

JUDICIAL COUNCIL MEETING

Minutes
February 25, 2019
Matheson Courthouse
Council Room
450 S. State St.
Salt Lake City, Utah 84111
9:00 a.m. – 12:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Attendees:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Augustus Chin
Hon. Ryan Evershed
Hon. Paul Farr
Justice Thomas Lee
Hon. David Marx
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Staff:

Hon. Mary T. Noonan
Ray Wahl
Kim Allard
Heidi Anderson
Shane Bahr
Cathy Dupont
Brent Johnson
Kara Mann
Jim Peters
Neira Siaperas
Karl Sweeney
Jeni Wood

Excused:

Hon. Kevin Allen

Guests:

Hon. James Brady, Fourth District
Michelle Draper, ASL Interpreter
Mark Urry, Fourth District TCE

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

Judge Derek Pullan recommended adding to section 14 of the January 28, 2019 minutes that Judge Kara Pettit expressed concerns that some courts designated for approval may not have met all of the requirements. Judge Pullan requested Judge Dennis Fuchs report to the Council's next meeting that all courts have met the requirements. Judge Mary Noonan will speak with Judge Fuchs regarding this.

Motion: Judge Kate Appleby moved to approve the Judicial Council minutes from the January 28, 2019 meeting, as amended. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

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

Chief Justice Durrant appreciated meeting with President Adams and both parties.

3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary Noonan stated that Judge Kevin Allen, Judge Katie Bernards-Goodman, and Commissioner Thomas Patton have announced their retirements. Interviews of the five finalist for the State Court Administrator position are scheduled for today and tomorrow. The court received over 100 applications, however, only 11 met minimum qualifications. Judge Kara Pettit said district court judges would like to be involved with the hiring-decision. The finalists will meet with AOC management staff and others. Justice Thomas Lee questioned why there were not more qualified applicants. Ray Wahl noted the National Center for State Courts (NCSC) recruitment team said compensation is not an issue. When court managers in other states are in a vested retirement system. Many cannot afford to leave that state for other employment.

The Human Resources Policy review was discussed. Rob Rice said he is more than happy to help. Mr. Wahl said the NCSC has a listserv of HR Directors that may provide examples of other court system's HR policies. After further discussion, Judge Pullan will meet with Judge Noonan to create a plan for the review of all Human Resources Policies.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee will send out an email reminding judges about rules and processes on contact with legislators. The committee will meet after the session to create a more formalized process in the future.

Policy and Planning Committee Report:

Judge Derek Pullan reported that Policy & Planning did not meet in February.

Bar Commission Report:

Rob Rice said the Bar Commission did not meet in February. The Bar continues to monitor proposed legislation. President Dickson Burton thanked Chief Justice Durrant and the Judicial Council for holding the March Council meeting in St. George in conjunction with the Bar Spring Convention. Attorneys have expressed their appreciation for the Chief, Council, and judge's participation in the Bar conventions.

5. FOURTH DISTRICT COMMISSIONER REQUEST: (Judge James Brady and Mark Urry)

Chief Justice Durrant welcomed Judge James Brady and Mark Urry. Judge Brady noted the Fourth District has 2 commissioners – one shared between district and juvenile and one that does exclusively district court work. Commissioner Patton announced his resignation for August 1. There were more than 3,600 domestic case filings in FY18. Commissioner Patton's caseload is 672.

Judge James Brady noted with the announcement of Commissioner Patton's retirement, the Fourth District will need to begin the process to fill that position.

Chief Justice thanked Judge Brady and Mr. Urry.

Motion: Judge Shaughnessy moved to approve filling the Fourth District commissioner position. Judge Appleby seconded the motion, and it passed unanimously.

6. ETHICS ADVISORY COMMITTEE REPORT: (Judge Michele Christiansen Forster and Brent Johnson)

Chief Justice Durrant welcomed Brent Johnson. Mr. Johnson noted Judge Christiansen Forster was unable to attend. The committee just completed an opinion request that will soon be posted on the courts website. The committee only meets when an opinion is requested or when they review the Code. Mr. Johnson reviewed the committee members list.

Chief Justice Durrant thanked Mr. Johnson.

Motion: Judge Shaughnessy moved to approve the continuance of the Ethics Advisory Committee for an additional six years. Judge Appleby seconded the motion, and it passed unanimously.

7. LANGUAGE ACCESS COMMITTEE REPORT: (Michelle Draper and Kara Mann)

Chief Justice Durrant welcomed Michelle Draper and Kara Mann. Ms. Draper reviewed the committee memberships and projects they have completed, including a new English written exam policy, an interpreter survey, proposed revisions to CJA Rule 3-306.01-05 and HR Policy 570 – Second Language Stipend. Ms. Mann reviewed the committee's goals, including a mock trial. Judge Shaughnessy said he appreciates the work of the program coordinators when finding rare languages. Regarding the monitoring of interpreters in the courtroom, Ms. Mann noted certified interpreters must maintain CLE hours, however, monitoring the court hearings involving interpreters are not typically done. Ms. Draper said the committee has a grievance policy in place. Mr. Wahl commended Ms. Mann on her ability to maintain a difficult program.

