2017 Judicial Council meeting and the August 18, 2017 Budget and Planning meeting. Judge Marvin Bagley seconded the motion, and it passed unanimously.

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

Chief Justice Durrant stated he met with the Appellate Nominating Commission to discuss the qualifications of applicants to replace the vacancy created by the retirement of Justice Durham.

3. ADMINISTRATOR'S REPORT: (Richard Schwermer)

Mr. Schwermer mentioned James Ishida will be leaving the courts in October. Mr. Schwermer said there will be a national search for his replacement. Mr. Schwermer discussed that the next Council meeting will be held in the afternoon of October 3 in Zermatt. Mr.

Schwermer said the members are invited to join the Tribal State Reception, which will be from 5:30 – 7:00 on October 3.

Mr. Schwermer next discussed Operation Rio Grande. Mr. Schwermer said there are now funds for a new drug court. The drug court will begin September 13. Judge Fuchs will cover the first couple of weeks of the drug court. Judge Shaughnessy will oversee the court after that. Judge Todd Shaughnessy noted they currently have 40 potential participants. He also noted that there is room in the other drug courts. Mr. Schwermer said treatment slots are available but the final number will depend on Medicaid expansion.

Mr. Schwermer said Representative Hutchings met with him recently to provide feedback. Representative Hutchings has been involved in the probate case of a family member. Representative Hutchings wanted to thank Mr. Schwermer and the Self-Help Center for assisting with his case. Representative Hutchings said once he moved to the Self-Help Center the case went smooth and quickly.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant had nothing new to report.

Liaison Committee Report:

Justice Thomas Lee had nothing new to report.

Policy and Planning Meeting:

Judge Derek Pullan stated the work of the Policy & Planning meeting was reflective in the minutes.

Bar Commission Report:

Mr. Rob Rice said the Bar will be holding the 2019 Summer Convention in Park City in hopes to have greater participation. The Bar Commissioners toured the Canyons facility and were impressed with the pricing and space. Mr. Rice mentioned having the Council meeting in conjunction with the convention. Mr. Schwermer said that the 2019 schedule will be discussed in the fall of 2018.

5. REQUEST FOR NEW JUSTICE COURT - MONA: (Kasey Wright and Jim Peters)

Chief Justice Durrant welcomed Kasey Wright, attorney for Mona, and Jim Peters to the meeting. Mr. Peters presented a map of Mona and surrounding areas where there are existing justice courts. Mr. Peters noted there isn't a shortage of justice courts within 25 miles of Mona. Mr. Peters said seven miles from Mona is Juab County Justice Court. Mr. Peters noted most of the community's resources, such as schools and shopping are located in Nephi. Mr. Peters said the Board of Justice Court Judges was not in favor of adding a new justice court.

Kasey Wright briefly discussed the history of Mona city. Mr. Wright said since 2010 the population has risen approximately 70%. Mr. Wright said although the population is still small, they are expecting rapid growth. Mr. Wright said recently Mona has moved away from their dependence on Nephi and added an elementary. Mr. Wright said this summer a city building

was completed with the justice court in mind. The new building has space for the justice court. Mr. Wright noted there is no public transportation in Mona. Judge Noonan asked if Mona had discussed with neighboring justice courts the possibility of an interlocal agreement to Mona. Mr. Wright said they have not looked into this. Mr. Wright said the Mona cases are going to Juab County, which operates once a week. Mr. Wright said Mona is looking at the court being open once a week. Mr. Wright said the city is driven by independence more than revenue.

There was concern that the cost may outweigh the income. Mr. Wright said along with community identity, Mona is also working towards the expansion of the city. Mr. Wright said at this point they will not be adding a police department. Mr. Wright thanked Jim Peters for his assistance on this issue. Mr. Wright apologized for the Mayor’s absence. Judge Shaughnessy suggested starting with an inter-local agreement before creating a justice court. The Council discussed the costs associated with a court such as prosecutors, transportation of defendants, and legal defenders.

Motion: Judge Toomey moved to deny adding a justice court in Mona at this time because the city has not shown a need for the court as required by statute, and instead offering a potential solution of an inter-local agreement then readdressing this. Judge Mark DeCaria seconded the motion, and it passed unanimously.

6. AMENDMENTS TO FY 2018 SPENDING PLAN: (Richard Schwermer)

Mr. Schwermer presented FY 2018 spreadsheet showing what additional one-time funds are available after year-end close out. Mr. Schwermer explained what the funds are and how they can be used. Mr. Schwermer said the Legislature gives guidance on how the funds can be used. Mr. Schwermer said the items that were to be addressed in April 2018 can be dealt with today with the carry forward funds. Mr. Schwermer is proposing the following:

One-time Spending Plan		
Unallocated funds after closeout		\$366,066
WiFi Upgrade	\$60,000	\$306,066
UPS	\$79,000	\$227,066
VOIP	\$15,000	\$212,066
3rd District Senior Judges	\$97,000	\$115,066
ODR	\$8,000	\$107,066
Security Audit	\$17,000	\$90,066
Reserve	\$90,066	-

Mr. Schwermer discussed each proposal and explained the estimated costs are from the bids that have been received. There was discussion on each item. Mr. Schwermer mentioned the Fourth District is in need of a law clerk. Shane Bahr noted the vacant law clerk bailiff positions will not be replaced until permanent funding is available. Judge Pullan said the Fourth District court clerks issue has been a priority of the Judicial Council. Mr. Bahr said all of the law clerk bailiff positions are a one-year term.

The committee agreed to discuss the security audit in an executive session. Judge Toomey noted the amount for the security audit is small, however, if there are issues that need to be fixed that amount could rise.

Motion: Judge Parkin moved to accept the proposed funding as presented. Judge Toomey seconded the motion, and it passed unanimously.

7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Judge Michele Christiansen)

Chief Justice Durrant welcomed Judge Michele Christiansen to the meeting. She reported that there was only one new complaint since her last report to the Council, and that it was dismissed.

Judge Christiansen was thanked for her time.

8. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Richard Schwermer)

Mr. Schwermer discussed the legislative interim highlights from the August 22, 2017 meeting. Mr. Schwermer said the legislature voted to pass a committee bill deleting the Administrative Office of the Courts from the sunset list.

Mr. Schwermer said that judicial rules will be discussed in a Legislature meeting later this week. Mr. Schwermer said all Judicial Council and Supreme Court rules that have gone out for comment in the past several months will be addressed by the legislature. This will allow the legislature to provide feedback to the judiciary.

Mr. Schwermer said Representative Ray has asked to discuss the pretrial release program in an interior meeting.

9. BOARD OF JUVENILE COURT JUDGES UPDATE: (Judge Michelle Heward and Katie Gregory)

Chief Justice Durrant welcomed Judge Michelle Heward and Katie Gregory to the meeting. Judge Heward noted there was a change to the Board of Juvenile Court Judges since their last update. Judge Manley was replaced by Judge Fannesbeck. Judge Heward listed the other current members on the Board. Judge Heward reviewed the filing trends in the court over the past 10 years. Judge Heward said referrals, status offenses as well as delinquencies are down statewide. Judge Heward said the court is allowing probation to address non-compliance issues rather than a youth being referred back to the court. Judge Heward said the decrease in filings is due in part to enforcement and in part to efforts to keep kids out of the court system.

Judge Heward said the Board reached out to Geoff Fattah to outreach into the communities to help the relationship between the juvenile courts and the community and media. There have been positive outcomes from this effort. Judge Heward said another court improvement project was established. The Board brought in a Michigan Law School professor who is a national expert on keeping families engaged in the court system. The effort was to help attorneys understand the importance of keeping families involved. Judge Heward said the current staff to the juvenile courts is exceptional.

Judge Heward said the Board invited a tribal chief to come speak. There was concern about the tribal children. The chief discussed concerns which were then discussed with the juvenile court personnel. Judge Heward has since invited the chief to return for a follow up

session. Judge Heward said there was a state-wide training on the Indian Child Welfare Act that included DCFS personnel, Guardian ad Litem, judges, and court personnel, totaling over 1,000 individuals. Judge Heward noted Gabriella Archuleta has been instrumental in these efforts.