Total spoken language usage:

- 5,512 District courts
- 3,939 Juvenile courts
- 6,743 Justice courts

Spoken language usage by district:

- 731 First district
- 2,161 Second District
- 7,985 Third District
- 3,884 Fourth District
- 846 Fifth District
- 190 Sixth District
- 104 Seventh District
- 83 Eighth District

Total sign language usage:

- 56 District courts
- 118 Juvenile courts
- 93 Justice courts

Sign language usage by district:

- 13 First district
- 50 Second District
- 103 Third District
- 80 Fourth District
- 20 Fifth District
- 0 Sixth District
- 0 Seventh District
- 1 Eighth District

Chief Justice Durrant thanked Ms. Draper and Ms. Mann for their impressive report.

8. STATE AUDIT UPDATE: (Karl Sweeney, Kim Allard, and Heidi Anderson)

Chief Justice Durrant welcomed Karl Sweeney, Kim Allard, and Heidi Anderson. Ms. Allard said the state review audit is looking at the chain of evidence in accordance with CJA Rule 4-206. Ms. Anderson said the second part of the audit is IT network, CORIS, and jury payments. Courts will soon require stronger passwords and will put VPN through terminal servers. Mobile devices should not attach to courts internet without ensuring proper protection. Judge Noonan thanked Ms. Anderson for keeping the courts informed of changes. Mr. Sweeney noted jury witness system and its operation will also be tested.

Chief Justice Durrant thanked Mr. Sweeney, Ms. Allard, and Ms. Anderson.

9. LEGISLATIVE UPDATE: (Cathy Dupont and Michael Drechsel)

Cathy Dupont stated the 2019 legislative session began on January 28 and will conclude on March 14. The courts are tracking 200 bills, 313 fiscal impact reviews, and 28 bills with court-reported fiscal impact. Ms. Dupont reviewed the priority bills for the courts. The request for Third District Court judges and staff is in position 13 and was reduced from 4 judges and staff to 2 judges and staff. The Judicial Assistants salary increase is number 34 on list.

There are three important legislative efforts that are underway.

1. Bail Bond Amendments (Rep. Lisonbee). This legislation is the result of negotiations with members of the bail industry at the specific direction of legislative leadership. The bill clarifies the circumstances under which a judge or magistrate can limit the specific method of posting bail.

2. Clean Slate Expungement (Rep. Hutchings). This legislation would result in a large percentage of misdemeanor and infraction cases, including traffic cases, being automatically expunged after certain eligibility requirements are met. This legislation will have significant fiscal impact on the courts in its current form. We are working to address those concerns before the bill is numbered.

3. Judiciary Housekeeping Bill (Sen. Hillyard). This legislation makes minor revisions to six statutes of importance to the courts:

- **Utah Code § 77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation,**

- modification, or extension -- Hearings -- Electronic monitoring.** Removes three words in subsection (12)(b)(i) (“the court that authorized probation shall . . . “)
- **Utah Code § 77-30-25. Individual brought into state on extradition exempt from civil process --Waiver of extradition proceedings -- Nonwaiver by this state.** Removes obsolete language requiring that a copy of consent of waiver of extradition be sent to Governor’s office.
 - **Utah Code § 78A-3-101. Number of justices -- Terms -- Chief justice and associate chief justice -- Selection and functions.** Removes term limit for Associate Chief Justice.
 - **Utah Code § 78A-7-203. Term of office for justice court judge -- Retention -- Reduction in force.** Removes obsolete phase in language regarding JPEC evaluation of full-time justice court judges.
 - **Utah Code § 78A-7-205. Required training -- Expenses -- Failure to attend.** Removes “each calendar year” from justice court judge continuing education (court doesn’t use calendar year to track training).
 - **Utah Code § 78B-7-106. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.** Addresses a renumbering issue that was introduced into the code as a result of HB160 and SB27 last session. This renumbering issue resulted in making possession of a firearm in violation of a protective order a civil, as opposed to a criminal, violation of the protective order.

Chief Justice Durrant thanked Ms. Dupont for her continued dedication to the legislative session. Ms. Dupont said Michael Drechsel has done a great job. Ms. Dupont will address the possibility of a team-approach for next year’s session at the post-legislative meetings.

10. NCSC SYSTEM REVIEW: (Judge Mary T. Noonan, Judge Kate Appleby, Judge Todd Shaughnessy, and Neira Siaperas)

Judge Noonan next addressed the two-step NCSC system review. The NCSC consultants visited Utah Courts and interviewed approximately 50 individuals over the course of 3 days last week. Judge Noonan will present a final report to the Council, once complete. Judge Noonan noted the willingness to participate and energy level of interviewees was commendable. This is the first time the consultants have been requested to review an entire court structure. Judge Appleby reminded the Council there will be a more intensive review completed at a later date. Justice Lee noted this opportunity may result in greater demands of Council members. Chief Justice Durrant was pleased with the review and noted this is a great opportunity to embrace change.

11 EXECUTIVE SESSION

There was no executive session held.

12. CONSENT CALENDAR ITEMS

a) Forms Committee Forms. Forms: Motion to Grant Divorce and Decide Other Issues Later (Bifurcate Divorce); Order on Motion to Grant Divorce and Decide Other Issues Later (Bifurcate Divorce); Notice to Defendant of Disclosure Requirements in Unlawful Detainer

Actions; Notice of Disclosure Requirements in Domestic Cases; Financial Declaration; Certificate of Service of Financial Declaration. Approved without comment.

b) Committee Appointments.

- Uniform Fine and Bail Committee appointment of Judge David Hamilton as Chair. Approved without comment.
- Self-Represented Parties Committee appointment of Janet Thorpe. Approved without comment.

13. ADJOURN

The meeting adjourned.