Judge Heward said probation has updated their case-planning curriculum.

Judge Heward discussed H.B. 239. Judge Heward said there were vast changes to the juvenile court system. Judge Heward noted the juvenile court houses probation, whereas the district courts do not. Judge Heward said the judges are aware of the changes. The changes will take place in two parts, one began August 1, 2017 and the other will begin July 1, 2018. Judge Heward indicated most of the spring conference will be devoted to from H.B. 239. Judge Heward said there are meetings being held regularly to discuss and understand the required changes. Judge Heward said most misdemeanors will no longer go before a judge, they will now go before probation officers for non-judicial closure. Judge Heward anticipates the workload for the probation officers will increase dramatically. Judge Heward said there are also substantial changes to CARE. Judge Heward said the Juvenile Justice Oversight Committee is tasked to discuss the new changes state-wide in meetings that have been organized.

Judge Mary Noonan briefly discussed the focus of these meetings has been discussing the changes to school districts and the police departments. Judge Noonan said the West Jordan chief of police said there may need to be issues readdressed in the law. Judge Noonan said Judge Heward has worked very hard in her efforts to educate stakeholders about the changes in H.B. 239.

Judge Heward requests any changes to resources wait for at least one year to give the juvenile courts time to adjust.

10. COMMISSIONER AND SENIOR JUDGE CERTIFICATIONS: (Nancy Sylvester)

Ms. Sylvester discussed the senior judge certifications. Ms. Sylvester reviewed each of the judges who are applying for recertifications for both active and inactive status. Ms. Sylvester said senior judges did not have substantial relationships with the presiding judges and districts therefore, the surveys were not helpful. Ms. Sylvester said she will address this with Policy & Planning

Motion: Judge Shaughnessy moved to approve the recertifications of 1) active senior judges: Judge Kent Bachman; Judge William Barrett; Judge Rand Beacham; Judge Judith M. Billings; Judge L.A. Dever; Judge Roger Dutson; Judge Sheila McCleve; Judge Frederic Oddone; Judge Sterling Sainsbury; and Judge Gary Stott, 2) inactive senior judges: Judge Lee Bunnell and Judge Darwin Poulson, as presented. Judge Toomey seconded the motion, and it passed unanimously.

11. COMMISSIONER VACANCY FOURTH DISTRICT: (Judge James Brady and Judge Suchada Bazzelle)

Chief Justice Durrant welcomed Judge James Brady and Judge Suchada Bazzelle to the meeting. Judge Bazzelle said Commissioner Faulkner has been shared between two courts. Commissioner Faulkner will be leaving at the end of 2017. Judge Bazzelle discussed that the weighted caseload has been steadily increasing. Judge Bazzelle said the judicial workload reflects they are .8 judges understaffed. The judges are at approximately 115% of the workload

standard. Judge Bazzelle reviewed further statistics related to the commissioner. Judge Bazzelle is recommending a 60/40 split between the district courts and juvenile courts for Commissioner Faulkner's position.

Judge Brady said the current split is 50/50 between the courts. Judge Brady is concerned that the district courts are down 1.6 judicial positions, without a commissioner. Judge Brady said averaging the Second and Third District caseloads is about 1,600 per commissioner per year. Currently the Fourth District is 45% higher than the average of the Second and Third Districts. With the replacement of the commissioner position the yearly amount would be approximately 1,800. Judge Brady said the need is there for a full-time commissioner in the district court.

Judge James Brady and Judge Suchada Bazzelle were thanked for their time.

Mr. Schwermer suggested postponing any decision on this issue until more data can be collected only 40+ days is presently available since H.B. 239 took effect. Mr. Schwermer said the current data is too new to determine where the cases will end up. Mr. Schwermer said it takes about 3 months to bring in a new commissioner.

The Council decided to address this again in at the October meeting.

12. EXECUTIVE SESSION

Motion: Judge Toomey a moved to go into executive session to discuss a security matter. Judge Higbee seconded the motion, and it passed unanimously.

An executive session was held.

13. ADJOURN

The meeting was adjourned.